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## Order Decision

Site visit made on 2 August 2017

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 29 November 2017**

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### Order Ref: ROW/3169391

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Derby City Council Megaloughton Lane, Extinguishment Order 2014.
- The Order is dated 6 March 2014 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were five objections outstanding when Derby City Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

### Summary of Decision: The Order is not confirmed

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#### Procedural Matter

1. Network Rail was granted a Temporary Traffic Regulation Order to commence on 11 January 2017 to close the crossing in order to carry out track works. The effect of the temporary order ended on 30th June 2017. However when I visited, the Megaloughton Lane level crossing was still closed and fenced off.
2. Derby City Council, the order making authority (the Council) was requested to supply details of the authority under which it is currently closed. The Council confirmed that the crossing has been closed without any legal authority. It also appears from its statement that, following the making of the Order, Network Rail had closed off access to the line without the Council's consent.
3. I was thus unable to walk the whole of the existing route but viewed the crossing through metal railings placed across each side. From a photograph submitted clear and well-positioned warning signs were placed at the entrance to the crossing. These had been removed when I visited, as had part of the structure placed between the rails to aid crossing, composed of sleepers and connecting surface material which I could not identify as anti-slip.
4. Although the existing route is not available for use, a comparison could be made between the existing and alternative routes. My decision is based on the assumption that the existing route is available to the public to its full legal extent.

#### Preliminary and Main Issues

5. An objector raises the preliminary matter of whether s118 of the 1980 Act is an appropriate procedure to use, given that the Council accepts both that the route is currently used, and if the Order were not made it would remain in use. This question can be answered by first examining the criteria set out in the Act.
  6. The main issues to be considered before deciding whether or not to confirm the Order are found in s118 (2). I must be satisfied that it is expedient to stop up the public right of way described in the Order. The question of expediency
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- enables other relevant matters to be considered but particular regard must be had to:
- a. the extent that it appears that it would, apart from the Order, be likely to be used by the public; and
  - b. the effect which the extinguishment of the route would have on land served by it, taking account of the provisions as to compensation.
7. I should also give consideration under s118(6A) to any relevant parts of a rights of way improvement plan prepared by any local highway authority whose area includes land affected by the Order.
  8. The Order arises from an application made by Network Rail for three principal reasons. These are: firstly that the route is no longer needed for public use; secondly, that train speeds could increase which are claimed to have socio-economic benefits; and thirdly, to reduce risks of casualties on the railway line. There are separate powers to make orders extinguishing railway crossings, but these are intended to address primarily the question of public safety<sup>1</sup>. I see no reason why s118 cannot be used for the reasons given in the application provided that particular attention is paid to the extent of likely use of the route.
  9. Therefore, in relation to the preliminary objection raised, although the evidence might show the route would remain in use, it is the extent of such use should no order be made which should be considered on a fact and degree basis having regard to relevant circumstances of the case. I should also add that case law has emphasised that at confirmation stage the question of likely future use of the path concerned is relevant rather than the need for the path as it was assessed when the Order was made.

## **Reasons**

*The extent to which the footpath would, apart from the Order, be likely to be used by the public*

10. The crossing is in a mainly industrial area of Spondon, 0.5k west of Spondon station. It provides access between industrial estates located either side of the railway line. Use of the crossing seems to have reduced after the adjacent Celanese factory mostly shut down in 2014. The evidence suggests that the main use of the path is to walk, or cycle to and from work, by the shortest, most convenient route possible. A recreational use of the path exists in that it is a link between the Derby Canal path from Sandiacre to the Derby Canal path from Swarkestone, via the Riverside path and Alvaston Park.
11. A pedestrian survey conducted in December 2012 showed some use of the crossing. Another survey was undertaken from mid-January to the beginning of February 2016. The evidence suggests the number of users is small with an average of 6 to 7 users per day. About half the numbers are pedestrians and the other half are cyclists. However the surveys were carried out in months when arguably the crossing would not be as frequently used as in warmer weather.
12. The Council considers the use of the path is limited and the alternative routes would make the impact of closure minimal. Although the objectors are few in

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<sup>1</sup> See sections 118A and 119A Highways Act 1980 and Rights of Way Circular 1/09, paragraph 5.47

number, most claim actual use of the route, stating that they, including family members, use the existing route to cycle to work. The Council challenges the statements but I see no good reason to disbelieve them. They emphasise the inconvenience of the alternative routes and the consequence of the Order being confirmed in that they would be discouraged from cycling to work and instead use their car.

13. The evidence suggests that one can take a bicycle over the crossing without undue difficulty when dismounted. Other representations were to the effect that the route was quieter and more pleasant than the footpath adjacent to the A52 or that whilst it was not a good walking route, it formed a link between canal paths which if lost would divert walkers onto routes with more road traffic that were less safe.
14. The future potential for use of the Order route should be considered. Following the closure of the Celanese Works the land is intended for future industrial or business use, but the crossing does not directly link to the site. It is not disputed that other employment sites south of the railway could be affected by the Order but there is no detailed evidence to explain the position. Therefore any future benefits cannot weigh significantly in favour of keeping the route.
15. The Order route might not be described as an attractive recreational way but there is a clearly proven, albeit limited use of the route by walkers. The use made of it by cyclists, although small in number, is marked and I find their evidence compelling that if the route is closed it is likely that they will use other modes of transport to travel to and from work. It is likely in my view that a more comprehensive survey of the use of the crossing by commuters in better weather conditions would have increased the observed usage.
16. The alternative routes are currently being used by the public due to the closure of the crossing but that is not a relevant factor. Although the evidence is not substantial, it is clear that the Order route is likely, apart from the Order, to be used to some extent.

*The effect which the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation*

17. No issue of compensation has arisen in connection with the Order.
18. Whilst it has been noted that there may be advantages in maximising available connections for adjacent employment sites, I cannot conclude from the information supplied that the effects of extinguishment would be demonstrably adverse to the ownership of any land through which the existing route passes.

*Expediency and other material considerations*

#### Alternative routes

19. Megaloughton Lane along which the existing route lies, is about 745m long. Two main alternative routes have been identified with termini at either end of Megaloughton Lane. These are at Station Road /Megaloughton Lane and Raynesway Bridge/A52.
20. The Council accepts that these routes are not quite as convenient as the Order route, but contends that they do not put excessive additional burdens on users and are safer.

21. The former alternative route is some 765m long and includes the Spondon Level Crossing which is for road traffic with a separate footbridge. The evidence suggests there can be an appreciable wait for the safety barriers to be raised. The bridge is not designed for cyclists and if a bike is carried up and down the several flights of steps, negotiating it would not be at all easy. This alternative route has more traffic than the existing route and the Council accepts that the footway is limited in width but claims that the preferred alternative would be via the A52 for pedestrians.
22. The Raynesway Bridge/A52 route is about 1.4k long and includes a footbridge with cycle channels. I saw that there were several steps and the channels were steep. I agree with one objector that it would be a challenge to push one's bike up between the rails or to manage the descent conveniently. There is an extensive, and not particularly well-signed network of underpasses, fairly steep ramps, footways and footbridges at this junction. The Council accepts that this route may be limited to those cyclists that are agile and fit.
23. Proposals to manage vegetation growth along part of the Raynesway route are made by Network Rail. Photographs are submitted to highlight similar issues on the existing route as well as the absence of lighting and poor sighting in the approach to it. However in my view the curvature of the road at the point illustrated allows for reasonable visibility for those on foot. On the other side of the crossing, whilst there may be no lighting, pedestrians are unlikely to use it in darkness and from what I have read and seen, I see no reason why cyclists would be deterred from using it in early morning or evening commutes.
24. It is suggested that the alternative routes are much more convenient and commodious for pedestrians with dogs, small children, prams, or those with mobility problems. However this is at odds with the diversity impact statement produced by Network Rail which points out the reduced accessibility for more vulnerable users at the Raynesway footbridge. In any event the alternative routes exist and do not have to be created, so there is no inherent advantage to the Order being confirmed for these reasons.
25. Overall the alternative routes would mean increased walking distances for some users, especially for those unable to manage steps as the Raynesway footbridge is steep. I found that the existing route is quieter to walk than the footpath adjacent to the A52. Although the alternative routes would bring users closer to road traffic, I do not consider them to be intrinsically less safe than the existing route. However there would be some inconvenience for cyclists who would have to use one of the two alternatives.

#### Safety and increase of line speed considerations

26. The Council has commented that closure of the path is not directly related to concerns over safety but that it would be expedient to divert the path away from the unmanned railway crossing on this as well as convenience grounds.
27. The crossing was given a risk rating of high to very high in 2015 according to Network Rail's statement although in their application it was stated that the rating was "border line high risk". 186 trains on average use the crossing daily and line speed is 85 mph downline and 80 mph upline. Users are protected by stop, look and listen signage, whistle boards and audible train horn warnings between 0700 and 2300 hours. At such crossings, users are responsible for their own decision on when it is safe to cross.

28. Due to the closure I was unable to approach the decision points on either side of the crossing. From what I have read and seen including the curvature of the line, risk model information and statements from users, visibility for crossing appears generally good. However the fact that the crossing has been closed without authority has made it difficult for me to assess visibility with real confidence. Furthermore the statement unfortunately contains several references to the unrelated "Stoke Prior" crossing, clearly in error and it is not possible to tell if the contextual information relates to Megaloughton Lane.
29. Misuse of the crossing is alleged but the photograph that shows two young persons crossing, one on a bike, fails to show the nature of the alleged misuse. Albert Looms, next to the upline side of the crossing, refers to "kids playing there" but again it is unclear exactly what is alleged or where it is taking place.
30. The Derby to Spondon line is seen as an opportunity for a significant line speed increase as part of the programme to reduce journey time from London to Nottingham and Sheffield. A slide presentation suggests that "6 more seconds to release at Spondon" is critical and an overall 8 minute reduction in journey time from London to Sheffield had to be achieved by the end of 2014. In their letter to objectors, Network Rail states somewhat ambiguously, that the closure would provide the 8 minute improvement. More significantly however, the socio-economic benefits locally and nationally are not explained in detail.
31. National policy to reduce rail journey times and maximise the safety of crossings are capable of being relevant considerations. However there is no robust evidence that persuades me such benefits outweigh the primary consideration I must give to the likely extent to which the route would, apart from the Order, be likely to be used by the public.

#### Other matter

32. Objectors considered that the Council should encourage more people to walk or cycle to work on environmental grounds and to reduce congestion. The Council does not refer to the Rights of Way Improvement Plan 2014-2017, however its aims include promoting an efficient, sustainable transport network and for walkers, on mainly traffic free routes. Given that the Council accepts that for some users there would be inconveniences arising from using the alternative routes, in terms of more vulnerable users, the longer routes and their proximity in places, to fast moving traffic, it is not clearly explained how confirmation of the Order would assist in fulfilling the objectives of the plan.

#### **Conclusion**

33. Having regard to all of the above, it is likely that the Order route if available would continue be used to some extent by pedestrians and cyclists. It has not been demonstrated that there would be any specific adverse impacts on land that would be affected by confirming the Order. Alternative routes are available and whilst they may be suitable for some users they present disbenefits in terms of inconvenience, such as impeded access for cyclists. Whilst I have not found that the alternative routes would be less safe than the existing route, the need for walkers in some cases to pass close to heavy traffic on the narrow footway along the A52 is itself an inconvenience.
34. Although not primary considerations I have considered the case for closure of the crossing on safety and increase of line speed grounds. The former case is

weak as there are ambiguous references to another crossing and confusing as to the particular situation at Megaloughton Lane. Similarly, the socio-economic justification for increased speeds desired to be achieved, despite this appearing to be a motive for the proposed Order, is not made fully apparent.

**Conclusion**

35. Having regard to the above and all other matters raised in the written representations, I conclude that it is inexpedient to confirm the Order.

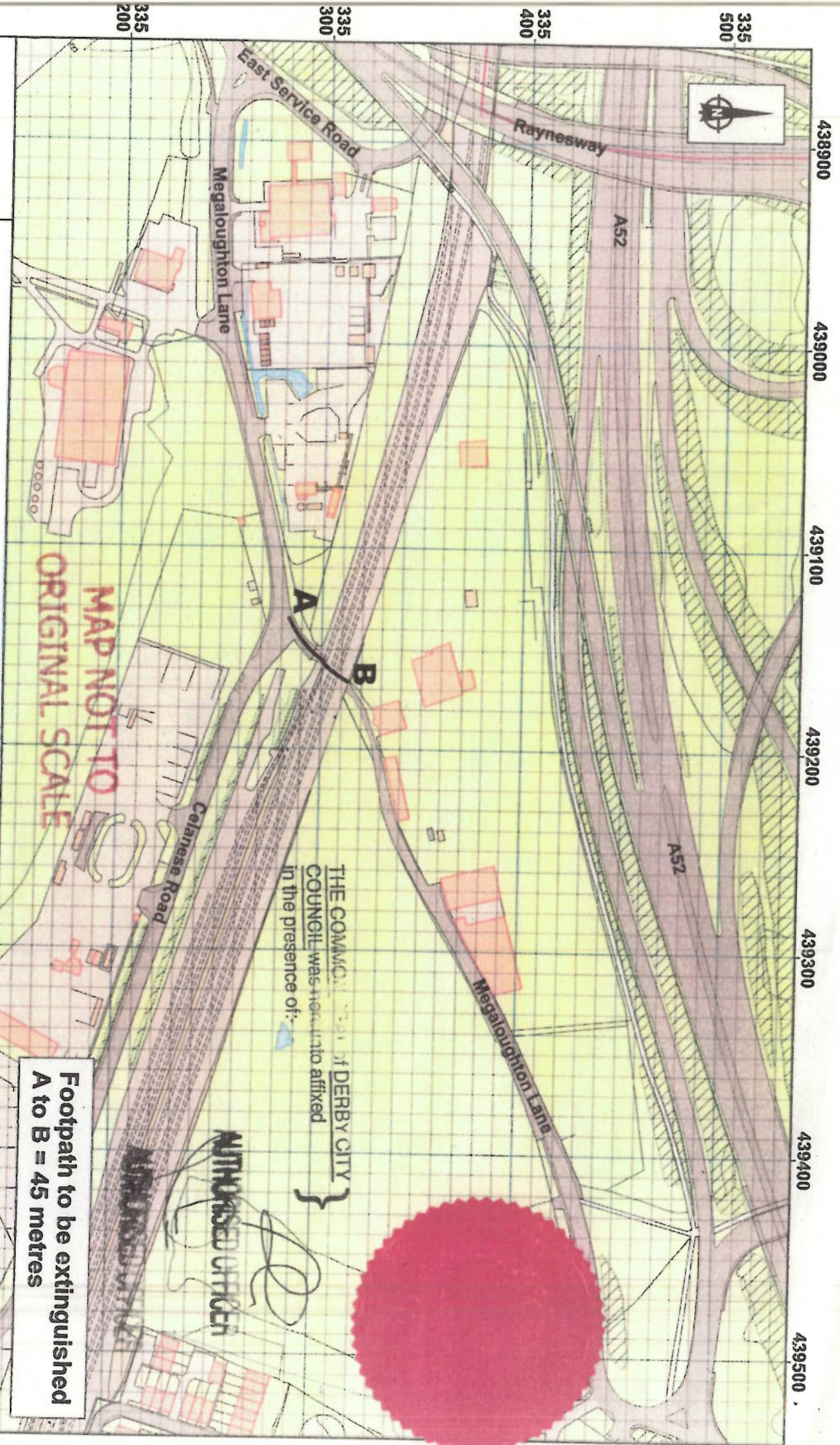
**Formal Decision**

36. The Order is not confirmed.

*Grahame Kean*

INSPECTOR





MAP NOT TO  
ORIGINAL SCALE

THE COMMONS ACT of DERBY CITY  
COUNCIL was not to be affixed  
in the presence of:

AUTHORISED OFFICER

Footpath to be extinguished  
A to B = 45 metres



Derby City Council

Highways Act 1980 Section 118  
Megaloughton Lane, Spondon  
Public Path Extinguishment Order 2014

Drawing No: Plan 1  
Date: 05/02/2014  
Map Scale: 1:2500  
Contact: Environment Team  
Department: Neighbourhoods  
Telephone Number: (01332) 293111  
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