

Regulatory Committee

Dorset County Council



Date of meeting	16 August 2018
<p><u>Local Member(s):</u> Cllr Cherry Brooks - Member for South Purbeck</p> <p><u>Lead Officer(s)</u> Carol McKay, Senior Definitive Map Officer</p>	
Subject of report	Dorset County Council (Footpath 14, Wool at East Burton) Rail Crossing Extinguishment Order 2018
Executive summary	This report considers objections to the Rail Crossing Extinguishment Order and recommends that it be sent to the Secretary of State for confirmation.
Applicant	Network Rail
Impact Assessment:	<p>Equalities Impact Assessment: See Report to the Regulatory Committee December 2017 (attached as Appendix 2)</p>
	<p>Use of Evidence: See Report to the Regulatory Committee December 2017 (attached as Appendix 2)</p>
	<p>Budget: There is no specific statutory provision for charging applicants for the cost of public inquiries and associated expenditure. If the County Council does not send the Order to the Secretary of State for confirmation the applicant may be entitled to a refund of any monies paid for the process to date.</p>
	<p>Risk Assessment: See Report to the Regulatory Committee December 2017 (attached as Appendix 2)</p>
	<p>Other implications: See Report to the Regulatory Committee December 2017 (attached as Appendix 2)</p>

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	Community safety implications: See Report to the Regulatory Committee December 2017 (attached as Appendix 2)
Recommendations	That: (a) The Order be submitted to the Secretary of State for determination; and (b) The County Council takes a supporting stance in the proceedings.
Reason for Recommendation	(a) The extinguishment, which is the subject of the Order, complies in all respects with the law and therefore the Order should be confirmed. As there have been objections to the Order the County Council cannot confirm it itself but may submit it to the Secretary of State for an Inspector to be appointed to consider confirmation; and (b) The County Council has accepted the application and agrees with the proposed extinguishment. Decisions on applications for public path orders ensure that changes to the network of public rights of way comply with the legal requirements and supports the Corporate Plan 2017-19 Outcomes Framework: People in Dorset are Healthy : <ul style="list-style-type: none"> • To help and encourage people to adopt healthy lifestyles and lead active lives • We will work hard to ensure our natural assets are well managed, accessible and promoted. Dorset's economy is Prosperous : <ul style="list-style-type: none"> • To support productivity we want to plan communities well, reducing the need to travel while 'keeping Dorset moving', enabling people and goods to move about the county safely and efficiently
Appendices	Appendix 1 – Dorset County Council (Footpath 14, Wool at East Burton) Rail Crossing Extinguishment Order 2018 Appendix 2 – Report to the Regulatory Committee 7 December 2017 – Application to extinguish Footpath 14, Wool at Darkies Appendix 3 – Extract from the Minutes of the Regulatory Committee Meeting 7 December 2017 Appendix 4 – Letters of objection

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	<p>Appendix 5 – Network Rail Narrative Risk Assessment October 2015</p> <p>Appendix 6 – Network Rail Narrative Risk Assessment January 2018</p> <p>Appendix 7 – Drawing 18/09</p>
Background Papers	<p>The file of the Service Director, Highways and Emergency Planning (ref. RW/P179), which will be available to view at County Hall during office hours.</p>
Report Originator and Contact	<p>Carol McKay Senior Definitive Map Officer Regulation Team, Dorset Highways Tel: (01305) 225136 email: c.a.mckay@dorsetcc.gov.uk</p>

1 Background

- 1.1 On 7 December 2017, the Regulatory Committee resolved to make a Rail Crossing Extinguishment Order in respect of Footpath 14, Wool (see Appendix 3 – Extract from the Minutes of the Regulatory Committee Meeting 7 December 2017).
- 1.2 The Dorset County Council (Footpath 14, Wool at East Burton) Rail Crossing Extinguishment Order 2018 was sealed on 16 March 2018 and published on 29 March 2018 (a copy of the Order is attached as Appendix 1).
- 1.3 As there have been objections to the Order the County Council is unable to confirm it itself; instead it may be sent to the Secretary of State for confirmation. In these circumstances the Secretary of State, through the Planning Inspectorate, may hold a local Public Inquiry at which issues can be explored fully before an Inspector decides whether the Order should be confirmed. Alternatively, at the discretion of the Inspector, the matter may be considered by way of written representations.

2 Law

- 2.1 The relevant law is set out in paragraphs 2.1 to 2.13 of the earlier Report to the Regulatory Committee December 2017 (Appendix 2).
- 2.2 The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 will apply. The County Council may charge an applicant for the costs incurred in making an order, including advertisements. The County Council shall, if asked, refund a charge where, having received objections, the Council fails to submit the Order to the Secretary of State for confirmation without the agreement of the applicant.

3 Representations and objections to the Order

- 3.1 The County Councillor for South Purbeck, Cllr Cherry Brooks, was consulted on the proposals and indicated that she concurred with her predecessor Cllr Peter Wharf's support for the closure.
- 3.2 There have been four objections to the Order, copies of which are included as Appendix 4.

4 Comments on objections

- 4.1 All four objectors query the level of risk at Darkies identified by Network Rail, asserting that it is not dangerous because there is no history of fatalities or incidents at the crossing.
- 4.2 The Ramblers state that having visited the site "The visibility along the sight lines from both north and south of 'Darkies' Crossing ... and in each direction was very good."
- 4.3 Dorset County Council is satisfied with the safety assessments made by Network Rail, which is required to operate within its industry safety standards.

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- 4.4 Network Rail have indicated that there is a high individual risk to pedestrians using this crossing. The risk assessment carried out by Network Rail in October 2015 (attached as Appendix 5) is discussed in paragraphs 1.15 – 1.18 of the earlier Report to the Regulatory Committee December 2017 (attached as Appendix 2).
- 4.5 Network Rail also carried out a more recent risk assessment in January 2018, a copy of which is attached as Appendix 6.
- 4.6 It should be noted that Network Rail are required to be forward-thinking in order to prevent accidents therefore a rail crossing may be assessed as high risk without a history of fatalities. There are no recorded incidents of misuse at Darkies, but both risk assessments score on Network Rail's All Level Crossing Risk Model (ALCRM) is C6 being a high individual risk and high to medium risk overall.
- 4.7 The Open Spaces Society consider the stiles either side of the crossing to be its most dangerous feature.
- 4.8 This comment has been passed to the Senior Ranger for the area. If the Extinguishment Order is not confirmed, appropriate action will be taken and the stile may be improved or replaced.
- 4.9 The Open Spaces Society query Network Rail's figures of usage for the crossing, suggesting that there is a higher level of use of the crossing than the two recent camera surveys indicate.
- 4.10 Dorset County Council is satisfied that the three user surveys carried out by Network Rail have been conducted correctly and the results are accurate. Cameras are installed at the crossing for the duration of the census and the number and type of users are counted.
- 4.11 Prior to submitting the application to extinguish Footpath 14, Wool, Network Rail carried out a camera survey of the crossing in September 2015 which showed an average of 4.25 people per day using the crossing. A survey was carried out in May 2017 which showed that the use of the crossing had increased from 4.25 persons per day to 8.78 persons per day. The results of the surveys carried out by Network Rail are attached as appendices 8 and 9 to the Report to the Regulatory Committee December 2017 (attached as Appendix 2). Network Rail carried out a further 9 day camera survey in January 2018 which showed average use at 9 persons per day (Appendix 6 to this report).
- 4.12 The Open Spaces Society and Mr Blackmore both raise the issue of possible development of the field through which Footpath 14, Wool runs. Mr Blackmore feels that the footpath extinguishment would lead to development in this field whilst the Open Spaces Society believe that any future development would increase the use of Footpath 14 and therefore justify the cost of improving the rail crossing rather than closing it.
- 4.13 This issue is discussed in the earlier Report to the Regulatory Committee December 2017 (attached as Appendix 2).

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- 4.14 Mr Blackmore fears that the closure of Footpath 14, Wool would lead to the closure of other rail crossings including Wool West (Bailey's Drove) and Burton Common (referred to as Seven Stars by Mr Blackmore). These crossings are shown on Drawing 18/09 (attached as Appendix 7).
- 4.15 Network Rail have indicated that Wool West (Bailey's Drove) will be improved and there is no proposal to close this crossing. The planned installation of Miniature Stop Lights at Wool West (Bailey's Drove) is discussed in paragraphs 1.6 – 1.8 in the earlier Report to the Regulatory Committee December 2017 (attached as Appendix 2).
- 4.16 No application has been submitted to Dorset County Council to close the crossing at Burton Common. Any application for a Rail Crossing Extinguishment or Diversion Order is assessed individually against the legal tests, taking into account the level of risk identified by Network Rail.
- 4.17 The Ramblers question whether "reasonable consideration has been given to making the crossing safer for the public" whilst the Open Spaces Society suggest Miniature Stop Lights could improve the safety of the crossing, and that Dorset County Council should consider leaving part of Footpath 14 between C and D as a cul-de-sac route, or investigate diverting the footpath towards Giddy Green Lane. Giddy Green Lane is shown on Drawing 18/09 (attached as Appendix 7).
- 4.18 As discussed in the earlier Report to the Regulatory Committee December 2017 (attached as Appendix 2), Miniature Stop Lights are not considered a viable option at this crossing as they do not fully control the risk.
- 4.19 Also discussed in the earlier report, a cul-de-sac path is not desirable as it creates a fragmented rights of way network and people may be tempted to trespass onto the closed railway if the footpath stops either side of the crossing.
- 4.20 The Secretary of State's Rights of Way Circular (1/09) Guidance for Local Authorities states that
- "Care should be taken to avoid the creation of a cul-de-sac that would encourage trespass on to the railway. Section 118A(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way".
- 4.21 With regards to the possible diversion of Footpath 14, Wool, previous discussions between Dorset County Council and Network Rail considered the possibility of diverting the footpath to link up with Wool West (Bailey's Drove) as this would be the most desirable route in terms of location. However, this is not a viable diversion route because this would require a public right of way being created through third party owned land. There is insufficient land available on Network Rail property.
- 4.22 The diversion suggested by the Open Spaces Society towards Giddy Green Lane was not put forward in earlier discussions and has not been fully investigated. It has been discussed with the Senior Ranger for the area and a

site visit has been carried out. The initial views are that it would provide limited benefit to the public rights of way network as it does not connect with East Burton Road and is in close proximity to the existing route of Footpath 13 which runs from Burton Road to Frome Avenue (see Drawing 18/09 attached as Appendix 7). It would reduce the length of walking along the road by a minimal amount.

- 4.23 A diversion along Giddy Green Lane would also need to be evaluated against the potential impact on the privacy and security of properties along this privately-owned track.
- 4.24 The Ramblers, Open Spaces Society and Mr Blackmore all emphasise that Footpath 14 is a well-used footpath and is an important part of the rights of way network.
- 4.25 Mr Blackmore is concerned that if Footpath 14 is extinguished, East Burton would lose access to Wool.
- 4.26 The Ramblers and Open Spaces Society both discuss the connection that Footpath 14 provides with the unclassified county road opposite its northern end (see Appendix 7). This road in turn links with Footpath 17, Wool which leads north to Bovington and a permissive path east to Woolsbridge.
- 4.27 The Open Spaces Society also states that Footpath 14 is an important part of two circular walks in the area.
- 4.28 It is acknowledged that there is a small loss of amenity value to users of the public footpath by the proposed extinguishment. However there are alternative routes via the crossings at East Burton (a lower risk level crossing) and Wool West (Bailey's Drove), which will be improved by Miniature Stop Lights.
- 4.29 As the footpath has a relatively low level of use, (particularly in comparison with other crossings in the area) the impact of closing it is minimal.
- 4.30 The safety of the alternative route for walkers along East Burton Road is raised by Mr Blackmore and the Open Spaces Society. The Open Spaces Society feel that this route has a higher risk for accident than the rail crossing at 'Darkies' and queries whether a risk assessment has been done.
- 4.31 The safety and convenience of the alternative route for pedestrians in comparison to Footpath 14 is a relevant consideration.
- 4.32 Dorset County Council's Community Highways Team Leader was initially consulted on the proposed extinguishment and raised no objection.
- 4.33 East Burton Road is already well used by walkers as part of the wider network of roads and rights of way. There is a pavement along part of the route.
- 4.34 Dorset County Council is responsible for carrying out maintenance along the road, which includes vegetation clearance to improve sightlines.

- 4.35 Network Rail carried out a Risk Assessment for East Burton level crossing on Burton Road (see Drawing 18/09 attached as Appendix 7) in July 2018. This indicated that there are on average 675 vehicle crossings per day and 108 pedestrians / cyclists using the crossing. Due to the proximity of East Burton level crossing to East Burton Road, it can be reasonably assumed that a similar number of vehicles and pedestrians / cyclists use East Burton Road, (allowing for non-through traffic and for traffic that passes along East Burton Road but bypasses the East Burton level crossing).
- 4.36 The level of pedestrian use would not be significantly increased by the closure of Footpath 14, Wool which has an average of 9 users per day at the latest surveys in May 2017 and January 2018. As East Burton Road is already used by walkers, by those who use Footpath 14, Wool there is no indication that the extinguishment would put people at additional risk.
- 4.37 Dr and Mrs Nellist, owners of the property Southbrook which is next to Footpath 14 between points A and B, use the footpath to maintain the stream that runs along the footpath and to clear vegetation that overhangs their garden. In the event that Footpath 14 is closed, they would like to retain access to the footpath between A and B to maintain their property. They are also concerned that if Footpath 14 is extinguished, vehicles could access the path from point A, posing a security risk to their property.
- 4.38 Dr and Mrs Nellist have been advised that when a public right of way is extinguished, the surface reverts to the registered owner of the subsoil. When the ownership of the subsoil under the public right of way is unknown, there is a rebuttable legal presumption that the owners of the adjoining properties own the land including the subsoil, up to the centre line of the former highway (Footpath 14). The presumption will apply unless there is evidence to the contrary.
- 4.39 In the case of Footpath 14, Wool, there is no registered owner for the section A – B, so if it is extinguished, the owners of Southbrook and Marbrouk would be presumed to own the land up to the midpoint of the footpath. This should enable Dr and Mrs Nellist to access the extinguished footpath between A and B and also take any necessary measures to stop unauthorised vehicular access along the path.
- 4.40 There is no evidence of any unauthorised vehicular use of the Footpath 14, Wool in the past and there is no indication that extinguishment of the path would invite vehicular use.
- 4.41 Should someone provide proof of ownership of the land between A and B in the future, the presumption would be rebutted.
- 4.42 Since Dr and Mrs Nellist have been accessing the footpath to maintain their property for many years, it is possible that they have acquired private rights of access for maintenance purposes, which exist separately from public rights.
- 4.43 Dr and Mrs Nellist were also advised to take further legal advice on this matter as Dorset County Council cannot give advice on private rights or land ownership.

5 Discussion

- 5.1 As objections have been received, the County Council is unable to confirm the Order itself and must either submit the Order to the Secretary of State for confirmation or abandon the Order.
- 5.2 The options now available to the County Council are:
- To submit the Order to the Secretary of State and support the Order (maintaining the position of the County Council to date);
 - To submit the Order to the Secretary of State and take a neutral stance; or
 - To abandon the Order.
- 5.3 Supporting the Order would entail the preparation of a detailed Statement of Case to be submitted to the Secretary of State for consideration. There would also be preparation for and active participation in any subsequent public inquiry which may be held.
- 5.4 If the County Council takes a neutral stance in the matter, copies of all correspondence relating to the case are submitted for consideration, and there is reduced participation in any subsequent public inquiry which may be held.
- 5.5 If the County Council decides to abandon the Order no further action is taken but the applicant may be entitled to a refund of their expenditure to date.
- 5.6 It is recommended that the County Council support the Order, maintaining the previous position of the County Council.
- 5.7 The legal tests for making and confirming a Rail Crossing Extinguishment Order (see paragraphs 2.1 to 2.13 of the earlier Report to the Regulatory Committee December 2017 – attached as Appendix 2) have been met.
- 5.8 The stopping up is expedient in the interest of the safety of members of the public who use, or are likely to use, the path in question. This is demonstrated by the risk assessments carried out by Network Rail.
- 5.9 The extinguishment of both the crossing and the adjacent lengths of path up to the intersection with Footpath 13, Wool to the south and East Burton Road to the north avoids leaving a cul-de-sac path.
- 5.10 As discussed in paragraphs 1.19 – 1.21 of the Report to the Regulatory Committee December 2017 (attached as Appendix 2), alternatives to the extinguishment of Footpath 14, Wool have been considered including a bridge, tunnel, Miniature Stop Lights and diversion. None of these options are feasible and therefore it is considered that it is not viable to make the crossing safe for use by the public.
- 5.11 It is officers' view that the objections do not raise any new issues which were not considered at the Committee's meeting on 7 December 2017.

5.12 The Order will not be confirmed until the following works have been carried out by Network Rail and inspected by Dorset County Council:-

- Remove wooden decking across railway
- Install permanent fencing and signage at points B and C to prevent access onto railway
- Erect additional signage at A and D notifying the public of the extinguishment and alternative routes

5.13 In addition, Dorset County Council will remove fingerposts and waymarks from the route and remove the stile at point D.

5.14 This meets the legal tests regarding arrangements for appropriate barriers and signs.

6 **Conclusions**

6.1 The objections raised remain outstanding; therefore the County Council may either send the Order to the Secretary of State for confirmation or abandon the Order.

6.2 The extinguishment, which is the subject of the Order, complies in all respects with the law and the objections raise no new issues.. Therefore, the Order should be confirmed.

6.3 If the County Council does not send the Order to the Secretary of State for confirmation the applicant may be entitled to a refund of his expenditure to date.

6.4 The County Council has previously supported the application; therefore it is considered that it should take a supporting stance in any further proceedings resulting from the objections to the Order.

Andrew Martin

Service Director, Highways and Emergency Planning

July 2018