

# Highways Act 1980 – failure of enforcement

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## **THIS COMPLAINT IS ADDRESSED TO**

- **THE THAMES VALLEY POLICE**
- **TRANSPORT FOR BUCKS /  
ROAD SPACE MANAGEMENT**

The complaint (described in detail below) relates to obstruction of the highway (the A413) for around half a mile, caused by the erection of security fencing on the footway. The obstruction is on both sides of the road where it passes through the Smalldean Viaduct site, midway between Rocky Lane and the Grove Farm roundabout.

This is not only a criminal offence, but endangers the passage of cyclists and pedestrians along the A413. The situation is aggravated by the closure of Smalldean Lane to all traffic, including cyclists and pedestrians, for the duration of the works. Smalldean lane previously provided a safe route from Grove Farm to Dunsmore (and Rocky) lanes which avoided the A413.

## **History**

Smalldean Lane was closed to all users late in 2021. The Chiltern Society (and others) requested that it be opened for cyclists and pedestrians, but this was refused (by the HS2 contractor, EKFB). They later offered to construct an alternative bridleway between Grove Farm and Smalldean Lane, but this proposal was recently abandoned, as it was incompatible with the Smalldean conveyor. EKFB previously denied any responsibility for the safety of the A413<sup>1</sup> –

*“At EKFB, safety is one of our top priorities and the lane [Smalldean] has been closed both for staff and public safety.*

*The safety of the A413 and the level of traffic on the A413 is not related to the HS2 project and therefore I would advise that you raise any safety concerns with Transport for Buckinghamshire. Many other vehicles and lorries use this road that are not operating on HS2 business.”*

Since the danger to pedestrians results from the obstruction of the footpath caused by the HS2 security fencing, a report was prepared (see page 5 below), which clearly shows that

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<sup>1</sup> Email from Chloe Smith, Public Response Manager, 18-Feb-22

- the fencing is on the roadside verge, an obstruction under section 137 of the highways act
- the act has not been suspended within the HS2 'Act Limits'
- The obstruction extends beyond those limits

The offence was first raised with the Bucks councillor responsible for HS2 matters, but in the absence of any apparent response, the report was submitted to Thames Valley Police.

### **Thames Valley Police**

An email was received from Aaron C5131 (Contact Management)<sup>2</sup>-

*"The issue you outline is something that falls under the local council who act as the highway authority.*

*Obstructions to the footpath can be reported to them using the link below."*

### **Buckinghamshire Council**

Two reports were made on Fix my Street (refs 40188269, 40188270 ) for the East and West sides of the A413, both linked to the original report. As there was no response, I phoned their contact number, and they suggested that I call Road Space Management.

Road Space Management declined to take any action, but suggested that I contact the HS2 helpline, which I did. As expected, the helpline referred the matter to the contractor, EKFB, who had already denied responsibility for the safety of the A413.

In reply (copied in full below), EKFB state

*"we require all the land within the fence line in order to maintain an exclusion zone between our works and the general public. Therefore we are unable to justify removing the fence to allow pedestrians and cyclists access to this area", and*

*"I can confirm that we are in full compliance with all relevant legislation and our site teams undertake daily reviews to ensure that we continue to operate within the law."*

However, there is no attempt to deny that the security fences are obstructing the highway, and no explanation of how this obstruction can be regarded as being in compliance with the Highways Act.

## **Conclusion**

Neither TVP nor Bucks Council are prepared to investigate allegations that a criminal offence (obstruction) is being

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<sup>2</sup> 10-Mar-22

27-Mar-22

committed, if the perpetrator is HS2 Ltd, or their contractor, even when this offence clearly endangers users of the public highway. They seem content to allow complaints to be referred back to the contractors, against whom the complaints are made, and the contractors see no need to even attempt to explain why their actions could be considered lawful.

I hereby register a formal complaint against both bodies (TVP and Bucks council), and request that action be taken immediately to investigate the original complaint, and have HS2 remove the obstructions in question.

Dr James Conboy  
HS2 Amersham Action Group

**Reply from EKFB – 25/3/22**

Dear Mr Conboy,

Thank you for your email to the HS2 Helpdesk which has been passed to me for attention.

Further to the concerns you have raised regarding the security fencing around the Small Dean Viaduct, please find below information which I hope you will find useful.

We are currently in the process on constructing a conveyor across London Road and the Chiltern Rail line, as well as constructing the Small Dean Viaduct, which will involve three separate realignments of the highway. Both of these works are extensive, and we require all the land within the fence line in order to maintain an exclusion zone between our works and the general public. Therefore we are unable to justify removing the fence to allow pedestrians and cyclists access to this area.

I can confirm that we are in full compliance with all relevant legislation and our site teams undertake daily reviews to ensure that we continue to operate within the law.

As the planned conveyor will be constructed on the west side of the line, we are therefore unable to provide a safe pathway within that area.

We are currently in the process of looking at upgrading the bridleways between Small Dean Farm and Bacombe Lane to enable cyclists to use this route should they wish to do so. I can advised that a survey has been undertaken today, Thursday, 24 March to this effect.

I hope this information has been useful. I am sorry we could not fulfil your request.

If there is anything further we can assist with, please do not hesitate to contact the HS2 Helpdesk ...

Kind regards

Caroline

Caroline Brennan

Public Response Co-Ordinator

# Obstruction of the A413

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**HS2 SECURITY FENCING HAS BEEN ERECTED ON THE VERGE OF THE A413,  
CAUSING AN OBSTRUCTION OF THE HIGHWAY, AND ENDANGERING  
PEDESTRIANS**

## Background

Following the eviction of the Wendover Active Resistance camp from land between the A413 and the Chiltern Line (just south of Grove Farm), HS2/EKFB erected fencing to secure the area, in violation of section 137 of the Highways Act 1980, and so a criminal offence.



**A pedestrian negotiating the narrow path  
alongside the carriageway**

This has left a path around 3' wide between the fence and the carriageway, which carries considerable HGV traffic, at speeds up to 60mph.

The situation is compounded by the closure of Smalldean Lane to all traffic, including cyclists and pedestrians, for the foreseeable future, as the Lane provided a route from the Grove Farm roundabout to Dunsmore (& Rocky) Lanes which avoided the A413.

In reply to our Emails requesting that Smalldean Lane be reopened to cyclists and pedestrians, EKFB 'Engagement' replied *"The safety of the A413 and the level of traffic on the A413 is not related to the HS2 project and therefore I would advise that you raise any safety concerns with Transport for Buckinghamshire. Many other vehicles and lorries use this road that are not operating on HS2 business."*<sup>3</sup>

This Email also undertook to provide a suitable diversion, which we now understand is not practical.

For EKFB to deny responsibility for the dangerous state of the A413 is ridiculous; the situation is largely caused by

- Encroachment of Security Fencing on the roadside verge
- Frequent single lane working and associated traffic signals
- Additional HGV traffic related to HS2 construction

## **The Highways Act 1980**

Section 137 states

*"If any person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence"*

This applies to the *full width* of the highway –

*"every member of the public is entitled to unrestricted access to the whole of a footway ... any encroachment on the footpath which restricts him in the full exercise of that right ... is an unlawful obstruction"*<sup>4</sup>

### **(HS2) act limits**

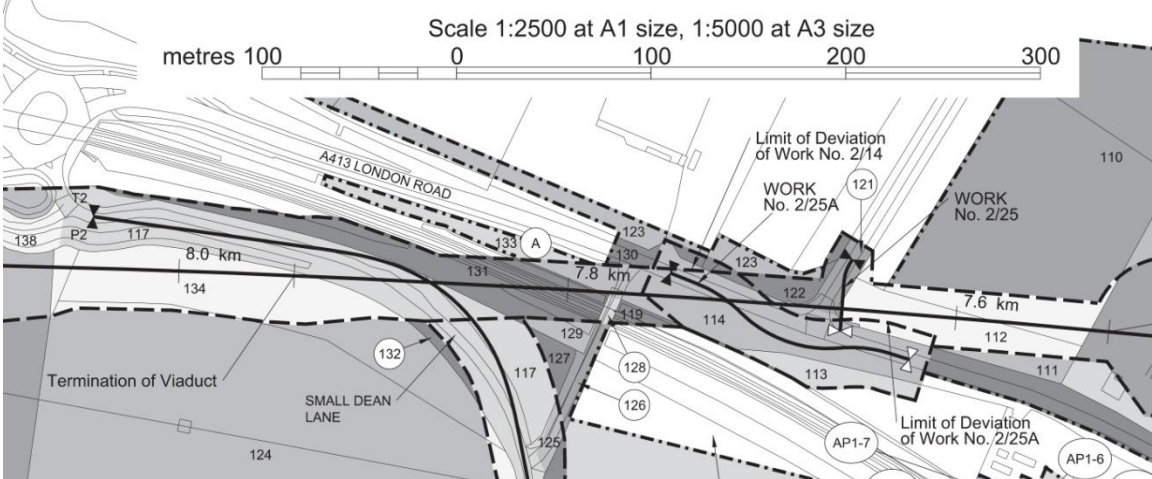
Schedule 23 (Street Works) of the HSR (London-West Midlands) bill makes no reference to section 137 of the Highways act, and so it remains in effect inside the Act Limits.

In addition, large parts of the obstructed verges lie *outside* the Act Limits; to the west of the (demolished) footbridge over the Chiltern Line, the Act Limits (works 123, 133) are over 5m back from the edges of the carriageway –

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<sup>3</sup> Email from Chloe Smith, 18-2-22

<sup>4</sup> Wolverton UDC vs Willis, 1962



**Act Limits, Smalldean Viaduct  
(Plans vol 2.1, p36)**

### The Obstructions

#### West side



West side, showing footpath now behind the security fence, and the narrow gap remaining for pedestrians





West side – the security fencing, constructed on the existing footpath; further gratuitous obstruction of the limited space remaining, by a roadsign

**East side**



The security fence is 2 to 3 metres inside the railings marking the edge of the highway.





The East side walkway is generally much wider, apart from a few obstacles..



Such as this carelessly positioned road sign

## Conclusion

1. The security fencing clearly constitutes an obstruction of the highway, which is a criminal offence, even if committed by HS2.
2. Worse still, it indicates a complete disregard for the safety of cyclists and pedestrians who may be obliged to navigate through these works. There is no evidence of any attempt to be a 'Good Neighbour'.
3. An immediate remedy would be to move the west side fencing off the highway.
4. In the medium term, a safe path might be provided on the west side of the Chiltern line, on network rail land.

Dr Jim Conboy  
HS2 Amersham Action Group