

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

Further Legal Submissions

1	<p>We do not dispute the potential danger from the crossing. What is wrong is closing it altogether instead of providing a safe alternative which is not an at-grade crossing</p>
2	<p>Network Rail (“NR”) clearly recognise the demand for a crossing here. 40 users a day were noted before use was prohibited. At paragraph 3.16 of their Statement of case NR recognise that there would be a significant increase in use as a result of proposed development: “the character of the crossing will change into a busy thoroughfare”. They say this “only serves to reinforce the requirement for stopping up”. We contend that it does the opposite, and shows the need for a safer alternative crossing such as a bridge or underpass.</p>
3	<p>The government and the medical profession recognise the increasingly strong evidence of the health-benefits of walking and encouraging people to walk. Brisk walking improves circulation and the performance of the heart and lungs, and can lower blood-pressure, and reduce risk of stroke and heart disease, the UK’s biggest killer. Walking also promotes mental health and well-being, and improves mood. It has the potential to be as effective as anti-depressants or psychotherapy in treating depression. These and other matters are well-attested and widespread take-up could massively lighten the burden on the NHS caused by physical inactivity.</p>
4	<p>Walking in a country lane between paths could at one time have been a pleasurable activity. Nowadays the volumes of motor vehicles, and their noise and fumes and speeds, dispel any rural tranquillity. Some motor-vehicles are too large for lanes which existed before the age of lorries, cattle trucks and milk-tankers, but they still use them.</p> <p>Many cars go at speeds which either endanger vulnerable road users or put them in fear of danger, even where a footway is provided.</p>
5	<p>Closing a direct strategic link like this works counter to the laudable aim of encouraging people to walk. Severing the rights of way network, so that the alternative is walking on dangerous roads with the attendant unpleasantness of vehicle noise and fumes, is likely to diminish people’s desire to walk.</p>
6	<p>Section 60 of the Countryside and Rights of Way Act 2000 required local highway authorities to produce rights of way improvement plans. The assessment which highway authorities had to make under section 60(1)(a) had to include, by virtue of section 60(2)(b), “the opportunities provided by local rights of way ... for exercise and other forms of open-air recreation and the enjoyment of the authority’s area”.</p>
7	<p>In connection with the provision, the Government produced official guidance, namely the statutory guidance contained in the document Rights of Way Improvement Plans —</p> <p>Statutory Guidance to Local Highway Authorities in England, published by the Department for Environment, Food and Rural Affairs in November 2002.</p>
8	<p>Under the heading “Assessing users’ needs” in the document’s paragraph 2.2.2, the statutory guidance highlighted certain types of route as of particular importance:—</p> <p>In making their assessments under section 60(1)(a) and 60(3)(a) [said the advice], local highway authorities should consider the needs and circumstances of people with a range of expectations, interests and levels of ability. They should take account of the needs of both local people and visitors to the area.</p> <p>For example, local highway authorities should consider the adequacy of:</p>

	<ul style="list-style-type: none"> • access to and within attractive areas of countryside which might currently have few rights of way such as watersides, coast and woodlands, or access to a particular viewpoint, feature or other attraction; ... • opportunities for cycling, harness-horse driving, horse riding and walking other than on roads used mainly by motor vehicles; and links in the network which enable people to avoid having to use such roads; • routes from centres of population, or routes which can be used in conjunction with public transport, which allow people to gain easy access to countryside from where they live; • links which create circular routes and better facilities for walkers, including dog walkers, runners, cyclists, horse riders and harness-horse drivers for leisure and health....
9	<p>The same document also makes this general point about rights of way:—</p> <p>1.1.1 Local rights of way are both a significant part of our heritage and a major recreational resource. They enable people to get away from roads used mainly by motor vehicles and enjoy the beauty and tranquillity of large parts of the countryside to which they would not otherwise have access. They are becoming more important as increases in the volume and speed of traffic are turning many once-quiet country roads into unpleasant and sometimes dangerous places for walkers, cyclists and equestrians.</p> <p>1.1.3 Local rights of way can also provide a convenient means of travelling, particularly for short journeys, in both rural and urban areas. They are important in the daily lives of many people who use them for fresh air and exercise on bicycle, foot or horse, to walk the dog, to improve their fitness, or to visit local shops and other facilities.</p> <p>1.1.4 Research for the Countryside Agency on rights of way use and demand in 2000 revealed that just over 50 per cent of households had at least one member who had used local rights of way in the previous year. The most popular activities were walking and cycling. 30 per cent of households felt that there were not enough paths and tracks while 40 per cent felt that provision was adequate. 70 per cent of households (including a third of those where nobody had undertaken any activities in the countryside in the previous year) said that they would increase activity, particularly walking and cycling, if more paths and tracks were available.</p>
10	<p>Whether Leicestershire County Council identified bridleway 120 in a RoWIP as part of the above criteria does not matter for present purposes. By any measure this is a path which DEFRA's guidance regards as significantly useful: it is a link in the network which enables people to avoid having to use roads; and it is a path which allows people to gain easy access to countryside from where they live. It is such a path par excellence: it provides residents of Sileby Road with a direct link to countryside to the north and east of the line.</p>
11	<p>NR mention (3.12) amenities to the south including a marina and (oddly) "an industrial estate". It is true there are amenities to the south, though that sector has an industrial and generally developed feel to it, not least on account of Mountsorrel quarry and the four-lane A6. The terrain to the north and east of the line is of open aspect and more character, with a good rights of way network, and some good distant views with plenty of old grassland. It provides a real sense of leaving the suburban aspects of Barrow behind, and the walks take on a truly rural character. A bridge ought to be provided to maintain that connection.</p>
12	<p>Guidance published by DEFRA in 2015 is relevant as well. Highway authorities must make an assessment including the following matters clearly regarded as important:</p> <p><i>'inconsistencies on individual rights of way, e.g. paths that don't follow the mapped route or routes which have a dead end'</i></p> <p>and</p>

	<i>'opportunities to improve the network, eg restoring routes that have been cut off by building works'.</i>
13	The order will create more of the problems to which the Rights of Way Improvement Plan is meant to ameliorate. Instead of restoring a route that has been cut off, it will create a route which has been cut off. When assessing the issue of expediency in determining the order, in our view the Inspector should have regard to the fact that this statutory guidance highlights this kind of path as of particular importance
14	<p>We do not say that because the bridleway almost certainly existed before the railway did, it should remain where it is through "seniority".</p> <p>We do say that it is perverse that the design of the rights of way network, whether for functional use or for recreation, has to be subservient nowadays to the needs of a poorly-designed railway which cut corners by having level crossings in the first place.</p> <p>If as part of NR's economic enterprise the level crossing needs to close so that the trains can run faster and faster, then the building of footbridges should be a reasonable expectation as part of the operation of such an enterprise. That is what needs to happen not to extinguish old-established rights in circumstances which will lead to fewer people walking and make it less attractive for those who continue with what is left.</p>
15	As for the practicalities of a bridge, we agree that the Highways Act 1980 doesn't provide for a compulsory purchase order but to provide a bridge would probably require the highway authority to make a diversion order. This could create enough new highway to enable a bridge to be constructed on part of it. There is provision for compensation for affected landowners [section 28 of the Highways Act 1980, as applied to this kind of order by section 121(2)]. It is arguably the same thing as a CPO.
16	We ask the Inspector, in assessing the expedience of confirming the order, to have regard to the circumstances we mention and to find that it is reasonably practicable to make the crossing safe for walkers by means of a bridge, and that the order be not confirmed, and that a bridge be provided instead.

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