

Transport And Works Act 1992

Transport And Works (Inquiries Procedure) Rules 2004

The Network Rail (Tackley Level Crossing) Order

SUMMARY Proof of Evidence of Will Steel on behalf of the British Horse Society

1. Although the BHS does not consider NR's safety case for the closure of the existing crossing to be compelling, it is not in principle opposed to the closure.
2. There is a clear requirement for an alternative route which must be "suitable and convenient".
3. The BHS does not consider that bridleways running alongside a rail line are inherently unsafe and each route should be assessed on a case-by-case basis.
4. The route proposed in the Order is neither suitable nor convenient due to the following factors:
 - its extended and uninterrupted length (c950m)
 - horizontal and vertical separation from the rail line (generally less than 10m and at or around eye level for horse and rider, respectively)
 - lack of natural screening such as trees / shrubs
 - enclosed by fencing on both sides
 - an unsuitable surface across the entire width of the track
5. The combination of these factors, taken with the expected speed and frequency of trains, has the potential to create significant risks to those less confident, competent and skilled horses and riders. It will not be possible to mitigate these risks by traversing the route in the interval between trains.
6. The risks, physical and psychological, will materially interfere with many riders' ability to exercise their right of way.
7. An alternative route which is not able to be exercised is no alternative at all.
8. A far more suitable route has been suggested and remains available. This provides many advantages for users and also for NR as construction costs, and potentially land-take compensation, will be much reduced.
9. The BHS considers that permanent access could and should be provided across the proposed new footbridge for pedestrians and cyclists.

10. For the above reasons, the BHS requests the Inspector to recommend the refusal of the Order or, if possible, its modification to enable the adoption of Route D and to address the other points raised.

Will Steel

Head of Access

The British Horse Society

21st May 2024.

Transport And Works Act 1992

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The Network Rail (Tackley Level Crossing) Order

Proof of Evidence of Will Steel on behalf of the British Horse Society

1. My name is Will Steel and I am employed as the Head of Access for the British Horse Society (the BHS). I have worked for the Access Department of the BHS since 2018. I am not an equestrian but between 1994 and 2018 I worked in Public Rights of Way management roles for or on behalf of various local authorities. I have been a full member of the Institute of Public Rights of Way and Access Management since 1997 and was a director of the institute from 2008 until 2019.
2. The position of the BHS with regards to The Network Rail (Tackley Level Crossing) Order 202[] (“the Order”) is set out in its Statement of Case dated 15th March 2024, which is still to be relied upon and should be considered together with this Proof of Evidence. In this Proof of Evidence, the BHS also considers some additional points which are raised in NR’s Statement of Case received by the Planning Inspectorate.
3. The BHS considers its stance towards the Order in this case as straightforward. It does not believe that Network Rail (NR) has clearly demonstrated that the existing level crossing is inherently unsafe for users of the bridleway. Provision of the proposed footbridge and lifts to cross between platforms, at the same time as the installation of fencing or similar to prevent passengers accessing the existing crossing and bridleway users accessing the platforms, would appear to allow for retention of the crossing for the bridleway as a simple, cheap option to address the actual safety risk.
4. Nonetheless, in principle the BHS does not oppose the closure of the crossing for the purposes of increasing capacity and reducing misuse by passengers. However, this is dependent on a satisfactory alternative route being provided for riders and other users – the statutory test is whether the alternative would provide a “suitable and convenient” route by which users continue to make their journey; the route proposed to be created by the Order does not do that and is not acceptable. Far more suitable options are available, in particular Route D as set out in the BHS’ Statement of Case.

NR’s approach and the consultation process

5. As noted in its Statement of Case, the BHS has concerns as to the approach and effectiveness of NR's engagement and consultation in the process that has led to this inquiry. At times the Consultation has felt inadequate and or misleading. For instance, it is noted that in their Statement of Case, NR has included a copy of the consultation document "Oxfordshire Level Crossings Public Consultation" [APP05-NR07 pp65-78]. However, there appear to be significant differences between this version and the version which the BHS and others received at the time. On page 5 of the document contained within NR's Statement of Case, there is a description of the proposals at Tackley and a visualisation of the new Footbridge. In the document that was made available to the public at the time, the similar page also included a schematic diagram which shows both the existing and the proposed bridleways running parallel to and equidistant from the rail line. Although only schematic, such a depiction is fundamentally misleading and appears to suggest an equivalence between the routes that does not exist in reality. Extracts of both documents are provided below:



Version of consultation document included within NR's Statement of Case for this inquiry

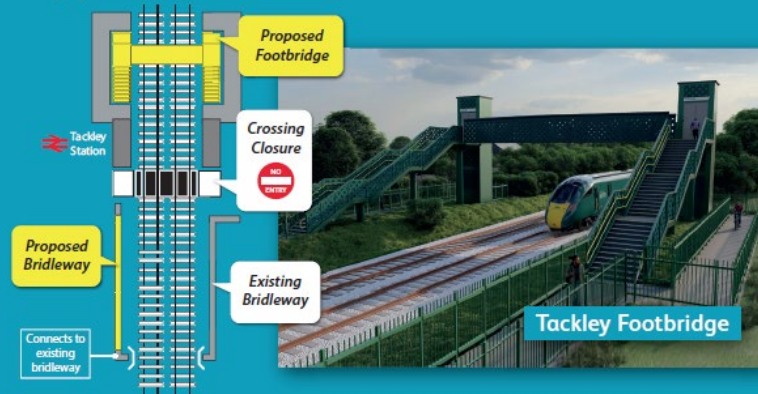
Tackley Level Crossing

Tackley level crossing was closed under emergency measures in 2020. A permanent solution has now been developed, which will integrate with the wider programme.

A new “heritage style” stepped footbridge with lifts will replace the current scaffold bridge but will be moved 50 metres back into the cutting, so it is less intrusive to the community. This structure is within our land boundary, so will not be included within a Transport and Works Act Order.

A new **bridleway** is proposed to be constructed to the west, running adjacent to the railway and joining up with existing bridleway 379/25/10.

Temporary construction compounds will be needed to the north and south to construct the new bridge and bridleway. Third party land will be needed both temporarily and permanently for the proposals.



Version of consultation document issued to the public and available on website during the consultation period.

6. A further example - in its written response to the BHS' objection to the Order (letter sent by email 1st March 2024), NR referred to the findings of a "Report on the presence of bridleways adjacent to railways". The BHS requested a copy of this report and on 8th March was provided with a document headed List of bridleways and a five-column table listing some 68 routes, the relevant County / Highway Authority, Grid reference, Distance alongside railway and Line Speed. Whilst useful information, there was no explanation or analysis that one would expect with a report and as was indicated in the text of the letter of 1st March. The BHS immediately sought clarification of this to which NR responded by email on 20th March stating *"The report which I sent over was indeed the report that you requested, where Network Rail had undertaken a desktop study of bridleways adjacent to the railway, detailed within Appendix 1 of our response."* Nonetheless, in their Statement of Case at pp78-95, NR includes its *"Review of analogous bridleways"* which contains the said table and further explanation of the methodology and analysis as well as some more detailed comments on individual routes. The deadline for submission of Statements of Case to DfT's Transport Infrastructure Planning Unit was 18th March so whilst some material may have been added at

the final stages, the bulk of this must have been in existence and available when requested by the BHS.

The Line Side Route

7. Moving on to the substance of the objection of the BHS to the proposed line side route, this was set out in the table at para 46 of its Statement of Case and provides a comparison between the existing definitive bridleway and the new route. It is reproduced in a slightly amended form below:

Existing bridleway	Lineside route
Horizontal Separation (measured closest distance between rail line and route)	
Majority of total length at least 70m from railway	Majority of total length (c. 950m) alongside railway within 10m from the line
70 to 300m from the line Reasonably distant from horse and rider so impact of noise and perception of physical threat of fast-moving heavy mass is reduced	Adjacent to railway line at foot of embankment - Proximity of trains intrusive and unpleasant for noise and fumes - Perceived physical threat of fast-moving heavy mass high - Higher risk if horse perceives a threat, and if rider is uncomfortable, which unsettles the horse
Vertical Separation (estimated from OS contours or by observation)	
5-10m above the line Impact of the trains reduced as generally well below horse and rider	Trains at or close to head level - More threatening than at ground level - Higher risk if horse perceives a threat, and if rider is uncomfortable, which unsettles the horse
Nature of boundaries	
Significant proportion is a hedged track across fields - Hedges provide an element of visual and sound screening. - The hedged corridor is generally remote from the line - >70m. - Hedges have greater amenity value and less intimidating than security fencing, providing shelter and biodiversity, and much reduced risk if a horse or person should come in contact with the shrubs, for example when passing other users	Details of boundary fencing has not been made clear by NR but their response to OBJ25 indicates the use of post and wire fencing on the field side. It is assumed that either post and wire or palisade fencing is intended on the track side. - Top spikes of the palisade fencing would be at rider's body level, with clear injury potential from being thrown onto it from a horse - Obvious & severe injury risk from horses hitting post-and wire fencing, which is the most likely to be hit by a horse running from a train - Corridor fence increases feeling of being trapped in an unpleasant environment

Existing bridleway	Lineside route
	• Frequency of trains means a rider cannot travel the length of the diversion without being exposed to a train • The corridor prevents moving further away from the railway should a horse be unsettled, and increases the likelihood of a horse, as a flight animal, running from the threat, which if the train is approaching from ahead, could mean a sharp turn, increasing risk of unseating the rider and/or reducing control.

8. It is important to emphasize that the BHS does not consider that riding alongside rail lines is inherently unsafe and indeed it frequently campaigns to be given access to many such routes which are being created to accommodate walkers and cyclists. Every route must be assessed against a wide range of factors to determine its suitability and it is rarely a binary decision. Further, horses and their riders differ in their levels of skill, competency and confidence and, in such circumstances where new routes are being provided, riders should be able to make an informed decision as to whether the new route is suitable for them to use or not.
9. However, this is not the situation in Tackley, where an existing, well-established, well-used and well-loved route is being taken away and the test to be applied is whether the alternative to be provided is suitable and convenient. The BHS does not consider that it is.
10. Much is made by NR of the existence of comparable line side bridleways as set out in its "Review of analogous bridleways", referred to above. This would appear to be a deeply flawed and superficial exercise. The vast majority of the routes considered are shorter, most considerably shorter, than the proposed route at Tackley. It includes no assessment of whether the routes are actually well used by equestrians or not. It ignores the fact that what is required at Tackley is a suitable and convenient alternative for an existing route that does not run alongside a rail line for any distance. The fact that other line side routes do exist, even if they were similar to that at Tackley, does not demonstrate that the proposed route at Tackley is suitable or convenient.
11. The BHS also has concerns about the proposed surface treatment of the line side route. It understands that the intention is to provide a wide (5m) track with a hard loose stoned surface. This is not suitable or convenient for equestrian use; it can be uncomfortable and potentially injurious for horses. It appears to be justified by NR on the basis that the existing BW is now also a similar stoned track. However, as NR acknowledges in para 5.23 of its Statement of Case, the bridleway was a rural path, with the accompanying image showing a

wide grass sward with a worn central trod. Aerial photographs of the route confirm that this was an accurate description of the bulk of the route (see Appendix WS 1). It appears that the natural surface was damaged by heavy plant used by NR to construct the temporary footbridge in 2020-21 and was resurfaced in stone by them, apparently without agreement or authorisation from Oxfordshire County Council's Public Rights of Way service.

12. The width and proposed surface of the route tends to indicate that some level of vehicular access is envisaged but NR has not made this clear. If it is to accommodate cycling use, then this could be equally effectively and more economically achieved by the provision of a narrower suitably surfaced strip with a firm but natural surface to the remainder of the width for equestrian use. Nonetheless, it is noted that the intention is to retain the existing bridleway as far as the station to allow continued pedestrian and cycling access along the original route and thus the need for additional cycling-specific provision on the new route appears unnecessary.

Alternatives to the Line Side Route

13. At the crux of the objection is the fact that NR has disregarded a far more suitable alternative route that could have been adopted. It appears that NR justify this primarily on the basis that the landowner would not agree to it. It is the understanding of the BHS that the landowner would accept the BHS' preferred route but found that NR were unwilling to engage in meaningful and constructive negotiations to secure it.
14. It is the BHS' position that any of the five routes, A to E, identified in its Statement of Case would be preferable to NR's chosen route F and it is a shame that some of these were not fully pursued at an early stage when they may have been viable. Nonetheless, Route D remains viable and as noted above the Landowner is willing in principle to accept it. (see email from Tackley Estate's Land Agent in Appendix WS2).
 - Route D is already in use on a licensed or permissive basis to some local riders.
 - It provides a large degree of separation from the rail line.
 - It already has a good resilient natural surface for the majority of its length thus implementation costs would be much less than the "stone road".
 - The southern section is coincident with the walked line of an existing public footpath and thus provides an opportunity for resolving the off-line anomaly.
 - Due to its alignment and the coincidence with existing paths noted above, it has the potential to result in less net land-take and thus advantageous to both NR and the landowner.

15. The extent to which the inadequacies of the proposed route, whether physical or psychological, deters riders from using the route could, in effect, amount to an extinguishment of a bridleway which is an important link and force riders onto nearby roads, arguably significantly increasing the risk to their safety. It has been established, albeit in a different context that psychological factors can constitute interference with the use of a right of way. In the case of *Herrick v Kidner* (2010) – at para 47 Cranston J. states: *“Thus the issue in the case, and the focus of Mr Mould QC’s powerful submissions, was whether albeit an obstruction, the Barcroft Hall gateway was not an obstruction which (i) significantly interfered (ii) with the exercise of public rights of way over footpath Y24/10. The first concept is significant interference. In my view interfere in this context means to get in the way of, in other words, the structure must impede the right of passage or prejudice other amenity rights, either generally or in particular. **There is no reason to confine interference to physical interference. An object can get in the way of the right of passage or other amenity rights because of its psychological impact.**”* (my emphasis). The BHS contends that the relationship of the rail line next to the proposed bridleway in these circumstances will create a psychological impact that is likely to interfere with the equestrian use of the route to a significant extent thus rendering it not suitable or convenient.
16. The BHS accepts that “enjoyment” is not explicitly a factor in determining whether a proposed route provides a suitable and convenient alternative. However, it considers that enjoyment can form an element of that assessment. In the decision letter issued on 29 October 2020, in relation to the Network Rail (Cambridgeshire Level Crossing Reduction) Order, paras 29-32 indicate that the Secretary of State considered that the detrimental effect on the enjoyment of a route was at least one factor in the rejection of a particular proposal from that order. The relevant parts are reproduced below with emphasis added.
- 29. The Secretary of State notes the Inspector’s consideration of the suitability of the diversionary route proposed for each right of way proposed to be closed (IR 7.2.128 to 7.2.135). He notes that the creation of a field margin route, improving the potential crossing of the road to the south, would be welcome but fails to address the wider issue of the narrow footway alongside Station Road and in particular over the bridge itself which was the main issue arising here. (IR 7.2.128). The Secretary of State further notes that the proposal increases the distance for users and the Inspector considers that this is more significant when account is taken that this route is a link between two villages and provides access to and from retail facilities to the south (IR 7.2.133). **The Secretary of State notes that there would be an effect on***

enjoyment of the route, moving people from a countryside route to walking alongside an industrial estate and roadway (IR 7.2.134).

30. The Secretary of State notes the Inspector considers that the proposed changes are not suitable and convenient so far as existing users are concerned. He notes that the Inspector does not consider that the displacement of users from a straightforward countryside route, perceived to be relatively safe, onto a roadside route, on a narrow footway, provides a suitable and convenient alternative to the existing rail crossing (IR 7.2.135).

31. ...

32. The Secretary of State concurs with the Inspector's recommendation that the crossing should not be included in the Order (IR 7.2.143).

17. Whilst the proposed route at Tackley cannot be described as “an industrial estate”, it does appear to be a roadway and the change from the existing hedge-lined countryside route to right alongside the rail line does tend towards making the comparison apt.
18. The BHS notes that para 104 of the National Planning Policy Framework requires that planning decision should “protect and enhance public rights of way and access”. For the reasons outlined above, the BHS considers that the line side route falls far short of this test.

Other Issues

19. The BHS remains concerned about NR's unwillingness to commit to permanent pedestrian and cycling access across the new footbridge. The retention of the stub bridleway leading to this provides a valuable link for other (non-equestrian) users. Should NR choose to end the permissive use of the bridge then a cul-de-sac route will be left with problems for management and network integrity. Even up to that point, NR will need to ensure that suitable and appropriate signage is installed and maintained at the junction with the bridleway to the south to ensure that users are able to make a correct decision about which route to use.
20. In NR's document NR04 - Statement of Aims - the plan on Page 6 shows the proposed new bridleway stopping short of Nethercote Road, thus making it a cup-de-sac at its northern end - presumably this is an error on this plan as the Plan at NR09 shows a link to the road, but clarification and an amended plan is requested.

Summary and Conclusions

21. Although the BHS does not consider NR's safety case for the closure of the existing crossing to be compelling, it is not in principle opposed to the closure.
22. There is a clear requirement for an alternative route which must be "suitable and convenient".
23. The BHS does not consider that bridleways running alongside a rail line are inherently unsafe and each route should be assessed on a case-by-case basis.
24. The route proposed in the Order is neither suitable nor convenient due to the following factors:
 - its extended and uninterrupted length (c950m)
 - horizontal and vertical separation from the rail line (generally less than 10m and at or around eye level for horse and rider, respectively)
 - lack of natural screening such as trees / shrubs
 - enclosed by fencing on both sides
 - an unsuitable surface across the entire width of the track
25. The combination of these factors, taken with the expected speed and frequency of trains, has the potential to create significant risks to those less confident, competent and skilled horses and riders. It will not be possible to mitigate these risks by traversing the route in the interval between trains.
26. The risks, physical and psychological, will materially interfere with many riders' ability to exercise their right of way.
27. An alternative route which is not able to be exercised is no alternative at all.
28. A far more suitable route has been suggested and remains available. This provides many advantages for users and also for NR as construction costs, and potentially land-take compensation, will be much reduced.
29. The BHS considers that permanent access could and should be provided across the proposed new footbridge for pedestrians and cyclists.
30. For the above reasons, the BHS requests the Inspector to recommend the refusal of the Order or, if possible, its modification to enable the adoption of Route D and to address the other points raised.

Will Steel

Head of Access

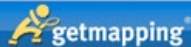
The British Horse Society

21st May 2024.

Tackley – Aerial Photos of Existing Bridleway

Obtained from getmapping.com apart from final image from Google Street View.

2004?



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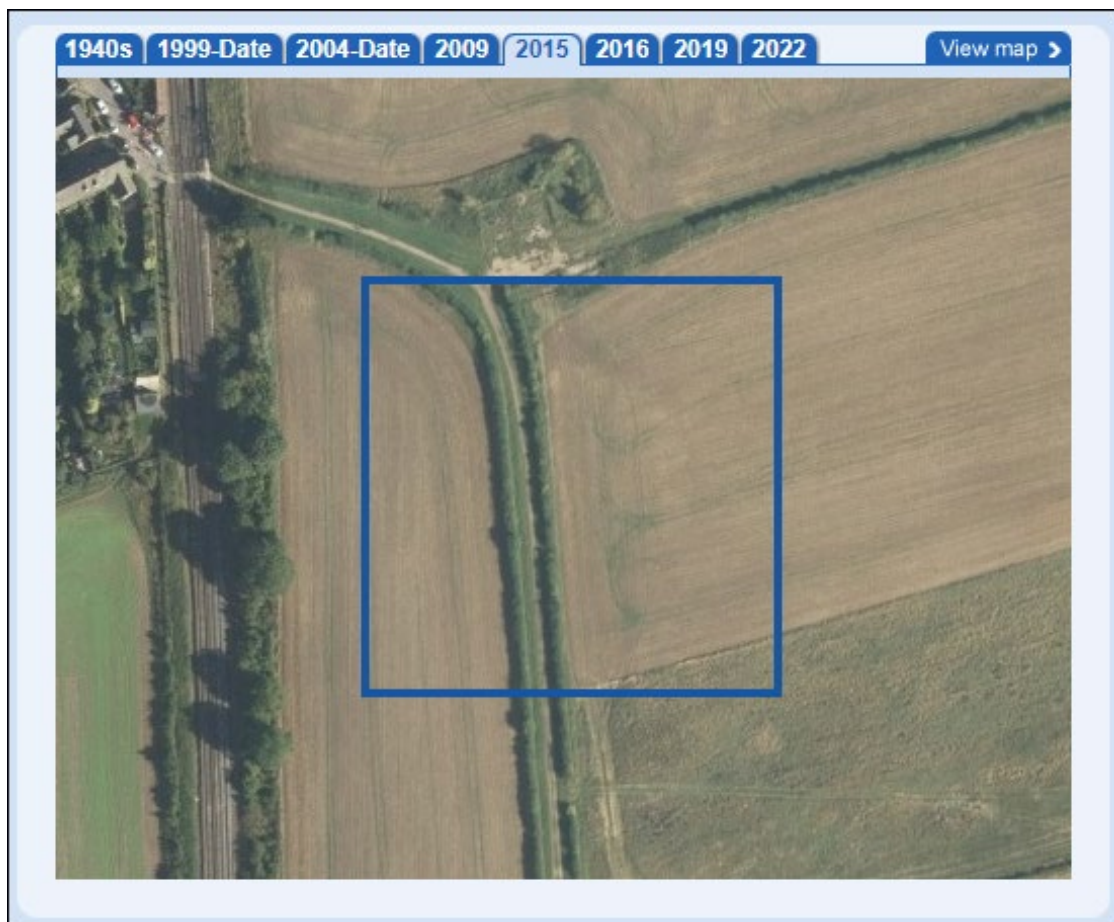
Site map

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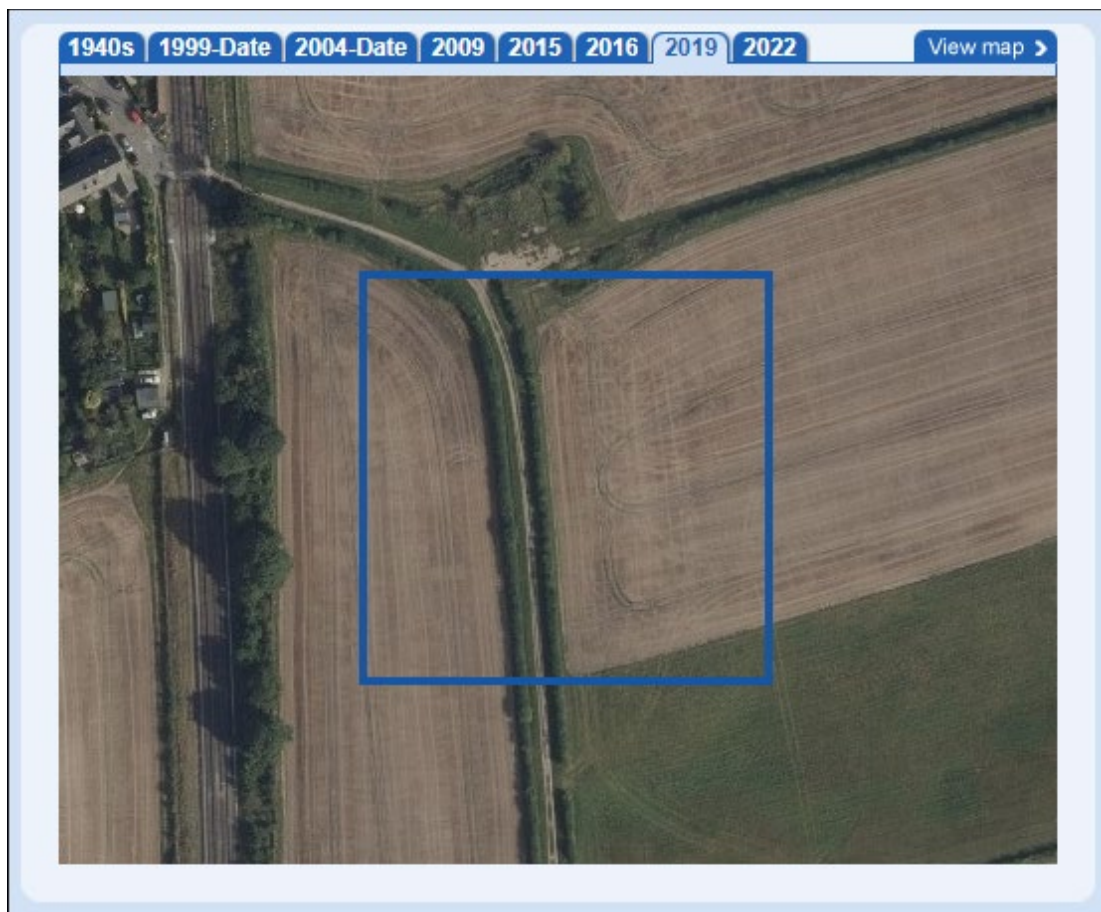
Returns policy

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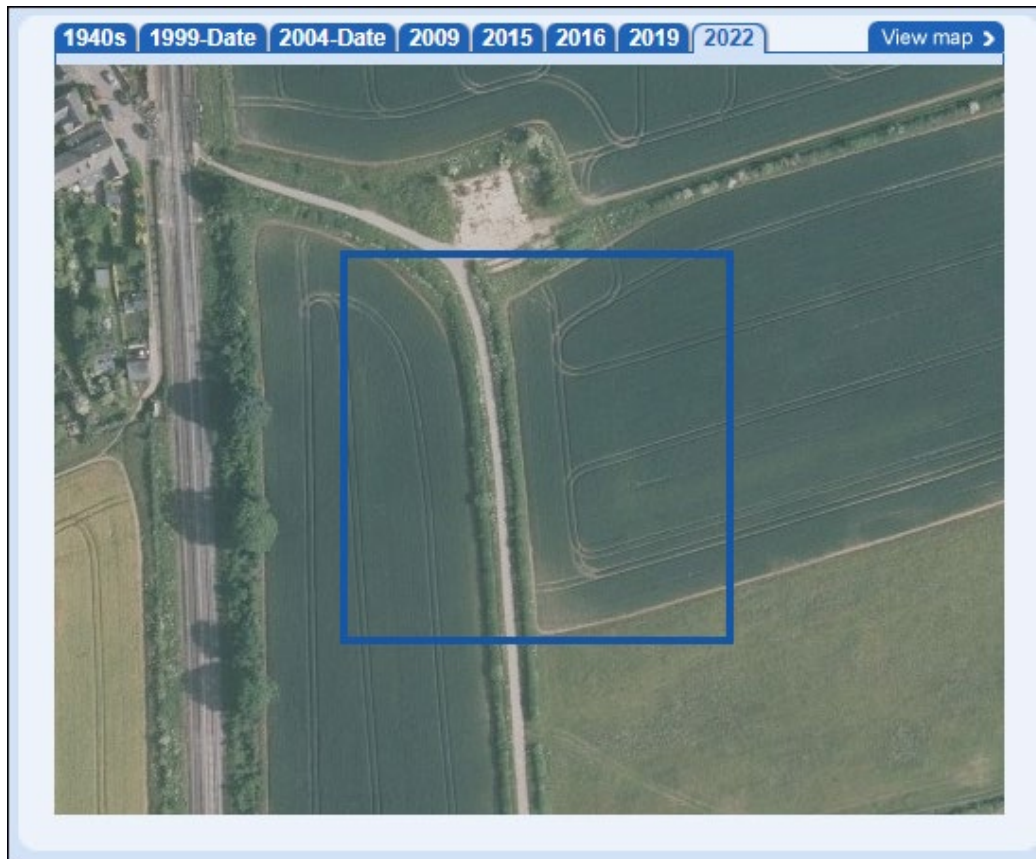
2015



2019



2022



Google Street View image from 2011.

APPENDIX WS2

From: Hywel Morse [REDACTED]
Sent: 08 April 2024 13:17
To: Sophie Vagg [REDACTED]
Subject: RE: Permission to visit

CAUTION: This email originated from outside of The BHS. Use caution when actioning, replying, clicking links, or opening attachments..

Dear Sophie,

Thank you for your patience.

Please see my replies below in red.

Kind regards

Hywel

Hywel Morse MRICS FAAV
Laws & Fiennes

[REDACTED] w: www.lawsandfiennes.co.uk
Registered Office: Warren Lodge, Broughton, Banbury, Oxfordshire OX15 5EF

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From: Sophie Vagg [REDACTED]
Sent: Thursday, March 28, 2024 9:12 AM
To: Hywel Morse [REDACTED]
Subject: RE: Permission to visit

Morning Hywel,
[REDACTED]

Thank you so much for that, it was a really useful (if rather damp) visit, and really helped to give context to the arguments for the people who will be giving evidence.

I am just going through our case and am looking to have some form of evidence for our points,

would it be at all possible for you to provide the following in writing (email)

- I know you raised the Estate's most recent offer to NR at the Parish meeting, but unfortunately it wasn't minuted, would it be possible for you to put in writing what the Estate offered and when and when NR refused, and if poss. their reasons.

Recently, Mr Peake has suggested an alternative, again across his land and which would run along the licensed path. Provided the existing bridleway (379/2/10) was stopped up at its junction with bridleways 379/2/20 and 379/25/10, Mr Peake would be willing to allow Network Rail to create a bridleway over this land as an alternative to the use of the proposed bridleway. While the bridleway (379/2/10) was stopped up, Mr Peake would allow a permissive path to be granted to allow access to continue as long as access was allowed through the station on a permissive basis with the understanding on closing the station to public access Mr Peake could close the permissive path.

NR response

Although we acknowledge that, the infield route you propose could re-provide the bridleway connectivity, Network Rail are not in a position to introduce a large alteration to the TWAO as it would cause significant delay and risk to our programme and increase costs, with greater impact on your client's land and as such cannot be seen as the better solution in the round. We note that your client ties the provision of the infield route with a much greater closure of the existing bridleway to the east of the railway line. As such, whilst changing the alignment of the route may remove some objections, the stopping up of the existing bridleway has the potential to introduce even more. The closure of the existing bridleway in its entirety would not be acceptable to many stakeholders and has been discussed at length in the past.

Network Rail will continue to promote its scheme in the TWAO and will not be promoting the increased closure of the bridleway on the eastern side. Should your client seek and obtain any consents necessary for the infield route and be in a position to deliver and dedicate it within the necessary programme, Network Rail would be happy to enter into further discussions at that time with your client regarding the use of that route. The TWAO powers will not preclude the infield route.

- Also would it be at all possible to get the Estates current position on the routes, mostly just that in principle you would support the current permissive route as an alternative option. The estates position in supporting the Licensed route is conditional on the stopping up of the existing bridleway and the granting of a permissive path. I hope this clarifies the matter?

Hope you have a lovely Easter

Best wishes,

Sophie

Sophie Vagg
Access Field Officer South

The British Horse Society

Abbey Park, Stareton,
Warwickshire CV8 2XZ