

**SURREY COUNTY COUNCIL**

**LOCAL COMMITTEE (SPELTHORNE)**

**DATE: 23 APRIL 2015**



**LEAD OFFICER: STEVE MITCHELL  
COUNTRYSIDE ACCESS TEAM MANAGER**

**SUBJECT: PUBLIC FOOTPATH NO. 18 (STAINES)  
EXTINGUISHMENT ORDER APPLICATION**

**DIVISION: STAINES-UPON-THAMES**

<p><b><u>SUMMARY OF ISSUE:</u></b></p> <p>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.</p> <p>The officer's view is that an extinguishment order should be made.</p>
<p><b><u>RECOMMENDATIONS:</u></b></p> <p><b>The Local Committee (Spelthorne) is asked to agree that:</b></p> <ul style="list-style-type: none"> <li>(i) An extinguishment order is made under section 118A of the Highways Act 1980 as shown on Drg. No. 3/1/85/H32</li> <li>(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.</li> </ul>
<p><b><u>REASONS FOR RECOMMENDATIONS:</u></b></p> <p>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.</p>

<b>1. INTRODUCTION AND BACKGROUND:</b>
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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 **Annexe 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 187metres. 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

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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:

- 17/09/2003 – child electrocuted. Fatal injuries.
- 02/09/2007 – shopping trolley left on side.
- 16/04/2008 – female struck by train. Fatal injuries.
- 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:**

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

**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.

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**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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