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| **Order Decision** |
| Inquiry opened on 26 July 2021Site visit made on 13 April 2021 |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 2 November 2021**  |

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| **Order Ref: ROW/3201659** |
| * This Order is drafted under Section 119A and 120(3) of the Highways Act 1980 (the 1980 Act) and is known as the Part of Footpath SR49, Pilgrims Way (Otford, Kent) Rail Crossing Diversion Order 2019.
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| * The Order proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were 57 objections and 2 representations outstanding at the commencement of the Inquiry.
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| **Summary of Decision: The Order is made subject to minor modifications set out in the Formal Decision.** |
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Procedural Matters

***Virtual Inquiry***

1. The inquiry was scheduled to open on 4 May 2021 as a virtual event using video conferencing technology. My pre-inquiry site inspection on 13 April revealed that the notices posted on site giving advance notice of the inquiry did not comply with the statutory requirement to give notice of the date, time, and place for the inquiry as the place was described as ‘to be arranged’.
2. Once this error had been identified, a replacement notice was published which stated that the inquiry would take the form of a virtual event. However, the replacement notice did not contain any information as to what software would be required in order to participate in the inquiry, or information as to from whom the invitation to join the inquiry could be obtained.
3. Rule 16 (3) of the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 requires notice of the date, time, and place to be published not less than four weeks before the date fixed for the inquiry. Given that the published notices did not provide sufficient details of the place where the inquiry was to be held the parties were notified on 20 April 2021 that the inquiry would be postponed from 4 May 2021.
4. Rule 16 (2) provides that the Secretary of State may at any time change the date, time or place fixed for the inquiry and give such notice of that change as appears to him to be reasonable to the parties to the Order. On 14 June 2021 notice was given to the parties that the new date for the inquiry had been fixed for 26 July 2021. Although Step 3 of the ‘roadmap’ of the lifting of restrictions had been reached when notice of the new date was given, the inquiry remained scheduled as a virtual event.
5. I was, and remain, aware of the concerns that a virtual inquiry would not be the same as an inquiry held in person. I am also aware that representations had been made to the Planning Inspectorate by individual participants and via Laura Trott MBE MP regarding the use of video conferencing technology as the medium through which the inquiry would run and that as of 19 July, the country had entered Step 4 of the roadmap.
6. However, holding the inquiry virtually avoided any concerns that the process would be disrupted if local or national restrictions were re-imposed at short notice and made allowances for the potential vulnerability of witnesses or any concerns participants may have had about gathering in an enclosed space.
7. Instead of travelling in person to the event, participants were able to take part, or watch / listen in, using computer, laptop, tablet, smart phone or landline from their own home, office or other location that best suited them. The Planning Inspectorate was aware of the public interest in this case and livestreamed the event on its YouTube Channel, allowing those who would have wished to attend the inquiry as observers to be able to hear the arguments being put forward for and against the Order. Livestreaming the inquiry added to the public accessibility of the event.
8. Holding the inquiry virtually also enable the postponed inquiry to proceed expeditiously. It is in the interests of all parties for decisions on Orders such as this to be delivered in a timely manner so that people are clear as to what may happen next, depending upon the decision reached. I remain satisfied that in taking the inquiry forward virtually a fair balance was struck between the need for public involvement in the inquiry and the need to deliver decisions in a fair, open, and impartial manner.
9. Kent County Council (‘KCC’) adopted a neutral stance in relation to the Order. I am grateful for the assistance KCC gave the inquiry in providing a page on its website where the inquiry documents were made available for interested parties to view.
10. The inquiry opened on Monday 26 July 2021 and closed on Tuesday 3 August 2021, sitting each weekday. Network Rail (‘NR’) the applicant for the Order was represented by Mr Juan Lopez of Counsel. Whilst individual objectors appeared at the inquiry in their own right, collective opening and closing submissions were made on behalf of the objectors by Cllr Irene Roy, Chair of Otford Parish Council. I am grateful to all participants for the helpful and courteous way in which they endeavoured to assist me in the course of the inquiry.

***Site visit***

1. As noted above I made an unaccompanied inspection of the Pilgrim’s Way crossing and the alternative routes suggested by NR which would be available to those current users of the crossing who would be unable to negotiate the proposed footbridge.
2. In undertaking a number of circular walks in the vicinity of the crossing incorporating Station Road, Station Approach, the station car park, Sevenoaks Road, Bubblestone Road and Well Road I had occasion to traverse the crossing on a number of occasions, including when trains were approaching or leaving Otford Station. I also viewed the site of the proposed footbridge as best I could from available public vantage points. No-one requested a further site inspection at the close of the Inquiry.

***The Order***

1. In July 2015 NR submitted an application to KCC under section 119A of the 1980 Act for a rail crossing diversion order (‘RCDO’). The purpose of the application was to divert that part of footpath SR49 which crosses the railway via Pilgrim’s Way crossing to a new alignment via a stepped footbridge, with the footbridge providing a means by which pedestrians could cross the railway without being in the path of approaching trains.
2. NR’s RCDO application was considered by a Panel of KCC’s Regulation Committee on 1 March 2017. The report to the Panel by the Head of Regulatory Services recommended that KCC should make the diversion order being sought as it was considered that NR had a safety case in relation to the use of the Pilgrims Way crossing. The report also noted the objections which had been made to the proposal and that a stepped footbridge would present certain risks and may exclude some members of the public who could currently use the at-grade crossing. The Head of Regulatory Services concluded that there was evidence both for and against the application which lent itself to being tested fully at an inquiry, and that KCC should remain neutral at any subsequent public inquiry.
3. The Minutes of the Regulation Committee meeting show that the members of the Panel voted unanimously not to make the RCDO. The members considered that the safety case advanced by NR had not been made out; that the replacement of the crossing by a footbridge was unnecessary and that safety improvements to the crossing should be considered; that the footbridge had safety and inconvenience issues associated with it; and that the local community had a clear understanding of the risks at the crossing and the proposed alternatives.
4. I heard from Cllr Gough (the Council Member for the Sevenoaks division) at the inquiry. Although Cllr Gough was not a member of the Regulation Committee Panel and could only speak to the minutes of the meeting of 1 March 2017, it is evident from the Minutes that the Panel chose not to follow their professional officer’s recommendations.
5. Whilst a number of objectors took issue with NR for seeking to pursue the diversion following the Panel’s unanimous rejection of the application, section 130 (3) of the 1980 Act provides for such a request to be made of the Secretary of State where an application for an RCDO has been made to the Highway Authority which has been declined. The Order before me for determination is that which was drafted by the Secretary of State following the request made of him by NR.
6. The Order was drafted by the Secretary of State in 2019 with this date being reflected in its title. Given the passage of time, should the Order be made, I consider it appropriate that references within the Order to ‘2019’ should be replaced with ‘2021’.

***The bridge***

1. NR propose to divert that part of footpath SR49 which crosses the railway to an alternative route with the diverted footpath being carried over the railway by means of a stepped footbridge. NR has secured Prior approval for the construction of a footbridge under Schedule 2 Part 18 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015[[1]](#footnote-1).
2. The drawings to which the Prior Approval relates (DS032112-701 P4 and DS032112-702 P6) show a bridge with the stepped accesses being parallel to the live rails with the deck span at right angles to the steps; this design is reflected in the Order plan. The design of the proposed bridge gave rise to a number of safety and security concerns raised by objectors regarding the ‘blind’ corners of the bridge around which it was claimed those with malicious intent could lurk before attacking unsuspecting path users.
3. At the Inquiry, NR introduced a new design concept being developed for deployment as part of future railway infrastructure. This design[[2]](#footnote-2) would eliminate the ‘blind’ corners of the earlier design with a transparent parapet allowing users a clear view of anyone else present on the bridge. The bridge was said to be of a modular design, lighter than a traditional steel framed bridge and therefore easier and cheaper to install.
4. The alternative design had not been circulated prior to the morning of the third day of the inquiry and it was recognised that the objectors had not had an opportunity to consider or comment on it. Nonetheless, it provided an example of what the footbridge might look like and how some of the perceived shortcomings of the footbridge shown in the approved drawings might be overcome through innovative design and the use of modern materials.
5. NR have prior approval for a footbridge to be constructed should the Order be made. The type of footbridge which is eventually constructed if the Order is made, and whether any further or additional Prior Approval is required should the design depart from that shown in the drawings submitted to Sevenoaks District Council in 2015, is a matter for NR and the Planning Authority to determine. Irrespective of the final design of the footbridge, it will be required to be built to the prevailing standards for such structures.

The Main Issues

1. If the Order is to be made, I need to be satisfied that it is expedient to divert that part of footpath SR49 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 made, any appropriate barriers and signs are erected and maintained.

1. I consider that the salient points under the above headings to include the following issues:

 a) the current safety of the pedestrian railway crossing for the public;

 b) the safety of the alternative route(s) in comparison;

 c) the convenience and enjoyment of the alternative route(s) for pedestrians in comparison;

 d) whether any improvements to the pedestrian crossing, so as to make it safe, are reasonably practicable; and

 e) whether, if the Order is made, adequate arrangements have been made to secure the redundant crossing.

1. NR argued that, as a result of their safety assessment, the Pilgrim’s Way 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.
2. Two representations in support of the closure of the crossing were received, although no-one spoke in support of the Order at the inquiry. These residents considered the crossing was unsafe for use by parents with small children and that the proposed footbridge would assist pedestrian journey times as it would remove the need to wait whilst goods trains and other trains passed over the crossing.
3. The objectors argued that the crossing was safe and convenient to use, particularly in comparison to the stepped footbridge proposed as an alternative. It was also argued that if the crossing was considered unsafe, further works at Pilgrim’s Way were possible to improve crossing safety. It was argued that the alternative routes suggested by NR for use by those who would be unable to negotiate the footbridge were not as safe or convenient as pedestrians would be required to negotiate the discontinuous footway alongside Station Road.

Reasons

***The crossing and its surroundings***

1. Pilgrims Way crossing is located approximately 80m from the southern end of the Up and Down line platforms of Otford station. The Up line is the line towards London and is the western set of rails at the crossing; the Down line, running away from London, is the eastern set. The railway was constructed under the provisions of the Sevenoaks Railway Act 1859 with southeastern trains running services via Otford on the London Victoria to Maidstone and London Blackfriars to Sevenoaks routes.
2. NR classifies Pilgrim’s Way crossing as a passive crossing; that is, a crossing at which path users are required to make a decision as to whether it is safe to cross the line. There are Stop, Look, Listen (‘SLL’) signs on either side of the crossing at the points where crossing users are expected to make their decision. At a passive crossing there is no direct method of warning people who use the crossing of approaching trains. A passive crossing is not controlled, equipped with lights, audible warnings or barriers that are integrated with railway signalling systems. The crossing benefits from a level crossing deck which provides a relatively even walking surface across the rails. The crossing is lit by a lamp located within the western railway boundary, but the remainder of footpath SR49 on the approaches to the crossing is unlit.
3. There are no whistle boards within the vicinity of the crossing as these were removed in response to a Noise Abatement Notice being served on NR. No advance audible or visual warning of the approach of a train is given to crossing users. The maximum line speed over the crossing is currently 70mph, although mitigation of risk following the removal of the whistle boards is provided by a temporary speed restriction (‘TSR’) of 40mph on trains passing over the crossing.
4. There are stiles at the railway boundary and a short flight of steps on the Down side of the railway. Palisade fencing either side of footpath SR49 between the railway boundary and the crossing prevents unauthorised access to the railway as do the trespass guards between the wings of the palisade fence. The steps on the Down side and the stiles at the railway boundary on either side of the crossing limit the accessibility on the approaches to it from the eastern and western parts of footpath SR49.
5. Pilgrim’s Way crossing is located to the east of the village centre in a predominantly residential part of the village. To the east of the crossing is Tudor Drive and Tudor Crescent and to the west are the residential roads of Hopfield Close, Evelyn Road, Well Road and Bubblestone Road. The crossing provides a connection between the residential areas on either side of the railway. Generally speaking, the railway bisects the village with the village centre, shops, church, and village hall being on the west of the railway and predominantly residential areas being to the east.
6. Footpath SR49 commences on the western side of Tudor Drive and crosses the railway via the crossing. The footpath continues in a generally westerly direction to St Bartholomew’s Church where the path splits into two parts; one limb runs to a junction with A225 Station Road near the village pond, the other limb runs in a generally south westerly direction to A225 Sevenoaks Road via the grounds of the former Otford Palace. Footpath SR49 runs between close board fences either side of the railway which mark the boundaries of adjacent housing on Tudor Drive, Hopfield Close and Beckets Place.
7. Bridleway SR49A commences on the eastern side of Tudor Drive and runs to Dynes Road, Kemsing. Bridleway SR49A and footpath SR49 provide a means by which residents of Kemsing can travel to the centre of Otford on foot via Pilgrim’s Way crossing (and vice versa) without having to walk along vehicular highways.
8. Footpath SR59 commences at its junction with footpath SR49 immediately to the west of the crossing and runs in a generally south westerly direction for approximately 70 metres to the junction of Well Road / Evelyn Road. Pedestrians following footpath SR59 can then follow the footways of Well Road and Bubblestone Road to reach the A225 Sevenoaks Road. At the time of my site inspection, Well Road and Bubblestone Road were quiet, lightly trafficked residential roads.
9. Where footpath SR49 turns to run to the rear of the properties on Hopfield Close and Beckets Place, there is a short path which provides a link to the station car park, Station Approach and Station Road. A route along Station Approach and crossing the car park to this link path was one route discussed in the evidence presented to the inquiry as a possible alternative for those who would be unable to negotiate a stepped footbridge.
10. Footpath SR48 commences on Tudor Drive approximately 30 metres north of the eastern end of footpath SR49. The path runs in a generally north-westerly direction to the rear of the properties on Tudor Drive, passing the local Scout Hut and skirting a parcel of land known as the Chalk Pit before its junction with Station Road. In part the footpath runs over a track which provides vehicular access to the Scout Hut and properties on Station Road. A spur from footpath SR48 provides access to the Down line platform of Otford Station. It is also possible to access the Up line platform from footpath SR48 by walking along the Down platform and crossing the railway by means of the station footbridge.
11. Station Road (A225) runs generally east to west into Otford and crosses the railway by means of an overbridge. That part of Station Road discussed at the inquiry is subject to a 30mph speed limit. I understand that traffic management proposals put forward by Otford Parish Council are shortly to be implemented by KCC as Highway Authority; amongst other things, these proposals include a reduction in the speed limit to 20mph between Colets Orchard and the village pond.
12. Station Road has a discontinuous footway on the southern side of the road. Pedestrians emerging from footpath SR48 wishing to walk into the centre of the village are required to cross the road. Immediately to the east of Station Approach is a pedestrian crossing point via a traffic island which also includes ‘Keep Left’ signs. The crossing point has dropped kerbs and tactile paving and there are dropped kerbs and tactile paving on the footways either side of it. The use of footpath SR48 and the footway along Station Road was another of the routes discussed in the evidence presented to the inquiry as a possible alternative for those who would be unable to negotiate a stepped footbridge.

***Use of the crossing***

1. In its initial application to KCC for a diversion order, NR submitted that the crossing was well used by local residents, walkers, dog walkers, family groups, unaccompanied children, and the elderly, with approximately 172 individual uses of the crossing each day. It was noted that people also crossed over the level crossing with bicycles which impeded their manoeuvrability or ability to react quickly to the approach of trains. Crossing users carrying large bags were similarly encumbered.
2. NR considered that the crossing saw a high level of public use. As the crossing provided a means of access to Otford Station as well as a means of communication between housing estates, it was considered unlikely that there would be seasonal variations in the quantity of use.
3. A nine-day camera census of use of the crossing was carried out by NR as part of its assessment of risk at the crossing which showed an average of 230 users per day. The census was carried out after the country had entered the second period of lockdown in November 2020 and although the numbers of people using the crossing as part of a commuter journey to the station may have been reduced, the number of people using the crossing as part of a recreational walk for air and exercise may have increased. Nonetheless, an average of 230 uses per day represents a relatively high level of use.
4. The results of the census in terms of overall numbers were not generally disputed. Use of the crossing was for both utilitarian purposes of accessing the facilities and services found at the centre of the village, for access to the Up line platform for trains to London and also for recreational purposes; this mixed use is reflected in the photographs of the crossing taken during the census period.
5. The available evidence demonstrates that the crossing is a well-used facility and the level of use demonstrated by the census is probably what would be expected of a crossing such as this, given its location.

***Vulnerable users***

1. In the absence of whistle boards or any other audible means of warning of an approaching train being given at the crossing, users will be reliant upon their ability to observe a train approaching the crossing. The distance between decision points at the crossing is 10m. It is assumed that unencumbered, able bodied pedestrians will be able to cross between decision points at a walking pace of 1.189m per second, with the time required to cross the railway being 8.4 seconds.
2. The 2020 narrative risk assessment (‘NRA’) conducted by NR determined that the time required to cross the railway should be increased by 50% due to the level of use by vulnerable or encumbered users. The Census Good Practice Guide (‘CGPG’) provides information as to what groups of people may be considered to be vulnerable, with those seeming relevant in this case being accompanied and unaccompanied children, the elderly, those using walking aids, people encumbered by heavy items, people pushing bicycles, people with push chairs and dog walkers. The CGPG 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

1. The 9-day survey revealed a daily average of 117 uses by those who could be considered ‘vulnerable’ out of a daily average of 230 traverses of the crossing being made. The survey demonstrates that just over 50% of those observed using the crossing during the census period were amongst those considered to be vulnerable.
2. I fully accept that of those who gave evidence of their use of the crossing did not consider themselves to be vulnerable when using it, and that there were benefits from using the crossing in terms of access to and from other parts of the village. I can fully appreciate why the witnesses did not consider themselves personally to be vulnerable when using the crossing and that they exercised due care and attention when crossing the railway. Notwithstanding these personal observations, the 9-day survey demonstrates that the crossing is used by a high number of individuals who fall into the categories of ‘vulnerable users’ as identified in the CGPG.
3. The camera survey revealed that just over 50% of use of the crossing was by vulnerable users, which sits midway between two in five and three to five uses of the crossing as set out in the CGPG. As the surveyed use is not high enough to warrant the automatic application of the 50% uplift in traverse time, the two in five use criteria appears to be applicable. This requires that there should be a risk-based decision made as to whether to apply the uplift. The decision as to whether the uplift should be applied is a matter for the Level Crossing Manager (‘LCM’) as the expert assessor, and the 2020 NRA provides the basis of that risk-based decision. Having heard the evidence in relation to this particular matter, I consider that it was appropriate for the LCM to propose increasing the crossing time required from 8.4 seconds to 12.6 seconds.

***Whether the current pedestrian crossing is safe***

1. The All-Level Crossing Risk Model (ALCRM) is a mandatory decision support tool developed through extensive research and approved by NR in conjunction with the Rail Safety & Standards Board (‘RSSB’) and quantifies individual risk, collective risk and Fatality and Weighted Injury probability, to assess the relative risk to both the public and to rail passengers and crew in relation to all types of level crossings.
2. Under ALCRM, collective risk is reported in simplified form by number, where 1 represents the highest risk and 13 the lowest. Individual risk is assessed in terms of the risk a single user would be exposed to per year of use; this level of risk is identified by letter where A is the highest and M the lowest.
3. The ALCRM risk score recorded in the NRA dated 19 November 2020 was C2; NR submits that the assessment ranks Pilgrim’s Way as the highest risk footpath crossing of the railway in Kent and the third highest risk crossing of all the 341 crossings on the railway in Kent. A revised version of ALCRM was introduced in April 2021 and although a further risk assessment for Pilgrims Way crossing was not due to be carried out until November 2021, NR were asked to run the data it held from the crossing through the revised version of the model. Under the revised model, the assessed risk at Pilgrims Way was calculated as B2. It was noted that whilst Pilgrims Way remained the highest ranked footpath crossing within Kent in terms of risk, the revised assessment placed it the 2nd highest of all 341 crossings within the county.
4. The objectors took issue with the level of risk identified through ALCRM as it was considered not to bear any resemblance to the risk perceived by users of the crossing. Whilst the objectors acknowledged that there was some risk involved in crossing the railway on the level, it was argued that users made their own assessments as to the degree of risk present at the crossing and that the extent of use shown by the census demonstrated that users considered the risk to be manageable. The objectors submitted that injuries and fatalities at Pilgrims Way remained stubbornly at zero and had done so (as far as could be ascertained) since the railway had opened in the 1860s.
5. Criticism of the ALCRM system at a technical level was offered by Dr Williamson. He highlighted his concerns regarding the outcomes produced by ALCRM as confidence intervals for the results obtained were not specified. To the statistician, such matters provided an opportunity to determine whether the outcome appeared sound or was the result of chance. Criticism was also made of NR’s overall assessment which combined ALCRM with the qualitative assessment set out in the NRA. It was Dr Williamson’s view that despite the NRA being reviewed by the Regional LCM, if the organisational culture was one of risk aversion, challenges to the findings of an individual NRA were unlikely to be forthcoming.
6. Whilst criticism was levelled at ALCRM and to the interpretation and review of the NRA carried out at Pilgrims Way, no alternative process or system was suggested as an alternative means by which risk at level crossings could be estimated. I understand that ALCRM has been through a number of iterations since it was first introduced in 2007 with modifications being made to the system over time. A revision to the system (such as that implemented in April 2021) does not mean that the previous iteration was ‘not fit for purpose’ as alleged by the objectors. Whilst it is unlikely that any system for assessing risk will be perfect, and ALCRM may be subject to further review and amendment at a future date, it remains the tool for assessing risk at level crossings. As such, the model, and its outcomes, has to be accorded some weight.
7. The railway lines running over Pilgrims Way crossing are operational and in 24-hour use. 153 passenger services per day run over the crossing, the vast majority of which (148) stop at Otford. Those trains arriving at Otford on the Up line run over the crossing at approximately 38 mph; those departing Otford on the Down line run over the crossing at approximately 20 mph. There are also 5 non-stopping passenger trains which are able to pass through Otford at line speed.
8. In addition to stopping and non-stopping trains, there are also unscheduled ad hoc movements of goods trains, locomotives and other rolling stock, and engineering and maintenance trains which pass through Otford on a non-stopping basis. Miss Kent provided an analysis of these ad hoc movements in NR3[[3]](#footnote-3). The suggestion that on 27 July 2021 45 freight trains had passed through Otford was questioned by the objectors on the basis of personal knowledge of the extent and frequency of freight movements on the railway line, and on the extent of freight movements shown on [www.realtimetrains.co.uk](http://www.realtimetrains.co.uk),which reported that only 5 freight trains ran through Otford on that date.
9. There is likely to be a difference between the number of ‘pathways’ or ‘corridors’ available to freight operators and the number of those ‘pathways’ or ‘corridors’ which are actually used by trains on any given day. The figure of freight movements contended for by the objectors is closer to the 3 ‘pathways’ per day said by Miss Kent in her initial proof to be available to freight operators during the working week and closer to what the objectors have experienced as residents.
10. Whilst there may have been a potential for 45 freight trains to run over the crossing on 27 July, it would seem that that potential remained unfulfilled. As non-stopping trains, each of these trains (whether the 5 that were reported as having undertaken a programmed journey or those which potentially could have run but may not have) would have been able to run over the crossing at or near line speed. In addition to the figure given for freight trains, Miss Kent also provided details of treatment trains (13) and empty rolling stock trains (20) which also ran over the crossing on 27 July. Each of these trains would have the potential to run at full line speed, as would any train being diverted through Otford as a result of incidents elsewhere on the network.
11. Clearly the number of non-timetabled, non-stopping trains passing over the crossing will vary from day to day and may vary depending upon the time of year. However, whilst the majority of trains which pass over the crossing stop at Otford and are not travelling at the upper limit of the TSR, there are a known number of non-stopping passenger trains and a fluctuating number of other non-stopping trains which can run at the TSR speed and could run at higher speeds if the TSR were removed. Non-stopping trains running at higher speeds are likely to present a greater risk to pedestrian users of the crossing than those running at slower speeds, particularly among those groups whose perception of approaching train speed may not be accurate.
12. Any crossing of a railway line by pedestrians, where there is no physical separation from approaching trains, carries a significant element of risk. Furthermore, not only do pedestrians possess different degrees of mobility but variations in weather will create differences in visibility and conditions underfoot. It is difficult therefore to determine with any degree of precision whether a crossing is ‘safe’ or ‘unsafe’; the issue is whether the crossing currently carries an acceptable level of risk and, if it does not, whether it is reasonably practicable to take steps to reduce that risk to a level that is acceptable.
13. The estimated time taken to cross the running rails (the crossing time) is calculated as the time required to cross between decision points. Decision points are found on either side of the line and are defined in the relevant guidance[[4]](#footnote-4) as *‘a point at which guidance on crossing safely is visible and at which a decision to wait or cross in safety can be made’*. The decision points are taken to be the point at which notices bearing the legend ‘*Stop Look Listen Beware of Trains’* are situated and are generally located at least 2m from the nearest running rail.
14. The critical figure in relation to the crossing time is the warning time. The warning time is calculated by reference to the shortest possible time for trains to travel the distance to the crossing from the point at which they can first be seen by a pedestrian standing at the relevant decision point (the sighting distance). Warning times are calculated using the maximum permitted line speed.
15. NR submits that due to the curvature of the line as the railway runs through Otford the available sighting distance varies between 226m (Up line looking towards oncoming Up line train) and 280m (Down line looking towards oncoming Down line train). At the full line speed of 70mph (112KmH) the visual warning time ranges between 7.22 and 8.95 seconds. NR argues that as vulnerable users require 12.6 seconds to traverse the crossing, there is insufficient sighting in all directions.
16. Calculations had also been made of the impact upon visual warning times for a train travelling at 50mph (80.46KmH) and 40mph (64.37KmH). For a train travelling at 50mph, the visual warning of the approach of a train ranges between 10.10 and 12.53 seconds, with the visual warning time remaining insufficient in all directions. At 40mph, the visual warning exceeds the required crossing time, and the lower speed provides sufficient visual warning for a vulnerable user to cross the railway before the train reaches the crossing.
17. NR submits that even with the current restriction on line speed, the proximity of the crossing to Otford station and the pattern of train movements was such that crossing users were exposed to an unacceptable level of risk. Up and Down trains are scheduled to arrive at the station at 58 minutes past the hour and at 28/30 minutes past the hour. A train standing at the station on the Up line can obscure the crossing users view of Down line trains and reduce the visual warning of the approach of a Down train. Due to the timetabling of stopping passenger trains, it is likely that trains will pass within 20 seconds of each other at the crossing. The visibility of a second train approaching the crossing may be obscured by the first train passing the crossing.
18. NR also point to the incidents of misuse of the crossing as evidence of the risks to which users expose themselves when crossing the railway. Incidents of users having their attention distracted by a mobile phone, users wearing headphones whilst crossing, failing to follow the instruction to SLL before crossing and being potentially distracted by leading a dog or dogs were all recorded as part of the 9-day camera survey. Those users I heard from at the Inquiry all noted that their use was undertaken in a reasonable manner and that they paid full attention to their surroundings when using the crossing; I have no reason to doubt that this is the case. However, the census shows that there are users who do not exercise such diligence and may, for one reason or another, not be fully focussed on the task of crossing the railway.
19. In addition to the incidents recorded by the camera survey, NR also submitted evidence relating to ‘near misses’ at the crossing which had occurred since 2009. What constitutes a ‘near miss’ appears to be determined by the driver of the train. Whilst this appears to be somewhat subjective, the train driver is likely to be best placed to determine whether the actions of users put themselves or the train and its passengers at risk of a collision. Near miss incidents include crossing users running out in front of an approaching train, youths playing chicken with the train and other incidents which required the driver to apply the emergency brake.
20. The objectors questioned the veracity of some of these incidents, noting that two were described as having occurred at ‘Otford Junction’. The objectors point out that Otford Junction is approximately 1Km to the south of the crossing. Whilst two of the reported incidents do mention Otford Junction, they both make specific mention of Pilgrims Way as being the relevant crossing at which the incident took place. Furthermore, there is no at-grade pedestrian crossing of the railway in the vicinity of Otford Junction. I am satisfied that the incidents described by NR occurred at the crossing and demonstrate that some users do not approach their use of the crossing with the same diligence and responsibility attested to by those I heard from at the inquiry.
21. NR’s evidence demonstrates that poor user behaviour and actions which put users and others at risk of injury occurs and has occurred at the crossing. It follows that there is a degree of risk present at the crossing irrespective of the speed at which a train is running, but which is likely to increase at full line speed.
22. It was argued that NRs aspiration to run trains at full line speed was unrealistic as the section of the line south of Otford was limited to 35mph whereas the section north of Otford was limited to 55mph. The objectors argued that even if 70 mph were attainable by non-stopping trains, drivers would be accelerating to and decelerating from 70mph over a short distance. It was argued that there would be little by way of operational efficiencies arising from the aspirational increase of line speed as the majority of trains running over the crossing made a stop at Otford and would not be able to achieve such line speeds.
23. Whilst recognising the real-world evidence that the majority of passenger services passing through Otford stop at the station and are travelling below the current TSR speed on approach and departure, there are 5 scheduled services per day which do not stop, and which could attain full line speed. Even if those passenger trains (and other unscheduled trains) were only to run at 55mph on approach to the restricted zone north of Otford or maintain that speed heading south prior to entering the 35mph zone to the south, pedestrians using the crossing would not have sufficient visual warning of the approach of such trains to be able to cross the rails before the train arrived at the crossing.
24. The TSR provides the necessary mitigation for there being insufficient warning of trains approaching the crossing at 70mph following the removal of the whistle boards. At full line speed (or even at 55mph) there is a sighting deficiency in all directions which would present an unacceptable risk to the safety of those members of the public using, or likely to use, the crossing.

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

1. The objectors contend that the crossing is safe for use by the public. Network Rail’s view is that risk can be best mitigated if it is removed altogether, and the closure of the crossing and the diversion of footpath SR49 would eliminate any risk posed to pedestrians.
2. As part of its submissions, Network Rail gave details of the range of options which it had considered to mitigate the risk which users were exposed to. Improving sighting distances and thereby increasing the sighting time was not possible as it was track curvature and not vegetation growth which restricted visibility at the crossing.
3. Notwithstanding the objectors’ claim that the crossing was safe, it was suggested that the introduction of miniature stop lights (‘MSL’) at the crossing would provide an additional visual warning of the approach of trains and improve safety. It was noted that technology of this nature had been installed at a number of other crossings on the railway network.
4. A MSL system provides users with a visual warning of the approach of trains by displaying a red and green light as well as providing an audible warning at the crossing. MSL systems are of two types; the first being an overlay system where the necessary electronics and cabling is separate from the signalling system, with the second type being fully integrated with the signalling system.
5. The crossing is located 80m from Otford station and within 10m of crossover points which allow trains to move from one line of track to the other. Overlay MSL are suited to ‘plain layout’ railways where there are no stop signals, stations, or junctions between the crossing and the ‘strike in’ point where a train is detected to activate the MSL system. The location of the crossing precludes the installation of an overlay MSL system, with an integrated system being the only option possible at this location.
6. The provision of an integrated MSL system at Pilgrims Way would cost in the region of £1.5 million; such a system has high ongoing maintenance costs in addition to the high cost of installation.
7. Whereas the installation of integrated MSLs may provide further mitigation of the risk at Pilgrims Way, one weakness of MSLs is that they do not prevent use of the crossing or mitigate user behaviour. Expensive works which may mitigate risk but allow it to remain do not appear to me to be ones which can be described as reasonably practicable given the extensive use of the crossing by a high proportion of vulnerable users. In contrast, a slightly more circuitous route incorporating the proposed footbridge would eliminate the risk to pedestrians using the crossing.
8. It would not be possible to install a Supplementary Audible Warning Device (‘SAWD’) at the crossing to give an audible warning of the approach of trains as SAWD is required to be used in conjunction with whistle boards. As the use of whistle boards to provide audible warning is precluded by the noise abatement notice, SAWD is not a reasonably practicable option at this location.
9. Consideration has been given to straightening the skew of the crossing, but this option has been discounted as the Down side decision point would be moved closer towards the curve in the line and would further reduce the visual warning of an approaching train. Straightening the crossing would therefore reduce the visual warning of an approaching train and would increase the risk already present at the crossing. Consideration had also been given to the provision of a ramped access bridge but was not pursued on engineering, land use and cost grounds.
10. The objectors were of the view that NR wished to close the crossing and replace it with a footbridge without considering how the crossing could be improved so that it could remain open. NRs witnesses were forthright in their view that safety at railway crossings was enhanced by closure and that NR policy was to close level crossings where possible and appropriate. NR considered that eliminating the risk to crossing users by constructing a footbridge was a better use of public funds than trying to further mitigate but not eliminate the risk as would occur with the other possible options considered.
11. The objectors also took issue with the outcome of the cost benefit ratio figures provided by NR in relation to the various mitigation options considered, particularly in relation to the provision of a footbridge where the benefit which would arise would only be 80% of the cost of the installation of the bridge. Furthermore, this analysis did not appear to factor in the value of preventing a statistical fatality (£2.017 million[[5]](#footnote-5)) and would not represent value for money to the public purse.
12. The question which arises is whether the cost of the proposed mitigation measures is grossly disproportionate to the risk being mitigated. Although a return of 0.8 would not result in the costs of the footbridge being fully recouped through the safety benefit arising, diversion of footpath SR49 over a new footbridge would eliminate the risk to the public posed by the crossing; the cost of the footbridge is therefore not grossly disproportionate to the benefit that will arise from its provision.
13. As noted above, the objectors are of the view that the crossing is safe to use, has provided an accident-free facility within the village for in excess of 150 years and that they wish to continue using the crossing.
14. The risk at the crossing is currently mitigated to an acceptable level by the 40mph TSR. The TSR conflicts with NR’s licence conditions and the aspiration to reduce journey times where possible and does not sit with the level of service sought by Government from the rail network. Whilst the TSR was introduced in place of the mitigation provided by whistle boards, the reduction in line speed for all trains does not provide a permanent solution to the mitigation of that risk.
15. I am satisfied from the evidence submitted that the visual warning of an approach of a train travelling at the permitted line speed is insufficient. I am also satisfied that running trains at the permitted line speed would result in an increase in the level of risk faced by crossing users to an unacceptable level and that there are no reasonably practicable measures which could be taken to reduce that risk and make the crossing safe for users.

***Arrangements for appropriate barriers and signs to be erected and maintained***

1. Under the terms of Article 1 of the Order, the Order does not become operative, and the crossing cannot be closed until such time that KCC certify that the alternative path (namely over the footbridge) has been provided to its satisfaction.
2. NR confirmed that upon the Order coming into operation, it would expeditiously install permanent fencing to securely close off both the eastern and western entrances to the crossing and remove all existing crossing furniture. It would also install ‘no trespassing’ signs inside the boundary of the railway land where they would be visible to the public and within very close proximity to both fenced-off crossing entrances.
3. I am satisfied that the installation of fences and notices would be adequate to discourage attempts to use the crossing subsequent to closure.

***The safety of the alternative routes in comparison to the crossing***

*The footbridge*

1. NR proposes to construct a stepped footbridge to carry the diverted section of footpath SR49. It will be designed and built in accordance with current applicable standards. NR consider that for a significant proportion of current users of the crossing the proposed footbridge will be safer and more convenient to use.
2. The approach to the crossing from Tudor Drive requires current users to be able to negotiate a two-step stile and five steps to reach the crossing and to be able to negotiate a similar stile on the western side. Although NR acknowledge that the provision of a stepped footbridge may limit its use by some current users, the majority of those who are able to negotiate the current approaches to the crossing should also be able to negotiate the proposed footbridge; none of the witnesses at the inquiry stated that they would be unable to negotiate a stepped footbridge.
3. The objectors submit that building a footbridge would not eliminate risk but would change the nature of the risk pedestrians would face and increase them overall. The objectors drew attention to the Health & Safety Executive research paper “*Falls on Stairways - Literature Review*”[[6]](#footnote-6) as being supportive of the case that a new footbridge would introduce a type and level of risk which crossing users were not currently exposed to. The objectors noted that the risk of injury and death following a fall on stairs increased with the age profile of users. Poor maintenance of stairs, whether users were encumbered by heavy objects, familiarity with the stair environment were also contributory factors in exposing stair users to risk.
4. Concerns were also raised that as 21% of the village population were recorded as being over 65 years of age[[7]](#footnote-7), the requirement to negotiate the equivalent of four flights of domestic stairs would present new and potentially catastrophic risks. Similar concerns were raised regarding the potential impacts upon pregnant women and parents or guardians wishing to cross the railway with young children. In addition, concern was also expressed regarding the risk from the steps not being cleared of snow, ice or leaves during the autumn and winter months. The bridge was also considered to pose a personal safety risk due to the approved design having no clear lines of sight due to the right angle turns within the structure.
5. Whilst there will be some risk of slips, trips, and falls on a bridge structure, there is little by way of statistical evidence of the extent of incidents and accidents arising from use of stepped footbridges. NR are only made aware of such incidents on its bridges by compensation claims being lodged with them. The HSE report to which the objectors refer notes that “*Most stair injuries occur in the home*”, and that there are “*nearly as many deaths each year from accidents in the home as from traffic accidents*”, with around a quarter of all such deaths being attributed to falls on stairs.
6. Clearly non-domestic stairs can pose a risk to users. The HSE research paper notes that stair design has been regulated in the UK since 1944; the Building Regulations 2010 Approved Document Part K (2013) being the current standard. The HSE research paper sets out that the design and dimensions of stairs are important for the prevention of stairway accidents with dimensional consistency in risers, goings, nosings and pitch being important as is the installation and positioning of handrails and lighting.
7. NR submit that the footbridge (irrespective of whether the bridge being constructed were to be that shown in the drawing submitted to Sevenoaks DC as part of the Prior Approval application or the design introduced at the inquiry) would comply with all applicable national standards. The risers of each step would be approximately 16cm, with the goings being uniform throughout the entire width of the step; the steps and nosings would also be treated with an anti-slip coating. The design would incorporate standing resting places between flights with a continuous handrail from one side of the bridge to the other. Appropriate illumination of the steps and span of the footbridge will assist users in identifying the riser of each step during the hours of darkness. Whilst the design of the bridge and its component parts cannot eradicate the risk of trips, slips and falls arising, it is recognised that appropriate design can mitigate against the occurrence of such incidents.
8. The objectors point towards the risk posed by snow, ice and leaves not being cleared from the bridge as neither NR nor KCC appeared willing to accept responsibility for such maintenance. The informative provided by NR to the inquiry clearly sets out the position with regard to future maintenance of the footbridge; NR will be responsible for the maintenance and upkeep of the bridge structure, with KCC responsible for the maintenance of the surface. KCC acknowledge however, that it would be unlikely that the bridge surface would be gritted or cleared of ice and snow as such action is not taken on the public rights of way network generally.
9. Whilst a bridge covered in ice and snow may present a risk to users, it is highly likely that a similar or equal risk to users would be present at the crossing in times of adverse wintery weather. A risk of slipping on ice or snow on the crossing and potentially not being able to rise from the path of an oncoming train is likely to carry and equal if not greater level of risk to users. Similarly, in either case the approaches to the crossing (or bridge) are unlikely to be cleared of ice and snow. Any risk perceived to be present on the proposed footbridge due to an accumulation of ice and snow is therefore also likely to be present on the crossing or the approaches to it.
10. Another source of personal risk was said to arise from users not being able to see whether there was anyone lurking or loitering around the 90o turns on the bridge. Although the crossing provides a direct line of sight between the stiles on the east and west sides, the approaches to the crossing involve the negotiation of several other 90o turns in the path; if there was a risk of such activity on the bridge, it is probably no greater than that which would be present on other parts of footpath SR49.
11. The approaches to the crossing (other than near the stile on the western side of the railway) are not lit after the hours of darkness (Otford not having adopted street lighting within the village). However, the revised footbridge design put forward by NR would, if adopted, address the specific concerns regarding lines of sight and the opportunity to see other users on the footbridge. The clear glass sidings to the bridge and its sinuous alignment are likely to provide reassurance to those users who might be deterred by the more conventional design initially proposed.
12. Whilst there may be risks associated with the footbridge, many of the factors that give rise to the risk of slips, trips, and falls on such structures can be mitigated by good design. The diversion of footpath SR49 onto the footbridge will eliminate the unacceptable level of risk to vulnerable users at the crossing which would arise from trains running at 70mph, and eliminate the risk arising from known user behaviour whilst trains are limited to 40mph.
13. None of the witnesses at the inquiry spoke of being unable to negotiate a stepped footbridge although reservations were expressed about having to undertake the equivalent of four flights of domestic stairs to cross the railway. I place some weight on the evidence given by Mr Housden with regard to the ability of some users with protected characteristics to use the bridge. Mr Housden’s preferred means of crossing the railway was via the crossing, but when the crossing was unavailable (due to engineering works on the line for example) he made his way into Otford via footpath SR48, the Down line platform and the footbridge between the Down and Up platforms.
14. The footbridge between the platforms is of a similar type to that proposed as a replacement for the Pilgrim’s Way crossing. That is; it has two flights of steps with landing stages between flights and is illuminated. It is obviously not constructed to current standards in that there is no continuous handrail, but despite any deficiencies, Mr Housden was able to negotiate it. I consider it highly likely that those users who can currently negotiate the crossing and its approaches are also likely to be able to negotiate a bridge built to the current required standards.

*Station Road*

1. The principal alternative route identified by NR for those who would be unable to use the proposed footbridge as a means of crossing the railway was Station Road. A number of possible variations on how to reach the facilities clustered around village pond were possible, but each of these options required the use of the Station Road overbridge to cross the railway.
2. Station Road is the main road to Otford village centre from the east with a speed limit of 30mph. Between the northern end of footpath SR48 and the village centre, Station Road is predominantly a residential area with other residential streets leading off from it. Vehicular access to the railway station car park is from Station Approach which is immediately to the west of the overbridge on the south side of the road.
3. Station Road forms part of the A225 which continues in a generally southerly direction from the village pond as Sevenoaks Road. Sevenoaks Road is also predominantly residential, interspersed with the remains of Otford Palace and a parade of shops, including a post office, near the junction with Bubblestone Road. The principal commercial facilities within the village are clustered along High Street and to the north of the village pond.
4. There is a discontinuous footway along the southern side of Station Road and a continuous footway on the north side of the road. A traffic island with ‘keep left’ bollards is located just to the east of Station Approach. The traffic island has dropped kerbs and tactile paving and there is tactile paving and dropped kerbs on the footways either side of the traffic island. The island provides a means by which pedestrians can cross Station Road to access the continuous footway on the northern side of the road. The footway on the northern side of Station Road is of a uniform width apart from a short section to the east of the Woodman public house.
5. The objectors consider Station Road to be an unsafe alternative to the crossing for those unable to use the footbridge. It is common ground that Station Road is subject to a high volume of traffic with 45,000 vehicles using the road per week and it is contended that many of those vehicles travel faster than the 30mph posted speed limit.
6. Particular concern was raised regarding the requirement for pedestrians to cross Station Road at the traffic island and then re-cross the road near the Woodman if the object of a journey was St Bartholomew’s or the post office on Sevenoaks Road. There was no defined crossing point near the Woodman and when crossing south to north, the wall of Colets Orchard obscured the view of oncoming traffic. As part of my site visit, I crossed the road at this location and note that at that date there was a small ‘keep left’ traffic island which permitted some refuge from oncoming traffic; it was necessary to wait for a suitable break in the traffic before crossing and whilst not without risk, it was possible to do so.
7. Whilst the traffic island near Station Approach is said to be non-compliant with current standards, those standards are not retrospectively applied to existing road infrastructure. The provision of dropped kerbs and tactile paving demonstrates that the traffic island is considered by the Highway Authority as the appropriate means by which pedestrians can cross Station Road in safety. Those with pushchairs or wheelchairs who are currently unable to use the crossing due to the stiles at the railway boundary are likely to have been using the traffic island as part of a journey to the village centre.
8. I was referred to data from ‘crashmap’ which objectors said showed that Station Road was unsafe. Whilst the data for all accidents along Station Road over a 20-year period is available, the data shows that during that period only four incidents involving pedestrians occurred all of which were categorised as ‘slight’. Of these incidents, only the full report into the incident which occurred on 2 March 2010 was submitted; this showed that a pedestrian walking in the road (not on the footway) was struck by a car. Whilst the available data shows that there have been some incidents involving pedestrians, in relation to the number of vehicle movements per week along Station Road, the number of those incidents appears to be quite small. There was no evidence submitted by the Highway Authority to suggest that there were concerns regarding pedestrian use of the footways along Station Road.
9. The speed limit along Station Road is to be reduced to 20mph between the junction with High Street and Colets Orchard as part of a traffic calming scheme within the village. In addition to the reduction in permitted speed along part of the road, there will be a reduction in the carriageway width south of the station entrance with additional hatch markings on the road surface to provide further warning of, and protection to, the existing pedestrian crossing point. At the road junction at the Woodman, the existing small traffic island is to be reprofiled to provide an informal crossing point of the road with tactile paving being installed at the reprofiled island and on the footways opposite.
10. Whilst the speed limit on part of Station Road will remain unchanged, the traffic calming measures being undertaken will improve provision for those crossing users unable to use the proposed footbridge. The route along Station Road will provide a safe means of crossing the railway and a safe means of travel into the centre of the village.

###### *The convenience and enjoyment of the alternative routes in comparison to the existing crossings*

1. For those currently able to negotiate the stiles and stepped approach to the crossing, the proposed footbridge would provide a reasonably convenient alternative, albeit that there would be an increase in both journey time and distance as a result of negotiating the bridge. The increase in journey time will vary between users but the increase in distance is approximately 46 metres. From Tudor Drive to the junction with Station Road at the village pond, footpath SR49 is approximately 680 metres in length; a 6% increase in journey length is unlikely to result in a significant inconvenience to those using footpath SR49 as a means of access to the village.
2. The objectors submitted that the 2011 census showed that 34% of the village population was over 55, a figure which was 7% higher than the national average. As such the footbridge would have a disproportionate impact upon a high proportion of village residents which may not be able to negotiate four flights of steps. I understand the point being made but think it fair to say that as we age, it is difficult to accept that we may not be able to do some of the things we did when we were younger. However, not all those who fall into the category of the over 55s will be unable to negotiate the proposed footbridge and for those that can, the increase in journey distance would not be significantly different.
3. For those who currently cannot use the crossing, or for those who find they cannot use the footbridge, a number of alternative routes are available. As noted above, all these utilise the overbridge on Station Road as the means of crossing the railway.
4. The degree of inconvenience which an individual user may experience is likely to depend upon the purpose of a journey over the crossing and the start and end points of such a journey. To travel from Tudor Drive to that part of the A225 near St Bartholomew’s church via the railway overbridge would increase the journey distance by approximately 76 metres and would require Station Road to be crossed twice. If the purpose of a journey was to reach the village facilities on High Street, then other than an increase in journey distance there would be no increased inconvenience for those using the overbridge route; a journey via the crossing requires the user to cross Station Road or Sevenoaks Road at some point.
5. The alternative route via the Station Road overbridge requires users to travel along footpath SR 48 from Tudor Drive, past the Chalk Pit, the Scout hut and the properties which front onto Station Road. There is some vehicular use of the route for access to property, with cyclists also using the footpath as a means of access to bridleway SR49A and onward to Kemsing. Whilst concerns were expressed regarding shared use, there is no evidence of incidents or accidents befalling pedestrians whilst using the footpath. Footpath SR48 appears to be safe and convenient for use by pedestrians as part of an alternative means of crossing the railway.
6. A route following footpath SR48, the overbridge, Station Approach, and the link path through the station car park back to footpath SR49 would be more circuitous route for those wanting to travel to the village centre but would remain an option for those who did not want to walk along Station Road. This route would also provide a step-free access to those commuters living on the eastern side of the railway wishing to catch an Up-line train from platform 1.
7. The crossing is used for utilitarian purposes as a means of access to facilities within the village centre and for travel between the residential areas which lie to the east and west of the railway. Whilst journey times and distances will be increased as a result of the diversion, I consider that the proposed diversion has the benefit of retaining a through route between Tudor Drive and the facilities found to the west of the railway. Although increased journey times and distances may be an inconvenience to some users, I do not consider these to be of such significance to warrant the retention of the existing crossing.

***Equalities Act 2010 – Diversity Impact Assessment***

1. The objectors contend that closing the crossing and diverting users over a stepped footbridge or requiring them to travel via footpath SR48 and Station Road has the potential to breach the public sector equality duty set out in s149 of the 2010 Act. Reference is made to the impact upon the mobility impaired, the young, the elderly and the pregnant of the stepped footbridge and longer journey distances for those unable to negotiate the steps.
2. However, very little evidence of the extent of the impact the proposed footbridge or the alternative route via footpath SR48 and Station Road would have on those with protected characteristics was put before the inquiry. Mr Housden’s evidence was that he was able to negotiate a stepped access over the railway; letters of support from mothers of young children were to the effect that a stepped access would not present a barrier to crossing the railway although it was not without its challenges and was considered to be safer than using the crossing.
3. The Diversity Impact Assessment (‘DIA’) undertaken by NR as part of its application to KCC for a diversion order recognised that the provision of a stepped footbridge could have an impact upon those sharing the protected characteristics of age, disability, and pregnancy. The DIA also recognised that the existing approaches to the crossing also posed challenges for these groups. However, the construction of a footbridge to the relevant standards was considered to have a positive impact upon those with visual or hearing impairments and would provide a safer means of crossing the railway for some groups. The DIA noted that although footpath SR49 was not step free, a footbridge would require an increase in effort that older and disabled users may have to exert to cross the railway.
4. A ramped access footbridge may address some of the issues identified by the DIA, although in order to provide a gradient shallow enough to accommodate self-propelled wheelchairs the length of the ramped sections may present problems in terms of fatigue. In any event, a ramped access is not feasible at this location due to the physical constraints of the site and the disproportionate cost of such a structure.
5. As noted above, it is an inevitability of the ageing process that some users will, over time become unable to use the stepped footbridge. However, very little evidence was presented to demonstrate that any significant group of users would be unable to use the footbridge. The alternative step free routes proposed are already in use by those currently residing within Otford and although these routes may be longer depending on the ultimate destination, they offer a means of crossing the railway where the risk posed is at an acceptable level.
6. The 2010 Act establishes a general duty on public authorities to have due regard when carrying out their functions, to the need to eliminate unlawful discrimination, harassment, or victimisation; to advance equality of opportunity; and to foster good relations.
7. I have borne this duty in mind in weighing the positive and negative impacts the proposal would have for those with protected characteristics. I agree with the findings of the DIA that although the provision of a stepped footbridge could lead to some users having to travel further as part of a step-free route, it would also improve their safety, as the step-free alternative means of crossing the railway is grade-separated.

**Conclusions as to the proposed alternative routes**

1. I have had regard to the safety of the proposed alternative routes, the relative convenience of those routes and the likely impacts upon current users of the crossing were footpath SR49 to be diverted. I am also mindful of the submission that the proposed diversion may lead some users to resort to making a journey to Otford by car as opposed to using the proposed footbridge or the alternative via footpath SR48 and the footway on Station Road. At a time when people are being encouraged to walk or cycle for short local journeys, increased car use (should that arise as a result of this proposal) would be unfortunate.
2. I recognise that for some people the diversion over a stepped footbridge would be a less convenient means of traversing the railway than using the at grade crossing. However, the bridge would be compliant with all modern design requirements which would minimise risk from trips, slips and falls and is likely to provide safety benefits to users with hearing or sight impairments. There is little evidence that current users of the crossing would be unable to negotiate a stepped footbridge.
3. An alternative step-free means of accessing the facilities found at the centre of the village currently exists from Tudor Drive utilising footpath SR 48 and the footways adjacent to Station Road. Whilst journey times and distances may be increased, the increase would be under 100 metres; I do not consider that this marginal increase would dissuade anyone who can currently undertake a journey on foot from Tudor Drive to the village pond from doing so in the future. Connectivity between those parts of the village either side of the railway would not be lost as a result of the proposal.
4. The number of recorded accidents involving pedestrians walking along Station Road over the previous 20 years does not lead me to consider that the proposed step-free alternative is fundamentally unsafe. The footway on the northern side of the road is of a uniform width with the exception of a section east of the Woodman public house. Whilst it may not be possible for two persons to pass each other at this specific location, I consider it highly likely that common sense and courtesy will prevail with one party stepping back or waiting to allow another to pass on this restricted section; it should not be necessary for anyone to step out into the road as part of a journey along Station Road.
5. The traffic calming measures being undertaken in Otford will enhance the safety of pedestrians on Station Road. No objection on grounds of safety (or otherwise) to the proposal for Station Road to be part of a step-free alternative route has been made by KCC as Highway Authority; I give some weight to that fact.
6. I am satisfied that the proposed diversion, together with the step-free alternatives would provide suitable alternative routes for the public to use for the purposes for which the current crossing is used. Whilst there are some negative impacts of the proposal which would weigh against the making of the Order, I do not consider that these would have such an adverse effect on current users to prevent the Order from being made.

**Other matters**

*Compensation (s121(2) and s28 of the 1980 Act)*

1. By virtue of section 121(2) of the 1980 Act, section 28 applies to RCDOs, as it would apply to a diversion order made under section 119 of the 1980 Act. 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 an order or where a person has suffered damage by being disturbed in his enjoyment of land in consequence of the making of an order.
2. NR own the land over which the Pilgrims Way crossing runs. The Order would divert that part of footpath SR49 where it runs over NR’s land to a new alignment which would be wholly within NR’s land. The approaches to the crossing which run over third party land are unaffected by the Order. It is highly unlikely that any interest (other than that of NR) would be affected by the proposal and thereby give rise to a claim for compensation.

*Agriculture, forestry, and nature conservation (s121(3) of the 1980 Act)*

1. The land crossed by footpath SR49 is an operational railway. Consequently, the interests of agriculture, forestry and nature conservation are unaffected by this proposal.

*Operational efficiency*

1. NR submits that one of the key factors defining the capacity and efficiency of any given railway line is track speed; in order to ensure a reliable service to train operators and passengers, rolling stock is expected to achieve maximum line speed, wherever possible. It is argued that the TSR in place at Otford impacts upon operational efficiency by preventing trains from operating at the line speed which the infrastructure is capable of sustaining.
2. NR also submits that the TSR was the only means of ensuring that the crossing complied with relevant operational standards including sighting whilst complying with the noise abatement notice by the removal of the protective whistle boards. The TSR cannot be lifted, and the operationally efficient line speed of 70mph cannot be reinstated, unless the crossing is closed.
3. Whilst increasing the attainable line speed may not impact upon those trains stopping at Otford (where approaching and departing speeds are below 40mph), the ability to run non-stopping trains at speeds up to 70mph would ensure that the network is capable of performing and working at capacity to accommodate any future increases in the speed or number of train services.
4. Whilst the TSR is unlikely to have any impact upon trains scheduled to stop at Otford due to the speed at which an approaching or departing train will be running over the crossing, those non-stopping passenger and unscheduled trains would be able to run at a higher speed through Otford; whilst the gains to operational efficiency may only be marginal, they will nonetheless accrue if the TSR is removed.
5. As has been demonstrated above, at a line speed of 40mph, all users have sufficient visual warning of an approaching train. At speeds above 40 mph the visual warning given is insufficient for vulnerable users to be able to cross the railway in safety before a train reaches the crossing. It is not possible for this deficiency to be mitigated by the reinstatement of whistle boards as the sounding of train horns would give rise to a statutory nuisance. Increasing the attainable line speed through Otford is not possible without an unacceptable risk to public safety. The diversion of the footpath would remove the risk present at the crossing and permit non-stopping trains to run at full line speed.

*Rights of Way Improvement Plan (ROWIP)*

1. KCC’s ROWIP 2018-2028 draws broad strategic conclusions to identify improvements to the rights of way network within the lifetime of the plan. Action point 2.12 of Policy EN03 regarding safe travel provides that KCC will “*Look to improve safety of railway and road crossings where possible, working with Highways and PROW partners”*. The proposed diversion does not appear to conflict with the policies set out in the ROWIP.

*Post-inquiry correspondence*

1. Following the closing of the inquiry, a late submission was made by one of the statutory objectors who had not appeared at the inquiry. Mr Clucas drew attention to a press report which related to a pedestrian crossing at Halesworth station in Suffolk. This crossing point had been proposed for closure by Network Rail but had been retained for use following the introduction of gates and additional signage which gave instruction of the correct and safe use of the crossing.
2. Mr Clucas’ interpretation of the press notice was that there were similarities between the crossings at Halesworth and Pilgrim’s Way and that it would be possible for Pilgrim’s way crossing to be retained and for Network Rail to withdraw its application to close it.
3. NR’s response was that whilst the crossings share some external characteristics, Pilgrim’s Way is entirely distinct from the crossing at Halesworth. Pilgrim’s Way carries a public right of way over the railway whereas the crossing at Halesworth is a station facility (a ‘barrow crossing’) immediately at the end of the platforms which allows passengers to cross from one platform to the other. NR submits that concerns remain about the crossing despite the introduction of gates and notices. Furthermore, sighting at Halesworth is satisfactory in all directions, the line speed at the crossing is 15mph and there are only 33 trains per day. The pattern of use of the crossing and the frequency and speed of trains at Halesworth is in direct contrast to that experienced at Pilgrim’s Way which in NR’s view is demonstrably unsafe
4. In my view, beyond the function of facilitating the crossing of the live rails on the level, there is little by way of comparison to be made between these two crossings. Even if gates and notices of the type installed at Halesworth were introduced at Pilgrim’s Way, such infrastructure would not address the deficient sighting at the crossing for trains travelling at full line speed or for trains travelling in excess of 40mph. Nor would such infrastructure permit the re-introduction of whistle boards to mitigate the deficient sighting at the crossing.

***Whether it is expedient to make the Order***

1. In considering whether or not it is expedient to divert part of footpath SR49 and close the crossing, I must weigh in the balance all the circumstances. The removal of the TSR would increase the operational efficiency of the railway although the impact of raising line speeds will have little positive impact on the running of timetabled services which stop at Otford. At speeds in excess of 40mph, the visible warning of the approach of a train is insufficient and mitigation through the reinstatement of whistle boards is not an option at this location.
2. The provision of a footbridge and the diversion of part of footpath SR49 over that footbridge will provide the public with a means of crossing the railway which does not expose them to unacceptable risk and danger. I have taken into account the suburban setting and current use of the crossing and the impact the diversion and the proposed alternative routes may have on particular users. In balancing these competing matters, I am of the view that the risk to the safety of crossing users exceeds the risk those users would be exposed to on the stepped footbridge or Station Road alternatives.
3. Having taken all these matters into account, I consider that it is expedient that the Order should be made.

**Conclusions**

1. Having regard to these and all other matters raised at the Inquiry, and in the written representations, I conclude that the Order should be made subject to the modification set out in paragraph 18 above.

**Formal Decision**

1. I make the Order subject to the modification of the Order’s date from 2019 to 2021.

Alan Beckett

Inspector

APPEARANCES

For Network Rail Infrastructure Limited

Mr Juan Lopez of Counsel

Who called:

Miss Gemma Kent Level Crossing Manager, Kent Route

Mr Jerry Greenwood Head of Liability Negotiation

Mr Damian Hajnus Liability Negotiations Manager

Objectors

Cllr Irene Roy Chair, Otford Parish Council

Dr Martin Williamson

Mr Barry Davies

Mr Simon Featherstone Otford Society

Mr Tom Housden

Mr Ken Cardinal

Mrs Elizabeth Williamson

Mr Edward Bergin

Inquiry Documents

1. Office of Rail and Road – Principles for managing level crossing safety (15 June 2021)
2. Photograph of unnamed level crossing fitted with MSL (from Mr Cardinal)
3. Network Rail NR1: Errata Sheet
4. Network Rail NR2: Note on ALCRM
5. Network Rail NR3: Note on ad hoc train movements
6. Network Rail NR4: Note on proposed footbridge
7. Network Rail NR5: Authorisation for Future Local Traffic Management Works plus appendices: Appendix 1: Traffic Order deposit documents; Appendix 2: Notes from Otford Parish Council on proposed Traffic Management Scheme (part 9); Appendix 3: Traffic Management Working Party meeting notes; Appendix 4: Traffic Management proposals - Village Centre to Station Road viewports 5 and 6; Appendix 5: traffic management proposals - Station Road to Pilgrims Way East viewports 7 and 8.
8. Network Rail NR6: Photograph of passengers on platforms at Otford
9. Network Rail NR 7: Response to written questions from Dr Williamson
10. Network Rail NR 8: NR and KCC joint informative regarding future maintenance responsibilities
11. Network Rail NR9: Prior Approval delegated report and officer’s decision on Prior Approval application under GPDO provisions (18 September 2015)
12. Network Rail NR10: Local School and Nursery intake ages
13. Network Rail NR 11: Matters arising under sections 119A and 121 of the 1980 Act.
14. Opening remarks on behalf of the objectors presented by Cllr Roy
15. Proof of Evidence of Cllr Roy – Alternative Routes
16. The Otford Society – Rail Crossing Member Consultation (July 2021) (amended version)
17. The Otford Society – Petition against 36ft bridge (15 January 2021)
18. Personal statement of Mr Tom Housden
19. Personal statement by Dr Martin Williamson
20. Objector’s note; Daily freight train movements through Otford, 26-30 July 2021
21. HM Treasury Green Book – Central Government Guidance on Appraisal and Evaluation (submitted by Dr Williamson)
22. Personal statement of Elizabeth Williamson
23. Proof of Evidence of Mr Lanceley[[8]](#footnote-8)
24. Closing remarks on behalf of the Objectors.
25. Closing remarks on behalf of Network Rail.

Post-inquiry correspondence

1. Email and attached press report submitted by Mr Clucas.
2. Response from Network Rail.



1. Sevenoaks District Council approval dated 18 September 2015 [↑](#footnote-ref-1)
2. See Inquiry document 6: Network Rail NR4: Note on proposed footbridge [↑](#footnote-ref-2)
3. Inquiry document 5 [↑](#footnote-ref-3)
4. Office of Rail regulation Railway Safety Publication No. 7 ‘Level Crossings: a guide for Managers, Designers and Operators’ (2011). [↑](#footnote-ref-4)
5. Paragraph 38 of Principles for managing level crossing safety ORR 15 June 2021 [↑](#footnote-ref-5)
6. HSE Health & Safety Laboratory Report Number HSL/2005/10 (2005) [↑](#footnote-ref-6)
7. 2011 census [↑](#footnote-ref-7)
8. Mr Lanceley was due to appear at the Inquiry on Monday 2 August but was indisposed and could not appear; his proof was taken ‘as read’. [↑](#footnote-ref-8)