

|  |  |
| --- | --- |
| **Order Decision** | |
| Site visit made on Tuesday 12 August 2025 | |
| **by Mrs A Behn Dip MS MIPROW** | |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** | |
| **Decision date: 11 September 2025** | |
|  | | |
| **Order Ref: ROW/3342447** |  | |
| * This Order is made under Section 118A of the Highways Act 1980 and is known as the Essex County Council Rail Crossing Extinguishment Order 2023, Footpath 25 Great Clacton, in the district of Tendring. | | |
| * The Order is dated 8 November 2023 and proposes to extinguish the public right of way as shown on the Order plan and described in the Order Schedule. | | |
| * There was one objection outstanding when Essex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | | |
| **Summary of Decision: The Order is confirmed.** | | |
|  | | |

**Background**

1. The footpath that is the subject of this Order is located in the Parish of Tendring in Essex. The footpath commences on an Industrial Estate before heading east until it reaches the railway line, where it then runs in an approximate northerly direction, parallel to the railway, before crossing the line and heading north east to Sladbury’s Lane. There is also a private vehicular right of way across the level crossing for the accommodation of landowners. This would remain unaffected by the proposed footpath extinguishment.
2. Network Rail (NR) wish to close public rights over the level crossing to remove the safety risk that they consider it poses to pedestrians. Essex County Council (the Council) feel that Footpath 25 (FP25) is isolated from the rest of the public rights of way network and that the proposed closure of the level crossing would leave two dead ends, which could encourage users to trespass onto the railway. They therefore consider it expedient to extinguish the full length of FP25.

**Preliminary Matters**

1. I made an unaccompanied site visit of the Order route on 12 August 2025 when I was able to walk that part of FP25 from Sladbury’s Lane to, and across the railway line. The remainder of the path was very overgrown, at points, above head height. Adjacent industrial businesses kindly allowed me to view the overgrown section of FP25 from various points on their land. In writing this decision I have found it convenient to refer to points marked on the Order Map and I therefore attach a copy of this map.
2. Mr Loach (the objector) was concerned that he may not have received a document referred to in the Council’s statement of reasons, however the Council and NR clarified that the document referred to was the same document that was sent to the objector in December 2023. I note that the objector included this document as an appendix to his statement of case and I am therefore satisfied that the document was received.

**The Main Issues**

1. Under Section 118A of the Highways Act 1980, if I am to confirm the Extinguishment Order, I need to be satisfied that it is expedient to do so, having regard to all the circumstances, and in particular to:

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

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

1. I must have regard to ‘all the circumstances’ and these could include the use currently made of the existing path, the risk to the public of the continuing of such use, the effect the loss of the path would have on users of the public right of way network as a whole, the options for alternative measures and the relative cost of such measures.

**Reasoning**

*Whether the current crossing is safe*

1. The crossing in question is located on the Colchester to Clacton-on-Sea railway line, on a shallow curve. The crossing spans two tracks that carry circa 47 trains over a 20 hour time period. In addition to this there are unscheduled ad-hoc movements of empty stock trains, Rail Head Treatment trains and engineering trains. Speeds of the trains vary between 35mph to 50mph, with most trains being in the latter category.
2. The pedestrian crossing point over the railway is ‘passive’ which relies on those using it to ‘stop, look, and listen.’ The crossing is not controlled however there are audible warning systems to advise of oncoming trains.
3. Use of the crossing has been measured as consistently very low, with a 2017 census recording a single user in 25 days, a 2021 census showing an average of 2 users per day, and a 2022 census which took place over a 41 day time period, showing an average of 1 user. A census was then undertaken in 2023 and recorded only 6 users in 11 days, equating to less than one user per day.
4. The objector noted that the 2022 census was carried out in September and October when the schools were in session and as such felt that the footpath was likely to be used more in the summer. Whilst I accept this reasoning, my site visit was undertaken on a warm and sunny day during school holidays and I observed no use of FP25. I acknowledge that my visit was a snapshot in time, however at the time of my visit the footpath was very overgrown, especially at point A, where the vegetation was head height in places and looked like it had not been used for some time.
5. Staff at the adjoining industrial units who facilitated access so that I could better view those areas of the path that were impassable, or that could not be reached due to the impassable sections, made comment that it was extremely rare to see anyone using the footpath. This supports the findings of the NR census and the comment by the Council that they had no evidence of wider use of this footpath or of the onward road walking route that the objector outlined in his evidence.
6. NR use the census data to feed into an application called All-Level Crossing Risk Model (ALCRM) to provide a consistent method of assessing safety risk at level crossings. It incorporates a quantitative and qualitative approach to achieve a rounded and balanced analysis of risk. It has been developed through extensive research and a collaborative partnership between NR and the Rail Safety Standards Board.
7. The most recent risk assessment for the crossing, determined an ALCRM Risk Rating of C9. The letter represents the risk to an individual per traverse. A represents the highest risk and M the lowest. The number represents the collective risk based on total harm or safety loss with 1 representing the highest risk and 13 representing no risk. While the risk per traverse is high, the collective risk is much lower, which NR explained was from the extremely low use recorded by the census information. As this risk rating was assessed on use by one individual as per the census, just a minimal increase of use would increase the risk factor exponentially.
8. Although the crossing might appear to have reasonable sight lines, it is located on a sweeping curve, giving the user minimal sighting of approaching trains. To traverse this 9.1 metre level crossing, a fit and healthy person needs 7.65 seconds to cross the rails and requires a sighting distance of an oncoming train of 172 metres. Whilst this was achieved for three of the aspects, NR identified that the sighting on the up side (western side) was inadequate at 126 metres and could only be made compliant by reducing train speeds to 35mph.
9. Vulnerable users such as those with mobility issues and dog walkers require a crossing time of 11.48 seconds. The required sighting for vulnerable users would be 258 metres, meaning that for such users, three out of 4 aspects are not currently compliant and could not be made so without reducing train speeds to 20mph. Such a speed would be considered unacceptable under the Network Licence.
10. Whilst the audible devices could be moved further up the crossing to partially mitigate this, their effectiveness is limited by other factors such as ambient noise, breakdown, and physical features. NR advised that audible protection devices are now recognised as being inherently flawed and are seeking to phase them out.
11. NR stated that the sight lines at this level crossing could be further reduced by factors outside of their control, including rain, fog, sun glare and vegetation outside of NR land. It was also felt that the variations in the speed of the trains could make it more difficult for path users to judge the speed. Slower trains might also encourage impatience and the risk of users crossing the rails having misjudged the speed at which a train is travelling. Hidden trains could also present a risk to public safety and I noted on my site visit a warning sign to that effect.
12. When combining the sighting issues, the ALCRM risk rating and the inevitability of it rising sharply should just a few more users cross the track, alongside the variation of train speeds and the risk of hidden trains, I consider the level crossing presents a recognisable safety risk to the public.

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

1. NR have considered various mitigations to reduce risk at the crossing, so far as is reasonably practicable. Critically, mitigations undergo a Cost Benefit Analysis to determine a benefit-cost ratio, and a Gross Disproportionality test to determine whether the cost of implementing a mitigation is grossly disproportionate to the reduction in risk achieved.
2. The option of requiring footpath users to telephone the signaller for permission to cross the line was a low level mitigation considered. Whilst instances of non-compliance with this requirement on private level crossings can be policed, this is not the case on level crossings used by the general public. Here, NR feel that there is a real risk of footpath users not heeding the instruction to seek permission to cross the line, and non-compliance would be difficult to police.
3. Installation of Miniature Stop Lights (MSL’s) were considered as a mitigation at the crossing to give an audible and visual warning where the sighting is deficient. The minimum cost of this would be £250,000 and the cost-benefit analysis determined this would be grossly disproportionate to the benefits it would give for such a lightly used crossing.
4. The option of a bridge or subway being installed at the crossing were also appraised. However the costs of a stepped footbridge at £2 million, a ramped footbridge at £4 million or a subway at £8 million are again very heavily disproportionate and a substantial cost to the public purse. To allow for safety margins should a train derail, the footprint of the bridge would have to extend outside of NR’s land ownership, necessitating purchase of third party land and adding further costs. When weighed against the extremely low user base of the footpath, I consider that such costs are not justifiable.
5. Taking into account all of the mitigations examined above, I consider it is not reasonably practicable to make the crossing safe for use by the public.

*Other Considerations*

*Diversion of the path as an alternative measure*

1. The objector was not opposed to the closure of the level crossing, but felt that the footpath could have easily been diverted, rather than being extinguished in its entirety. He referenced the nearby Bluehouse Crossing Closure where NR had provided a 280 metre diversion for the Frinton and Walton footpath as part of the closure of the route across the railway line.
2. NR explained that this closure and accompanying diversion were undertaken using the Transport and Works Act, and as there were no private rights across the Bluehouse crossing, the powers enabled outright closure and removal of that level crossing. Level crossings that held both public and private rights, such as the one crossed by FP25 were not included in the scope of that particular project unless both sets of rights could be extinguished or a low cost diversion could be achieved.
3. The objector, while acknowledging that he was not aware of what costs were involved in diverting a footpath, thought that not providing a diversion *‘put little value on public safety.’* As such he considered that the proposed extinguishment was not in the interests of the public and so use of S118A was not appropriate for this application. Whilst I follow the objectors reasoning, the application before me has been made under S118A to remove the risk to public safety by extinguishing public rights across the crossing. There is undoubtedly public risk in crossing the railway line and it therefore follows that the application is duly made.
4. In their statement of case, NR sought to address the objector’s suggestion of a diversion by considering the diversionary route he had proposed, which would run east of the railway heading south towards the automated level crossing at Burrs Road. NR advised that such a diversion would have to pass over land not belonging to them and they had contacted both landowners whose land would be affected by the proposal. The landowners in response, made it clear that they were not prepared to consent to such a footpath creation, with one landowner advising that they would actively object to any such diversion proposal as it would negatively affect their farming operations.
5. Whilst NR acknowledged that there were legislative provisions that could impose the creation of such a diversion without landowner consent, they stated that such a process was both costly and difficult. They calculated that the total costs of bringing an approximate 900 metre diversion into being, would likely be in excess of £110,000.
6. As pointed out by the objector, NR acknowledged that such a diversion would protect onward connectivity, however it was their view that the value of preserving this connectivity was severely curtailed by the very low use of the path and what they perceived as the unsuitability of the onward highway routes.
7. The objector did not agree, saying that such a diversion would allow the closure of the level crossing and that it would not make the onward road travel from FP25 *‘any worse’*. He further felt that the cost of the diversion was far less than the cost of a footbridge or subway and when compared to the cost of increasing rail capacity or savings saved from not having to pay compensation payments for cancelled or delayed trains, the diversion should be seen as a reasonable investment in improving their network.
8. While I accept the objectors viewpoint that a diversion on the grounds of safety would be preferable, the costs of such a diversion must be considered against the backdrop of use. Both the evidence before me and my observations on site, appear to indicate extremely low use of this path. The fact that the Council have received no complaints about the regular overgrown vegetation and no other objections were received following consultation about the Extinguishment Order, appear to support the apparent lack of use of FP25.
9. I consider that the estimated costs of over £100,000 to divert the path, are disproportionate to the benefit that would be gained from such a little used path. Moreover both NR and the Council *‘felt the cost of providing a bespoke solution of a diversion for potentially only one user… which would not remove the need for onward road walking, makes no sense in terms of cost or either organisation’s responsibilities to the tax payer.’* Whilst the objector points out that future development in the area may mean more use of the path by others, it is not appropriate to determine the matter based on speculation of what may or may not happen in the future.

*The effect the loss of the path would have on use of the PROW network as a whole*

1. There was much discussion in the evidence of the onward routes from FP25 requiring use of the roads and lanes, as well as use of Footpath 28 (FP28), to reach such destinations as the nature reserve approximately 2km distant and other settlements further afield.
2. Whilst it was the view of the Council and NR that FP25 was isolated from the rest of the Public Right of Way (PROW) network and that the low number of users of FP25 supported their opinion that there were few safe onward connections for walkers, the objector did not agree. He pointed out that FP25 connected with the highway Sladbury’s Lane, and that by travelling along Sladbury’s Lane for less than 200 metres, a user would meet up with FP28, a cross field path. At the end of FP28, there was a less than 250 metre walk along another highway bearing a national speed limit, before the speed limit reduced to 30mph making *‘walking along that lane much safer’*.
3. On my site visit I travelled the local lanes and observed the passing traffic and any pedestrian footfall. The lanes were not overtly busy being late morning, but the traffic travelling along Sladbury’s Lane between the end of FP25 and the commencement of FP28 travelled at some speed. The lane has no footway, is hedged on one side, with a narrow grass verge on the other side, that opened onto farmland. While I appreciate that some pedestrians may be happy to walk along these lanes, others might feel unsafe walking in an environment where there are very limited footways. I did not observe any pedestrians using the surrounding lanes or FP28, which was cleared of crops on the line of the path, on my site visit.
4. I note the objectors point that there could be opportunities to make these lanes safer for pedestrians, however it is outside of the remit of my determining of this Order, to consider potential highway improvements that could make walking along these lanes less of a risk.
5. I appreciate the closure of FP25 would affect the objector, when wanting to walk in the direction of the nature reserve and the much further distant settlements of Kirby Cross and Kirby le Soken. However when considering the PROW network as a whole, while FP25 links to a local rural lane, it does not lead to a point of interest, or immediately to another footpath. It opens out onto country lanes with few verges, and although FP28 is nearby, this itself is a short cross field path that terminates on another lane with few verges offering respite for those pedestrians that choose to share the lanes with vehicular traffic. The indications are that FP25 is rarely used and any users would undoubtedly then need to walk much further along these country lanes to an onward destination. As such I do not consider the loss of the path would be substantially detrimental to the PROW network as a whole.

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

1. In the event that the Extinguishment Order is confirmed, NR have undertaken to remove the stiles and fingerposts and erect and maintain all appropriate fencing and signage to secure the railway. The landowners to the west of the railway have undertaken to fence both ends of the footpath to the west of the railway. I am therefore satisfied in this respect.

**Conclusions**

1. From the evidence submitted it is clear that the level crossing provides a safety risk to the public. The costs of providing mitigation measures or a diversion are grossly disproportionate to the net benefit achieved, when weighed against the extremely low use of the footpath.
2. Looking at FP25 in the context of the local PROW network, there is little provision for safe onward travel from FP25, along the winding lanes which in the main, hold national speed limit status and little in the way of verges of footways. When combining this with such scarcity of use of the footpath by the public, I do not consider that the extinguishment of FP25 would have an undue effect on the PROW network as a whole.
3. Having regard to all matters raised in the written representations, I conclude that it is expedient in all circumstances that the Extinguishment Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

Mrs A Behn

**Inspector**

