

**THE NETWORK RAIL (STALYBRIDGE TO DIGGLE (SADDLEWORTH))
ENHANCEMENTS ORDER**

CLOSING SUBMISSIONS ON BEHALF OF OLDHAM MBC

1. These submissions will address the area that remain in dispute between Oldham MBC ('the Council') and Network Rail ('NR') at the end of the Inquiry.
2. At the time of the SoCG¹ there were two matters in dispute: the justification for the location of a zebra crossing at Greenfield Station, and the extinguishment of the Moorgate Halt Level Crossing ('the Level Crossing'). However, the Council is now satisfied – following the agreed position recorded at INQ-39 – that the Greenfield Station dispute has become academic and our concerns are resolved by the approach agreed.
3. This Closing will therefore only focus on the Moorgate Halt Level Crossing.
4. The issue is straightforward. The Council accept that there is a safety justification for the Level Crossing to be closed but are not satisfied with the alternative route being provided. Not only is it unsafe and unsuitable but NR had originally planned to provide a footbridge over the Level Crossing which is suitable. The Council are – simply put – here to hold NR to their original commitment to provide the promised footbridge.
5. In terms of the Statement of Matters this Closing relates primarily to 3a:

The likely impact of the Scheme on landowners, local businesses and residents:

¹ NR-SOCG OBJ-185

a. the effects of the Scheme on public rights of way including the proposed closure of Footpath 209 (Moorgate Halt Level Crossing), the suitability, safety and convenience of proposed alternative routes and whether appropriate mitigation has been considered, including the provision of a footbridge;

A note on terminology

6. The existing route of FP209 over the Level Crossing will be referred to as the ‘Existing Route’.
7. NR’s proposal to rely on an improved FP244 will be referred to as the ‘Alternative Option’.
8. NR’s abandoned proposal to provide a footbridge – which is the Council’s preference – will be referred to as the Bridge Option.

The correct approach to the issue

9. Before turning to the specifics of this case, it is important to outline the approach which a decisionmaker must take to considering whether to extinguish a PRoW as part of a Transport and Works Act Order under the Transport and Works Act 1992 (‘the 1992 Act’).
10. The starting point is the 1992 Act itself which requires per s.5 (6) that the Secretary of State be satisfied that either an alternative right of way has been/is provided or that one is not required.
11. While not expressly stated within the 1992 Act – albeit reflected in old DfT Guidance² - implicit within this is a question of whether the alternative route (either existing or provided) is convenient, safe and suitable. This was accepted as being an appropriate approach by Jerry Greenwood in XX.
12. The reason that there is a stringent test for the extinguishment of a public right of way is because of the long-standing recognition in England and Wales of the importance

² A Guide to Transport and Works Act Procedures 2006 – Appendix 4 to Council’s Statement of Case

and permanence of public rights of way. This is encapsulated in the maxim of ‘once a highway, always a highway’ and reflected in the statutory duty placed on highway authorities (such as the Council) under s.130 of Highway Act 1980 to ‘*assert and protect the rights to the public to the use and enjoyment of any highway*’.

13. In a normal course of events when considering a Transport and Works Act Order the decisionmaker therefore needs to consider if the promoted alternative is suitable.

14. However, given this Order concerns a level crossing there is a specific provision that can also apply: s.48 of the 1992 Act.

15. S.48 directly concerns ‘footpaths...over railways’ and applies where:

(a) a public right of way over a footpath.....crosses a railway or tramway otherwise than by a tunnel or bridge,

(b) the operator of the railway or tramway has made a closure or diversion application in respect of the crossing, and

(c) in the opinion of the Secretary of State the crossing constitutes a danger to members of the public using it or likely to use it.

16. These three criteria are clearly met here. It is also the case that we are within the two-year period from the application³ thus avoiding the ouster clause at s.48 (4).

17. This gives the Secretary of State the discretion to order NR to provide a bridge:

(2) The Secretary of State may by order require the operator to provide a tunnel or a bridge, or to improve an existing tunnel or bridge, to carry the path or way over or under the railway or tramway at or reasonably near to the crossing to which the closure or diversion application relates.

(3) An order under this section may include particulars as to the tunnel or bridge which is to be provided or as to the improvements which are to be made.

18. It is noteworthy that there is a specific statutory provision in the 1992 Act for requiring a railway operator to respond to a dangerous level crossing by providing a bridge or

³ Defined at s.48 (8) as being ‘an application made under section 6’ of the 1992 Act. This Application for the Order was made in November 2025.

tunnel. It reinforces and reflects the importance of the permanence of highway rights and the preference for retaining a right through the provision of a bridge/tunnel rather than extinguishing it.

19. In this case the Council is formally asking the Secretary of State to exercise their discretion under s.48 and make a Bridge Order requiring NR to provide the footbridge.
20. This expands the considerations that a decisionmaker has to address in considering a Transport and Works Act Order.
21. As well as considering if the alternative route is suitable, the decisionmaker must also positively consider whether a Bridge Order should be made here.
22. This is important to set out in detail because of the suggestion in the cross-examination of Mr Kennedy ('LK') that the test under s.5 (6) simply requires the alternative route to be 'suitable' rather than the 'most suitable'. NR's point being that if the Alternative Option is suitable then it does not matter if the Bridge Option is more suitable.
23. That is correct if the issue is looked at solely in the narrow terms of s.5 (6). But – setting aside that the Council do not accept the Alternative Option to be suitable – it overlooks the fact that the Secretary of State is being specifically asked to exercise their discretion to make a Bridge Order under s.48.
24. In those circumstances the competing suitability of the two Options is critical.
25. While it is artificial to separate out the two issues, to assist the decisionmaker in identifying a structured approach to determination two relevant questions can be posed and considered in this order:
 1. Is the Alternative Route a convenient, safe and suitable replacement for existing users?
 2. Should NR be ordered to provide the Bridge Option via a Bridge Order?

26. The reason for taking these questions in this sequence is that if the answer to Question 1 is 'No' then the answer to Question 2 should be 'Yes'.
27. But – critically – if the answer to Question 1 is 'Yes' this does not determine Question 2.
28. If the decisionmaker concludes that the Alternative Route is suitable then they still need to consider if – despite this – it would be preferable to have the Bridge Option and so still make a Bridge Order. This is why – with an express request before the Secretary of State under s.48 – the overarching question for the decisionmaker is what the most suitable option for is closing the Level Crossing?
29. The Council will structure its submissions according to those two questions and why the answer to Q1 has to be 'No' and the answer to Q2 should be 'Yes'. But before doing do it is worth briefly outlining the relevant facts to those questions.

Factual Background

30. The Existing Route is around 210m in length and – as set out by LK – has a gradient and surfacing which requires mild to moderate effort in keeping with other routes in the local vicinity⁴.
31. In terms of usage the Inquiry has the benefit of two sets of survey data: 2022 and 2024. The former shows an average of 40 movements a day⁵ and the latter shows an average of 25 movements a day. While the lower figure is more recent it was also carried out in the depths of winter (November to December), in comparison to the 2022 data which was carried out in Spring (March to April).
32. As LK made clear in XiC it is a truism that you have higher usage in better weather and it is more appropriate to use the spring rather than winter data as to a numerical indication of the amount of use that the Existing Route experiences.

⁴ LK Proof: 3.7

⁵ LK Proof- Appendix 5

33. In terms of characterising that use LK was clear that he would consider that as being ‘high’ usage. His evidence carries significant weight in this regard because he has the most knowledge of any witness of the PRow in Oldham, being the PRow Officer for this area in question (as well as being a registered member of IPROW⁶).

34. This also was reflected by NR when they previously considered the usage of the route as part of the Impact Assessment Report in 2023⁷ when they concluded that⁸:

The crossing receives a high volume of usage and is used as an access into the centre of Uppermill for many. This usage includes a higher than usual number of vulnerable users.

35. NR – through the evidence of Mr Cary – sought to play down the usage of the Existing Route by reference to the Web-TAG Unit guidance⁹ at 5.2.3 of his proof which would categorise under 200 users a day as being low.

36. However – as accepted in XX – there are warning signs about attempting to rely on this guidance for the purpose of categorising a level of use when considering extinguishment. The Guidance uses a uniform figure and does not distinguish levels of usage between urban vs semi-urban vs rural footpaths despite it being accepted that usage between those types of footpaths will vary significantly. This is well illustrated by the fact that the Guidance categorises a large impact as only occurring if there are over 1000 people using it a day – and Mr Cary accepted that he had never come across a rural footpath with that level of usage.

37. Mr Cary did accept that fundamentally the consideration of categorising a level of usage as high/medium/low is a subjective judgment – and in this case the decisionmaker should follow the subjective judgment of LK as the most informed expert and consider the usage to be high.

38. Furthermore, this usage is clearly highly valued by locals. The Council will not seek to repeat or summarise the various heartfelt representations that the Inquiry heard from

⁶ The Institute of Public Rights of Way

⁷ LK Proof -Appendix 5

⁸ Para 4.2 on Page 5

⁹ NR112

individual residents and resident groups. It is expected that those locals will give their own written closings. But the level of opposition to the extinguishment of the Existing Route speaks for itself. It has become one of the most controversial elements of the Order.

39. This is because locals – both young and old – and tourists have been using it for decades. They perceive it as being part of the village’s success as a tourist destination and as an important part of their own mental health when they walk as part of walking groups (e.g Wednesday Walkers). This includes usage by those with visual impairment¹⁰ and leg injuries¹¹ as well as the elderly and vulnerable.
40. In terms of the experience of the Existing Route, LK described it in XiC as being a rural woodland peaceful and solitary experience.
41. The Alternative Route would send walkers – coming from Uppermill - down the Huddersfield Narrow Canal Towpath, along the Oldham Road (A670), along an improved FP244 before going up Ladcastle Road.
42. In terms of the length the Alternative Route would add up to 400m compared to the Existing Route and around an additional five minutes of journey time based on an average walking speed.
43. Because of the current unsuitability of FP244 NR are proposing to improve it. This would lead to the widening and surfacing of FP244 and the introduction of several sets of steps and metal handrails. The illustrative CGI¹² shows what LK described as ‘a highly engineered footpath route’ which he considered to be out of keeping with the immediate area.
44. In terms of gradient the Alternative Option would requires the provision of 67 steps and the plan provided at Appendix 2 of Mr Barraclough’s proof shows that the gradient will reach -74% towards the end of PF244. While Mr Barraclough suggested in XX that this

¹⁰ Mr Fletcher

¹¹ Dr Taylor

¹² Mr Barraclough Proof – Appendix 10

could be incorrect and was only high level, it is the only gradient plan of the Alternative Route that the Inquiry has.

45. The Bridge Option would retain FP209 but replace the Level Crossing with a footbridge. The footbridge itself has already been designed and broadly costed by NR who had previously gone so far down the route as to have obtained planning permission for it in June 2022¹³.
46. While the costs have risen to between £3.7 to £4.5 million¹⁴ because of complicating factors, it was confirmed by Mr Barraclough in XX that the footbridge remained feasible and deliverable but just at a higher cost.
47. As Mr Greenwood confirmed in XX, NR had previously been promoting the Bridge Option between 2017 to 2024. It was in August 2024 that there was a change of stance which was confirmed by Mr Greenwood to relate solely to the rising costs of the footbridge as reflected in the worsening Cost Benefit Ratio.
48. In terms of the majority of physical characteristics the Bridge Option is the same as the Existing Route because the only thing that is changing is the introduction of a footbridge.
49. Having outlined the high level facts, the Council will now turn to address the two questions outlined above.

Is the Alternative Route a convenient, safe and suitable replacement for existing users?

50. The Alternative Route is neither convenient, safe nor suitable.
51. The fact that the Alternative Route is longer on its own is not fatal. That is often the case with alternatives although the additional five minutes and 400m is not insignificant. But – as Mr Wotherspoon accepted – the additional length cannot be

¹³ Mr Kennedy Proof -Appendix 3

¹⁴ 3.7.1 of Mr Doodley Proof

looked at in isolation. The experience of a walker on that additional length must be considered.

52. This is particularly important given the predominant use of the Existing Route is recreational. While NR rely on that to reduce the relevance of the additional length – given the context is recreational walkers doing longer routes – the flip side of that is that it increases the relevance of the subjective experience of the walkers on the Alternative Route. Mr Wotherspoon accepted that it would be highly relevant here in XX.
53. The recreational purpose of walkers on the Existing Route is to get away from the urban environment and up into the higher countryside and peaks around Uppermill.
54. The Existing Route – being an unmade rural footpath – is consistent with that recreational purpose and are a contributing feature to its high use.
55. The Alternative Route loses that peaceful and solitary experience. It directs walkers along a towpath which is clearly within Uppermill, then along a busy A-road, then via a private drive onto a crushed ballast highly engineered path with metal handrails on the stairs. None of that will retain the rural character of the Existing Route and even Mr Wotherspoon had to concede ‘It will be different’.
56. But it won’t just be different, it will be worse when considering the recreational purpose of the existing users of the Existing Route.
57. With the Alternative Route users will not only have to take a longer route to reach the countryside but – during that diversion – they will not have achieved their purpose of getting away from the urban but will instead be firmly within it.
58. The question which no-one can answer is whether that disamenity will put walkers off using the route. But it is clearly a materially increased risk and illustrates that the Alternative Route is neither convenient nor suitable.

59. The Alternative Route would also create a significant safety risk compared to the Existing Route by introducing new interactions between walkers and vehicles. There are two areas of concern.
60. The first is the Oldham Road (A670) which is agreed by both Mr Storey and Mr Wotherspoon as being a very busy A-road.
61. The particular safety issue arises from the fact that the Alternative Route would require walkers to traverse a ‘pinch-point’ of less than 600mm. This can just about be traversed by a single file able walker (as long as they don’t trip on the block sticking out from the private property) but not if they are holding a child’s hand¹⁵, are walking with a cane¹⁶ or encounter someone coming the other way. In those situations – if they are not willing to wait – then this will require the walker to step out into a live lane of the A-road. If walking to Uppermill from FP244 they will be doing so with their back to traffic.
62. If a walker is coming from the FP244 and wanting to turn right – i.e towards the train station – then they will be unable to do so and will have to cross to the other side of Oldham Road.
63. The safety issues with this are self-evident and were – unsurprisingly – highlighted in the GG104 Safety Risk Assessment¹⁷ and later Road Safety Audit¹⁸. The Road Safety Audit summarising the issue as:

The Audit Team are concerned that a circa 10m length of existing footway on the west side of Oldham Road, immediately to the north of the Public Footpath identified, is very narrow and is considered insufficient in width. As a result, it is likely that either pedestrians could stray into the northbound lane of the carriageway, or southbound pedestrians will need to cross over to the south side utilising the existing uncontrolled crossing, proceed southbound, and then crossing back over to the west side opposite the Public Footpath, and vice-versa for northbound pedestrians.

¹⁵ Mr Wotherspoon XX

¹⁶ 750mm Minimum Footpath Width set out in Mr Storey’s Proof at 3.8

¹⁷ NR88

¹⁸ NR87

64. Without mitigation the Safety Risk Assessment was clear¹⁹ in its scoring of the hazard that the Alternative Route would push the safety of the ‘pinch point’ from a score of 6 to a score of 9 meaning that serious harm may happen once every five to ten years.
65. Both documents were clear that the primary solution to solve this issue was the widening of the footway. But that is not what is being promoted here. Instead, NR have been forced to rely on the lesser mitigation of reducing the speed limit to 20mph and the erect of warning signs. Neither is satisfactory.
66. The issue with the former is that the reduction of speed does not negate the risk of collision but instead only mitigates the harm because it means that walkers are hit at a lower speed²⁰.
67. This meant that – on the terms of the Safety Risk Assessment – the score remained the same at 6. The logic being that while more people will be traversing the pinch point thus increasing the likelihood of collision, the reduction in speed will reduce the severity of any injury.
68. But a sense check needs to be taken here. None of the users of the Existing Route have to risk stepping out into a carriageway of an A-road. The likelihood of collision for them is 0. It is entirely unpalatable for walkers to be told that the Alternative Route is safe and acceptable because of mitigation that means if they are hit by a car, it will be at 20 rather than 30mph. The correct response is that it is safer to avoid the risk altogether by remaining on the Existing Route.
69. The second mitigation measure is the provision of warning signs to alert drivers to the risk. But these are insufficient because of the physical limitations of where they can be put. Because of the layout of the private houses around the ‘pinch-point’ drivers coming south will only have signs either 250m away or literally at the pinch point itself.

¹⁹ Page 17 of NR88

²⁰ This is made clear from the ‘assumption’ box in the Safety Risk Assessment which states “*Relocation of the change in speed limit from 30mph to 20mph to a point west of the junction of the public footpath and the A670 may not reduce the likelihood of collision but, should a collision occur, the severity should be reduced due to the reduced speed of the vehicles involved*”

70. In an unusual presentation of evidence by NR the Inquiry was presented in their Statement of Case with recognition at 8.2.3.21²¹ in relation to the signage that:

This has been considered further in the Designers Response that considers that it is not possible to provide a sign until approximately 150m to the south, too far removed from the perceived hazard to be effective.

71. However, this did not match up with the March 2026 Designer Response appended to Mr Wotherspoon's proof which noted the limitations meant the sign would be 250m to the south but made no comment as to effectiveness. This disparity was explained by Mr Wotherspoon as being due to the fact that there was an earlier version of the Designer Response which the Inquiry had not seen and which the Statement of Case was based on.

72. But Mr Storey was clear in his XiC that warning signs placed 250m away from and immediately on top of the pinch point are not going to be effective mitigation because they are either too far away or too close to the hazard that drivers are meant to be warned about. Mr Wotherspoon attempted to skirt round the point by arguing the signs would also be effective for other safety issues on Oldham Road.

73. Fundamentally – in relation to the first safety issue arising from the Oldham Road 'pinch point' – a serious safety issue was identified by NR, and they have been unable to provide the primary mitigation. The correct response at that point should have been to accept that the Alternative Route was not safe. But instead, NR have attempted to rely on two lesser mitigations that are simply not effective and not good enough. Mr Storey was clear in his evidence that he was not satisfied with them from a road safety perspective.

74. The second danger – Ladcastle Road – relates to the fact that on the Existing Route a walker waking along FP209 would have to cross Ladcastle Road but not walk along it.

²¹ PDF 215

75. By contrast to reach back to FP209 from the Alternative Route would require a walker to walk 115m along the carriageway of Ladcastle Road which is unlit, narrow and curving in places. As set out by LK in his XiC this leads to obvious safety concerns about walkers interacting with vehicles.
76. Overall, these two dangers means that the Alternative Route cannot be considered to be 'safe'.
77. It is worth briefly addressing the counter-arguments that NR will likely raise to this issue.
78. The first is to argue that walkers already must walk over the 'pinch-point' and there has not been a record of existing accidents there. Such an argument has several flaws.
79. The first is that it is wrong in principle to argue that because a route is already dangerous this justifies increasing the usage of it further. The fact that something is already dangerous is a strong argument not to exacerbate the issue further, rather than to justify increasing the usage of it.
80. The second is that it fails to recognise that while it is technically correct that users of FP244 would have to cross the pinch point, in reality FP244 currently has a low usage because of the inherent unsuitability of it (as recognised by NR who are having to commit to carrying out improvement works to it). The point is that NR are actively promoting the usage of a newly improved FP244 and so materially increasing the safety risks if more people use it as they hope.
81. The existing situation argument – though commonly argued – is a very poor excuse in the context of this sort of decision to make an alternative suitable.
82. The second is that the 'pinch-point' must be safe given the Council have not triggered their duty under s.41 of the Highway Act 1980 to maintain the highway to fix it. The lawyer's logic going that given the s.41 duty requires a highway is '*reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger*'

*caused by its physical condition*²², if the pinch point is unsafe then the Council should have fixed it already.

83. However, this point entirely fails to recognise the practical reality of how s.41 is dealt with by highway authorities across England & Wales. As explained by Mr Storey the inherently finite and limited resources of highway authorities require them to be 'reactive' and respond to the most pressing safety concerns. This will often be where an area has a high record of accidents (which it is accepted the 'pinch point' does not). It certainly does not mean that everything the Council have not dealt with under s.41 they accept to be 'safe'. Nor is it right to say that something is safe just because of the absence of recorded accidents. Such blind logic has no bearing with the reality of how s.41 operates in the real world. The 'pinch point' is unsafe even though the Council have not sought to fix it under s.41.

84. The third counterargument may be that while currently on the Existing Route there may no risk of vehicular collision there is a much greater risk of a train colliding with a walker. That is right and the Council do not dispute that safety justification. However, a safety risk from trains does not justify putting walkers on unsafe roads (otherwise the entire requirement for a safe alternative when closing a level crossing would be undermined) and this entirely falls away when considering the Bridge Order.

85. Overall, the Alternative Route is neither convenient, safe and suitable. It would force walkers on a longer more urban route requiring them to have to navigate clear dangers as they must interact with vehicular traffic on a busy A-road and on an unlit narrow and winding rural road.

Should NR be ordered to provide the Bridge Option via a Bridge Order?

86. The issues set out above are sufficient to justify the Existing Route not being extinguished. However, the Council have always recognised that there is a safety justification for doing so and this is why they so strongly support the Bridge Order.

²² **Burnside v Emerson** [1968] 1 W.L.R 1490

87. The Bridge Order achieves a win-win. It delivers NR safety objective of closing the Level Crossing, while maintaining FP209 and the PRow network. Yes, there is an increased cost but as will be set out below, cost should not be the determining factor in these cases. It is striking that NR had long promoted the footbridge approach until costs increased. This is because - apart from cost - it is the clear logical solution to the issues here.
88. Before turning to the compare and contrast exercise between the Bridge and Alternative Options it is important to start with the points recognised and accepted by Mr Greenwood. Given the importance and protection given the PRow and their permanence, there will always be a weighty factor against extinguishment: namely the benefit in retaining the PRow and continuing to protect the public's right to use and enjoy it.
89. Usually in these types of cases that factor simply provides a hurdle for the alternative route to overcome because it is impossible to retain the PRow after extinguishment. But here – because the safety issue only relates to the Level Crossing - there is an opportunity to preserve the majority of FP209 through the provision of the footbridge. This is a major factor which provides the starting point for the justification for the Bridge Order.
90. However, on every metric the Bridge Option is better than the Alternative Option.
91. In terms of length, it is near identical to the Existing Route. As set out by LK it retains the rural woodland peaceful and solitary experience. Of course, for the short section that did cross the railway there will now be a footbridge. But that does not fundamentally change the overall experience of FP209.
92. In terms of gradient and steps it will be less than the Existing Route with fewer steps and – per Mr Barraclough – a potentially lesser gradient of -60%²³ on those steps compared with the -74% on the Alternative Route.

²³ Considered and provided in XX

93. Critically in terms of safety, the Bridge Option will be safe. It will not introduce any new interactions between walkers and vehicles. It does not require a Road Safety Audit or to rely on the mitigation of walkers being hit by a car at a slower speed. There is a significant safety advantage of the Bridge Option over the Alternative Option.
94. As set out and confirmed by LK the Bridge Option is better in PRow terms (as it is preserving FP209), and more suitable, more convenient and safer. The only reason that NR are justifying not delivering a better outcome is cost.
95. NR case for closure is predicated heavily on cost. This is reflected in the Cost-Benefit, Optioneering and Gross Disproportionate Factor analysis that is presented by Mr Doodson and Mr Greenwood. However, that analysis does not take the decisionmaker much further in determining between the Alternative and Bridge Option.
96. This is because said analysis is narrowly looking at the cheapest way of achieving the greatest safety benefit. Both the Alternative and Bridge Option achieve the same safety benefit (100%²⁴) but closing a footpath is cheaper than building a footbridge over it. So, this sort of analysis will always support diverting users onto the existing route. A point well illustrated by the Stockport Road analysis provided later on in Mr Doodson's proof²⁵ which showed a more typical costing bridge still coming out as red.
97. The above is not set out to criticise the analysis carried out by NR. It will be useful for other purposes. But the clear point is that it does not take the decisionmaker any further in considering whether to extinguish a public right of way. That is not its function. It does not attempt to factor in the importance of public rights of way nor the potential unsuitability of alternatives for example.
98. Furthermore, NR and ORR's own policy documents recognise that it is not as simple as simply achieving the highest safety benefit for the cheapest cost.

²⁴ 3.7.1 of Mr Doodson's Proof

²⁵ 4.7 on pdf 23

99. Enhancing Level Crossing Safety 2019 to 2029. A long-term strategy²⁶ recognises at page 23 that there is a tension between safety and – when it comes to public rights of way – the importance of that public’s right requiring NR to ‘*recognise the importance of community, and how our level crossings do, in some circumstances, allow communities to remain connected.*’
100. It goes onto note that “*The risks of traversing the railway will be balanced against the risks of diversionary proposals. We will take account of demographic needs and user convenience within option selection. Public safety will always be at the forefront of decision making*” meaning that safety is a primary concern but not a determinative one.
101. Before finally noting that “*Wherever practicable and safe to do so, any diversions will seek to utilise conveniently located over-bridges or underpasses to assure public money is efficiently managed*”. The reference to ‘practicable and safe to do so’ telling the reader that cost is not a determinative factor.
102. Equally ‘ORR Principles for managing level crossing safety²⁷’ addresses at page 11 and paragraphs 27 – 29 reiterates that the approach is to look at ‘*reasonably practicable options*’ and that as well as a cost/benefit analysis there is a need to ‘*take into account wider implications*’.
103. The point to be derived from these documents – and this interpretation was put and agreed in XX of Mr Greenwood – is that cost should not be a determinative factor. However, the Council would submit that NR have treated it as just that. The cost/benefit ratio began to produce worse and worse numbers and so NR changed tack and abandoned the footbridge. But that is not how these sorts of decisions should be made.
104. Mr Greenwood argued that while cost is not determinative it should be ‘important’. However, the Council would again disagree.

²⁶ NR77

²⁷ NR78

105. Fundamentally NR are seeking to justify a worse outcome on the sole basis of cost. But in the PRow context that point was powerfully considered by Inspector Arnott²⁸ who viewed such an argument as setting ‘*a worrying precedent*’ and concluded at DL/144 that:

In my view, the decision to retain a public right of way or not cannot be driven by financial considerations alone; otherwise, a great many paths across the country may be vulnerable to closure, simply to facilitate savings for cash-strapped councils.

106. In the circumstances where NR are attempting to set that dangerous precedent it is entirely appropriate for the Secretary of State to make a Bridge Order under s.48.

107. It is right to note that such an Order only requires NR to use their best endeavours to comply. But the Secretary of State can derive comfort from the fact that the footbridge concept is not a creation of the Council but a designed and broadly costed option by NR that previously received planning permission and was confirmed by Mr Barraclough to remain deliverable and feasible. The Bridge Order is not imposing a new concept on NR but simply requiring them to revert to their original proposal for the Level Crossing.

108. There is no evidence before the Inquiry that if a Bridge Order were to be made then there would be no prospect of further funding not being awarded in the next funding round to enable it to be delivered. In the context of a current authorised cost of almost £225 million for this section as part of a wider £11 billion spend on the TransPennine Route Upgrade it would be a near fanciful submission (if it is made) that NR could not be able to receive an extra £4 million in funding if it was the requirement of an Bridge Order from the Secretary of State.

109. Overall, there is a strong justification for the Bridge Order. It achieves a win-win for both NR (in negating the safety risk of the Level Crossing) and for residents (in protecting their public rights and avoiding an unsuitable and unsafe alternative). The additional cost is clearly justified in that light.

²⁸ Mr Kennedy's Proof – Appendix 7

Conclusion

110. On the basis of the above the Inspector is asked to recommend and the Secretary of State asked to conclude that the Alternative Option is not appropriate as it is not safe, suitable nor convenient. Furthermore, the circumstances here strongly support the Secretary of State exercising the discretion given to them by s.48 and ordering a Bridge Order.
111. In doing so the Secretary of State will secure that the only suitable option for closing the Level Crossing will be secured and a win-win will be achieved. NR will achieve their safety objectives and locals will retain and benefit from their much-valued Public Right of Way.

PIERS RILEY-SMITH

KINGS CHAMBERS

14th July 2026