



Order Decision

Inquiry opened on 22 September 2020

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 25 January 2021

Order Ref: ROW/3226477

- The Order is made under Section 118A of the Highways Act 1980 and is known as The Kent County Council (Public Footpaths CW80 & CWX40, Whitstable) Rail Crossing Extinguishment and Definitive Map and Statement Modification Order 2018.
- The Order is dated 16 October 2018 and proposes to extinguish the footpath running from the junction of Portway and Clifton Road in a generally southerly direction across the Chatham main line railway and the footpath continuing generally south-east to the junction with Glebe Way. Full details are set out in the Order Plan and Schedule.
- There were 168 objections and 284 representations in support outstanding at the commencement of the Inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

The Virtual Inquiry

1. On 4 February 2020 the Planning Inspectorate confirmed that an Inquiry into this Order would be opened on 22 September 2020 at The Marine Hotel, Whitstable. The Covid-19 pandemic led to changes being required so that this Inquiry could proceed.
2. Initially a decision was made to postpone the Inquiry but, having reviewed the matter following complaints raised regarding the potential delay, the decision was taken to proceed by way of a virtual event, that is online. I note the concern that the decision to continue had not taken sufficient account of the technical ability of users despite the online questionnaire, which was also sent out in physical form to parties without email. In organising the event it was necessary to recognise that in the (then) prevailing situation we needed to find a way to move forward in a safe and stable manner for all parties.
3. The Inquiry opened on the date that all statutory parties had known, and presumably worked towards, since being notified of it some six months previously. There was a short period between notification of postponement and reinstatement¹, but additional time was given for submissions of documents and so I am satisfied that there will have been no prejudice in relation to this matter.
4. A test event was held on 10 September 2020, with further opportunities for generic test event participation and guides on the use of Microsoft Teams provided for all interested parties. At the test event a request was made by the Whitstable Society ("WS") that the Inquiry should open as a blended event, that is with some people able to attend in person to give and hear evidence, as well as to watch the event livestreamed. I subsequently advised that I would

¹ 10 August and 17 August 2020 respectively

- take submissions on this matter at the opening of the Inquiry, it not being possible to simply alter what had already been advertised as a virtual event.
5. On opening the Inquiry on 22 September 2020 agreement was reached that the proposed change to procedure was no longer sought. WS, with the assistance of the Order Making Authority ("the OMA"), Kent County Council, organised for a venue to be made available for those witnesses who wished to provide evidence virtually, rather than by telephone, but were unable to do so without access to a digitally connected venue. Another objector chose to participate by telephone.
 6. The OMA, who were taking a neutral stance at the Inquiry, were also helpful in providing a page on their website where the documents, and Inquiry programme, were uploaded and available to interested parties. The Planning Inspectorate were aware of the public interest in this case and so livestreamed the event on the Planning Inspectorate YouTube Channel, adding to public accessibility to the event.
 7. I was, of course, well aware of the concerns that a virtual Inquiry would not be the same as an Inquiry held in person. A virtual event meant that instead of travelling in person to the event, participants were able to take part from their own home, office or other location that best suited them. This also avoided concerns relating to any local, or indeed national, restriction that could be put in place with little notice, as well as taking account of the potential vulnerability of witnesses. Such an event makes use of Microsoft Teams allowing participants to take part, or watch/ listen in, using computer, laptop, tablet, smart phone or landline.
 8. The purpose of the Inquiry remained the same – for me as the Inspector to look at and hear the relevant evidence. The written submissions form part of the Inquiry evidence which I have also considered in writing my decision. I consider it important that decisions on Orders such as this are delivered in a timely manner so that people are clear on the next steps, dependant on the decision reached. In taking the Inquiry forward at this time and in this way I am satisfied that I balanced that with the need for fair opportunity for public involvement in the Inquiry, which the Covid situation made more testing for us all, and the need to deliver decisions in a fair, open and impartial manner.
 9. I opened the Inquiry on 22 September and closed it on 7 October 2020. The Inquiry sat every weekday apart from 5 and 6 October.
 10. A late representation was received which required circulation, with other responses arising as a result also being circulated for information. This delayed the issuing of the decision.

Site visit

11. I made a site visit on 21 September taking in the crossing itself, including at the time of a train passing, and the suggested alternative available routes, as well as various locations, in Whitstable and beyond, which had been mentioned by parties in their submissions. No-one requested a further site visit at the close of the Inquiry.
12. Through the late representations I was invited to witness the new whistle board position and the vegetation clearance. These changes occurred prior to and

during the Inquiry respectively. I am satisfied that my site visit and the discussion of these matters through the course of the Inquiry were sufficient for my understanding of the points raised, as dealt with in the following decision. As a result, I have not undertaken a further site visit.

Proposed diversion & consultation matters

13. A report by the Head of Public Protection to the OMA's Regulation Committee Member Panel, 26 September 2018 ("the Report"), dealt with an "*Application to divert part of public footpath CW80 from the 'at grade' foot crossing to a stepped bridge at Whitstable in the City of Canterbury.*" The report provides information on the Network Rail ("NR") prior approval application for a new footbridge submitted to Canterbury City Council's ("CCC") Planning Department and considered in September 2017². The attached plan shows the proposed footbridge would have been to the east of the crossing, running between the cul-de-sac end of Norfolk Street and Clifton Road, with linking footpath access alongside the railway itself to take users back to the junctions of the existing crossing with Portway and Footpath CWX40. This would have allowed the diversion of public footpath CW80 onto an alternative footbridge route.
14. The Report indicated that informal consultation saw "*...a large amount of opposition, not so much to the closure of the crossing, but rather to the bridge and the impact of that on the local community and environment*". The report continues that this situation led to an informal consultation with all those who were consulted or had commented about the diversion proposal consultation on an extinguishment of the path, with no alternative provided.
15. The Report recommendations, approved by the Regulation Committee Member Panel and so giving rise to the Order now before me, were that:
 - the County Council declines to make an Order to divert public footpath CW80 where it passes over the 'at grade' foot crossing to a stepped bridge at Whitstable, Canterbury, as per the original application.
 - the County Council makes an Order to extinguish public footpath CW80 where it passes over the 'at grade' foot crossing at Whitstable and that the Definitive Map and Statement ("DMS") are amended accordingly.
 - the County Council makes an Order extinguish public footpath CWX40 which runs from Glebe Way to CW80 (as the extinguishment of CW80 will mean footpath CWX40 is not needed) and that the DMS are amended accordingly. The two extinguishments would form part of the same Order.
16. A statement to the Inquiry was provided by CCC Councillors, on their own behalf, not representing CCC, raising concerns that the CCC Councillors had only been asked to comment on matters relating to the footbridge. Another CCC Councillor, who had been the Vice Chair of the Planning Committee at the relevant time, submitted a representation in support of the Order. The objecting Councillors said that the decision to instruct the Head of Planning to write to the OMA regarding the level crossing itself was not a representative or binding decision taken by CCC as a whole. I consider this to be a matter for CCC to resolve internally; there is no indication of a further letter clarifying the CCC position as a result of such concerns.

² Reference CA//17/01178

17. Concerns were raised that the consultation on the potential extinguishment order had not been clear. I note that the consultations referred to in the Report were informal. NR had carried out their own public information event in October 2015 regarding options for the crossing.
18. There are statutory requirements in relation to the advertisement of Public Path Orders, which are set out in Schedule 6 to the Highways Act 1980 ("the 1980 Act"), as well as for the advertisement of associated Inquiries. These differ from planning application requirements and do not require informal consultation, although this is of course good practice and, from the evidence, did occur in this case. The OMA confirmed in writing and at the Inquiry that the statutory requirements had been met. With 452 statutory responses to the Order notices and twenty local people providing first-hand evidence to the Inquiry I am satisfied that the statutory requirements have been met.

Main Issues

19. The Order was made under section 118A of the 1980 Act as it appeared to the OMA that Footpath CW80, the Glebe Way level crossing ("the crossing"), should be extinguished in the interests of the safety of members of the public. Footpath CWX40, which runs from Glebe Way north-west to the crossing, was included in the Order as this has a like right of way, being a public footpath.
20. To confirm the Order, I would need to be satisfied that it is expedient to do so having regard to all the circumstances, and in particular to:
 - (a) whether it is reasonably practicable to make the crossing safe for use by the public, and
 - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
21. NR indicated that, as a result of their safety assessment, the crossing was unsafe and should be closed. They argued that there were no practicable means to make the crossing safe for use by the public.
22. Those in support of the Order relied on NR's assessment and their own personal experience of the crossing to make the case for closure; some of that experience involved the loss of a family member or friend. They believed that the available alternative routes were sufficient to provide access for those requiring it.
23. WS argued that the crossing was safe and convenient to use, particularly in comparison to the main available alternative routes. It was also argued that further works were possible to improve crossing safety.
24. The objections to the Order focussed on the desirability of keeping the crossing open for access to the beach, the town centre and other associated amenities, as well as for links to friends and family. There was discontent regarding the proposed alternatives with the argument that they were not as safe or convenient as the crossing itself.

Reasons***The setting of the crossing***

25. The crossing is located between Glebe Way and the junction of Portway/Clifton Road in Whitstable, Kent, CT5 1DH. The crossing provides pedestrian access over the Victoria to Ramsgate (VIR) railway line, the northern section of the Chatham Main Line railway. There was reference during the Inquiry to people and amenities to the north or south of the railway and I shall adopt those terms where appropriate.
26. The residential Clifton Road runs parallel to the railway to the north east of the crossing. Portway runs perpendicular to this providing a link to the road West Cliff, with the Whitstable and Seasalter Golf Club ("the Golf Club") to the north-west. A public footpath is recorded across the Golf Club, providing access to West Beach. To the south of the crossing is a private driveway, leading to garages, with the garages, properties to the west and south-west and another bank of garages belonging to the Glebe Way Property Company Ltd. Footpath CWX40 runs alongside the eastern edge of the private driveway.
27. Glebe Way forms a T-junction, with the south-eastern end leading onto Canterbury Road, the A290. Canterbury Road runs generally north-east/south-west into Whitstable town centre, turning generally north-west and passing under the railway bridge ("the underpass"), with Belmont Road running to the east at this junction. At around this junction the road becomes the B2205, Oxford Street, leading onto High Street. The use of Canterbury Road and the underpass was one of the main alternative routes discussed in the evidence.
28. Travelling south-west from Glebe Way along Canterbury Road gives access to Alexandra Road, a private road with a recorded footpath, which leads to the Irish Village footbridge³ ("the footbridge") over the railway. Turning north-east to the north of the crossing links back to the Golf Club footpath and West Cliff. There are other footpaths to the south-east of the footbridge, linking to Joy Lane, Prospect Fields and another footbridge over the railway line further to the west. The use of the footbridge was the other main alternative route mentioned in evidence.
29. The crossing is located to the west of Whitstable Station for which train services are provided by Southeastern. The terminus of the Chatham Main Line, London Victoria, originally opened in October of 1860 and was expanded two years later for the London, Chatham and Dover Railway lines. The Up line is the line towards London and is to the south at this crossing whilst the Down line, away from London, is the northern line.
30. Although there was some discussion in the submissions regarding when the right of way first came into existence, I do not consider this to be relevant to the matters before me. I understand that the public rights of way, CW80 and CWX40, were recorded on the DMS under the provisions of the National Parks and Access to the Countryside Act 1949.
31. The crossing is referred to by NR as a passive level crossing. It benefits from a level crossing deck, with low level blue solar powered carriage lights and trespass guards alongside. Kissing gates on either side of the crossing limit the

³ Identified by NR as VIR/769C

accessibility on the approaches to it from Glebe Way and Portway. There are Stop, Look, Listen (“SLL”) signs on either side of the crossing. Whistle boards on the railway line approaching the crossing are the point at which train drivers sound the horn to warn crossing users of the train approach except in the Night Time Quiet Period (“NTQP”) between the hours of 00.00 and 06.00. Covtec was installed at the crossing in 2016 as a supplementary audible warning device and works by radar detecting a train approaching and a train horn type warning being sounded at the crossing. This audible warning continues through the NTQP.

Use of the crossing

32. In response to the Order WS devised a questionnaire asking residents about their use of the crossing, the impact of closure, and the alternatives they might use. The questionnaire was distributed digitally and physically, with 1,000 copies of the hard-copy version hand-delivered to 39 roads, which were judged to be on likely walking routes to and from the crossing. The digital version was sent via email to WS members and posted on WS social media platforms. There were 160 digital and 61 physical responses.
33. There was some discussion through the Inquiry as to the constitution of WS and the production of the questionnaire. I understand that WS was founded in 1960, with the current constitution adopted 20 February 1990, amended at the 19 February 2014 AGM. WS covers the area in and around Whitstable seeking to serve and represent the local community, with the aim to improve the amenity and utility value of the town and district for local people, preserving the character and features of historic or public interest and improving the area to meet the needs of the future. As Whitstable has no local government administration, I understand that WS is a consultee for planning applications.
34. It is important that any formal organisation, particularly where subscriptions are involved, acts within the terms of their constitution. Whilst I hear the comments of NR on related propriety matters, I understand that WS members act in a voluntary capacity. I also understand the concerns raised of potential bias creeping into matters as presented on both sides of the table. It is clear from the leaflet distributed by WS⁴ that they sought to stop the closure of Glebe Way rail crossing but, of course, as applicants it will be clear that NR seek to have that closure confirmed. I keep such matters in mind. In relation to the questionnaire I consider that it provides useful information to be read alongside all other information relating to the use of the crossing.
35. A crossing in this type of location will, of course, provide access for a larger number of people than would be the case for a rural crossing. NR said in their application to divert the route that there was “considered to be a high level of use over a public footpath level crossing”. Censuses undertaken by NR from 2015 – 2020 showed the average number of users per day at 201, 116, 216 and 162. WS indicated that the data showed a reduction in the assumed level of use of the Crossing from 2019 – 2020. The WS survey found that most users were accessing the beach and so it is likely there would be higher daily use during the summer period, which was not covered by any census period⁵.

⁴ Pre-inquiry submission KCC23

⁵ Census dates were January, March and October

36. I give limited weight to the argument that new development would lead to an increased level of use of the crossing or that this would necessarily be material with regard to vulnerable and encumbered users. Of the identified developments the one most likely to increase use would be the 400 units allocated to land north of Thanet Way with a potential 'direct' route on Saddleton Road. There was no evidence that NR had requested contributions or restrictive conditions on any of the developments relating to closure or improvement of the crossing, which suggests they have not historically been viewed as a problem in relation to the crossing.
37. I agree with WS that the greatest change would be for those living closest to the crossing, who use it as part of their daily lives. They noted the variety of purposes for use of the crossing, including:
- Recreational/leisure including tourism
 - Familial and friendship ties either side of the railway line
 - Employment
 - Access to parking
 - Education
 - Those with reduced mobility
 - Medical services
 - Shopping
38. I shall bear these matters in mind in relation to this decision, particularly the wider expediency issues.

Vulnerable users

39. There was argument as to whether the Narrative Risk Assessment ("NRA") of 24/08/2020 was correct in determining that a 12 second warning time for train approach was required at the crossing. This was based on a 50% safeguard on crossing time, having formerly been 8 seconds, being required due to the level of use by vulnerable and encumbered users. The Census Good Practice Guide⁶ ("the CGPG") provides information on the types of vulnerable users, with those seeming relevant in this case being elderly people, dog walkers, people carrying heavy bags or large objects and young children. It sets out when it might be appropriate to consider a safeguard if for every five journeys:
- only one in five is made by a vulnerable user, the 50% safeguard might not typically be applied
 - two in five is made by a vulnerable user, it is especially important that a risk based decision is made
 - three to five are made by vulnerable users, the 50% safeguard would always be applied
40. One of the data inputs relied upon by NR for the 2020 NRA was the census carried out by Sotera, a report of which was issued to NR on 17 March 2020. I

⁶ Attached as WSx32, appendix to Inquiry Document 27

agree with WS that the statement⁷ that *"There has been no video footage taken of any user of the LC as part of the Census"* fails to reflect the report of that census. This indicates that a nine-day pedestrian census was carried out at the crossing from 29 February to 8 March 2020 using continuously recording equipment. It states that video review personnel classified incidents that may be of interest to NR, as set out at Table 3 of that report. I can accept that photographs of the incidents were provided to NR, rather than any video data, but I find it unlikely that the report was incorrect regarding the procedure.

41. NR suggested that the CGPG was out of date and so didn't cover matters which now been recognised by NR as relevant to crossing safety. However, the version submitted to the Inquiry⁸ was Issue 3, dated July 2017 and this appears to remain the most up to date CGPG. It is not unreasonable to expect that the CGPG would be followed and the point of disagreement was that the table which could be used to help decide which groups were considered vulnerable appeared not to have been used in the way it might be expected.
42. In relation to elderly users it was noted that *"Judgement is needed as not all elderly people are slow or less able to use a crossing safely..."*. Examples are then given of 'Vulnerabilities' and 'When users are not normally considered to be vulnerable'. However, the 2020 NRA makes clear that all potentially vulnerable users, as identified under the CGPG, were classified as vulnerable.
43. An example is seen in relation to dog walkers, which appeared to make up around a third of users, making some allowance for the potential of users with multiple dogs⁹. The CGPG indicates that dog walkers *"Observed to be using the crossing correctly and safely whilst keeping dogs on leads and under control"* would not normally be considered vulnerable but all dogs were included in the vulnerable count in the 2020 NRA.
44. NR's analysis of the remaining users' vulnerabilities led to inclusion of other groups and individuals, such as those using the crossing whilst wearing headphones or taking photographs or selfies on the crossing. The 2020 NRA indicates that, in the view of the Level Crossing Manager ("LCM"), around 55% of crossing users in that 9-day period were vulnerable. The CGPG indicates that it remains the LCMs final decision whether to add the 50% safeguard.
45. I understand that resources would not make it practicable for LCMs to spend lengthy periods of time at the crossings for which they are responsible in order to 'observe' and determine whether users were or were not vulnerable in their use. However, there appears to be a presumption of vulnerability, when there is other data available, such as the Sotera 'general observations' which indicates *"the vast majority of dogs were safely leashed or harnessed when they crossed... Very few unaccompanied children were seen to use the crossing during this period...and...The majority of pedestrians approached trackside with caution, looking repeatedly both ways."* This presumption is unhelpful when the thrust of the NR approach is read by the general public as seeking closure at all odds, as it suggests that there has not been rigorous consideration of the available information.

⁷ Inquiry Document 12

⁸ As an appendix to Inquiry Document 27

⁹ It would be possible to calculate a more correct figure from the data in WS09, where more dogs are recorded in comparison to pedestrians, such as Day 2 at 09.45. I have not carried out this assessment and so the figure may be a slight under- or over-estimate, but I do not consider the absolute value to be material on this point

46. I heard evidence from older people on both sides regarding their view of vulnerability of themselves and others in this context. I believe it would be fair to say that we generally find it difficult to accept that we are no longer able to do things as we did when we were younger. I was impressed by the personal evidence of users, who clearly benefit from the use of the crossing and did not feel that they were vulnerable in using it. I was also assisted in hearing from those with a medical background, although speaking in a personal capacity as friends and neighbours of those directly affected by a recent loss of life on this crossing. Taking account of all the evidence, I consider that it was reasonable to presume that a majority of elderly users should be considered as vulnerable users, but in the 9-day census it is noted that they made up only a small percentage of the total users.
47. NR provided an explanation for their rationale regarding users with dogs in terms of the likelihood of escape, distraction – for dogs and owners - and those with multiple dogs. On balance I accept that there is a greater vulnerability when walking with a dog, even when noted to be safely leashed as they may still interact with other dogs on the crossing. However, there was a failure to properly calculate the numbers giving rise to the LCM suggesting 64% of users walking with dogs, when in fact the number was around 36%.
48. Although WS suggested that the existence of the kissing gates either side of the crossing meant users would be unlikely to use them if encumbered there was evidence of users crossing with bicycles, kayaks, pushchairs, shopping, picnics and, memorably for all, a cooked Christmas turkey. I accept NR's argument that encumbered use indicates vulnerable use.
49. Evidence on executive functioning of the brain set out its role in relation to functions which could prove important in relation to an individual making decisions regarding safe use of the crossing. It was noted that it is not fully developed until the early 20s, which has significance in relation to the behaviour of teenagers. This explained a tendency towards risky behaviour, deliberate or otherwise, which would put them at greater risk when using crossing, for example, using the phone whilst trying to look/listen or seeing if they can 'get away' with crossing at a dangerous time. It was also noted that executive functioning can be impaired, for example, due to stroke or dementia.
50. A serving Detective Inspector stated that he had no reason to think that the crossing was a hotspot in relation to anti-social behaviour, with more call outs to other locations. However, there was evidence, including from those living adjacent to the crossing, of younger people loitering in proximity with solvent, alcohol and/or drug use implicated. A lack of function control, as induced by such substances, will impair judgement and increase vulnerability and, taking account of the information on executive functioning, the evidence indicates a group of people who are more vulnerable with regard to their own ability to use the crossing safely.
51. I heard from people, both at the Inquiry and in writing, that they did not feel they were vulnerable in their use of the crossing. Whilst there may be some who fail to recognise their own vulnerability there will be a proportion of users who are not vulnerable under any of the relevant criteria set out in the CGPG.
52. I understand the concern that the potential vulnerability and actual vulnerability of users of the crossing, as set out in the CGPG, had not been

correctly assessed; this was not assisted by the failure to calculate percentages correctly and was affected by the stated intention, at least in cross-examination, of NR to close level crossings, which fed the general public understanding that this was the end goal regardless.

53. Despite the miscalculations there are users in the categories discussed above, giving rise to around 50% of users being, fairly in my view, classified as vulnerable. This would set the matters in the two-three to five crossings being made by vulnerable users as set out in the CGPG. This does not push to the situation that a 50% safeguard would always be applied but rather that there should be a risk-based decision. Having read the 2020 NRA and heard the cross-examination, as well as all other evidence, I consider that it was appropriate for the LCM to apply the 50% crossing time safeguard such that the relevant crossing time to be assessed against would be 12 seconds.

Suicide

54. I heard evidence from both a medical and religious perspective on the merits of reducing exposure to known suicide localities. Despite three recorded suicides on the crossing in December 2010 and January and February 2011 this site does not meet the NR criteria for designation as a suicide hotspot and WS said there was no reason to think of it in this way. There was other evidence of attempted or threatened suicide, for example in the Glebe Way Incident Log.
55. Whilst not currently triggering NR's criteria on suicide hotspots concerns were raised regarding the potential for an increase in suicide as a result of the impact of Covid-19. It was indicated that restricting access to the means of suicide was the most effective way of suicide prevention. As it was possible to walk out in front of a train on the crossing, this was more likely to happen as an impulsive behaviour, from those who might not otherwise do so.
56. I also heard evidence from an adjacent resident who had experienced the aftermath of suicide at the crossing, with the Glebe Way Incident Log also providing some distressing details. I accept that removing an 'easy option' may assist in providing the time and thought needed to allow some people to seek help. I give this matter a little weight in favour of closing the crossing in the interests of safety of the public.

Accidental death

57. I heard from family, friends and others affected by the death of a 14-year-old girl who was killed on the crossing in February 2015. A verdict of accidental death was recorded by the coroner. The clearly devastating effect of such an incident on immediate and extended family and friends, as well as those in supporting roles, was eloquently expressed to the Inquiry.
58. As she and her family had moved to the area in 2007, she grew up with knowledge of the crossing. Despite this knowledge and not being an obviously vulnerable user, except in relation to her age and executive functioning, her life was lost on this crossing. I consider this demonstrates a risk for users, even if familiar with the crossing as many argued they were, feeling it to be safe for them to use.

Personal responsibility

59. NR accepted that pedestrians are responsible for their own safety and would be expected to use reasonable vigilance. Of course, you cannot completely remove the potential for misuse on railway land and a level of common sense should be applied. I agree with WS that photographs of misuse of other crossings, not necessarily directly comparable in terms of location or 'traffic', may not be helpful in focussing on the potential misuse at this crossing. However, I agree with NR that the photographs supplied as part of the Sotera survey output did show misuse, as characterised by NR.
60. Although people should take responsibility, we, as a civilised society, take responsibility for those unable, or unwilling, to do so in various areas of life. I do not consider that it is reasonable to suggest leaving people to take responsibility when they may not be entirely aware of the dangers.

Safety of the crossing

61. The All Level Crossing Risk Model ("ALCRM"), the mandatory tool developed and approved by NR in conjunction with Rail Safety & Standards Board ("RSSB"), quantifies individual risk, collective risk and Fatality and Weighted Injury probability. ALCRM requires specific information for the calculations, which includes census and type of users. The ALCRM risk score recorded in the 2020 NRA of 24/08/2020, was C3 which I understand to be the fifth highest score of 46 FPW (footpath with wicket gate) level crossings and 25th of 341 level crossings within Kent.
62. Towards Whitstable Station the line speed is restricted to 50mph, with trains travelling into the station decelerating, whilst those from it will be accelerating. Most trains stop at the station whilst some are not scheduled to stop, for example, empty stock, freight and engineering trains. There is a speed change board between the station and the crossing, with the line speed at the crossing being 65 mph.
63. Whilst there was agreement that a train travelling on the Up line, that is out of the station, would need to wholly pass the speed change board before accelerating there was disagreement as to the speeds that could actually be expected at the crossing itself – the highest attainable speed. The speed of the train affects the time that people have to decide to cross and make the crossing once they are aware of the train, whether visually or audibly.
64. The decision point is where an individual would reasonably decide to cross. It is a minimum of 2m from the track and is generally identified by the SLL sign. The sighting distance is the distance that a user can see in both directions when looking for approaching trains. Following on from the matters discussed from paragraph 39 I accept the argument that a 12 second warning time is appropriate¹⁰. NR argued that there was insufficient sighting to give the 12 seconds required warning time for Up direction trains, with those deficiencies giving rise to danger to users.

¹⁰ Based on the length of the crossing of 9.1 metres, with a walking speed of 1.2 m per second, the required crossing time (rounded up to the nearest whole second) is 8 seconds. The 50% safety margin for vulnerable and encumbered users increases this to 12 seconds.

65. Due to the double-line in this location it is possible for a second train to pass through the crossing within 20 seconds of the first. I understand that although Covtec produces a second sound in relation to a second train, the public are not necessarily attuned to this, with the risk that visibility of a second train can be obscured by the first. WS compared the times when users were recorded crossing with train times and assessed the risk, which was felt to be lower than projected by NR. I also note that *T984 Research into the causes of pedestrian accidents at level crossings and potential solutions* ("T984"), indicated no evidence for double tracks being a risk factor at unprotected crossings.
66. The Office of Rail Regulation¹¹ issued '*Level Crossings: A guide for managers, designers and operators, Railway Safety Publication 7*' in December 2011 to provide "general guidance on the safe management, operation, modification and use of Britain's level crossings." This guidance, which NR consider dated, says that the highest attainable train speed should be used in warning time calculations. Although this is only guidance, I agree with WS that it seems unreasonable to rely on calculations which could not stand in the real world.
67. As the entire train must pass the speed board, increasing from 50 to 65mph on the Up line, before the train can accelerate even with a 3 car train the driver would only be able to accelerate when the front of the train was around 45 metres from the crossing. NR calculated that such a train would be travelling at 52.75 mph at the crossing. For a 4-car train, acceleration would only be possible when 16m from the crossing. I agree with WS that it is inconceivable that a driver would accelerate if they saw a hazard at the crossing, which they should when that close to it. However, even if not actively accelerating the stopping distance from 50 mph was calculated to be 196 metres, which would be increased if rail adhesion was reduced. The train would be slowing down throughout that distance, but I accept that it would reach the crossing at a speed which could still prove fatal.
68. In relation to the Down line, there was agreement that the sighting distances are adequate. This was the case whether at the 65 mph line speed or the 56.8 mph it was argued by WS would be needed in order to have slowed down enough to be doing 50mph by the time it reached the lower speed limit on the approach to the station.
69. Appendix JG6, SE¹² Train Speed Data provides examples of train speeds at the crossing showing a maximum of 52mph on the Down line and 51mph on the Up line. These are example speeds and NR argue that a 1-car unit, for example for engineering, which may run unscheduled, would be capable of travelling over the crossing at more higher speeds than suggested by WS. On the evidence of, at the very least, the actual measured example train speeds at the crossing evidenced at JG6, it was not reasonable for WS to rely on a highest attainable line speed at the crossing of 50mph.
70. On the evidence as a whole I consider that there remains a sighting deficiency on the Up line. Taking account of all relevant matters I consider that the OMA were correct to find it expedient to make this Order in the interests of the safety of members of the public using, or likely to use, the crossing.

¹¹ Now the Office of Road and Rail

¹² Southeastern

Whether it is reasonably practicable to make the crossing safe for use by the public

71. Although of the view that the crossing was already safe for use by the public, in the alternative WS made suggestions for improvements, which they believed could make it safer.

Bridge or tunnel

72. A grade separated crossing, above or below the line of the railway, is a solution for a level crossing, however, it was accepted that neither was possible in this location. As set out from paragraph 13 the option of a footbridge to the east, linked to the crossing was rejected by the OMA.

73. NR indicated that the original funding associated with this project has been re-allocated to another project and could not be returned. I am satisfied that whilst funding would not be available within the current spending period, Control Period 6 (2019 – 2024), there would not be any reason why it could not be brought forward as a project under the subsequent budgeting period.

74. However, taking account of the decision of the OMA, in their role as the relevant highway authority, I do not consider that there is any realistic possibility of taking the matter further. Even if I were to determine that this was a possibility the funding situation would delay matters to such an extent that I consider this is not a reasonably practicable solution.

Overlay Miniature Stop Lights

75. Overlay Miniature Stop Lights (OMSLs) provide a visual and audible indication that a train is approaching a crossing with lights and a yodel alarm. It was agreed on both sides that integrated MSLs, which would give warning of another train approaching on a double track as in this location, were impracticable at this crossing due to the complex signalling required.

76. WS were of the view that the introduction of OMSLs would improve safety. However, NR noted that it should not be assumed that all users would pay attention to the warning given by the lights. Research from the RSSB indicates that while there are benefits in removing the need for SLL safety judgment, MSLs cannot mitigate the risk from misuse or trespass, which are a known cause of near misses and fatalities.

77. The other matter on which there was disagreement was whether it would be feasible to install OMSLs in this location due to engineering constraints. The Inquiry was assisted by the evidence on behalf of WS from someone with Signal Sighting knowledge and experience.

78. The document *Efficient Delivery Process for OMSLs*¹³ ("EDPO") assists in setting out that an OMSL is so-named because it is intended to be installed in an area with signalling systems for the control of movement of trains without either system interfering with the other; it is 'overlaid' on top of train detection systems. The document indicates that there are limitations with the approved OMSL equipment which can prevent their use. It advises caution where there is any doubt as to acceptability of the proximity of incompatible infrastructure.

¹³ WS29

79. The location of existing signals is important in relation to whether an OMSL could be implemented as the strike-in point – the location at which the train initiates the warning device at the crossing – cannot have a signal between it and the crossing. The signal of significance is identified as EK 5063, located on the Down line west of the crossing.
80. WS argued that, through observation, mapping, including NR's 'Routeview' and by reference to NR Inquiry Appendix JG6, the signal was at a distance from the crossing that would allow the implementation of OMSLs. NR disagreed, referring to the National Records Group diagram. I have no doubt that the evidence submitted from WS was given with the best intentions but bear in mind that NR will require correct information in order to manage their own assets. Therefore, I rely on their evidence on this point.
81. The argument for OMSL implementation was also based on the calculated traverse time over the measured 9.1m of the crossing, to which I have already referred. However, NR indicated that the MSL units themselves would need to be a minimum of 1.5m behind the decision point on each side, so increasing the overall traverse distance to 12m and, therefore, the crossing time.
82. NR referred to 'the 20 second sighting initiative', introduced by British Rail in 1986, as the standard guidance to be used for all crossings to be fitted with OMSLs. This is at odds with the more recent (2018) EDPO which states that the use of fixed times (e.g. of 20s for pedestrians) is likely to be considered too onerous for the application of OMSLs and may unnecessarily rule out a site for the application of OMSL. Instead a site-specific timing assessment is recommended.
83. As discussed above I am satisfied that it is appropriate to use the vulnerable user safeguard in relation to this crossing. Although WS suggested that the NR standard for feasibility of OMSLs did not refer to a 50% safeguard I note that EDPO indicates that additional time may be added to the traverse time for vulnerable users. Additionally, there appeared to be agreement that a [rail] Industry-imposed requirement for an additional 5 seconds to reach 'a position of safety' before a train arrives at a crossing was applicable. This gives rise to a longer crossing time being required, which then affects the position of the strike-in point.
84. I am satisfied, from the calculations put to the Inquiry, that on the basis of the additional required traverse time, even if WS were correct with regard to the location of signal EK 5063, the minimum sighting times required for the OMSL could not be met without the signal falling within the strike-in point. This is the case in relation to all possible train speeds mentioned through the course of the Inquiry. As a result, I place weight on NR's position that the installation of OMSLs is infeasible.
85. I also note that OMSLs have a disproportionate installation and maintenance cost, which affects the Benefit Cost Ratio. This is a relevant matter in terms of the reasonable practicability of any proposed improvements.

Whistle boards and Covtec

86. Whistle boards are located 381 metres¹⁴ from the crossing on both the Up and Down line crossing approaches. This is considered by NR to be the optimum distance allowing sufficient warning time, with the train driver sounding the train horn to warn potential crossing users of the approach of the train. However, NR note that placing the onus on the train driver can lead to no warning being sounded or inconsistent warning times, based on whether the horn is sounded on approach to the board, at the board or beyond it. A witness for WS was concerned that the now greater distance of the whistle boards from the crossing may mean that users could not hear them in certain conditions.
87. The NTQP was introduced in 2007 following an industry-wide review of train horns and their impact on those living near to whistle boards. Indeed, one supporter of the Order commented that "*The cessation of infernal socially unacceptable train horns is keenly awaited.*" Whistle boards do not operate during the NTQP, although train drivers should still blow their horns during this period if they see a person at the crossing. This would be dependant on the driver seeing someone at the crossing, which I do not consider a necessarily reliable safety measure in hours of darkness.
88. Covtec was installed at the crossing in 2016. NR indicate that Covtec is not a standalone mitigation measure at crossings. I agree with WS that it provides some mitigation.
89. NR suggested that sound from either the whistle boards or Covtec may be obscured by oncoming traffic. However, at this crossing users travelling from the south are coming from a cul-de-sac giving access to and from garages. Users from the north are travelling from the connection of Portway and Clifton Road, where traffic must slow in order to safely traverse the almost 90° corner. I consider the likelihood of traffic noise interfering with sound from either the whistle boards or Covtec is extremely low.
90. Nonetheless, it is the case that a tragic incident occurred at the crossing in February 2015, demonstrating that people may not hear warnings for any number of reasons, for example, those with no or reduced hearing, wearing headphones, using telephones or if a driver fails to sound the horn. It is noted that at the time Covtec was not in place, nevertheless, I accept that there will still be those who miss, or misunderstand, warnings.

Vegetation cutback

91. One of the factors of sighting distances, for users from the crossing and train drivers to the crossing, relates to lineside vegetation. Vegetation clearance had taken place during the course of the Inquiry¹⁵, although not verified by NR. As a result, it was argued that the measured sighting distances would increase such that the warning times would exceed those required by NR's calculation, even with a 50% vulnerable users safeguard.

¹⁴ Moved out from the original distances referred to in the NR Statement of Case

¹⁵ 30 September 2020 according to Inquiry Document 29, which apparently followed on from a cut at the beginning of August 2020 (Inquiry Document 27).

92. NR disagreed that the vegetation cutback led to compliant sighting distances in all directions, as suggested, with continued deficiencies Upside looking towards Up train approach at 65mph and Downside looking towards Up train approach at both 65 mph and at 56 mph, which WS accepted was an attainable speed.
93. I agree with WS that vegetation cutback leads, unsurprisingly, to an improvement in sighting distances. However, the reality is that the reason vegetation needs to be cut back is because it grows. There will be periods after cutback when vegetation is such that there are improvements in the sighting distance, but this cannot be sustained indefinitely due to continual vegetation growth cycles. I am not satisfied that it is reasonably practicable to keep vegetation cut back to the maximum extent on a continuous basis.

Lighting

94. There are blue reflective solar light studs to provide a guide to the edge of the crossing deck in dusk/darkness. I agree with WS that the existing lighting should be regularly maintained, it having been noted that only one or two of the ten appeared to be working in the submitted night-time video taken during the Inquiry.
95. In relation to the idea of lighting the crossing, with poor lighting in the area noted in the Sotera Census, I note NRs view that train drivers should not be distracted. I accept that lighting may assist users in navigating the decking but consider any improvement limited in terms of the risks under consideration.

CCTV

96. In relation to the possibility of dummy CCTV cameras to deter misuse NR indicated that these, as much as actual cameras, tended to be vandalised. I understand there to be legal, policy and practical reasons as to why CCTV was not seen as a serviceable mitigation. I agree with NR that even if installed, it could only be responsive and would depend on the ability to monitor and respond to incidents. On balance, I do not consider that this would add significant assistance to the matters of concern.

Crossing deck

97. The nature of the crossing deck is such that it has to provide for the four rail lines to bisect the decking. The 2020 NRA sets out that the deck comprises timber boards which are approximately 1.4 metres wide and fitted with a non-slip surface. The Sotera census notes an uneven surface but does not specify where, whilst the 2017 application for diversion refers to uneven surfacing around the decking as well as a slight incline on the tarmac approaches, which I observed on site.
98. I agree with NR that a user who is unable to use the footbridge alternative because of an inability to easily raise their legs and/or feet will have a greater propensity for instability. This could lead to a fall in any location, including on the crossing. However, I am satisfied that the deck itself is suitably surfaced, whilst any improvements to the approaches would provide minimal, if any, risk reduction.

Demarcation of a safe area

99. The research in report T984 explored measures that are demonstrably cost-effective in specific situations to form a credible basis for improving safety. The idea of demarcation of the crossing surface with a single block of colour is to provide a clear distinction between the zone in which there is a risk of being struck by a train from the crossing approach and exit areas in which there is no such risk. T984 concluded that this should be extended much more widely, although noting that the safety benefits were likely to be comparatively small.

Anti-social behaviour

100. There was a suggestion that an Order, either under section 27 of the Road Traffic Act 1988 or by way of a Public Space Protection Order under the Anti-social Behaviour, Crime and Policing Act 2014, requiring dogs to be kept on the lead could assist with regard to this issue. I agree with NR that this can only be a responsive action to individual instances of misuse, which must first be identified for prosecution.
101. I do not consider this would adequately address the issue of misuse, deliberate or otherwise, whether in relation to dogs or other matters. However, I agree with WS that antisocial behaviour or deliberate misuse is a crime and users should be expected to use reasonable vigilance. Misuse cannot be completely avoided; personal responsibility must play a part in weighing risk.

Additional signage

102. It was suggested that some issues could be addressed through additional signage, for example, to keep dogs on leads. I agree with NR that the addition of signs does not necessarily lead to compliance. The SLL signs are the warning for users in relation to passive level crossings and their importance should not be affected by additional instructions in the area of the crossing.

Line speed changes

103. Having noted the 50mph restriction one objector suggested that it may be possible to make minor modification to the speed restricted section to include the crossing. There are, as was fairly noted, implications for train performance and timetabling, which is a matter of concern for NR, the train operating companies, the regulators and the travelling public.
104. Whilst suggested that the change in times may be small, there is support for measures that deliver improvements in capacity and connectivity between key centres, by speeding up journey times, encouraging further modal shift to rail. Slowing train times would not sit with the longer-term desired levels of service sought by Government.

Other matters regarding reasonable practicability

105. It is clear that there is a feeling that NR simply wish to close all level crossings without looking for solutions, with a financial saving arising. Witnesses for NR have not backed away from the view that it was safer to close level crossings where possible. Their evidence sets out that it is widely acknowledged that closure of level crossings is the most effective way to remove risk, consistent with the General Principles of Prevention, set out in Schedule 1 of the

Management of Health and Safety at Work Regulations 1999. It is therefore NR policy to close level crossings where possible and appropriate, and it was their objective to reduce level crossing risk by 25% in Control Period 5 (2014-2019 - CP5), including through closure of crossings.

106. There is evidence before the Inquiry that NR have taken action to provide alternatives for level crossings where appropriate. Indeed, it should be borne in mind that the original plan for this crossing was to provide a diversion with a new footbridge. I am satisfied that the cost matters have not had an inappropriate part to play in the decision-making process.

Conclusions

107. I understand that objectors feel that the crossing is safe to use and wish to continue to do so. However, I am satisfied from the evidence that there is risk associated with the use of this crossing and that it is not reasonably practicable to make the crossing safe for use by the public.

Arrangements for appropriate barriers and signs to be erected and maintained

108. NR confirmed that if the Order was confirmed, it would expeditiously install permanent fencing to securely close off both the northern and southern crossing entrances (sited within the boundary of railway land) and remove all existing crossing furniture. It would also, subject to any contrary direction given by the OMA, install permanent (no trespass) signs, placing them visibly for the public, inside the boundary of the railway land and within very close proximity of both fenced-off crossing entrances.
109. I am satisfied that this would be adequate to discourage attempts to use the crossing subsequent to closure.

The alternative routes and the existing rail crossing

110. The parties identified and discussed two main alternative routes:
- i) east of the crossing via Canterbury Road and the underpass; and
 - ii) west of the crossing via Alexandra Road or Irish Village.
111. In relation to i) there was also discussion of what became known as the 'alternative alternative', which was use of the pedestrian traffic light crossings across Canterbury Road, Belmont Road and Oxford Street.
112. I agree with WS that NR's indication of alternative crossings as a footbridge 200 metres to the west and an underpass 300 metres to the east of the crossing is unhelpful as these distances are those directly along the railway line itself. I am well aware of the actual walking distances on the alternative routes, having walked them myself during my site visit. I have these distances in mind in my consideration of the matters raised.

Canterbury Road

113. Canterbury Road is the main road to and from Whitstable town centre from the south. The road has a mix of residential properties and amenities, with shops and food and drink establishments. It was common ground that there were

times at which there was queueing traffic into and out of town. There are pavements¹⁶ on either side of the road with traffic-light controlled pedestrian road crossings at various points.

114. The railway crosses over the road by way of a bridge at a point at which Canterbury Road turns from running generally south-west/north-east to south-east/north-west. Belmont Road runs to the east-northeast on the southern side of the railway bridge/underpass.
115. In relation to access to and from the town centre, which people use for everyday shopping trips, I do not consider the walking distances would be significantly different. Some people already have to use this route as access over the crossing is limited by the kissing gates on either side for those with pushchairs and wheelchairs. Those living closest to the crossing would be most affected, particularly as it feels counterintuitive to walk in what seems to be away from your intended direction. However, new people moving into the area, who had never used the crossing, would simply accept the situation as they found it.
116. Access to West Beach would be more impacted as the crossing provides the more direct access to the footpath crossing the Golf Course linking to the west and onto the beach. I accept that this becomes a limiting factor in terms of use of the beach, for example, for dog-walking when time is short or for impromptu after-school trips.
117. An issue was raised in relation to air quality with some of the questionnaire returns for WS referring to a preference not to walk alongside traffic. Although untested at the Inquiry Councillors¹⁷ indicated that monitoring from CCC was introduced to Whitstable in 2018 but is limited to areas north of Canterbury Road. The Green Party representative indicated that they had carried out monitoring of particulate matter in 2019 which found the level of PM_{2.5} exceeded the World Health Organisation's guidance for health of 10 micrograms per cubic metre.
118. As this evidence was not spoken to, I agree with NR that the weight I can attach to it is limited. I do not know where the monitoring of particulate matter was undertaken. In relation to those accessing town for daily, or regular, shopping the town centre itself, with the High Street a continuation of Canterbury Road, is likely to be the most polluted area locally. However, I understand that the CCC Air Quality Action Plan 2018-2023 shows averages across the town below the level needed for CCC to introduce an Air Quality Management Area, i.e., it is within acceptable limits.
119. Although there was concern that residents would use their cars more often instead of walking, which would contribute to poor air quality, I consider the evidence of this to be limited. I consider those who, quite rightly, wish to shop locally are unlikely to significantly alter their routine for the sake of avoiding Canterbury Road. A small number may choose to drive to out-of-town supermarkets, but this would not affect air quality in the town.
120. A main concern raised by WS, and other objectors, related to danger in using Canterbury Road, particularly the section of pavement on the western corner

¹⁶ Some refer to footways

¹⁷ Not providing evidence to the Inquiry on behalf of CCC

opposite Belmont Road. This is a narrow pavement with no separation between pedestrians and vehicles. The photographic evidence, and my site visit observations, support the claims of vehicles mounting the kerb in this location. I heard from one party who had been struck by a van wing-mirror whilst walking on this section of pavement. On turning the corner visibility is compromised and may require people to step back to allow others to pass.

121. I agree that the pavements in Whitstable generally appear to be relatively narrow, making 'social distancing' as required during the Covid-19 situation, more problematic. However, it seems to me that people would not be forced to move out into the road unnecessarily. I was referred to data from 'crashmap', which objectors said showed that the roads were unsafe. The KCC Highways, Transportation & Waste Schemes Project Manager indicated that their crash data showed 6 recorded crashes in the three years to December 2018, of which one involved a pedestrian. There were no incidents at the underpass.
122. It is noted that there were no planned improvements by the footway team as at 2018 and that WS have not to date formally sought changes to the area. It may be that as a result of potential increased pedestrian use KCC, as the highway authority, looks to make improvements in this area, such as limiting traffic under the bridge to alternate one way, which would allow widening of the pavements. However, I make this decision on the basis that, currently, the highway authority have not identified a problem requiring action.

Canterbury Road – the 'alternative alternative'

123. NR suggested that the 'alternative alternative' provided a way to avoid the need to use the western pavement as people could pass underneath the railway on the eastern pavement, north-west of the entrance to Belmont Road. There was some discussion as to whether the three pedestrian crossings had been provided specifically for this purpose; without clear evidence of intent I place no weight on this.
124. I heard concerns that using the eastern pavement may also cause problems as large vehicles, such as buses, would overhang the pavement. Whilst there was no detailed work in terms of vehicle swept path analysis, as mentioned by NR, I can understand the point made. Again I must rely on there being no evidence of proposals from the highway authority to make improvements in this area to show that the relevant authority are content, albeit that they may need to consider further work if it was shown that changes to the crossing led to increased pedestrian use of the pavements in this area.
125. In terms of timing it was noted that people might have to wait at each of the three pedestrian crossings in order to make their chosen journey, adding time to the journey. I consider any additional distance to be insignificant in terms of the overall journey in comparison to using Canterbury Road. Depending upon the sequencing and time at which individuals arrive at each crossing I accept that the additional time could end up being significant. However, this would not always be the case – sometimes all the lights go your way – and I take account that arguments to include OMSLs on the crossing, as an alternative to closure, would also potentially add journey time, again depending on when people were walking and when the lights stopped them to allow trains to pass.

Alexandra Road or Irish Village to the Footbridge

126. The stepped footbridge to the west of the crossing¹⁸ gives access to the footpath over the Golf Course for people travelling to and from West Beach as well as onto West Cliff to give access to and from town. Alexandra Road is private cul-de-sac road, which did not give rise to concern, despite the lack of a pavement. There is another access further west on Joy Lane, with both routes having public pedestrian rights concurrent to any private rights. West Cliff and/or Portway/Clifton Road would be used as part of a route using the crossing or using this alternative and, therefore, I do not consider there to be matters of 'difference' to take into account.
127. There are those who would struggle or be unable to use the footbridge, due to either ambulatory/mobility issues or other health conditions. However, I have some sympathy with the view that people who would have difficulty using the footbridge could also be placing themselves, albeit perhaps unwittingly, in a dangerous situation using the crossing. Those with particular health conditions, where it would be the steps themselves that would cause difficulty, would not have a choice to use this alternative and would be limited to the alternatives already discussed.
128. Witnesses, including a serving Detective Inspector, felt the footbridge was not a pleasant place, with the graffiti demonstrating it to be isolated, although I also noted graffiti at and near the crossing, as well as at the Canterbury Road bridge. I saw no evidence of users feeling intimidated in using the footbridge during the daytime, which was when I made my site visit, noting individuals and families making use of it in both directions.
129. I can imagine that in darker hours people may not feel comfortable walking this route. However, I agree with NR that the crossing appears to be no more welcoming; it has no dedicated lighting, which is available on the footbridge, albeit apparently not working entirely at the time of the Inquiry. According to the Sotera census data there was very little use of the crossing in the period midnight to 6.45am. The period 17.00 to around 20.00, which would reasonably be a dusk – dark period in late February/early March, was little altered from the daytime use, just tailing off towards the end of the period. There was still some use up to midnight, although a small fraction of the overall use, with a suggestion that this might be associated to some extent with people travelling to and from the Golf Club.
130. Without comparable data of the existing use on any of the alternative routes there is very limited evidence to show whether people use the alternatives, presumably therefore feeling confident with them in dusk and darkness. There is evidence from the NR video taken during the Inquiry to demonstrate the potential timings in using the alternative alternative from which it could be seen that people were using Canterbury Road. This is not surprising given that it is a main road to and from the town centre with street lighting.
131. As the footbridge is on the edge of the residential area, rather than in an area with residential properties on either side like the crossing, I consider that it is likely to feel more uncomfortable to use for at least some parties. As such the

¹⁸ There is another footbridge crossing further west, Sherrins Valley Footbridge, which has not been considered by the parties due to the distance from the crossing

use of the footbridge as an alternative appears less favourable overall than Canterbury Road but it remains available and will be suitable, so far as some people are concerned, to use as a means of crossing the railway line.

Diversity Impact Assessment

132. The NR Diversity Impact Assessment ("DIA"), dated 07/03/2016, was part of the application for the footbridge and diversion referred to from paragraph 13. The DIA noted that closure without provision of a new bridge or a link would mean that some people may be deterred from crossing the railway. The DIA indicated that extinguishment was unlikely to be promoted by the OMA due to loss of connectivity in the area.
133. The OMA referred to the DIA in relation to their public sector equality duty under the Equality Act 2010 ("the 2010 Act"). It was in relation to that, alongside other matters, that they found it to be "*...evident that the new route running over the [proposed] stepped bridge will exclude a number of people from being able to use the route.*" This led to the situation referred to earlier of the application for diversion being rejected by the OMA, with the Order then made for extinguishment.
134. Age and disability are both protected characteristics under the 2010 Act, which establishes a general duty on public authorities, which includes my role, to have due regard when carrying out their functions, to the need: to eliminate unlawful discrimination, harassment or victimisation; advance equality of opportunity; and to foster good relations.
135. In my considerations on this Order I have borne these duties in mind. I agree with the findings of the DIA that although closure of the crossing could lead to some users having to travel further, it would also improve their safety, as all alternative crossings of the railway are grade-separated. I have weighed the positives and negatives in relation to these matters in reaching my decision.

Other matters - compensation

136. Some of those living to the south of the railway line were concerned that closing the crossing and therefore making access longer, particularly to the beach, could affect the value of their property. It was also suggested that the property to the north of the crossing, with ownership of a garage to the south, in one of the Glebe Way garage blocks, would be devalued.
137. As the OMA indicates section 28(2) of the 1980 Act provides that compensation claims would be payable by them. By virtue of the section 121(2) of the 1980 Act, section 28 applies to rail crossing extinguishment orders, such as this. Section 28 provides for compensation to be payable where it can be shown that the value of an interest in land has depreciated as a result of the order or where a person has suffered damage by being disturbed in his enjoyment of land in consequence of the making of an order.
138. The term "interest" is defined in section 28(5) to include rights over land, whether those rights are enjoyed by virtue of an interest in land, by agreement or by licence. However, compensation would only be payable if they own the land, or if they do not own the land, only if they had any other legal basis to sue for the effect the extinguishment would have on them.

139. NR owns the land over which footpath CW80 runs whilst the Glebe Way Property Company Limited owns the land over which footpath CWX40 runs and is supportive of the Order. The main parties agreed that there did not appear to be evidence of any eligible claims for compensation.
140. NR indicated that, as a post-confirmation matter, I could entrust the correct application of the compensation provisions, at the appropriate subsequent stage. However, I consider that if there is no provision for compensation on which I can rely I must take account of the matters raised as part of the expediency of the confirmation, as set out in section 118A(4) of the 1980 Act.
141. No evidence was provided of valuations with or, hypothetically, without the crossing. I agree with NR that a house and separate garage would each have independent value in any event, which may be unaffected by whether they were sold as a package. I understand fully that people will have placed their own values on their properties relating to proximity to amenities and, in some cases, family members. Changes would impact on them particularly, although a financial value is a different matter.
142. I am not satisfied that there is sufficient evidence to suggest that financial implications, even in the absence of compensation, would be such that they should prevent confirmation of the Order.
143. Matters relating to the personal value of the location of properties in relation to the crossing and other amenities, friends and family, are considered in relation to use of the alternative routes. It is absolutely recognised that there will be those negatively impacted by closure in a way that cannot be compensated monetarily in any case. However, in a decision such as this I must weigh those personal disappointments against, as one person put it, the greater good.

Other matters

144. I have dealt with matters around consultation from paragraph 13. There was comment regarding the DIA, that just 7 (2.12%) of the 362 responses to NR 2015 public information event and consultation favoured closure only, with nearly 70% favouring a new footbridge or path. It appears that NR sought to meet the desires expressed through the public information event, however, I can only deal with the Order now before me and the public preference is not relevant to that.
145. Similarly, whilst I agree with NR that in my experience it is unusual for there to be more people in support of closure than against, in relation to the statutory objections and representations to the Order, that is not a matter which weighs in the balance for me in determining the Order.
146. The concern that closure of the crossing would reinforce an, apparent, local view that "officialdom" never listens fails to take account that this decision has been taken with regard to all the relevant evidence. Local people have been listened to through the Inquiry process, whether in person or in writing. Whilst, of course, there will be those disappointed by this decision it has been made with all relevant matters put into the balance.

Alternative routes summary

147. I agree with WS that it is appropriate that I should consider not only the existence of alternative routes, but also their relative convenience. I have considered and had in mind the evidence of convenience, or inconvenience, comfort, enjoyment and pleasure of the routes. At a time of global concern about climate change, air pollution, public health and obesity, people are being encouraged out of their cars to walk and cycle for short journeys. I accept that for some people it may be that closure of the crossing would result in them being less likely to choose to walk to certain destinations.
148. It is clear that for some people the effect of closure would be more significant than for others, for example, in being unable to easily access a garage and so make use of a car providing independence; or for those with close family on either side of the railway line. The additional distance and time will be inconvenient to some users, perhaps curtailing dog walks, increasing times to walk to and from work, businesses and amenities. For some people, this may prevent them from making certain journeys to which they have become accustomed. I agree with WS that the loss of the crossing would have a knock-on effect on the surrounding network.
149. Reasons for use of the route were identified by WS, as referred to in paragraph 37. I disagree with NR's weighting of convenience only in relation to the purpose and understand that recreational use is important, for example in relation to exercise, health and mental health matters. To that end I also note that the OMA, who NR were concerned would be unlikely to promote extinguishment of the public right of way due to loss of connectivity in the area, were in fact of the view that the current Order should be made, rather than the first proposed diversion. As the highway authority for the area I place some weight on their view on this matter.
150. Weighing all these matters, I am satisfied that the alternative routes offer appropriate alternatives. It may be that improvements are subsequently found to be necessary, however, at present they provide reasonable routes for public use in connection with the activities for which they currently use the crossing. Whilst the identified negative outcomes weigh against the confirmation of the Order, I do not consider there to be such a significant adverse effect on users that the change would not be acceptable.

Expediency

151. The term 'expedient' arises in three subsections of section 118A of the 1980 Act. The first two, in subsections (1) and (2)(b), relate to matters for the OMA, which have led to the making of this Order. Subsection (4) sets out the matters as I must consider them on behalf of the Secretary of State:

"The Secretary of State shall not confirm a rail crossing extinguishment order...unless he... [is] satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—

- (a) whether it is reasonably practicable to make the crossing safe for use by the public, and*

(b) *what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained."*

152. The Shorter Oxford English Dictionary¹⁹ defines expediency as:

"Advantageous (in general or to a definite purpose); fit, proper; suitable to the circumstances of the case".

153. I am satisfied with regard to the arrangements for barriers, subsection (4)(b), as set out from paragraph 108 above.

154. As discussed above I agree with NR that it is not reasonably practicable to make the crossing safe for use by the public.

155. In relation to overall expediency I must have regard to all the circumstances. I agree with WS that there is evidence of the value of the crossing to many of those living locally. I have taken account of the effect of closure on the lives of many and considered the potential reduction and restriction of enjoyment of the local area that may arise. In that consideration I have taken account of the setting and use of the crossing in a suburban area and have considered the matters associated with use of the alternative routes available. There is a balance here and I consider that greater weight should be given to the safety of individuals over the potential inconvenience and losses identified by the objectors.

156. With all those matters in mind I am satisfied that it is expedient to confirm the Order.

Modification of the Definitive Map and Statement

157. The Order is drafted to include section 53A(2) of the Wildlife and Countryside Act 1981. This will modify the DMS for the area as a result of the event arising from the confirmation of the extinguishment. I am satisfied that this is appropriate.

Conclusions

158. Having regard to these and all other matters raised at the Inquiry, and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

159. I confirm the Order.

Heidi Cruickshank

Inspector

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APPEARANCES

For the Order Making Authority:

Mrs M McLauchlan Definitive Map Officer, Kent County Council

In Support of the Order:

Mr J Lopez of Counsel *on behalf of* Network Rail Infrastructure Limited

who called:

Mr J Greenwood Head of Liability Negotiation

Mr D Hajnus Liability Negotiations Manager

Ms G Kent Level Crossing Manager

Ms H Ashington

Ms M Bishopp-Schyberg

Ms L Gagic

Dr J Kenny

Ms A Mutanda Dougherty

Mr P Pollard

Mrs D Waterson

Rev R Webbley

Mrs H Wheeler

In Objection to the Order:

Mr J Welch of Counsel *instructed pro bono* by Kent Law Clinic *on behalf of* the Whitstable Society

who called:

Ms L Bradshaw

Mrs J Brankley

Ms J Court

Mr P Cronin-Hill

Mr M Demery

Mr N Greenan

Mr C Hosea

Mr D Keates FIRSE MSc, CEng

Mr P Priston

Ms E Preston

Mr J Rosser

Mrs J Seath

Mrs K Gill *on behalf of* the Ramblers

Miss E Harris

DOCUMENTS

- 1 The Order
- 2 Kent County Council Closing Statement for the Public Inquiry
- 3 NR1: Canterbury Road Crossings (A-F route)
- 4 NR2: Errata (D. Hajnus)
- 5 NR3: Glebe Car Parks [Map and Key]
- 6 NR4: Vantage Points & Amenity
- 7 NR5: Corrected CBA/Optioneering Schedule
- 8 NR6: Note on Additional Journey Time (from points A-F)
- 9 NR7: Historic Census headline information
- 10 NR8: CCTV provision
- 11 NR9: Note on Train Acceleration on Up Line (375 & 395 Class trains) [s/s by NR16, inquiry Document 18]
- 12 NR10: Note on Sotero Census
- 13 NR11: Note on Overlay MSL
- 14 NR12: Note on Minimum Sighting Distances (re. vegetation cutback)
- 15 NR13: Note on Overlay MSL: Further
- 16 NR14: Whitstable Society Constitution (extracts)
- 17 NR15: IET Rules of Conduct (referenced in XX Keates)
- 18 NR16: Note on Rate of Acceleration of 375 Class Trains Towards the Glebe Level Crossing in the Up Direction/on the Up Line [replacing NR9, inquiry Document 11]
- 19 Rebuttal Evidence – NR position
- 20 Closing Submissions on behalf of Network Rail Infrastructure Limited
- 21 Dr J Kenny statement
- 22 Mr P Pollard statement
- 23 Rev R Webbley statement
- 24 Mrs H Wheeler statement

- 25 Opening submissions on behalf of the Whitstable Society
- 26 Letter regarding rebuttal evidence
- 27 Mr Keates rebuttal, 15 September 2020
- 28 Canterbury Road pavement widths
- 29 Note on sighting distances and vegetation management
- 30 Statement on Whitstable Society executive functions
- 31 Mr Keates' email relating to feasibility of OMSLs
- 32 Closing submissions on behalf of the Whitstable Society
- 33 Statement from Miss E Harris

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ALCRM	All Level Crossing Risk Model
CCC	Canterbury City Council
CCTV	Closed circuit television
CGPG	Census Good Practice Guide
DIA	Diversity Impact Assessment
DMS	Definitive Map and Statement
EDPO	Efficient Delivery Process for OMSL
FPW	Footpath with wicket gate
LCM	Level Crossing Manager
mph	Miles per hour
NR	Network Rail Infrastructure Limited
NRA	Narrative Risk Assessment
NTQP	Night-Time Quiet Period
OMA	Order Making Authority
OMSL	Overlay Miniature Stop Lights
ORR	Office of Road and Rail
RSSB	Rail Safety and Standards Board
SLL	Stop Look Listen signs
T984	Report by RSSB of Research into the causes of pedestrian accidents at level crossings and potential solutions, July 2014
WHO	World Health Organisation
WS	The Whitstable Society

