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| **Order Decision** |
| Inquiry opened on 24 January 2023Site visit made on 23 January 2023 |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 May 2023** |

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| **Order Ref: ROW/3277902** |
| * This Order is made under Section 118A of the Highways Act 1980 (‘the 1980 Act’) and is known as the Oxfordshire County Council Culham Footpath No. 1 (part), Rail Crossing Extinguishment and Definitive Map and Statement Modification Order 2018.
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| * The Order is dated 2 August 2018 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were three objections outstanding at the commencement of the inquiry.
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| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. The inquiry into the Order opened at the Village Hall, Sutton Courtenay, Oxfordshire on 24 January 2023 and sat for three days.
2. I made an unaccompanied inspection of the route in question in the late afternoon of 23 January 2023; I was not required to make a further site inspection following the close of the inquiry.

The Main Issues

1. Footpath No. 1 (‘FP1’) crosses the Didcot – Chester railway at grade with the operational railway. The Order has been made as it appears to Oxfordshire County Council (‘the Council’) that it is expedient in the interests of the safety of the public using or likely to use the footpath that it should be stopped up.
2. If I am to confirm the Order, I need to be satisfied that it is expedient to extinguish that part of FP1 running from the western boundary of the railway to its current junction with Restricted Byway No.4 (‘RB4’) on Thame Lane, 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.

1. I consider that the salient points under these heads include the following issues:

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

 b) the safety of the suggested alternative route in comparison (acknowledging that no specific new route is proposed to be created by this order);

 c) the convenience and enjoyment of the suggested alternative route 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 confirmed, adequate arrangements have been made to secure the redundant crossing.

Reasons

***Background***

1. Nuneham Level Crossing (‘the Crossing’) is located on the Didcot – Chester railway between Culham and Radley approximately 1km north of Culham railway station. The railway is used by both passenger and freight trains. During the working week 235 trains currently traverse the Crossing, with a reduced service operating on Saturdays (186 trains) and Sundays (81 trains). Of the weekday trains, approximately 70 carry freight, with the passenger trains being a mixture of those which call at Culham station and those which do not.
2. The maximum line speed over the Crossing is 90mph for passenger trains and 75mph for freight trains, although the speed at which any given train may pass over the Crossing is likely to vary depending on whether or not it is scheduled to call at Culham or upon the freight load being carried. The railway at this location is signalled to allow bi-directional working; that is, trains can be signalled to travel north on the up line (the east side of the railway) (when the usual direction of travel is to the south) or south on the down line (the west side) (when the usual direction of travel is to the north). It is also possible for trains to be signalled to travel in both directions on the same line of track, depending upon the operational needs of the railway.
3. The Crossing is located within a cutting and is accessed from the surrounding agricultural land by means of stiles at the railway boundary and a flight of steps on either side of the railway. The risers and treads of the steps are uneven and are staggered to reduce the gradient of the approach to the Crossing. The Crossing has decking boards between the rails to provide an even walking surface and the Crossing is at right angles to the track. To the north of the Crossing the railway line curves to the east. Approximately 320m to the south of the Crossing, the railway curves to the west at Thame Lane Bridge which carries RB4 over the railway.
4. The Crossing has been proposed for closure or diversion on a number of occasions, by Network Rail or its predecessors. An application made in 1992 under s119 of the 1980 Act was not progressed by the Council as the alternative route proposed was already a public right of way.
5. In 2014 Network Rail approached the Council with a view to diverting FP1 onto a new route which would have crossed third party land on the eastern boundary of the railway, passing under the railway in the vicinity of the viaduct over the Thames. This proposal was not progressed; the owners of the land objected to the suggested diversion as they were not prepared to accept new public rights of way over their land.
6. The Order under consideration was made by the Council following Network Rail’s application for the extinguishment of part of FP1 under the provisions of section 118A of the 1980 Act.

**Assessment of risk at level crossings**

1. Network Rail uses a system known as the All-Level Crossing Risk Model (ALCRM) as part of its risk assessment and mitigation strategy, the main purpose of which is to provide a consistent method of assessing risk at level crossings to crossing users, train passengers and railway staff.
2. ALCRM considers two levels of risk; the collective risk and individual risk at any given crossing. Collective risk (the overall risk to the network and all those using it) is expressed in a simplified numeric form ranked from 1 to 13 where 1 represents the highest risk and 13 represents nil risk. Individual risk (the risk of fatality to one individual using the crossing regularly in one year) is expressed as a letter, ranked A to M where A represents the highest risk and M nil risk. A qualitative risk assessment of each crossing is also carried out by individual Level Crossing Managers which feeds into the ALCRM model. The qualitative risk assessment allows for the identification of features or characteristics at crossings with the same ALCRM score and informs the optioneering exercise undertaken to eliminate or mitigate the risk identified.
3. Whilst ALCRM provides an estimate of the risk at a crossing at the date of the assessment, it provides little by way of consideration of the likely future risk arising from prospective or planned development in the vicinity of the Crossing. In addition to the ALCRM assessment, Network Rail has submitted an Impact Assessment Report (IAR). The IAR takes into account the likely impact on the Crossing of the intensification of use of the existing Culham Science Centre both in its existing, built out capacity and the future employment opportunities envisaged under Local Plan policy STRAT8; the additional employment site being developed to the east of the railway under Local Plan policy STRAT9 (‘the Culham No.1 site’); and the projected development of an additional 3,500 homes to the west of the railway (‘the Culham No.2 site’).
4. The IAR considers the effect of potential mitigation measures at the Crossing in the light of these developments and includes a cost benefit analysis of those mitigations to determine an appropriate course of action.
5. The most recent risk assessment of the Crossing resulted in an ALCRM score of C6 which shows that whilst the collective risk is moderate, the individual risk to those using the crossing is high. It is acknowledged that risk will vary according to the characteristics of any given crossing; the extent of use of that crossing; the frequency, number and speed of trains passing over the crossing; and whether crossing users have sufficient advance warning of the approach of a train to be able to cross the railway in good time. Such factors are considered as part of the risk assessment.
6. Factors in determining risk to pedestrians at a level crossing are the ‘crossing time’ and ‘warning time’. The crossing time is calculated as the time required to walk between decision points. Decision points are found on either side of the line and are the pointsat which guidance on crossing safely is visible and at which a decision to wait or cross in safety can be made. It is at these points that notices bearing the legend ‘*Stop Look Listen Beware of Trains’* are situated. For line speeds of up to 100mph, the decision point is taken to be 2 metres from the nearest running rail.
7. The walking speed of an able-bodied adult crossing the railway where crossing boards are provided is calculated as 1.2 metres per second. In calculating the crossing time, an allowance of 50% additional time is added to allow ‘vulnerable’ users sufficient time to cross the railway. Network Rail’s understanding of vulnerable users includes (but is not limited to), the elderly; those with mobility impairments; encumbered users such as dog walkers or cyclists pushing or carrying their bicycles over the Crossing.
8. The critical figure in relation to the crossing time is the warning time. The warning time is calculated as the time taken by 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 travelling speed on the line.
9. The accepted principle regarding at-grade crossings is that for a crossing to be deemed ‘safe’ (notwithstanding that there will always be an element of risk involving in crossing any live railway), the warning time should be greater than the crossing time. It was the Council’s and Network Rail’s case that the Crossing did not provide users with adequate warning of the approach of trains running at line speeds.
10. The Crossing is a ‘passive’ crossing in that the public are required to ‘stop, look and listen’ for the approach of trains.

***The current safety of the pedestrian railway crossing for the public***

1. It is common ground between the parties that the Crossing is used by few people. To help inform the ALCRM risk assessment, Network Rail undertook a camera census between 26 May and 16 September 2022 to establish the current pattern of usage. The camera census revealed that over the 114-day period of the survey a total of 242 individuals made use of the Crossing, an average use of just over 2 uses per day.
2. Of these users, there were 217 pedestrians, 8 pedestrians with their dog on a lead, 6 pedestrians accompanied by a child and 11 cyclists carrying their bicycles over the Crossing. Network Rail considers those users accompanied by a child, dog, or encumbered by a bicycle, as ‘vulnerable’ users. The objectors questioned whether those who were able to negotiate the stiles and steps down to the trackside could be classed as being vulnerable and in need of additional warning time. Network Rail’s view was, irrespective of age or physical ability, any user whose attention may not be fully concentrated on checking for the absence of approaching trains whilst using the Crossing, because they were concerned about their child, dog or were carrying a bulky object such as a bicycle, should be considered to be vulnerable. As the expert assessor of safety on the railway, I accept Network Rail’s argument as to why such users should be considered to be vulnerable when attempting to use the Crossing.
3. A camera census was also carried out on RB4 at Thame Lane Bridge to assess the level of pedestrian use of the right of way network leading to and over the bridge as a comparison with the use of the Crossing. Over an 80-day period, a total of 1678 uses of the bridge were recorded, a total which included 870 pedestrians and 668 cyclists. The number of individuals using the bridge as a means to cross the railway was approximately 10 times that of those who used the Crossing.
4. The Crossing has a traverse distance of 9.4m between decision points. An able-bodied user would normally cross the railway in 7.91 seconds; however, a 50% uplift to allow for vulnerable users sets the required crossing time at 11.86 seconds.
5. The minimum sighting distance required to allow an able-bodied user enough warning time of the approach of a train at line speed would be 318m (crossing time (7.91 seconds) x line speed (40.2336m/s)). For a vulnerable user, the minimum sighting distance would be 477m (11.86s x 40.2336m/s).
6. At the date of the assessment (September 2022) for non-vulnerable users standing at the decision point on the up side of the railway looking in the up direction towards a southbound train there was insufficient sighting (230 metres) due to the curvature of the line and vegetation growth. For a non-vulnerable user standing at the down side looking in the down direction for a northbound train there was also insufficient sighting (301 metres). For vulnerable users, the available sighting was insufficient in all directions when the railway was working normally (280m, 430m, 438m, 301m); that is, without bi-directional working.
7. Network Rail acknowledges that in optimal conditions with all impeding vegetation trimmed back it would be possible to achieve sufficient sighting in all directions for non-vulnerable users. However, on the measured distances provided by Network Rail, even with all vegetation cut back to maximise the available sighting distance, a vulnerable user would only have sufficient sighting when seeking to cross from the up side and looking for a train travelling in the down direction (509m).
8. The calculations as to crossing times, warning times and sighting distances submitted by Network Rail were not contested by the objectors.
9. At current permissible line speeds and during periods of normal vegetation growth, there is insufficient warning time for a vulnerable pedestrian to cross the rails safely from either side of the railway, and non-vulnerable pedestrians have insufficient time to cross from the east when a southbound train first comes into view and from the west when a northbound train first comes into view. I am satisfied that the warning time for pedestrians for a train running at the maximum permissible line speed would not satisfy the current safety criteria.
10. The risk to the public posed by insufficient sighting of an oncoming train is currently mitigated by whistle boards located 432m from the Crossing on the up line, and 430m from the Crossing on the down line. At these distances, the audible warning of the approach of a train would be 10.73 seconds on the up line and 10.68 seconds on the down line. However, the audible warning given would not provide non-vulnerable users sufficient time to cross the railway with a train approaching at full line speed.
11. In any event, whistle boards only provide limited mitigation for insufficient sighting. The sounding of the horn before, at or after the whistle board may give rise to inconsistent warning times and the warning time given will depend on the speed at which individual trains are travelling. For example, a freight train travelling at 65mph (29.05m/s) would give rise to a warning time of 14.8 seconds whereas a train at full line speed would give 10.7 seconds warning. A vulnerable user waiting to traverse the Crossing may be unaware of the nature of the train approaching and may (inadvertently) cross into the path of a line-speed train when a freight train may have been anticipated.
12. The audible warning provided by the train horn may also be masked by other ambient background noise which would limit its effectiveness. During my site visit an up-line freight train approached and cleared the crossing but was of sufficient length for it to mask the approach of a passenger train on the down line. I understand the some of the freight trains can measure up to 775m in length. The noise generated from the freight train at line side was also sufficient to drown out the noise of the horn from the passenger train on its approach to the Crossing. The inability to see or hear the approach of a train on the opposite line presents a significant risk to users at this location; given that 235 trains per day travel over the Crossing, I consider it to be highly unlikely that what I observed would be an isolated occurrence.
13. It is not disputed that in addition to the reduction in sighting caused by the curvature of the track and vegetation growth, the railway at this location may also be affected by sun glare and fog or mist rising from the Thames. Whilst these may only affect the Crossing on a seasonal basis, they would nonetheless add to the risk presently faced by both vulnerable and non-vulnerable users.
14. Whilst the daily use of the Crossing as evidenced by the camera survey is low in absolute terms and the proportion of users who can be classed as ‘vulnerable’ is similarly low, the risk to which these users is currently exposed cannot be ignored. If the current circumstances pertaining at the Crossing were to remain unchanged over time, the degree of risk to which each user was exposed would remain broadly the same, that is, the Crossing would present a risk to both vulnerable and non-vulnerable users.
15. However, there is likely to be an increase in the number of trains passing over the Crossing from the summer of 2023 as it is intended to resume the pre-covid timetable which would result in 284 trains running during weekdays. By December 2024, the Oxford Phase 2 enhancement to increase capacity on the Oxford – Didcot line is scheduled to result in 307 trains per day passing over the Crossing. Network Rail also submit that the line through Culham has been included in future plans for electrification, which by 2033 has the potential to increase capacity to 440 trains per day during weekdays.
16. The projected increase in train services in the immediate future (up to December 2024) would lead to a 30% increase in the number of trains passing over the Crossing, with a commensurate increase in the risk to those seeking to use it to cross the railway.
17. In addition to the increase in the number and frequency of trains passing over the Crossing, the expansion of Culham Science Centre (‘CSC’) under various planning permissions already granted, the projected additional commercial development to the east of the railway at the Culham No. 1 site and the development of 3,500 dwellings to the west of the railway at the Culham No. 2 site is likely to result in an increase in use of the Crossing.
18. Network Rail’s assessment of those planning permissions already granted for the CSC site is that employment will rise from the current level of 2,500 to 5,000 by 2035, with employment at the Culham No.1 site being 3,500 once fully developed. The site masterplans for the projected developments envisage that 5% of employees will walk to work and 15% would travel by bicycle. Network Rail considers it highly likely that some of those users would use the Crossing as a means of accessing the CSC site as the site masterplan shows an entrance being at the northern end a little to the east of Point C.
19. Land to the west of the railway at the Culham No. 2 site has been identified in the South Oxfordshire Local Plan 2035 as suitable for 3,500 new dwellings. Although no development has yet been commenced on this site, Network Rail has assessed the likely occupancy level of the development once complete as giving rise to between 8,332 and 10,018 new residents, based on the average size of a household in South Oxfordshire District and average household size in Culham.
20. Network Rail recognises that a clear majority of employees or new residents are unlikely to use the Crossing. However, based on projected employment and residential occupancy, and on current levels of use, Network Rail has conservatively estimated that use of the Crossing is likely to increase from the current 2 uses per day to 5 per day in 2023, 33 by 2025, 71 by 2030 and up to 228 by 2042 when the housing development is projected to be fully occupied. The ALCRM score for the crossing is projected to rise from C6 to B4 when the pre-Covid timetable is re-introduced in 2023, and to B1 one all projected line enhancements have been completed and the line is running at full capacity.
21. The level of the projected increase in use of the Crossing is to some extent speculative given that the composition of the projected housing development has yet to be determined. However, the suggested increase in use of the Crossing by new employees and residents is not incredible, given the planned use of the land east and west of the railway.
22. Network Rail’s assessment as to the potential increase in the number of those seeking to use the Crossing as a result of current and future planned was not challenged by the objectors, although it was considered that retention of the crossing would provide new residents and those employed on nearby sites a means of access to the wider countryside.
23. Whilst recognising the potential for the Crossing to provide access to the countryside for new residents, the projected increase in the number and frequency of trains in the immediate future and the likely increase in numbers using the Crossing arising from other developments in its vicinity would only serve to increase the risk to which users are currently exposed. I consider that the Crossing poses a risk to vulnerable and non-vulnerable users at the current time due to sighting deficiency of the approach of a train which is only partly mitigated by whistle boards; I therefore accept that the Crossing presents a risk of danger to the public.

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

1. The IAR prepared by Network Rail considers the various options which could be implemented to mitigate the risk at the Crossing. Section 12 of the IAR provides an assessment of each option and considers whether these are feasible, reasonably practicable and effective in mitigating the risk, taking account of the possible gross disproportionality of the cost of each mitigation against the safety benefit which would be achieved.
2. The relative cost of each of these measures compared with the safety benefit which would flow from their implementation, is set out within the IAR. Network Rail estimates that a ramped footbridge would cost around £4 million to deliver with no provision having been made within the current funding period (Control Period 6 2019 – 2024) for such mitigation.
3. However, given the proximity of Thame Lane Bridge and the limited number of current users of the Crossing, the likely expenditure required to provide a safe means of crossing the railway via a new footbridge would be significantly more than the permanent closure of the Crossing, which would deliver the same safety benefits for a lower cost. The provision of a new footbridge at this location is not a reasonably practicable solution.
4. Other measures such as the permanent reduction in line speed would carry significant costs in terms of the impact on operational efficiency and compensation payments to train operating companies. Such costs would be disproportionate in relation to the safety benefit provided for the two people (on average) who use the crossing daily. To provide vulnerable users with sufficient visual warning of the approach of a train in all directions with optimal vegetation clearance, line speeds would need to be reduced to 65mph.
5. A permanent reduction in line speeds would be contrary to measures already in hand to deliver improvements to the frequency and number of trains running between Didcot and Oxford and would have adverse impacts upon connecting services to the midlands and the south coast which also use this section of the network. Reducing line speeds would not be compatible with Network Rail’s operating licence and would not sit with the levels of service sought by Government.
6. The installation of Miniature Stop Light (MSLs) systems has also been examined. MSLs provide an audio-visual indication to the Crossing user of the approach of a train; if a red light is displayed and an alarm sounds, a train is approaching, and it is not safe to cross. Three types of system have been considered at the Crossing. The ‘overlay’ system is independent of the signalling system and triggers a warning at the crossing when a train crosses the ‘strike-in’ point and would cost around £200,000 to install. This system assumes the train will run at full line speed, so that warnings triggered by trains calling at Culham or slower freight trains will lead to extended warning times.
7. Flex-Speed Measuring makes provision for variable train speeds on the approach to stations but would be ineffective at the Crossing as the strike in point would be north of the station. This MSL system would be of no practical benefit. A MSL system fully integrated with the signalling system has an estimated cost of £980,000 but would result in extended warning times at the Crossing due to the existing signal circuit on the down line extending to the south of Culham station.
8. Of the three systems, an overlay MSL would be the most cost effective, but would not mitigate fully the sighting deficiency at the crossing as variable train speeds would give rise to variable advance warning times. Any uncertainty about the warning time may lead to distrust in the system and lead to users crossing the railway regardless of the warning on display.
9. Whilst the IAR demonstrates that the installation of an overlay MSL system would return a high safety benefit, it would be more expensive to implement (and maintain) than closure of the crossing, and any safety gain would be negated by the projected rise in the number and frequency of trains between 2023 and 2033 and the predicted rise in the number of users arising from planned developments in the immediate area.
10. A supplementary audible warning device (SAWD) replicates the sound of a train horn via a loudspeaker at the Crossing is employed at some locations where there is a known issue with train horn audibility. Despite there being occasions where the horn of an approaching train may be masked by the noise from a train already at the crossing, there does not appear to be a general problem with the audibility of train horns at this location. Installation of a SAWD is estimated to cost around £25,000 with the mitigation of the risk being little better than that already provided by the existing whistle boards.
11. It is acknowledged that other mitigations (such as the installation of handrails on the steps into the cutting, or the provision of improved signage at the decision points) could be introduced at small cost but would only provide limited safety gains as they would not mitigate the sighting deficiency present at the Crossing.
12. Network Rail submit that the Crossing is inspected on a four-monthly basis to allow for better monitoring of vegetation growth. There are limited staff resources available to be on hand to undertake vegetation clearance on a more regular basis. As noted above, even with the optimal management of lineside vegetation, visual warning of the approach of a train is insufficient for vulnerable users in all but one aspect.
13. The Crossing currently benefits from a level uniform surface which enables users to cross in the shortest possible time. The indication of the danger area by means of a coloured walking surface, the installation of stud lights along the Crossing edges and revised or improved signage at the decision points would provide users with visual assistance at the Crossing but would not address the sighting deficiency identified.
14. There are clearly a range of measures that could be taken to reduce risk at the Crossing were it to remain open. An overlay MSL system or a SAWD would provide additional visual and audible warning of the approach of trains on the line but would not by themselves (or in combination with each other or other low-cost measures) address the problem faced by vulnerable users of the Crossing. In addition, any marginal safety gains made by the installation of such systems are likely to be negated by the projected increase in the number of trains passing over the Crossing and the likely increase in the number of users of the Crossing as nearby planned developments proceed.
15. The provision of a ramped bridge at this location is not considered to be reasonably practicable nor is a permanent reduction in line speed, although these measures would address the issue of deficient sighting.
16. The analysis undertaken by Network Rail of the possible mitigations (whether stand alone or in combination with others) set out in part 12 of the IAR indicates that the proposed extinguishment provides the greatest risk reduction for the lowest cost.
17. Overall, I conclude that measures which could be undertaken to mitigate the risk at the Crossing and make it safe could not be said to be reasonably practicable.

***The safety, convenience, and enjoyment of the alternative route in comparison to the existing route***

1. It is acknowledged that no alternative route will be created by the Order. The Council and Network Rail contend that those users wishing to travel to RB4 on the eastern side of the railway from FP1 on its western side would not be inconvenienced by proceeding south along Footpath 5 (‘FP5’) and then along RB4 via Thame Lane Bridge.
2. The objectors disputed the convenience of the alternative route as it appeared counter-intuitive for those wishing to travel east to RB4 to have to travel south then east then north (or vice versa) to reach the same point; the suggested alternative would involve an additional distance of around 400m with a proportionate increase in journey times.
3. The principal use of FP1, FP5 and RB4 appears to be recreational as opposed to utilitarian. Although near to the site of CSC, the rights of way network in the vicinity of the railway is in a predominantly rural area, although this is likely to change over the coming decades. Nonetheless, those who currently use FP1 and RB4 who seek to cross the railway are likely to have undertaken a journey of some distance before they arrive at the Crossing.
4. For example, those users following the Oxford Greenbelt Way from Abingdon will have walked approximately 3.88km before arriving at the Crossing. Those wishing to continue east to Clifton Hampden will then be contemplating a walk of an additional 3.45km to reach their destination. Being required to undertake an additional 400m on a journey of over 7km is unlikely to represent an inconvenience to such users.
5. FP5 follows an unfenced agricultural track which is free draining and firm underfoot. RB4 follows Thame Lane and was similarly firm underfoot at the time of my visit. The alternative route is also step and stile free and is suitable for use by a wide range of people. The alternative route also provides users with a view of the Grade II listed flying segmented arch bridge at Thame Lane designed by I.K. Brunel as part of the Birmingham branch of the Great Western Railway. The bridge is only partially visible from the Crossing, and for some users a close view of the bridge is likely to add to the enjoyment of a walk in the area.
6. Furthermore, walkers can cross the railway via Thame Lane bridge without coming into contact with the operational railway, and as a restricted byway, users of the alternative route will not be exposed to risk from the public in vehicles. The camera survey undertaken by Network Rail demonstrates that the proposed alternative route is used by more people than FP 1 as a means of crossing the railway.
7. I am satisfied that the alternative means of crossing the railway will be safe, convenient, and enjoyable for those who currently use the Crossing.

***The alternative route proposed by the objectors***

1. The objectors contend that an alternative route running north to the Thames along the eastern boundary of the railway and then west under the railway at the Thames viaduct would provide a convenient and suitable alternative means of crossing the railway. This was considered to be a more appropriate and intuitive alternative for those wishing to travel east-west (or vice versa).
2. The objectors submitted that to not consider such an alternative, whether by means of a s119A diversion order, a s26 creation order, under a developer contribution under s106 of the Town and Country Planning Act 1990 (‘TCPA90’) or compulsory purchase powers under the Transport and Works Act 1992 (‘TWA92’), was contrary to the Council’s duties to assert and protect the rights of the public under s130 of the 1980 Act.
3. It is noted above that in 2014 enquiries were made of adjacent landowners as to their views on the diversion of FP1 along the eastern boundary of the railway in the manner contended for by the objectors. Neither of the relevant landowners were agreeable to that suggestion at the time, and the evidence before me is that the views of the landowners on this point has not subsequently changed.
4. In the absence of any willingness on the part of the landowners to acquiesce to the diversion of the footpath over their land, a s26 order could only be pursued by the Council if it were satisfied that there was a need for such a footpath to be created. Whether there is a need for a footpath along the objectors’ preferred alignment and whether the other tests found in s26 could be satisfied is a different matter to the objectors’ desire, wish or preference to see such a path come into being.
5. I am unaware of any evidence having been put forward to the Council which demonstrates that there is a need for a footpath to be created under s26 along the eastern boundary of the railway, or that the relevant tests found within s26 would be met by such a proposal; consequently, I attach little weight to the objectors’ submissions on this point.
6. Although there would be powers available to Network Rail for the compulsory acquisition of land under TWA92, action under that Act would only be possible if all other available measures under the 1980 Act had already been pursued. Consequently, the compulsory acquisition of land on the eastern boundary of the railway under TWA92 would not be possible unless this s118A Order was not confirmed or other action under s119A proved to be unsuccessful.
7. I accept that it would have been possible for the Council to have sought a diversion of FP1 under s119A against the wishes of the landowners with s28 compensation being payable. However, in the light of the landowners’ responses to informal consultation and given the alternative means of crossing the railway via FP5 and RB4, it is understandable why the Council considered action under s118A to be more appropriate. The alternative route suggested by the Order is already well-used by recreational walkers as was demonstrated by the camera survey.
8. Whether funding for the preferred alternative route or the provision of some other means of crossing the railway could be secured through a s106 TCPA90 developer contribution would be a matter for the relevant planning authority and an (as yet unidentified) developer to consider. Whether the provision of an alternative means of traversing the railway would be a priority for the signatories to any prospective s106 agreement is unknown.
9. The possibility that mitigation of risk at the Crossing could arise through a s106 agreement is little more than speculation and I attach little weight to this as a suggested means by which the objectors’ preferred route could be secured. Furthermore, the prospective development of the Culham No. 2 site is unlikely to come forward before 2027, whereas the risk posed to users of the crossing is current and is likely to increase with the projected increase in train services before that date. Even if mitigation of the risk at the crossing could be secured by way of some future s106 agreement, it is highly likely that the formal process under s118A or s119A would be required to secure the closure of the Crossing.
10. I consider that the objectors’ submissions with regard to the Council being in breach of its s130 duties to be misplaced. To read s130 in the manner for which the objectors contend would mean that it would not be possible for the Council to exercise its powers under s118. Section 130 (3) (a) provides that the Council should prevent the stopping up of highways ‘as far as possible’ where the Council considers the stopping up would be prejudicial to the interests of the area. The Council submits that as the Crossing presents a clear and present danger to those members of the public using it, the closure of the Crossing would not be prejudicial to the area. The Council’s view is that the closure of the crossing with the public using a risk-free alternative would be of benefit to the area.
11. Section 118A of the 1980 Act provides for the extinguishment of a pedestrian level crossing where the Council is satisfied that it is in the interests of the safety of the public to do so. Given the evidence advanced by the Council and Network Rail in this case, I do not consider the Council to be in breach of its duties under s130 in promoting the extinguishment of FP1 under s118A of the 1980 Act.
12. The objectors suggest that the current process should be abandoned with the Crossing being temporarily closed on safety grounds via a temporary traffic regulation order (‘TTRO’) whilst negotiations take place to secure a new public right of way along the eastern boundary of the railway. However, this suggestion appears to misunderstand the purpose of the legislation which is to protect the public from danger and to allow for remedial works to address that danger are undertaken. I consider that it would be unlikely that a TTRO could properly be made to provide an unspecified and unknowable period of time for the negotiation of the objectors’ preferred alternative.
13. To conclude on this matter, whilst an alternative route along the eastern side of the railway may be preferable or desirable from the point of view of one party, it would not provide grounds for the non-confirmation of the Order if the tests for confirmation are met having regard to all the circumstances.

***Whether, if the Order is confirmed, adequate arrangements have been made to secure the redundant crossing***

1. As set out in the Order, the Council requires Network Rail to defray any expenses associated with the coming into operation of the Order. For its part, Network Rail has confirmed that upon confirmation of the Order, it will expeditiously install permanent fencing to secure the entrances to the Crossing at the boundaries of the railway and remove the stiles, steps, and other crossing infrastructure.

***Public Sector Equality Duty (PSED)***

1. As noted above, the suggested alternative means of crossing the railway will be step and stile free and on firm, free draining ground. In comparison to the crossing, there would be no restrictive infrastructure which path users would be required to negotiate. I conclude that there should be no disproportionality introduced (over and above that likely to be experienced by the rest of the population) by the proposed extinguishment of part of FP1.

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

1. I have concluded that the crossing poses a risk to the safety of the public and the evidence submitted by Network Rail demonstrates that there are no reasonably practicable steps which can be taken to fully mitigate that risk and make the Crossing safe for use. Although no alternative route is being provided by the Order, current users of the Crossing will be able to cross the railway by means of FP5 and RB4 as it passes over Thame Lane bridge. This alternative route will add approximately 400m to an east-west journey which is unlikely to inconvenience recreational users of the Crossing, and the proposed alternative will be suitable for all types of users.
2. It follows that I consider that it is expedient to confirm the Order.

**Conclusion**

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 confirmed.

**Formal Decision**

1. I confirm the Order.

Alan Beckett

Inspector

APPEARANCES

**For Oxfordshire County Council:**

Mr Andrew Sylvester Public Rights of Way Officer

**For Network Rail Infrastructure Limited:**

Mr Juan Lopez Counsel for Network Rail

Who called:

Mrs Lisa Bullock Town Planner

Mr Richard Pedley Route Level Crossing Manager, Western Region

Mr Jerry Greenwood Head of Liability Negotiation

Mr James Audley Liability Negotiations Adviser, Wales, and Western Region

**Objectors:**

Mr David Godfrey Footpath Secretary, Ramblers Oxfordshire Area; Secretary, Oxford Fieldpaths Society

Mr Nick Moon CPRE Oxfordshire

Inquiry documents:

**Oxfordshire County Council:**

OCC1 Plan of a route claimed under Schedule 14 of the Wildlife and Countryside Act 1981

OCC2 Inquiry bundle of all submitted documents (Files 1 – 7)

OCC3 Closing submissions on behalf of Oxfordshire County Council

**Network Rail Infrastructure Limited:**

NR1 Copy of judgment in R v Director of Telecommunications [1999] E. C. C. 314

NR2 Plan of diversion proposals 2014 and 2022

NR3 Copy of Order decision ROW/3285310 regarding diversion of Great Missenden Footpath No. 70.

NR4 Closing submissions on behalf of Network Rail Infrastructure Limited

**CPRE Oxfordshire:**

NJM1 Addendum to Mr Moon’s proof of evidence.

NJM2 Closing submissions on behalf of CPRE Oxfordshire

