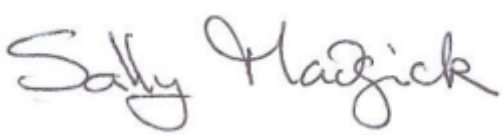


**RECORD OF OFFICER DECISION FOR DECISION REPORT PROPOSED EXTINGUISHMENT UNDER SECTION 118A OF THE HIGHWAYS ACT 1980 OF FOOTPATH WESTBURY 15 (PART AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – FOOTPATH WESTBURY 15 (PART)**

Name	Signature	Date	Approved Yes/No
Sally Madgwick As Definitive Map and Highway Records Manager, pursuant to section 110 of the Scheme of Sub-Delegation dated 8 April 2025, I am authorised under Wiltshire Council's Constitution to make the above decision on behalf of Parvis Khansari, Corporate Director Place		28 August 2025	Yes
<b>From:</b>	Ali Roberts Definitive Map Officer		
<b>Date of Report:</b>	27 August 2025		
<b>Return to:</b>	Ali Roberts		

This decision is in accordance with the relevant requirements in Part 1 and the Local Authorities (Executive Arrangements) (Meetings and access to information)(England) Regulations 2012

**Nature of Report:**

This report by Ali Roberts (Case Officer) is seeking authorisation from the officer with the delegated power to affect the proposal to take the application to extinguish Footpath Westbury 15 (part), across Penleigh Level Crossing to the Western Area Planning Committee for a decision on whether to refuse the application or to make an order to extinguish part of Footpath Westbury 15. Network Rail made the application under Section 118A of the Highways Act 1980 and stated in their application and subsequent paper that there is now a serious risk of fatality if the level crossing is not closed due to the significant increase in users with a proportionally high number of vulnerable and encumbered users. However significant objection has been received to the proposal during the initial consultation, including , the Area Highway Engineer, the Countryside Access and Development Officer, the two Countryside Access Officers for the area, the Ramblers, Open Spaces Society and Westbury Town Council. Concerns have been raised that closing the crossing will create a loss of connectivity to the rights of way network as this is the only viable link for the walking public from Amazon Way estate to Westbury Town. The crossing provides vital access to essential amenities such as Westbury Train Station, White Horse Health Centre, schools, nurseries, community utilities such as shops, the local park and skate park and access to the lake for recreational fishing. The alternative route is 1km longer and will result in considerable inconvenience to the users.

Officers therefore consider that it is appropriate for a decision on this application to be made by the Western Area Planning Committee.



## **DECISION REPORT**

### **PROPOSED EXTINGUISHMENT UNDER SECTION 118A OF THE HIGHWAYS ACT 1980 (STOPPING UP OF FOOTPATHS, BRIDLEWAYS AND RESTRICTED BYWAYS CROSSING RAILWAYS) OF FOOTPATH WESTBURY 15 (PART AND SECTION 53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981 – FOOTPATH WESTBURY 15 (PART)**

#### **1. Application**

Application No: P/2025/003  
Application Date: 28 March 2025  
Applicant: Network Rail  
4<sup>th</sup> Floor  
1 Holbrook Way  
Swindon  
SN1 1BD

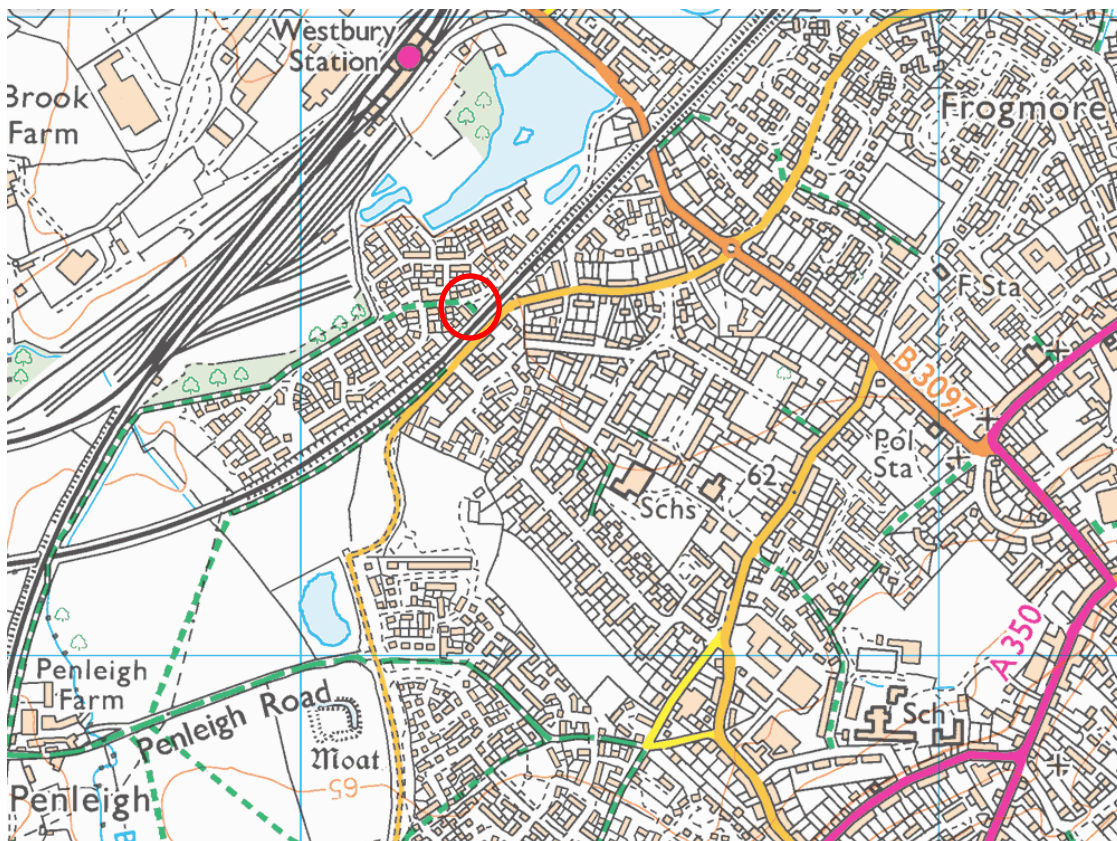
1.1 The application to extinguish Penleigh Park Level Crossing, Westbury Footpath 15 (part) (WEST15) was made by James Audley on behalf of Network Rail, under s.118A of the Highways Act 1980 inserted by the Transport and Works Act 1992. The application is made on the grounds that it is in the interests of public safety. Network Rail have stated in their extinguishment application that there is now a serious risk of fatality if the level crossing is not closed. Network Rail's statement of reasons include the bullet points below and can be seen in full at Appendix 2:

- The level crossing has a very high number of daily crossings as it provides the most convenient access from the new housing development towards Westbury Town, local amenities, including the schools, shops, parks and recreation ground.
- The level crossing is located on the Westbury Avoiding Line which provides a faster link for trains.

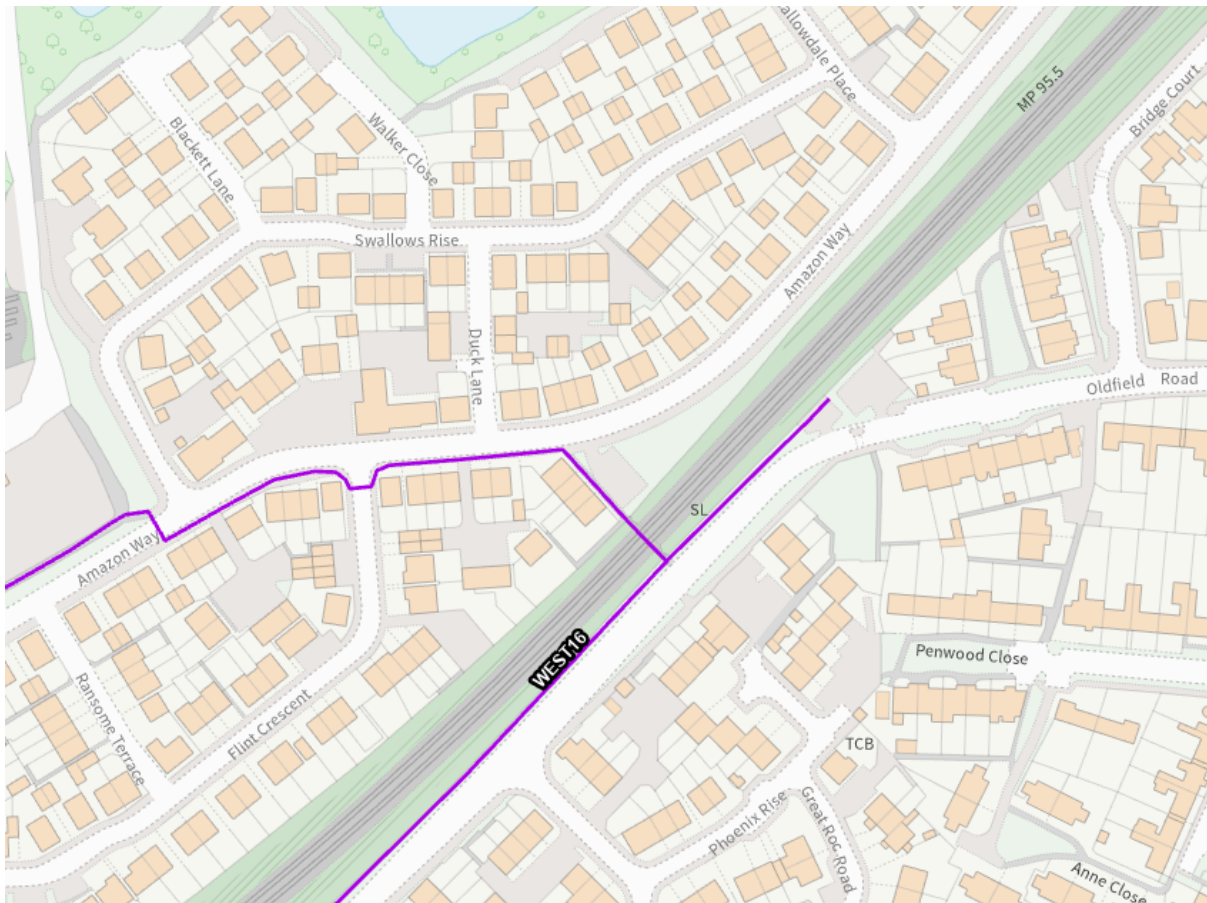
- Network Rail is aware that the crossing is used by vulnerable and encumbered users deemed by Network Rail may not be able to use the crossing with the same degree of awareness and safety as other users, the risk assessment modifies the time these users take to cross by 50%.
- Network Rail is also aware of misuse of the crossing.
- The crossing is already at the highest level of protection, therefore without the construction of a bridge no additional mitigation can be provided. Network Rail's application detailing their reasons in full can be seen at Appendix 2 which also includes Network Rail's response to the 45 objections received to this proposal.

## 2. **Location Plan and definitive statement**

### 2.1 Location plan



## 2.2 Working copy of the definitive map showing the public right of way.



## 2.3 Definitive statement for WEST15

Westbury	15	<u>FOOTPATH.</u> From the western end of Oldfield Road leading south-west along and then north-west over the Railway Loop line following path and footway to the former B.R. Engine Sheds to the Main Line.	53(3)(a)(i)
		Approximate length 691 m.	
		Width from OS Grid ref ST8627 5153 to ST 8613 5151 2 metres	

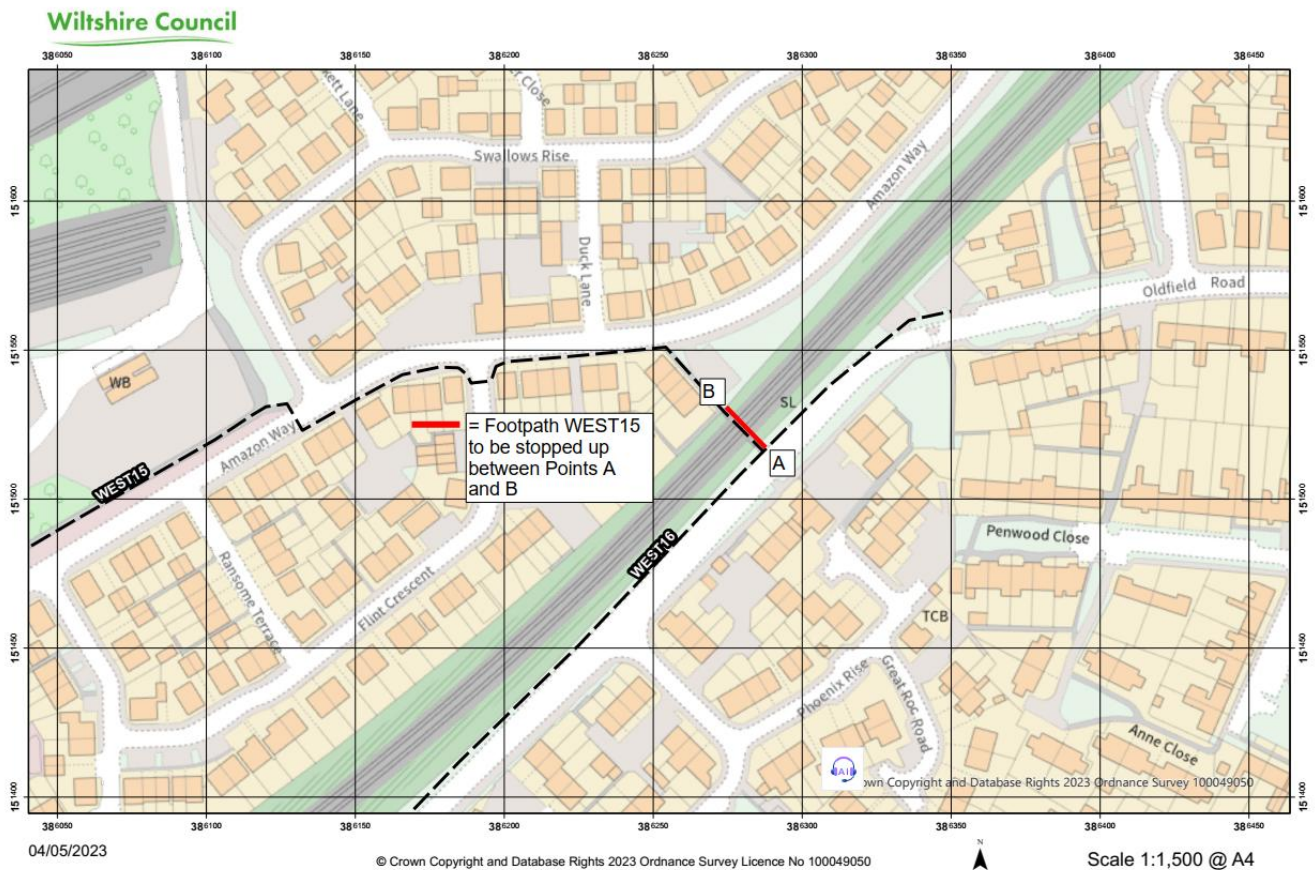
### Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)



### 3. Proposed Order Plan

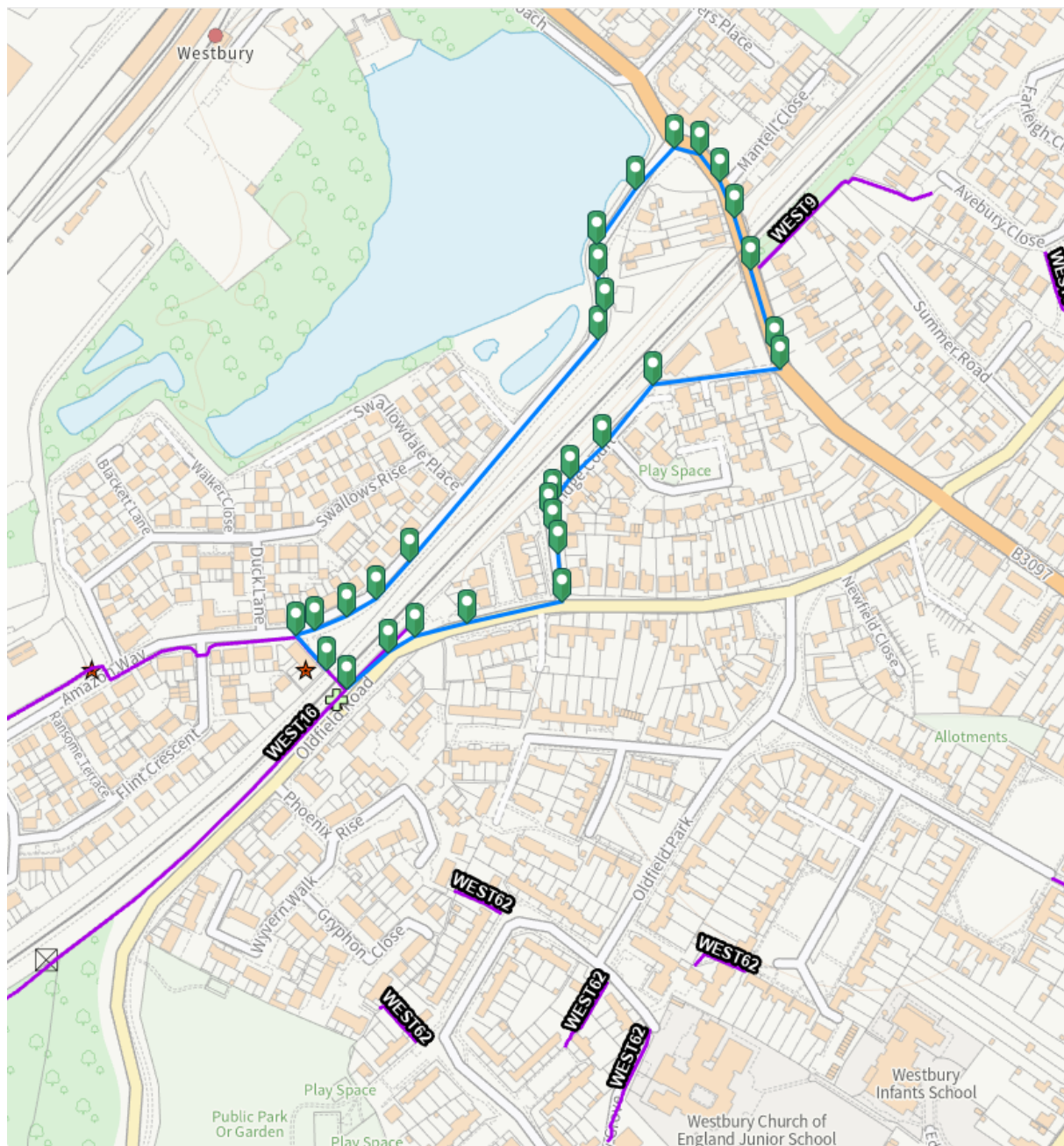
- 3.1 Proposed extinguishment plan - It is proposed to extinguish Penleigh Park Level Crossing, WEST15, as shown on the attached plan from the route shown with a bold red continuous line, A-B, approximately 20 metres in length.



#### Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)

- 3.2 The alternative route for the walking public would be via Oldfield Road, Bridge Court, Station Road, Amazon Way and vice versa, which is approximately an additional 1km journey. Below is a map segment showing the alternative route from point to point.





#### 4. **Photograph of location**

##### 4.1 Aerial photograph



Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)



## 4.2 Penleigh Park Level Crossing to be extinguished



## 4.3 Alternative route if the crossing is to be extinguished

### Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)









## Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)



## 5. **Registered Landowner**

- 5.1. Network Rail  
Waterloo General Office  
London  
SE1 8SW

## 6. **Legal Empowerment**

- 6.1 The application to extinguish WEST15, is made under Section 118A of the Highways Act 1980, which states:

***“118A. Stopping up of footpaths, bridleways and restricted byways crossing railways.***

- (1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, other than by tunnel or bridge, should be stopped up.*
- (2) Where this section applies, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the right of way over the path or way-*
- (a) on the crossing itself, and*
  - (b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way (whether or not other rights of way also subsist over it).*
- (3) An order under this section is referred to in this Act as a ‘rail crossing extinguishment order’.*

- (4) *The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to all the circumstances, and in particular to-*
- (a) whether it is reasonably practicable to make the crossing safe for use by the public, and*
  - (b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.*
- (5) *Before determining to make a rail crossing extinguishment order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement to defray, or to make such contribution as may be specified in the agreement towards, any expenses which the council may incur in connection with the erection or maintenance of barriers and signs.*
- (6) *A rail crossing extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.*
- (7) *Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of rail crossing extinguishment orders.*

(8) *In this section-*

*‘operator’, in relation to a railway, means any person carrying on an undertaking which includes maintaining the permanent way;*  
*‘railway’ includes tramway but does not include any part of a system where rails are laid along a carriageway.”*

6.2 DEFRA Rights of Way Circular (1/09) which gives guidance for local authorities on rights of way matters, gives guidance on extinguishment orders under Section 118A of the 1980 Act at 5.48 -5.50, as follows:

- *5.48. Section 118A(1) provides for the extinguishment of a footpath, bridleway or restricted byway that crosses a railway otherwise than by a tunnel or bridge where it appears to the council expedient in the interests of the safety of members of the public using it or likely to use it. Care should be taken to avoid the creation of a cul-de-sac that would encourage trespass on to the railway. Section 118A(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way*
- *5.49. Before confirming the order the Secretary of State or the authority must be satisfied that it is expedient to extinguish the path, which enables all relevant factors to be taken into account, including use currently made of the existing path; the risk of the public continuing such use; the effect that the loss of the path would have on users of the public rights of way network as a whole; opportunity for alternative measures to deal with the problem and the cost of such alternative measures.*
- *5.50. Where an order is confirmed, signs should be erected at both ends of the route, informing users of the extinguishment and advising them of the nearest alternative route. Authorities may require the operator to enter into an agreement to defray or contribute towards any expenses incurred in connection with the erection or maintenance of barriers and signs.*

## **7. Public Consultation**

7.1. An initial public consultation exercise was carried out from 29 May 2025. The consultation included landowners, statutory undertakers, statutory consultees, user groups and other interested parties, including the Wiltshire Council

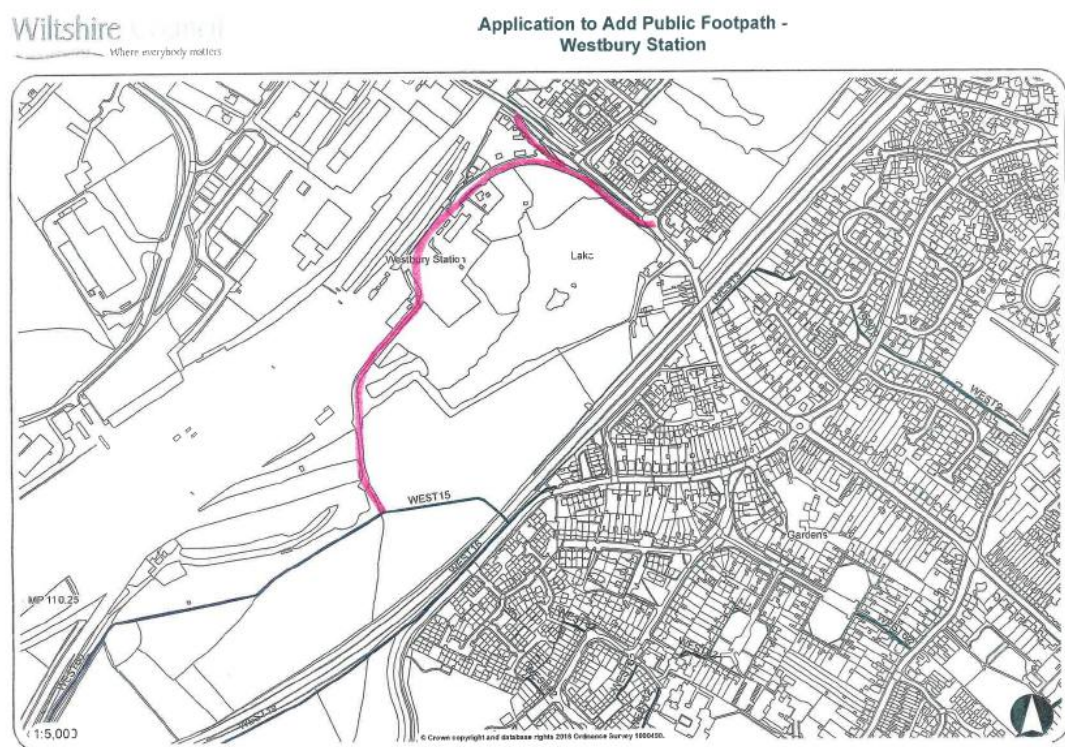


Member for Westbury West and Westbury Town Council, the area Countryside Access Officers, area Highway Engineers, the Bridge Engineer and Sustainable Transport. Notices were also posted on site due to the likely public interest in this proposal. The consultation received 45 objections which can be read in full at Appendix 1, there is also a summary of the responses. Objectors include, the Area Highway Engineer, the Countryside Access and Development Officer, the 2 Countryside Access Officers for the area, the Ramblers, Open Spaces Society and Westbury Town Council. Appendix 2 contains Network Rail's application statement and response to the objection points.

## **8. Main Considerations for the Council**

- 8.1 Section 118A(1) provides for the extinguishment of a footpath, bridleway or restricted byway that crosses a railway otherwise than by a tunnel or bridge where it appears to the council expedient in the interests of the safety of members of the public using it or likely to use it. DEFRA Rights of Way Circular (1/09) which gives guidance for local authorities states *"Care should be taken to avoid the creation of a cul-de-sac that would encourage trespass on to the railway."*
- 8.2 It is clear from the objections received during the initial consultation period that this is an exceptionally well used crossing, many stating they use the route multiple times a day. The crossing provides access to essential amenities such as Westbury Train Station, White Horse Health Centre, schools, nurseries, community utilities such as shops, the local park and skate park and access to the lake for recreational fishing. This is the main link for the walking public from Amazon Way estate to Westbury town and provides a vital connection for the two communities. Concern is raised that closing the crossing will cut off the estate and create a loss of connectivity to the rights of way network isolating affected families. It is clear from the responses received

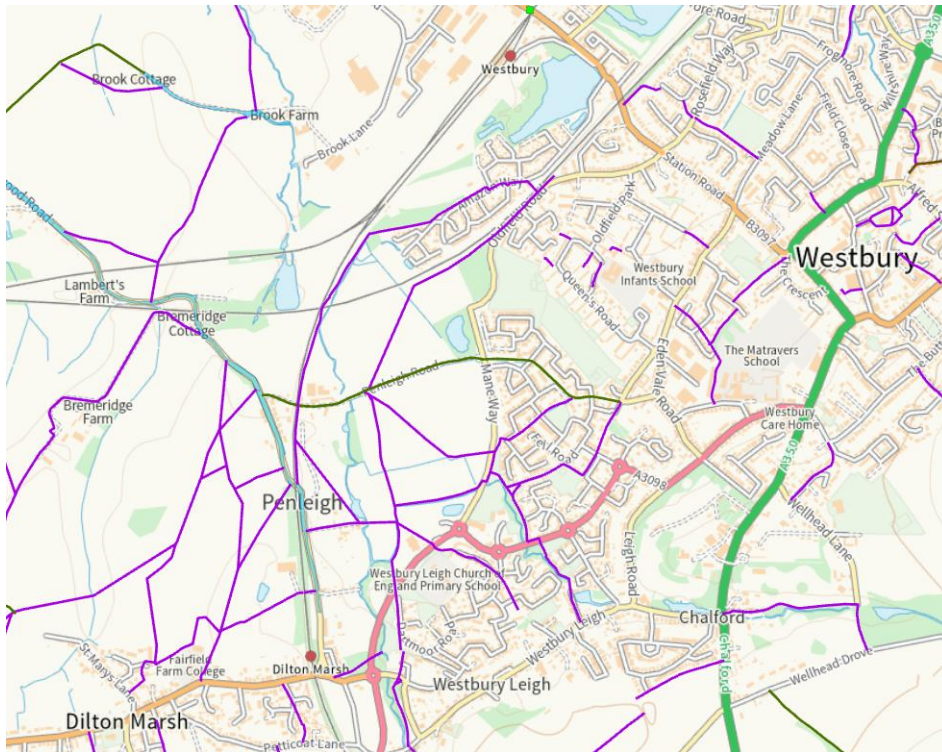
that the crossing provides a valuable connection between communities. Prior to the housing estate being built the crossing had been used to access Westbury Train Station as highlighted by one objector *“When I joined the railway in 1975 this crossing was much used by railwaymen and residents. Also used at weekends by the railway social club”*. The path to Westbury Station was physically obstructed in 2016 by the erection of steel fencing and a bund across the path. Subsequently a Definitive Map Modification Order application was received to add the route. Several user evidence forms were submitted with the application claiming use, and witnessed use, of the route which would be accessed via Penleigh Park Level Crossing.



#### Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)

Penleigh Park Level Crossing also provides access to the rights of way network which links the walking public from Westbury to Dilton Marsh.



No statistics of use of the crossing prior to the development have been provided by Network Rail therefore the increased risk cannot be assessed.

- 8.3 The proposed alternative route would add approximately 1km to the walking journey of the residents. Westbury Town Council highlight that this closure would send the large number of vulnerable and encumbered users, identified by Network Rail, on a 1km detour. Many objectors have also stated that they use the crossing multiple times a day. For example, one mother has written in her objection representation, *“To give my family as an example, we use this crossing 4 times a day every weekday during term time to walk our eldest child (5) to Westbury infants school and back, usually accompanied by her younger sister (20 months) who obviously cannot be left home alone. We also use it at other times to access the doctor, shops, town centre etc. If we had to walk via Station Road using the proposed diversion, that's an extra 4km every single day that we need to navigate with a toddler (and 2km of that with a*



*toddler and young child), often in unpleasant or dangerous weather (wet, cold, icy, excessively hot).*” It would take the average 5 year old child between 15 and 20 minutes to walk 1km which would add between an hour and an hour and 20 minutes to this parent’s day. It is clear that the 1km length of the alternative route will result in considerable inconvenience to regular users of the crossing and potentially isolating individuals and communities.

- 8.4 Concern is also addressed regarding safety of the proposed alternative, specifically the Station Road section. In his assessment of the alternative route the Area Highway Engineer states, *“The narrow pathway of 700mm at Station Road compromises safety and affects accessibility for the vulnerable, the mobility impaired and pushchairs.”* As can be seen in the photographs at 4.3 the pavement on the western side of Station Road leading directly from Amazon Way is extremely narrow and difficult to navigate for the elderly, wheelchair users, toddlers and prams, children walking to school, dog walkers, etc. The pavement is raised from the road and is at a camber, there is no safety railing and there is only enough room for single file pedestrian traffic, people crossing would be required to step into the busy road. Pigeons nest under the bridge so this section of path is particularly unpleasant and unsanitary. Station Road and the pavement under the bridge is also prone to flooding having a severe impact on accessibility. Once passed the narrow bridge section there is a busy garage with 2 entrances off Station Road crossing the pavement. The eastern side pavement under Station Road bridge is wider, approximately 2 metres and has a safety railing. However, there are no pedestrian crossings making its access extremely difficult at peak traffic periods, particularly if encumbered or vulnerable.
- 8.5 In their statement, which can be seen in full at Appendix 2, Network Rail acknowledges the 1.3km (1.3km would be using Oldfield Road instead of Bridge Court) alternative route is not ideal but sees it as the only viable alternative given the safety concerns of the crossing and lack of a bridge.

Network Rail state they support any actions to improve the safety of Station Road; however, they reiterate that the responsibility for road safety lies with Wiltshire Council as the highway authority.

- 8.6 Section 118A(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way.
- 8.7 The route to be extinguished is across the level crossing only.
- 8.8 Section 118A(4)(a) provides that the Secretary of State or authority must be satisfied that it is expedient to extinguish the path having regard to all the circumstances. Defra government guidance “... *enables all relevant factors to be taken into account, including use currently made of the existing path; the risk of the public continuing such use; the effect that the loss of the path would have on users of the public rights of way network as a whole; opportunity for alternative measures to deal with the problem and the cost of such alternative measures*”.
- 8.9 As a result of this lengthy alternative route, as discussed at 8.3, concern is raised by objectors that more people will have no choice but to use a car for journeys they would normally have made on foot which will result in extra traffic on already congested roads. The vulnerable and encumbered users, identified by Network Rail, may not have access to a car and would therefore require potentially expensive alternative transport to reach vital utilities such as the train station, shops or the health centre. The Open Spaces Society expand on this point stating “*The society submits that this closure is contrary to the public interest, it will discourage people from walking and force them into their cars, which is clearly disadvantageous to their health and wellbeing,*

*and damaging to the environment. If they have no car they may not go out at all, which is also severely disadvantageous to them.”*

- 8.10 Network Rail concedes that this is a popular route that provides convenient access to the town and local amenities and is a highly valued crossing serving many residents. As a consequence concern is voiced by objectors that closing the crossing will result in more trespass incidents as it provides such a valuable connection between communities.
- 8.11 In their objection Westbury Town Council raises concern about the lack of evidence provided by Network Rail to demonstrate their case for stopping up the crossing *“It appears that part of Network Rail’s case for the stopping up relies upon a fatality at Pewsey on a pedestrian crossing that is far inferior to the one on Oldfield Road. Network Rail has failed to provide evidence that the crossing is any more dangerous than it was in 1933 when it was first opened. There is no empirical evidence whatsoever – no evidence of fatalities, or even near misses, at this footpath crossing. Network Rail claim that “There is now a serious risk of fatality to a person using the level crossing if the crossing is not closed” and yet provide no evidence for this or basis for this claim. We believe that the increased risk of the closure on the people of Westbury is so great that this would be reckless”*. Other objections received reiterate these comments, some from residents living near the crossing for a number of years, state that they have never witnessed any incidents of misuse or near misses and have no recollection of accidents, injuries or fatalities at this crossing. It is suggested that Network Rail should be educating the local community, particularly the younger generation, on the dangers of railway crossings, rather than closing the crossing and disadvantaging the community.
- 8.12 In their response Network Rail discuss the census method used at Penleigh Park Level Crossing, which is ongoing monitoring using CCTV reviewed

throughout the year and provide a log of incidents that have occurred since 2022. 5 images of children misusing the crossing have also been included in the statement. Network Rail site a specific incident on 11 June 2025 where the crossing went into “dark mode”, a light and sound failure, where users continued to use the crossing without contacting the operator as instructed by the signage.

- 8.13 Objectors have stated that Penleigh Park is a superior crossing, with good access, an all weather surface, good visibility and the traffic light system is clear and easy to use. Potential solutions to prevent the closure of this crossing suggested by objectors included a telephone system or lockable gates.
- 8.14 The safety concerns and potential mitigations are addressed in Network Rail’s response. Since the construction of the new housing Network Rail has installed miniature warning lights with audible alerts at Penleigh Park Level Crossing which is the highest level of technology available. Since the housing development there has been a significant increase of use including a large proportion of vulnerable users such as unaccompanied children, users with mobility impairments, aged users, and users encumbered with pushchairs, push-bikes etc. Network Rail suggest that due to the proximity of the housing to the level crossing it is seen as an everyday feature which could result in a sense of complacency. Network Rail reject the suggested mitigations as follows:
- Whistle boards are not permitted by ORR (Office of Rail Regulation)
  - There is a risk of misuse in urban settings if telephones are installed.
  - Locking gates could result in trapped users causing a safety hazard.
- 8.15 Some objectors have suggested that a bridge should be provided if Network Rail are concerned about safety of the crossing, including residents that state properties were purchased based on site plans dictating a bridge. The current



position on the proposed road bridge from Mane Way to Amazon Way is that it is not yet at a point where construction is confirmed. The bridge still requires further detailed planning permission and likely, additional private land to be obtained. Notwithstanding this, the intention remains to provide a full road bridge with ped/cycle facilities. Although the planned road bridge would provide improved access to some facilities, for example White Horse Health Centre, it would still add a considerable distance of approximately 1km from point to point. However, the extinguishment has been applied for without a bridge in place so if the crossing is closed the alternative route will be along Station Road with the safety concerns already discussed.

8.16 Network Rail addresses the construction on a bridge in detail in their statement. In summary Network Rail state;

- In 2016 Network Rail objected to the housing development unless mitigated by a bridge.
- Wiltshire Council aspired to a road bridge connecting Mane Way to Amazon Way.
- A Section 106 Agreement had a £2 million developer contribution earmarked for a bridge, with a fallback to Network Rail if the bridge isn't built within 10 years.
- Network Rail's understanding of the current status of a bridge is that there is no confirmed funding or timeline for the road bridge.
- The estimated costs for a footbridge at Penleigh Park crossing are as follows:
  - £5.2 million for a ramped footbridge.
  - £4 million for a stepped footbridge
  - £4.5 million for an underpass
- Network Rail supports a bridge but notes the lack of progress and funding shortfall.

- 8.17 Section 118A(4)(b) provides that the Secretary of State or authority must be satisfied that arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
- 8.18 Network Rail in their application have stated that “*Standard closure signage with instructions demonstrating the diversion would be erected and maintained where required for a reasonable time following the closure of the footpath level crossing. The crossing would also be physically secured using appropriate materials in-keeping with those already present in the local area.*”

## **9. Equalities Impact of the Proposal**

- 9.1 Wiltshire Council Rights of Way Improvement Plan (ROWIP) - the current plan is entitled Wiltshire Countryside Access Improvement Plan 2015 – 2025 – Rights of Way Improvement Plan 2. ROWIP 2 recognises the Council’s duty to have regard to the Disability Discrimination Act 1995 (now superseded by the Equalities Act 2010). As discussed in detail throughout paragraph 8 the closure of WEST15 across Penleigh Park Level Crossing would have a detrimental impact on the connectivity for the communities on either side of the crossing, many of whom, as identified by Network Rail, are vulnerable and encumbered. This is due to the length of the alternative route, the safety of the alternative route and the likelihood that it will decrease foot traffic and increase the use of motorised vehicles and isolate those that do not have access to a motorised vehicle.
- 9.2 However Network Rail consider this crossing to be a risk to the individual user particularly the vulnerable and encumbered, also discussed in paragraph 8.

## **10. Reasons for Proposal**

- 10.1. Network Rail have stated in their extinguishment application and subsequent paper that there is now a serious risk of fatality if the level crossing is not closed due to the significant increase in users with a proportionally high number of vulnerable and encumbered users. However significant objection has been received to the proposal during the initial consultation, including , the Area Highway Engineer, the Countryside Access and Development Officer, the two Countryside Access Officers for the area, the Ramblers, Open Spaces Society and Westbury Town Council, citing concerns that closing the crossing will create a loss of connectivity to the rights of way network as this is the only viable link for the walking public from Amazon Way estate to Westbury Town. The crossing provides vital access to essential amenities such as Westbury Train Station, White Horse Health Centre, schools, nurseries, community utilities such as shops, the local park and skate park and access to the lake for recreational fishing. The alternative route is 1km longer and will result in considerable inconvenience to the users.
- 10.2 Therefore it is proposed to take Network Rail's extinguishment application to the Western Area Planning Committee on 8 October for a decision on whether;
- (i) To refuse to make an order. Consequently, Network Rail could then submit an application for a Transport and Works Act 1992 Order to the Secretary of State for Transport to extinguish Penleigh Park Level Crossing. Or Network Rail could judicially review Wiltshire Council if it has been unreasonable or unlawful in making its decision.
  - (ii) To make an order to extinguish part of Footpath Westbury 15 subject to this application, under Section 118A of the Highways Act 1980. If the order is objected to it would be referred to the Secretary of State for Environment, Food and Rural Affairs who would appoint an inspector from the Planning

Inspectorate for an independent determination.

Ali Roberts

Rights of Way Officer

27 August 2025

Decision Report

Highways Act 1980 Section 118A inserted by the Transport and Works Act 1992– Proposed extinguishment of Penleigh Park Level Crossing, Footpath Westbury 15 (part)