

THE NETWORK RAIL STALYBRIDGE AND DIGGLE (SADDLEWORTH)

TRANSPORT WORKS ORDER ACT (REF DPI/G4240/25/18)

Proposed Extinguishment of Moorgate Halt Level Crossing (Definitive Footpath 209, Saddleworth) and proposed enhancements to Definitive Footpath 244, Saddleworth as alternative route.

Proof of Evidence

May 2026

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Public Rights of Way Officer

Oldham Metropolitan Borough Council

1 Introduction

1.1 I am Liam John Kennedy, Public Rights of Way Officer for Oldham Council. I am a registered member of IPROW (The Institute of Public Rights of Way) and have worked within the Highways Sector for 10 years. This Proof of Evidence is on behalf of Oldham Metropolitan Borough Council in my capacity as Public Rights of Way Officer in relation to the Network Rail proposal to extinguish a section of Definitive Footpath 209, Saddleworth and the proposed enhancements to Definitive Footpath 244, Saddleworth to the South as means of an alternative route.

1.2 . This Proof of Evidence is on behalf of Oldham Metropolitan Borough Council in my capacity as Public Rights of Way Officer in relation to the Network Rail proposal to extinguish a section of Definitive Footpath 209, Saddleworth and the proposed enhancements to Definitive Footpath 244, Saddleworth to the South as means of an alternative route.

1.3 While we fully support the aims of the TransPennine Route Upgrade Project we believe that the current proposal does not secure the most suitable nor appropriate solution for the Borough of Oldham and its residents.

2 Background

2.1 As part of the Order, Network Rail are seeking the permanent closure of Definitive Footpath 209 as it crosses the Moorgate Halt Level Crossing.

2.2 Network Rail have previously obtained planning consent for the provision of a Footbridge in 2022 (see Appendix 1-3 Planning Application, Planning Decision Notice and Design and Access with Heritage Statement). However this permission was never implemented. The provision of a Footbridge was concluded to be the most suitable option in Network Rail's own Diversity Impact Assessment (see Appendix 4 – Additional Information – final). Quoted costs have increased from an initial figure of approx. £1.2m to £4.5m. In this same document Network Rail highlight that *'construction of a bridge at this location would be extremely complex, and unfortunately this has increased the costs significantly'*. They go on to state that *'Disproportionate expenditure is contrary to Network Rail's financial and efficiency objectives under its Licence, and we are therefore strongly of the view that it is no longer feasible to construct a pedestrian bridge in place of Moorgate Level Crossing, and that other alternatives must be explored'* (see Appendix 4 – Additional Information – final, Para 12.3-12.4)

2.3 Network Rail previously applied to OMBC under s118A of the Highways Act 1980 for a part extinguishment of the section of FP209 SADD that crosses the railway citing safety grounds. This application was not approved by the (then) Traffic Regulation Order Panel with the hope that Network Rail would revise its position on the provision of a Footbridge. Network Rail chose not to appeal this decision.

2.4 Signalisation works have been undertaken within the vicinity of Moorgate Halt Level Crossing resulting in the possibility of trains being held at newly positioned signals and *'fouling the crossing'*. As a direct result of this the Level Crossing is now even more of a safety risk than previously. There is currently a Temporary

Traffic Regulation Order (TTRO) in force for the temporary closure of this section of the route. It is anticipated that this TTRO will continue to be extended until such time as the TWAO is determined.

2.5 Section 5(6) of the Transport and Works Act 1992 states that a Transport and Works Act Order: *'shall not extinguish any public right of way over land unless the Secretary of State is satisfied (a) that an alternative right of way has been or will be provided, or (b) that the provision of an alternative right of way is not required'*.

2.6 The Department of Transport issued *A Guide to Transport and Works Act Procedures 2006* which provides guidance on the procedures for obtaining orders under Part 1 of the Transport and Works Act. Schedule 1 of the Act exemplifies those matters that may be included in an order made under section 1 or 3 of the Act and a commentary on Schedule 1 is provided in Annex 2 of the Guide. The relevant part of Annex 2 of the Guide states: *"a section 1 or 3 order shall not extinguish a public right of way over land unless the Secretary of State is satisfied that an alternative right of way has been or will be provided, or that one is not required. If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users."* An extract of the relevant parts of *A Guide to Transport and Works Act Procedures 2006* is attached as Appendix 4 with the relevant parts highlighted.

2.7 The Council's stance is that they do not dispute that there is a safety justification for the current arrangement – the footpath over the level crossing – to be changed.

2.8 However, the area of dispute between the Council and Network Rail concerns the alternative. As will be explained in more detail below a key criterion for confirming

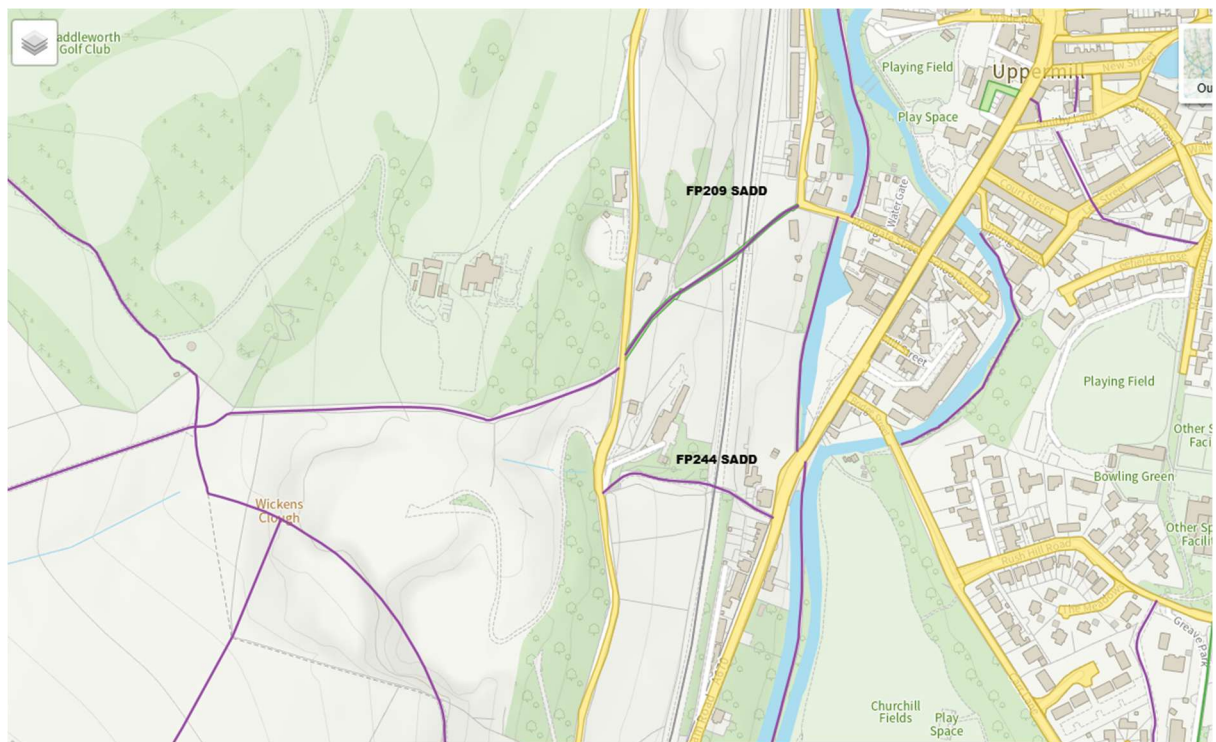
an Order is the Secretary of State being satisfied that an alternative right of way has been or will be provided. It is clear that this alternative must be a convenient and suitable replacement for existing users.

2.9 The Council do not consider the currently proposed alternative to be convenient and suitable replacement for existing users. Instead that would be achieved by Network Rail providing the pedestrian bridge they previously planned to provide.

2.10 This proof will address this by first exploring the Existing Route, then the unsuitability of the proposed Alternative Route before considering whether the Bridge would be a suitable alternative.

3 Existing Route

Figure 1: Location Plan



3.1 Existing Definitive Footpath 209, Saddleworth (FP209 SADD) is an ancient Highway (Dark Lane) and is shown on maps from 1766 onwards. It runs from its junction with Moorgate Street/Den Lane, Uppermill in a south-westerly direction across Moorgate Halt Level Crossing along Dark Lane to Ladcastle Road (approx. 204m) where the route continues west to its junction with Burnedge Lane.

Moorgate Halt Level Crossing is the railway crossing point at this location. The route is primarily rural with sections running through woodland and open fields. This rurality increases the further west you proceed where FP209 SADD opens out providing connectivity to numerous other Definitive routes (FPs 116, 117, 208 & 211 SADD). The open land of Saddleworth Golf Course is to the north of the route after its junction with Ladcastle Road and open farmland thereafter.

3.2 The route of FP209 SADD consists of varying surface types with the majority being un-made in the form of compacted earth and grassed tracks. There are steep gradients however these do not appear to be a deterrent to usage.

3.3 Network Rail's Impact Risk Assessment Report (see Appendix 5 – IRA for Moorgate Halt Final) identifies FP209 SADD as receiving a '*high volume of usage*' (Para 4.2) including a '*higher than usual number of vulnerable users*'

3.4 Network Rail has provided 2 sets of census data (see Appendix 6 - Mayer Brown Highways Statement June 2025 and Appendix 5 – IRA for Moorgate Halt Final) for usage surveys 08/11/2024-03/12/2024 (26 days) and 25/03/2022-04/04/2022 (11 days). The total pedestrian count was 647 between 08/11/2024-03/12/2024 and 434 between 25/03/2022-04/04/2022. Peaks in usage are at weekends. This data supports the assertion that the route is more heavily used in the Spring/Summer months.

3.5 The data provided indicates usage by vulnerable users; however, how these individuals are categorised is unknown. There is no evidence provided that the existing route cannot be traversed by persons with protected characteristics (such as mobility impairment or hidden disabilities). Primary usage is

leisure/recreation based and provides access to Uppermill centre as well as the historic Delph Donkey route to the North. The Delph Donkey route is a non-Definitive popular recreational walking and cycling trail following the disused railway branch line.

3.6 Overall, I would categorise the usage of existing route as high level recreational with peaks at weekends and higher level during the Spring/Summer month.

3.7 Overall, I would categorise the gradient and surfacing of the existing route as mild to moderate effort required and in keeping with many of the routes found within the local vicinity, due to topography.

3.8 Overall, I would consider the experience a user has of the route as being pleasurable, rural and peaceful with minimal vehicular traffic interaction.

4 Alternative Route

4.1 The current proposal is for the part extinguishment of the section of FP209 SADD that traverses the railway line by means of the existing Moorgate Halt Level Crossing and the usage of FP244 SADD as an alternative route with associated enhancements/upgrades. It is anticipated that should the TWAO be accepted in its current format and FP244 SADD be improved and offered as an alternative route there will be an associated increase in usage.

4.2 Existing Definitive Footpath 244 Saddleworth (the alternative route) links Oldham Road (A670), and Ladcastle Road, Uppermill. It is approx. 165m in length and passes under the railway via Wickens underbridge (MVL3/29). There is a significant level difference between both ends of the route. The route itself is

challenging to the most able bodied of walkers in its existing condition. The entry/exit point at the Oldham Road end is via private driveway and leads to the adopted highway where there is little to no footway.

4.3 If the part extinguishment were to be approved and no footbridge provided Users would be directed (to the east) down (adopted) Moorgate Street which has no segregated footway to the Huddersfield Narrow Canal Towpath, then joining Oldham Road (A670) footway. This stretch of footway leading to the entry/exit point of existing FP244 SADD narrows to a point that can only be traversed by single file pedestrians. Users with prams/push chairs or mobility aids are forced to step into the carriageway. Beyond this point continuing south the footway ceases, forcing Users to cross the A670 by means of an uncontrolled crossing in a 30mph zone to join the opposite side of the road that includes a footway. For Users traversing FP244 SADD from the Ladcastle Road end, upon approaching Oldham Road (A670) visibility of oncoming traffic is restricted. Users are forced to turn left (north) to the 'pinch point' with their backs to the flow of traffic, practically removing their ability to take evasive action to avoid being hit by vehicles.

4.4 Options to address the 'pinch point' were explored by Network Rail including the possibility of widening the existing footway by means of purchasing a strip of the adjacent land. However, this was not agreed by the landowner. Another option was to extend the existing 20mph speed limit in order to mitigate the safety concerns of the Highway Authority. Network Rail further propose the placement of advanced warning signs to warn road users to anticipate pedestrians in the carriageway. The displacement of any pedestrian into the carriageway poses an

unacceptable highway safety risk regardless of its scoring on a Risk Assessment matrix. In anticipation of the increased usage of FP244 SADD, even more Users will be put at risk which is considered inappropriate and unacceptable to the Highway Authority.

4.5 Should the extension of the 20mph zone not be agreeable/approved, the Mayer Brown Safety Risk Assessment (September 2025) categorises the Risk Value as Level 9. This would result in a risk of '*Serious harm; serious injury or illness, substantial damage or loss*' once every 5-10 years. The current risk level is 6 '*Serious harm; serious injury or illness, substantial damage or loss Unlikely*'; less than 1 per 10 years. The increase in Risk Value is due to the increase in likelihood of incidents due to the anticipated increase in usage of the route as an alternative to FP209 SADD.

4.6 In Network Rail's Statement of Case (Para 8.2.3.21) it is stated that in the absence of the option of widening the existing footway: '*advanced warning signs should be considered to the South of Footpath 244 SADD, facing northbound traffic, to warn road users to anticipate pedestrians in the carriageway deployed alongside the proposed relocation of the change in speed limit. 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*'. If appropriate and adequate signage cannot be implemented alongside the proposed relocation of the extension of the 20mph zone, this leaves us with an unacceptable increase in risk to Network Users.

4.7 I consider the ‘pinch point’ safety issue – which is fundamentally left unaddressed by Network Rail – is a fundamental safety concern with the Alternative Route that means it cannot be considered to be an appropriate alternative. At the interaction point of alternative route FP244 SADD and Oldham Road (A670), Users join the adopted Network where there is little, to no Footway. Users turning right (South) must either step directly into the carriageway into oncoming traffic as there is no Footway or cross over the busy A670. Users turning left (North) must navigate a Footway that is no more than 600mm in width allowing for only single file pedestrians (prams, pushchairs, wheelchairs must either cross or navigate the carriageway with their backs to the flow of traffic. As mentioned previously, without sight of vehicles to their rear, Users have no means of taking preventative evasive action to avoid collision. For further reference see Proof of Evidence of Alister James Storey, Principal Traffic Engineer and Traffic Manager, Oldham Council.

4.8 This safety concern is then exacerbated by the requirement on walkers to travel north along (adopted) Ladcastle Road where there is no segregated footway. This causes a safety concern because Users are forced to navigate a shared use Highway with potential for vehicular conflict for approx. 115m effectively adding approx. 115m of potential risk by means of Highway interaction than previous.

4.9 The entry/exit point of FP244 SADD is via the private drive with a bitmac surface where it meets 2 small steps and begins its ascent towards Ladcastle Road. This surface continues under Wickens underbridge and terminates thereafter. From here continuing west the surface is unmade, steep and littered with loose rocks,

fallen trees, tree roots and heavy leaf fall eventually reaching a set of 2 stone steps that are in a state of disrepair leading up to Ladcastle Road.

4.10 Due to topography this route suffers significantly during high level rainfall events.

4.11 FP244 SADD has a listed width in the Definitive Statement of 1.2m. Network Rail's proposals to improve/enhance FP244 SADD with surfacing and steps (*'to create a minimum of 2.0m wide walking surface with existing staircases to be replaced with new compliant staircases of 1.8m width with non-slip surface and steel handrails'*) go beyond this listed width and would therefore require the consent of the relevant landowner(s). It would need to be established if any of the proposed works would affect any of the trees covered by the Tree Preservation Order in force for the area. I am therefore not satisfied as to the deliverability of the proposed improvements.

4.12 The utilisation of sections of adopted highway to the route changes its character. Where currently Users are able to enjoy a peaceful, rural route, the alternative route introduces busier, urbanised sections where Users would have to share parts with high levels of vehicular traffic. The A670 start/end point of FP244 SADD is located approximately 300m south of Uppermill village centre unlike existing FP209 SADD which provides almost direct access for Users accessing the village centre, its facilities and businesses.

4.13 The overall distance using the alternative route is approximately 593m in comparison to the current 204m.

4.14 In my view the Alternative Route is not a convenient nor suitable replacement.

5 Footbridge

5.1 Planning permission was sought by Network Rail in June 2022 for the provision of a footbridge to replace Moorgate Halt Level Crossing in the interests of the preservation of the existing route. This permission was later granted. At the time Network Rail provided suitable information as to why a footbridge was necessary (see Appendix 3 – Design and Access with Heritage Statement) referencing the Local Plan and NPPF.

5.2 Since 2022 when Planning permission was granted, Network Rail have cited increasing construction costs resulting in the removal of the provision of a footbridge as an option.

5.3 It is our position that a footbridge would be the most appropriate and safest solution. To illustrate this I will compare the Alternative Route with the footbridge:

5.4 In terms of distance, from its junction with Moorgate Street to Ladcastle Road, with the provision of a footbridge the route length would be retained (approximately 204m). If no footbridge is provided and the alternative route approved, this would be approximately 593m resulting in additional 389m.

5.5 In terms of gradient the provision of a footbridge would retain the existing gradients upon the approaches to the structure. The usage of the alternative route would include more challenging gradients than those of the existing route.

5.6 In terms of surfacing, a footbridge would provide a long-lasting material surface for the duration of the structure. The alternative route of FP244 (with improvements/enhancements) will be improved from its current condition. However, due to location and topography, the proposed more formalised surface than the existing surface would have a significantly less lifespan.

5.7 In terms of safety, the provision of a footbridge would satisfy Network Rail's aim to remove the risk of conflict by directing Users away from the existing interaction point. The entry/exit points of a footbridge have no immediate highway interaction points, unlike the alternative route. In comparison there are still safety issues relating to the usage of the alternative route, in particular the FP244 SADD/Oldham Rd (A670) interface where Users would be forced to navigate a stretch of route with little to no footway.

5.8 In terms of experience, the provision of a footbridge would retain the rural elements at either end of the route whilst giving Users the ability to traverse the existing alignment at level over a footbridge as opposed to the existing level crossing. If a footbridge were to be provided, this would also improve the experience of the route as there will no longer be a point of interaction where Users must navigate a live crossing. The usage of the alternative route would be significantly different and much less pleasurable. There would be sections of route along adopted highway where there is little or no provision of a segregated footway in a more urbanised location. The quality of experience will be reduced by Users having to maintain a higher level of awareness of their surroundings and at points having to constantly survey for vehicular traffic.

5.9 Fundamentally a footbridge would retain this historical route which is categorised as ‘high level’ usage, whilst simultaneously allowing Network Rail to achieve its aim of the removal of risk of the existing Level Crossing.

5.10 Although the technicalities of access for construction and bespoke design have resulted in an increase in costs, the arguments for the provision of a footbridge remain the same.

5.11 In the context of Public Rights of Way – and the closure of them – while cost is a factor for consideration, we do not believe this should be the determining factor nor even a weighty factor. In this regard I appended a PROW Inspector Decision (Appendix 7 – Inspector Decision May 2023) concerning the unsuccessful attempt to stop up a public footpath over a footbridge under s.257 of the Town and Country Planning Act 1990 in May 2023.

5.12 In that case the Council’s argument was one of cost – and in particular the increasing maintenance cost of footbridge – and that this justified stopping up the footpath.

The PROW Inspector was explicit in her disagreement with the submission that the cost saving should carry considerable weight:

139. The Council has argued, and I accept, that there is nothing to prevent the overall cost to the public finances from being a relevant factor when considering the merits of this or any other order. At the same time the Council acknowledged Lord Carnwath’s view in the HSE case that “Of course, the weight attributable to cost considerations will vary with the context”. Importantly, NTC does not argue that the financial benefits to any developer should be taken into account when determining an order made under section 257 of the 1990 Act but in these circumstances, where it is the Council itself seeking closure, it says the overall costs savings should carry considerable weight.

140. NTC relies on this premise as a basis for rejecting suggestions that this approach could set a precedent for local authorities to close public rights of way where the level of use is not judged to justify the money needed to maintain them. I regard that as somewhat optimistic and possibly naïve. In the current economic climate, I suspect there may be a very real likelihood of others following suit.

141. I recognise there might be occasions where closure of a public path may be proposed by a highway authority where cost is a significant factor; for example, where ground conditions or constant erosion makes continued maintenance of a highway practically and financially unsustainable. However, to remove a highway from the network solely on the grounds of cost and/or low usage would, in my view, set a worrying precedent.

...

144. I understand the burden that maintenance of the Borough Road bridge places on the highway authority; that is an ongoing duty requiring significant public money in challenging times, but it is one entirely anticipated by the legislation. 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.

5.13 I appreciate that there is a difference in circumstance: this Inquiry concerns not providing a bridge due to cost, while the 2023 Inquiry concerned removing a bridge due to cost. But I do consider the underlying point is relevant and applies here: when considering extinguishing public rights of way the consideration of 'cost' should not be a weighty one.

5.14 In this case it is stark that Network Rail had previously committed to the footbridge as the most appropriate option in highway terms until the costs escalated. But I do not consider that Network Rail should be entitled to extinguish a historic PROW and provide an inappropriate alternative because the solution of retaining the PROW is too costly.

5.15 Overall, it is documented that there is a need for a footbridge in order to resolve the safety risks of the existing level crossing whilst retaining this ancient route. This need remains.

5.16 While it is a matter that will be left to legal submissions, the Secretary of State has the power to make such an Order under s.48 and – in absence of Network Rail’s agreement to provide a footbridge as previously envisaged – the Council seek that such an Order be made.

6 Conclusion

6.1 Whilst the Council fully support the aims and objectives of the TRU and the benefits this will bring to the Borough and its residents, we strongly believe that the current proposal for the extinguishment of Moorgate Halt Level Crossing (FP209 SADD) and the usage of FP244 SADD as an alternative route do not secure the best possible and achievable solution.

6.2 In summary, the historic recorded route of Definitive Footpath 209, Saddleworth should be retained by achievable means.

6.3 We accept that there is currently a safety risk at Moorgate Halt Level Crossing and that that safety risk will increase significantly as a direct result of the TRU programme. We accept that a solution is required in order to minimise or neutralise this safety risk.

6.4 We do not accept that improvements/enhancements to FP244 SADD and its usage as an alternative route is acceptable, nor will it be a suitable or convenient alternative.

6.5 Although improvements to an existing right of way are welcomed, we must take into consideration the impact on relevant landowners and Network Users. Network Rail's proposals for improvements/enhancements exceed the existing listed width of FP244 SADD. The site itself does not lend itself to easily achievable access and the level difference between Oldham Rd (A670) and Ladcastle Road will remain, albeit with a more formalised surface and new steps and handrail. Topography will exclude a proportion of existing Users of FP209 SADD.

6.6 The interface of FP244 SADD with Oldham Rd (A670) remains unresolved. Despite options being explored, no suitable means of making this entry/exit point safe have been presented. If no solution is provided we are left with an alternative route that is a higher risk level than it currently is. A documented risk of serious harm or serious injury once every 5-10 years cannot reasonably be expected to be accepted.

6.7 In the interests of the preservation of the route of FP209 SADD it is considered that the provision of a footbridge would be the most suitable and safest option (as supported by Network Rail's Diversity Impact Assessment).