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Infrastructure Liability Manager -
Network Rail
Floor 14, Southern House
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Your Ref:

Our Ref: FPS/E0535/3/3

Date: 08 DEC 2004

Dear Sir

HIGHWAYS ACT 1980 SECTION 118
Cambridgeshire County Council
(Public Footpath No.11 (part) Littleport)
Public Path Extinguishment Order 2003

RAIL CROSSING ORDER

I enclose for your information a copy of the Inspector's decision on this Order following the Inquiry on Tuesday 2 November 2004.

Also enclosed are two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

Yours faithfully

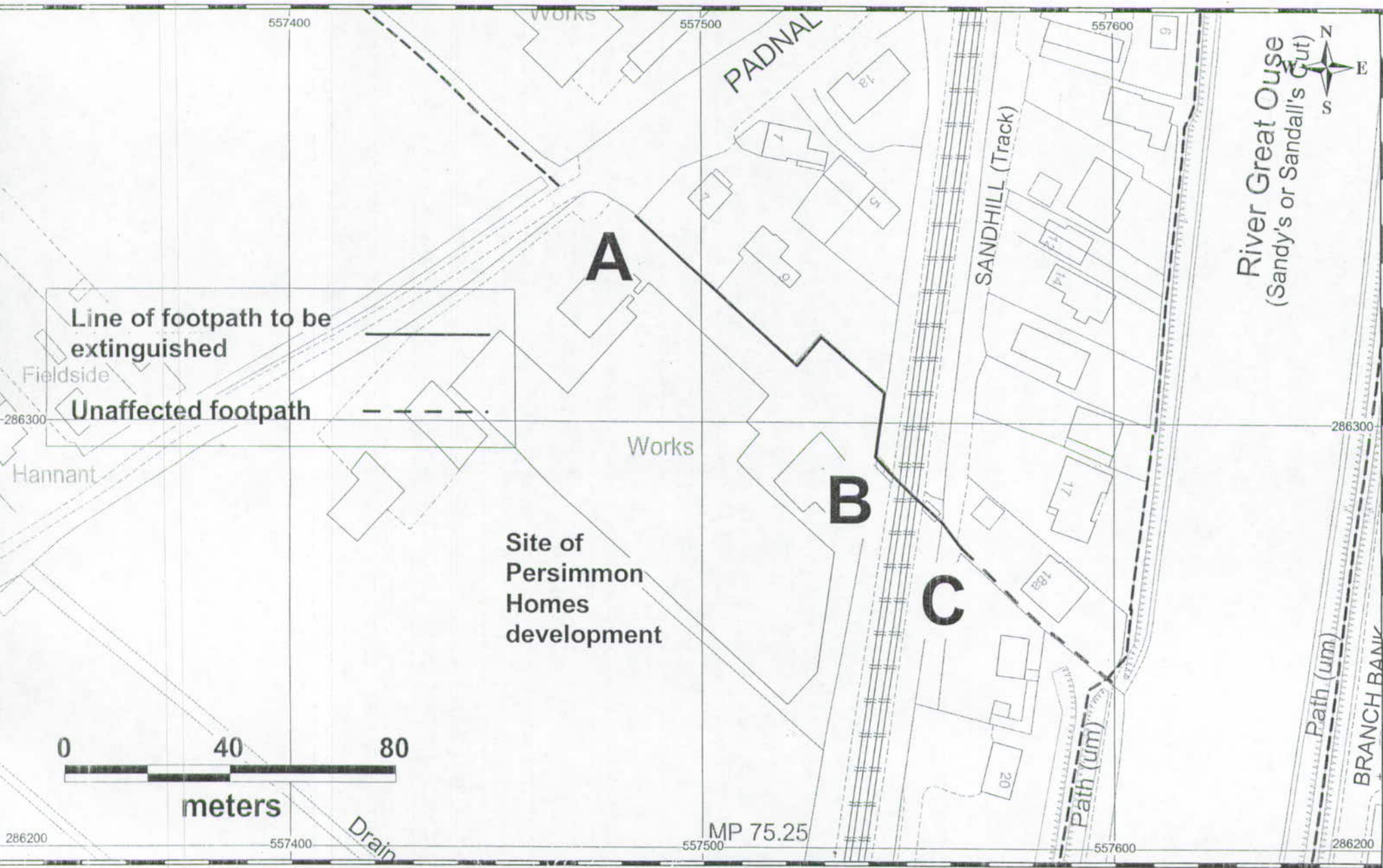
CLIVE RICHARDS
(Rights of Way Section)

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BHC 13/12
MN



Littleport Public Footpath No. 11 (part) Extinguishment Order plan



Scale: 1:1250
Date: 04/03/03
By: PM

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Order Decision

Inquiry opened on 2 November 2004

By **Helen Slade MA FIPROW**

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

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Date:

06 DEC 2004

Order Ref: FPS/E0535/3/3

- This Order is made under Section 118A of the Highways Act 1980 and is known as The Cambridgeshire County Council (Public Footpath No. 11 (part) Littleport) Public Path Extinguishment Order 2003.
- Cambridgeshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
- The Order is dated 5 March 2003 and there were a total of 49 objections (including one petition with 44 signatories), and one representation in support at the commencement of the local inquiry.
- The Order proposes to extinguish part of Footpath 11 in Littleport, in particular that part which runs from Padnal and crosses the railway line at the Claway level crossing, as shown on the plan attached to the Order, and described in the Order Schedule.

Summary of Decision: I have not confirmed the Order.

Preliminary Matters

1. This Order was originally advertised on 12 March 2003 and received one objection. Following submission of the case to the Secretary of State, it was noted that the title of the Order was incorrect. It describes the Order as a Public Path Extinguishment Order, whereas the Order is actually made under the provisions in the Highways Act 1980 ('the 1980 Act') for Rail Crossing Extinguishment Orders. It was also noted that there was no provision in the Order regarding the cost of works necessary to secure the rail crossing, should the Order be confirmed. The Order was therefore rejected as invalid. However, after further consideration it was acknowledged by the Planning Inspectorate, on behalf of the Secretary of State, that there was no requirement to include a paragraph relating to the costs of implementation, where no works were considered likely. It was also agreed that the meaning of the Order was sufficiently clear, despite the error in the title, and that it was capable of confirmation with modification if necessary. A minor typographical error was also identified by Cambridgeshire County Council ('the Council'). The words 'District Council' are repeated in the fourth paragraph of the citation. The Council requested that if the Order was confirmed, modifications should be made to correct both errors.
 2. It was agreed by the parties concerned to adopt the written representation procedure for determining the Order. During the course of written exchanges, a third party became involved, and it became apparent that the Notice of the Order had been published in a newspaper which did not circulate in the area in which the Order route lies. The Council was therefore directed by the Planning Inspectorate to re-advertise the Order in a newspaper circulating in the correct area. The Notice appeared in the Ely Standard on 12 February 2004 and attracted a further 47 objections, a petition containing 44 signatures, and a
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representation in support. In re-advertising the Order, the title of the Order was altered to read 'Rail Crossing Extinguishment Order'. It was not re-advertised on site at that time.

3. The Council considered that only those objections on the grounds of safety were relevant, and that only five objectors fell into this category. The objectors at the inquiry were concerned that the failure to advertise on site, and the confusion over the title of the Order, may have resulted in fewer objections to the Order on the grounds of safety than might otherwise have been the case.
4. Further confusion was alleged over the name of the level crossing proposed to be closed. Several objectors stated that locally the crossing was referred to as 'Sandhills', that being the name of the adjoining track. Network Rail has the crossing listed as 'Claway' (or sometimes 'Clayway'). Some distance to the south of the crossing exists an ancient track called 'Clayway Drove' which also crosses the same railway line on the level.
5. I have considered all these aspects carefully. I agree with the objectors that there has been some opportunity for potential confusion, and this is regrettable. However, Section 118A(4) requires me to have regard to ALL the circumstances in coming to my decision, not just those on safety matters, as considered by the Council. It is possible that some of the objectors might have included comments on safety issues in addition to their comments on other issues, but I do not think it likely that any one has been deterred from objecting to the Order altogether. I consider all the objections to be relevant, whether on safety grounds or loss of amenity, and have had regard to all objections and representations in coming to my decision. This includes the comments made during the period when written representations were being exchanged. All the documentation covering that initial period is included in the Council's bundle of documents. Furthermore, the inquiry was well attended, and several objectors gave oral evidence. I am satisfied that the matter has received sufficient publicity, and has attracted sufficient attention, that no-one has been prejudiced by the short-comings of the Order or the procedures followed by the Council.
6. I explored the issue of the name of the crossing at the inquiry, but I am satisfied that all the evidence relates to the correct location, and that no-one has been misled or prejudiced by the name used by Network Rail, as recorded in the Order.
7. With reference to the requested modifications, in view of my decision, I have not needed to address these matters.
8. The inquiry ran into a second day. At the end of the first day, having heard closing submissions, an issue was raised which had not previously been mentioned but which I considered might have a significant bearing on the cases of all the parties concerned. I return to this issue in my Reasons at paragraph 25 below. To avoid any post-inquiry correspondence on the issue, I adjourned the inquiry to allow time for the necessary details to be provided the following day. I therefore carried out the accompanied site inspection at 10.00 on the morning of Wednesday 3 November 2004, and resumed the inquiry at 11.30 the same day. A further short adjournment was required to allow the Council's officer sufficient time to return to the inquiry venue. Having provided an opportunity to all the parties to comment on the issue which had been raised, I was satisfied that the situation had been sufficiently clarified, and that the matter was relevant. I have taken this information into account in coming to my decision.
9. The original supporter of the Order, Railtrack, has ceased to exist and its responsibilities in respect of this matter have been assumed by Network Rail. For simplicity, I refer

throughout this decision to Network Rail, even where action was previously taken by Railtrack.

10. Network Rail records some of its measurements in imperial units, not metric. Where it is necessary for me to make reference to these figures, I have used the imperial measurements first, but supplemented them with metric equivalents in brackets.

The Main Issues

11. If I am to confirm the 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.
12. In this case, I consider that the salient points relate to the following issues:
- a) the current safety of the pedestrian railway crossing for the public
 - b) the potential effects of the housing development on use of the crossing
 - c) the safety of the alternative route for pedestrians in comparison
 - d) the convenience of the alternative route for pedestrians in comparison
 - e) whether any improvements to the pedestrian crossing, so as to make it safe, are reasonably practicable
 - f) whether, if the Order is confirmed, adequate arrangements have been made to secure the redundant crossing.

Reasons

Background

13. In September 2001, Persimmon Homes received planning permission to develop land in Littleport immediately to the west of the railway line which runs between Kings Lynn and Ely. A number of planning obligations formed part of the permission, in the form of an extensive agreement under Section 106 of the Town and Country Planning Act 1990 ('the Section 106 agreement'). At the request of Network Rail, a clause had been included requiring the developer to apply for the re-routing of Footpath 11 and to secure its closure as quickly as possible. The Council was a signatory to the Section 106 agreement, together with the developer and the East Cambridgeshire District Council ('the District Council'), which is the planning authority.
14. An application was duly made by Persimmon Homes, but a Council Officer's report concluded that the criteria for extinguishment under Section 118 of the 1980 Act (under which the application had been made) were not met. Neither would it be appropriate to make an Order under Section 118A because at that time Network Rail considered that the crossing met the safety standards required by the Health and Safety Executive's HM Railway Inspectorate ('HMRI'). Further enquiries were subsequently made by the Council with Network Rail into the possibility of making an Order under Section 118A. Network Rail undertook a formal inspection and risk assessment of the crossing on 14 June 2002, and

submitted the results to the Council. The Council stated at the inquiry that an application was subsequently made by Network Rail to extinguish the crossing and as much of the path as was necessary to avoid a cul-de sac path being left. The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 set out the form of application to be used in these circumstances, but I was not given sight of an application in any form. However, Mr Nye, for Network Rail, was of the opinion that such an Order could be made at the instigation of the Council if necessary, and that it was not essential for a formal application to be made.

15. The Council's Assistant Director makes clear in his memorandum of 25 March 2002 that the County Council had already signalled a preference for extinguishing Footpath 11, by signing the Section 106 agreement. I do not think the relevant clause in the Section 106 agreement (Clause 3.6(c)) complies with the guidance on such matters, in that the ability to comply with it is not within the power of either the developer, or either of the relevant Councils. No application for a public path order is bound to succeed and neither the District Council (as Planning Authority) nor the County Council (as Highway Authority) could confidently assert that the crossing or the path would be closed. However, I do not consider that anything significant hinges on how the Order came about. The fact is that the Order was made and I must consider it against the relevant criteria; in particular, the issues which I have identified in paragraph 12 above.

Whether the current pedestrian railway crossing is safe

16. On 26 February 2002, Network Rail wrote to the Council in connection with the failure to make an extinguishment order for the path. The copy of the letter in the bundle is incomplete, but the second paragraph is significant. It reads as follows:

'Although the existing crossing does meet the required safety standards for the present situation, some further improvements will now have to be considered such as an additional requirement for trains to sound the horn.'

The letter goes on to indicate that HM Principal Inspector of Railways wished to close the crossing because the adjacent development could make the site more accessible and attractive to residents, particularly to children who might be drawn to congregate and play in the area.

17. The inspection report and risk assessment carried out on 14 June 2004 presented a rather different picture. The inspection, carried out by Mr Hill, reported that the fence lines were complete, but that the stiles were in poor condition; vegetation growth obscured visibility, and the crossing appeared not to be in use. Both the whistle boards (which were in fact already in place) needed to be re-set, but there were no other warning signs in place. The report identifies the locations known as the 'decision points' (being the points at which a pedestrian makes the decision whether or not to cross the lines) and calculates the crossing time between the two decision points, one on either side of the lines, 2 metres from the nearest running rail. As the crossing is skewed, the distance is greater than crossing at right angles, and the crossing time was calculated to be 11.2 seconds.
18. The critical figures in relation to the crossing time are the sighting distance and warning times. The warning time is calculated by reference to the shortest possible time for trains to travel the distance to the level crossing from the point at which they can first be seen by a pedestrian, standing at the relevant decision point. Mr Hill explained that these figures are based on the maximum permitted travelling speed on the line, which in this case is 80 mph. For this level crossing, Mr Hill calculated that the warning time for 'down' trains (ie trains

travelling north towards Kings Lynn) was 30 seconds regardless of the direction in which a pedestrian would be crossing the line. This is within safety tolerances. However for 'up' trains, the warning times were considerably less: 5.5 seconds for someone standing on the west side of the crossing (Padnal side), and 8 seconds for someone standing on the east side (Sandhill side).

19. The report clearly indicates that the pedestrian crossing time of 11.2 seconds is significantly longer than the warning time (8 seconds or 5.5 seconds, depending of the direction of crossing) in respect of trains coming from Kings Lynn and travelling south towards Ely. This does not comply with the safety requirements.
20. The objectors were critical of the assessment and disputed that trains ever travel along the route at 80 mph. Furthermore, Littleport Station is approximately 1km north of the crossing, resulting in the likelihood of lower speeds. Mr Hill stated that it was every driver's objective to reach the maximum permitted speed in order to ensure timeliness.
21. My observations of trains on the line during both the unaccompanied site visit and the formal site visit suggest that the general speed of trains is about 50mph. However, I accept that the risk assessment carried out by Network Rail must be carried out in accordance with the guidance of HMRI, and that the figures reflect that.
22. Nevertheless, the crossing is supplemented by whistle boards in both directions. Mr Hill stated that a whistle board is positioned 413 yards to the north of the crossing (approximately 378 metres). This means that drivers of up-trains have to sound their whistle on approach, giving a warning time of about 10.5 seconds at the maximum speed permissible (80mph). Whilst this figure improves the warning time, it still falls slightly short of the crossing time (11.2 seconds). Thus I accept that the inspection report shows there to be a marginal risk for pedestrians from trains travelling towards Ely. I also accept that Network Rail is of the view that the only safe crossing is one that is closed.
23. The timetable for the line and the inspection report both indicate that the frequency of trains on the line is more than one per hour but less than three. In addition to timetabled passenger trains, there is occasional un-timetabled goods traffic. For someone familiar with the area and the train times, the marginal risk in crossing would be reduced by their knowledge, but the unscheduled goods traffic would present a slightly increased risk. I therefore accept that this marginal risk is a factor which gives weight to the arguments in favour of confirming the Order.

The potential effects of the housing development on the use of the crossing

24. The Persimmon development comprises approximately 80 dwellings, some of which are low-cost accommodation managed by a Housing Association. As I have mentioned in paragraph 16 above, Network Rail was concerned about the increase in the number of people who would have reason to be in close proximity to the crossing, and in particular the number of children who might gather there.
25. This concern was exacerbated by the discovery of the plans for the provision of open space on the development. It was this issue which caused the adjournment to which I refer in paragraph 8 above. The information obtained by the Council from the District Council shows that the precise location of the open space provision has not yet been determined, and is subject to further consultation. Nevertheless, the intention of the developer seems clear; the large drainage ditch (which has been constructed so as to obstruct the line of Footpath

- 11) and the parcel of land surrounding that ditch (both north and south of the line of the footpath) are proposed to form areas of open space of some description within the development. Both this area of land and several other pieces of land within the development, also identified as proposed open space, lie adjacent to the railway. Furthermore, there is a planning obligation to provide play equipment for children on part of the open space, as yet unidentified.
26. This information concerned many of those present at the inquiry. It was of obvious concern to Mr Nye and Mr Hill, as in their view it simply served to increase the risk of children being in the vicinity of the railway line and the crossing itself. The likelihood of them wanting to access the line for the retrieval of footballs and the like seemed to them to be very high. This increased the need for the crossing to be closed.
27. The objectors, whilst being concerned that so much of the planned development seemed not to have been resolved at the appropriate point in the process, took the view that the information made it more necessary for the crossing to be kept open and made safe, because more people would be likely to want to use it. The route gives access to a riverside path to the east of the railway, which would be an attractive destination to residents.
28. I accept the validity of both points of view. Nevertheless the issue is not clear cut. If it were considered preferable in safety terms to close the crossing, it would in my view increase the risk of unauthorised trespass, unless considerable works were undertaken to secure the railway line from the adjacent land. I note that the current fencing consists of three or four strands of plain wire through which it is relatively easy to climb. No details of any re-fencing works were provided to me by Network Rail or the Council.
29. I consider that the existence of the development in general is likely to increase the potential number of people in the vicinity of the current crossing location, and thus the opportunity for an accident to occur would be statistically higher, whether that access were legitimate or not. However, if the crossing were to be closed, the current need for the provision of whistle boards and other safety features would no longer apply. Thus in the absence of details of security fencing and other barriers, it could be argued that the risk to a member of the public of an accident might be higher, because any access by the public would be unlawful and would not benefit from any safety measures. The retention of the crossing would ensure that the required safety measures were in place, making lawful access safer. Unlawful access should not be used as a factor in determining the risk to lawful users of the crossing. The risk to lawful users would be marginally increased due to a higher number of potential users. Therefore I consider that, based on the information provided to me, the effect of the development is to marginally increase the frequency of the risk to lawful users in statistical terms, but not the level of risk to individual users.

The safety of the alternative route in comparison

30. The alternative route which would need to be used if the crossing were to be closed involves walking approximately 200 metres in a north easterly direction along a new footway provided by the developers along Padnal. It is then necessary to cross Victoria Street to regain a footway on the north side; cross the automated half barrier ('AHB') crossing on the north side using a pathway delineated by a white line; regain a footway that is itself crossed by the vehicular access to a public house car park; and then re-cross Victoria Street to access the track known as Sandhill. Sandhill serves a number of properties and a holiday caravan park, and is adopted highway to a point just beyond its junction with Footpath 11. There is no footway along the 200 metre length involved, which runs in a southerly direction

immediately adjacent to the railway fencing. Although there is partial provision of a delineated footway across the AHB crossing on the south side, there is no adopted footway adjacent to Victoria Street on that side.

31. The majority of the objectors who commented on safety issues, and those who gave evidence to the inquiry, were of the opinion that the alternative route being suggested was less safe than the order route if the current footpath crossing were to be maintained in the correct manner. At present, the footpath crossing was difficult to use due to the lack of good stiles, and the encroachment of vegetation. It was not boarded out and the ballast was uneven. Further more, the access to the crossing was now virtually impossible on the definitive line because of the large drainage ditch constructed by Persimmon Homes. Many people were more concerned with the dangers posed by the ditch, which is steep sided and contains water, than the dangers of using the pedestrian railway crossing. There was considerable concern regarding the poor visibility of approaching road traffic available to pedestrians when crossing Victoria Street, and to the danger of crossing the AHB crossing in immediate proximity to vehicles. The crossing is used by lorries and buses in addition to car traffic, and there is no physical separation of pedestrians from vehicles.
32. Network Rail was of the opinion that the presence of barriers on the vehicle crossing made it safer for the public to use, and provided comparative figures of accidents and fatalities on both AHB crossings and pedestrian crossings. These indicated that there had been 11 fatalities on footpath level crossings throughout the country between 1999 and October 2003, and only 3 pedestrian fatalities on AHB crossings during a similar period. (Reference was specifically made to an accident which took place a number of years ago at Doncaster, where a mother and some children with bicycles were killed while crossing the railway line on a bridleway crossing). However, both the Council and Network Rail acknowledged that no road safety advice had been obtained in respect of pedestrian use of either the alternative route as a whole, or of the AHB crossing on Victoria Street in particular.
33. In my view, the accident statistics are inconclusive. Firstly, they do not relate to the specific conditions which exist in the case I am considering. Secondly, a substantial majority of the reported pedestrian accidents at footpath level crossings seem to suggest the possibility of a deliberate act with the intent of self-harm. The evidence of accidents involving legitimate users is ambiguous. In relation to this specific case, Mr Hill acknowledged that there is no history of crossing abuse on the Order route, nor on any crossings in the vicinity.
34. The accident figures for AHB crossings in general indicate that pedestrians are at risk when crossing them either because they may be slow in getting across (ie elderly or disabled) or because they may have deliberately 'weaved' around the barriers. Thus it seems to me that there is no particular advantage in terms of public safety for legitimate pedestrian usage of AHB crossings over the pedestrian crossings.
35. Accidents involving members of the public intent on self-harm are of little relevance to my considerations. Such incidents may occur whether crossings exist or not, and access to vehicular crossings for this purpose is often easier than access to pedestrian crossings in any case.
36. The accident at Doncaster involved a crossing which was a bridleway, which could be used by bicycles. The circumstances in Littleport are different. I do not consider the risks in Littleport to be of the same magnitude to those in Doncaster.

37. During my site inspections, I was able to experience the difficulties of crossing Victoria Street; the proximity of large lorries and buses; the frequency of vehicular use of the AHB crossing; and the problems of competing with vehicular use of Sandhill. I agree with the objectors that the alternative route provides a number of opportunities which puts vulnerable road users at risk. Vulnerable road users include pedestrians and children. In contrast, the pedestrian crossing involves potential conflict with only a small number of trains and the crossing of two highways with a relatively small amount of mainly private car traffic.
38. There is risk involved with both routes. However, the alternative route puts pedestrians at much higher risk of conflict with vehicular traffic, and a similar risk of conflict with rail traffic. On balance therefore I consider the alternative route is less attractive in terms of safety, which would support the retention of the pedestrian crossing.

The convenience of the alternative route for pedestrians in comparison

39. Many of the objectors argued that it was inconvenient to use the alternative route and that the current route had been in existence for a long time. As part of the area's heritage, it was desirable to retain the current route, and it was also the most convenient way to access the riverside, on a route virtually free of traffic all the way from the village centre. The alternative route, in addition to posing safety risks, was also longer and less pleasurable to use, and thus less convenient. Evidence was given that there are weekly organised 'Health Walks' in the village, and that the alternative route currently had to be used due to the difficulties of accessing and using the definitive route across the pedestrian railway crossing. However, it was inconvenient as the alternative route brought the participants into conflict with vehicles to a much greater extent and was consequently less enjoyable. Crossing at the pedestrian crossing would facilitate a circular walk much more easily. The walks were accompanied by an experienced leader, and consequently the crossing of the railway at that point would be relatively straightforward.
40. The Council had not addressed issues of convenience in putting their case for confirming the Order, considering that they were not relevant. Network Rail was only concerned with safety issues as they affected the part of the Order route that actually crossed the railway. It considered that the extra distance that pedestrians would have to walk in using the alternative route was not an important factor in leisure walking; the most likely use of the route as a whole.
41. I consider that if the object of using the path is to provide access to the riverside for a leisure walk, the use of the alternative route would certainly be less convenient. It would also in my view be less enjoyable because of the need to compete with road traffic to a much greater degree. I cannot place as much weight on convenience as I can on safety, but this is nevertheless an issue which would incline towards keeping the pedestrian crossing open.

Whether any improvements to the pedestrian crossing, so as to make it safe for use by the public, are reasonably practicable

42. The risk assessment carried out by Network Rail includes an assessment of measures which could be taken to improve the safety of the existing pedestrian crossing, if it were impossible to close it. These include minimising the crossing time, and improving the warning times. The suggested improvements are listed at section 11 of the assessment and it is stated that they would reduce the risks at the crossing to an 'ALARP' level. In a letter dated 13 September 2003, Network Rail explained that the abbreviation means 'as low as reasonably practical (sic)'. The works are listed as follows:

- *Reprofiling of the crossing will be required to ensure the approaches are adequate, and a realignment of the stiles will need to be undertaken to position them directly opposite each other thus ensuring the crossing time is minimised.*
- *The installation of a 'Crossing deck' to help improve the warning time/crossing time relationship.*
- *Both the Up and Down Whistle Boards will need to be repositioned 350 Yards from the crossing to provide an adequate audible warning to users.*
- *The 536 Signs (Stop, Look and Listen) will need to be repositioned at the decision point for users (2 metres from the nearest running line).*
- *A refurbishment of the Stiles would be required to ensure they are fit for purpose and conform to current standards.*

43. At the inquiry, Mr Hill confirmed that these measures were reasonably practicable.

44. The definitive route crosses the railway line at an angle. It would be possible to alter that angle but that is outside the scope of the Order that I am considering. However, the other measures outlined would nevertheless bring the existing crossing time into a satisfactory relationship with the improved warning times. Furthermore, it was acknowledged at the inquiry by Mr Hill that proper line-side vegetation management would also assist by improving visual warning times. I also have some sympathy for the objectors arguments that trains using the line are rarely travelling at 80mph at this point. These reasonably practicable improvements would therefore improve the safety of the existing pedestrian crossing, and are a factor of considerable weight in favour of keeping the crossing open.

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

45. I have already stated in paragraph 28 above that no details of any works to secure the redundant crossing were provided for me. In a letter dated 15 October 2003, Network Rail confirmed that it was not necessary to enter into any agreement with the Council to indemnify or make contributions towards any expenses incurred by the Council in connection with the erection or maintenance of barriers or signs upon the extinguishment of the footpath at the Claway Crossing. At the inquiry, the Council stated that no works were required because all that was needed was to simply remove the remains of any stiles. The railway fences were intact.

46. The objectors were of the view that the current line-side fencing was insufficient to prevent trespass. The fence is in a poor condition in a number of places, including alongside what would become the alternative route along Sandhill, were the Order to be confirmed. In view of the concern expressed by Network Rail regarding the dangers posed by the housing development, the objectors considered that substantial improvements to the fencing would be required.

47. I agree with the objectors. The current fencing consists of three or four strands of wire, which is not high-tensioned, and which can be climbed through without much determination. Despite the requirements of the Section 106 agreement, there are no signs in position to direct pedestrians to use the alternative route in preference to the (still legally open) definitive route across the railway. I consider that inadequate attention has been given to

what measures would be required to prevent unauthorised access to the redundant railway crossing, should I confirm the Order.

48. It is a requirement of Section 118A that attention be paid to this aspect, and that I must take any arrangements into account in considering whether or not it is expedient to confirm the Order. In view of the proximity of the railway line to the housing development, and the suggested locations for the provision of open space within that development, I consider the lack of attention to the security of the redundant crossing to be a significant failing. It is a factor to which I must give some considerable weight and which militates against the confirmation of the Order.

Whether or not it is expedient to confirm the Order

49. In considering whether or not it is expedient to close the crossing, I must weigh in the balance all the circumstances. In support of closing the Claway crossing are the safety factors identified by Network Rail in their Inspection Report and Risk Assessment. I acknowledge these concerns. However, I consider that the significant issues relating to the safety of the alternative route as a whole for pedestrians, together with the inconvenience to users, tip the balance towards retaining the crossing. The fact that there are a number of reasonably practicable measures available to the operator convinces me that the crossing can be made safe enough, bearing in mind that the speed of the trains is likely to be generally less than the maximum speed of 80mph. I have taken into account the effect of the development and consider that there are risks involved whether or not the crossing is kept open. As I have no details of any arrangements for securing the redundant crossing I take the view that it would be preferable for access to be governed by the prescribed safety standards. Taking all these matters into account, it is not expedient to confirm the Order.

Other Matters

50. The obstruction of the path to the west of the railway line, by vegetation growth and the new drainage ditch, is not a matter which directly affects my decision. These problems are matters of enforcement and maintenance that are properly addressed by the Council in their capacity as Highway Authority. I have not taken them into account in coming to my decision.
51. A number of objectors raised concerns about the failure of the planning authority to ensure compliance with parts of the Section 106 agreement, and the perceived lack of consultation about the development. Indeed, Mr Nye and Mr Hill were also concerned about aspects of the design of the scheme, about which Network Rail had not been consulted. Except where I have specifically referred to aspects of the design, and in particular to the provision of open space, these are issues for the planning authority and do not affect my decision. I have not allowed them to influence me except where I have made it clear that I have considered it appropriate to do so.
52. The objectors also expressed the view that the closure of the Order route would benefit adjacent property owners who had expressed support for the Order, as the retained section of footpath to the river passes through their property. It was likely that if the Order were to be confirmed, the use of the remaining section of the path would be likely to significantly diminish. Whilst I understand the logic of the argument, I do not consider that it forms part of the issues which I must consider in determining this order, and I have not allowed it to influence my decision in any way.

Conclusions

53. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

54. The Order is not confirmed.

Helen Glade

Inspector

Appearances

For the Order Making Authority:

Mr F Chandley *Legal Officer, Cambridgeshire County Council*

Who called:

Mr P Mumford *Definitive Map Officer, Cambridgeshire County Council*

In support of the Order:

Mr M Nye *Infrastructure Liability Advisor, Network Rail, Floor 14, Southern House, Wellersley Grove, Croydon, CR9 1RT*

Mr T Hill *Level Crossing Risk Control Assistant, Network Rail, Floor 2, General Offices, Waterloo Station, London, SE1 8SW*

For the Objectors:

Local residents

Mrs S Summerside *Mow Fen Hall, 4A Silt Road, Littleport, Ely, CB6 1QD*

Mr A Summerside *Mow Fen Hall, 4A Silt Road, Littleport, Ely, CB6 1QD*

Mr V Perry *Footpaths Secretary, Littleport Society, 17 Williams Close, Ely, CB7 4FQ*

Mr D Clarke *Voluntary Walks Leader, National Walking for Health Initiative, 3 Dean Peacock Court, Ely, CB6 1BW*

Mr G Goodson *Chairman, Littleport Society, 47 Ely Road, Littleport, Ely, CB6 1HG*

Mrs A Harknett *43 Sandys Crescent, Littleport, Ely, CB6 1LP*

Mrs N Vickers *4 The Crescent, Littleport, Ely, CB6 1HS*

Mr A R Unstead *Footpath Secretary, East Cambridgeshire Group, Rambler's Association, 7 Main Street, Wardy Hill, Ely, CB6 2DF*

Mrs E M Scott *Hereward, 20 The Holmes, Littleport, CB6 1NH*

Mr B Frost *Membership Secretary, Littleport Society, 18 Upton Lane, Littleport, CB6 1HF*

DOCUMENTS

1. Attendance lists: 2 and 3 November 2003
2. Statement and bundle of documents submitted by Cambridgeshire County Council
3. Copy of Draft Decision Notice in respect of Planning Permission for Persimmon development site
4. Details of Planning Obligations under Section 106 of the Town and Country Planning Act 1990 in respect of the Persimmon development site
5. Documents relating to the proposal for public open space areas on the Persimmon development site
6. Statement of Mr M Nye, on behalf of Network Rail
7. Railway accident statistics, submitted by Mr T Hill
8. Level Crossing fatality details for 1999, submitted by Mr T Hill
9. Letter in support of the Order dated 2 November 2004, submitted by Mr and Mrs K M Musk
10. Statement of Mrs S Summerside and attached copy of letter dated 8 January 2003
11. Statement of Mr V Perry, on behalf of the Littleport Society
12. List of questions submitted by Mr V Perry
13. Statement of Mr D Clarke
14. Letter dated 25 October 2004 from Mrs E M Scott

LITTLEPORT PUBLIC INQUIRY – SECTION 118A, HIGHWAYS ACT 1980.

LESSONS LEARNT

- 1) Inspector takes account of all the circumstances, e.g. she listened to non safety arguments as well. The word ALL is included in the legislation. E.g.
 - Nearby development non only means increased risk at the crossing, it also means increased need / benefit because there would be more people wanting to use it.
 - consider the convenience of alternative routes.
 - 2) Where alternative is an AHB, have answers ready to combat suggestions that crossing there is also unsafe for pedestrians (danger from road vehicles)
 - use experience from ECML team.
 - get Highway Authority road safety report.
 - 3) What do we do when a crossing has been out of use for some time, partly due to being blocked by vegetation elsewhere (due to disuse?) on the route?
 - do we bring it up to standard or keep it as it is?
 - If no work is done it complicates our argument that the crossing cannot easily be made safer. Chicken and egg problem.
 - 4) If new development adds to our concern about trespass, consider if general lineside fencing needs improvement and refer to this in the statement. The existence of stiles gives easy access onto the railway but the Inspector thought that our fencing elsewhere was poor anyway.
 - 5) The inspector disregarded fears that children could get access from the crossing to other parts of the railway, e.g. to retrieve balls. She did not consider that this was relevant to the Inquiry regarding the footpath.
 - 6) At the actual point of the crossing, make it clear how we intend to fence it off. Just saying that Network Rail will pay for what is necessary is not sufficient.
 - 7) Ensure our Risk Assessment is accurate. E.g. name of Clayway crossing is misspelt as Claway throughout the risk assessment.
 - 8) Ensure that Level Crossing Risk assessment have consider all other reasonable improvements, e.g.
 - install crossing deck (to reduce crossing time).
 - repair stiles deck (to reduce crossing time).
 - adjust alignment of crossing so it is at 90 rather than on the skew deck (to reduce crossing time).
 - reposition whistle boards to best position (to maximise warning time).
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