

Stephen Kisko
East Sussex County Council
County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

[REDACTED]
Network Rail Campus
Gresley Road
Basingstoke
Hampshire
RG21 4FS

[REDACTED]
Liability Negotiations Adviser Wessex

02/06/2020

RWO 225 - South Heighton

Network Rail hereby objects to the above-named application affecting its property, and requests that the order should not be made. The reasons are set out below.

1. London, Brighton & South Coast Railway Act 1914 (the 1914 Act).

a) The application correctly concludes at 8.1.16 that the land acquisition powers and powers for stopping up and diversion of existing public footpaths given in the 1914 Act were not exercised.

b) The 1914 Act gave the railway company the power to stop up certain sections of existing public footpaths. Section E-D on the 1914 deposited plan (at Cement Company's LC (CC LC)) was not included. It gave the powers for a new footpath to be made at A-D, which encompasses E-D. This is strong evidence that no public footpath existed at D-E at this time. The conclusion made at 8.1.10 that E-D was already a public right of way is therefore incorrect.

c) 8.2.2 states it is 'hard to see the purpose of a public path between B and E if it did not continue across the railway'. The purpose of the public footpath at B-E is not in question here, and an assumption on such should not be made, and is simply not relevant. The application extrapolates unjustifiably on this point and provides no evidence upon which this is based.

The purpose of a public inquiry, if one was to follow, would be to determine whether it is more likely than not that a public footpath is in existence, not what the purpose of its existence is.

2. OS maps referred to in Paragraph 13.

a) OS maps are not conclusive as to the status of any path, and do not purport to be. They ordinarily do not distinguish between public and private paths.

b) The application makes an unjustifiable interpretation that 'fp' must refer to a public footpath. This is incorrect.

3. Level Crossing status and closure.

CC LC was an accommodation work, provided only for field to field access for the landowner whose land was severed by the construction of the railway. It was closed in 1961 because, in our view, by operation of the law, the sole occupation of the land on both sides of the railway came to an end, which extinguished Network Rail's predecessor's

statutory obligation to continue to provide the accommodation work. It was therefore removed.

Reference to a letter as opposed to a deed of release (for a private transaction releasing crossing rights for the landowner) or to an order (for the stopping up of a public footpath) is indicative that the closure occurred by operation of law, as described above.

Reference is made to CC LC on the Terrier of the London, Brighton & South Coast Railway, which is annotated with 'Level Crossing at 55m 31chs closed. 30.8.1961. C.C.E's letter 11.12.1961'. Although the letter has been unable to be found to date, this further confirms that no public footpath existed over CC LC. 'Closed' is used as opposed to 'stopping up', as it would have been for any public crossing being removed.

The annotation of the Terrier would be carried out only by either a surveyor or an Infrastructure Liability Officer, both of whom would have been well versed in the terminology of level crossing and footpath closure mechanisms. It is highly probably that, if CC LC carried a public footpath, 'stopping up' would have been used in the annotation. This is therefore evidentially corroborative that no public footpath existed over CC LC.

4. Presumed dedication.

Considering the above, the only means by which a public footpath may be claimed is by presumed dedication. This can be discounted, due to the interruption to the footpath by CC LC's gates being locked during any period of use which may be claimed. Paragraph 14 of the application confirms, by means of witness statements, that the gates have always been locked, and any use made by those witnesses was done so by climbing over the gates. No stiles were in situ, and the landowner was the only person who held a key to the gates.

For Network Rail,

[REDACTED]

[REDACTED]