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**RIGHT OF WAY I 20 - REF ROW/3209333 - STATEMENT OF CASE
PROPOSED EXTINGUISHMENT OF BRIDLEWAY I 20 (PART),
SILEBY ROAD AND ACROSS THE RAILWAY LEVEL CROSSING, BARROW UPON SOAR**

1 - INTRODUCTION

1.1 The Leicestershire Local Access Forum (LLAF) objected to the extinguishment of this crossing and remains of the view that footpath rights can and should be maintained by the provision of a bridge, albeit stepped, and that an additional diversion be found for riders.

1.2 As an independent statutory body, set up as a result of the Countryside and Rights of Way Act (CRoW) 2000, existing to represent the interests of everyone concerned with access to the countryside and the public rights of way network including footpaths, bridleways and byways, cycleways and areas of open access, we feel that the loss of amenity to the general public is not justified when alternatives are available.

1.3 Before it was closed on apparent safety grounds it was a major link in one of the best bridleway circuits in the area, keeping riders mostly off the busy roads. It was also a pedestrian route popular with both locals and leisure walkers giving access to the wider countryside and network of rights of way. With the construction of a new estate by Jelson off the Melton Road, the I 24 footpath to this crossing would have become even more popular for foot travel into the village. It would provide a good route for people from this area to access the bus route and it would again provide for children from Sileby going to school in Barrow, who at present have to use the narrow and dangerous footway along the busy road.

1.4 We remain to be convinced by suggested usage figures produced by Network Rail (NR) and question their methodology. We do not see how they could have counted the number of users if those users had not chosen to make themselves known to NR. There was a survey done in 2006 using telescope surveying and in March, not the best of weather for leisure walking, they recorded 12 pedestrians using the crossing in a single hour.

1.5 The busiest day recorded showed 51 people using the crossing. We acknowledge that is the highest usage and not constant but it does indicate a need for this route. Alternative routes are currently being used by the public due to the closure of the crossing leaving them no other choice, but that is not a relevant factor.

1.6 The LLAF does not believe NR has adequately pursued what we considered to be constructive suggestions for a safer crossing of the railtrack. Without an alternative being provided it creates a significant length of dead-end bridleway and a footpath (between Melton Road and the railway) which is contrary Public Policy for achieving a joined-up PRow network. When the initial suggestions were floated by NR we engaged with them to consider the various alternative solutions they had tabled and accepted that a bridge, suitable for riders, would be an eyesore and impinge unreasonably on nearby residents. It would have involved the probable compulsory purchase of at least one residential property. They declined

to bridge that location on the grounds of the purchase and demolition of a property, the visual intrusion and the creation of a bridleway parallel to a railway. They also mentioned safety but a bridge must be safer than busy roads. They mentioned value for money which we consider irrelevant but also talked of their reputational impact. We would contend that whilst this is also irrelevant in determining this matter, closing popular routes like this do more damage to their reputation than this bridge would.

1.7 We do feel that there is a perfectly feasible solution with a bridge located just off the present line of the route which could have satisfied the foot traffic. We are given to understand that NR does already have Permitted Development Rights (CBC ref P/10/0730/2) for a stepped pedestrian bridge beside Pingle Nook. This would not provide for cyclists and horse riders but riders can accept a more lengthy diversion and the bridleway rights could have been satisfied as well by separate means. It would keep horse riders and cyclists, off the busy roads in Barrow.

1.8 We see no reason why the existing rights should not be protected by two solutions if a one-fits-all solution is not available and, bearing in mind their original comments, it seems to us that the only reason why NR are not going down this route is one of cost. There is precedent for bridleway rights being extinguished but footpath rights being accommodated but in this case we believe that both sets of users can be accommodated by two different solutions.

1.9 We have over recent years tried to engage constructively with NR on several occasions as regards their plans for level crossings. The suggestions put forward by NR to close a number of level crossings have been explored and we have agreed some diversions or alternative routings by bridge. However some proposals are not acceptable, the alternatives being unsuitable because they are too long; removing a sense of directness of purpose and taking users of a particular route too far out of their way. This is especially true where the route is used more for everyday utilitarian travel rather than recreation or because the alternative involves walking or riding on a busy road, especially if it has no footway or useable verge. With the new housing development this would increasingly be the case with this crossing were it to be available. We see ourselves as critical friends offering constructive advice based on our breadth of local knowledge and rarely object as such, but on this occasion we felt we had to

2 - BACKGROUND

2.1 The LLAf sees as a major part of its role, the need to facilitate and encourage the general public to walk or ride more. There is increasingly strong evidence of the health-benefits of walking in particular. E.g. the fact that brisk walking improves circulation and the performance of the heart and lungs. Walking can lower blood-pressure; it can reduce risk of stroke and of heart disease. It can improve control of blood sugar in type-two diabetes and it has an important role in cardiac rehabilitation. Walking and riding also promote mental health and general well-being, and have the potential to be as effective as anti-depressants or psychotherapy in treating depression. The loss of this route has reduced the opportunities for residents to get out into the nearby countryside. Widespread take-up of walking and riding generally could massively lighten the economic burden on the NHS caused by physical inactivity and provide a boost for rural economies. Walkers and riders spend literally billions of pounds in the countryside and it is calculated to support a quarter of a million jobs.

2.2 It can be demonstrated therefore that such activity in the country can reduce the nation's health-bill and boost the opportunities for rural diversification. In the Barrow case, with new development on the far side of the tracks, the route in question can provide a link into the main part of the village and discourage the use of a vehicle. There is thus a need for a rights of way network which encourages walking and riding; a network which connects people with their communities and their local amenities and with their history and the wider natural environment.

3 - BARROW

3.1 This closure, if permitted, would sever the network and provide unacceptable alternatives. The LLAF urges the appointed Inspector to bear in mind the potential effects of the closure not least because walking and riding along dangerous and inconvenient roads is the alternative.

3.2 We do not believe in many instances, the risks involved in the use of level crossings is any greater than the risks taken regularly in daily life, including crossing roads. It seems to us that most accidents at crossings are at vehicular crossings and that other fatalities are quite often suicides. The perceived danger of crossings should not be an excuse for closures to satisfy operational or economic aims. We have seen suggested closures of crossings with no records of accidents, with diversions onto dangerous roads with a history of accidents. Where there is a greater degree of danger on the suggested alternatives then we believe this can often be a good reason to refuse a request for an extinguishment and the issue can often be addressed by providing pelican style warning lights, CCTV observation, and telephone contact.

3.3 In the case of Barrow we are unaware of any accidents although there was a narrow escape which triggered the proposed closure. With Barrow, the railways, which will become an increasingly high-speed high-frequency line, the track operation will be a profitable enterprise and we believe that the building of a footbridge can be considered a reasonable financial solution. The provision of a longer diversion for riders would be of modest cost in the greater scheme of things.

3.4 We are able to suggest in more detail how such solutions could be provided - See app1 for details of these suggestions.

4 LEGAL BACKGROUND

4.1 We understand that the Secretary of State or Highway Authority “...shall not confirm such an order unless he, or as the case may be, they, are satisfied that it is expedient so to do 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....” etc. This is the provision in section 118A(4) of the Highways Act 1980.

4.2 We contend that even if the Secretary of State accepts that the safety concerns about the crossing are well-founded, the Inspector needs to have regard to all the circumstances, which must include the ways people will have to go instead. If those ways are similarly dangerous because of road traffic, or unsuitable at attracting users because of the noise and perceived danger and fumes of traffic, those, we submit, are considerations which must weigh heavily against confirming the order.

4.3 There appears to be no case-law governing the principle, but we submit that principles laid down by the courts under other provisions ought, by analogy, to apply here. These authorities have a common principle that authorities should not extinguish any public right of way over land unless the Secretary of State is satisfied that a suitable alternative right of way has been or will be provided, or that the provision of an alternative right of way is not required.

4.4 In the case of *Ramblers' Association v Kent County Council* (1990) it was held by Lord Justice Woolf it was necessary to be satisfied that the alternative way was suitable, or reasonably suitable, for the purpose for which the public were using the existing way. *See appendix 2*

4.5 In this matter we contend that the directness of the route will be lost if the order is confirmed. That directness can be a factor in the enjoyment of a route was accepted by an Inspector in the matter of *The Council of the London Borough of Harrow — Harrow School Playing Fields (Footpath No 57) Diversion Order 2013*, Planning Inspectorate reference FPS/M5450/4/1, and the Council of the London Borough of Harrow *Harrow School Playing Fields (Footpath No 58) Diversion Order 2016*, Planning Inspectorate reference FPS/M5450/4/3. *See appendix 3* - It was an order under section 119 of the Highways Act 1980. In that matter, objections had included the undesirability of a zigzag route replacing a direct one, and the loss of sense of walking an old-established route. The Inspector generally accepted both matters as relevant factors. She commented “The straightness of the route gives walkers a sense of purpose which is lost on a route which turns at angles to avoid modern, man-made features”. This is different legislation but we

contend that loss of directness is one of the “circumstances” to which the Inspector should have regard in deciding whether to confirm the order.

4.6 We also note the recent decision made by Grahame Kean an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs in respect of a crossing in Derby: (ROW/3169391 under Section 118 of the Highways Act 1980 known as the Derby City Council Megaloughton Lane, Extinguishment Order 2014 - Decision date: 29 November 2017)

4.7 We do not quote these as if we think they set some sort of precedent, since every case must be judged on its merits but they do support our case that where practical, a direct route should not be extinguished in circumstances like the ones faced at Barrow.

4.8 National policy to reduce rail journey times and maximise the safety of crossings are relevant considerations. However we feel there is insufficient evidence that such benefits outweigh the primary consideration of the use of this historic route by the public and argue that there are acceptable diversions and a practical bridge construction and would ask that the likely extent to which the route would, apart from the Order, be likely to be used by the public be given prime consideration.

4.9 Leicestershire County Council has a Rights of Way Improvement Plan which we helped them produce. Amongst its aims, to paraphrase, is promoting a sustainable transport network including, for walkers and riders, travel on mainly traffic-free routes. Given that there would be inconveniences and risk arising from using any alternative routes, especially in terms of more vulnerable users, with longer routes and their proximity in places, to fast moving traffic, it is clear that confirmation of the Order would act contrary to fulfilling the objectives of the plan

5 SUMMARY

5.1 When the crossing was first closed about 10 years ago we engaged with Network Rail’s then safety and security officer to explore solutions to the perceived risk at this potentially dangerous crossing. It crosses points and two little used tracks serving quarry sidings before four tracks of the main line. We accepted that with trains potentially being speeded up, the crossing as it is would have to be replaced and both sides agreed that a bridge was feasible on a slightly diverted line to the original right of way

5.2 A series of public consultations was then organised out of which numerous possibilities arose and in the end several options were on the table for determination. For a number of reasons it became apparent that a bridle bridge was virtually impossible but that a footbridge could be achieved but with a new bridleway link need to replace those lost rights.

5.3 A practical new bridleway link of just over 1400 yards was identified to an existing bridleway (I 4) and subject to engineering constraints the possibility of re-opening an underbridge at Hayhill Lane

5.4 The only reason we can see why the footbridge should not be constructed is one of cost. Section 118A of the Highways Act states that the Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order (when) it is reasonably practical to make the crossing safe for use by the public. The bridge would be safe and indeed considerably safer than using the busy roads to achieve the same journey.

5.5 It is entirely possible to safely satisfy the bridleway rights by the link to I 4 although it might require some compulsory purchase and compensation but again cost appears to be the only reason not to pursue this option

5.6 We contend that whilst cost is a consideration it should not justify the loss of public rights, a useful link and a safe route

5.7 There appears to be no solution which satisfies all rights by one means and the potential extinguishment of foot rights and the loss of bridleway rights should therefore be treated as two quite separate matters with different solutions being available for both, neither of which should be contingent on the other.

6 THE HEARING

6.1 Members of the Forum will be in attendance for all or part of the hearing and I would wish to speak in support of our submission

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7 APPENDICES

- 1) Possible solutions
- 2) Ramblers Association v Kent County Council
- 3) Harrow School Playing Fields (Footpath No 57) Diversion Order 2013.

7.1 APPENDIX 1

7.1.1 Bridleway rights could be created between routes I 4 and I 20 which is at present dysfunctional. British Gypsum has land reserved for the creation of sidings but they have had that permission for many years and never seen the need to actually create these sidings. It should be possible to negotiate the use of this land given that it is now highly unlikely to be seen as economically viable to use such sidings for what is left of their mining permission. As a last resort the land could be compulsorily purchased. This route is too long to be of any practical assistance to pedestrians wishing to cross the line but could be a solution for horse riders

7.1.2 We do of course speak for the general public and our soundings suggest that the popular local solution for a bridleway is to re-open Hayhill Lane (Underbridge 55) which has been filled in. This would provide an alternative bridleway and additional footway. There would be a need to provide an equestrian route to the north of the proposed Network Rail loop next to the Up Slow line to link the existing Bridleway with Hayhill Lane and this might require a CPO. The engineering works do not appear to be very challenging although the underbridge may flood. Such a route would provide access directly into a support area for the quarrying activity but we do not consider this to be a safety concern given appropriate fencing.

7.1.3 There is a track down to Hayhill Lane from footpath I 23 just to the north east of where it intersects bridleway I 20; Hayhill Lane could then be used for a short distance to a headland route down to cross the Gypsum service road and link up with I 4. If this route could be agreed, I 20 could be downgraded to a footpath between I 23 and the railway to maintain the local village circuit. The footbridge would then be an extension of footpath I 24.

7.1.4 Footpath rights can quite easily be satisfied by a slight diversion to allow the creation of a stepped bridge. Ideally we would wish to see ramps but if that is not deemed possible at this location then a stepped bridge satisfying the needs of most users on foot would be acceptable. Given the constraints of the footprint within which solutions for a pedestrian route have to be created, we concede that steps will be required as there does not appear to be room for a ramp. This unfortunately will be disadvantaging some

of the less able, but this should not be an excuse for depriving the majority of users of their legal rights of way. Legislation requires Network Rail to take all reasonable steps to accommodate less mobile people but difficulties in this area do not justify failing to maintain the rights of the many.

7.1.5 The exact location of such a bridge could be explored further and there are possible slight variations but our preferred option is to remove a broad hedge of conifers which is about three metres wide. This location would require a short stretch of trackside land on far side which may take a CPO. On the Barrow side it would involve a stepped bridge at Pingle Nook but to the side of existing drive on the edge of Jelson's land replacing the hedge and thereby not taking up any useable land on Jelson's property.