We welcome you to
Spelthorne Local Committee
Your Councillors, Your Community and the Issues that Matter to You

Discussion

Alleged Public Rights of Way, Sunbury

Public Footpath No. 18 Staines Proposed Extinguishment

Venue

Location: Council Offices, Knowle Green, Staines-upon-Thames. TW18 1XB

Date: Thursday, 23 April 2015

Time: 6.30 pm

Please note there will be no written questions and petitions at this special meeting
You can get involved in the following ways

Ask a question

If there is something you wish know about how your council works or what it is doing in your area, you can ask the local committee a question about it. Most local committees provide an opportunity to raise questions, informally, up to 30 minutes before the meeting officially starts. If an answer cannot be given at the meeting, they will make arrangements for you to receive an answer either before or at the next formal meeting.

Write a question

You can also put your question to the local committee in writing. The committee officer must receive it a minimum of 4 working days in advance of the meeting.

When you arrive at the meeting let the committee officer (detailed below) know that you are there for the answer to your question. The committee chairman will decide exactly when your answer will be given and may invite you to ask a further question, if needed, at an appropriate time in the meeting.

Sign a petition

If you live, work or study in Surrey and have a local issue of concern, you can petition the local committee and ask it to consider taking action on your behalf. Petitions should have at least 30 signatures and should be submitted to the committee officer 2 weeks before the meeting. You will be asked if you wish to outline your key concerns to the committee and will be given 3 minutes to address the meeting. Your petition may either be discussed at the meeting or alternatively, at the following meeting.

Thank you for coming to the Local Committee meeting

Your Partnership officer is here to help. If you would like to talk about something in today’s meeting or have a local initiative or concern please contact them through the channels below.

Email: susan.briant@surreycc.gov.uk and yvette.ortel@surreycc.gov.uk
Tel: 01932 795120
Website: http://www.surreycc.gov.uk/spelthorne

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Mr Richard Walsh, Laleham and Shepperton (Chairman)
Mrs Denise Saliagopoulos, Staines (Vice-Chairman)
Mr Ian Beardsmore, Sunbury Common and Ashford Common
Mrs Carol Coleman, Ashford
Mr Robert Evans, Stanwell and Stanwell Moor
Mr Tim Evans, Lower Sunbury and Halliford
Mr Daniel Jenkins, Staines South and Ashford West

Borough Council Appointed Members

Cllr Chris Frazer, Ashford East
Cllr Ian Harvey, Sunbury East
Cllr Jean Pinkerton, Staines South
Cllr Joanne Sexton, Ashford North & Stanwell South
Cllr Richard Smith-Ainsley, Laleham & Shepperton Green
Cllr Spencer Taylor, Stanwell North
Cllr Robert Watts, Shepperton Town

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This is a meeting in public. If you would like to attend and you have any special requirements, please contact us using the above contact details.
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Local Committee (Spelthorne)

County Councillors 2013-17
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<td>Chris Frazer</td>
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Local Committee (Spelthorne)

Borough Council Co-optees 2013-15

For councillor contact details, please contact Georgie Lloyd on georgie.lloyd@surreycc.gov.uk, tel: 01372 832605 or visit www.surreycc.gov.uk/spelthorne.
## MOBILE TECHNOLOGY AND FILMING – ACCEPTABLE USE

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If you have any queries regarding this, please contact the representative of [Legal and Democratic Services](#) at the meeting.
1  APOLOGIES FOR ABSENCE

To receive any apologies for absence.

2  DECLARATIONS OF INTEREST

To receive any declarations of disclosable pecuniary interests from Members in respect of any item to be considered at the meeting.

Notes:
- In line with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, declarations may relate to the interest of the member, or the member’s spouse or civil partner, or a person with whom the member is living as husband or wife, or a person with whom the member is living as if they were civil partners and the member is aware they have the interest.
- Members need only disclose interests not currently listed on the Register of Disclosable Pecuniary Interests.
- Members must notify the Monitoring Officer of any interests disclosed at the meeting so they may be added to the Register.
- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest.

3  ALLEGED PUBLIC RIGHTS OF WAY BETWEEN THAMES STREET AND THE RIVER THAMES (SUNBURY)  (Pages 1 - 20)

To consider the application for a Map Modification Order to add a Byway Open to all Traffic (BOAT) between Thames Street and the River Thames, Sunbury to the Surrey County Council Definitive Map and Statement (DMS).

4  PUBLIC FOOTPATH NO. 18 (STAINES) EXTINGUISHMENT ORDER  (Pages 21 - 42)

To receive a report from the Countryside Access Team Manager recommending the extinguishment of public footpath number 18 Staines.

5  DATE OF NEXT MEETING

To be held on Monday 29 June 2015 at 7pm in the Council Chamber, Spelthorne Borough Council Offices, Knowle Green, Staines-upon-Thames, TW18 1XB.
SUMMARY OF ISSUE:

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA 1981) to modify the Definitive Map and Statement (DMS) if it discovers evidence which can be reasonably alleged to support a modification. An application has been received for a Map Modification Order (MMO) to add a Byway Open to All Traffic (BOAT) between Thames Street and the River Thames, Sunbury to the Surrey County Council DMS as shown on the attached drawing 3/1/86/H16 (Annexe A).

It is considered the evidence is not sufficient to support BOAT rights but that public footpath (FP) rights can reasonably be alleged to subsist. As such a legal order to modify the DMS should be made.

RECOMMENDATIONS:

The Local Committee (Spelthorne) is asked to agree that:

(i) Public Footpath rights are recognised over A – B – C, B – E & D – E – F on Drg. No. 3/1/86/H16 and that a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 be made to modify the Definitive Map and Statement. The routes will be known as Public Footpaths nos. 83, 84 and 85 Sunbury.

(ii) If objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

REASONS FOR RECOMMENDATIONS:

The evidence submitted in support of the application is considered sufficient to establish that public footpath rights are reasonably alleged to subsist, having been acquired under both statutory presumed dedication (under s.31(6) of the Highways Act 1980) and common law. Evidence suggests that landowners have not challenged users or taken sufficient actions to demonstrate their lack of intention to dedicate during the relevant period. A map modification order to modify the definitive map and statement by the addition of public footpaths as described above should be made under s. 53 of the WCA 1981.
1. INTRODUCTION AND BACKGROUND:

1.1 In March 2012, Mr Chris Wills of ‘Mon Abri’, Wheatley’s Eyot, Sunbury on Thames submitted an application for a Map Modification Order (MMO) to add a BOAT, which runs parallel to Thames Street and the two associated access routes which run from Thames Street to the public landing stages at the river; one adjacent to ‘Monksbridge’ and the other adjacent to ‘Kingfisher House’ to the Surrey County Council DMS. The claimed route runs between points A – B – C, B – E and D – E – F as shown on Drg. No. 3/1/86/H16 (Annexe A).

1.2 The application was accompanied by 6 public way evidence forms showing use of the routes between 1975 and 2012 as a BOAT and FP. Documentary evidence in support of the application was also submitted. For the legal background for map modification orders see Annexe B. The relevant 20-year period for the claim is 1992 – 2012.

1.3 The claimed route forms an ‘H’ shape. The western spur runs from point A on Drg. No. 3/1/86/H16 at its junction with Thames Street, Sunbury on Thames, (between numbers 20 and 22a) in a southerly direction for 27 metres to point B. It continues for 16 metres to the River Thames at point C. The middle section of the route runs from point B in a north-easterly direction for 70 metres to point E. The eastern spur runs from Thames Street (point D) between number 8 and ‘Monksbridge’ in a south-easterly direction for 28 metres to point E, continuing for a further 45 metres to point F to the River Thames. Near point F there is a bench, a coal and wine tax post and a litter bin. Prior to the redevelopment of the land fronting the river the buildings formed Turks Boatyard, which was then sold to Horace Clark for his boating business. Since then the buildings along the river frontage have been developed as residential dwellings and for storage purposes.

2. ANALYSIS:

PUBLIC USER EVIDENCE FOR THE ROUTE:

2.1 Section 31 of the Highways Act 1980 provides that the claimant’s evidence must show that the route has been enjoyed by the public for a 20-year period, calculated retrospectively from the point at which that use was first challenged. The use must have been without force, secrecy or permission. Public use can also lead to the acquisition of public rights at common law. In such cases the use must have been sufficient to raise a presumption that the landowner had intended to dedicate the route.

2.2 Section 31 provides no minimum level of user for the establishment of a public right of way. Instead a route must have been used by a “sufficient number of people who together may sensibly be taken to represent the people as a whole/the community in general”. The House of Lords has ruled that the amount of user must be such as might have been reasonably expected if the route in dispute was an undoubted public highway. The necessary level of use must therefore be considered on a case by case basis.
2.3 There are 6 claimants: David Banks (1), Colleen Cuthbert (2), Robert Hayes (3), Joseph Scott (4), Paul Watts (5) and Chris Wills (6). All of the claimants have used the routes for the full 20-year period, all on foot, as well as claimants 1 and 6 on bicycles and claimants 3, 5 and 6 in a motorised vehicle. The total number of journeys per year ranges from 8 to 200 on foot with an average of 51 times a year amounting to once a week on average.

2.4 Mr Banks claims using the routes 20 times a year by bicycle and Mr Wills 50 times. Mr Hayes used the route A – B – E – D in a motorised car every day and now has established private vehicular rights in his deeds. Mr Wills used the public landing stages and the adjoining routes in a car to access his boat mooring approximately 12 times a year.

2.5 A summary of the user evidence can be found at Annexe C.

3. LANDOWNERS AND ADJOINING LANDOWNERS EVIDENCE

3.1 A Land Registry search has revealed that the majority of the land is unregistered. A section between points B – C is registered to Spelthorne Borough Council. The middle section of the ‘H’ is registered to Mr and Mrs Bartlett, Mr and Mrs Sheppard and Mr Griffiths.

3.2 Mr Griffiths’ land ownership extends to the eastern edge of the old boathouse near point E. The claimed route extends up to his property boundary. Mr Griffiths bought the land from Mr and Mrs Sheppard 5 years ago. A brick wall has been erected running parallel to E – F within the width of the path outside of Mr Griffiths’ landownership. As well as being an encroachment on the claimed route it has the effect of blocking the view of the weir from the bench at point F. The Environment Agency as landowner and the County Council as Highway Authority will seek its removal if the claimed route is added to the DMS. Mr Griffiths has been contacted but no response has been received.

3.3 Mr and Mrs Sheppard of ‘The Boathouse’, which is located east of Kingfisher House, until recently owned the middle section of the track between B – E. Last year they sold Kingfisher House, and the section of track north of it to Mr and Mrs Bartlett. Mr and Mrs Sheppard still own the middle section of track in front of ‘The Boathouse’. They had owned all of the former Turks boatyard area next to the river for approximately 10 years. They state they have never turned anybody away who was walking through, but had turned away vehicles using it as a cut through. At one time the route became a bit of a ‘rat run’ for vehicles if traffic was slow on Thames Street. Mr and Sheppard confirmed that originally there had been no vehicular access to the backs of properties in Thames Street but over the years these had been established and recorded in property deeds as private rights. The sign at the corner of the old boathouses (point E) saying ‘Private No Through Road Access Only’ has been there as long as they remember. They do not allow parking on their land but access is allowed for residents and deliveries.

3.4 Mrs B Baker of nos. 22, 22a & 22b Thames Street, is an adjoining landowner on the western side, and has lived there since 1969/70. She says there have always been ‘Private Road’ signs up and that the routes used to be much narrower. She does not mind walkers going through but does not want vehicles as they already have parking problems. Mrs Baker
states that the public have only ever had pedestrian access to the river. The path behind numbers 20 to number 8 Thames Street was a small footpath very frequently blocked by boats and was not for general public use.

3.5 Mike Pegram of M Pegram and Associates, 12 – 14 Thames Street has been freeholder of the property bounding the alleged route since 1997 and has lived in Sunbury since 1956. He states there has been free access to the claimed routes.

3.6 Mr and Mrs Hayes of 10 Thames Street bought their house in 1979 from Horace Clark, the original owner of the boatyard and holiday business. The house was the original residence of the boatyard owners. They and their neighbours accessed the rear of their properties by car over the claimed route A – B – E – D and vice versa, establishing private rights which have now been recorded in the deeds of their properties. Yellow lines have been painted at some time between D – E to discourage people parking there. It is not known who painted them. Mr Hayes said the boatyard business closed 20 years ago and confirmed there has always been public pedestrian access to the river.

3.7 Mr J Bartlett bought Kingfisher House and half the western end of the track between points A - B and approximately 30 metres east of point B in 2014. He states the road is used to serve the rear of some properties on Thames Street and Mr Sheppard’s house as a private right of way only. Mr Bartlett claims the route has never been a public right of way and is not used as a public right but only for the adjoining owners to reach their properties. He wishes to keep the telegraph pole at the side of the track on his land, to ensure larger vehicles cannot use the private roadway at any time.

4. ENVIRONMENT AGENCY

4.1 The Environment Agency is the navigation authority for the freshwater River Thames by virtue of being the current statutory successor to the Conservators of the River Thames (“The Conservators”). As recited in the preamble to the Thames Conservancy Act 1857, the Mayor, Commonality and Citizens of the City of London (“The City Corporation”) claimed to exercise rights of ownership on the bed and shores of the River Thames between Staines- upon-Thames to the west and Yantlet in Kent. Under section 50 of that Act, all the estate, right, title and interest of the City Corporation in the bed and shores of the Thames was transferred to the Conservators of the River Thames (now the Environment Agency). They are concerned to preserve existing public landing and river access points.

4.2 The claimed routes run partly over riverbed land reclaimed from the river in the 1860s. The upper eastern section between D – E has double yellow lines on the ground suggesting it has been treated as part of the highway network in the past although it is not included in the County’s List of maintainable streets. There is a domestic notice outside one property saying “Private Parking” and not claiming that the road itself is private.

4.3 In 1967, the Conservators sold off the land running east-west (points B - E) to the boatyard proprietor Mr H C R Clark. This sale was reported to the Conservator’s Board Meeting (13 February 1967). It was reported that an external valuation of the land had been assessed at (only) £68.10s 0d in the circumstances including that...“it would appear that the public have acquired
certain rights over the land, possibly with vehicles, although no formal dedication has ever taken place”. The Environment Agency have stated that “the general public had been driving vehicles through that corridor of public land for some considerable time (i.e. prior to 1967) without there having been any notice or other form of challenge by the Conservators, as landowner”.

4.4 The Environment Agency, who own part of the land between points B - C, consider that that section is a public footway only and has not been used by vehicles.

5. MAP EVIDENCE

5.1 The routes do not appear on the Definitive Map or in the Definitive Statement.

5.2 The Ordnance Survey maps of 1896, 1914 and 1958 show the routes in the positions they are today.

5.3 In the absence of any conclusive documentary evidence showing public rights the claim must rely on user evidence either by statute or common law.

6. HISTORIC EVIDENCE

6.1 The ‘Lower Sunbury Conservation Area Preservation and Enhancement’ document produced by Spelthorne Borough Council dated November 1992 contains various references to The River Thames and access to it. In the 19th century, visitors to Sunbury were attracted by the recreational boating facilities and the views both towards and from the Thames.

6.2 “Small areas of public access to the river occur immediately to the west and east of Turks Boatyard. The former is at present a rather overgrown area but it is potentially very attractive. It includes a horse chestnut tree, a seat and steps to the river. Between Turks Boatyard and Monksbridge, a public walkway leads to a paved area by the river with a river mooring and an old city tax post.” (s.2.15).

6.3 “From the river the Turks site is a pleasant mixture of timber shingled buildings, boats and an important slipway, with large recreational boats available for hire.” (s. 2.20). “There are small areas of riverside open space to either side of Turks Boatyard. To the west, clearance of an overgrown area and the replacement of a seat are needed to enhance a potentially very attractive spot opposite Sunbury Lock. To the east, the lane to the side of Monksbridge has been improved; two litter bins and a seat have been installed. The seat and litter bins are still in place today. Some further clearance and ongoing maintenance is needed to the planted area” (s.3.16).

6.4 “It is considered desirable where such opportunities may arise, to increase levels of access to the river and these will be pursued where redevelopment proposals come forward or access can otherwise be negotiated”. (s.3.19).

6.5 Spelthorne BC Policy EV4 states “The Borough Council will seek to protect and enhance the views of the River Thames....”
6.6 All of the above references add weight to the use by the public of the routes; from access for coal and wine deliveries, access to the former boatyards for recreational boating, and the provision of seating and litter bins for public use.

7. COAL AND WINE TAX POST

7.1 The above 1992 document also refers (s. 2.4) to the coal and wine tax post dated 1861 situated by the river in the lane to the south of Monksbridge. It says the post “is an important reminder of the previous use of the river and marks the place where duty was payable for the movement of those goods. (s.2.12) states that “the old passageways.....alongside Monksbridge.....which were used to bring goods to and from the river also form important elements of the character of the area. They still provide important pedestrian routes today.” The post is statutorily listed – “Three foot high post of 1861 with City of London shield.” It was repainted by the British Trust for Conservation Volunteers in September 1992.

7.2 As far as the Environment Agency is aware, no other landing place in Sunbury has one, nor ever had one. This implies that in the 1860s when these posts were set up all around the edge of London, this public landing place at Sunbury was a recognised entry point into the area for waterborne goods. They believe the tax post is extremely strong evidence of the lane itself having been a public lane and an officially recognised transport route in the 1860s. Until recently there were some concrete bollards in place for a few decades just south of point E that would have prevented vehicular use for a while. It is not known who put them in or removed them. However any historical rights prior to the erection of the bollards would still exist.

8. PUBLIC BYWAY RIGHTS

8.1 Three people claim vehicular use of the routes. Mr Hayes (3) used them to access the rear of his property. He has already established a private vehicular right recorded in his deeds. Mr Hayes would not in any case have been using all the routes, which would not have included the two spurs to the river. Mr Watts (5) used a vehicle to gain access to his boat mooring and as access to the side gate of Monksbridge for deliveries. Mr Wills (6) used them as a vehicular access to Turks boatyard and as a through route.

8.2 Although the application is to record the routes as BOATs it is considered that there is insufficient evidence of vehicular use. Mr Hayes has already established a private right, leaving only two claimants. Had there been sufficient evidence then sections 66 and 67 of the Natural Environment and Rural Communities Act would have restricted the ability of the public to acquire and then record new public vehicular rights.

9. OPTIONS:

9.1 The Committee may agree or disagree with the officer’s recommendation that footpath rights have been acquired. Alternatively, they may decide that the evidence submitted shows that the routes should be of a different status to that recommended. Decisions can only be made on the basis of the evidence available. The recommendation is based upon the evidence submitted and interpreted under the current legislation. Matters such as convenience, amenity, security or safety are irrelevant (see Annexe B).
9.2 Where the County Council decides not to make an order, the decision can be appealed to the Secretary of State. If such an appeal resulted in a Public Inquiry the County Council would normally take a neutral stance.

**10. CONSULTATIONS:**

10.1 Spelthorne Borough Council, The Ramblers, Cyclists Touring Club (CTC), British Horse Society, Tim Evans (County Councillor), The Open Spaces Society, Richard Walsh (County Councillor) and Legal Services have all been consulted on the application.

10.2 Mr Meek of The Ramblers was unable to offer any relevant information about the history of the route. John Brooks, Head of Planning at Spelthorne Borough Council confirms the statements set out in the 1982 Enhancement Plan and what appears to be a very long established public access to the riverside via the two footpaths either side of what was the Turks boatyard site. In respect of the connecting ‘roadway’ between the two footpaths, the way through appears from maps to be long established but the Council is unable to verify whether a ‘right’ of public access exists. No other responses have been received.

**11. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:**

11.1 The cost of advertising a Map Modification Order would be approximately £1,200, which would be met from the County Council’s Countryside Access budget. If objections are received and a Public Inquiry held, additional costs of around £4,000 will also be met from the same budget. Most costs are fixed by our duties under Schedule 15 of the WCA 1981.

**12. EQUALITIES AND DIVERSITY IMPLICATIONS:**

12.1 There are no equalities and diversity implications. In any event these are irrelevant factors under the current legislation.

**13. LOCALISM:**

13.1 The recording of public footpath rights on the DMS would safeguard the routes for the future providing valuable recreational access to the River Thames in accordance with Spelthorne BC Policy.

**14. OTHER IMPLICATIONS:**

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15. HUMAN RIGHTS ACT 1988:

15.1 Local Authorities are required to act to uphold European Convention rights which are now enforceable in British courts as a result of the Human Rights Act 1988. Primary legislation, of which the WCA 1981 is an example, may require the County Council to act in a different way. While the Council must interpret primary legislation in a way that is compatible with Convention rights, that duty does not apply if the County Council could not have acted differently. In this instance it is first necessary to consider whether the action recommended to members touches on a Convention right. The making of this order may affect the rights of the landowner/occupier under Article 8 of the Convention, the right to a peaceful enjoyment of one's possessions. The Act makes it clear that such rights may only be interfered with in a way that is in accordance with the law. Here the action by the County Council as surveying authority is prescribed by law as described in **Annexe B** of this report. As such the recommendation to Members is not considered to be in breach of the Act.

16. CONCLUSION AND RECOMMENDATIONS:

16.1 Any decision must be made on the legal basis set out in **Annexe B** to this report. The only relevant consideration is whether the evidence is sufficient to raise a presumption that a public right of way exists. Other issues such as security, privacy, safety or convenience are irrelevant.

16.2 Under Section 53 of the WCA 1981, “the authority shall make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way not shown on the DMS subsists or is reasonably alleged to subsist over land in the area to which the map relates”.

17. STATUTORY TEST

17.1 Section 31 of the Highways Act 1980 states that:

1) “Where a way over any land other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

2) The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by a notice…or otherwise.”

**Calling into question**

17.2 It is necessary to establish under Section 31 when the public’s use was first brought into question and whether sufficient time has passed (20 years) since any previous challenge. Section 31(7A) of the HA 1980 provides that an application made under Schedule 14 of the WCA 1981 can be taken as a
'calling into question'. In this instance the 20-year period must rely on the making of the Schedule 14 application by Mr Wills on 30 March 2012. The period in question therefore is 1992 – 2012.

17.3 Mr and Mrs Sheppard who owned the section B – E for 10 years have stated that they turned away vehicles attempting to drive through but did not prevent walkers. It appears there have not been any other attempts by landowners during the relevant 20-year period to prevent public footpath use.

Public use

17.4 Section 31 provides no minimum level of user for the establishment of a public right of way. Instead a route must have been used by a sufficient “number of people who together may sensibly be taken to represent the people as a whole/ the community in general”. It is not necessary for all, or indeed any, of the claimants to have used the route for the whole 20 year period but the cumulative effect must be considered. In this instance all six claimants used the route for the whole of the 20 year period. This level of use during this 20 year period meets the statutory test, therefore raising the presumption that the routes had been dedicated as public footpaths.

Use ‘As of Right’ or ‘By Right’

17.5 Under the legislation use of the way must have been ‘as of right’, which means without force, secrecy or licence. It is not necessary for the user to have a belief that their use is ‘as of right’. Mr Hayes of 10 Thames Street is the only claimant using the route to access the rear of his house on foot and in a motor vehicle. He states that he has a private right in his deeds to use the roadway. However, he states that he also used the route for leisure purposes. When exercising a private right that use may not have been public but with permission (i.e. by right). Mr Wills used the route to access his boat mooring. Others would have driven and parked to access the Turks Boatyard to hire boats and were therefore there by permission of the landowner.

17.6 There appears to be nothing within the Highways Act 1980, case law or Government guidance which supports the conclusion that use by those who are accessing adjacent properties are necessarily exercising private rights ('by right'). That said, it is accepted that, if any of those properties can be explicitly shown to have the benefit of a private right over the claimed route then none of the use associated with that property would be ‘as of right’.

17.7 In the circumstances it has been concluded that there is insufficient evidence for use in motorised vehicles or on bicycles to give rise to the acquisition of public byway rights. However, it is considered that public footpath rights have been acquired by virtue of section 31 of the HA 1980 and at common law (see below). A legal order should be made to add the routes shown on Drawing no. 3/1/86/H16 to the DMS.

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Page 9
Lack of intention to dedicate

17.8 A sign saying ‘Private No Through Road Access Only’ has been at the entrance to the boathouse for approximately 10 years. Mr and Mrs Sheppard bought all of the former boatyard area of land next to the river ten years ago, including the majority of the middle section of the track. It is not known when the sign was first put up but it was in place when they purchased the land. The wording of it is in any case unclear and would suggest that it relates to access by motor vehicles and not those on foot. Mr Sheppard has confirmed that he has never turned anybody away walking through, but had turned away vehicles. Mr and Mrs Sheppard said it was nice for people with dogs and kids on bikes to be able to walk through and access the river. They claim that at one stage it became a bit of a rat run for vehicles if the traffic was slow on Thames Street. Mr Sheppard had filled in pot holes over the years but left a telegraph pole in situ jutting out to try and discourage public vehicular use. Originally there had been no vehicular access to the back of properties in Thames Street but over the years private rights of access have been established and recorded in the property deeds.

18 COMMON LAW

18.1 An inference that a way has been dedicated for public use may also be drawn at common law where the actions (or lack of) by the landowner indicate they intended a way to be dedicated as a highway and where the public have accepted it. Dedication may be express or implied from evidence of use by the public and of acquiescence to that use by the landowner. The period of use required to give rise to dedication at common law has never been defined and will depend upon its own facts.

18.2 The historical use of the tracks by pedestrians to access the river for recreational purposes would have given rise to common law dedication. In addition the placing of the coal and wine tax post in the 1860’s would suggest public access for commercial purposes. When The Conservators sold the land in 1967 they stated that “it would appear that the public have acquired certain rights over the land...” (see s.4.3 above).

18.3 Therefore notwithstanding the view that rights have been acquired under section 31 of the Highways Act 1980, the County Council would also submit that, taken together, the facts imply that the landowners have been willing to dedicate the route as a public right of way.

19. CONCLUSIONS

19.1 In light of the above, it is the officer’s view that pedestrian rights have been acquired over the routes under section 31 of the Highways Act 1980. Notwithstanding this, it is also argued that rights have also been acquired at common law.

19.2 This being the case the officer would submit that it can be reasonably alleged that rights have been acquired and that the routes should be recorded on the Definitive Map and Statement for Surrey as public footpaths.
20. WHAT HAPPENS NEXT:

20.1 If Committee decide that an order should be made and objections are maintained to that order, it will be submitted to the Secretary of State for confirmation.

20.2 If Committee decides that no order be made, the applicant will have opportunity to appeal to the Secretary of State for Environment, Food and Rural Affairs against this decision.

20.3 If the Committee resolution is different to the officer’s recommendation the reasons and evidence for the decision should be recorded. This will explain the Council’s actions should the matter proceed to Public Inquiry or appeal.

20.4 All interested parties will be informed about the decision.

Lead Officer
Daniel Williams, Countryside Access Officer, Tel. 0208 541 9245

Contact Officer:
Debbie Prismall, Senior Countryside Access Officer Tel. 020 8541 9343

Consulted:
See Section 10.

Annexes:
A Drawing No. 3/1/86/H16
B Legal background
C User evidence summary

Sources/background papers:
File ‘CP550’ including all relevant correspondence and documents can be viewed by appointment at our Merrow Offices.
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Alleged Public Rights of Way, Sunbury
Between River Thames and Thames Street

Alleged Footpath 83 shown:
Distance A-B-C: 43m

Alleged Footpath 84 shown:
Distance B-E: 70m

Alleged Footpath 85 shown:
Distance D-E-F: 73m
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Map Modification Orders - General

The National Parks and Access to the Countryside Act 1949 placed a duty on all Surveying Authorities in England and Wales to produce a definitive map and statement, indicating and describing public rights of way within their areas. The ‘49 Act also required Surveying Authorities i.e. County Councils, to keep their definitive map and statement under periodic revision. The Wildlife and Countryside Act 1981 completely changed the way in which the definitive map and statement is updated. Under this Act Surveying Authorities have a duty to keep their map and statement under continuous review.

Certain specified events can trigger that process and one of these is an application under Section 53 of the Act for a map modification order (MMO). Section 53(5) enables any landowner, occupier or user to apply for a Map Modification Order to modify the definitive map. Landowners and occupiers may believe for example that a right of way should never have been shown on the definitive map at all, or is shown on the wrong line or that its status is incorrectly shown, for example, as a bridleway instead of a footpath.

Claims may also be made for routes to be added on the basis of evidence from historical documents or of evidence of public use, either for a continuous period of 20 years, as provided for by the Highways Act 1980 (s31) or for a shorter period under common law.

Both at common law and under Section 31 of the Highways Act 1980 the public’s enjoyment of the way must have been “as of right” in order to form the basis of implied dedication. “As of right” was interpreted in Merstham Manor v Coulsdon and Purley UDC (1937) as acts done openly, not secretly, not by force and not by permission from time to time given. The House of Lords has held in R v Oxfordshire CC ex p Sunningwell Parish Council (1999) that subjective state of mind of the user does not have to be proved. Users over a long period may have been “subjectively indifferent as to whether a right existed”.

Deciding who “the public” are can sometimes be difficult. In general it should be people other than those working for the landowner(s) concerned or who had the permission or licence of the landowner(s) to use the route. The period of 20 years is counted back from the date on which the public’s right to use the way was first brought into question or from the date at which an application is made to modify the Definitive Map and Statement. In order to bring the public’s right into question, the landowner must challenge it by some means sufficient to bring it home to the public, for example, through the erection of a fence or locking of a gate across the way, however long ago that date was.
Statute

“Section 31 of the Highways Act 1980 provides that the claimants’ evidence must show that the route has been actually enjoyed for a 20-year period. The use must be without force, without secrecy and without permission”.

Although 20 years uninterrupted use by the public establishes a presumption that the way has been dedicated to the public, this can be contradicted by evidence showing that the landowner did not intend to dedicate public rights during that time. Evidence of interruption of the public’s use of the way, would have to be shown to have been both effective in preventing public use and clearly known to the public. The turning back of the occasional stranger will not be a sufficiently positive act - at least where the way continues to be used by locals. Notices clearly displayed and maintained on the way, indicating that it was private, or plans deposited with the surveying authority or its predecessors can prove sufficient evidence of an intention by an owner not to dedicate. Section 31(6) of the Highways Act 1980 enables landowners to protect themselves against claims based solely on use by depositing a map, statement and statutory declaration with the surveying authority showing which rights of way they acknowledge to be public on their land.

It is not possible to claim a route by presumed dedication over Crown Land such land being exempt from the provisions of the Highways Act 1980. Byelaws for some National Trust Land and other open spaces may also prevent the acquisition of rights.

Under Section 53c (i-iii), documentary evidence alone, may be sufficient to establish the existence of public rights and however old the document, the rights recorded will still exist unless there is evidence of a subsequent legally authorised change.

In May 2006, the Natural Environment and Rural Communities Act was brought into commencement. The main effect of sections 66 and 67 of this act was to significantly curtail the scope for recording further public rights of way for mechanically propelled vehicles (MPVs) on the definitive map and statement. This was done in two ways. Firstly, any existing unrecorded public rights of way for MPVs (with certain exceptions) were extinguished, so that they cannot then be added to the definitive map and statement as byways open to all traffic (BOATs). Secondly, the act also ensures that no further public rights of way for MPVs can be acquired unless expressly created or constructed. Typically, where such rights had been acquired but were thereafter extinguished, this results in a restricted byway.

Common Law

A highway is created at common law by the dedication by the owner of a right of passage across his land for the use by the public at large coupled with acceptance and use by the public as of right. Dedication may also be inferred at common law where the acts of the owner conclusively point to an intention to dedicate. In Poole v Huskinson (1843) it was held that “2 things to be made good, that the user has been sufficient in is duration and character and that the presumption then arising has not been rebutted. The length of user evidence is also important but there is no fixed minimum or maximum period of use which
must be proved in order to justify an inference of dedication. Under common law it is possible to claim a route by presumed dedication over Crown Land.

Schedule 14 Applications For Definitive Map Orders
The procedures for the making and determination of an application are set out in Schedule 14 of the Wildlife and Countryside Act 1981. Anyone making an application must serve notice on every owner and occupier of land affected by the application. In cases of difficulty in tracing the owner or occupier, the authority has the power to direct that a notice be placed on the land instead. The procedures include the right for applicants to appeal to the Secretary of State for the Environment Food and Rural Affairs against the surveying authority’s refusal to make an order. In such cases the Secretary of State can direct the authority to make the order even when the authority considers the evidence does not support the making of the order.

Once the authority has received the certificate of service of notice it has a duty to investigate the application and consult with every local authority concerned, i.e. Borough, District, Parish/Town Council. The authority should make a decision on the application as soon as reasonably practicable. Where the authority has not come to a decision within 12 months of receiving an application, the applicant can appeal to the Secretary of State for the Environment Food and Rural Affairs who can direct the authority to determine it within a specified time.

An authority can act on evidence without a Schedule 14 application being made and should do so on discovery of relevant evidence. There is no requirement to investigate the claim within 12 months and no right of appeal to the Secretary of State for the Environment Food and Rural Affairs in these cases.

Order-making procedure
If it is established that, on the balance of probabilities, public rights have been acquired, a MMO is published and advertised on site and in a local newspaper. If no objections are received the order can be confirmed by the County Council. If there are unresolved objections it must be referred to the Secretary of State who will probably decide to hold a Public Inquiry to resolve the matter.

If the authority has been directed by the Secretary of State to make a MMO after it has decided not to do so and objections are made which result in a Public Inquiry being held, the authority may adopt a neutral stance or oppose the order.
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ANNEXE C

Bar chart of alleged public rights of way between Thames Street and the River Thames, Sunbury - CP550

<table>
<thead>
<tr>
<th>No.</th>
<th>Title</th>
<th>Name</th>
<th>Period of Personal Use</th>
<th>Foot</th>
<th>Foot/Bike</th>
<th>Foot/Bike/Car</th>
<th>Car</th>
<th>Car/foot</th>
<th>Bike (or Horse)</th>
<th>bike/car</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr</td>
<td>David Banks</td>
<td>1990 - 2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Mrs</td>
<td>Colleen Cuthbert</td>
<td>1977 - 2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Mr</td>
<td>Robert Hayes</td>
<td>1982 - 2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Mr</td>
<td>Joseph Scott</td>
<td>1980 - 2012</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>5</td>
<td>Mr</td>
<td>Paul Watts</td>
<td>1975 - 2012</td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>6</td>
<td>Mr</td>
<td>Chris Wills</td>
<td>1985 - 2012</td>
<td></td>
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</tbody>
</table>
SUMMARY OF ISSUE:

An application has been received from Network Rail to extinguish Public Footpath No. 18 Staines under section 118A of the Highways Act 1980 on safety grounds. Fifty-six objections have been received. This report seeks a decision to make a legal order to extinguish the footpath. Network Rail has offered to fund improvements to one of the alternative routes.

The officer’s view is that an extinguishment order should be made.

RECOMMENDATIONS:

The Local Committee (Spelthorne) is asked to agree that:

(i) An extinguishment order is made under section 118A of the Highways Act 1980 as shown on Drg. No. 3/1/85/H32

(ii) If objections are received and maintained to the order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

REASONS FOR RECOMMENDATIONS:

The application has been made by Network Rail on safety grounds. The Council has powers to make an extinguishment order where it appears expedient in the interests of the safety of members of the public using or likely to use a crossing. This particular crossing has been assessed by Network Rail as high risk on the grounds of deficient sighting of approaching trains and that background noise may mean train horns are not audible. There was a fatality on the crossing in April 2008.
1. INTRODUCTION AND BACKGROUND:

The Application

1.1 Network Rail has applied to extinguish Public Footpath No. 18, Staines under section 118A of the Highways Act 1980 on safety grounds. The footpath commences at Moor Lane at point A on Drg. No. 3/1/85/H32 (attached at Annex A) and passes over a level crossing between points B – C before joining public footpaths nos. 17 and 19 on Staines Moor at point D. The total distance A – B – C - D is 187 metres. It is proposed to extinguish the whole length of the footpath so that cul de sac routes are not left on the Rights of Way Definitive Map either side of the crossing. This could cause confusion for walkers not familiar with the area with signs pointing to a crossing that is unavailable with possible trespass implications. The land either side of the crossing is owned by Staines Commons Limited. Although they have been written to no response has been received to date. Staines Moor is managed by Spelthorne Borough Council, in partnership with the Moormasters and other community organisations. It is registered common land with Open Access rights and is a Site of Special Scientific Interest (SSSI). There are no buildings or other premises on it.

1.2 The level crossing is mainly used for leisure purposes to gain access to Staines Moor. Network Rail collected census data during a 9-day survey as part of a re-signalling project. They estimated that the level crossing is used by 2 to 6 pedestrians a day during the winter, dependent on weather conditions. This increases during the spring and summer months to an average of 12 to 20 per day. The winter data is estimated on knowledge of the conditions on Moor Lane and on the basis that it floods making it impassable at certain times. They consider the existing path has limited accessibility and is unsuitable for mobility impaired users. This is due to the path not being made up along its entire length, kissing gates at the level crossing, and the approaches to the railway.

1.3 Highways Act 1980 section 118A

(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, otherwise than by a tunnel or bridge, should be stopped up.

(2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way (a) on the crossing itself, and (b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way (whether or not other rights of way also subsist over it).

(3) An order under this section is referred to in this Act as a ‘rail crossing extinguishment order’.

(4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless they are 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.

(5) Before determining to make a rail crossing extinguishment on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards, any expenses which the council may incur in connection with the erection or maintenance of barriers and signs.

Expediency

1.4 The requirement in the legislation is for the County Council to be satisfied as to the expediency of making the order in the interests of safety of members of the public. ‘Expediency’ in the Oxford Dictionary is defined as ‘suitability to the circumstances or conditions of the case’. Network Rail has identified the level crossing as high risk, as explained below, and following examination of the evidence it is considered expedient that an order should be made.

Safety concerns

1.5 Network Rail is currently running an investment programme to improve safety and reduce the risk wherever the public highway meets the railway. Part of the campaign is to seek the opportunity to completely remove the risk to members of the public from coming into contact with high speed trains through the closure or diversion of level crossings. This particular footpath has been identified as high risk with safer alternatives of an existing bridge to the north and a bridge and subway to the south east. Network Rail state that level crossings are only safe when used correctly. Incorrect use can be either intentional or accidental, but both can result in serious consequences for the user. Accidental misuse can be caused by a lack of awareness such as in children or young people, or time taken to cross which is increased for those who are mobility impaired or encumbered, such as elderly people. Network Rail is committed to improving level crossing safety but is ultimately unable to control how individuals use them.

1.6 Network Rail uses a complex quantitative process called the ‘All Level Crossing Risk Model’ (ALCRM), to assess all risks at all of its level crossings. These risk assessments help in the decision making process; to then pursue closure or to invest in additional safety measures if closure cannot be achieved, such as on a public road or where there are no suitable alternatives available. This risk assessment process was independently reviewed for accuracy before it was introduced in 2007 and it has been audited internally and by the Office of Rail Regulation (ORR). The ORR is the independent safety and economic regulator for Britain’s railways. Their policy for level crossings states that "...Risk control should, where practicable, be achieved through the elimination of level crossings...."

1.7 The assessment process considers amongst other things the type of crossing, how many people use it, available sighting for users, whether there are vulnerable and or infrequent users, the frequency and speed, and different speeds of train services. The resulting score provides a normalised figure for
risk and consists of a letter and a number. The letter represents the level of risk of a fatality to an individual crossing user, where A is the highest risk and M is the lowest risk. The number represents the collective level of risk that may include, for example, train crew and or passengers, as well as those using the crossing. The highest risk crossings are those which score A, B or C for individual risk and 1, 2 or 3 for collective risk.

1.8 The last risk assessment for the Footpath no. 18 crossing was carried out on 29 January 2013. The crossing scored a rating of C4, which comprises a high individual risk on the A – M scale. The highest risk at this particular crossing is of a fatality occurring. It is on a double track section of line with a maximum speed of 60 mph in both directions. The key risk drivers are:

- Deficient sighting of approaching trains
- Ineffective whistle boards
- Background noise

At line speed, the sighting of approaching trains at the level crossing is insufficient from the decision point due to the presence of permanent structures. Accordingly, an aural warning is given by whistling. Other safety concerns have arisen through environmental factors, namely the proximity of the M25, A30 and Heathrow airport, all of which contribute to background noise. This means that pedestrians may not be able to hear the whistles at certain times of the day and the sound of a train approaching is drowned out until it is within a few seconds of the crossing. There has been one fatality involving a train, which occurred in 2008. The pedestrian appeared to slip, fell to the ground and was unable to avoid being struck by the approaching train. In the Rail Accident Investigation Branch report (27/2008) into a fatal accident at the Moor Lane footpath crossing dated 16 April 2008, the angle relative to the railway of the south-eastern approach path, the relative quietness of the combination of a modern train and track and the level of background noise at the crossing were all identified as contributory factors. Her companion who survived the incident did not recall hearing a warning horn, although the on-train data recorder confirmed that it was used appropriately by the driver. The Rail Accident Investigation Branch (RAIB) suggested closure as an option to mitigate the safety risks. The witness stated that neither she nor the deceased heard the whistle board. Following the accident Network Rail applied a non-slip surface to the crossing, reduced the flange way gaps in the up line, and repainted the white lines along the edges of the crossing.

1.9 The RAIB Report, amongst other factors, discusses the visibility of approaching trains. It states “For a person approaching the crossing from the south-west side, the visibility of trains is limited by, first the vegetation to the right of the approach path, then the disused railway embankment and abutment about 75m away beyond the river bridge, and finally by the railings on the river bridge. By the time the approaching pedestrian has reached a position where all these things are no longer obstructing their view to the right, they are at the fence posts at the end of the approach path, about 1.5m away from the down line, and just past the warning notice, from where they can see trains up to one mile away. At this point, the pedestrian must make a decision on whether it is safe to cross the railway.....A person who is not paying close attention to what they are doing may, because of the direction they are facing when walking, not make the check to the right until they have stepped onto the crossing itself.
The angle of the approach path, and the crossing itself, is a contributory factor in the accident.”

1.10 Following a fatal accident to a child on the line close to the crossing in 2003, the crossing surface was removed and replaced.

1.11 A number of incidents at the crossing have been recorded:

- 02/09/2007 – shopping trolley left on side.
- 29/08/2008 – near miss with a child on the line.
- 18/04/2014 – trespass and vandalism.
- 19/04/2014 – (3 instances captured on camera) trespass and vandalism.
- 22/04/2014 – trespass, vandalism and theft of camera.
- 10/06/2014 – high visibility police patrols (EIU) implemented after reports of trespass.
- 16/03/2015 – trespass and vandalism identified by resident.

Network Rail says that a lot of the incidents at the level crossing have been vastly unreported for a number of reasons. It is not a locally controlled crossing and their attempts at monitoring it were hampered by the fact that their covert cameras were continuously vandalised and in some instances stolen.

Alternatives to closure

1.12 Alternatives to an extinguishment order have been considered by Network Rail including miniature stop lights, a footbridge, subway, and a diversion/creation order with an additional footpath route as compensation.

(i) Miniature stop lights (MSL) - may be possible but it is considered that they would be an ineffective safety measure. These systems still require the attention and adherence of users and may be ignored by children and regular users. They would still necessitate controlled crossing over the railway on the level and would not be a physical barrier to somebody being on the level crossing when a train is approaching. MSLs would cost in the region of £350,000 - £500,000 for a 30-year lifespan.

(ii) Footbridge - Network Rail has carried out a cost benefit analysis for a stepped footbridge. The bridge fails the analysis and cannot be justified due to the presence of alternative routes within close proximity to Open Access land. Another bridge approximately 550 metres away from the main entrance footbridge along Moor Lane would in Network Rail’s view be excessive. Their estimate of costs is attached at Annexe B. It does not take into account land purchase or any compulsory purchase for common land. The land under the footpath sits in the floodplain of the River Colne. The Environment Agency has identified the land as liable to flood. There is a 1 per cent chance (1 in

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100) or greater chance of flooding happening each year. This would mean that any bridge would have to have adequate foundations.

(iii) Subway – this option was ruled out by Network Rail at a very early stage in their investigations. This was due to a number of reasons; flood risk, risk of anti-social behaviour, costs are generally at least 3 times as much as a bridge. Also the risk of embankment slides and the complexity of subways mean that generally Network Rail will always go over the railway rather than under it and disturb the embankment.

(iv) Diversion/Creation order to provide an additional route - Network Rail investigated a new footpath creation/diversion route on Staines Moor under section 26/119 of the Highways Act but unfortunately the landowner involved would not consent. As there are already Open Access land rights to walk anywhere on the Moor an additional public footpath would not provide a real benefit to the public. Similarly, there is no other possible diversion route as all entrances onto the Moor are already accessed by public rights of way.

Alternative routes

1.13 The nearest alternative routes to using Footpath No. 18 to access Staines Moor are Bridleway No. 50 and Footpath No. 17 to the north and Footpath No. 21 to the south-east. From point A travelling north, pedestrians are able to use an existing footway alongside Moor Lane for approximately 390 metres, which ends near the railway bridge (just before ‘The Willow’ on the plan). From that point walkers are able to continue along Bridleway No. 50 and then turn south along Footpath No. 17 to point B. The distance from point A to Footpath No. 17 is approximately 600 metres. Alternatively, walkers can continue along Bridleway No. 50 to join other public footpaths to the north.

1.14 Concerns have been raised by objectors about the suitability of walking along Moor Lane where there is no footway from the point near the railway bridge. In response to this Network Rail have been negotiating with the Surrey County Council Highways Engineer for that area and has agreed to fund the construction of a new 75m stretch of footway from the end of the existing footway northwards. It would be 1.0m wide and include a pedestrian drop crossing. Network Rail has also agreed to fund improvements to Footpath No. 17 including replacing the stile with a kissing gate (with the landowner’s approval), refurbishment of the steps, provision of a fence preventing walkers straying onto neighbouring land, and the provision of a dog bin (subject to Spelthorne Borough Council’s approval).

1.15 The County Council’s accident data records show no reported accidents involving cars or pedestrians on the section of Moor Lane from point A to where it passes under the M25.

1.16 From point A travelling south, pedestrians can follow an existing footway to Footpath No. 21, which then enters Staines Moor via a bridge over the railway and a subway under the A30. This involves walking south-eastwards for approximately 550 metres from point A along an existing footway beside Moor Lane to the beginning of Footpath No. 21. That particular footpath forms part of the Colne Valley Way.
1.17 Both of the alternative routes, with the addition of an extension to the footway, are already well used and are easily accessible routes if Footpath No. 18 were to be extinguished.

**Objections**

1.18 Fifty-six objections have been received to the proposed extinguishment. A summary of the objections is attached at **Annexe C**. They relate to: the lack of suitability of the alternative routes, the footpath is an historical route and has been used regularly for a number of years, that it is less expensive for Network Rail to extinguish rather than maintain the crossing and the footpath was there before the railway and an adequate crossing should be provided.

**Comments on the objections**

1.19 The application has been made on safety grounds. Network Rail does not believe that the permanent loss of this crossing on the level would in any way impact on potential users. The existing bridge will link the land on both sides of the railway as well as connecting with the existing footpath network. The footpath section over the crossing has been temporarily closed since April 2014 under the Road Traffic Regulation Act 1984 due to the risk of danger to the public. Network Rail requested the temporary closure as the only reasonable interim solution to ensure there were no other fatalities on the crossing whilst a permanent solution was sought.

1.20 Although the footpath would be deleted from the Definitive Map, all of the land involved, except the railway crossing, is subject to Open Access rights so people will still be able to walk over the land either side of the crossing. Network Rail consider there would be no loss of amenity to users of the footpath as the alternative route over the existing footbridge is fundamentally safer, more family-friendly and should promote more use of the footpaths in the area. Network Rail invited all of the objectors to a meeting on 18 November 2014 to discuss their application. Twelve people attended and from that a site meeting was arranged in December 2014 to discuss possible improvements to the alternative routes. At the meeting Network Rail agreed to fund the improvements as set out in section 1.14 above.

**Works**

1.21 If a Rail Crossing Order were confirmed, the existing level crossing furniture, signs and kissing gates will be removed. The Network Rail boundary will be securely fenced off in order to prevent unauthorised access and trespass onto the railway. New signs will be provided to notify users of the diversion. The removal of the crossing would also result in removal of the whistle boards. Trains will no longer be required to sound their horns, thereby improving the amenity of the area with a direct benefit to nearby residents.

**2. ANALYSIS:**

2.1 The County Council’s Public Rights of Way Priority Statement lists the processing of Rail Crossing Orders to improve public safety as priority 2. The highest priority 1 relates to the statutory duty to keep the Definitive Map and Statement up-to-date.
3. OPTIONS:

3.1 Make an extinguishment order and advertise it in accordance with the statutory procedures. If any objections are received and maintained, submit the order with the objections to the Secretary of State for determination. This is the officer’s preferred option.

3.2 Reject the application. The level crossing would reopen.

4. CONSULTATIONS:

4.1 Notices were placed on site and statutory bodies and other interested parties including Spelthorne Borough Council, The Ramblers, Open Spaces Society and all utility companies were consulted on the application. John Brooks, Head of Planning at Spelthorne Borough Council has raised no objection. An objection from Staines Ramblers together with 55 other objections has been received.

5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

5.1 Network Rail has agreed to meet the costs of making an order and to undertake the works to erect and maintain barriers and signs at the location should the crossing be removed.

5.2 If an order were made and objected to it would have to be submitted to the Secretary of State for determination. If it was decided to hold a Public Inquiry or Hearing the County Council would be liable for costs in the region of £4,000, which would have to be met from the Countryside Access budget. Current legislation does not allow the recovery of Public Inquiry costs from the applicant.

6. EQUALITIES AND DIVERSITY IMPLICATIONS:

6.1 The County Council gives high priority to consideration of equality and diversity issues in its rights of way network. The Rights of Way Improvement Plan for Surrey specifically addresses how the rights of way network can be improved for those who are blind, partially sighted and those with mobility difficulties. The Plan proposes that all improvements should comply with the principle of least restrictive access. The provision of an extended footway along Moor Lane and possible improvements to Footpath No. 17 will provide a suitable alternative route for all users.

6.2 There are no significant equality or diversity implications.

7. LOCALISM:

7.1 The extinguishment would have an impact on the public rights of way network although there are alternative routes providing access to Staines Moor.

7.2 The removal of the level crossing would mean that the whistle boards could be removed, which in Network Rail’s view would improve the amenity of the area.
8. OTHER IMPLICATIONS:

<table>
<thead>
<tr>
<th>Area assessed:</th>
<th>Direct Implications:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime and Disorder</td>
<td>Set out below.</td>
</tr>
<tr>
<td>Sustainability (including Climate Change and Carbon Emissions)</td>
<td>No significant implications arising from this report.</td>
</tr>
<tr>
<td>Corporate Parenting/Looked After Children</td>
<td>No significant implications arising from this report.</td>
</tr>
<tr>
<td>Safeguarding responsibilities for vulnerable children and adults</td>
<td>No significant implications arising from this report.</td>
</tr>
<tr>
<td>Public Health</td>
<td>No significant implications arising from this report.</td>
</tr>
</tbody>
</table>

8.1 Crime and Disorder implications

The closure of the crossing would reduce the likelihood of trespass on the railway.

8.2 The Human Rights Act 1998

Under section 6(1) of the Human Rights Act 1998, local authorities are required to act, as far as possible, in a way that does not breach rights contained in the European Convention on Human Rights. This includes the right to property, under Article 1 of the First Protocol to the Convention. In the officer’s view this proposal has no human rights implications.

9. CONCLUSION AND RECOMMENDATIONS:

9.1 The County Council has powers to make an extinguishment order where it appears it expedient in the interests of the safety of members of the public.

9.2 Network Rail has agreed to fund improvements to an existing alternative route.

The Local Committee (Spelthorne) is asked to agree that:

(i) An extinguishment order is made under section 118A of the Highways Act 1980 as shown on Drg. No. 3/1/85/H32

(ii) If objections are received and maintained to the order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

10. WHAT HAPPENS NEXT:

10.1 If the Committee agree with the recommendation an extinguishment order will be made and advertised in accordance with the statutory procedures.

10.2 All interested parties will be informed about the decision.
Contact Officer:
Steve Mitchell, Countryside Access Team Manager Tel. 0208 5417040
steve.mitchell@surreycc.gov.uk

Consulted:
Mrs Denise Saliagopoulos, statutory utility companies, Spelthorne Borough Council, The Ramblers, Open Spaces Society, Staines Commons Ltd.

Annexes:
A – Drawing No. 3/1/85/H32
B - Network Rail detailed cost analysis
C – Summary of the objections

Sources/background papers:
File 3/1/85 Extinguishment and all its contents including the application, all correspondence and objections, responses to consultations and reports and mapping can be viewed by appointment.
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### Design

<table>
<thead>
<tr>
<th>GRIP 1-4</th>
<th>£110,000.00</th>
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### Design and Design Management

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Design Costs - Form 3 - Impact Protection</td>
<td>£ 50,000.00</td>
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<tr>
<td>Surveys - Including buried services desk-top search</td>
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<td>Buried services - GPR survey</td>
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<td>Condition survey</td>
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<td>Temporary Works Design</td>
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### The Works

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<tbody>
<tr>
<td>Prepare site Flood plain - could be far more</td>
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<tr>
<td>Service diversions/protection</td>
<td>£ 15,000.00</td>
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<tr>
<td>Footbridge foundations Piled solution and extensive foundations needed</td>
<td>£ 80,000.00</td>
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<tr>
<td>Fabricate steel bridge and stairs</td>
<td>£ 200,000.00</td>
</tr>
<tr>
<td>Installation of steel bridge and stairs - crane good access Crane would require large crane mat as works on flood plain</td>
<td>£ 25,000.00</td>
</tr>
<tr>
<td>Hard landscaping</td>
<td>£ 5,000.00</td>
</tr>
<tr>
<td>Lighting If power can be sourced easily</td>
<td>£ 20,000.00</td>
</tr>
<tr>
<td>Decommission crossing</td>
<td>£ 5,000.00</td>
</tr>
<tr>
<td>S&amp;T works</td>
<td>£ 5,000.00</td>
</tr>
<tr>
<td>New fence to location</td>
<td>£ 15,000.00</td>
</tr>
<tr>
<td>Roadworks</td>
<td>£ 5,000.00</td>
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<tr>
<td>Drainage</td>
<td>£ 15,000.00</td>
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<td>Signage</td>
<td>£ 2,500.00</td>
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<td>Impact Protection Measures</td>
<td>£ 200,000.00</td>
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<td>Privacy screening</td>
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### 3rd Party Costs

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<td>New power supply</td>
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<td>Road closure/TM</td>
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<tr>
<td>s119A Diversion Application</td>
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### Subtotal

£ 848,000.00

### Contingency @ 8%

£ 67,840.00

### Sponsor/Project Management costs @ 7%

£ 59,360.00

### Total

£ 975,200.00

### Assumptions

* No allowance for ramps or lifts to footbridge to make it DDA compliant
* There is a suitable area for site compound
* Assumed no power to existing infrastructure
* This estimate does not take into account the requirement for land purchase on either side of the railway or associated legal/survey costs.
* This estimate does not take into account the costs of a legal challenge to a diversion application or compulsory purchase order.
Footerpath 18 (Staines)  Annexe C
Summary of responses received during consultation on proposed extinguishment of right of way.

<table>
<thead>
<tr>
<th>Number</th>
<th>Details of respondent</th>
<th>Summary of comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Martin Matthews</td>
<td>Email</td>
</tr>
<tr>
<td></td>
<td>Staines Ramblers</td>
<td>Opposes</td>
</tr>
<tr>
<td>2</td>
<td>Janet Green</td>
<td>Email and Letter</td>
</tr>
<tr>
<td></td>
<td>Moor Lane Resident</td>
<td>This crossing has been used regularly for years and now you wish to send us on alternative routes. I have used it for 40 years. Many people are still trying to use it not knowing it has been closed. No one is rushing to catch a train or late for work, they are just out for a healthy, leisurely walk so not rushing to beat trains. Alternative route is longer and more dangerous than crossing the railway where there is a long view and only 2 trains every half hour. The alternative route over the bridge at the end of Moor Lane is a real hazard involving 2 blind bends, one extremely dangerous, almost no pavement and unseen view of approaching traffic at the brow of the hill not to mention unable to hear approaching traffic due to motorway noise.</td>
</tr>
<tr>
<td>3</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Regular user of footpath for 47 years. FP8 is an Ancient Right of Way. One of alternative routes is along the Lane and over the railway bridge. This part of the road is extremely dangerous with no proper kerb, two blind bends and is over grown by hedgerow for most part of the year. The traffic at certain times of day can be very busy as there are a couple of businesses at the end of the Lane. Most drivers seem to race along the Lane. With this regard, a 20 mile or even 10 mile, speed restriction sign along the Lane would be appreciated, with some “Slow” signs being erected as well and would be beneficial to making things safer.</td>
</tr>
<tr>
<td>4</td>
<td>Michael Merryman Moor Farm Vice Chairman Staines Moormasters</td>
<td>Ancient Right of Way in existence before railway was built. No other viable access to the Moor, main access point to Moor is ½ mile away. I feel, as do many of the residents of Moor Lane that this crossing should be reinstated with added signs stating “look before you Cross”. Footpath 17 which is situated down the bridle path alongside the M25 has been made impassable by the owners of the land alongside it as they have illegally built a bunding to stop flooding on the flood plain,. To even get to it you need to walk over the railway bridge in Moor Lane, which means walking in the road with cars coming over the brow of the bridge at speed in excess of 30 mph. This is far more dangerous than crossing the railway line.</td>
</tr>
<tr>
<td>5</td>
<td>Aaron Geeves</td>
<td>Letter.</td>
</tr>
</tbody>
</table>
Footpath 18 (Staines)  
Annexe C
Summary of responses received during consultation on proposed extinguishment of right of way.

| Moor Lane Resident | This proposal does not have merit because:
|                   | The right of way now crosses the railway along a very straight stretch of track. Access across this part of the railway line is no more dangerous than any such pedestrian crossing. 
|                   | The argument to close the right of way is not based on public safety but on economic grounds. The argument in aid of public safety was not made when there were accidents at this location many years ago. These accidents were not attributable to the specific location of this railway crossing. It is simply more convenient and less expensive for Network Rail not to have to maintain this pedestrian access. 
|                   | The right of way gives access to an unusually quiet and special part of Staines Moor Common. If this public right of way is extinguished this 100 metre stretch of path will become neglected and its important ecology forgotten. 
|                   | The alternative path is not a suitable or satisfactory alternative. It is almost one kilometre in length, 10 times the length of the section being closed. The historic rights of the small community living alongside Moor Lane will be disrupted, they will no longer have ready access to the Moor. 
|                   | The alternative path runs alongside a fast flowing river and is inherently less safe for children, whether accompanied or otherwise, who would wish to have access to the Moor.
|                   | This public right of way to the historic Common on Staines Moor, first recorded in 1056, has existed for centuries, and long predates the railway itself. Such rights should not be extinguished lightly.

6  Sharon Genovesi  
Moor Lane Resident  
Letter  
See comments at 5 above

7  Elzbieta Czernik  
Letter  
See comments at 5 above

8  P Dorsett  
Moor Lane Resident  
Letter  
See comments at 5 above
### Summary of responses received during consultation on proposed extinguishment of right of way.

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Type</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Ron Dawson</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>10</td>
<td>Bridget Dawson</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>11</td>
<td>Patricia Gowers</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>12</td>
<td>Ellen Davis</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>13</td>
<td>C. May</td>
<td>Letter</td>
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<td>15</td>
<td>P. Casey</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>16</td>
<td>Gabrielle Nelson</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>17</td>
<td>Hayley Brown</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>20</td>
<td>Jane Roche</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>21</td>
<td>Keith Willis</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>22</td>
<td>Amanda Lucas</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>23</td>
<td>J Lucas</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>24</td>
<td>S. Day</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
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</table>
Footpath 18 (Staines)  Annexe C
Summary of responses received during consultation on proposed extinguishment of right of way.

<table>
<thead>
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<td>25</td>
<td>Giovanna Cochrane</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>26</td>
<td>Graham Newport</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>27</td>
<td>Karen Newport</td>
<td>Moor Lane Resident</td>
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<td>See comments at 5 above</td>
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<tr>
<td>28</td>
<td>Tomasz Szubsla</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
<td>See comments at 5 above</td>
</tr>
<tr>
<td>29</td>
<td>Beryl Bowles</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>30</td>
<td>P. Loveday</td>
<td>Moor Lane Resident</td>
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<tr>
<td>31</td>
<td>S.J. Shorey</td>
<td>Moor Lane Resident</td>
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<td>32</td>
<td>Tamryn Thomson</td>
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<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td>33</td>
<td>Cara Boocock</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
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<td>34</td>
<td>David Kessler</td>
<td>Moor Lane Resident</td>
<td>Letter</td>
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<tr>
<td>35</td>
<td>Elsa Barrs</td>
<td>Moor Lane Resident</td>
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<td>P. Johal</td>
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<td>S. Glazier</td>
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<td>I Brunton</td>
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<td>39</td>
<td>Annabel Foreman</td>
<td>Moor Lane Resident</td>
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Footpath 18 (Staines)  Annexe C
Summary of responses received during consultation on proposed extinguishment of right of way.

<table>
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<th>Comments</th>
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<tr>
<td>40</td>
<td>Danny James</td>
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<td>41</td>
<td>Michelle Drinkwater</td>
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<td>Rob Drinkwater</td>
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<td>Jason Brazier</td>
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<td>Chavala Swithenbank</td>
<td>Letter</td>
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<td>Moor Lane Resident</td>
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<td>46</td>
<td>Pauline Perry</td>
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<td>47</td>
<td>Nigel Galt</td>
<td>Letter</td>
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<td>Jennifer Vinson</td>
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<td>Moor Lane Resident</td>
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<tr>
<td>50</td>
<td>Siobhan Ring</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<td></td>
<td>Moor Lane Resident</td>
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<tr>
<td>51</td>
<td>Nigel Cook</td>
<td>Letter</td>
<td>See comments at 5 above</td>
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<tr>
<td></td>
<td>Moor Lane Resident</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>S. T. Bristow</td>
<td>Letter</td>
<td>Object to extinguishment of a right of way which has been enforced since and before the Enclosure Act. The footpath was there before the railway was built and crossing is the result of the railway being built on the cheap, so they should provide adequate crossings for the public. As for the Moor Lane railway bridge to make the public use it to access the Moor is very dangerous - 1. No pavement 2. Blind Bends 3. Very fast traffic</td>
</tr>
<tr>
<td></td>
<td>Local Resident</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Footpath 18 (Staines) Annexe C
Summary of responses received during consultation on proposed extinguishment of right of way.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Vehicles cannot be heard because of motorway</td>
<td>5 Contravenes Health and Safety and my rights.</td>
</tr>
<tr>
<td>53</td>
<td><strong>Earl Gray</strong>&lt;br&gt;Association for the Preservation of Staines Moor</td>
<td>1. The application is in contravention of the Law of Property Act 1925 Section 193</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Network Rail is abusing the Safety Agenda, to reduce costs, legal liabilities and gaining provision for increasing the capacity of the Staines Central to Windsor branch line.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Closure of the level crossing to pedestrians wishing to visit Staines Moor, will significantly increase the risk of them having accidents, due to dangers from heavy goods vehicles and cars, using Moor Lane.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Both nominated access points to Staines Moor necessitate pedestrians using Moor Lane, a congested narrow lane, with on the Southern access, parked cars on the West side, no footpath on the left side and vehicles vying to use the single narrow lane space remaining. [Both Surrey and Spelthorne BC’s are aware of the risk to life of pedestrians and vehicle users using Moor Lane].</td>
</tr>
<tr>
<td></td>
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<td>The Northern access is extremely dangerous due again to heavy vehicular traffic, using a Builders Merchants and scaffold company on a continual basis. No footpath exists on the West side of Moor Lane, and on the East side, NO FOOTPATH EXISTS for approximately 150 yards, of which there is a narrow hump back bridge with barely room for 7 ½ Ton – 30 Tonne vehicles to pass. <strong>THERE IS NO PEDESTRIAN ESCAPE ROUTE.</strong> Only an imbecile would recommend families and children to use the North access. This alternative route is deliberately chosen to reduce visitors to Staines Moor and is tantamount to wilfully placing human and animal life in danger. The Northern access is impenetrable, due to over burden gradient and stile, making push chair access impossible.</td>
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<td>5. Network Rail have a ‘zero risk policy’ with no consideration given to safety of people who will be forced to use alternatives or stop using the Staines Moor. This is in accord with Surrey County Council’s action in agreeing to place a temporary order for closure of the level crossing, without public consultation and the due lawful process for closing a public footpath being carried out.</td>
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<td>6. Footpath 18 prior to designation, has for centuries past, been the main access to the Staines Moor from the Lammas Fields, and prior to the 1848 Staines to Windsor branch line being constructed, was also a cattle drive as well as pedestrians way.</td>
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<td>7. Mitigation following the Temporary Closure has been nonexistent, with little or no practicable deviations or facilities being offered.</td>
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<td>54</td>
<td><strong>Mrs V Whatford</strong></td>
<td>Demonstrates a lack of true care for public safety as the alternative route of Bridleway 50 is more dangerous than the route being extinguished. The pavement on Moor Lane leading to Bridleway 50 is completely overgrown in places or nonexistent, forcing pedestrians onto the narrow road, with dogs on leads, facing traffic which in some cases travel at high speed, over a humped backed “blind bridge” which has no pavement.</td>
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Summary of responses received during consultation on proposed extinguishment of right of way.

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<td>55</td>
<td>Mr E Ireland</td>
<td>Demonstrates a lack of true care for public safety as the alternative route of Bridleway 50 is more dangerous than the route being extinguished. The pavement on Moor Lane leading to Bridleway 50 is completely overgrown in places or nonexistent, forcing pedestrians onto the narrow road, with dogs on leads, facing traffic which in some cases travel at high speed, over a humped backed “blind bridge” which has no pavement.</td>
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<td>56</td>
<td>Mr Freeman</td>
<td>I wish, on behalf of Spelthorne Natural History Society, to object to the extinguishment application in respect of FP18, which we consider to be based on the false assumption that the safety of pedestrians using this crossing is at risk. In fact there has not been a fatal accident or incident at this crossing since Mrs Terri Mansell was tragically killed there on 16 April 2008. The official report on that fatality states that a causal factor was than a non-slip surface had not been added to the crossing in 1998 or when requested by HM’s Railway Inspectorate in 2005. A non-slip surface was provided after the accident. However, this has now been removed and a chain-link fence, topped with barbed wire, has been erected at both ends of the crossing. The fact that The Swan public house, which is opposite the footpath, is now a private residence should be taken into account since the closure means that the number of casual users of the footpath has been reduced considerably.</td>
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