

**TRANSPORT AND WORKS ACT SECTION 1 AND 5
THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION)
ORDER**

E41 Paget Road OBJ59 Proof of Evidence of Cyril Liddy

1. I am Cyril Liddy of [REDACTED]. I have lived continuously at this address since 1978 and I have used the Paget Road crossing ("E41") on countless occasions since then, without incident and in perfect safety.
2. I am a councillor and represent Wivenhoe ward on Colchester Borough Council. I sat on Wivenhoe Town Council ("WTC") between 1995 and 2011 and was Town Mayor in 1998/9. Along with Mr. Peter Kay, I am asked to represent both WTC and the wider community at this inquiry. These submissions are made accordingly.
3. I am pleased to note that Network Rail ("NR") withdrew its proposed closure of the Sand Pit crossing at Cockaynes Wood (E42), so any further observations will relate to E41 only.
4. I understand that the status of E41 as a public footpath by 150 years prescriptive use is not in contention by NR, despite its absence from the Definitive Map and I will not raise the matter again, unless my understanding is incorrect or NR chooses to raise the issue.
5. Objections to the closure of E41 primarily revolve around four main arguments; that E41 is very well used, that it has never posed a danger to any user within living memory, if ever, that the alternative routes suggested by NR are so impractical as not to warrant any serious consideration and the modus operandi of NR in managing the closure process.
6. Other objectors skilfully articulate the first three arguments. Mr Peter Hill of the Wivenhoe Society does so and my colleague Mr. Kay provides technical arguments to support those objections. Likewise, I will not dwell on these matters, except where relevant to this submission.
7. In my Statement of Case of 1st July 2017, I argued that all public authorities are obliged to act reasonably. Where a public body has a policy, it is reasonable to expect that the policy will be implemented fairly, with any decisions based on evidence and not on a mechanistic application of that policy. Each situation must be carefully examined on its own merits, rather than on a generic one size fits all approach.
8. NR has done precisely that, by applying a policy that has no basis in fact. The situation at E41 has not substantially changed in the last 150 years or so. There is no evidence that E41 is more dangerous than at any other time in the past, other than that NR has reinterpreted its own safety standards to reach a result of its own choice.
9. In so doing, NR seeks to transfer any risk at E41 to Essex Highways and the local community. The two alternative routes proposed are simply impractical and cause more problems to users than they solve.
10. During the Pre Inquiry Meeting ("PIM") the Inspector, Mr Beckett, noted that there were more objections from Wivenhoe to the proposed closure of E41 than to any other

closure. There is good reason for that response and that arises from NR's attitude to the public consultation.

11. NR has run several consultation exercises, but on each occasion made it amply clear during conversations with its representatives that the end result will be closure of E41, regardless of any evidence that contradicted the policy or any other effects on the local community.

12. All who attended the consultations left with the distinct impression that NR did not conduct the exercise with an open mind and it had predetermined the outcome, despite the lack of evidence of any real danger to its staff, the travelling public or the general public.

13. In accordance with the Inspector's direction at the PIM, NR provided a written response to each objector. The response to me dated 4th September 2017, signed by Brigit Choo Bennett and attached ("NR1") sets out the strategic case for level crossing closure. This is identical in all replies and uses generalised justifications. I will examine those parts of NR1 that are particular to me.

14. NR1 refers to the ALCRM risk assessment model, which gives E41 a risk rating of C4, ranking it 25/354th in the Anglia region. The letter "C" represents the third highest individual risk on a scale of A to M for individuals crossing the railway line and the number 4 represents the fourth highest collective risk for all users of the crossing on a scale of 1 to 13. The risk factors cited include, frequency of trains, frequent usage by the public, sun glare and "low sighting time".

14. A cursory glance at the ALCRM scoring through out NR's Statement of Case, shows that of the 57 crossings in Essex, some 20 are either not part of the closure program or ranked as M13, the lowest score which is usually reserved for "sleeping dog crossings". Of the 37 remaining, half are given a collective risk of "C" and of those 6 share the C4 rating with E41. In other words, there are 7 crossings that are ranked 25th most dangerous crossing out of 354!

14. The ALCRM risk assessment model is the core of NR's case for the Level Crossing Reduction program across the country and particularly for closing E41. It is a valuable tool to evaluate risk, but it is no more than a tool. It is merely an algorithmic method that produces a result that depends on the information fed to it. NR has chosen to use this algorithm to determine policy and as an evidence base for that policy. NR has substituted artificial intelligence for human intelligence and decision making.

15. NR1 goes on to say that there is an inherent danger in any pedestrian crossing (irrespective of whether a fatality has occurred at any particular site). In other words, a generic risk not a specific risk. The running costs of level crossings are also mentioned in passing. Heavy usage is also cited. So E41 must close due to frequent use, whereas E42 would have been closed due to infrequent use.

16. NR1 also states that the poor sighting of approaching trains requires a speed reduction in those bound for Clacton and that they must accelerate from Wivenhoe Station more slowly than otherwise might be possible. Once a train has reached the bridge, the driver should have a clear view of E41, so poor sighting is a poor excuse.

17. NR1 discusses alternative routes, the one via Anglesea Road requires hand rails outside the houses at the top of Queens Road and the other a footpath from the north end of Paget Road to Philip Road. Hand rails in Queens Road would prevent residents using their cars and the Philip Road option will bring pedestrians into conflict with motorists seeking access to the new Philip Road Surgery due to open on 23rd October. The Inspector will draw his own conclusions when he visits the site.

18. The response in NR1 fails to provide any compelling reason for the closure of E41 and it is yet another example NR's failure to act reasonably through out this process.

19. One aspect of NR's conduct in recent years that cannot go unremarked is the excessive use of klaxon. Since summer 2014, NR has crudely attempted to shape local opinion by instructing train drivers to sound the train's klaxon on approach to E41, for up to 3 seconds, during the permitted hours of 06.00 to 00.00. This is to ensure that all residents of Wivenhoe and Rowhedge are aware of a passing train. Local commuters joke that they can identify individual train drivers by the way each one sounds its klaxon.

20. In summary, NR's conduct in this matter has been manifestly unreasonable. It has used an algorithm to assess the risk and allowed it to determine the decision. It has not even considered the possibility that E41 might remain open. It has used vague generalised arguments to justify this decision. It has failed in due diligence to consider local conditions and geographic layout, by proposing alternatives are absurdly impractical.

21. NR has been manifestly unreasonable in its conduct of this exercise. Its clumsy methods have produced cynicism in the local community and thereby undermined public support for its objective of securing a safe and efficient railway system. NR's methods only serve to bring public authorities into disrepute and further erode public confidence in the democratic process.

Cyril Liddy.

Monday 18th September 2017.