

Countryside Access Team  
Cumbria County Council



Cumbria



27 September 2019

Dear Sirs

**Diversion Order - unrecorded right of way, Bailey Lane Level Crossing, Grange-over-Sands**

I wish to object to the above order on the following grounds.

1. The safety case is far from proven. Much of Network Rail's current case conflates misuse with safety. There may be misuse, but it is not actually unsafe unless a train is approaching. The vast majority of incidents cited by Network Rail occurred when there was no train anywhere near, and should therefore be discounted when assessing the safety of a crossing.
2. The only grounds for closure of a level crossing are 'public safety'. Nothing else.
3. In 2006, Network Rail stated "*At no time has Network Rail stated that the level crossing was not safe*", and "*Network Rail has at no time stated the crossing is dangerous*".
4. Since then they have made a few alterations to the crossing, making it safer.
5. Since Network Rail stated in 2006 that the crossing was safe, and not dangerous, the numbers of people using the crossing has steadily fallen. Their own risk ratings show that it now has a safer score than ever before.
6. At numerous times during the last 10 years Network Rail has explained (including in their own guidance) that all risk can be mitigated.
7. Network Rail has repeatedly said that the main safety issue is sighting times. But their Risk Assessment of 13 August 2013 asks "*Is deficient sighting distance mitigated yes/no*" – and for each of the four ways of looking before crossing, the surveyor has answered "*Yes*".
8. In 2012 Network Rail stated that it would be a waste of time applying for yet another safety closure, as 'nothing had changed'. That is still the case – nothing has changed, except that the risk levels of the crossing have fallen.

9. Therefore, the cumulative effect of this is that Network Rail is saying:
  - The crossing is not dangerous, we have never said it is not safe;
  - Nothing has changed since we said this;
  - It is currently safer than ever before, and is used by fewer people;
  - All risk can be mitigated;
  - The problem here is sighting times;
  - The deficiency in this has been mitigated;
  - Their own assessment shows a likelihood of fatality once every 119 years [which is probably safer than most roads in and around Grange-over-Sands].
  
10. There are further things that NR could do to improve safety, that they refuse to do. A requirement of the Level Crossing Regulations is that they take these actions, or explain why they cannot. They have not done this except for some over-exaggerated cost-benefit assessments for some of the possible actions. The alternative provisions, other than closure, have not been fully explored. For instance,
  - a. there has never been a detailed explanation of why warning lights would not work, or why their projected cost is so much higher than projected costs at other locations;
  - b. the suggestion of locking gates was simply dismissed as 'will not work' despite examples of the same thing working elsewhere (eg: Knaresborough level crossing);
  - c. promises to straighten the crossing to reduce crossing times have not been carried out;
  - d. the other alternatives set out in our initial objection to CCC have not been fully explained away by CCC or Network Rail – they have just been dismissed, even though their own documents show that the ALCRM score could be reduced significantly – to that below scores of level crossing that they do not deem too unsafe to leave open.
  
11. The reliance by Network Rail and CCC on the ALCRM is misplaced. Network Rail on the one hand state that this is a very dangerous crossing because the ALCRM score says it is, but on the other hand say that improvements to the crossing that reduce the ALCRM score are irrelevant because ALCRM is not an actual risk assessment process for the purposes of determining a threshold on which to base their decisions on which level crossings to close (that is – they will close an M13 if possible, but might not close a C2). In any case, the ALCRM scores do not seem to reflect reality, in that the fatalities that have occurred at crossings don't appear to correlate to the crossings with the higher scores.
  
12. The decision making by CCC Members was flawed. It was all predicated on being unable to re-open the level crossing that was illegally closed by Network Rail, and then had a temporary TRO placed on it by CCC without any safety case being made.
  
13. No safety audit of the alternative routes which will be used instead of Bailey Lane has been presented by Network Rail to show the comparative risk levels – despite a Memorandum of Understanding being signed by them saying that they would do this when wishing to close crossings some 3-4 months before CCC took the decision to make the Order. In addition, the formal alternative route is simply not attractive to use and is hugely longer and inconvenient.

14. The Order seeks to extinguish unrecorded foot rights over the level crossing. However, CCC is in possession of data provided by Network Rail that show that the crossing is regularly used by cyclists. And therefore, it is likely that the crossing is actually a bridleway.
15. The Order seeks to 'create' foot rights over the proposed alternatives. However, the route chosen is almost certainly already a public path. The section to the underpass was created in 1857 to enable people from the town to reach the level crossing, the underpass was specifically created to provide a public path, and the promenade already has an outstanding DMMO application. Therefore this is not really a 'diversion', but an 'extinguishment'.
16. Furthermore, the Order seeks to create a public footpath over the promenade, which almost certainly has higher public rights, with cycling being an accepted and encouraged part of the use of the promenade.
17. The Order itself is fundamentally flawed. It orders that Network Rail will be liable for the maintenance of the sea wall and supporting structures (the promenade). Yet CCC have since admitted that they have only included this to remove their own potential for any liability for maintenance, and that Network Rail will **not** be legally responsible for maintaining the sea wall. It is not right that a Diversion Order can legally create a responsibility that CCC openly accepts it cannot do.
18. CCC state that the owners are in agreement – but do not seem to know who actually owns which sections of the proposed alternative route.

Please acknowledge receipt of this objection

Yours sincerely

***By email***

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