

NETWORK RAIL - NOTE 3

Rebuttal of issues raised in John Russell's evidence for the Ramblers on other orders

1.1 John Russell points raised on other orders

- 1.1.1 Mr Russell has stated his concern if S J Tilbrook and Sue Tilbrook transpire to be the same person. I can confirm that I am both named persons and I am the CEM (Contractor's Engineering Manager) for the Anglia Level Crossing Reduction Strategy project. I can confirm that I approved the designer's response report for Cambridgeshire (Document ref 367516/RPT019 Rev A) and checked the second revision of the Stage 1 Road Safety Audit for Cambridgeshire (Document ref 367516/RPT014 Rev B), for issue as part of Mott MacDonald's commission on the project.
- 1.1.2 I can also confirm that Jason Smith and J A Smith are the same person, who was involved in preparing the Audit Brief and approving the second revision of the Stage 1 Road Safety Audit for Cambridgeshire (Document ref 367516/RPT014 Rev B), for issue as part of Mott MacDonald's commission on the project.
- 1.1.3 Mr Russell has rightly pointed out that the Road Safety Team must be independent from the design team. I can confirm that this is indeed the case for the Road Safety Audit's (RSAs) carried by Mott MacDonald for the project. In summary, the fact that I have checked and signed off the RSA does not mean that the RSA has not been prepared independently, as I explain below. I do not accept that the RSAs are undermined by my familiarity with the proposals or any "pride" in them.
- 1.1.4 RSA report 367516/RPT014 Revision B was checked by me and approved by Jason Smith. This document required a very minor amendment (correcting one erroneous reference to a version of another document in the report). This matter is documented as part of the review and acceptance procedure (in the document review notice DRN 024) and the covering emails that were issued with the reports at the time, which explain and document the changes made. These documents and correspondence provide a contemporaneous record of the changes made, and they can be provided if required. A copy of revision A of the RSA report 367516/RPT014 can also be provided if required to allow comparison of the 2 versions of the document to be made.
- 1.1.5 It is important to note that this documents made no changes to any of the issues raised in the original version of the RSA document. The principle of me being the checker of the updated document and Jason Smith approving the document was discussed and agreed with the independent RSA team at the time. I can provide further details if so required.
- 1.1.6 I would also draw your attention to Section 3 of the Road Safety Audit Report, the Audit Team Statement. In this section of the RSA all members of the Audit Team have signed the document to confirm "We certify that this audit has been carried out in accordance with the Highways England Departmental Standard HD 19/15.". It can clearly be seen that the Checker and Approver do not have a role within the Audit team.
- 1.1.7 Notwithstanding the above, it should also be noted that any document issued by Mott MacDonald has to be Checked and Approved in accordance with Mott MacDonald's Business Management System (BMS), which is certificated to ISO 9001.

- 1.1.8 Under Mott MacDonald's BMS, all documents and deliverables have to be checked by a person (not the originator) with the requisite experience, and approved by someone at a senior level from the project team. In view of the minor amendment to document ref 367516/RPT014, which did not relate to the body of the findings of the Road Safety Audit, the checker and approver of revision B were considered appropriate to ensure that the document was being issued in line with Mott MacDonald's BMS requirements.
- 1.1.9 Based on the above, role of the checker and approver in this instance has no bearing on the outcome of the Audit, as their role is to ensure that the deliverable is carried out in line with the project requirements, which in this case is to carry out Road Safety Audits in accordance with HD19/15. In other words, the checking and approval process is to make sure that an RSA compliant with the requirements of the project has been produced. The judgments in the document are unaffected.
- 1.1.10 Mr Russell has previously picked up on some inconsistencies with reference to the Essex and Suffolk Orders, referring to other document references and revisions that appear in the documentation contained within NR16. It is unfortunate that one typo has occurred within a document that may cause some confusion. I have set out below the documents concerned with the correct information in the comments column.

Document	NR16	Comment
Cambridgeshire Stage 1 Road Safety Audit (Dec 2015) 354763/RPT219	The front cover of this document included in NR16 shows the Report Number as 354763/RPT219 Revision A	This is a typo and the Cambridgeshire Stage 1 Road Safety Audit front cover should show the report number as 354763/RPT221 Revision A
Cambridgeshire Stage 1 Road Safety Audit (Aug 2016) 367516/RPT014	At paragraph 2 on page 2 of this document, reference is made to the previous Stage 1 RSA ref 354763/RPT221	This reference is correct and the report is included in NR16 as confirmed above.
Cambridgeshire Stage 1 Road Safety Audit Response Report 367516/RPT019	At paragraph 2 on page 1 of this document, reference is made to the Stage 1 RSA carried out in December 2015 ref 354763/RPT221	This reference is correct and the report is included in NR16 as confirmed above.

- 1.1.11 In conclusion, I can confirm that the correct information is contained within NR16 and this is the Road Safety Audit information that will be relied on at the inquiry. I can also confirm that the RSAs have been carried out by an independent Audit team.
- 1.1.12 It should be noted that a further Stage 1 RSA has been carried out to consider updated proposals at 2 level crossing locations. This Audit report, together with an updated designer's response report has been issued as part of my evidence.

Response to other general points previously raised by Mr Russell (Based on rebuttal prepared for Essex and others)

1.2 Use of Highway Verges

- 1.2.1 *In paragraph 1.11 (a) of his evidence, Mr Russell refers to the use of grass verges adjacent to the highway (highway verges) and that NR have provided no evidence to confirm that all verges to be utilised as part of the alternative routes are within the highway boundary and not 3rd party land adjacent to the highway.*
- 1.2.2 In response, I note that it is the general presumption that the fence line (or equivalent feature such as a hedge or drainage ditch) represents the Highway boundary. Mr Russell notes that it is not unreasonable to make this assumption, but that it is not always the case. This assumption is supported by case law and I refer to Information Sheet no C10: Highway Verges published by the Open Spaces Society and found in Appendix A to this rebuttal. The Highway Authorities have commented where the verges are not highway verges and the routes have been developed accordingly. CCC has been engaged with the potential diversionary routes for some time and have not taken issue with them falling within the highway boundary. Where any physical works are required to the verges, they have been referenced and included in the Book of Reference, core document NR09.
- 1.2.3 *In paragraph 1.11 (b) of his evidence, Mr Russell refers to the fact that the highway authority is able to remove grass verges for widening of the carriageway and he recommends that the Inspector seeks evidence from Network Rail concerning how they intend to secure the retention of grass verges in the long term which are utilised for diverted routes.*
- 1.2.4 The proposals have been discussed with the affected local Highway Authority and they have not highlighted any planned improvements that could affect the proposals. It should be noted however, that any highway improvement scheme should consider all highway users and therefore pedestrian needs will be taken into consideration when future schemes are taken forward, along with RSAs where necessary.
- 1.2.5 *In paragraph 1.11 (c) of his evidence Mr Russell states that he is unable to find evidence from Network Rail concerning how they intend to ensure maintenance of grass verges in the long term which are utilised for diverted routes.*
- 1.2.6 Maintenance of highway verges is the responsibility of the Local Highway Authority (see Information Sheet no C10: Highway Verges at Appendix F to this rebuttal). The verges have generally been considered for use in their current state. Where maintenance measures over and above the normal regime are deemed necessary to maintain grass verges in a suitable condition for use by pedestrians, Network Rail will agree an appropriate level of payment to be made to the highway authority as part of the commuted sums. The matter of commuted sums has been discussed throughout the scheme development with Cambridgeshire County Council and Network Rail are currently in detailed discussion with the LHA about this matter with the aim of reaching agreement on the principles on which the commuted sums will be calculated.

1.3 Signage

- 1.3.1 *In paragraph 1.14 of his evidence Mr Russell states that the Inspector should seek evidence from Network Rail as to how they intend to sign diversion routes and ensure the long term maintenance of the signs.*
- 1.3.2 I have outlined the level of design required at this stage of the project in paragraph 1.7.1 of my Proof of Evidence NR32/1. The detailed design proposals will be agreed with each relevant Local Authority and the existing routes over the level crossings cannot be closed until the highway Authority has certified completion of the alternative route to their satisfaction. Article 31 of the Order would confer powers on Network Rail to place and maintain traffic signs relating to the construction or operation of the works, in consultation with CCC. Any additional maintenance burden on the Highway Authority will be dealt with through a commuted sum payment.

1.4 Influence of Traffic Volume

- 1.4.1 *In paragraph 2.9 of his evidence Mr Russell states that it is extremely important for the designer to understand how much traffic uses a specific road along which pedestrians are to be diverted.*
- 1.4.2 I have outlined the collection of this data in paragraph 1.8.4 of my Proof of Evidence NR32/1.

1.5 Separation Distance

- 1.5.1 *In paragraph 2.12 of his evidence Mr Russell states the separation distance is the distance between the edge of where vehicles are travelling and the path along which pedestrians are walking. There is no definitive guidance on what is an acceptable distance, Notwithstanding this it is noted that a distance 450-500mm is usually allowed for in highway design to cater for vehicle wing mirrors. Further guidance in Manual for Streets recommends a minimum width of 0.75m to cater for a single pedestrian.*
- 1.5.2 A minimum set-back of 450mm to street furniture is required to prevent damage by vehicles with a lateral overhang. It should be noted, however, that footway design does not require a set-back between the edge of footway and carriageway. It is considered that new street furniture (principally signing) could be installed on all crossings within the Cambridgeshire order to achieve this minimum set-back. The arrangements at C16 Prickwillow 1 and C17 Prickwillow 2 will need some careful consideration at detailed design stage where the proposed steps meet the existing carriageway. The arrangements here will be subject to a Stage 2 Road Safety Audit and also subject to the approval of CCC's highways officers as part of agreeing the schedule of works. Existing highway verges and footways that form part of the proposed routes exceed the width of 0.75m mentioned by Mr Russell.
- 1.5.3 *In paragraph 2.13 of his evidence Mr Russell states that guidance on the safety of pedestrians in the carriageway is provided in Chapter 8 of the Traffic Signs Manual (TSM). This requires, where there is an enforced speed limit of 50mph, a minimum distance of 1.2m between the space in which people are walking / working and the live carriageway for safety purposes. Where this is not achievable, TSM Chapter 8 recommends that speed limits should be lowered to 40mph or 30 mph and enforced.*

The absolute minimum separation is stated as 0.5m, which corresponds with the standard highway design approach.

- 1.5.4 Chapter 8 of the Traffic Signs Manual Traffic relates to Safety Measures and Signs for Road Works and Temporary Situations. It is not a relevant guidance document for the proposals. Articles 31 and 32 of the Order provide for signage and traffic regulation orders as required in the implementation of the Order scheme.
- 1.5.5 *In paragraph 2.14 of his evidence Mr Russell states that this means that where a verge or footway is less than 500mm, a vehicle on the carriageway would not be able to pass a pedestrian safely that was walking along the verge.*
- 1.5.6 I refer to my responses regarding separation distance at paragraphs 1.5.2 and 1.5.4 above. Based on this, the Road Safety Audits carried out, and the traffic data collected on the alternative routes, I conclude that the routes are suitable.
- 1.5.7 *In paragraph 2.15 of his evidence Mr Russell states that highway design guidance recommends a minimum carriageway width of 4.6m where vehicles and pedestrians share the same surface and the vehicles are almost exclusively cars. However, this is based on the assumption that vehicle speeds are low (between 20mph and 30mph) and the volumes are low. Higher speeds would require wider carriageways to cater for two-way vehicular traffic and pedestrian movements. For example a bus and / or lorry requires 3m width (6m for two-way traffic) and a van / horsebox requires 2.4m (4.8m for two-way traffic).*
- 1.5.8 The proposed routes have been assessed in the context of road width, available verge width, traffic volumes and speeds, and with cognisance of any issues raised during the Stage 1 RSAs. It is not appropriate to generalise about the appropriate minimum design standards for carriageway widths as each individual crossing proposal and highway environment is different. My proof of evidence, document N32/1 sets out the particular circumstances of each proposal and explains why the proposed routes are suitable.

1.6 Compliance with Guidance

- 1.6.1 *In paragraph 3.7 of his evidence Mr Russell states that he does not believe that the requirements of HD19/15 para 2.30 have been satisfied i.e. that " The end of the preliminary design stage is often the last occasion at which land requirements may be changed. It is therefore essential that Stage 1 Road Safety Audits considers any road safety issues which may have a bearing upon land take, licence or easement before the draft Orders are published or planning consent is applied for."*
- 1.6.2 The Stage 1 Road Safety Audits were carried out prior to design freeze and preparation of the draft orders for each Level Crossing proposal, in accordance with HD19/15. There are 2 sites in the Network Rail (Cambridgeshire Level Crossing Reduction) Order that have been subject to a further Stage 1 RSA since deposition of the orders due to late changes in the design proposals. Paragraph 2.62 HD19/15 sets out a mandatory requirement for RSAs to be repeated if the scheme design materially changes, if there are many minor changes which could together impact on road user safety or if the previous finalised Road Safety Audit for the relevant stage is more than 5 years old, therefore it was considered necessary to carry out further audits after deposition. The RSAs carried out since order deposition can be found in my evidence. No problems were identified as part of the RSAs carried out for these sites.

- 1.6.3 It is worth noting that unlike a HA Order for example, a TWAO scheme is not expected to be worked up to detailed design before the Order is made. However, sufficient assessment and design work has been carried out to have confidence that the powers obtained under the order will enable the diversion routes to be implemented.
- 1.6.4 *In paragraphs 3.5, 3.8 and 3.9 of his evidence Mr Russell states that road collision data, traffic flows and NMU flows should be provided as part of a RSA brief, however, notes that this information was not available at the time of the Stage 1 RSAs and therefore is to be considered at a later date in the Stage 2 Road Safety Audit. He recommends that the Secretary of State defers any decision until this information has been included within a stage 1 RSA.*
- 1.6.5 Whilst HD 19/15 requires this information to be provided as part of the general scheme details, it is not a mandatory requirement. However, it is a mandatory requirement that if the Road Safety Audit Team considers the Road Safety Audit Brief to be insufficient for their purpose, they must request that further information shall be made to the Design Team Leader and copied to the Project Sponsor. Any information requested but not supplied to the Road Safety Audit Team must be identified in the introduction to the Road Safety Audit Report. No such request was made by the independent Audit team. The information on road collision data, traffic flows and NMU flows was assessed by the design team as it became available, as part of overall assessment of the proposals. Stage 2 RSAs will be undertaken, where required, on completion of detailed design, and there is no reason why a decision on the Order proposals should be deferred until that assessment has been undertaken.

Susan Tilbrook
29/11/2017

Appendix A

Information Sheet no C10: Highway Verges published by the Open Spaces Society



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INFORMATION SHEET NO: C10

Highway Verges

A revised version of Roadside Wastes
by the late W R Hornby Steer MA LLB
(first published July 1936)

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Origin and Importance

1. Along many of the highways of England and Wales are to be found strips of land open to the public, running between the metalled road and the fences inclosing the adjoining land. Such strips are often irregular in character and sometimes of considerable width.
2. A reason for their origin is to be found in the judgment of Abbot, LCJ in *Steel v Prickett* (1819) 2 Stark 463 NP, where he used these words:

In remote and ancient times when roads were frequently made through uninclosed lands, and when the same labour and expense was not employed upon roads, and they were not formed with that exactness which the exigencies of society now require, it was part of the law, that the public, when the road was out of repair, might pass along by the side of the road. This right on the part of the public was attended with this consequence that although the parishioners were bound to repair the road, yet, if an owner excluded the public from using the adjoining land, he cast upon himself the onus of repairing the road ... hence it followed as a natural consequence that when a person inclosed his land from the road he did not make his fence close to the road, but left an open space at the side of the road to be used by the public when occasion required ... the object was to leave a sufficiency of land for passage by the side of the road when it was out of repair.

3. When an owner has left such a strip alongside the road, with the intention that the public should be able to use it for passage, and the public has so used it, there is a presumption that he intended to dedicate the strip as part of the highway, and such strips must in many cases be deemed to have been so dedicated. In that event, the strip alongside the road, is just as much part of the highway as the metalled road itself.
4. Sometimes the roadside strips belong, not to the owner of the adjoining property, but to the lord of the manor, and are part of the manorial waste. In such cases they may or may not be subject to rights of common, but in either event they may be held to have been dedicated to public passage, in which case also they are part of the highway. See *East v Berkshire County Council* (1911) 76 JP 35; and *Evelyn v Mirrieles* (1900), 17 TLR 152, CA; 65 JP 131n).

5. These roadside strips are now more commonly referred to as roadside verges. It is important that strips of roadside verge should be safeguarded from any illegal attempts to inclose them for the following reasons.
6. In cases where no footway has been constructed alongside the metalled road, the verge enables pedestrians to proceed with greater safety than they would on the metalled road.
7. Verges often provide a soft turf surface of value to equestrians who would otherwise be limited to using a metalled road which is often unsafe and sometimes of a character unsuitable for horses.
8. With the loss of most of our traditional meadow land through agricultural change, our largest nature reserve is now represented by roadside verges, an important habitat which extends to perhaps half a million acres. They are a vital reservoir of wildlife, especially of wild flowers. (Soil Association 1992).
9. If the inclosure of roadside verges is permitted, any necessary widening of the metalled highway will be more costly by reason of the consequent compensation to the owners of the adjoining lands, and perhaps some much-needed road improvement may thereby be prevented.
10. The increased popularity of walking and riding and the increasing need for wide traffic-routes make it especially important that the public should not lose the advantages to be obtained from keeping such strips free from any illegal inclosure.

Ownership of the soil

11. The general principle of law relating to the ownership of the soil of such strips was stated by Gibbs CJ in *Grose v West* (1816) 7 Taunt 39, in the following words:
Prima facie, the presumption is, that a strip of land lying between a highway and the adjoining close, belongs to the owner of the close; as the presumption also is that the highway itself to the centre line of the road does. But the presumption is to be confined to that extent; for if the narrow strip be contiguous to or communicate with open commons, or larger portions of land, the presumption is either done away or considerably narrowed; for the evidence of ownership which applies to the larger portions, applies also to the narrow strip which

communicates with them.

12. It is to be borne in mind that the questions who owns the soil of the roadside verge, and whether it is part of the highway, are quite distinct. Regardless of who owns the soil, the public may have a right of passage over it, ie it may be part of the highway. Consequently, if a public right of passage over such a verge is claimed, it is no answer for the adjoining owner to say ~~the~~ the land belongs to me since even if it does, it may still be part of the highway.
13. Where the highway authority acquired the site of the road by purchase, but has only metalled the centre, it has the same legal interest in the verges as any other freeholder has in his own land. It owns the surface and all the soil beneath.
14. Roads taken over by highway authorities vest in them together with the verges. This results in the appropriate authority becoming the fee-simple estate owners in respect of the surface of the road and so much of the subsoil as is essential to the maintenance of the highway for the public use. *Tithe Redemption Commission v Runcorn Urban District Council* [1954] 1 All ER 653.

Width of Highway

15. The general rule of law relating to the extent of the space subject to the public right of passage was stated in *Regina v United Kingdom Electric Telegraph Co Ltd* (1862) 26 JP 390, by Martin B, as follows:

In the case of an ordinary highway, although it may be of a varying and unequal width, running between fences on each side, the right of passage or way prima facie, unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as a highway, and are not confined to the part which may be metalled ... a permanent obstruction erected on a highway, placed there without lawful authority, which renders the way less commodious than before to the public, is an unlawful act and a public nuisance at common law . . .

16. This presumption that a highway extends over the whole space between fences may however be rebutted by proof of facts from which it may be inferred that the fences were not put up as boundaries of the highway; thus they may be part of the original

boundary of a close of land through which the highway had been made. *AG and Croydon RDC v Moorson-Roberts* (1908) 72 JP 123.

17. Or they may be the boundary between the inclosed land and a strip of manorial waste alongside the highway which has not been dedicated as part of it. Thus the presumption of dedication arising from the public user of greens along the side of a highway between the fences was rebutted in one instance by evidence of an entry in the court rolls of the manor that the greens were waste belonging to the manor, and of the greens being treated by the lord of the manor as his private property. *Friern Barnet UDC v Richardson* (1898) 62 JP 547 CA.
18. The question as to the extent of the space subject to the public right of passage depends upon the evidence in each particular case as to the nature of the district, the width and level of the margins, the regularity of the lines of the fences and other relevant circumstances. *Countess of Belmore v Kent County Council* [1901] 1 Ch 873.
19. Sometimes a road does not run between fences, but across open common or manorial waste; and in that case the presumption of dedication between fences does not apply. *Neeld v Hendon UDC* (1899) 63 JP 724.
20. The cases cited above were considered in *Harvey v Truro Rural Council* [1903] 2 Ch 638 by Joyce J who in his judgment said:

In the case of an ordinary highway running between fences, although it may be of a varying and unequal width, the right of passage or way prima facie, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the entire of it as a highway, and are not confined to the part which may be metalled. All the ground that is between the fences is presumably dedicated as highway unless the nature of the ground or other circumstances rebut that presumption ... It is an established maxim that 'once a highway, always a highway'. The public cannot release their rights. Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper. Even if the highway authority had actually consented to any obstruction or encroachment upon the strip being part of the highway, such consent could not legalise that which was

otherwise illegal...

21. In *Attorney General v Beynon* [1969] 2 WLR 1447, the verge was of considerable width and irregular in shape. The highway authority claimed that the verge was part of the highway and that the keeping of vehicles there by the defendant was an obstruction of the highway. Goff J said:

It is clear that the mere fact that a road runs between fences, which of course include hedges, does not per se give rise to any presumption. It is necessary to decide the preliminary question whether those fences were put up by reference to the highway, that is, to separate the adjoining closes from the highway or for some other reason. When that has been decided then a rebuttable presumption of law arises, supplying any lack of evidence of dedication in fact, or inferred from user, that the public right of passage, and therefore the highway, extends to the whole space between the fences and is not confined to such part as may have been made up. It seems clear to me however as the principle has developed, that one is to decide the preliminary question in the sense that the fences do mark the limit of the highway unless there is something in the condition of the road or the circumstances to the contrary.

22. It was held that the presumption of law which arose had not been rebutted by the defendant's alleged acts of ownership and the verge was held to be part of the highway and the keeping of vehicles there by the defendant to be an actionable obstruction.

23. In *Vanderpant v Mayfair Hotel Co* [1930] 1 Ch 138 at 152 it was said:

An encroachment on a highway is by common law a public nuisance. It is no defence that the obstruction is made on a part of the highway which is not habitually or ordinarily used for passage. It is no defence that the obstruction is in other ways productive of public benefit, and however reasonable may be the use of a highway by an owner of adjoining premises the public right is a higher right than his and he must yield to the public right.

Powers and duties of local authorities

24. **S71 (1) Highways Act 1980.** *It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up*

carriageway adequate grass or other margins as part of the highway in any case where they consider the provision of margins necessary or desirable for the safety or accommodation of ridden horses and driven livestock; and a highway authority may light a margin provided by them under this section.

25. **S130 (1) Highways Act 1980.** *It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.*

(2) *Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.*

(4) *... it is the duty of a local highway authority to prevent any unlawful encroachment on any roadside waste ... for which they are the highway authority.*

(6) *If the council of a parish ... represent to a local highway authority ... (b) that an unlawful encroachment has taken place on a roadside waste comprised in a highway for which they are the highway authority, it is the duty of the local highway authority, unless satisfied that the representations are incorrect, to take proceedings accordingly and they may do so in their own name.*

26. **S96 Highways Act 1980** *authorises the highway authority to plant trees in the highway verge but not to obstruct it.*

27. **S96 (6).** *No tree, shrub, grass verge, guard or fence shall be planted, laid out or erected under this section, or, if planted, laid out or erected under this section, allowed to remain, in such a situation as to hinder the reasonable use of the highway by any person entitled to use it ...*

28. **S142 (1) Highways Act 1980.** *The highway authority for a highway may by a licence granted under this section permit the occupier or the owner of any premises adjoining the highway to plant and maintain, or to retain and maintain, trees, shrubs, plants or grass in such part of the highway as may be specified in the licence.*

(5) *A highway authority may attach to any such licence such conditions as they consider necessary to ensure the safety and*

convenience of passengers in the highway and to prevent traffic [‘traffic’ includes pedestrians and animals, s329 Highways Act 1980] therein being delayed, to prevent any nuisance or annoyance being caused to the owners or occupiers of other premises adjoining the highway.

29. **Town and Country Planning Act 1990.** Where planning permission is given under Part III of the act for the change of use from highway verge to private use, the highway right is not extinguished until the Secretary of State for Transport authorises the stopping-up of the highway by an order under s247 of the act. The order is made to enable the development to be carried out.
30. Where the change of use takes place before the highway right is extinguished, the highway right can only be stopped up by an order made by a magistrates court. **(S116 & 117 Highways Act 1980.)**
31. **Local Acts of Parliament** Some local authorities have their own private acts that give them powers to control or manage roadside verges and restrict the right of passage by certain categories of user. Ask the legal department of your county authority if such an act exists for your area.
32. The legal remedies available to local authorities are described in *Rights of Way . a guide to law and practice* (John Riddall and John Trevelyan, 4th edition, 2007).

Revised by the late **Gordon Hands**

While the Open Spaces Society has made every effort to ensure the information obtained in this factsheet is an accurate summary of the subject as at the date of publication, it is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice in this paper.

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