

Regulatory Committee

Dorset County Council



Date of meeting	16 August 2018
<u>Local Member(s):</u> Cllr Cherry Brooks - Member for South Purbeck	
<u>Lead Officer(s)</u> Carol McKay, Senior Definitive Map Officer	
Subject of report	Dorset County Council (Footpath 18, Wool at Hyford) Rail Crossing Extinguishment Order 2018
Executive summary	This report considers an objection to the Order and recommends that it be sent to the Secretary of State for confirmation.
Applicant	Network Rail
Impact Assessment:	Equalities Impact Assessment: See Report to the Regulatory Committee 7 December 2017 (attached as Appendix 2)
	Use of Evidence: See Report to the Regulatory Committee 7 December 2017 (attached as Appendix 2)
	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.
	Risk Assessment: See Report to the Regulatory Committee 7 December 2017 (attached as Appendix 2)
	Other implications: See Report to the Regulatory Committee 7 December 2017 (attached as Appendix 2)
	Community safety implications: See Report to the Regulatory Committee December 2017 (attached as Appendix 2)

<p>Recommendations</p>	<p>That:</p> <p>(a) The Order be submitted to the Secretary of State for determination; and</p> <p>(b) The County Council takes a supporting stance in the proceedings.</p>
<p>Reason for Recommendation</p>	<p>(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 has been an objection 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</p> <p>(b) The County Council has accepted the application and agrees with the proposed extinguishment.</p> <p>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:</p> <p>People in Dorset are Healthy:</p> <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. <p>Dorset's economy is Prosperous:</p> <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
<p>Appendices</p>	<p>Appendix 1 – Dorset County Council (Footpath 18, Wool at Hyford) Rail Crossing Extinguishment Order 2018</p> <p>Appendix 2 – Report to the Regulatory Committee 7 December 2017 – Application to extinguish Footpath 18, Wool at Hyford</p> <p>Appendix 3 – Extract from the Minutes of the Regulatory Committee Meeting 7 December 2017</p> <p>Appendix 4 – Letter of objection – Open Spaces Society</p> <p>Appendix 5 – Network Rail Narrative Risk Assessment July 2017</p> <p>Appendix 6 – Photographs of crossing</p>

Background Papers	The file of the Service Director, Highways and Emergency Planning (ref. RW/P193), which will be available to view at County Hall during office hours.
Report Originator and Contact	Carol McKay Senior Definitive Map Officer Regulation Team, Dorset Highways Tel: (01305) 225136 email: c.a.mckay@dorsetcc.gov.uk

1 Background

- 1.2 On 7 December 2017, the Regulatory Committee resolved to make a Rail Crossing Extinguishment Order in respect of Footpath 18, Wool (see Appendix 2 and Appendix 3).
- 1.3 The Dorset County Council (Footpath 18, Wool at Hyford) 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).
- 1.4 As there has been an objection 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 7 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 made no comment.
- 3.2 There has been one objection to the Order, a copy of which is included as Appendix 4.
- 3.3 Following the submission of the objection, representatives from Network Rail and Dorset County Council met with the Open Spaces Society Local Correspondent for Purbeck to discuss the issues raised and to request that they consider withdrawal of their objection.
- 3.4 During the site meeting, two trains passed each other at the Hyford level crossing. Network Rail's Narrative Risk Assessment July 2017 indicates that this occurrence increases the risk of an accident (see 2.6 of Appendix 5).
- 3.5 After the meeting, the Open Spaces Society requested additional information on other lower risk rail crossings in the area. Comprehensive information was subsequently provided by Network Rail although it was emphasised that the Open Spaces Society should consider the legal tests for the Order rather than comparison of Hyford with other crossings.

4 Comments on objections

- 4.1 The Open Spaces Society propose that installation of whistle boards would improve safety at the crossing.
- 4.2 There are no whistle boards associated with the Hyford crossing. However, trains are required to sound their horns if they see someone on the crossing.
- 4.3 Network Rail have indicated that installation of new whistle boards is not an appropriate safety measure at Hyford. Whistle boards are usually installed to compensate for sighting issues only. They would also have a significant adverse impact on lineside neighbours who would be exposed to horns being sounded 136 times for 18 hours a day.
- 4.4 In addition, whistle boards are not generally installed at new locations as they rely on the driver to sound the horn and the footpath user to hear the whistle, which is not always the case as some people listen to music or use their phone whilst using level crossings.
- 4.5 The Open Spaces Society also feel that the step up onto the crossing is dangerous. This is shown in the photographs attached as Appendix 6. In his letter of objection to the Order, the Open Spaces Society Local Correspondent for Purbeck, Mr Ralph Holmes states that he tripped on the step and fell onto the railway line whilst carrying out a site visit at Hyford. He requests action by Network Rail to improve this step.
- 4.6 Network Rail consider that the step does not present any danger to the average, able-bodied user. The application to extinguish Footpath 18, Wool is focused on the safety of members of the public using the crossing, but the step is not identified as a dangerous feature in itself.
- 4.7 Should the Extinguishment Order not be confirmed, Dorset County Council will discuss possible improvements to the step with Network Rail, although it is not considered to pose a high risk to footpath users, particularly given the low level of use of the footpath. The Senior Ranger for the area is satisfied with this suggestion.
- 4.8 The Open Spaces Society's objection also included other issues which were set out and considered at the Regulatory Committee meeting on 7 December 2017.
- 4.9 It is significant that that no objections have been raised by any local users of the footpath.
- 4.10 The owners of the adjacent property 'Fantasia' are in support of the extinguishment.

5 Discussion

- 5.1 As an objection has 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 an extensive and 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 his expenditure to date.
- 5.6 It is recommended that the County Council support the Order, maintaining the position of the County Council.
- 5.7 The Open Spaces Society's objection raises several of the same issues as their previous objection, which were considered at the Regulatory Committee meeting on 7 December 2017.
- 5.8 The legal tests for making and confirming a Rail Crossing Extinguishment Order (see paragraphs 2.1 – 2.13 of the earlier Report to the Regulatory Committee December 2017, Appendix 2) have been met;
- 5.9 The stopping up is expedient in the interest of the safety of members of the public who use, or are likely to user, the path in question. This is demonstrated by the risk assessments carried out by Network Rail in 2015 and 2017.
- 5.10 The extinguishment of both the crossing B – C and the adjacent length of path up to the intersection with the C33 road at point A to the north of the railway avoids leaving a cul-de-sac path.
- 5.11 Alternatives to the extinguishment of Footpath 18, Wool have been considered including a bridge, tunnel, Miniature Stop Lights and diversion;
- Network Rail is unable to provide a bridge or tunnel as an alternative due to the topography of the area. There is insufficient land to provide a stepped footbridge at the site of the level crossing. Land purchase would also be required to facilitate footings.
 - A subway cannot be provided, due to the lay of the land and the risk of flooding.
 - There is no viable diversion route available.

- Miniature Stop Lights are not considered a viable option at Hyford crossing as they do not fully control the risk and high cost of installation would be disproportionate to the level of risk reduction achieved, thus presenting a negative cost benefit analysis for this option.

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 at points B and C to prevent access onto railway
- Erect signage at A and C notifying public of extinguishment and alternative routes

5.13 In addition, Dorset County Council will remove any fingerposts and waymarks from the route.

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

6 Conclusions

6.1 The objection raised remains outstanding; therefore the County Council cannot confirm the Order.

6.2 It is therefore recommended that an Inspector appointed by the Secretary of State consider the confirmation of the order.

6.3 The extinguishment, which is the subject of the Order, complies in all respects with the law and therefore the Order should be confirmed.

6.4 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.

6.5 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 objection to the Order.

Andrew Martin

Service Director, Highways and Emergency Planning

July 2018