

Ben Alder Level Crossing Closure – Rationale and Q&A **May 2022 – Network Rail**

Background

In July 2021 Network Rail took the decision to prevent public vehicle and pedestrian access across the railway line at Ben Alder Level Crossing. This was done on public safety grounds. The level crossing's legal status is private, as opposed to public, with the sole 'authorised' user being the Ben Alder Estate.

The level crossing has always been a private crossing in terms of its legal status, despite being used by members of the public regularly for many years, and particularly by hillwalkers accessing a footpath to Ben Alder Mountain, a Scottish 'munro'.

When a risk to safety is identified at any level crossing, Network Rail is obliged by law to control that risk. This was the case at Ben Alder, where an insufficient warning time was identified and, as a result, the decision was made to restrict access over the level crossing to the authorised user and emergency services.

An alternative route crossing under the railway is available south of the closed level crossing, via the underbridge leading to Loch Ericht, which connects into the same path leading up to Ben Alder Mountain.

This action to close was taken in direct response to a changed situation at the level crossing, observed during a routine risk assessment. Serious safety concerns were identified by the Network Rail Assessor and escalated to the safety professionals within the company. For all railway level crossings, risk assessments and asset inspections are scheduled regularly and carried out by Network Rail. As the owner of the railway we use specialised rail industry designated risk assessment tools to measure risk at level crossings, monitor how the crossing is being used and consider the suitability of the risk controls and technical capabilities of the crossing.

At Ben Alder level crossing, with passenger and freight trains approaching at speeds of up to 80 mph, there is a minimum 'sighting' distance for oncoming trains of only 55 metres. At 80 mph that gives a 1.5 second warning. The pedestrian crossing time at Ben Alder is 12 seconds. The crossing also has 'whistle boards' which are notices to instruct the trains to sound their horns on approach to the level crossing, to warn pedestrians who are about to cross or who are on the track trying to cross. For Ben Alder the whistle boards give a warning of an approaching train of just over 12 seconds. This is the maximum amount of time that the whistle boards can provide at this location. However, having monitored Ben Alder we have become aware that some more vulnerable users are taking much longer than this to cross over the track, and this significantly changes the risk profile of the level crossing. Some pedestrians were observed taking up to 30 seconds to reach a point of safety on the opposite side of the railway and were therefore at high risk of being hit by a train. According to the law and safety policy that must be adhered to, in this instance that meant Network Rail had to react quickly and lock the level crossing gates out of use to the public, thereby restricting use to the authorised private level crossing user only.

Network Rail is aware that some groups have challenged the lack of public consultation on this restriction and that the closure to the public was undertaken too quickly. There has also been criticism that the decision to prevent public access is illegal and the wrong course of action. This has led to discussion with local groups including the Dalwhinnie Community Council as well as wider organisations including Ramblers Scotland, the Cairngorms National Park Authority, the Highland Council, ScotWays and others around why the decision was taken.

However, we believe that this was the right course of action; once aware of the heightened risk Network Rail, had to immediately address the insufficient safety measures that were in place to protect members of the public using the Ben Alder private level crossing. This safety concern does not involve the Azuma trains and the real risk cannot be mitigated at this location other than by preventing public access.

After discussion with Transport Scotland, Network Rail agreed to conduct a high-level review of the viability of alternative options at this location and to show the likely costs, timescales, any issues of practicality (such as land acquisition) of alternative possibilities and the implications for stakeholders. The options being

reviewed included new pathways and a re-review of whether a technological solution known as Miniature Stop Lights (MSLs) could be implemented. However, no budget has been assigned by any authority to implement the findings of this Options Review, and its secondary purpose was to explain in detail why the decision was taken to close the crossing. With a safe and secure secondary access only 200 metres to the south, which also connects into the same path leading from the level crossing, a Cost Benefit Analysis has confirmed that the expense of a footbridge would be grossly disproportionate to the benefit.

It should be borne in mind that Network Rail is a taxpayer-funded body and must abide by the many laws in place around railway safety as well as conform to the clear rules of our regulator, the Office of Rail and Road (ORR). Safety is the primary concern of Network Rail and all decisions are taken with this as a priority.

The Options Review has been made available to key stakeholders and further copies are available on request. The technical report impacting the decision that Miniature Stop Lights (MSLs) were not an option, is also available on request.

Commonly asked questions about Ben Alder Level Crossing closure

Q: Why weren't the public and stakeholders consulted before the closure even if it was safety related?

A: First, as a private facility there was no requirement on Network Rail to openly consult with any authority (other than the private authorised user) prior to locking the crossing gates. Consultation on a safety critical operational matter like this one, where there are no public rights involved would be inappropriate and could raise expectations that an option other than closure may be a possibility. Our safety experts are industry-standard specialists working to an industry-approved risk management process recognised and endorsed across the UK railway system. That expert judgement on when and why to close a level crossing is not something that it would be appropriate or fair to open up to public opinion where there is no legal requirement to do so.

Q: Network Rail proposed a Miniature Stop Lights (MSL) system as the best solution in their initial assessment of this; and backtracked. Is this fair?

A: The expectation around our MSL intent came from a previous ALCRM assessment. ALCRM ("All Level Crossing Risk Model") is an Industry recognised tool which Network Rail uses to measure quantitative risk at level crossings as part of the risk assessment process. It is true that on first assessment the Level Crossing Manager recommended this crossing could be upgraded with MSL protection and a project was developed to design an MSL system for this location. However, Network Rail Engineers and technical specialists subsequently determined MSLs would not be safety compliant at this location, they would not sufficiently reduce risk as previously thought, and alternatives were sought.

This decision and feasibility of MSLs was re-considered and the reasons MSLs are not possible have been explained below, for the layperson. The original decision was confirmed as accurate and the technical report detailing the background is available.

Essentially, south-bound train services that stop at Dalwhinnie station would, on leaving the station, be accelerating towards a red signal before the level crossing if MSLs were to be installed. The infrastructure changes required to mitigate against that, and the risk of a "Signal Passed at Danger" (SPAD) is an occurrence that would not pass the specialised railway risk assessment for introduction of such a control measure, so could not be authorised; i.e, this could not be signed off by our technical and engineering department and would not be acceptable to our regulator, as it would deviate from all other such systems across the UK. Network Rail could not introduce a conflicting system at Ben Alder, inconsistent with systems at all other level crossings.

Reasons for rejecting MSLs can be summarised as follows:

- Every crossing is designed specifically for its location, type and level of use.
- Proximity to the station and the combination of stopping and non-stopping trains means that the trigger to activate the crossing cannot provide the required crossing time consistently.
- Trains stopping at the station would cause the MSLs to show red for longer periods, therefore users could not rely on the MSLs to confirm whether a train was about to arrive at the crossing. A long delay can lead to impatience, with pedestrians choosing to cross against the red lights.
- Trains held at the station for longer periods could also cause the system to revert to “Dark Mode” where the system ‘times out’ when the train does not arrive at the crossing, and no lights are shown by the MSLs.
- Engineering options available to overcome the issue are not suitable at this location due to many factors, including type of signalling and train operations.
- Creates an unacceptable risk to SPADs occurring.
- Creates a performance issue to the train services
- Flawed level crossing design would introduce a new risk; no engineer could progress an unsafe design.
- To progress with a flawed design would not pass Network Rail safety processes nor obtain necessary approvals or ORR sign-off. It is reassuring that Network Rail safety systems prevent installation of a system that would introduce an unsafe crossing.
- When making the initial recommendation, a level crossing manager could not possibly identify the level of technical engineering obstacles which would prevent MSLs being instigated at Ben Alder.

Q: The options report asserts that MSLs are not technically achievable but doesn't give any explanation of why.

A: The explanation above explains generally why MSLs are not an acceptable option for Ben Alder, and the technical report has been provided as requested by stakeholders.

Q: We understand challenges of proximity to station; why not just leave a longer 'red' phase to allow the train to have cleared the area?

A: Our technical specialist did reconsider the MSL option as part of the options appraisal, in order to reaffirm the decision. Essentially, it is not technically achievable for the reasons already stated above.

Primarily, consistency is required. An irregular user may believe a longer red phase means there is a fault and may decide to cross; or if a red light is on for an extended period on a regular basis, a regular user may become impatient, and believe they still have time to cross before a train arrives, so decides to cross whilst the lights show red. Further, the crossing will operate for a train travelling north, that may be approaching at linespeed (80 mph). The red phase of the lights could be much shorter and if a user mistrusts the crossing, thinking for example they have more time, they could cross with no to reach a point of safety on the opposite side of the railway.

Q: Is closure of this, and indeed all level crossings, not just Network Rail's preferred solution as stated on your website?

A: Network Rail is committed to regularly reviewing the status of level crossing safety and closing or upgrading them where required. In the case of private level crossings like this one, our duty is to the authorised user; the only trigger for restricting public access was the safety review and concerns raised about unsafe use. However, in recognition that the public did use the crossing, our optioneering identified that there is a safe and convenient alternative, using the underbridge located 200 metres to the south which would not unduly inconvenience those who may otherwise have used the level crossing. The alternative route is also open and available for all users without the need to negotiate gates or to cross in front of approaching trains.

Q: Can't the trains just pull away slowly from the platform as they approach the MSLs?

A: No. First, this does not address those trains approaching from the opposite direction or those that do not stop at the station which potentially may be approaching at 80 mph. This would also introduce an unacceptable element of risk and deviate from the industry safety standard for MSLs. It also risks driver confusion in a highly regulated and specialised rail network, where deviating from safety rules can cost lives.

Q: Given people are using the crossing anyway, shouldn't you look again at the value of having the stop lights?

A: We are aware the closed crossing is currently being misused and that people are climbing the fence to cross. This is criminal trespass and the British Transport Police have been made aware. Our monitoring systems have recorded numerous instances of unnecessary trespass (when considering the availability of the alternative route) and Network Rail is now obligated to take measures to increase the height and type of fencing around the railway in the locality, to do what we reasonably can to prevent further trespass.

Q: Why hasn't a 'call to the signaller' option been considered?

A: The telephones at the crossing are provided for authorised vehicular users. National consistency on level crossings is required, and what the public is directed to do at one level crossing has to be consistent with others. Instructing all the many members of the public to call the railway Signaller would not be feasible. Even if all the users did not phone, Signallers are highly specialised resources that could not accommodate a high number of calls from walkers asking if it is safe to cross at pedestrian level crossings. Signallers have safety critical roles to ensure trains run safely on the tracks and are not resourced to be a crossing handling service for the public.

Q: If the authorised user's guests can phone the signaller why can't that same facility be extended to the public?

A: While an invitee of the authorised user can phone, this is at the discretion and liability of the authorised user. For members of the public generally to do likewise, is not consistent with protocol at other level crossings and would increase risk at the crossing and for the authorised user. Rules around the use of public and private level crossings are very different.

Q: Are you sure the level crossing is not a public right of way?

A: We are aware there have been assertions that the level crossing at Ben Alder is, in fact, a public right of way. Our records and legal advisers have carefully considered the various points made by different stakeholders on this issue and remain of the view that the public do not have rights over the crossing.

Q: If NR had considered this a public level crossing, what would have happened? Would it have been shut in the same way as a private one?

A: No. If Ben Alder had been a public level crossing with the safety issues found as they have been, Network Rail would still have sought to address the immediate risk of unsafe use of the crossing and would have relied on the existing statutory processes to restrict access, given the unacceptable risk presented and the alternative crossing options in the area. There are, of course, greater requirements in consultation for public level crossings which would have been followed.

Q: Why is signage so poor?

A: Temporary signs were urgently put in place when the level crossing was first closed. These were pulled together quickly, to redirect people who wanted to cross to the underbridge 200 yards along the road. We have now upgraded the signage and intend to improve it further, throughout the village and in the station itself for those arriving in the area, to advise that the crossing is closed and how to reach the alternative walkway.

Q: Have NR's actions actually increased risk here by closing the level crossing?

A: No; the overall risk has been mitigated. The risk profile when assessed before closure meant that immediate closure of the crossing was the only feasible option, for the reasons described above. We have undertaken further risk assessments since the crossing has been closed and are aware of limited trespassing. We intend to work to increase robustness of fencing around the railway to reduce safety risk insofar as we are able. We are also providing information and evidence to the British Transport Police.

Q: Is there a policy of closing level crossings across the UK wherever NR thinks it can get away with this?

A: No. Network Rail does believe that the most effective way of reducing level crossing risk is to eliminate the crossing completely, by closing it. However, that doesn't necessarily mean restricting access; we also look at any suitable diversions that could be progressed as an alternative. Where we cannot do this we will look at options to make the crossing safer. We have an overriding moral and legal duty to reduce the risk wherever we can in a reasonably practical way, and we do operate a risk reduction strategy which is informed by scheduled risk assessments at all level crossings. There is no overarching policy or Performance Indicator that drives a decision other than risk assessment.

Q: Why are level crossings treated differently in Scotland?

A: How we manage Level Crossing risk management, controls and equipment is the same and is standard across the UK Rail Network; there are no different approaches to risk management in Scotland. Scotland does, of course, have a separate legal system to that of England and Wales and the legal position informs the decision-making process as appropriate.

Q: Does this closure have anything to do with the new Azuma trains?

A: No. This closure would have taken place as it did and when it did, irrespective of the existence of Azuma trains.

Q: Doesn't Scotland need a policy like England, where you can't just close without ministerial or judicial approval?

A: For crossings that carry a public right of way, Scotland also has a legal process that requires an Order to be confirmed. However, the policy and law that applies to Ben Alder level crossing as a private crossing is as described above - i.e. a safety risk was identified under our specialised assessment systems and closure was required urgently in this case.

Q: Why don't we just slow down/stop the Azuma trains and members of the public who want to cross can call the signaller- these are the core of the problem?

A: This has been answered above; but additionally, under its Operating Licence with the ORR Network Rail has a fundamental role to play in promoting railway safety and improving railway performance and operational efficiency. Network Rail has a duty to increase train capacity (both passenger and freight) and increase train speeds to shorten rail journeys. It is not the answer to an unacceptable public safety risk posed by the crossing, to run fewer or slower trains along this section of the railway. Fundamentally, the operational efficiency of this strategically critical railway must be maintained, with possible future aspirations to seek faster running speeds than 80 mph. This rightful emphasis also has clear statutory force, as well as full Regulator and Industry backing; so, level crossing safety should not be addressed by means of prejudicing operational efficiency.

Q: Why can't we just move the pedestrian-only element of the crossing (a bit further south) and have a crossing point just for pedestrians, just as you have at Pitlochry?

A: There is already a much safer crossing point 'a bit further south'; the underbridge is nearby and does not put local people or visitors in front of trains, thereby removes all risk. A new level crossing between the current crossing and the underbridge would import new risks onto the rail Network and would require access over third party land.

Q: Isn't it inevitable people will climb the gates if trying to catch a train when coming from the west rather than spend the extra time walking round the underpass?

A: Trespass on the railway is a criminal offence. We are aware of the current issues around trespass and are working to do all we can to mitigate these risks. We intend to work to increase robustness of our fencing around the railway to meet our legal obligations to reduce safety risk insofar as we are able. We are also providing information and evidence to the British Transport Police. As stated above, we also intend to improve signage, including at the railway station itself, as well as update reference points like websites on the change.

Q: Network Rail has handled this issue badly and stakeholders are angry; why?

A: The closure of Ben Alder level crossing was a safety critical operational decision concerning a private level crossing having too high a safety risk to allow unauthorised use by the public. As such Network Rail consultation with the public around its closure would have been disingenuous.

We understand the urgent closure has caused anger; but ultimately, to have consulted or taken additional time in reacting to safety critical matter of operational railway use would have created false expectations.

As a regulated statutory undertaker Network Rail has a very high, statutorily prescribed, duty and key responsibility to ensure safety on the railway and we would be failing in our obligations if we did not urgently address the circumstances identified in our risk assessment. In the particular circumstances of the crossing, the promotion of safety and the avoidance of unacceptable hazards to the public, including those traversing the crossing, is highly significant. If a similar safety risk was ascertained at another level crossing in future, the same course of action would be taken. We acknowledge we could have informed local people slightly sooner that closure would be happening; but partly due to lockdown restrictions this was a little delayed, and we do apologise for that.

Q: Stakeholders have had little time to consider the options report.

A: The Options Review is a commitment made to Transport Scotland and the Community Council via the local MSP to demonstrate Network Rail had considered options before the decision to close was made. It also looks at possibilities to improve the new status quo. However, while we did invite comments by correspondence, Network Rail has always been clear in that we are not resourced to manage the report findings or fund any of its outcomes.

Q: Will Network Rail work with stakeholders to resolve this matter and find a way forward?

A: For the reasons stated, we do not want to raise any expectation that the decision to close Ben Alder level crossing will change. We are committed to listening to any stakeholder views on any safety considerations, but we are not resourced to consult on this matter or to take forward the outcomes of the options report. We have devoted considerable resources to respond to questions, meet with stakeholders and respond to challenges on this matter.

Q: The options report is not clear about the role of Transport Scotland?

A: Ben Alder level crossing closure is an operational issue for Network Rail. Transport Scotland is Network Rail's funder in Scotland and the operational safety of the railway is a matter Network Rail has governance over. The development of the Options Review arose from a suggestion by Transport Scotland that Network Rail produce a report to give transparency to the public on how the decision was made to close the crossing

and the options available to us for the safety of this crossing. We are happy to hear any written comments on the Options Review and we will pass these to the team who undertook the review as well as Transport Scotland. Transport Scotland is clear that operational safety matters on Scotland's Railway and closure of this level crossing are decisions for Network Rail.

Q: Is Network Rail in principle, willing to resource finding a solution with stakeholders that allows them to manage the railway safely, but which makes provision for those people who want to have public access?

A: We have consistently made it as clear as possible that we were not funded for any change or enhancement that lies outside our duty to the authorised user for Ben Alder level crossing. Network Rail has no contingency funding to cover the implementation of any of the mitigations/options identified in the options report not included within the current Control Period 'Business Plan'. We stand by our decision to close the crossing to the public based on a professional railway judgement around operational safety and operational efficiency.

Q: Has a new risk assessment been carried out in person (not using algorithms) for the closed crossing that is creating more danger?

A: Our risk assessments are bespoke, regulator approved systems in the rail industry. We are actively monitoring the crossing and following the risk assessments new fencing will be installed to prevent further trespass.

Q: Can the public have access to a copy of the risk assessment that's been done in regard to the situation as it stands as a closed crossing?

A: Yes.

Q: You are not monitoring trespass as the cameras don't work?

A: The cameras we use to monitor the crossing are solar powered backed up by batteries. They do work and we have extensive footage coming through our systems from their filming, which is shared with the British Transport Police where appropriate.

Q: Visitors with reactive pets are impacted by this and have cancelled holidays because of this closure. What are you going to do about it?

A: We are sorry that there has been an access impact for local people and holidaymakers but the safety of anyone using the railway has to be our priority. The diversionary route from the closed crossing is a reasonable alternative route and adheres to the safety criteria Network Rail is obliged to meet.

Q: There is no point in continuing further dialogue - no one speaks to us from Network Rail?

A: We have engaged extensively with the community verbally and in writing on this matter, answering numerous multi-pronged questions on email and through Freedom of Information requests and with the media and politicians, since the closure took place. We feel the issue is now at deadlock, as answers we provide are often disregarded as insufficient and further discussion risks leading to unrealistic expectations that cannot be implemented.

Q: How many occurrences of a pedestrians using the crossing unsafely have there been; is it only one?

A: We reacted initially to one individual using the crossing unsafely. We were also made aware by the Dalwhinnie Community Council of a number of residents who may also be unable to cross safely (within the safe time limits required for vulnerable people.).

Q: Does the underpass re-route 200 yards from the level crossing allow for disabled access?

A: Yes; although a full Diversity Impact Assessment has not been carried out the route through the underpass meets the statutory grade required to fulfil Network Rail's Public Sector Equality Duty. It is step free, with no limitations (such as gates) in terms of the Equality Act 2000.

Q: Wherever there are private level crossings in Scotland can Network Rail then come along and close the crossing with no notice?

A: Network Rail is only required to consult with the legitimate authorised users before closing level crossings which are private in status. However, as explained previously, we would only restrict permissive access to the public where we felt it was necessary to do so on safety grounds.

Q: We will have this legally changed to a public right of way and continue to cross.

A: We fully understand there is disagreement over the current legal status of the crossing. For the reasons set out elsewhere, we would object to any attempt to change the legal status of the crossing on the basis that it would be incompatible with the statutory purpose of Network Rail and would create an unmanageable safety risk.

Q: Can the authorised user write to every resident in Dalwhinnie inviting them to be guests and giving them the padlock code to cross?

A: Any discussion on the way the authorised user exercises their rights over the crossing would be a matter for discussion with the authorised user. The authorised user is ultimately responsible for the actions of their invitees and they would not be able to exceed the rights they acquired when the crossing was constructed.

Q: Experts on rights of way in Scotland believe there is still a right of way.

A: We accept anyone's right to challenge our legal position; but as things stand, we are clear in our belief that we are within our rights and have taken a legally sound decision for safety reasons at Ben Alder.

We would like to add that the frustration and disappointment at this decision is fully understood by Network Rail, and we are not in the business of actively taking decisions that go against community feeling; but this cannot be at the risk of compromising safety. Safety is at the very heart of Network Rail's national operational strategy. As stated in the answers above, we do believe that closure is the only viable option, but we have listened to alternative viewpoints and comments. Unfortunately, in this case we have now reached a stage where we realise we cannot give many those who would want to use the crossing the outcome they would prefer, and we must stand by our decision which has been made to try to protect public safety on Scotland's Railway.