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**REGULATION 28 REPORT TO PREVENT FUTURE DEATHS FOLLOWING THE  
INQUEST INTO THE DEATH OF SARAH MARIE ATHERSMITH**

**WALSALL MBC RESPONSE**

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1. This is a response to the Senior Coroner Zafar Siddique's opinion on the actions that should be taken to prevent future deaths as detailed in his Regulation 28 Report to Prevent Future Deaths dated 30.11.17 ("Regulation 28 Report") which followed the Inquest Hearing on 28.11.17 into the tragic death of Sarah Athersmith at the Wallows Lane Railway Crossing on 26.09.17.
2. The Regulation 28 Report's opinion on the actions required are as follows:

***Walsall Local Authority may wish to consider urgently reviewing any application to close the crossing made by Network Rail or converting it into a controlled crossing using suitable methods.***

**A. Walsall MBC's ("WMBC") urgent review of any application to close the crossing made by Network Rail**

3. As explained at the Inquest, the most appropriate procedure for the permanent closure of a level crossing is under the Stopping Up of Rights of Way across a railway is a Rail Crossing Extinguishment Order Regulations under Section 118A of The Highways Act 1980.
4. This prescribes a set application form in Schedule 1 of the Regulations and as part of an application for extinguishment of a footpath under S118 HA1980, the reasons to be considered and included are set out within the Application.

5. The closure application needs to be made by Network Rail ("NR") and will then be advised upon and considered WMBC as the Highway Authority.
6. As was heard at the Inquest Hearing of 28.11.17, discussions had taken place between WMBC and NR and although WMBC had provided appropriate guidance on the closure application process, no application had been submitted by Network Rail for the permanent closure of the Wallows Lane Railway Crossing at that time.
7. On 14.12.17, NR telephoned WMBC to inform that they had posted the closure application and wanted to discuss the same. WMBC had not received any such application and NR then emailed the same on 14.12.17.
8. Following NR's submission of the closure application on 14.12.17, WMBC urgently arranged a meeting with NR for 19.12.17 to discuss the application and to provide guidance and advice on any deficiencies in the same.
9. On 19.12.17, WMBC held a meeting with NR to discuss the closure application. WMBC advised NR that at that stage the application is considered to be incomplete, and would require updating and resubmission to ensure it can be considered in context of the legal criteria and procedures, thereby allowing the council to validate the application and demonstrating sufficient evidence has been submitted to proceed with an order. NR were advised that whilst WMBC will provide support on the application, NR needed to appropriately complete the application in accordance with the legal requirements and WMBC recommended that NR's legal team approve the application prior to submission.
10. At the meeting, WMBC reiterated to NR that The Rail Crossings Extinguishment and Diversion Orders Regulations 1993, under Highways Act 1980, Section 118A Public Path Extinguishment Order in accordance with Schedule 1 of the Order, sets out the following criteria for extinguishment:

- (a) Give reasons for the proposed extinguishment of the rail crossing. Include information about:
- i. The use currently made of the existing path, including numbers and types of users and whether there are significant seasonal variations, giving the source for this information (any circumstances preventing or inhibiting such use must also be mentioned);
  - ii. The risk to the public of continuing to use the present crossing and the circumstances that have given rise to the proposed order.
  - iii. The effect of the loss of the crossing to users, in particular whether there are alternative rights of way, the safety of these relative to the level crossing, and the effect on any connecting public rights of way and on the network as a whole.
  - iv. The opportunity for taking alternative action to remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing.
  - v. The estimated cost of any practicable measures identified under iv. Above; and
  - vi. The barriers and or signs that would need to be erected at the crossing or the point from which any path or way is to be extinguished, assuming the order is confirmed.

11. WMBC also explained at the meeting that although the footpath is currently closed temporarily, it should be considered in context of the level of use that would be expected (9 or 10 trips per day as indicated by the Network Rail Census figures) if it was open.

12. Furthermore, WMBC explained that it appeared that there were incidents of concern in the NR's Risk Assessment of 2015 which resulted in some safety improvements being carried out at the level crossing and as such it would be beneficial for NR to provide an evidence statement to set out a chain of events and explanation of the risk assessment criteria and how the priority has been affected following the fatality. This may give reference to the Coroners' recommendations at the Inquest of Closure or technological safety improvements as well as an updated risk assessment post the date of the fatality.

13. At the meeting of 19.12.17, it was also discussed that the likely alternative route that Network Rail would be recommending as part of their application submission will be the route shown in the Temporary Traffic Regulation Order Map. As this is a restricted byway there will be a requirement to consider the impact of the



closure on cycling as well as walking and it would be useful to check whether there are any known Road Safety concerns at the location.

14. After the meeting, WMBC's Road Safety Team were contacted for their view on the suitability of the alternative route. This has been provided by the Road Safety Team who have advised that the alternative route is not a dedicated cycle route and would require further investigation. This advice has been forwarded to NR on 5 February 2018.
17. On 20.12.17, NR emailed WMBC a draft letter that it proposed to send to potential interested parties such as local residents and commercial premises regarding their closure application.
18. On 21.12.17, WMBC emailed NR providing advice and suggestions on NR's draft letter to the interested parties.
19. On 09.01.18, NR emailed WMBC informing that it had now received some responses to its letters to the interested parties and wanted to know if WMBC had the chance to consider the statutory consultees.
20. On 15.01.18, WMBC responded to NR with the following email advice:

*Thank you for your email dated 9<sup>th</sup> January.*

*In order to assist further, the requirements are set out in the prescribed application form Schedule 1 of the Rail Crossing and Diversion Orders Regulations 1991. We attach a copy of the form for your ease of reference.*

*Section 1.e) refers to the requirement for names and addresses of owners and occupiers of land on either side of the path to be extinguished to be listed, and section 1.f) requires details of any consents of persons with an interest in the land to be provided. Section 2 further sets out that details of public utility undertakers who may have apparatus that is likely to be affected are provided.*

*As you will recall in our meeting of 19<sup>th</sup> December, we discussed in detail that Network Rail consultations would need to be completed with land owners and with public utility undertakers to check for any interest in the land and for any requirements which may need to be taken into consideration or dealt with prior*

*to making an order. Any details of this and responses to the consultations should be included with the application for the Extinguishment Order under the relevant sections.*

*There is no specific reference within the prescribed application form for wider consultations to be undertaken, although during statutory consultation on a Rail Crossing Extinguishment Order under S118A of the Highways Act, the Council has a duty to serve notice on a list of additional prescribed interest groups including, for example, the Ramblers Association, Open Spaces Society and British Horse Society. The Council will consult all relevant parties including these when making an order in accordance with the statutory procedures. We would also contact these parties at the informal consultation stage, which we would arrange following receipt and validation of your application.*

*Although not discussed previously at the meeting, you may wish to consult with these additional prescribed bodies directly at this time and submit details of any responses received with your application. This could help to identify any potential objections and allow them to be addressed at an early stage. Your legal team may be able to advise on the application and make some recommendations in relation to this.*

*I hope the above assists and do let me know if you require any further information or guidance on the application process.*

21. WMBC's email also requested to know when NR thought it would be in a position to submit the application.
22. WMBC also asked NR to consider the legal criteria applied to the (TTRO) Temporary Traffic Regulation Order Closure following the fatality and as the Coroner's Inquest has taken place, what legal criteria NR were to apply to ensure this is still met.
23. In an email dated 16.01.18, NR informed WMBC that it was collating the closure order information and will forward it to WMBC.
24. On 31.01.18 an electronic version of NR's closure application was received by WMBC and a paper copy was received on 05.02.18.

25. As in the past, WMBC are undertaking an urgent review of the NR's revised closure application and will continue to provide assistance and guidance to NR in the closure application process.

26. Having undertaken an initial review of NR's revised closure application, WMBC's initial observations are as follows:

- There is a reference to a revised risk assessment but no risk assessment has been received;
- A number of objections have been received to the NR consultations, which will need to be examined;
- No alternative route available for use following closure has been proposed and therefore no assessment has been made of the adequacy of it.

27. WMBC have contacted NR to request a meeting to discuss the revised application within the next 7-10 days and it is envisaged that the above and any other deficiencies in the closure application will be discussed with NR and WMBC at this meeting.

28. WMBC will therefore continue to provide all relevant guidance and support to NR in its closure application and will further continue to urgently review any revised closure applications and supporting evidence/documents submitted by NR.

**B. Converting Wallows Lane Railway Crossing into a controlled crossing using suitable methods.**

29. As WMBC is not the landowner or the operator on which the Wallows Lane Railway Crossing is located, it has no authority or legal power to convert the Wallows Lane Railway Crossing into a controlled crossing using suitable methods.



30. If NR determines (whether as a result of the Coroner's Regulation 28 Report or for any other reason) that a technological safety improvement is required, NR as the landowner and operator will have to consider converting the Wallows Lane Railway Crossing into a controlled crossing using suitable methods.

Signed

A handwritten signature in black ink, appearing to read 'Kevin Gannon', is written over a horizontal dotted line. The signature is fluid and cursive.

Mr Kevin Gannon [Team Leader of Highways Development Control  
and Public Rights of Way]

On behalf of the Chief Executive of WMBC

Dated this 6 February 2018

