

## **DEVELOPMENT CONTROL AND REGULATION COMMITTEE**

Minutes of a Meeting of the Development Control and Regulation Committee held on Tuesday, 17 January 2023 at 10.00 am at Council Chamber - County Offices, Kendal

### **PRESENT:**

Mr GD Cook (Chair)

Mr A McGuckin (Vice-Chair)	Mr KR Hamilton
Mr RW Betton	Mr AJ Markley
Mr RK Bingham	Mr J Mallinson
Mr A Bowness	Mr W McEwan
Mrs HF Carrick	Mr P McSweeney
Mr F Cassidy	Mr FI Morgan
Mr N Cotton	Mr MH Worth
Mr D English	

### **Also in Attendance:-**

Mr M Brennan	-	Lead Officer - Historic Environment and Commons
Mrs J Currie	-	Professional Lead - Democratic Services
Mr P Haggin	-	Manager Development Control and Sustainable Development
Ms L Maving	-	Commons Officer
Mrs J Petersen	-	Planning Officer
Mr A Sims	-	Countryside Access Officer
Mr J Weatherill	-	Commons Officer
Mr I Blinkho	-	EPW - Lead Lawyer

### **PART 1 – ITEMS CONSIDERED IN THE PRESENCE OF THE PUBLIC AND PRESS**

#### **88 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Mr P Turner and Mr D Wilson.

#### **89 CHANGES IN MEMBERSHIP**

There were no changes in membership of the Committee for this meeting.

#### **90 DISCLOSURES OF INTEREST**

Mr P McSweeney declared a non-prejudicial interest in Agenda Item No 7 – Wildlife & Countryside Act 1981 – Section 53 Application to add a public Right of Way at Arnside Knott in the Parish of Arnside: District of South Lakeland, as the area was in

his division and he has had sight of correspondence from some of the local residents to the MP. However, he confirmed he was not pre-determined in anyway.

## **91 EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED,** that the press and public not be excluded during consideration of any items of business.

## **92 MINUTES**

**RESOLVED,** that, the minutes of the meeting held on 1 December 2022 be agreed with the following amendment:-

On Minute No 80 – Application Reference No 1/21/9007 Section 73 Application to vary Condition 2 of Planning Permission Ref 1/20/9013 ..... in the third paragraph, second last sentence, change the word ‘was’ to ‘to’ so it now reads ‘ He drew members’ attention to the...’.

## **93 CA10/51 - APPLICATION TO CORRECT THE REGISTER: PART OF CL78 GRASMERE COMMON, GRASMERE**

Members considered a report from the Executive Director – Economy and Infrastructure, which detailed an application from Mr Carss to correct unit No.CL78 Grasmere Common, Grasmere.

The Application related to a parcel of land around 236.80 square metres in area which formed part of the grass verge adjacent to the stone wall of a property called Howe Top.

The tract of land called Grasmere Common was provisionally registered as common land on 29 May 1968 under Section 4 of the Commons Registration Act 1965, pursuant to application number 220 made on 18 April 1968 by The National Trust.

The provisional registration, being undisputed, became final on 6 April 1972 and the land became register unit CL78 Grasmere Common, Grasmere.

The Applicant claimed that the provisional registration map was correct as it did not include the Application Land and was true to the plan attached to the National Trust Application. However, the later final register map incorrectly, according to the Applicant, included the Application Land and showed it as forming part of CL78 Grasmere Common. The Applicant claimed that this was a mistake made by the Registration Authority and requested the removal of the Application Land from the Register of Common Land.

The Commons Officer took members through the report and detailed the objections received during the application process.

Six objections were received and duly served on the applicant. Four of the objectors had concerns about possible future plans to build a garage and the detrimental effect this would have on the agricultural landscape, however, the officer concluded that they were not of a relevant nature having regard to the criteria set out in Section 19(2)(a) of the Commons Act 2006.

The remaining two objections came from Mr Craddock on behalf of the Open Spaces Society and Mr Byrne, and these were explained to members.

All objections were forwarded to the Applicant and his representative on the expiry of the notice period. A reply was received from the Applicant's representative on 1 March 2021. The Registration Authority also wrote to Mr Craddock to ask him to provide specific evidence as to which commoners may have relied upon the register of common land and may suffer detriment if the Application Land was removed from the register.

The Applicant was given an opportunity to make oral or written representations to these objections, and he chose to make a further written representation via his solicitor dated 1 June 2022.

The Commons Officer detailed the representation to members, and explained she wrote to the Applicant via his solicitor on 28 September 2022 stating that the Council did not consider that Section 19(5) of the Commons Act 2006 applied in this case and invited him to make oral representations, which he did.

The Officer had considered the Application and all available evidence. On the face of it, there did appear to have been a mistake made by the Registration Authority in including the Application Land as part of Grasmere common on the final register map. However, the existence of an earlier COSFPS Application and its accompanying plan and correspondence, implied that the mistake was not including the Application Land and the adjacent strip of land abutting the wall at Howe Top as part of CL78 on the provisional register map.

Members noted that conflicting applications to register common land were quite common at that time and this would not have been considered something out of the ordinary.

Officers believed that the Applicant had failed to show where any mistake by the Registration Authority had been made, which would allow the Council to deregister the Application Land and therefore it was recommended that the Application should be rejected.

One of the members asked who owned the Common and what it could be used for. The officer responded to say that most of the Common was owned by the Lowther family, however, this part of the land was owned by the applicant. The land could be used for the grazing of animals and be accessible to the public but no overnight camping was allowed.

One of the members asked about the reference made in the update sheet by Mr Craddock of The Open Spaces Society about 'provisional' and 'final' register maps, and whether the County Council had two maps.

The Commons Officer explained that the County Council did have, what Officers commonly referred to as, 'first and second edition' maps, which were then combined into the 'final' maps. The Officer advised that there was likely some confusion due to the terminology used, and it would perhaps be more accurate to refer to them as first and second edition maps, rather than provisional and final. Due to the number of registered commons in Cumbria, a decision seems to have been made (in the 1970's-1980's) to combine and amalgamate the 'provisional' maps to create new 'final' maps which were clearer to interpret, and which did not include commons that were never finally registered. Although some of the maps in the final map were not stamped, he confirmed that they were still considered legal and valid.

The Lead Officer for Historic Environment and Commons explained that while the area of land in the Application was small in comparison to the common as a whole, the Application was specifically to correct a mistake made by the Registration Authority, and it was not considered that the Registration Authority had made a mistake when the land was originally registered.

Members were comfortable that a mistake had not been made to incorrectly register this land and the recommendation was then moved and seconded and put to a vote.

With 14 voting for, 0 against and 1 abstention it was

**RESOLVED,** that the Committee rejects the application for the reasons contained in this report and on the specific ground that the application land should have been included as part of the common when producing the Provisional Registration Map under the Commons Registration Act 1965.

**94 WILDLIFE & COUNTRYSIDE ACT 1981 - SECTION 53 APPLICATION TO ADD A PUBLIC RIGHT OF WAY AT ARNSIDE KNOTT IN THE PARISH OF ARNSIDE: DISTRICT OF SOUTH LAKELAND**

Mr P McSweeney declared a non pecuniary interest in this item as the area was in his division and he has had sight of correspondence from some of the local residents to the MP. However, he confirmed he was not pre-determined in anyway.

Mr Betton arrived at the meeting during consideration of this item but did not vote.

The Committee considered an application which had been received to add a section of public footpath at Arnside Knott in the parish of Arnside.

Members were presented with the evidence regarding the route and asked for a decision on whether to proceed with the next stage of the process by making a legal order.

The Countryside Access Officer said this application had been received in May 2013 and was accompanied by 10 user evidence forms claiming to have used the route on foot for pleasure for a period of years ranging from 9 to 44(50?). Fencing was placed on the claimed path in 2010 and consequently brought the path into question.

The claimed path ran from Queen's Drive to High Knott Road, Arnside via the site of an old quarry and was surveyed initially in 2013 and more recently in July 2022.

At the time of the first survey, the route between the lower and upper quarry levels was fenced off and an amount of cut tree limbs prevented access to, or sight of, any desire lines between those two points. A gap in a chain link fence nearby only gave access to the edge of the quarry and the precipitous cliff face.

The more recent 2022 survey found that the site was still fenced off and considerably more overgrown.

Eight of the users claimed to have used paths for periods of 20 years or more. However, those users have not all followed the same path/route.

A letter had been sent out asking the users to clarify which path they had actually used on a blank map but only two maps were returned. One was from the applicant who depicted a line which was different to the one he had claimed in his user form and also different to the application plan, and the other map returned had no name on or covering letter, so it was impossible to compare with the original route claimed.

In determining these applications the Council's role was to consider whether or not the available evidence supported the claim made in the application.

In order to negate an application a landowner or objector needed to provide evidence that the claimed route had not been used as a right of way.

The user evidence produced showed that the claimed section of path had been used by some members of the public on foot for an uninterrupted period in excess of 20 years. However, not all users had walked the same path. Guidance suggested that at least 6 people need to have used the same claimed route for 20 years or more.

Apart from the photographs, none of the evidence submitted with the claim showed proof of the claimed route. The maps showed a route to the quarry but no further.

Whilst the officer considered that the landowner(s) had not taken steps to prevent the claimed route from becoming a right of way prior to the erection of the fencing, the user evidence produced was not considered to be sufficient evidence to establish deemed dedication by the landowner of the route as public rights of way as the users had used different paths.

Members had a number of questions about the possible routes available and the officer responded to these.

Upon conclusion of the questions the recommendations were moved, seconded and put to a vote. With 12 voting for, 1 against and 2 abstentions it was

**RESOLVED,** that members reject the application to add a public right of way at Arnside Knott in the parish of Arnside due to insufficient evidence.

The meeting then broke at 10.35 and reconvened at 10.45

**95 HIGHWAYS ACT 1980 SECTION 118A - REQUEST TO EXTINGUISH UNRECORDED PUBLIC FOOTPATH AT BAYLEY/BAILEY LANE GRANGE OVER SANDS: DISTRICT OF SOUTH LAKELAND**

The Chair referred to the Update Sheet circulated in advance of the meeting, and reminded members of the need to read this information in advance of any decisions being taken.

The Development Control and Regulation Committee considered a report from the Executive Director – Economy and Infrastructure which detailed a request to extinguish the unrecorded public footpath that passed over the railway at Bayley/Bailey Lane, Grange Over Sands.

In 2017 Cumbria County Council received a request from Network Rail to divert the unrecorded public footpath that passed over the railway at Bayley/Bailey Lane pedestrian level crossing. On the 13 August 2019 this Committee approved the making of an order but because of objections, the case was submitted to the Secretary of State for resolution. A public Inquiry was held over two sessions in November 2021 and January 2022 and the subsequent decision by the Inspector on 5 September 2022 was that the order should not be confirmed. Having considered all the evidence the Inspector did not accept the case for closure of the crossing. She also recommended some changes to the crossing to improve its overall safety.

Cumbria County Council placed a temporary traffic regulation order at the request of Network Rail on Bailey Lane Level Crossing in 2017, when Network Rail physically closed the crossing because of a near miss incident. The closure has been extended a number of times but would expire on 6 April 2023.

The County Council had now received a request to extinguish the crossing. Note the previous request was to divert the crossing but the outcome would be the same. Network Rail believed the level crossing was demonstrably unsafe for continued pedestrian user and could not reasonably be made safe.

In the request Network Rail disagreed with the Inspector's decision not to confirm the diversion order and asserted that as the company had provided a nearby underpass, there was no longer any requirement for the crossing to be re-opened.

Network Rail had said that if the crossing was legally extinguished it would dedicate the underpass as a public right of way and make improvements to the alternative connecting routes.

The Countryside Access Officer took members through the report in detail, highlighting specifically the consultation, and responses received to this, and the County Council's assessment of the application.

The Countryside Access Officer said whether the crossing should be closed on the grounds that it was in the interests of safety to the public was a complex argument that was very difficult to evaluate.

Nevertheless, an Inspector appointed by the Secretary of State, after sitting for seven days at a public inquiry and hearing evidence called by both sides, including the expert witnesses called on behalf of Network Rail to support its case the crossing should not be reopened, refused to confirm an order to divert, effectively close, the crossing and determined that the crossing should be reopened with some recommended improvements.

Network Rail disagreed with the Inspector's findings and believed the crossing should be closed because it could not be made safe in view of its high usage, the high levels of vulnerable users and high levels of misuse which they believed would all inevitably lead to a fatality.

However, Network Rail had not provided any evidence that was not made available at the 2021/22 public inquiry and neither had it challenged the decision by the Inspector in the courts on the basis she erred in law or in exercising her judgment in coming to her conclusion.

Therefore, the officer felt unable to make a recommendation contrary to the Inspector's recent decision, not to confirm the diversion order and recommend that this application be rejected.

One of the members asked whether a private footpath was the same as a permissive footpath. The officer responded to say presently the underpass was not recorded as a public right of way, however, Network Rail allowed the public to use it.

Members asked for clarification on what would happen next if members agreed with the officer recommendation.

The Countryside Access Officer said the order would not be made and the County Council would have to request that Network Rail re-open the crossing.

The Lead Lawyer replied to say that if the Committee accepted the recommendation Network Rail would need to make the crossing safe. Should Network Rail not undertake the work and re-open the crossing, then the local authority would need to instigate proceedings to ensure this was done.

One of the members asked for confirmation that the members were being asked to recommend that a crossing be opened up over a railway line. The officer confirmed this was correct.

Members asked a number of questions about the Inspector's recommendations and Network Rail's responsibility and these were answered by officers.

The Chair then opened the meeting up to public participation.

The first participant was **Mr Wearing**, the local member for the Grange division, who spoke to say:-

'I am here today to support the Extinguishment Order and the permanent Closure of Bayley Lane Rail Crossing.

Speaking as the Local County Councillor for the Town and long-standing resident of more than 50 years, I consider it my duty and position to point out to the Committee the necessity for this extinguishment and closure of the crossing on safety and general usage grounds as it has been closed since 2017 There has been no out-cry or public demand from my residents for it to be reopened as there is much better provision for access to the promenade for all users especially for those with mobility issues.

The promenade is a major attraction for tourists to our Town, and a much-loved area for residents to walk and enjoy the views in this part of our County.

I am looking at this from the long view and the fact that an increasing number of people are using the promenade will make it essential this order is agreed. The existing subway from the car park will meet all the needs of everyone especially when looking at the ease of access and managing the volume of people using the promenade in a safe and secure environment.

Reopening this crossing would in my opinion and that of the late Dr Irwin whose statement I will read out after mine makes it clear that if not extinguished this crossing would pose a clear present danger to my residents and visitors alike.

I hope that we can maintain this Town as a safe and secure place for everyone by agreeing this Extinguishing Order.

Mr Wearing then read out a statement on behalf of the late **Dr Irwin**'

Mr **Nick Thorne** said 'We have been here before. We pointed out in 2018 the flaws in Network Rail's safety case, and Network Rail dismissed our comments as they were the experts.

CCC made an Order to allow them to present their full safety case at a Public Inquiry.

The Inquiry cost CCC £49,000 – with a similar amount of public expense for the Planning Inspectorate.

After seven days of evidence and examination, the Inspector concluded that:

1. Her role was [partly] to examine the basis behind CCC's 2018 decision and form her own view following cross-examination of Network Rail's expert witnesses together with challenges made by objectors and the submissions made by all parties.



2. She found that:
  - a) CCC's decision to close the crossing was based on CCC accepting Network Rail data indicating that the crossing was unsafe for public use;
  - b) the census data CCC relied on was skewed by Network Rail's own actions;
  - c) the safety data CCC relied on was heavily reliant on Network Rail forecasts of likely usage; and
  - d) those forecasts were tenuous;
3. And most importantly - she concluded that CCC's & Network Rail's rationale for the closure order was not supported by hard evidence;
4. She also had doubts over the reliability of levels of risk identified by Network Rail.

In essence, the Inspector agreed with what we had said back in 2018.

Network Rail are now trying to belittle the Inspector's same conclusions on the basis that she is (quote) 'not a rail safety expert' and has 'no expert basis'. They, and CCC, had the opportunity to challenge the Inspector's understanding, interpretation and application of the law and the tests through the courts. Neither did so.

Network Rail now state that the crossing is 'demonstrably unsafe'. Their problem is that they comprehensively failed to demonstrate precisely this at the Inquiry.

The Inspector's words are set out in section 3.2 in my submission. She couldn't have been clearer. She rejected the case that the crossing was unsafe for public use and said that the risk was acceptable in public safety terms. To emphasise again – she found that the safety case for closure was not backed up by the evidence.

The safety case Network Rail present now is identical to that in 2018. There is NO new safety evidence whatsoever. The crossing is no less safe now.

The only legal grounds for an Extinguishment Order are: "where it appears to a council that it is expedient in the interests of the safety of members of the public".

Expedient in highway law basically means appropriate.

It cannot be appropriate to close a crossing based on data that the Secretary of State's Inspector has just told us all is tenuous, has been presentationally skewed by Network Rail, has led to their unreliable risk level assessments, and most importantly does not support the case for closure.

It cannot be appropriate to close a crossing based on a safety case that the Inspector has just told us all does not stand up to scrutiny.

If councillors do believe the Inspector was totally wrong, they will need to explain away her findings at the meeting, and show exactly where her assessment was

flawed. They will need to refer to all of the thousands of pages that the Inspector did, and hear the seven days of detailed evidence, cross-examination and barrister's arguments that she did. Then CCC could try belatedly applying for Judicial Review as set down in the procedures.

I'm sure councillors don't really want to lumber Westmorland & Furness Council with another £50,000 worth of pointless public inquiry just to rehearse all the same arguments that we have recently gone through – with the same outcome.'

Next to speak was Mr Steve Pighills on behalf of **Mr Geoff Wilson**, who could not be present today.

Mr Pighills spoke to say 'I am here today to make the following statement on behalf of Mr Wilson.

Mr Wilson is a member of the public that expended many days in 2022 assisting the inspector to assess the evidence that was before her at the public inquiry which looked at the diversion order which sought, only by another name, to achieve exactly the same conclusion as this current extinguishment order.

I support the officer recommendation that the request to extinguish the path in question be rejected, so leaving Network Rail free to take whatever further action it wishes independently of placing any further burden in this matter on this or a future highway authority.

Back in 2020 this council agreed that it would pass the decision on the confirming of the previous order to the Secretary of State. In acknowledgement of the inspector's decision and of its duty to the public who questioned the need to close the crossing, CCC should not accept NR's attempt to subvert that decision or to seek to achieve by another means another decision that would be counter to the inspector's decision.

For CCC to do so would make a mockery of the public inquiry system on which the council and the public relies. Providing Network Rail with the means of pursuing a reconsideration of that decision is the role of a court of law independent of this council, as clearly spelled out by the Planning Inspectorate, but NR chose not to take that option.

The starting point here is that CCC has a statutory obligation to prevent so far as possible the stopping-up or obstruction of the public right of way in question.

I expect that Network Rail will try to impress on you that this council has a greater duty to protect the almost negligible numbers of public who may place themselves in danger on the crossing on the few minutes each day that a train crosses, than it has to protect the public's right to use the crossing path.

But the council should not presume to relinquish the decision on that to Network Rail, a public body with a national policy to close paths over at-grade crossings.

That the duty of CCC and the duty of NR can come into conflict is recognised in statute, otherwise NR would have independent authority to close rail crossings ... but they don't have that authority.

The Secretary of State, through a public inquiry inspector, has concluded that the crossing is sufficiently safe to remain open, and that there are options available to Network Rail to make the crossing even safer should it wish to do so.

That is NR's responsibility, not this council's. In order to respect the public inquiry process and to avoid being drawn into another protracted and expensive appeal process the application should be dismissed by CCC.'

The next person to speak was **Mrs Sylvia Woodhead**, on behalf of the Cumbria and Lakes Joint Local Access Forum. Mrs Woodhead made the following statement to the members:

'The Cumbria and Lakes Joint Local Access Forum (C&LJLAF) welcomes the opportunity to contribute to the consultation on the above path extinguishment proposal.

The Local Access Forum has made many responses in the past urging CCC to keep this valued right of way open for public use, and to ensure its inclusion on the Definitive Map. The footpath connects the centre of Grange-over-Sands to the Promenade.

Bailey Lane level crossing predates the Furness railway, and was well used before its closure. Despite many applications to CCC the crossing has not been recorded on the Definitive Map. The wish of Network Rail (NR) to close all level crossings is well known. It is understood that their assessment is that only a closed level crossing is risk-free. The Bailey Lane level crossing has been closed since 2017 following a reported incident, after which CCC imposed an emergency TRO, which was renewed and replaced. The crossing gates were locked, and NR then removed the crossing deck.

A Public Inquiry into its proposed closure, and replacement by a diversion, was held in Grange-over-Sands in November 2021. Inspector Sue Arnott did not confirm the Order. At the Public Inquiry, the Inspector concluded that a number of 'reasonably practicable measures', including a slightly reduced speed limit, reconfiguration of the one-way two-deck arrangement, the reinstatement of whistle boards, improved signage could reduce the residual risk at this crossing. She concluded that it was reasonably practical to make the crossing safe for use by the public.

This further request by Network Rail appears to be seeking to abuse the system by revisiting the Inspector's decision. Any challenge to the finding of a Public Inquiry should be made through the correct Judicial Review processes which NR decided not to pursue.

The C&LJLAF advises that the County Council should not process this request. It would be a mockery of judicial processes, and potentially a huge waste of resources, at a time when the Council will shortly be handing over its powers to the new unitary authorities.

The C&LJLAF urges the County Council to request that Network Rail should seek to reinstate the safety aids that they removed at the level crossing, and to add others without delay, and that the crossing should be opened to the public as soon as possible. The CALJLAF urges CCC to reject this request, which goes against the ruling of the Inspector, and to enforce the re-opening of this level crossing. We further advise CCC (and its successor body) to record the crossing on the Definitive Map.'

Following on from Mrs Woodhead the Chair invited **Mr Woods** to address the committee. He spoke to say:

'Just to clarify. The Grange Town Councillors were informed by this council, a new application had been submitted by Network Rail, but the application details and reasons, were received too late for inclusion at the meeting for discussion. SLDC ARE RECOMMENDING APPROVAL AFTER CONSULTATION.

You have 128 pages of information to digest, but it all comes down to a simple decision: yes or no to the application.

Most of you have visited the crossing and are familiar with the safety issues. I attended all 7 days with only a handful of residents, some only attended periodically. Para 202 of the Order Decision, the inspector agrees that the proposed diversion was acceptable taking into account rights of way, diversion convenience etc.

So really the only question is now crossing safety, and if the inspector's safety proposals, are workable and effective.

By posing this question in the inquiry report, the inspector is agreeing with this council's decision that the crossing was not safe:

"Can the crossing be made sufficiently safe for the public?"

The inspector interpreted this test as:

"If practical mitigations are applied, would this be acceptable for public safety".

In reaching a decision the inspector decided this test could be achieved by:

- Slightly reducing the speed of the trains to 40 to 45mph: However, the inspector also concluded "it was not possible with certainty if the reduction would make any real difference to increased safety.
- Better Signage- The inspector concluded "the way" in and "no entry signs" on the crossing gates were not prominent and neither was their significance explained to crossing users, the inspector considered it was unfair to criticise the public without sufficient public guidance to make an informed choice when and how to cross". Additionally, the inspector considered the "stop, Look, listen" sign says nothing about crossing quickly, without stopping to take photos, chat with others or not proceeding on the decking until the exit is clear and accepted misuse cannot be fully addressed by

signage. Maybe a network rail should have a protocol councillor stationed at the gates!!

- The inspector also suggested:

Self-locking gates controlled by a distant signal box

Reconfiguring the crossing, to a different angle saving 1Metre and 1second.

Changing the crossing deck system but accepted congestion could be a problem.

All of which have very limited effectiveness, only save a few crossing seconds and have additional safety issues as described by Network Rail.

However, the inspector states: due to the whistle boards removed (in fact they are still in the same location just covered) and the decking removed (this was done for safety reasons as the wood was broken in many places), and with the gates were locked:

“It was not possible to use the crossing to evaluate for myself the safety issues.

This is a startling admission for the inspector to make. At no time did the inspector ever ask network rail to unlock the gates to allow the inspector stand on the crossing and look at the sight lines and distances etc and get a feel for the crossing.

Brought to the inspector’s attention at the inquiry numerous times, but never even received a mention in the report were:

- Since the crossing was closed, new modern and nearly silent trains have been introduced making it more difficult to hear approaching trains.
- A new modern children’s playground is being constructed very soon near the crossing which will attract more unaccompanied children crossing. Many now have bicycles and before the crossing was closed, they were opening the gates and some were lifting their bicycles up through the gates which poses additional dangers.
- The train driver dilemma if seeing children and people still crossing, does the driver apply the emergency break, possible injuring some passengers or hope the person will cross ok before the train arrives?

Children are now riding their bicycles or walking safely though the underpass along with the public for the last few years. There is no public petitions or outcry to reopen this crossing, people have moved on.

And to their credit Network Rail have never tried to hold a gun to your head and said if the crossing is not closed, we will close the underpass.

Trains with children and people crossing are not a good safe mix, you have the opportunity remove this danger and I would urge you to approve the application. And sleep soundly tonight.'

**Mrs Shapland** then made the following statement:

'For anyone here today who is not familiar with the Promenade at Grange over Sands I would like to give you the facts.

It is a tarmaced area, varying in width, 1¼ miles long, with the railway line running along one side and the sea wall on the opposite side (It was tarmaced to cover the sewage pipe running underneath it).

At the present time there are 5 exits or entrances to the promenade, which consist of 3 subways and 2 bridges which provide safe access to this area for all types of users: ie the disabled, parms, mobility scooters, children and adult cyclists as they are all ramped.

The accidents which the late Dr Irwin had to attend at the level crossing at the bottom of Bailey Lane could possibly happen again because the conditions are still there; the children's playground next to the crossing and the car park.

The 'knock on' effect to any fatal accident at that level crossing is well known, not only the driver of the train, his family and may passengers. The permanent closure of this crossing means future lives could be saved.

The number of new houses built in the town, plus the tourist accommodation means a great volume of people are using this promenade and with the advent of South Lakeland District Council renovating the old Swimming Pool, there will be even greater footfall.'

**Mr Shapland** then spoke to say 'I am here to support the request by Network Rail to extinguish the Bailey Lane crossing, for safety reasons.

I served as a Town Councillor in Grange over Sands from 2003 until 2018 and was elected as Chair and Mayor in 2006 which was when Network Rail first contacted the council to ask if it would like an underpass. The Town Council agreed to this when Arnside Viaduct was closed.

The report of the Public Inquiry, held a year ago, did not contain sufficient evidence to support the Inspector's assertions that her proposals would improve the safety of the crossing.

Therefore, I believe the decision taken at the time to recommend, in effect, the re-opening of the crossing should not have been made.'

After all participants had spoken the Chair then invited **Ms Bentley** to speak on behalf of the applicant.

'My name is Vicki Bentley, I am the Liability Negotiations Adviser who submitted the s118A application and I will speak on behalf of the applicant, Network Rail.

Network Rail is disappointed with the recommendation in the Director's report that our application should be rejected. To assist this Committee a written rebuttal to the Director's report has been submitted to address misleading assumptions that have been made, and I ask for this to be carefully considered by the Committee members before making their final decision. Given the short period of time between the recommendation paper being made available to Network Rail and the Committee meeting, Network Rail requests that the decision on this matter be deferred to permit a reasonable period of time for the written rebuttal to be considered.

The Director's recommendation challenges the safety case which the Committee previously supported, yet there is no explanation in the Director's change in stance other than the Inspector's findings are now supported. Network Rail understand that the Council has not sought any independent safety assessment which could challenge Network Rail's safety case and support the recommendation now put forward by the Director to Committee.

#### The Decision not to pursue a Judicial Review of the Order Decision

Following Inspector Arnott's Order Decision in September 2022, an internal analysis was conducted by Network Rail to consider whether Network Rail should pursue a Judicial Review of the Order Decision. A decision was made not to pursue a Judicial Review on this occasion and that a more appropriate, cost effective and timely option would be to submit a new application that would address the recommendations made by the Inspector.

The application must be considered independently and on its own merits from the Order Decision. Network Rail's decision not to seek a Judicial Review of the Order Decision does not have any bearing on whether this application is to be approved or not.

#### The Safety case and recommendations in the Order Decision

The Inspector made the conclusion that several measures, if implemented in combination, could have the capacity to reduce the residual risk at this crossing. Such residual risk, in the Inspector's opinion, would be acceptable in public safety terms and could be an improvement on the situation that pertained in August 2017. The collective measures raised in the Order Decision have now been assessed and as stated in our application, are deemed insufficient. The collective risk mitigation is minimal and would not reduce the risk sufficiently. Again, I stress, despite what objectors continue to state, the crossing cannot be made safe [sufficiently and practicably].

This new application also sought to address what the Inspector considered to be 'potentially effective measures' and confirms that, following further analysis carried out following the Order Decision, such measures do not make the crossing safe.

Following the Order Decision, each measure referenced within it was given in-depth consideration through our level crossing risk assessment tool as part of our risk assessment process and none of the measures were found to significantly reduce the current risk at the level crossing should we reopen it.

It is incredibly important to note that each “measure” referred to in the Order Decision is still reliant on human behaviour. Due to the crossing type and the users traversing, notably a higher than typical number of vulnerable users, Network Rail cannot responsibly reopen this level crossing safely based on previous incidents we saw when the crossing was in use by the public.

If we were to take forward each of the Inspectors ‘several measures’, for example to increase the number of signs and install whistle boards, we would be using outdated and unsuitable practices at this time for level crossings and ones that provide incredibly limited safety mitigations, if any at all.

We would urge the Committee to continue with the closure of the crossing particularly when there is a suitable safe alternative route which does not involve users crossing the operational railway.

Only last week, an elderly gentleman was tragically killed by a train that was travelling at a lower line speed than at Bailey Lane – at 45mph; one of the suggested mitigations referred to by the Inspector. Indeed, the overall trend over the past 12 months for incidents and near misses at pedestrian crossings like this, that are deemed a much lower risk than Bailey Lane, are on the increase, despite Network Rail making safety improvements.

Network Rail does not want any form of similar tragedy to occur at Bailey Lane which could if the crossing was to reopen. I therefore implore the Committee to reject the Director’s recommendation and agree that the Council should make the Order.

Thank you for listening.’

The Chair thanked all of the participants for attending today to make their presentations, and then opened up the discussion for members.

One of the members asked for clarification on whether the Committee could consider the appropriateness of alternative options for the level crossing. The Lead Lawyer said the application in front of members today was only concerned with the stopping up of the crossing. The alternative options, including possible diversions had previously been considered by this committee, and also at the Public Inquiry.

Members had concerns that during the Public Inquiry the Inspector appeared not to have taken on board evidence, or in fact evidence was not presented on the safety issues such as the children’s playground usage. One of the public participation attendees said it was brought to her attention but was not addressed in her findings.

A detailed discussion then ensued, during which members asked many questions for clarification. The Lead Lawyer reminded members that if they were minded not



to accept the officer recommendation there needed to be a reason given for this. He advised members that they were not bound by the Inspector's decision, but that it was material to the decision that they now made, and members had to consider whether any new evidence had been provided to set it aside.

It was proposed and seconded from the floor that members reject the officer recommendation and an Order be made, on the grounds of safety, the case made by Network Rail that the location could not be made safe was accepted, and it would be expedient to make the Order in the interests of those likely to use the crossing.

A second proposal in favour of the officer recommendation was made.

The first proposal to make the Order, having been moved and seconded, was then put to a vote, and with 10 for, 6 against and 0 abstentions it was

**RESOLVED,** that an Order be made under Section 118A of the Highways Act 1980 to extinguish Bayley/Bailey Lane crossing for the reasons given above.

**96 APPLICATION NO 1/22/9007 - SECTION 73 PLANNING APPLICATION TO PLANNING PERMISSION 1/22/9004 EXTENSION INCLUDING INTERNAL AND EXTERNAL ALTERATIONS TO BUILDING TO FORM A SIXTH FORM CAMPUS FOR PUPILS FROM JAMES RENNIE SCHOOL TO AMEND CONDITION 2 TO ALLOW NEW EXTERNAL FIRE ESCAPE STAIR, REMOVAL OF LIFT SHAFT PROJECTION AND ALTERATIONS TO THE WINDOWS IN THE PREVIOUSLY APPROVED EXTENSION.**

Following the reconvening of the committee 4 members had left the meeting.

Members had before them a report from the Executive Director – Economy and Infrastructure which detailed a Section 73 planning application to planning permission 1/22/9004 extension including internal and external alterations to building to form a sixth form campus for pupils from James Rennie School to amend condition 2 to allow new external fire escape stair, removal of lift shaft projection and alterations to the windows in the previously approved extension.

Planning permission was sought for the erection of a new fire escape and deletion of lift shaft projecting from the roof and alterations to the windows previously approved under planning permission 1/22/9003, which involved internal and external alterations to the building to form a sixth form campus for pupils (aged 16+) from James Rennie School, California Road, Carlisle. To date this permission had not been implemented, but it would be implemented once this amendment obtained planning permission.

The Planning Officer explained that the reason this required planning permission was because the development had not commenced to convert the church to school accommodation at this current moment in time. Therefore, the use of the building was still as a church, which did not have any permitted development rights, until such time planning permission 1/22/9003 was implemented.

The officer took members through the report in detail and informed them that there had been no representations or objections made.

Any environmental impacts would be minor during the overall construction activities which would last for a maximum of 6 months. Once the building was fully operational the only noise impact would be at break time and be people talking to each other externally.

The Planning Officer considered the inclusion of the emergency staircase to be essential to the safety of operations within St Edmunds Church. The emergency staircase would allow appropriate external emergency access from the first floor.

The proposed development was in accordance with the development plan, there were no material considerations that indicated the decision should be made otherwise and with the planning conditions proposed, any potential harm would reasonably be mitigated.

Upon conclusion of the discussions the recommendation was moved and seconded and voted upon. The vote was unanimous.

**RESOLVED,** that planning permission be **GRANTED** subject to conditions set out in Appendix 1 to this report.

#### **97 APPLICATIONS DETERMINED UNDER DELEGATED POWERS**

**RESOLVED,** that the list of applications determined under delegated powers be noted.

#### **98 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS**

**RESOLVED,** that, the list of applications proposed to be determined under delegated powers be noted.

#### **99 APPLICATIONS DETERMINED BY THE SECRETARY OF STATE FOR DLUHC**

The Manager - Development Control and Sustainable Development updated the Committee on the West Cumbria Mine application determined by the Secretary of State for DLUHC, and on the possible grounds for the current Judicial Review submission.

**RESOLVED,** that the update was noted.

## **100 FORWARD PLAN**

The list of applications to be considered at future meetings was discussed.

**RESOLVED,** that the Forward Plan be received and noted.

## **101 DATE AND TIME OF NEXT MEETING**

The next meeting of the Committee will be held on 28 February 2023 at 10.00am, County Offices, Kendal.

The meeting ended at 12.30 pm