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STATEMENT OF CASE: OBJECTION TO NETWORK RAIL'S PROPOSAL TO CLOSE THE OTFORD LEVEL CROSSING AND DIVERT FOOTPATH SR49 OVER A NEW FOOTBRIDGE

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Summary

We have examined Network Rail's *Statement of Case* and found it inaccurate, incomplete and unbalanced. It is not fit for purpose. The document contains a demand, not a case. The absence of an adequate *Statement of Case* should be considered grounds for terminating the Public Inquiry process at this point and rejecting Network Rail's request to divert footpath SR49 over a proposed new footbridge at Otford.

We object to what we know of Network Rail's proposal on safety grounds. The *Statement of Case*'s "safety" claims, such as they are, pertain almost exclusively to risks arising at the level crossing. This is not the "whole-system" approach the Office of Rail and Road requires. The *Statement of Case* fails to address the risks that would be created by diverting footpath SR49 over a new, high footbridge. These risks would include the risks arising from using any new bridge and the risks

arising from obliging some current level crossing users to take longer routes to avoid using the footbridge; these would be more hazardous than the level crossing because they would expose people to new and greater risks, including risks of collisions with motor vehicles on the busy A225. Denying mobility-impaired users convenient access to the village's facilities and amenities would be a safety issue for them. Taken in the round, i.e. on a whole-system basis, and bearing in mind that almost eight generations of pedestrians have used the level crossing over the last 158 years without a fatality or injury resulting from collisions with trains, the new risks created by Network Rail's proposal would exceed any plausible reduction in risk at the level crossing, thereby rendering our community less safe.

The new risks facing mobility-impaired disabled people would be especially high. This would be a form of discrimination against this (and other) protected groups as defined by the Equality Act 2010; it would be illegal. We will demonstrate Network Rail has not kept pace with recent developments in its regulator's thinking on the Equality Act 2010 (and on level crossings more generally) and ought to have addressed this issue fully in its *Statement of Case*.

Network Rail claims its proposal is "expedient" because it would enable it to run a small number of non-passenger trains at a faster speed through Otford. This is a side-issue. Safety is key here and comes before expediency. We demonstrate the anticipated gains in speeds would be nugatory - a few seconds - and have little or no commercial value to an organisation whose regulator allows it to class a freight train arriving up to 15 minutes after the scheduled time as being "on time" and therefore incurring no financial penalty. We argue it would not be expedient to spend public monies intended to promote **increased** safety on a proposal that would result in a net **reduction** in public safety in order to shave a few seconds off the journey times of five "through" (i.e. non-stopping) trains a day. Indeed, such a misuse of public funds would be likely to attract the attention of Network Rail's auditors, HM Treasury and possibly Parliament as well as the media.

Introduction

The limited amount of relevant and accurate information and argument in Network Rail's *Statement of Case* make it difficult to come to grips with the document's contents. It is difficult to argue against a case that has not been made. We are surprised by the lack of substantive content in the *Statement of Case*. After all, the Rights of Way Guidance Booklet defines the Statement of Case document as a written document full of particulars of the case a person proposes to put forward at the Inquiry. Network Rails' *Statement of Case* is Hamlet without the Prince. It contains no case. Some of its information is wrong, including something as basic as the location of the crossing it hopes to close and its accessibility status. (The crossing is not closed and we are not lobbying to reopen it!) Key pieces of information that one assumes would be central to Network Rail's case, were it to have argued one, are missing: no risk assessment, no "whole-system" approach to assessing safety, no financial case, no "optioneeering", no consideration of the Equality Act 2010 implications. The document is instead padded out with voluminous irrelevant material about Network Rail's duties and responsibilities, none of which require it to close the level crossing at Otford. Stripped of this and other irrelevant material, the document would be very thin. And the presentation of much that would remain is grossly distorted by Network Rail having adopted a one-eyed approach to safety at the level crossing. So, while Network Rail claims in the *Statement of Case* it must demonstrate "absolute compliance" with the ORR's requirements, it nonetheless ignores both ORR's wish for a "whole-system" approach to level crossing safety and ORR's insistence that risk assessment must be the basis for adopting new risk control measures. There is no sign of an actual risk assessment or a whole-system approach to safety in the *Statement of Case*. One wonders how, by 6 April 2021, Network Rail will provide the Secretary of State with "proof of evidence" of a case it has chosen not to make.

Presumably this is deliberate on Network Rail's part. It is experienced in Public Inquiries and knows how close it can sail to the wind without making its case transparent to its opponents, and at the same time avoiding having its *Statement*

of Case rejected as unfit for purpose by unamused Inspectors, thereby defaulting on its obligation to respect the Public Inquiry process' time-lines. But we believe Network Rail has misjudged on this occasion and overstepped the mark. They have not stated their case, merely asserted their demand for the level crossing to be closed and footpath SR49 diverted over a new footbridge. In reality, they have presented a 'Statement of Demand', not a *Statement of Case*. And just as one cannot transform a frog into a zebra by calling the creature a zebra, one cannot transform Network Rail's case-free document into a *Statement of Case* simply by rebranding a 'Statement of Demand' as a *Statement of Case*.

We believe the Inspector has grounds to save public money by terminating the Inquiry process at this point because Network Rail has defaulted on its obligations by failing to produce and submit to the Secretary of State a fit-for-purpose *Statement of Case* by 19 January 2021. Moreover, we believe the Inspector should advise the Secretary of State to withdraw his Order and consequently throw out Network Rail's attempt to divert footpath SR49 over a proposed new footbridge.

This note is organised as follows. First, we explain why we believe the *Statement of Case* is not fit for purpose. Second, in the event that the Inspector does not agree this amounts to a reason to terminate the Inquiry process immediately, we set out our objections to what we know of Network Rail's case in four sections:

Objection 1 is that the level crossing Network Rail wishes to close is already safe by reasonable standards that have stood the test of time.

Objection 2 is that Network Rail's proposal to divert footpath SR49 over a new footbridge creates new risks inevitably associated with using a high bridge, risks that would be greater than using the current level crossing.

Objection 3 is that the alternative routes proposed for people unable or unwilling to use the proposed new footbridge carry considerably greater risk than our present level crossing; moreover, imposing such risks on protected groups would contravene the Equality Act 2010.

Objection 4 is that it would not be expedient to use public funds to create a net increase in risk in order to generate nugatory gains in what Network Rail calls "operational efficiency" for a small number of trains daily.

We believe Network Rail's *Statement of Case* does not meet reasonable criteria to be regarded as a fit-for-purpose document in the Public Inquiry process and should be rejected, along with Network Rail's request to divert footpath SR49, on the grounds that Network Rail's submission to the Inquiry process is invalid.

Our belief is founded on three basic flaws in Network Rail's document:

- fundamental inaccuracies;
- omissions; and,
- bias.

We discuss these in turn.

Inaccuracies

The document is replete with inaccuracies.

Paragraph 1.1 of the Statement of Case defines the level crossing in question as being the 'Pilgrims Way Level Crossing ("the Crossing")' over which runs "footpath No49, Otford, Kent ("the footpath")'. We agree this is the crossing in question. But it is not always the crossing to which the Statement of Case refers to as "the Crossing". See, for example, Section 9.

Paragraph 9.3 observes:

"Prior to its closure the level crossing risk assessments confirm those who use the Crossing had the ability to walk at the required 1.2m/s and they records (sic) no known vulnerable users prior to its closure."

Note the use of the capital when referring to "the Crossing", making it clear this is the level crossing as defined in paragraph 1.1, i.e. Otford's. Note also the reference to this crossing having been closed. It hasn't. And the Otford crossing is (and presumably has always) been used by "vulnerable users". Indeed, on 1 March 2017 Mrs Nicola Mee, a Network Rail employee, informed Kent County Council's Regulation Committee that Network Rail had monitored use of the

Otford level crossing and during a nine day period 348 crossings had been made by children and eight crossings involved push chairs and prams.[1] The *Statement of Case* is incorrect: Network Rail knows "vulnerable users" use the crossing.

But let us not get distracted by facts. Network Rail's *Statement of Case* paragraph 9.4 blunders on:

"With the completion of the residential development and should the level crossing open then the characteristics of how the crossing is used will change and will include use by a notably high level of vulnerable users."

Paragraph 9.5 highlights the problems that will confront some of these new-to-Otford-crossing vulnerable users:

"Those who may use a motorised wheelchair or mobility scooter will not have the ability to accelerate off the crossing deck or change direction when a fast train is observed."

While agreeing with this description of the problems that would confront motorised wheelchair and mobility scooter users, anyone visiting Otford's level crossing will be left puzzling how someone using such vehicles got onto the crossing in the first place. When approaching the crossing from the Tudor Drive end one is confronted with the need to climb two steps, then over the wooden "bar" of the stile and descend two steps to ground level. There are a further five steps down to ground level and the level crossing itself. Having crossed the railway lines, one must then ascend two steps at the opposite stile, step over the wooden "bar" of the stile, then descend two steps to reach the footpath. These obstacles prevent motorised wheelchair and mobility scooter access to the crossing.

There's more to Network Rail's fictitious analysis. Paragraph 9.12 tells us:

[1] Recorded in the minutes of the Kent County Council Regulation Committee Members Panel, meeting in Otford to discuss Network Rail's "Application to divert Public Footpath SR49 from the at grade Foot Crossing to a stepped bridge at Otford" on 1 March 2017.

“With the characteristics of the level crossing changing from seasoned walkers to those living in an adjoining residential estate and with the Crossing providing direct access to bus routes and amenities, it is more than likely that vulnerable and encumbered users will form a high percentage of those who would use the Crossing *should it reopen*.” (our italics)

To labour the obvious – but not the obvious to Network Rail when confecting its *Statement of Case* – the Otford crossing has not been closed pending completion of a nearby residential estate, so there is no need to reopen it. There are, it is true, housing developments near the crossing. It is bordered on one side by Tudor Drive, which was mostly constructed in the 1930s and, after a break for a World War, more or less completed in 1950/51, although there have been a few additional properties constructed since then. On the other side is Well Road and adjoining roads, their houses also mostly constructed in the 1930s, but with some additional dwellings since then. Their inhabitants are, in Network Rail’s term, “seasoned users” of the crossing; the profile of their characteristics has not changed for about 70 years. So why does Network Rail consider it relevant?

Pilgrims Way footpath SR49 level crossing, not the one Network Rail writes about in sections 6 and 9 of its *Statement of Case*

It is clear from the above that section 9 of the *Statement of Case* is not about Otford, nor the people who use the level crossing at Otford. Similarly, section 6 of the Statement of Case also refers to a level crossing not at Otford: see its reference to "… possibly further impact from new housing development…" in paragraph 6.1). It appears that what we are seeing instead of a specific *Statement of Case* document about Otford is a "cut and paste" job where someone at Network Rail has got hold of a master document and failed to cut out all old case-specific information opposing the reopening of a level crossing that

was temporarily closed during construction of a new-build residential development somewhere else. This has nothing to do with the issues at hand at Otford. The carelessness involved in issuing this inadequately prepared document – careless with respect to drafting, proof reading and management supervision – is illustrative of Network Rail's broader casual approach to factual accuracy. Section 9, along with other inaccuracies discussed below, undermines confidence in the rest of the document. Why should we trust what they say or write? Moreover, why should the Inspector be put in the position of having to consider the merits of Network Rail's "case" when the material it presents is not relevant to Otford? Network Rail's sloppiness shows disrespect towards all involved in this Inquiry.

Unfortunately, there's more.

Consider, for example, the *Statement of Case's* section 13, which purports to provide evidence of risk at Otford' level crossing, but contains inaccurate information casting doubt on the validity of information in this section.

Section 13 lists 19 alleged "incidents" at the Otford level crossing. Consider the alleged "incident" logged on 3 August 2016: "At 1411 the driver of SE 2N38 1324 Charing Cross – Gravesend reported 7-8 youths playing chicken on pilgrims (sic) Way foot crossing at Otford Jn. At 1436 the Land Sheriffs advised that they had removed three girls from the area and there was no one else about." The problem here is that the Charing Cross - Gravesend service does not run through Otford. It never has, within living memory. The reason is simple. The Charing Cross – Gravesend service is well established. It is part of the complex of services that runs out of Charing Cross and along the north Kent coast to the Medway towns and beyond. We do not question that it departed Charing Cross that day at 13:24 to makes its 24 miles journey to Gravesend (measured approximately, as the crow flies). What is implausible, however, is that the driver embarked on a diversion from the standard route to Gravesend – a diversion adding in excess of 50 miles to a 24 miles journey – to deliver a service none of us has ever seen passing through Otford. Moreover, the driver required a mere 35 minutes to travel down the line to Sevenoaks (as would be required for him to get onto the

line to Otford), then turn north again in time to report 7-8 youths playing chicken at Otford at 14:11. He might have been able to get to Sevenoaks in 35 minutes (on a good day), but he would have required at least another 7-9 minutes to reach Otford station. Of course this driver saved himself a little time compared to these timings, perhaps a minute, because the alleged "incident" he reported was, he states, at Otford Junction, which is a completely different location to be found about 1 kilometre short of Otford's level crossing. And in the highly unlikely event that he had followed that route, where did he turn his train around at Sevenoaks? The route is wrong, the travel time is wrong and the location of the alleged "incident" is wrong. But all that is right enough for Network Rail, which has in the past been criticised by the Rail Safety Standards Board for fiddling its "incident" statistics prior to 2011. Network Rail chairman, Rick Hayworth, promised his institution would "heed the lessons".[2] Unfortunately he did not set a date for this and apparently we are still waiting because the only realistic assessment of this alleged "incident" is that it has been fabricated. And if Network Rail can fabricate this, what confidence can one have that other alleged "incidents" are genuine. We show below they cannot be taken at face value.

A further reason to doubt Network Rail's claims in Section 13 is its inconsistency with the this "evidence" put to Kent County Council's Regulation Committee when Network Rail's representatives addressed the Committee on 1 March 2017[3]. Mrs Mee, a Network Rail representative at that meeting, told the Committee there had been 12 "incidents" at the crossing in the five years prior to Network Rail having lodged its application for the footpath diversion with Kent County Council. Mrs Mee confirmed that application was lodged in 2014. However, Section 13 of Network Rail's *Statement of Case* shows only eight incidents in the five year period 2009-13. Even if Mrs Mee had been referring to financial , not calendar, years (i.e. 2009/10 – 2013/14) and one included any incidents in 2014 in that count, it would remain a total of eight alleged "incidents" because none was logged in 2014. So there is a basic inconsistency in Network Rail's evidence of alleged "incidents" at Otford's level crossing: 12 were claimed for the 2009-13

[2] BBC report 25 January 2011
[3] See Minutes of Kent County Council Regulation Committee Members Panel, held in Otford, 1 March 2017

period (or, being charitable, the 2009/10-2013/14 period) when Network Rail presented its case to Kent County Council's Regulation Committee in March 2017, but now there are only eight alleged "incidents" for the same period in Section 13 of Network Rail's *Statement of Case.* Depending how one looks at this, the decline in alleged "incidents" in that five year period represents either a 50% exaggeration of the number of alleged "incidents" when the data were first presented to the Kent County Council Regulation Committee, or a reduction of 33% in the number of alleged "incidents" now. Either way, it represents a big change. Four alleged "incidents" appear to have been deleted from Network Rail's official record. One wonders why. Were they not properly recorded in the first place? Were the incident recording criteria changed and tightened to exclude "incidents" that never had safety implications in the first place (we were told in 2017 that a "near miss" is a completely subjective concept and left to the driver's discretion as to what and whether to report formally)? Were the four deletions as fictitious as the Charing Cross-Gravesend service included in the *Statement of Case*? Had anyone heeded the Rail Safety Standards Board's criticism of Network Rail's approach to "incident" recording? It appears not.

One might be prepared to make allowances for the need to revise very recent data, but we are in 2021 and the data being changed are over seven years old. This 33% (or 50%) revision is not credible, especially when it involves deletions, not the sort of additions that would be made as new information is discovered. So these revisions are not mere "updates" to a data series, they represent something more fundamental and problematic. If the data presented by Mrs Mee in 2017 were not solid, why should we have any more faith in those presented in the *Statement of Case*? Bearing in mind the apparent fabrication of the Charing Cross – Gravesend via Otford service and its alleged "incident" at Otford Junction, no fair-minded or prudent person could trust these data. Yet information on safety is key to the Public Inquiry's outcome. We now know Network Rail exaggerated the number of alleged "incidents" at Otford by a huge margin, 50%, in 2017. Who is to say it has not done so again?

Moving on, under "Amenities, Destination and Accessibility", section 17 of the *Statement of Case*, there is yet another fabrication: a non-existent bus service.

This is not only another example of Network Rail's overly-casual approach to preparing its Statement of Case, but also a further demonstration that it lacks local knowledge, the sort of knowledge it needs to evaluate properly the consequences of closing the level crossing.

Paragraph 17.1 describes Otford's bus transport links:

"Buses 405 and 421 serve the bus stops along the A225 (Sevenoaks Road and Station Road). The A225 can be accessed from on foot from both sides of the Crossing using the alternative route mentioned in section 16. Bus 405 only runs on Wednesdays. Bus 421 runs Monday to Saturday. The buses run in both directions… The closure of the Crossing would not significantly limit access to the current public transport network."

This was an incorrect description of Otford's bus services, even before the pandemic disrupted services. The 405 service ceased "a long time ago" (i.e. well before the pandemic disrupted bus services) according to Go-Coach, the bus company that now runs Otford's bus service. The pandemic led to the 421 bus service being replaced by Go-Coach's "dial-only service". So neither the 405 or 421 services existed when Network Rail wrote and submitted its *Statement of Case*. As with its "incident" reporting, it appears Network Rail couldn't be bothered to get its right facts.

There are, unfortunately, more inaccuracies in the *Statement of Case*, but it would be tedious to go through them all. Instead, let us draw this section to a conclusion with a mention of just one of them: lamp posts. It may appear odd to single out lamp posts from the many other remaining inaccuracies in the *Statement of Case*, but this topic underscores how little attention Network Rail has given to appraising the safety of alternative routes available to people unable or unwilling to use the proposed footbridge. This lack of attention raises strong doubts that they have met their non-discrimination obligations towards members of protected groups as defined by the Equality Act 2010.

Section 16 of the *Statement of Case* describes alternative routes to the proposed footbridge for people wishing to cross the railway lines. Paragraph 16.4 states

"Lamp posts are positioned at different points on the A225 (Station Road) providing sufficient lighting." Paragraph 16.6 claims "Otford Junction roundabout is well lit…". Paragraph 16.9 states "There are lamp posts situated along the A225 (Sevenoaks Road) and the pavements are wide enough for pedestrians to pass each other without much difficulty." Paragraph 16.8 concedes "Pilgrims Way East, albeit not well lit, has a pavement on only one side of the road…"

The issue here is that there are no lamp posts, not on Pilgrims Way East, nor on the A225 from Otford railway station to the centre of the village, nor at "Otford Junction" (actually the pond roundabout in the village centre: Otford Junction is a railway junction immediately south of Otford whose importance to safety will be discussed in Objection 4). Otford was offered public street lighting in 1906, but the Parish Council refused the offer and Otford has never reversed that decision[4]. So there are no lamp posts along any route that would substitute for using footpath SR49 over the level crossing. Indeed, on the lower footpath (SR49) from the rail crossing stile to the station car park there are three overhead lamps that light the western section of this footpath, plus a light that illuminates the crossing itself. The second half of this section of the footpath (i.e. the part nearest to the station) also benefits from the station car park's lighting. The only exception on Station Road is one light on a traffic island in the middle of the A225, close to the road entrance to the station. This is not very bright and serves more as a warning of the island's presence than as a form of effective illumination of the A225.

The level crossing and railway station itself have lighting: on the approach to and in the station forecourt, on platforms, and in the station's car park. Indeed, the station itself is an island of light in Otford's darkness. Some of this light spills onto one of the footpaths leading from the level crossing. Otherwise, except for the illuminated traffic island, there is no street light, no lamp posts, in the area covered by Network Rail's proposed alternative routes for people unable to use the proposed footbridge. Pilgrims Way East in Otford is not only "not well lit", it, like much of the village, is not lit at all.

[4] D. Clarke and A. Stoyel, (1975), *Otford in Kent: A History*, (Battle, Sussex: Olivers), p230

The absence of street lighting from much of Otford is one of the village's distinctive characteristics. It could not have been missed by anyone undertaking even a cursory appraisal of the alternative routes to the proposed new footbridge. This suggests Network Rail either did not know it would be requiring mobility-impaired people, were they unable to negotiate the new footbridge, to undertake longer walk-arounds on unlit and uneven paths and pavements (i.e. we are back to the errors in section 9, which claimed no vulnerable people use the level crossing), or Network Rail felt that attaining its bridge-building objective was more important to the organisation than respecting the needs and safety of groups protected under the Equality Act 2010. Either way, the lamp posts fabrication fits the broader and sustained pattern of invention in the *Statement of Case*: alleged incidents, buses, lamp posts…

Omissions

Network Rail is keen in its *Statement of Case* to tell us about its Licence Duties and Responsibilities (section 5), its obligations to its regulator, the Office of Rail and Road (section 6) and to use public money in line with Parliamentary controls (section 15). Indeed, Network Rail is so busy telling readers about these duties, responsibilities and obligations – none of which require Network Rail to close Otford's level crossing - that it never quite gets around to telling us the risk assessment, financial and safety information crucial to its case. These omissions are compounded by the failure to identify Network Rail's responsibilities under the Equality Act 2010. Network Rail is well aware, not least from the Kent County Council Regulation Committee Members Panel Meeting in March 2017, the latter are relevant and material to its proposal to divert footpath SR49. We discuss these omission in turn under three themes:

- finance,
- risk assessment, and
- the Equality Act.

In each area Network Rail fails to justify, or even state, its case for crossing closure.

Finance

The *Statement of Case* makes no financial case for proceeding with Network Rail's preferred option of diverting footpath SR49 over a new-build footbridge.

Network Rail draws attention to a £200 million ring-fenced budget for HMG created for safety works, including at level crossings, in spending control periods 2009/10-2013/14 and 2014/15-2019. As Network Rail reminds us in section 6.4, "This imperative (to improve safety at level crossings) has unsurprisingly continued into the most recent Control Period, which runs from 2019 to March 2024." Well, the imperative to improve safety might have continued, but it is our understanding that dedicated, ring-fenced funding does not continue. (This is based on our reading of the Office of Rail and Road lamenting the end of this discrete budget; Network Rail remains vague on this, as on so many other issues in its *Statement of Case*.[5]) The implication is that safety work must compete for funds within Network Rail's overall budget and, to win the necessary funds, safety works must be justified as a better use of public monies than alternatives. So one would expect a degree of transparency in a *Statement of Case* intended to win approval to use public monies to build a new footbridge.

Basic transparency in a case such as this would require Network Rail to respect HM Treasury's "Green Book" guidance to those intending to use public money to fund an investment project. One would expect the *Statement of Case* section on using public money to include at least a brief cost/benefit analysis summary comparing an investment in the proposed footbridge with the "do nothing" option – this is a mandatory comparison for all public sector investments. Moreover, one would expect it to show cost/benefit comparisons with alternative

[5] See ORR "Strategy for regulation of health and safety risks" (revised 2020), chapter 4, p9: "Network Rail has produced and adopted a new strategy for level crossings for 2019-29… partly as a result of sustained ORR pressure… to secure a more focussed concentration on risk at passive (pedestrian level) crossings." ORR goes on to describe how it regrets Network Rail does not have ring-fenced funds to implement this strategy.

investment options in order to demonstrate the superiority of the favoured option. In this instance one would expect Network Rail to demonstrate the footbridge investment was superior to both the "do nothing" option and investment in Miniature Stop Lights (MSL), a safety-enhancing alternative to the footbridge mentioned in paragraph 14.2, but instantly and implausibly dismissed in the *Statement of Case* without further consideration.

Instead of a basic summary of the relevant cost/benefits of options we get nothing. Nothing on the cost of investing in a footbridge and the consequent depreciation and maintenance costs (and by extension the relative cost saving from doing nothing). Nor do we see any financial data on the cost of installing and running a MSL system. We are just told in section 15 of Network Rail's financial responsibilities in generic terms, but nothing about how these responsibilities will be exercised in this case, and no quantification of costs or benefits, not even the amount of finance involved.[6]

The MSL option should have been pursued given what the *Statement of Case* has to say about this option in paragraph 14.2: "The provision of a train detection and warning system such as Miniature Stop Lights would help to prevent accidents where users are not aware of approaching trains…" The *Statement of Case*'s lack of financial transparency here leaves one with the suspicion that an investment in MSL might well be superior to the footbridge proposal on safety improvement, affordability, value for money and public access and Equality Act grounds. The vacuous *Statement of Case* gives us no reason to suppose otherwise.

Otford residents wishing to retain the level crossing have argued, as in 2017, that installing Miniature Stop Lights at the level crossing would be welcome. This would combine retention of an already very safe and convenient level crossing with a further improvement in safety, albeit marginal. The MSL would inform crossing users' decisions as to when they could safely cross. It would bring clarity to decisions made at the crossing "decision point". Had such a system been in

[6] Pre-March 2017 contacts with Network Rail's representatives led us to believe the proposed footbridge would cost, at the prices prevailing at that time, in the region of £600,000 to build. Costs will have changed since then. We were not able to elicit information on likely maintenance costs, nor the costs of installing a MSL (or similar) system.

place already, it would probably have eliminated around half of the alleged "incidents" listed in the *Statement of Case*'s section 13 because these arose as a result of mismatches between crossing users' and train drivers' assessments as to when it was safe to cross. The users involved in half of section 13's alleged "incidents" were not playing "chicken" on the tracks or looking to get themselves run over, they were simply people whose decisions brought them too close for comfort in the drivers' opinions. Network Rail admits that installing a MSL system would help reduce risk at Otford's crossing in certain circumstances (paragraph 14.2). Moreover, the MSL option would help Network Rail respond to its regulator's complaint that Network Rail makes insufficient use of technological and innovative solutions to safety issues.[7] And an MSL system would make the expensive and risk-creating new footbridge unnecessary. MSL installation would be a "win-win" outcome. Yet Network Rail stubbornly refuses to address the issue, raising suspicions that what it really wants at Otford is not increased safety, but increased line speed, although this would be of little use to them, as demonstrated in our analysis under objection 4.

Risk assessment

The *Statement of Case* makes no risk assessment case for diverting footpath SR49 over the proposed new footbridge. The section on assessing risk (11) is as hollow as that on finance (15). Section 11 fails to make a risk-based case for what Network Rail wants to do and the *Statement of Case* instead falls back on the need for "absolute compliance" with its regulator's policies on level crossings, which it proceeds to summarise incorrectly in paragraph 6.4.

[7] See ORR "Strategy for regulation of health and safety risks" (revised 2020), chapter 4, p9: "Network Rail has developed new 'overlap' technologies that will provide 'active' warning of approaching trains at footpaths… Roll out of this system has not been as widespread as (ORR) anticipated, however… We will continue to challenge delay in the introduction of new level crossing technology." Well, ORR, here's a chance to "challenge" Network Rail! We would welcome this because ORR says, on p10, it "expects the adoption of new technology to make a significant difference in controlling these risks", i.e. the risks to people who must decide for themselves when it is safe to cross on a level crossing.

Network Rail tells us the Office of Rail and Road (ORR) insists on "absolute compliance" with the conditions ORR sets when licencing Network Rail to operate (*Statement of Case*, paragraph 6.3). ORR requires Network Rail to have a strategy for handling risk and to produce risk assessments; Network Rail complies. But only after a fashion as regards risk assessments.

Section 11 sets out in broad terms how Network Rail goes about constructing risk assessments and includes information in paragraph 11.3 about how it has spent some £3 million on upgrading its risk assessment modelling. Three points are worth highlighting because of their relevance to Otford's level crossing:

- The modelling upgrade will be introduced in Spring 2021. In other words, Network Rail intends soon to scrap the modelling approach used in 2014-17 to identify Otford as having a high risk level crossing that, Network Rail claimed at the time, justified it embarking on its attempt to have footpath SR49 diverted over a new footbridge. One may infer from this that Network Rail considers the risk modelling it used when bringing its case to the Kent County Council Regulation Committee and now to the Public Inquiry is not fit for purpose, otherwise it would not be scrapping the approach it adopted during 2014-17. We believe it never was fit for purpose. It identified as high risk a level crossing at which there had been no fatalities or injuries to users in 158 years. To any experienced risk modeller, it was apparent the quantitative elements in that model were misspecified in a way that biased the model's results, rendering it not fit for purpose. No surprise to us, therefore, that Network Rail has scrapped its old approach to risk modelling and risk assessment and will adopt a new one. Clearly the risk modelling in 2014-17 exaggerating risks at crossings such as Otford's and misled Network Rail's management into devoting resources to mitigate risk in locations where risk was less than they believed, while diverting limited financial resources away from areas of the industry where risk presents urgent, deadly and arguably more tractable problems in the event that money were spent on tackling them, such as

contractor compliance with safety codes, and the impacts of heavy rain and flooding on cuttings and embankments, respectively.[8]

- The consequences of Network Rail's risk assessment inadequacies became distressingly manifest at a vehicular level crossing in East Farleigh, Kent. Network Rail was fined £200,000 and order to pay a signalman's £86,000 legal costs after he had been injured when operating a level crossing. Media reported ORR's investigation into the causes of the injury found Network Rail's risk assessment "inadequate". Ian Posser, HM Inspector of Railways, said the problems went beyond the immediate case: "we would expect to see proper risk assessments made… and necessary safety measures taken". Yet look in vain at the *Statement of Case*, where no proper – or indeed any - risk assessment has been made. Is this how Network Rail, in Rick Hayward's words, "heeds the lessons"? Or its regulator?
- Section 11 tells us Network Rail's risk assessment combines quantitative and qualitative information. Such an approach has some advantages, but also creates real problems because the individuals feeding in their views and selecting information for inclusion in the assessment may themselves have pre-existing attitudes and prejudices that make dispassionate analysis difficult or impossible. This incompatibility of assessments problem then carries across into attempts to compare assessments of risk based on different individuals' differing subjective and partial judgements of risks at different level crossings. One ends up trying to compare apples with pears. Ranking risk reliably becomes impossible. Introducing the qualitative element to risk assessment also creates opportunities for the prevailing organisational culture to disrupt production of dispassionate risk assessments. It is easy to see how this might creep in when individuals such as Ian Prosser, ORR's Director of Safety, states "We support the

[8] One of the authors of this note spent much of his career as a professional risk modeller working variously for the Foreign and Commonwealth Office, the Cabinet Office, the International Monetary Fund in Washington and the Organisation for Economic Co-operation and Development in Paris. He offered to take a look at Network Rail's ALCRM model and was promised a copy by a Network Rail employee, but never received it. He welcomes the fact that Network Rail's management eventually recognised the model then, and regrettably still in use pending implementation of its upgrade, was flawed and was prepared to spend £3 million on essential improvements.

closure of level crossings and this should be the first option considered in a risk-control strategy"[9]. Andrew Haines, Network Rail's Chief Executive, offers a less nuanced opinion: "Simply put, the safest level crossing is a closed one."[10] It takes real integrity to resist this kind of cultural pressure and prevent it distorting and limiting the scope of one's judgements and assessments of level crossing risk.

- We are told the about-to-be-abandoned risk assessment model measures and classifies risk in various ways. Oddly, none of this has been included in the *Statement of Case*. We are not told what the old, failing risk assessment processes made of Otford's level crossing, nor whether the new, upgraded risk assessment process produces the same or different risk assessment for Otford's level crossing. So the document provides no evidential risk-assessed basis for arguing there is a pressing need for additional safety measures at Otford. As with finance, the *Statement of Case* makes no case in this area. And as with other elements of the *Statement of Case*, one is left with the impression we are here at the Inquiry stage of the planning process because we are here, driven along by bureaucratic forces in Network Rail that grind along simply because the bureaucracy was set up to do so. There is no sign Network Rail learned anything from having its application to divert footpath SR49 rejected on safety grounds by Kent County Council's Regulation Committee in 2017. As in 2017, Network Rail again asserts in 2021 what it wants, but does not bother to make a risk-informed safety case for it.

Equality Act 2010

Network Rail, so keen to pad out its Statement of Case by telling readers of its various duties and responsibilities in many spheres (see, for example, sections 1, 3, 5, 6, 7, 11, and 15), somehow omits mention of its duty to respect protected

[9] Ian Prosser, Foreword to ORR *Strategy for Regulation of health and safety risk*. Elsewhere Prosser takes a more balanced view.

[10] Andrew Haines, Forward to *Enhancing Level Crossing safety, 2019-29: A long-term strategy targeting improved safety on Great Britain's railways*. (Network Rail website www.networkrail.co.uk)

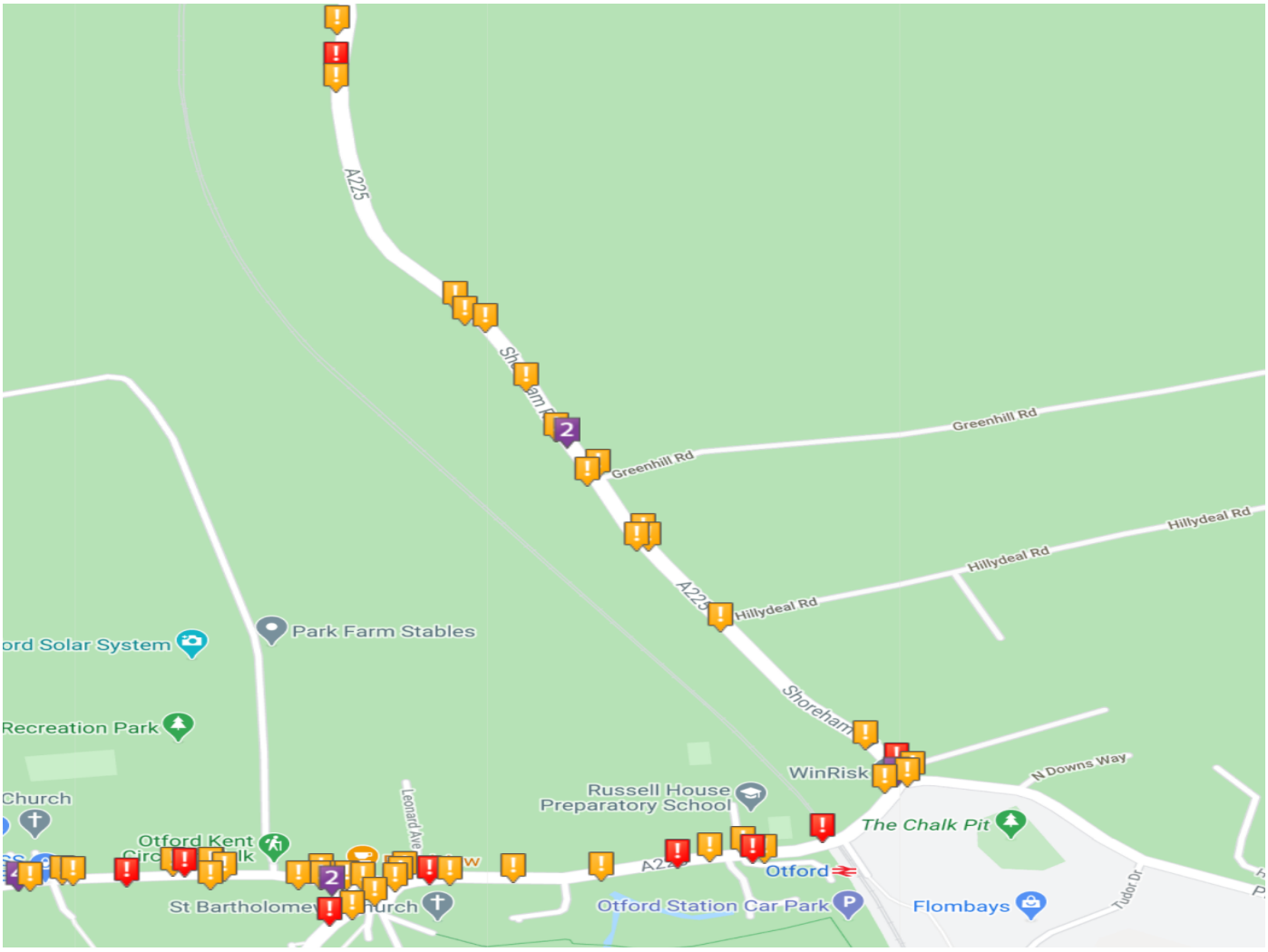
groups' interests under the Equality Act 2010. This would take it into territory it apparently would rather not cover. Indeed, it discusses only what it calls "vulnerable groups" – some of which overlap with the Act's protected groups – in section 9 without mentioning the Equality Act. Likewise, the Equality Act is conspicuous by its absence from the discussion of "Mitigation and Optioneering" (section 14), "Alternative routes" (section 16) and "Amenities, Destination and Accessibility" (section 17), any one of which might have been expected to consider the Equality Act's implications. The nearest one gets is in paragraph 17.7.1: "The assessment process, undertaken by Network Rail, invites due consideration to be given to the nature of any physical impediment or impediments posed to pedestrian users who may suffer immobility or relative immobility. Such is the case here." Leaving aside the fact that the Equality Act covers more than people with mobility problems, that final claim is breathtaking.

The *Statement of Case* offers no assessment, or even mention, of the risks facing members of protected groups (or anyone else for that matter) when using the proposed new, high footbridge. Nor does it consider risks created by obliging members of protected groups to walk further than they needed when using the level crossing – and, moreover, having to cross and walk alongside a busy and accident-prone A225.[11] There have been many accidents along the A225: 13 minor accidents and four serious along Station Road during 2000-19 according to the Department for Transport's records (contrasting with no accidents at the level crossing in the same period). The Department for Transport (DfT) "crash map" below shows the accidents' locations scattered along a road Network Rail believes mobility-impaired people should use: minor accidents (coloured yellow) and serious (red) according to DfT criteria. A perennial problem has been that, although the speed limit has been (and remains) 30 mph along this stretch of the A225 (encompassing Shoreham Road and Station Road), the police recorded average (mean) speeds along this stretch as 35 mph in each direction, while 15%

[11] One of the authors of this note (who had no mobility problems when the incidents occurred) has been struck by the wing mirror of a passing car driven by a parent bringing its child late to Scouts, and on another occasion by a supermarket delivery van when it pulled somewhat carelessly onto the pavement alongside the A225 to park to make its delivery. The delivery driver was extremely apologetic, explaining he had been distracted by sending a text as he pulled off the road to park two wheels on the pavement. Not a risk we have ever encountered in a locomotive driver at Otford.

of vehicles were being driven at 37/38 mph or more when last officially measured (2014). These speeds caused Kent County Council to turn down Otford's request for a zebra crossing at or close to the rail overbridge on Station Road, the location being regarded as too dangerous by the County Council.

The *Statement of Case* omits any discussion of risk diversion. It merely asserts without evidential basis (in paragraph 16.3) the A225 alternative "is a safer (than the Crossing) route for crossing the railway". Bearing in mind there have been four serious accidents on the A225 within a few yards of the railway overbridge and the railway station, one can see how little effort Network Rail has put into assessing safety, including the safety of vulnerable users and members of protected groups.



The *Statement of Case* not only omits discussion of the implications of the Equality Act 2010, it fails to show any appreciation of recent developments in its regulator's thinking on the Act, despite claiming Network Rail must deliver "absolute compliance" (paragraph 6,3).

The ORR's current guidance on level crossings, including Equality Act aspects, is set out in "Level Crossings: a guide for managers, designers and operators – Railway Safety Publication 7". This was issued in December 2011. The guidance states: "the Equality Act 2010 places duties on designers and managers to ensure that facilities at crossings do not cause an unnecessary barrier to access across the railway for those with disabilities."[12]

Of late ORR has become dissatisfied with its level crossings safety guidance, in part because its blanket preference for closing level crossings created tensions with Network Rail's duties and responsibilities under the Equality Act. ORR issued a consultation document in January 2021 explaining that its 2011 guidance, while still in place for the moment, had become "out of date or superseded" through technological and other developments.[13] Furthermore, while clinging to its mantra "consideration should always first be given to alternatives to a level crossing", ORR revealed itself to be increasingly uncomfortable with the incompatibility of this approach with the Equality Act.[14] A considerable part of ORR's note covering and explaining the purpose of its Consultation document focuses on the Equality Act.

The cover note reminds Network Rail and others in the railway industry the Equality Act "requires the public sector to:

- eliminate unlawful discrimination, harassment or victimisation as per the Equality Act;
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not share it; and

[12] ORR (2011) "Railway Safety Publication 7", p7
[13] ORR (2021) "Consultation on 'Principles for Managing Level Crossing Safety' guideline", p4
[14] Op cit. p4

- foster good relations between people who share a relevant protected characteristic and those who do not share it."[15]

Having reminded Network Rail (and others) what they are supposed to be doing under the Act, ORR's cover note then begins to draw out implications for their activities: "the area where equality considerations are most relevant are regarding crossing users and particularly people with reduced mobility, which has relevance to the protected characteristics of disability, age, pregnancy, maternity and race."[16] (Note the *Statement of Case* fails to even mention the last three of these characteristics, although section 9 about a level crossing not in Otford does discuss the Network Rail's wish to avoid providing a level crossing accessible to people using mobility scooters and motorised wheelchairs, and the elderly.)

ORR goes on to state "the risk assessment is the basis for implementing control measures" and that the proposed new guidelines are intended to achieve greater clarity regarding risks of concern to members of protected groups.[17] ORR emphasises risks are to be assessed "on a whole-system basis" i.e. from the perspective of level crossing users as well as the railway industry.[18] One would like to think so. Indeed, one imagines this would be standard industry practice, both now and in the future when ORR's updated level crossing safety guidance is formally introduced. However, as we observed above, section 11 of the *Statement of Case* merely told us how Network Rail had decided to scrap the flawed risk assessment model it used when it attempted unsuccessfully to persuade Kent County Council it had a safety case justifying diverting footpath SR49 over a proposed new footbridge in 2017, and how Network Rail will replace the flawed model with a £3 million upgrade from Spring 2021. The *Statement of Case* fails, however, to present any - old or new - model-based risk assessment of Otford's crossing, let alone an assessment based on a "whole-system" approach.

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[15] Op cit. p9

[16] Op cit. p9

[17] Op cit. p10 "The new document does not change the already existing legal requirements for consideration of these users, but makes the risks associated with persons of reduced mobility or vulnerable people using a crossing much clearer to a wider range of audiences of railway professionals undertaking risk assessments. "

[18] Op cit. p5 "The principles cover a broad range of level crossings and encourage people to consider level crossings as a whole system, including the considerations from a user perspective, the railway perspective, and the highway perspective."

The *Statement of Case* shows no evidence of keeping up with these developments in its regulator's thinking on level crossing safety, nor even of Network Rail's claim to "absolute compliance" with its regulator's requirements. The ORR would presumably conclude from Network Rail's reliance on assertion in the *Statement of Case* in place of a properly conducted and evidenced "whole-system" risk assessment, and its obfuscation and evasion on risk assessment instead of clarity, that Network Rail has no basis for introducing new control measures at Otford. If so, we would agree.

We also agree with another point ORR makes regarding level crossing safety and protected groups. In its consultation document cover note, ORR states "The accessibility of level crossings is an important issue for people with restricted mobility… Level crossings can also be in some circumstances *the only accessible route for people with restricted mobility to cross the railway in that area*. This should be taken into account in any proposal to close a level crossing" (our italics).[19] We are so pleased the ORR highlighted this point because, although the *Statement of Case*'s is silent on this matter, it is highly relevant to the situation in Otford.

Section 16 offers a breezy, but unsupported, claim that the three alternative routes it proposes are safe and adequate, presumably including for members of protected groups. Mr Tom Housden, a disabled person living near SR49 who uses the level crossing frequently, offered a more thoughtful contribution when he addressed the Kent County Council Regulation Committee Member Panel on 1 March 2017, speaking on behalf of a number of disabled people in Otford.

Mr Housden's contribution, recorded in the official minutes of that meeting, contained the following:

"Mr Housden went on to consider the impact of a bridge on the safety of the disabled. He said that there were two groups of disabled people who were affected (by Network Rail's proposal to close the level crossing and divert footpath SR49 over a new footbridge). These were blind or partially sighted

[19] Op cit. p11

people and people with mobility problems. A bridge would reduce one set of problems for people with sight problems as they would no longer have to worry about their inability to see a train coming. The proposed bridge would, however, introduce a new series of risks. People with limited or no sight would have to deal with two sets of steps, which would be risky at the best of times. They would have especial difficulty seeing a safe route if there were obstructions on the bridge or when bad weather had increased the risk of slipping on wet or icy steps. He considered that, on balance, a footbridge would not improve safety for people who were blind or partially sighted.

"Mr Housden said people with mobility problems would find that a bridge would definitely increase the level of risk in comparison to the present crossing as steps could be very difficult and dangerous for them. Crossing a style was difficult enough, but climbing two flights of steps would be even worse.

"Mr Housden referred to his own case as an example of a general problem. He said that when he came home from Sevenoaks on the train, he avoided using the footbridge on the platform because he felt unstable and did not want to risk using the bridge. He would go the long way round instead, along the footpath and across the stile as this was a far safer route for him. He then referred to a letter from another local resident who had informed him that a footbridge would be far more dangerous for her than the present crossing because of her condition. This letter indicated there were many others with mobility problems who use the present crossing. He felt it would be wrong to make changes that reduced their safety.

"Mr Housden went on to speak to his third point which was that convenience was a safety issue for the disabled. He said that if disabled people with mobility problems had to walk the long way round to cross the railway line, they would be exposed to additional risks of falling. They would also need to cross a busy main road where they had to cross the road bridge across the tracks. He asked the Panel to bear in mind that shorter routes were generally safer routes for disabled people if footbridges could be avoided. He asked the Panel not to force disabled

people to walk the long way round to avoid the footbridge and to keep the crossing as it was."

The ORR issued *Railway Safety Note 7* on level crossing safety only a year after the Equality Act 2010 was passed. Since then it has had time to develop its understanding of the Act's implications and its publication of a consultation on new safety guidelines is reveals ORR's direction of travel on this topic. It wants:

- risk assessments to be produced on a whole-system basis to take account of users' as well as railway industry perspectives;
- greater clarity on issues of especial concern to members of protected groups, including in risk assessments; and,
- greater sensitivity to the needs of members of protected groups when decisions are being made on closing level crossings.

Network Rail was aware of all this when it assembled its *Statement of Case*, yet chose to ignore it. It was also well aware these matters are relevant at Otford because its representatives were present when Mr Housden spoke about the likely impact on Otford's disabled were the level crossing to be closed at the Kent County Council Regulation Committee meeting in 2017. Yet Network Rail omitted discussion of these matters from its *Statement of Case*, preferring to discuss issues that would affect vulnerable users not at Otford, but at a level crossing located elsewhere. The omission of any disability strategy document or a reference to such a document – an Equality Act requirement – is simply shocking.

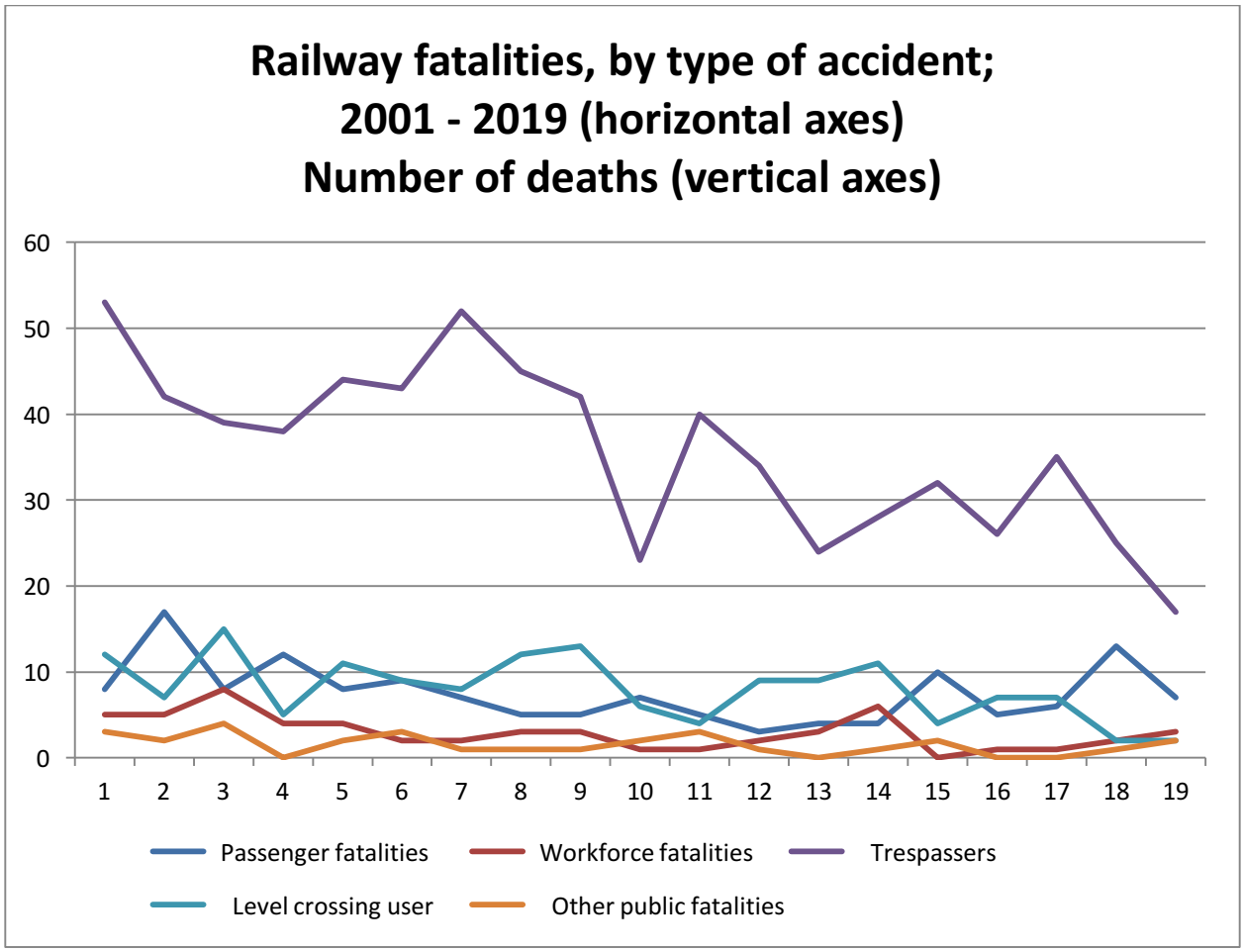
Bias

It is important to see the safety record of pedestrian level crossings in context. The government and ORR have tasked Network Rail with improving safety on Britain's railways and it has made progress in doing so. Ignoring deaths through suicide, as ORR decrees we should when discussing railway safety, all classes of fatality have declined over the last 20 years. The chart below, based on Department for Transport data on fatalities on the mainline railway during

2001/2-19/20, makes this clear. In this period fatalities have always been greatest among trespassers (65% of all accidental fatalities over this period). Fatalities due to accidents at level crossings – often caused by collisions between trains and cars - have been broadly similar in number to train passenger fatalities, although usually a little higher (15% versus 14%). Once one separates fatalities at vehicular level crossings from those at pedestrian crossings, one sees there were more fatalities among passengers than at pedestrian level crossings. As far as pedestrian level crossing users are concerned, your likelihood of dying on a train is higher than being hit and killed by it.

Fatality risks at passive pedestrian level crossings (i.e. those lacking technological aids to pedestrians), such as Otford's, are small. ORR measures the average risk at 189.5 fatalities per 1,000,000,000 crossings.[20] The pandemic has accustomed us to thinking of fatalities per 100,000; ORR's measure of risk at passive level crossings comes out as 0.00001895 per 100,000 crossings. The risk is tiny compared to others we accept and readily live with.

[20] ORR "Strategy for regulation of health and safety risks" (revised 2020), chapter 4, p7



Source: Department for Transport Statistics, Rail Statistics Table TSGN0805 (RA10501)
https://www.gov.uk/government/statistical-data-sets/rai05-rail-accidents-and-safety

ORR is aware pedestrian level crossing fatality risks are very small. Although it would prefer there to be no level crossings and thus zero fatality risks, it recognises broader considerations come into play. ORR states its strategy is to "ensure that the closure of level crossings is the first option considered in a risk control strategy by the duty holder (Network Rail in this instance), in line with the principles of prevention. We recognise the need to balance the risk of alternative routes against the safety benefits to the railway of closing crossings and others are best placed to make these judgements."[21] Indeed, ORR's *bête noir* is vehicular level crossings, not pedestrian crossings; in fact it thinks rather well of pedestrian

[21] Op cit. p1

level crossings: it even advocates their creation, although one would never know this from Network Rail's biased *Statement of Case*.[22]

The *Statement of Case* (paragraph 6.4) describes ORR's position on level crossings as: "ORR endorses closure of level crossings where there is a risk to public safety and where there is no other viable option to sufficiently mitigate or reduce that risk." The *Statement of Case*, ignoring its own statement that installing a Miniature Stop Light system would mitigate the near-zero risk of fatalities or injuries at Otford (paragraph 14.2), worries instead (in paragraph 6.1) about the imaginary adverse "impact from the new housing development" on crossing risks at Otford (recall the discussion above of section 9's erroneous ramblings about the impact of a new residential housing development on the decision of whether to reopen Otford's supposedly closed level crossing). The *Statement of Case,* having started from the position that "it is not reasonably practical to make the Crossing safe for public users" (paragraph 1.11), plods on to its final assertion "that the use of the Crossing is unsafe and well evidenced. The assessment has been expertly carried out and is robust" (paragraph 19.2). A pity, then, that these alleged experts were not invited to write the *Statement of Case*, reveal their risk assessment and explain why it is robust. Having chosen not to include any risk assessment in the *Statement of Case*, it is a bit rich on Network Rail's part to claim its non-existent risk assessment is "robust". How would it know? In fact the word "robust" appears to creep into paragraph 19.2 for no better reason than because, as discussed below, Network Rail's regulator has demanded it produce "robust" risk assessments.

Reaching this conclusion has required Network Rail to adopt a one-eyed approach to safety. It is clear that, whatever the ORR may say about a whole-system approach and use of appropriate risk assessments, Network Rail has thought of safety only in terms of safety at the crossing. It has not produced a risk

[22] Writing of level crossings in his Foreword to ORR *Strategy for Regulation of health and safety risk*.(revised 2020) , Ian Prosser, ORR's Director of Safety, said "Level crossings create the potential for serious train accidents because of the risk of collision with a road vehicle." He refrained from specifically mention pedestrian level crossings, indicating where he thought the main level crossing risks arise. Elsewhere, ORR advocates creating pedestrian level crossings where these can be substituted for vehicular level crossings. ORR (2011) "Level Crossings: a guide for managers, designers and operators – Railway Safety Publication 7", p62

assessment encompassing the risks of using the proposed new, high 62 step footbridge and the risks associated with diverting people who cannot use the footbridge and must instead walk further and deal with hazards on a busy and accident-prone A225. Were it to have done so, we argue below, Network Rail would have seen that eliminating a tiny risk at the level crossing could be achieved only at the expense of creating greater risks to users of its proposed new footbridge and the alternative routes for people unable or unwilling to tackle the footbridge's 62 steps. Moreover, by failing to discuss any of the risks of using the footbridge and obliging members of protected groups to embark on longer and more hazardous routes to cross the railway lines, the authors of the *Statement of Case* have chosen to ignore Network Rail's responsibilities to members of the protected groups under the Equality Act. Thus there is no credible evidence of a whole-system approach to assessing risk and safety. And even then, Network Rail has found it necessary to fabricate information in the hopes of making its *Statement of Case* appear acceptable to others unfamiliar with circumstances at Otford.

Network Rail's presentation of safety issues is biased. When discussing safety, one might reasonably have expected information on fatalities and injuries to users of Otford's level crossing. But this material is omitted entirely. Network Rail does not wish to admit there have been no fatalities to users of Otford's level crossing in the entirety of the 158 years since the crossing was opened. Similarly, Network Rail does not want to admit there have been no injuries – serious or otherwise – to users of Otford's level crossing in 158 years. Yet deaths and injuries are key aspects of safety. When the ORR launches its discussions of safety on Britain's railways, it writes primarily about deaths and injuries, regarding misuse as a secondary concern. ORR rightly gives prominence to data on deaths and injuries. It gives these a very high weight in its assessment of safety.[23] Its latest *Rail Safety* report briefly mentions "near misses" as a secondary safety concern on page 6, but only after devoting its first five pages to discussing safety in terms of deaths and injuries. (As usual, there were many hundreds of "near misses" recorded on Britain's railways, indicating Otford is not unusual in having

[23] See, for example, ORR (2020) *Rail Safety, 2019-20*

some experience of alleged "near misses".) So where is Network Rail's discussion of deaths and injuries at Otford's level crossing? Nowhere. Evidence of the sustained absence of deaths and injuries at Otford's level crossing is omitted entirely.

Instead of focussing on the key safety issues, deaths and injuries, the *Statement of Case* concentrates exclusively on alleged "incidents". It presents a mish-mash of alleged misuse and/or trespass at Otford. Trespass is a serious issue, of course, and regularly results in the highest number of non-suicide fatalities on Britain's mainline railways (see above chart showing railway fatalities by type of accident). But the trespass at Otford could have been initiated as easily in most cases from Otford station's nearby platforms as from the level crossing. In the absence of compelling safety data, Network Rail attempts to give its alleged "incident" data a prominence the quality information does not merit. Even if one took the *Statement of Case*'s section 13, "Incident History" at face value, which we do not for reasons discussed above, one would have to question their relevance. Is Network Rail really claiming the level crossing should be closed because, on 16 April 2017, a driver reported his "concern for a person's welfare at the Crossing"? How many of the other assets Network Rail manages have been closed on such grounds?

Network Rail's bias is clear in its selective approach to safety data and its avoidance of a whole-system approach to level crossing closure decisions. This carries through into distorting Network Rail's risk assessment process. How can one expect a misspecified quantitative model (discussed above), in conjunction with subjective qualitative material supplied by personnel working in a culture where bias is tolerated, to produce a high quality, reliable and robust risk assessment? Bias and high quality decision-making are not good bedfellows. It is therefore no surprise to see the ORR, in its 2019-20 *Annual Health and Safety Report* (p6), criticise Network Rail management because "inadequate risk assessment had taken place" and its risk assessments were not "robust". Well said, ORR, well said. We invite the Inspector to endorse ORR's well-informed judgement.

When Network Rail last tried to convince others its views on the safety of Otford's level crossing should be accepted, it was given short shrift by the Kent County Council Regulation Committee Member Panel on 1 March 2017. The Regulation Committee rejected Network Rail's case unanimously, 5-0. The meeting's official minutes record:

- Mr Maddison set the measured tone, he "said he did not feel the case for safety had been made on the basis of what he had read, seen and heard. He considered that the crossing could be made safer and that there were risks associated with the proposed step bridge. These included the possibility of young people dropping things on the line from the bridge as well as the significant points made by members of the public.
- "Mr Burgess said … the replacement of a well-used crossing by a step bridge was unnecessary. The approach should be one of considering the safety improvements that could be made at the crossing itself.
- "Mr Wedgbury said (Network Rail) had not been able to produce a convincing safety case for diverting the footpath onto a bridge, which brought its own safety and inconvenience issues into play.
- "Mr Manion said that the community had made its views clear. In his view the points they had made during the meeting demonstrated that they had a clear understanding of the risks involved in both the crossing and the proposed solution. This was a view he shared."[24]

Faced with this reasoned, unanimous decision based on safety considerations, the *Statement of Case* does not engage with the points the Councillors made, either individually or collectively. Instead, Network Rail crudely dismisses the Councillors' considered judgement in paragraph 4.1: "That refusal was, so far as Network Rail is concerned, unreasoned and ran contrary to the safety assessment and overall case meriting diversion." In other words, Network Rail refuses to hear messages it does not want to hear. There could be no better example of the bias that runs through the *Statement of Case* and undermines confidence in it.

[24] Kent County Council Regulation Committee Member Panel meeting minutes, 1 March 2017

In sum, Network Rail has not produced a *Statement of Case* containing full particulars of what it proposes to put forward at the Public Inquiry. It has produced a 'Statement of Demand' replete with inaccuracies, omissions and bias. It is unacceptable for Network Rail to play fast and loose with the procedures in this way. We believe that Network Rail has undermined the Inquiry process by defaulting on the requirement for it to submit a genuine Statement of Case by 19 January 2021. This provides grounds for halting the Inquiry process at this point and dismissing Network Rail's application to have footpath SR49 diverted over a new footbridge.

Objection 1. Otford's crossing is safe

The ORR is urging Network Rail to achieve the outcome that Otford's level crossing is already delivering: zero fatalities and zero injuries. It has been doing this year in, year out since it was constructed in 1862. Otford's level crossing safety performance over the last 158 years is what Network Rail should be targeting; it should not be making Otford a target for an unnecessary and perverse crossing closure.

Otford level crossing's safety record is impressive by any standards. One hundred and fifty eight years without an accidental fatality or injury is a long time. Pause a moment and consider just how long that is. Britain had 6 monarchs on the throne in that period. Britain's Empire reached its zenith, before disappearing to be replaced by the Commonwealth. Britain experienced two World Wars and countless regional wars in that time. New technologies have emerged and been surpassed, sometimes more than once, in the period. Man has gone from inventing flying machines to visiting the Moon. A village child of today might well have had a Great, Great, Great, Great, Great Grand parent who used the level crossing in its opening years. Very nearly eight generations have lived and died. But none has died on the Otford level crossing as a result of an accidental collision with a train. And none was accidentally injured.

The annual safety statistics achieved by Otford's level crossing reveal a drearily repetitive pattern reflecting this excellent outcome: Accidental Fatalities 0 v 0 Accidental Injuries. Repeat 158 times. But this masks a more interesting and encouraging pattern of safety behaviour by Otford's crossing users: accidental fatalities and injuries have remained at zero even as the underlying risks at the crossing have fluctuated over time because users have adapted their behaviour.

Two sets of risks are key here: risks created by the number of trains passing over Otford's level crossing and their speed; and risks created by changes in the number and composition of pedestrians using the crossing.

Train risks

First, train risks affecting the crossing have both increased and decreased without ever rendering it unsafe for use, as the accident data prove, the *Statement of Case*'s unreasoned assertions to the contrary notwithstanding. Technological improvements have made trains faster and quieter since 1862. Steam technology progressively increased the speed of locomotives running across Otford's crossing until the 1950s. The third rail's introduction in 1934 saw quieter, fast electric-powered trains progressively replace steam trains. The trend towards quieter and faster trains – and rising risks to crossing users – probably reached its peak in November 1994 when the fastest train on the network, the Eurostar, barrelled through Otford for the first time carrying passengers. (Test runs had been conducted before then, starting in 1991.) For nine years it continued to run unimpeded through Otford at 70 mph on the upline to London and 60 mph on the downline towards the Channel tunnel until September 2003. (Trains that might threaten to slow its progress were parked at passing points to allow the Eurostar to keep to its timetable.)

Train risks to Otford level crossing users have declined since then. The Eurostar service transferred permanently to another line when the Fawkham Junction connection to CTRL Phase One opened in September 2003. This was part of a broader trend towards reduced numbers of trains passing over the level crossing. Old timetables show the number of passenger trains running daily through Otford

were 157 in June 1962 and 156 in May 1973; Network Rail's *Statement of Case* paragraph 1.13 tells us there are currently 148 passenger trains daily, all either slowing to a stop as upline trains pass over the level crossing and arrive at the Otford station platform, or starting from 0 mph at a platform approximately 60 yards from the crossing on the downline.[25] The sharp reduction in "fast" (non-stopping) services travelling at the line speeds Network Rail wishes to restore from 24 in 1962 and 25 in 1973 to 5 (whose speed is capped at 40 mph) in 2021 also improved safety at the level crossing.

The gradual reduction in passenger services was accompanied by a more marked decline in freight services. We have no statistics on freight train traffic, but rail freight through Kent has been subject to the same downward pressures as on other parts of the rail network since the 1950s, and older residents remember freight trains as being much more frequent in the past than the five trains that pass the crossing daily now (according to the *Statement of Case,* paragraph 1.13). Moreover, the continental boat trains that used to run through Otford to the Channel have disappeared completely.

In addition to this overall reduction in the number of trains passing over the crossing, their speed has been reduced from a theoretical maximum of 70 mph to 40 mph. The speed at which trains ran through Otford was approximately 60 mph to and from Maidstone and 70 mph to and from the Sevenoaks/Bat and Ball direction until Sevenoaks District Council issued a noise abatement notice in 2002 that prohibited trains from sounding their horn as they approached Otford station from the south. The line speed limit was cut from 70 mph to 40 mph subsequently.[26] This had little impact on passenger train traffic stopping at Otford (now accounting for 97% of the traffic passing over the level crossing) and has

[25] In June 1962 there were 67 down stopping services (43 to Bat and Ball, 24 to Maidstone) and 13 down fast (non-stopping) services to Maidstone. There were 66 up stopping services (42 from Bat and Ball, 13 from Maidstone) and 11 up fast (non-stopping) services from Maidstone. Note the greater number of fast, non-stopping services, 24 daily, than the 5 running through Otford today.
In May 1973 there were 66 down stopping services (41 to Bat and Ball, 25 to Maidstone) and 13 fast (non-stopping) services to Maidstone. There were 65 up stopping services (40 from Bat and Ball, 25 from Maidstone) and 12 up fast (non-stopping services) from Maidstone. Again, the 25 fast services exceed today's 5 daily.
[26] The final section of this note explains the effects of a mandatory 30 mph speed limit at Otford Junction on the speed of trains on the Maidstone line.

only a marginal impact on the remaining 3% of traffic that comprise through trains.

This 3% of traffic must pass through Otford Junction, 1 kilometre (0.6 miles) to the south of Otford station, where there is a mandatory 30 mph speed limit on traffic using the Maidstone line because of the track's sharp bend. Downline trains pass through Otford knowing they must soon slow to 30 mph. When the line speed limit was 70 mph, traffic passing through Otford station from the Junction would be still accelerating from 30 mph towards the 70 mph speed limit, probably having reached around 60 mph by the time it reached the level crossing and station.

Taken in the round, risks at the Otford level crossing from train traffic have fallen since the 1960s because of the small reduction in passenger services and a larger reduction in freight and other non-passenger services passing through Otford without stopping, and because the reduction in line speed from 70 mph to 40 mph marginally impacted the minority of trains that pass over the crossing without stopping at Otford, many of which were and are freight trains that would have been travelling at less than 70 mph in any event.

Population risks

The second set of risks that have fluctuated over time concern the pedestrians using the crossing. Otford's population has increased over time, from 821 in 1911 to 3,843 in 1971 and more or less levelled off at that.[27] The *Statement of Case*, paragraph 18.1, quotes UK Census data as giving the combined population of Otford and Shoreham villages at 4,595. A reasonable guess would put Shoreham village's population in the 750-1,000 range, suggesting Otford's is now around 3,600-3,800. Whatever the fine detail, the Otford population able to access the crossing is now about four to five times larger than at the start of the 20th century. The number using the level crossings has probably grown faster than that in the same period for two reasons. First, the Tudor Drive and Tudor Crescent developments in the 1930s and 1950s, respectively, created an additional

[27] D. Clarke and A. Stoyel (1975) Otford in Kent, (Battle, Sussex: Olivers), p247

pedestrian demand for access to the centre of the village via the crossing. And a 1950s/60s housing development at the nearby West End of neighbouring Kemsing village created more foot traffic over the crossing because many parents in that development chose to send their children to Otford Primary school and to access Otford's amenities in preference to accessing the similarly distanced Kemsing village centre. Pulliing all this together Mrs Mee, a Network Rail employee, speaking to the Kent County Council Regulation Committee Member Panel meeting in 2017, said Network Rail had monitored pedestrian use of Otford's level crossing over a nine day period and found it averaging 173 crossings daily.[28]

Increased use of the crossing over time has been accompanied by a change in the Otford population's composition. The baby boom is over – one certainly sees fewer children and teenagers around - and the population is aging. This suggests a changing crossing clientele: fewer younger users, but more elderly users than in the immediate post-war period. We have no official data on this, but that picture feels right to us long-term residents. Does that make the crossing more or less safe? Here we do have evidence: the change in the size and composition of Otford's population has not increased the number of accidental fatalities or injuries at the crossing. They have remained at zero even as Otford's population increased, as its primary and junior school attracted Kemsing-resident pupils to use the crossing and as the composition of the population changed. Safety was not compromised.

Network Rail quotes the ORR as it states crossing users can be expected to use "reasonable vigilance to satisfy themselves that no trains are approaching before they start to cross the line" (*Statement of Case*, paragraph 8.1). Nonetheless, Network Rail questions ORR's reasoning, claiming some pedestrians compromise this vigilance by wearing "head-obscuring clothing and/or earphones and are unable to see or hear an approaching train until it is too late" (*Statement of Case*, paragraph 9.9). Interestingly, Network Rail does not make the same point about people crossing roads, as some people would be obliged to do if they were required to use one of the *Statement of Case*'s three alternative routes for people

[28] See Minutes of Kent County Council Regulation Committee Member Panel meeting, 1 March 2017

unable to cope with its proposed footbridge. Unsafe for people to wear earphones and "hoodies" when using Otford's level crossing, but safe to wear when crossing Otford's busy roads? It is just another example of Network Rail's cockeyed, institutionally-selfish approach to risk.

In any case, we can offer some reassurance on this point. It is worth mentioning that widespread use of earphone devices probably started with the Sony Walkman, introduced in 1971, which quickly became ubiquitous among people in certain age groups until, that is, they swapped these devices for earphones plugged into, successively, MP3 players and then mobile phones. Thus some of Otford's residents have been wearing earphones while using the crossing safely over a period of almost 50 years. The same, but with a longer period of adjustment, applies to clothing. "Hoodies" became fashionable in the 1980s and have been worn ever since, effectively reproducing the sort of distraction the duffel coat's hood (or ladies' rain hoods) created long before a certain Paddington Bear was wearing one as he turned up at a London railway station in 1958. *Plus ça change*…

Misuse, near-misses, trespass risks

The *Statement of Case* fails to mention Otford level crossing's excellent safety performance on the normally-accepted key indicators – accidental fatalities and injuries – and tries to divert attention from these primary safety issues onto a number of secondary issues termed "incidents". Section 13 lists these and the drivers' comments at the time with no further comment from the authors of the *Statement of Case*. As noted above, we have expressed doubts about the quality of these data: there is no Charing Cross-Gravesend service undertaking a 50+ mile detour so it can run through Otford; and the number of alleged "incidents" now recorded for the 2009-13 (or 2014) period is markedly and implausibly different from that given by Network Rail's representatives to the Kent County Council Regulation Committee in 2017 indicating Network Rail's data source is not robust and reliable, without which one cannot, of course, produce reliable and robust risk assessments. Moreover, one of the alleged "incidents", a driver reporting concern for a person's welfare on 16 April 2017, appears to be raising an issue

relating to a possible suicide, a topic ORR argues should be treated as a separate issue and not included when assessing safety risks. We understand and agree with ORR's reasoning on this and believe Network Rail should have complied with its regulator's approach and not included this alleged "incident" in the *Statement of Case*.

If one were to take the other 18 alleged non-suicide related "incident" reports at face value – and for the reasons given above we would not – what would they tell us about safety risk at Otford? We make five points:

- **First**, confidence in the accuracy of Network Rail's list of alleged "incidents" is further undermined because it reveals another example of geographical confusion in the *Statement of Case*. Having got the location of the level crossing completely wrong in sections 6 and 9 (discussed above), the *Statement of Case* shows a similar degree of muddle as to where some of the alleged "incidents" took place. Not all of the drivers' reports refer to alleged events at the Otford Pilgrims Way SR49 level crossing Network Rail wishes to close, yet are included in section 13 as if they were. Section 13's list of alleged "incidents" includes two drivers' "incident" reports, those on 3 August 2016 and on 31 August 2016, referring to events alleged to have taken place at "Otford Junction". Otford Junction, the original location of Otford's railway station before it moved up the line 0.6 of a mile to its current premises in 1882, is south of and a completely distinct location from Otford station. It is situated where the downline splits in the directions of Sevenoaks and Maidstone.[29] Otford railway station is

[29] Crossing location can be confusing. It certainly confused the British Transport Police (BTP). When the BTP received a Freedom of Information request from one of the authors of this note, he gave the location of the crossing as follows: "*DEFRA's Inspectors are to hold a Public Inquiry into this, beginning 4 May 2021 (Inquiry into Diversion Order for Footpath SR49 Pilgrims Way [Otford Kent] Rail Crossing Diversion Order 2018).*" *Apparently unaware of this crossing, the BTP asked for clarification as follows (NB (b) is at Otford Junction):* "**Please could you provide some clarity on the location / crossing that you are referring to? There are several locations that it could be. Is it:**

a) the path between Otford and Shoreham near Darent Valley Golf Course
b) the path between Otford and Kemsing parallel to the M26 near Childsbridge Farm
c) the path between Dunton Green and Knockholt near Twitton
d) the path between Dunton Green and Knockholt near Orchard Farm"

unmistakeably different from Otford Junction. The Pilgrims Way SR49 level crossing is approximately 60 yards from Otford station and not at Otford Junction. Therefore one would not expect to see "incidents" alleged to have taken place at Otford Junction being attributed to the level crossing Network Rail wishes to close.

- **Second**, the "incident" reports show Otford is not a misuse or trespass hot spot. Leaving aside the "concern for welfare" report, section 13 lists 18 alleged misuse near-miss or trespass "incidents" reported in a period of 11 years, none of which caused an accident. The ORR publishes time series data on "incidents", revealing that somewhere between 22,000 and 25,000 are recorded annually on Britain's mainline railways, totalling in excess of one quarter of a million in the 11 year period covered by the information in the *Statement of Case*'s section 13.[30] We calculate the alleged "incidents" attributed to Otford in the *Statement of Case* (albeit we believe wrongly in some cases) accounted for 0.000078% of the national total in this 11 year period. While this is broadly in line with Otford's share of the national population, it is well below the national "incident" per capita average. Thus Otford's level crossing is not especially "incident"-prone, and certainly not a "hot spot". Drivers have a lower propensity to report alleged "incidents" at Otford than elsewhere on the network. Stripping out the alleged "incidents" we believe the *Statement of Case* wrongly attributed to the Pilgrims Way SR49 level crossing, its share of national wrong-doing falls even further below the national per capita average. If one were serious about tackling risks created by incidents, one would reduce risk faster by taking action elsewhere.
- The *Statement of Case* itself provides no information enabling us to put these alleged "incidents" in a broader context, but we believe Otford, which witnesses graffiti-littered and/or vandalised trains passing though almost daily, is unlikely to rate as a major area of concern to the British Transport Police (BTP). Indeed, as outlined above, the BTP failed to locate the Pilgrims Way SR49 level crossing at Otford when presented with a

[30] ORR "Popular Statistics", www.orr.gov.uk

Freedom of Information request, and their puzzled response to the request suggests the crossing is not, in the infamous phrase much loved by the media, "known to the police". Or if it is "known", it is certainly not familiar to them or they would have known where to look when asked for data on it. (When the British Transport Police did eventually respond to our Freedom of Information request, they confirmed they had no record of fatalaties or injuries at the Pilgrim's Way SR49 footpath level crossing.) Otford features as a low crime area in crime data published by the police. Low crime, but not "no crime", as is consistent with drivers reporting 1.6 annual alleged "incidents" of misuse or trespass annually since 2009, and even then, only some of the alleged "incidents" were said to be at the level crossing under discussion!

- **Third**, if these alleged "incidents" of misuse or trespass really did take place (and we continue to harbour doubts about some of them), from where were they initiated? Some alleged "incidents" were evidently at the level crossing itself because the driver specifically mentions it, but one cannot necessarily assume all were. The alleged "incident" on 22 June 2017, for example, simply states "trespass incident reported", but not where. Given the ready availability of other access points to the railway tracks, one cannot assume the trespass was initiated from Otford's level crossing. The *Statement of Case* does not draw attention to the fact that the level crossing is just 60 yards from the southern ends of Otford station's platforms. These platforms are easily accessible. On the downline side, for example, convenient access is provided by a short flight of steps as well as by a gently sloping ramp suitable for cyclists. On the upline, access is always afforded by the footbridge from the unsupervised downline platform, sometimes through the booking hall and often through an unsupervised open gate entrance from the car park. There is no security on the platforms to supervise or prevent trespassing, nor anything more than a recently constructed partial and flimsy barrier *(see Annex B)* to prevent access from the platforms either to the tracks or the walkways alongside that are used by railway contractors. It is worth emphasising that if the

level crossing were to be closed and a bridge built, this easy access to the tracks from platforms would remain available to any would-be trespasser.

- **Fourth**, the alleged "incident" on 21 January 2015, when a bike was said to have been left on the tracks at the level crossing and hit by a train, was pure vandalism. Closing the level crossing and building a bridge would not prevent vandalism, but merely oblige a would-be vandal to relocate his/her activities. For example, a bike could be brought onto either platform and thrown onto the line. Or, as a Kent County Councillor pointed out in 2017, it or other objects could be lobbed off the proposed new footbridge onto the tracks while affording a "grandstand" and doubtless satisfying (to the vandals) view of the resulting consequences.[31] Thus a bridge would not solve the vandalism problem. It is misleading of Network Rail to insinuate that it would.
- **Fifth**, when one examines the content of the drivers' "incidence" reports, it emerges that nine related to alleged near-misses (not including reports where the driver believed members of the public were "playing chicken"). The reports are insufficiently detailed to understand the reasons for the near misses, but clearly the drivers and members of the public had different assessments of the risks of using the crossing at the moment pedestrians decided to cross. Paragraph 14.2 of the *Statement of Case* reveals there is a ready and effective solution to such problems: "The provision of a train detection and warning system such as Miniature Stop Lights would help to prevent accidents where users are not aware of approaching trains.." Inexplicably, the *Statement of Case* goes on to dismiss this solution on the grounds that "… it would not prevent deliberate acts from taking place." That is as ridiculous as saying one would not use an umberella in a rain shower because it does not protect one from tornados. Moreover, as argued above, one could apply precisely the same logic to a footbridge solution: it would not prevent deliberate acts of misuse or vandalism, nor prevent trespass from Otford station's platforms. A footbridge's

[31] See Mr Maddison's comments in the Minutes of Kent County Council Regulation Committee Member Panel meeting, 1 March 2017

contribution to safeguarding the railway and pedestrians against misuse and vandalism would therefore be minimal.

We believe – and have argued in the past – that a Miniature Stop Light system (or similar warning device) would offer a technological-based (and therefore ORR-blessed) improvement to safety at the level crossing. Moreover, it would enable to all users to retain the safety and convenience benefits of the present level crossing, an issue of particular importance for members of Equality Act protected groups, as we shall argue below. Network Rail has consistently refused to engage on this, preferring to stick to its mantra "the only safe crossing is a closed one", an attitude which has driven it into offering fake claims in the *Statement of Case* flowing from Network Rail's inaccuracies and omissions of fact. While the ORR expects Network Rail to justify the introduction of new safety controls, including crossing closures, based on a sound and robust risk appraisal and whole-system approach to evaluation, Network Rail fails to do so in the *Statement of Case* and, moreover, ignores its regulator's insistence that better use can be made of technological solutions to managing risk, such as the Miniature Stop Light system.


Danger
Do not touch the live rail
Warning
Do not trespass on the Railway
Penalty £1000
STOP
Red
Green
Clear
Wait for Green
If no light
do not cross
Phone Crossing
Operator
STOP
PEDESTRIAN INSTRUCTIONS
1. Check that green light shows
2. Cross quickly
3. If no light do not cross
Telephone crossing operator

To summarise:

- the level crossing aspect to our safety case, we can see in the primary safety data on accidental fatalities and injuries that Otford's level crossing has an enviable safety record that should be held up as an example to the rest of the network. It is delivering the outcome the ORR seeks and Network Rail targets in its 2019-29 strategy for level crossings.
- Moreover, two important long-term trends that suggest Otford's level crossing will continue to be safe.
- First, using Network Rail's *Statement of Case* section 9 terminology, Otford's (and Kemsing's) "seasoned users" not only cross safely themselves, but they share this knowledge with successive generations. Otford's children are taught to respect the level crossing and its risk, just as they are taught how to cross roads safely. The Green Cross Code works for both! The combination of a long-term safety culture, plus a strong individual sense of self-preservation, has proved to be powerful and durable force for accident-prevention.
- Second, risks have changed over time, with some falling a little even as others were rising a little. They fluctuate and do not move in a single direction; no one, least of all risk assessors, should pretend otherwise. The risks of being struck by a train have fallen because crossing users now share the facility with fewer and, to a certain degree, slower trains than in the 1950s and 1960s; at the same time the crossing is probably accommodating more users now than was the case before Otford's population levelled off in the 1970s. Furthermore, the composition of users has changed in the direction of fewer younger users and more "seasoned" users. This trend is likely to continue as long as Otford's housing stock remains relatively expensive and unaffordable to many families, including many with young children.
- These risk developments have counterbalanced each other and ensured that the already tiny risk of accidents at level crossings has been reduced to something vanishingly close to zero at Otford, as demonstrated by its impeccable fatality and injury record.

- Some further, incremental improvement in safety is possible, primarily by addressing the mismatch between some drivers' and some users' expectations at the crossing. This could be achieved by introducing a Miniature Stop Lights. Two additional small actions relating to maintenance also would do no harm: better signage and laying a broader strip of anti-slip material on the crossing. These are all relatively small beer compared to the cost of building, amortising and maintaining a high, new footbridge and we remain open to discussing them with Network Rail.

Objection 2. A new, high footbridge would create new risks

Footbridges create risks. Their consequences can be deadly. The ORR reported two pedestrian fatalities at mainline level crossings in 2019-20 and one fatality on a bridge.[32] Building a new footbridge at Otford would not eliminate risk, therefore, but it would change the risks and, we believe, increase them overall, notwithstanding the small crossing-risk reduction that might be obtained through closure.

The new footbridge-created risks would primarily be of slips, trips and falls on the proposed footbridge's 62 steps. The inherent risk of falling from steps is magnified when obstacles are left on them, or when conditions are wet, snowy or icy. These hazards would present problems for all users, but would be especially dangerous for people encumbered by carrying heavy objects and/or escorting small children. The new risks of falling would be especially relevant to certain members of Equality Act-protected groups, notably the blind and partially sighted, the mobility-impaired, pregnant women and the frail and elderly. While the Health and Safety Executive warns "Regular maintenance and inspection are key to reducing the risk of falls (on steps)", Network Rail has denied it would be responsible for clearing the footbridge of obstacles, wet leaves, ice and snow.[33] It told Kent County Council Regulation Committee members in 2017 it would

[32] ORR "Rail Safety, 2019-20", p5
[33] HSE policy is stated in A Scott (2005) "Falls on Stairways – Literature Review" (HSE) p4

commit to undertaking routine structural maintenance, but would not be responsible for maintaining footpath SR49 once it had been diverted over the footbridge. Separately Kent County Council officials have indicated the Council would not be responsible for maintaining and keeping clear Network Rail's footbridge. Sevenoaks District Council and Otford Parish Council also deny responsibility. Were the bridge constructed, users would face the prospect of none of these four bodies reducing risks by clearing obstacles, wet leaves, snow and ice from the bridge.

Three more footbridge-created risks should be borne in mind:

- risks to people at level crossings arise only when a train is close to, or on the crossing. When there is no train, there is no risk. The same cannot be said of 62 steps because these have to be negotiated every time someone crosses the bridge. These risks are 100% present;
- personal security becomes a risk on a bridge. It is not a particular risk at Otford's level crossing because it affords users a clear view across the tracks. Crossing the proposed bridge using Network Rail's proposed new access route would require a pedestrian to make seven changes of direction. Creating turns and short sight-lines creates places where undesirables may conceal themselves as pedestrians approach. People climbing the bridge's steps would not be able to see who or what awaits them at the top. The post-2017 arrival of "County Lines" drug dealers, who operate at and around Otford station and the nearby Chalk Pits, as well as growing numbers of drugs users in the same vicinity have increased personal security risks since Kent County Council's Regulation Committee rejected Network Rail's request to divert footpath SR49 over a new footbridge in 2017. And other forms of serious crime surface from time to time at or close to the station, including a rape and stabbings, including on the station platform. Otford is a low crime, not a no crime, area;
- vandals would be able to use the bridge as a platform for their activities, throwing objects onto the line or trains passing under the bridge. The very occasional vandalism that occurs now at the station and at the crossing

could easily move to the bridge, were it built. The cover it would afford them and their activities may well embolden them and increase vandalism.

The risks we identify above are not discussed, or even mentioned, in the *Statement of Case*. There is, therefore, no reason to expect they have been factored into Network Rail's perspective on crossing risks at Otford. But taking account of these risks is essential in order to form a balanced and whole-system perspective on the crossing closure case. So how much weight should be given to the bridge-created ever-present risks of slips, trips and falls, personal security risks and bridge-based vandalism? We argue these risks are an important consideration in the Inquiry's decision because the combination of bridge-created risks and the risks associated with obliging some pedestrians to use longer and more hazardous alternative routes to the crossing would outweigh the tiny risk reduction that would be made through closing the crossing. Overall, our community would be less safe if the bridge were built and the crossing closed.

Bridge-created risks are significant and may have catastrophic consequences. One of Network Rail's bridges proved to be as deadly as one of its level crossings in 2019/20, indicating bridge-created risks should not be ignored, despite the *Statement of Case*'s attempt to do so. The main risk is that of slips, trips and falls on steps. The Health and Safety Executive (HSE) gives us detailed information on this topic, notwithstanding the many data problems in this area. Network Rail data on bridge accidents and injuries, for example, are incomplete. Such incidents are not subject to thorough and systematic monitoring and recording. (When were you last approached to record an incident involving a slip, trip or fall, seeing vandalism occurring or being menaced on a railway footbridge? Outside of railway stations, to whom would you report this?) Admittedly, data collection in this area is difficult, resulting in official records of all types under-reporting accidents and injuries on bridges. But some of this - and other "incident" under-reporting - was in part a matter of Network Rail policy for a time.[34] It fiddled its safety statistics.

[34] On 25 July 2011 the BBC reported Network Rail was criticised by the Rail Safety Standards Board for pressuring staff to under-report the number of accidents on the railways. As a result, said the BBC, up to 600 accidents,

Despite the data collection problems relating to slips, trips and falls that bias data collection downwards for understandable reasons, the HSE found the risks and their consequences are greater than many might suppose.

The HSE commissioned research into the risks of slips, trips and falls on steps. It published its findings in *Falls on Stairways* in 2005.[35] It found "stairs are the most serious accident hazard that individuals encounter in their everyday environment."[36] (That environment would, of course, include using bridges over railways.) It found steps are a killer, and on a surprisingly grand scale. In a typical year, annual deaths from falls on steps are equivalent to approximately half of the annual deaths from traffic accidents.[37] Most of these deaths occur in the home, while deaths from falls on non-domestic steps average 100 fatalities annually (compared to 2 fatalities annually on Network Rail's approximately 6,000 pedestrian level crossings in each of the last two years). The HSE also identified over 100,000 injuries annually due to falls from non-domestic steps.[38] The majority of "low fall" injuries (i.e. falls from less than two metres) caused "over 3 day" injuries; a significant number of these were "major" injuries.[39]

The HSE found slips, trips and falls from steps are most likely to occur where steps have not been maintained properly. In particular, "Ice, snow and water on stair treads greatly increases the likelihood of slipping on a stairway"; accident numbers rise sharply where "clearing of snow or gritting has not been adequately carried out".[40] These findings reinforce our concerns that Network Rail proposes to build a footbridge exposed to the elements while consistently denying it has responsibilities going beyond structural maintenance, i.e. excluding basic "housekeeping" functions, such as clearing snow, ice, wet leaves and other hazardous obstacles. The HSE found that falls from steps were more frequent where the user could not see both the first and last steps on a flight. Thus

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around one third of the total, were not reported to Network Rail by its staff. The BBC reported Network Rail's chairman, Rick Hayworth, promised to "learn lessons" from the RSSB report.

[35] A Scott (2005) "Falls on Stairways – Literature Review" (HSE)

[36] Op cit. p8

[37] Op cit. p7

[38] Op cit. p7

[39] Op cit. p7

[40] Op cit. p18

outdoor flights of steps built in a south facing direction, as Network Rail proposes at Otford, will create the risk of sun glare temporarily affecting a user's clear sight of the first and last steps as they descend at certain times of day, raising the risk of a fall.

The HSE study identified the users most likely to fall on steps: the elderly, women of all ages and people carrying items.[41] The consequences of a fall for the elderly are more serious than for others because a person's bone density declines as they age, leaving them increasingly vulnerable to sustaining fractures from falls. And the elderly are most likely to fall because their eyesight and sense of balance also deteriorate over time. Their reactions slow too, leaving them unable to grab a handrail for support when stumbling. So the elderly are the most likely to fall when using steps and are the most likely to suffer the most serious injuries when they do.[42] Consequently a third of people fracturing a hip in a fall from steps will die within a year.[43] So steps can kill, not just at the time of a fall, but also as a result of the long-term consequences of injury from a fall.

The HSE research also identified behaviours likely to increase the risk of a fall. These include "rushing, wearing inappropriate footwear and consumption of alcohol".[44] These, of course, were all behaviours observed from time to time among Otford's commuters and rail travellers prior to the pandemic decimating rail travel from Otford; one imagines they will all return post-pandemic when mass travel resumes. The likely consequences of such behaviours would, of course, be more injurious when descending a high flight of steps than on a flat surface or when mounting a small, low obstacle, such as the stiles at Otford's crossing.

The HSE's findings are highly relevant to assessing the risks of replacing Otford's pedestrian level crossing with a footbridge, especially as regards the demands this would make on Otford's elderly. The *Statement of Case*, paragraph 18.1 observes 21.8% of Otford's population was over 65 in 2011; it has not got any younger

[41] Op cit. pp18-19
[42] Op cit. p10
[43] Op cit. p6
[44] Op cit.p19

since then. So the bridge would create new and potentially catastrophic risks for a large and growing segment of Otford's population that for the most part can manage safely the stiles and the pedestrian level crossing – as demonstrated by Otford's persistent injury and fatality-free record at the level crossing - but will be less able to cope with 62 steps (which is roughly the equivalent of ascending two stories of stairs in a domestic home, followed by descending another two flights of domestic steps).

The HSE research also identifies women and people carrying items as particularly at risk from steps. Consider, then, the risks facing a mother walking her primary aged child to (or from) school from Kemsing, Tudor Drive or Tudor Crescent perhaps while also pushing another child in a pram or push chair, sometimes whilst also lugging along the product of the latest school project or a scooter a child has tired of pushing. This is not a theoretical or infrequent example. One sees it regularly. So did Network Rail. Its crossing monitoring observations in 2017 counted 199 crossings involving children accompanied by one adult or more, and 8 crossings involving push chairs in a nine day period.[45] The adults and young children can safely negotiate the stiles and a flat level crossing, as they have proved school year after school year, but throw in the hazard of a 62 step footbridge and outcomes might very well be different.

The HSE research was undertaken before the Equality Act was passed in 2010 so the lack of a specific mention of the Act's protected groups is not unsurprising. These groups include pregnant women, the elderly, those with no or partial sight and the mobility-impaired disabled. Representatives of the elderly and disabled groups spoke out against closing the crossing at the Kent County Council Regulation Committee meeting in March 2017, arguing that for them the bridge was more dangerous than the level crossing, and they objected to being obliged to use alternative longer and, in their opinions, more hazardous routes. They believed this would be discriminatory treatment of them. We will return to the latter point in the next section. For now, it is sufficient to note that members of protected groups, including the elderly and disabled, as well as other people who

[45] See Mrs Mee's remarks recorded in the Minutes of the Kent County Council Regulation Committee Member Panel meeting on 1 March 2017.

might use the footbridge were it ever built, all object to being subjected to bridge-created risks, believing them to be greater than the risks of using the level crossing.

"To fall down steps is not only to fall off a cliff, but to fall on rocks below, for the nosing of steps presents a succession of sharp edges." (HSE [2005] *Falls on Stairways*, p6)

There was a moment in that Regulation Committee meeting which shows Network Rail, whatever it might say publicly to the contrary, believed them. A councillor asked a question which cut through Network rail's bureaucratic bluster. Mr Maddison asked whether Network Rail would build the footbridge if the footpath were not diverted over it. Mrs Mee, a Network Rail employee, said it would not be built. People would not use it (i.e. they would continue to use the

level crossing) so building the bridge would not, in Network Rail's opinion, reduce the crossing's risk score, without which bridge construction could not be funded from the safety budget.[46] Thus Network Rail recognised that, given a clear choice between using a new footbridge or using the footpath over the existing level crossing, people would continue to use the crossing. Economists call this "revealed preference" on the users' part, whereby people weigh up for themselves the risk and convenience aspects of competing options and then vote with their feet. Network Rail had to recognise people did not believe the level crossing to be unsafe in the light of the precautions they could take when using it. It could hardly argue the population that had avoided injuries and fatalities at the crossing for so long was ignorant of safety issues or risk-loving to the point of imprudence. For Network Rail, this was a moment of realism. It is a pity it did not last. Notwithstanding Mr Haywood's promise to the Rail Safety Standards Board that Network Rail would "learn lessons", it does appear to be an institution that finds this unduly difficult, and not just – if the statistics pertaining to incidents at Otford are anything to go by - in the still rather haphazard area of incident-reporting.

Objection 3. Network Rail's alternative routes create risks

In a nutshell, suppose you were unable to cope with a 62 step footbridge and needed to walk from Tudor Drive to Otford's post office on Sevenoaks Road, would you rather walk via the level crossing, where you know you can control risk, and through a quiet tree-lined residential estate on Well and Bubblestone Roads (see Map A, below), or would you rather go by any of Network Rail's three proposed alternative routes that require you to cross (twice) and for a large part of the trip walk alongside an accident-prone "A" road that carries some 45,000 vehicles a week, the majority of which pass at speeds in excess of the speed limit (see Map B, below, which reproduces the third of Network Rail's proposed alternative routes)? Would you rather that walk, there and back again, be under

[46] Op cit.

a mile, or about a mile and three quarters? If you can't cope with a 62 step footbridge, would you be happy to climb 63 feet up a steep hill? And how about making the journey in the dark, along roads or footpaths that have no street lights (or just one in the case of the "A" road)? Would being partially-sighted or mobility-impaired – through disability or age – affect your decision? Faced with these choices, we know what most people do: they avoid most of the risks of this journey by using the level crossing and avoiding the dangerous A225, Station Road. It's safer that way and more convenient – and for those with mobility issues, the convenience of a shorter journey is a safety issue (fewer obstacles, less chance of falling).

Traffic approaching the rail overbridge, Station Road

Section 16 of the *Statement of Case* sets out three alternative routes available to people who cannot use a 62 step footbridge to cross the railway. It asserts, without attempting to prove, crossing the railway using the overbridge on Station Road (the A225) is "safer than the Crossing route" (paragraph 16.3) and "suitable" for what it, in section 9, defined as "vulnerable users" (some, but not all, of which overlap with some, but not all, of the protected groups as defined in the Equality Act). It mentions a number of local features it believes would make its suggested routes safe: a pedestrian refuge island on the A225 near the station entrance (paragraph 16.3); pavements "of average width" in "a locality such as this" (16.4); lamp posts positioned at different points along the A225… providing sufficient lighting" (16.4); a "well lit" roundabout where the A225 arrives at the duck pond in the centre of Otford (16.6); and "lamp posts along the A225 (Sevenoaks Road)". It goes on to observe some features that limit the suitability of its proposed alternative routes, such as there being no footpath on one side of the A225 between the railway station and the village centre, and no footpath at all on one side of Pilgrims Way East, which it also observes is "not well lit" (16.8).

Section 17.7 of the *Statement of Case* recognises "not all pedestrian users will find the footbridge manageable or equally manageable. It is almost inevitably the case that some pedestrians will be unable or discouraged from using a footbridge…" It claims, presumably on the basis of the information provided in section 16, Network Rail has discharged its obligation for "due consideration to be given to the nature of any physical impediment or impediments posed to pedestrian users who may suffer immobility or relative immobility." Finally, section 16 asserts: "It is not considered that the diversion gives rise to any significant, still less objectionable impact on those who suffer reduced mobility. It is also not considered that any live mobility issues in this case outweigh, or significantly contribute to outweighing, the clear expediency of closure in the interests of safety" (17.7.4). We do not agree.

We do not agree because we believe the Statement of Case falls far short of the sort of "social, risk-based approach to managing level crossing risk" the ORR is

calling for.[47] We do not agree because assembling without risk and safety analysis a rag-bag of "facts" - some accurate, some distorted (such as describing an unlit main road as "not well lit") and some apparently fabricated (lamp posts along the A225) - does not amount to "due consideration". And we do not agree because some facts, such as the risks posed by having to cross the A225, have been omitted from "consideration", as have the risks facing pedestrians from having to cross the often-busy entrance to Russell House School, and the risks pedestrians face when re-crossing the A225 near Otford pond. The wall of Colets Well obscures traffic, making this is an especially tricky crossing point going north for those who are fleet of foot, and a serious hazard for those less nimble.

We start with the issue of convenience, a safety issue for those with mobility or sight-impairments as well for members of other protected groups, such as the elderly and pregnant women. If for whatever reason one cannot use the proposed 62 step footbridge, perhaps because it is iced-over or covered in snow that Network Rail and other official bodies refuse to clear, then one of the most important aspects of convenience is the distance one would need to walk. As per the *Statement of Case*'s three alternative routes in section 16, we measure distance from the point at which footpath SR49 crosses Tudor Drive. We use Google Maps to measure the distances, and these must therefore be regarded as approximations (as in the *Statement of Case* data).

The table below shows the distance (in metres and miles) we and the *Statement of Case* estimate would have to be walked to reach the footpath junction on the opposite side of the railway (shown as point "A" in the *Statement of Case* maps in section 16). Exactly the same footpaths and roads are used for the purpose of comparison. Note that the *Statement of Case* provides no distance estimate for the "Level crossing open" option, or for its Alternative route 3.

Pedestrian route	Our estimates		*Statement of Case*	
	metres	miles	metres	miles
Level crossing open	90	0.05	Not provided	Not provided
Alternative route 1	1,128	0.70	1,324	0.82

[47] ORR "Strategy for the regulation of health and safety risks", Chapter 4 "Level Crossings", p3

Alternative route 2	1,648	1.02	1,690	1.05
Alternative route 3	1,240	0.77	Not provided	Not provided

From the perspective of convenience, the "Level crossing open" option wins hands down. It is, on our estimates, more than a kilometre shorter than the *Statement of Case*'s Alternative route 1, more than 1.5 kilometres shorter than Alternative route 2 and over 1.1 kilometres shorter than Alternative route 3. These are sizeable additional distances to impose on people who walk with difficulty. Little wonder they complained so forcefully when Network Rail brought its proposal before the Kent County Council Regulation Committee in 2017. Because for them, convenience is a safety issue and the level crossing, because it delivers convenient access to the opposite side of the village, is **safety enhancing, not a threat to safety**. The *Statement of Case* steadfastly ignores this, as steadfastly as it ignores the Equality Act and its implications for level crossing management.

Network Rail's attitude towards the disabled in its *Statement of Case* is unacceptable. Section 17.7 basically tells them they are too high risk to be using its level crossing, and safety would be enhanced if they were not able to access it – ignoring the fact that many members of protected groups use the crossing at present without colliding with trains. Moreover, thinks Network Rail, if disabled people can't cope with the 62 step, high footbridge it proposes to build, then tough: they can walk an extra kilometre or more to get to where they could have reached by walking a mere 90 metres. It is a disgrace and a long way from what the ORR intended when calling for that "social, risk-based approach to managing level crossing risk".

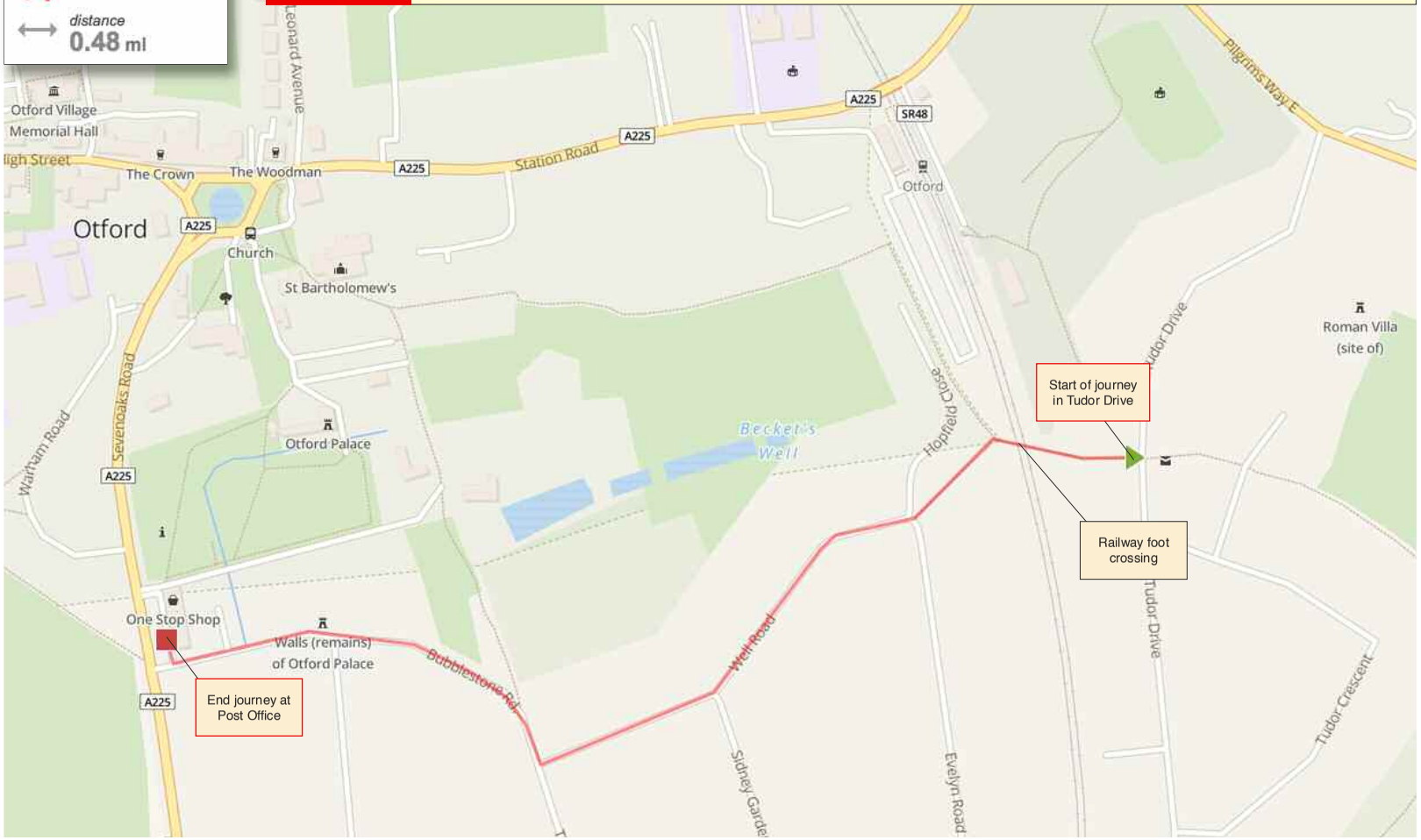
The maps below incorporate risk-based comments on what pedestrians might face when undertaking a walk from Tudor Drive to the Post office on Sevenoaks Road. The pedestrian's experience is markedly different depending on whether the level crossing is open (Map A – page 60) or closed (Map B – page 61). The route followed in Map B mirrors that in the *Statement of Case* Alternative route 3.

MAP A

The Current Route over level foot crossing to Otford shops and Post Office

At present the quickest route to the Post Office and the Parade of shops is via the foot level crossing over railway line, along a short footpath to Well Road, leading to Bubblestone Road, then turn into the Parade (for shops).

This route is 0.48 mile, or 0.96 mile return – it is three-quarters of a mile shorter than any of Network Rail's proposed alternatives



MAP B

Network Rail's Alternative Route 16.9 – To Post Office and Otford Parade of shops

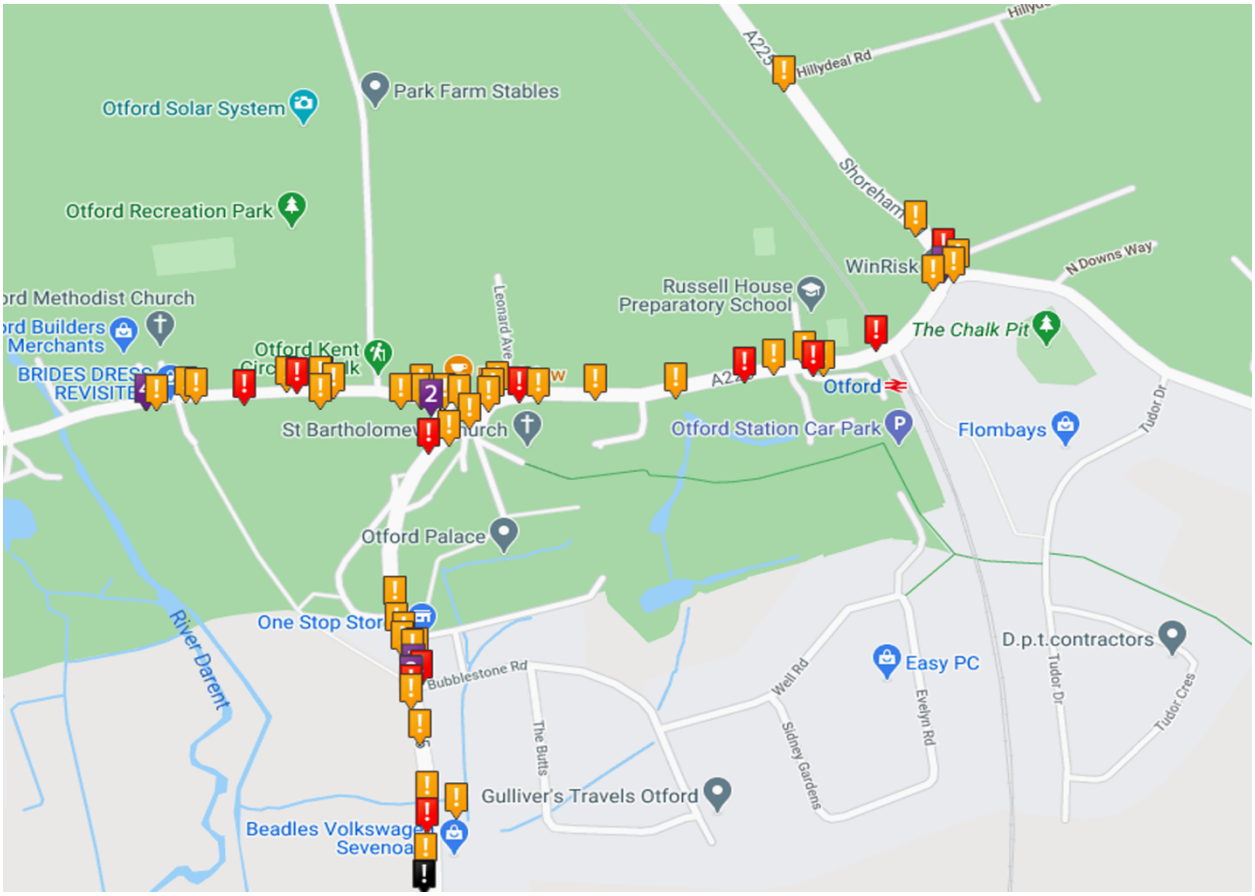
Using Networks Rail's suggested third route (16.9) to Shops and Post Office: Walk up steep hill of Tudor Drive – a rise in height of 63 feet. Progress along narrow pavement of Pilgrims Way East, cross busy A225 Station Road. Past entrance and exit of Russell House School's 'drop off' and car park. Cross 'T' junction of Leonard Avenue. Re-cross A225 near pond – a dangerous 'blind crossing' when returning due to obscuring tall wall against roadside shielding view of on-coming traffic down Station Road. Walk along Sevenoaks Road.

This route is 0.86 mile, or 1.72 miles for there and back – over three-quarters of a mile longer than existing route shown on map A.

Network Rail is not especially concerned about risk unless it arises on its tracks. When outlining alternative routes available to people unable to manage the proposed footbridge, the *Statement of Case* mentions the A225 (Station Road) several times without considering the risk it poses to pedestrians obliged by the walk-around routes to cross and walk alongside it down to the pond at the centre of the village. Police monitoring in 2014 confirmed it is a busy road – 45,000 vehicles a week passing along Station Road – and this stretch of the A225 routinely sees vehicles exceed its 30 mph speed limit. According to the police, the average (mean) speed is 35 mph, with 15% of vehicles exceeding 40 mph. This has contributed to Station Road being an accident "hot spot" (as discussed above).

Otford pond accommodating one of the cars speeding through Otford

A small refuge island in the middle of the A225 is provided for pedestrians close to the entrance to the railway station forecourt and Russell House School; this has a small overhead light, the only street light on Station Road. There is no zebra or pelican crossing on it because Kent County Council rejected Otford's request for one when it found the routine excessive speeds made it too dangerous to locate a crossing there; Kent county Council said sight lines were also a problem. There is a pond at the lower end of Station Road which, every year or so, is the place where cars end up after they have been speeding too quickly to negotiate the roundabout. And this is the road Network Rail expects pedestrians unable to cope with their footbridge should cross without risk and walk alongside on narrow pavements without risk from the vehicles speeding past. The Department for Transport's "crash map" (below) tells a different story, recording minor accidents in yellow, serious accidents in red.



Department for Transport "Crash Map" showing accidents along Statement of Case Alternative routes 1-3

Annex A gives more information on traffic accidents in Otford during 2005-17 using Department for Transport data. These accidents total 71 in the period: two fatalities, 10 serious accidents and 59 minor accidents on Otford's roads. The highest speed recorded at a police "speed trap" in Otford was 99 mph in a 30 mph area. Station Road near the railway station is a "black spot" (see DfT "Crash Map" above).

In addition to risks faced by pedestrians due to having to walk excessive distances or brave the A225, there are personal security risks along the footpath incorporated into the Statement of Case's Alternative routes 1 and 3. Otford is low crime, not no crime. Crime here is often petty, such as robbing commuters of handbags and other valuables as they walk home at night on unlit roads and footpaths. But some of the crime is serious: a commuter was raped near the railway station after she had returned by train to Otford, and a man was stabbed on the station platform. Otford is a fairly affluent area; this has attracted "County Lines" drug dealers in growing numbers in recent years. The Parish Council has recently asked police to clear these drug dealers who regularly ply their trade close to the station, notably on the unlit footpath between the station and the Chalk Pits that features in Network Rail's Alternative routes 1 and 3. Drug, solvent and alcohol abusers also frequent this area. An influx of disabled and elderly users unable to use the proposed footbridge would offer easy pickings to those needing money for drugs. The Scouts have recently erected an "industrial" spiked fence alongside the footpath in the hope of discouraging entry to their property by such people.

To summarise, we believe the *Statement of Case* has turned a blind eye to the risks facing people unable to use the proposed new footbridge. The risks arise mainly from these people – essentially elderly and disabled people who currently manage risk successfully when using the level crossing – having to undertake much longer journeys to reach their destination in the village centre and having to use routes rendered hazardous by heavy and speeding traffic on the A225 and by the threat to their personal security from crime, a threat which will grow once it

becomes widely known they are having to use longer and less secure routes to cross the railway line. The *Statement of Case*'s reliance on "all's well" assertions instead of credible risk identification and analysis leave it well short of Network Rail's regulators' wish for a social element, in particular relating to the needs of the Equality Act's protected groups, to be embedded in professional and dispassionate risk appraisals.

Objection 4. An inexpedient, not expedient proposal

The *Statement of Case* claims "expediency" justifies closing Otford's level crossing on two grounds. First, it claims in paragraph 1.15 the crossing is "demonstrably unsafe" so it is "expedient in the interests of safety" that it be closed. We do not agree with the claim the crossing is "demonstrably unsafe". Had it been possible to demonstrate an unreasonable lack of safety at Otford's level crossing, then the *Statement of Case* would surely have done so instead of simply listing a highly questionable small number of non-accident alleged "incidents", which even then is of limited value to Network Rail's case because the list includes alleged "incidents" that occurred elsewhere, at least one fabrication and an alleged "incident" relating to suicide risk, a risk that the ORR insists should not be factored into the rail industry's safety analysis.

We argue Otford's level crossing is already delivering Network Rail's safety target for level crossings: zero injuries and zero fatalities. This fact is so inconvenient for Network Rail's demands that the *Statement of Case* contains no information on safety as measured by the metrics that are at the heart of its long-term strategy for level crossing safety: fatalities and injuries. In that strategy, *Enhancing Level Crossing Safety 2019-29*, Network Rail states its strategic objective: "Our long-term level crossing safety vision is 'No accidents at level crossings on Britain's main line rail network'".[48] It adds: "Our focus, through delivering this level crossing safety strategy, is to prevent injuries and loss of life".[49] Well, Otford's

[48] Network Rail *Enhancing Level Crossing Safety 2019-29: A long-term strategy targeting improved safety on Great Britain's railway,* p6
[49] Op cit. p11

level crossing has delivered that for 158 years: no accidents, no injuries, no fatalities resulting from people and trains colliding. Moreover, this enviable safety record has enabled crossing users to walk safely to and from the village centre using the most convenient and shortest routes that minimise exposure to traffic risks on the A225 – a key safety issue for the disabled, elderly and other members of Equality Act protected groups – while at the same time avoiding risks created by using the new, high 62 step footbridge Network Rail proposes to build.

Network Rails' level crossing safety strategy recognises it must not close all level crossings and must live with them, albeit regrettably from its (but only its) perspective: "Ideally, we would not have any level crossings. However, we recognise roads and walkway routes are public rights of way and therefore running a safe and reliable railway must be delicately balanced with the number of level crossings in operation and the people who use them."[50] Elsewhere in its strategy document Network Rail recognises it has a duty under health and safety legislation to reduce risk, but not necessarily eliminate it.[51] Had Network Rail bothered to include the Equality Act's implications in its *Statement of Case*, this would have reinforced the point that Network Rail's blanket preference for level crossing closures cannot be implemented legally because it would discriminate against members of protected groups

We are confident the Inspector will, for the many reasons given in this note, believe it is reasonable to reject Network Rail's demand for the Otford level crossing to be closed on expediency, or any other, grounds. We are also confident the Inspector will reject Network Rail's second claim that closing the level crossing would be expedient because it would allow for greater "operational efficiency" through raising the line speed limit from 40 mph to 70 mph (*Statement of Case*, paragraph 1.16).

Otford railway station is approximately 0.6 miles, one kilometre, (by rail) north of Otford Junction, where the line divides into connections to, on the east side, Maidstone, Ashford and the Channel ports, and on the west side, Bat and Ball and

[50] Op cit. p13
[51] Op cit. p6

Sevenoaks stations. The Pilgrims Way SR49 level crossing is about 60 yards (50 metres) south of Otford station, crossing the line that leads to Otford Junction. The speed limit on the line to/from Otford Junction was 70 mph prior to 2002, when a Sevenoaks District Council noise abatement order obliged Network Rail to remove the whistle boards on the approach to Otford station. The line speed limit has been 40 mph since then.

The *Statement of Case* claims in paragraph 1.13 "operational efficiency" cannot be achieved unless the line speed limits are restored to their pre-noise abatement order levels, i.e. an increase of some 20-30 mph. The *Statement of Case* makes a number of claims in support of this in paragraph 1.14: "Introduction of speed restrictions anywhere on the network, especially on a busy, mainline railway lines translates into significant "*delay minutes*" compensation payable by Network Rail to train operating companies. This presents a significant financial burden on Network Rail and a wholly avoidable cost to the public purse." We do not accept the relevance of these points to the decision on Otford's level crossing:

- the introduction of speed restrictions on the network, especially those motivated by safety considerations, will not create "delay minutes" where these have been factored into railway timetables. The 40 mph limit at Otford has been in place for about 18 years, during which time there have been many timetable changes. If Network Rail has not incorporated the 40 mph limit by now, how many more years will it need?
- Speed restrictions can prevent delays. For example, there is and always has been a mandatory 30 mph limit imposed on all trains travelling through Otford Junction to or from the Maidstone direction. Track curvature is relatively sharp here and trains, were they permitted to speed at 70 mph through this bend, could very easily career off the track and crash. That would cause "delay minutes"!
- The line through Otford could hardly be described as "busy". With just 153 trains passing through Otford daily (*Statement of Case*, paragraph 1.13), traffic, both passenger and freight, is averaging (in both directions) fractionally over 8 movements an hour, i.e. four in each direction, during

the hours in which trains serve Otford. A train, on average, once every 15 minutes on each line. Four trains an hour on each line can hardly be described as "busy". As noted above, both passenger and freight movements have for decades been declining over time. We are more "Sleepy Hollow" than "busy mainline".

- Nearly 97% of the trains passing though Otford stop at its station (Statement of Case, paragraph 1.13). All are passenger trains. What difference would raising the line speed limit make to them? Passenger trains travelling towards Maidstone would need to accelerate from 0 mph as they leave Otford station, passing over the Otford level crossing about 50 metres (60yards) later as they accelerate towards Otford Junction a kilometre (0.6 miles) away. They would then have to slow again to 30 mph to take the bend at the Junction. If such trains were permitted to achieve 70 mph on the stretch of line where the 40 mph limit currently applies, the time spent travelling at 70 mph would be zero or close to that, implying the same for increases in "operational efficiency".
- The situation would be a little, but only a little, different for trains travelling to or from Sevenoaks and Bat and Ball stations (passenger trains to and from Otford along the Sevenoaks line all stop at Bat and Ball station. They do not need to slow to 30 mph at Otford Junction. The distance between Otford station and Bat and Ball is only about 2.5 km (1.6 miles). Given the need to accelerate from 0 mph at one station and slow to 0 mph at the other, there would be little opportunity to reach and maintain a speed of 70 mph. Even if achieved, the time saved would be a trivial, only 2.2 seconds per 100 yards travelled at 70 mph instead of 40 mph. The current scheduled journey time from Otford to Bat and Ball is 3 minutes, providing little scope to improve "operational efficiency" through restoring the pre-2002 speed limits.
- The five trains a day that do not stop at Otford would be able to achieve fractionally larger gains. We believe most of such trains would be hauling freight and freight trains generally head towards (or are coming from) Maidstone, Ashford and the Channel ports. Their speed increases would be

limited by the need to slow to 30 mph on the downline to Otford Junction or accelerate from that speed when travelling on the upline towards Otford. If downline freight trains were able to slow instantly from 70 to 30 mph on reaching Otford Junction, (or upline trains accelerate instantly from 30 to 70 mph) the maximum time saving per freight train would be under 24 seconds (2.18 seconds per 100 yards multiplied by the 1096 yards between Otford station and Otford Junction). But of course freight trains would not slow that sharply and many, perhaps including the nuclear waste-carrying train that runs to and from Dungeness power station, would not be intending to travel as fast as 70 mph in the first place.

Taking all this together, one can see Network Rail's claim of protecting the public purse through gains in "operational efficiency" resulting from restoring pre-2002 line speeds (*Statement of Case* paragraphs 1.13) is spurious. Were line speeds increased, the five through trains daily – usually freight - would achieve gains of less than one third of a minute each during their long journeys. (for example, the nuclear waste train travels from Dungeness to Cumbria.) Such nugatory gains would be even smaller if a freight train's intended speed were less than 70 mph. We are not even talking about a "delay minute", let alone the "delay minutes" the *Statement of Case* mentions! And freight trains already have a good margin for manoeuver when they deviate from their timetable. The ORR permits freight trains to class themselves as "on time" if they arrive within 15 minutes of their scheduled arrival time so the few seconds that might be saved between Otford station and Otford Junction is well within a freight train's margin of manoeuver.

Conclusion

Network Rail's claims that expediency justifies closing Otford's crossing should be seen for what they are: an attempt to justify the indefensible use of public money to build a risk-creating footbridge and divert some of the crossing's current able-bodied and disabled users onto less safe routes to their Otford destinations so that Network Rail can protect its assets from a miniscule risk at Otford's level

crossing and achieve line speed gains limited primarily to accelerating five trains daily by a few seconds, if that. And the outcome, if Network Rail were successful, would be an overall increase in risk to users of Otford's level crossing. We argue it would not be expedient to use public monies intended to improve safety to reduce safety. To do so would almost certainly attract audit, Parliamentary and media attention unwelcome to Network Rail.

People in Otford understand risk and respond to it. Those using the Pilgrims Way footpath SR49 level crossing know there is a small risk involved when crossing and manage that risk successfully: no fatalities, no injuries in 158 years of use, despite changes in the variables affecting risk at the crossing. People in Otford are not against changes that would genuinely improve safety. They are not nimbys. They lobbied for years to persuade Kent County Council to agree to new measures to reduce the risk of road accidents. Success has been partial, but a new lower speed limit on the High Street and at the pond roundabout is an advance, as are the associated traffic calming measures. Unfortunately this leaves risk unchanged along Station Road and Pilgrims Way East, where vehicles routinely exceeded the speed limit. These still-hazardous roads are those Network Rail proposes to incorporate into their alternative routes for disabled and other people unable to use their proposed new, high 62 step footbridge.

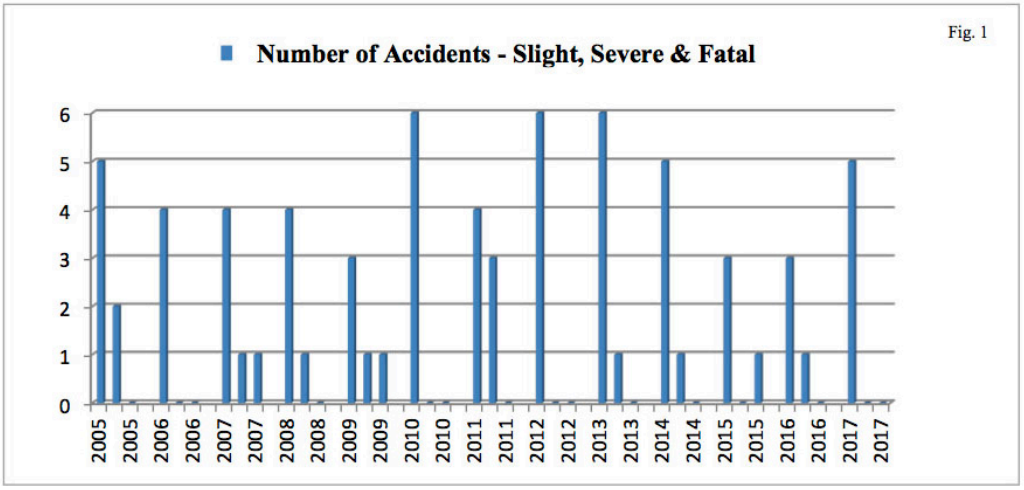
Network Rail's *Statement of Case* says, in terms, "we at Network Rail want there to be no risk that might affect our assets, so we will close your level crossing and dump all risk – the new risks created by our proposed footbridge and the risks of using alternative routes – onto you Otford residents, even though this will increase the risks you face, especially for people with disabilities." We reject its risk-increasing and risk-shifting proposal in favour of retaining our level crossing and managing the miniscule risk that arises there. And while we do this, Network Rail should get on with the task of tackling risks where they are greatest on the railway. Yet another Network rail contractor was killed (at Surbiton) while this note was being prepared. The institution's bureaucratic obtuseness is truly exasperating.

Annex A

Excerpt from Otford's traffic management study:

2.2 ROAD TRAFFIC ACCIDENTS & SAFETY

Department for Transport (DfT) data for Otford on traffic and pedestrian incidents going back to 2005 has been analysed. Over this time period a total of seventy-one accidents, ten serious and two fatalities (one in PWE Kemsing boundary) were recorded. The number of accidents recorded annually by the emergency services is consistent over this time period (Figure.1).



The DfT data over the same time period shows that accidents are spread fairly evenly across the main access roads as well as PWE and Rye Lane (Figure 2). The widespread nature of these incidents demonstrates the need for improvements to traffic management across the village; not just in the High Street as suggested in previous schemes.

Minor accidents which are not attended by the emergency services are not recorded in the official figures, but they are often reported to the Otford Parish Council. The Parish records show that the total number of traffic accidents is much higher than the official figures (Appendix 2.2); National Travel Survey data suggests that there are around five times more injuries to adults than police collision data[1].

A number of the incidents reported have involved pedestrians who have been hit by the wing mirrors of passing vehicles; last autumn a two-year-old child was hit by the wing mirror of a passing vehicle whilst walking to school with their mother along the narrow pavement near to the Bull pub. Fortunately, the child was not hurt badly, nonetheless, this highlights the risk faced by pedestrians on a daily basis.

All the available data analysed shows that traffic incidents have not dropped over the period studied despite initiatives to slow traffic down, such as the Otford Society 30mph limit campaign or SpeedWatch.

Annex B

End of ‘Down’ Platform at Otford Railway Station – a new but ineffective deterrent to would be trespassers.