

Obstruction of the A413 - Continued

These complaints relate to the continued presence of security fencing within the highway verge on both sides of the A413 where it passes through the Smalldean worksite. This constitutes a danger to pedestrians and cyclists, but the authorities have made no efforts to have the obstruction removed.

Chronology

Initial complaint regarding obstruction

9-Mar-22

A complaint was made to TVP regarding the obstruction of the verges of the A413 by security fencing erected by the HS2 contractors EKFB (page 12). This was prompted by an Email from EKFB, denying any responsibility for the state of the A413.

Obstruction of the Highway is a criminal offence (1980 Highways Act, section 137)

TVP replied that this was a matter for Bucks

11-Mar-22

The complaint was recorded on 'Fix my Street', 40188269, 270. During a follow up phone call, Bucks (Road Space Management) suggested that this was a matter for the HS2 helpdesk

21-Mar-22

Complaint made to the HS2 helpdesk (**HS2-22-75071-E**), without any expectation of success

25-Mar-22

Reply received from EKFB (Caroline Brennan- page 11), stating that everything was legal, but with no explanation of why this was so.

Complaint regarding handling of the initial complaint

I regard it as unacceptable that a complaint regarding alleged criminal behaviour by HS2 contractors was passed back to HS2 for a response, and that none of the bodies involved appear to have visited the site to assess the situation.

27-Mar-22

A formal complaint was made (page8) against TVP (**COM-16717-22-4300-C**), and Bucks (**1206124**) An officer from TVP responded (by phone) the next day, and my

22-May-22

understanding was that the complaint would be dealt with at a more senior level.

14-Apr-22

Bucks responded to my complaint (page 5), stating that the obstruction on the West side of the A413 had been authorised by approving an application under schedule 4 & 33 of the HS2 act, submitted 12/7/21.

Attempts to update the complaint to TVP, using their online form, failed.

21-Apr-22

I responded to Bucks (page 5), questioning why the application to obstruct the A413 verge on the west side had been granted, and observing that the obstruction on the east side was not covered by the application, and so (presumably) remained illegal. I requested that Bucks take steps to have the obstructions removed.

5-May-22

A further response from Bucks (page 7), stating that as there were no formal footways, pedestrian activity was not a consideration.

19-May-22

Initial response received from TVP, stating that the complaint (of 27th Mar) would be investigated.

The Complaint – renewed.

Against Bucks

West side The A413 Footpath section (page 4) clearly shows that a footpath existed along the west side, being a continuation of a two metre surfaced path starting at the Smalldean roundabout. Current footfall has been sufficient to define a path on the grass verge.

- What steps were taken to ascertain usage before consenting to the obstruction ?
- What risk assessment was made regarding the safety of road users ?

East Side

This appears to be a straightforward case of obstruction. Why has no action been taken to have it removed ?

Against HS2/EKFB

- Why did the response of 25th March fail to mention the Schedule 4 & 33 application ? This could have speeded up the process.

- Having been informed of the difficulties caused by the obstructions, why has nothing whatsoever been done to improve matters ?




Against TVP

- Were TVP aware that Bucks would refer my complaint back to HS2, and do they consider this to be an acceptable outcome ?
- Why has little or no effort been made to investigate an allegation that an illegal obstruction is endangering road users ?
- Why is it apparently impossible to convey fresh information about a complaint, by forwarding an Email to them ?

Summary

The Smalldean works clearly cause a danger to pedestrians and cyclists. HS2/EKFB deny this, Bucks and TVP will not investigate. While the HS2 act dis-applies much legislation within the act limits, this neglect by the authorities places HS2 completely beyond the law.

A413 Footpath

	
<p>1) There is a surfaced path on the west side, from the roundabout to the (now demolished) footbridge; this may account for pedestrians using this side of the road</p>	<p>2) What happened immediately after the bridge is unclear, but there is sufficient footfall to define a new path along the verge</p>
	
<p>3) 20 yards south from the bridge, a path emerges from the woodland</p>	<p>4) This path continues (now within the security fencing), as far as the entrance to the Smalldean conveyor worksite. It seems likely that the path continued to meet the pavement outside the houses, but it is no longer visible beneath the vegetation.</p>

Response from Bucks, 14-Apr

In order to review your complaint, I asked Laura Leech, Head of Major Projects, to consider and investigate your concerns in more detail. Please see their findings and response below:

Thank you for your email and I apologise you did not receive a satisfactory response prior to this.

Please find attached application from HS2 to stop up the land referred to in your complaint. The application details the works associated.

Please see attached application as well as layout plan. The limits of land to be acquired and used (LLAU) extends to the greyed out areas indicated on the plan therefore HS2 are allowed to stop up the areas they require to construct HS2. In addition to this, the installation of the fence coincided with a security operation to remove the protestors in the area.

Response to Complaint 1206124

Re Email from Shamim Akhtar, 10:17, 14/4/2022

Thank you for providing a copy of form TM1, regarding temporary stopping up of the verge of the A413. Had EKFB 'Community Relations' provided this document in response to my initial complaint, then the obstruction issue might have been progressed rather faster, but I accept that this is a matter for EKFB.

I note that the area identified on the plan (Small Dean, 1-Jul-21) lies on the west side of the A413, whereas my initial complaints relate to both sides of the highway. I shall consider these separately.

West Side

Consent was given under Sched 4 Part 2 para 6. Sub para (6) states that "consent may be given subject to conditions ... in the interests of public safety or convenience". Were any such conditions requested? The Highway Authority Response Sheet is blank.

It would not have been unreasonable to require that the Security fencing be erected so that the existing footpath beside the A413 was not obstructed; this would have been in the interest of public safety, and the works could still have been 'reasonably' carried out.

Can you clarify what safety considerations were discussed, at the pre-application meeting, and how the present unsafe situation came to be approved?

East Side

The documents provided make no reference to the obstruction to the highway verge on the East side (reported as problem 40188270 on Fix my Street). While not creating the same dangers as the West side obstruction, there are places where a pedestrian is forced onto the carriageway, as shown in the original complaint. Unless another TM1 application was submitted for the east side, then this complaint still stands, as the security fencing has been erected several metres inside the limits of the highway. Would you please clarify the legal status of this obstruction ?

Further Actions

At this stage, I consider that the answer to my complaint is incomplete, and request that you make the clarifications requested above, before I consider any escalation to stage 2.

I also request that

1. You require that EKFB restore access to the footpath on the West side of the road, on grounds of public safety. This might be justified on the grounds that the alternative route (via Smalldean Lane) has now been closed.
2. You require EKFB to reposition their fences on the East side to be at least 3m from the carriageway throughout the works, and so remove the obstructions recorded in my original complaint.

Even if these improvements are made, the A413 will remain a hostile environment for non-motorised users. There is an undertaking (2726) in the bill to provide a cycleway between the houses north of Dunsmore Lane and the Grove Farm roundabout. If this could be constructed sooner rather than later, a more satisfactory solution would result.

Dr Jim Conboy

21-Apr-22

Response from Bucks, 5-May

We have consulted colleagues in Highways as well as raising directly with EKFB.

To our knowledge there are no formal footways along the entire section of road as large areas are highway verges therefore we do not believe we considered pedestrian activity during the time of the application. It would be unreasonable for the council to request that HS2 considers the impact to pedestrians, unless a formal pedestrian route or public right of way exists. These comments would apply to both sides of the road, east and west. With regard to Assurance 2726, unfortunately there is nothing to report on this yet as HS2 are only down to deliver this following completion of Small Dean Viaduct, so still some way away.

Highways Act 1980 – failure of enforcement

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 A413¹ –

“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

- 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

¹ Email from Chloe Smith, Public Response Manager, 18-Feb-22

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)²-

"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 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.

² 10-Mar-22

27-Mar-22

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

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."*³

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"*⁴

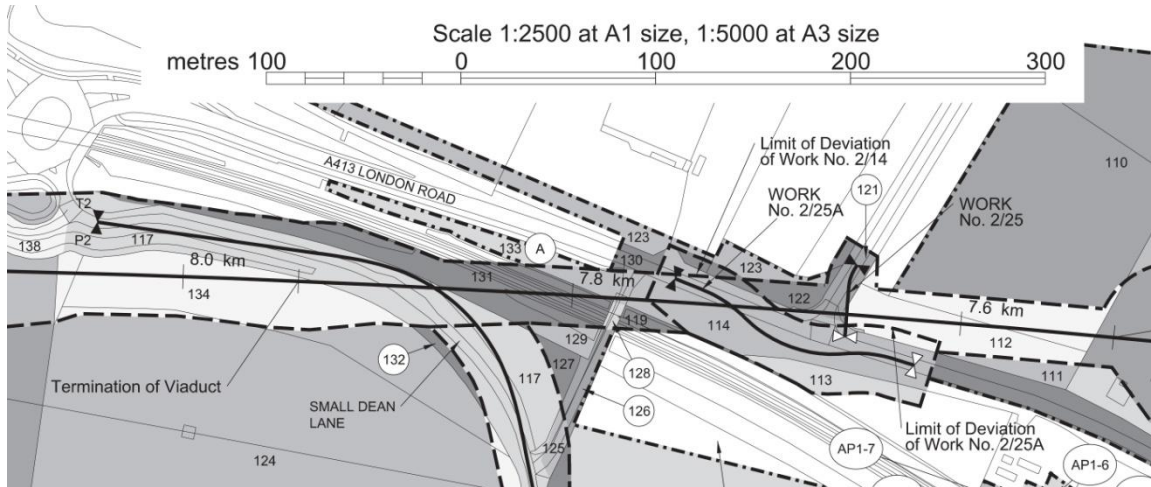
(HS2) act limits

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 –

³ Email from Chloe Smith, 18-2-22

⁴ 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 road sign

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