

Regulatory Committee

Meeting to be held on 21 October 2015

Electoral Division affected: Lancaster Rural North

Highways Act 1980 – Section 119A Rail Crossing Diversion Order
Wildlife and Countryside Act 1981 – Section 53A
Proposed Diversion of Part of Public Footpath No. 39, Silverdale Parish,
Lancaster City
(Annexes 'B' and 'C' refer)

Contact for further information:

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Executive Summary

The proposed diversion of part of Public Footpath No. 39, Silverdale Parish, Lancaster City.

Recommendation

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath No. 39, in the Parish of Silverdale, from the route shown by a bold black line and marked A-B-C on the attached plan, to the route shown by a bold black dashed line and marked A-D-E on the plan.
2. That in the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and promoted to confirmation if necessary at a public inquiry.
3. That provision be included in the Order such that it is also made under Section 53A of the Wildlife and Countryside Act 1981, to amend the Definitive Map and Statement of Public Rights of Way in consequence of the coming into operation of the diversion.

Background

The Trowbarrow level crossing is located approximately 50 meters south of Red Bridge on the line between Silverdale and Arnside. The crossing connects public footpaths and a local nature reserve to the local community. The crossing is well used by the local residents and visitors. Trains frequently pass along this section of the track and the crossing is sited on a slight bend with poor visibility for pedestrians and trains. The proposed alternative route follows a track which was previously a well used permissive path as well as Lancaster City Council's vehicular access to Trowbarrow Quarry.

The owners of part of the land over which the permissive path ran decided that they would no longer allow public access and a lock was put on one of the gates. As a result of this members of the public, local residents and visitors to the area, wanting to access the popular Trowbarrow Quarry local nature reserve, had to use the at grade crossing which had previously been used relatively infrequently. This included families with young children. Photographs, including these below, of people on the crossing were posted on social media.



The Office of Rail Regulation decided that the crossing was dangerous and required Network Rail to close the crossing. Network Rail successfully applied for a temporary closure of the section of footpath which is now the subject of this proposal.

A request has been received from Network Rail for an Order to be made under Section 119A of the Highways Act 1980 to divert part of Public Footpath No. 39 Silverdale from the current alignment over the level crossing onto the track to Moss Lane, allowing users to cross the railway via Red Bridge.

The length of the existing paths proposed to be diverted are shown by a bold solid lines and marked A – B – C and the proposed alternative route shown by bold broken lines and marked A – D – E on the plan.

Consultations

Consultation with the Statutory Undertakers has been carried out and no adverse comments on the proposal have been received. The Lancaster City Council has also been consulted and similarly raised no objection to the proposal. The Ramblers Association have also been consulted and they too have no objection to the proposal.

Silverdale Parish Council, the County Councillor for the area and Peak and Northern Footpaths Society have also been consulted and at the time of writing their response is awaited.

The owners of land over which a short section (approximately 16m) of the proposed route lies have indicated that they object to the proposal; this is the same section of the permissive path which was closed. Network Rail has only made this application after they were unable to secure agreement for a public footpath over this 16m section to join Moss Lane.

The owners of land at the western side of the crossing have indicated verbally that they support the proposed diversion. The length of footpath on their land which would be diverted is minimal (3 or 4 metres from the railway fence to the junction of the footpaths Silverdale 40 from Moss Lane and Silverdale 39 from Red Bridge Lane).

The remainder of the current and proposed routes lies on land owned by Lancaster City Council which supports the proposal.

Advice

Points annotated on the attached plan.

Point	Grid Ref (SD)	Description
A	4761 7576	Crossroads of track and Silverdale footpath 39
B	4758 7576	Stone stile over wall to small grass patch at side of railway track
C	4756 7576	Large gap in field fence at side of railway track
D	4760 7581	Field gate across track
E	4759 7583	Field gate and pedestrian gate at Moss Lane

The length of the footpath proposed to be diverted commences at Point A, in a westerly direction for 35m to a stone stile at Point B then turning west-north-west diagonally across the railway line with no levelled surface for 20m, to Point C.

The proposed alternative route, which commences at Point A, in a northerly direction for 50m along a stone track to a field gate at Point D, where the track continues in a northerly direction for 25m to a pedestrian gate at Moss Lane at Point E. All distances and compass points are given as approximate.

Criteria satisfied to make and confirm the Order

The proposal is considered to meet the criteria for a diversion under Section 119A of the Highways Act 1980, i.e.

- i. that it appears expedient in the interests of the safety of members of the public using it or likely to use it to divert a footpath which crosses a railway, other than by tunnel or bridge (whether on to land of the same or of another owner, lessee or occupier);
- ii. that it is expedient to confirm the Order having regard to all the circumstances and in particular to whether it is reasonably practicable to make the existing at grade crossing safe for use by the public and what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained. The proposal, if successful will provide a safe means of crossing the operational railway and once the public rights over the at grade crossing are removed, will enable Network Rail to exclude the public from the railway at this location. This will resolve the current concerns relating to accidental collisions and accessibility to the railway line for misuse. It is suggested that it is not reasonably practicable to make the crossing safe in particular because of the sight-lines which are limited by the curve of the railway and the presence of nearby Red Bridge and that there is a justifiable case for diverting the footpath so that the crossing can be closed.

In the event that the Order is confirmed, Network Rail will ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted.

There is no apparatus belonging to or used by statutory undertakers under, in, upon, over, along or across the land crossed by the present definitive routes, or they have given their consent.

It is advised that the effect of the proposed Order, if confirmed, will not have any adverse effect on the needs of agriculture and forestry and desirability of conserving flora, fauna and geological and physiographical features. It is also suggested that the proposal will not have an adverse effect on the biodiversity or natural beauty of the area.

The needs of disabled people have been actively considered and the proposal is compatible with the duty of the County Council as highway authority under the Equality Act 2010 in providing a route that has the minimum number of structures (2 gates) and which are easy to use and a sufficiently wide and convenient surface.

It is proposed that the right of way to be created by the proposed Order will be subject to 2 limitations: a pedestrian or field gate at point D and a pedestrian gate at Moss Lane.

It should be noted that the proposed diversion will alter the termination point of this section of public footpath from its junction with Silverdale Footpath 40 and place it on Moss Lane which is a highway connected with it, and it is suggested that this point is substantially as convenient to the public, having previously been used as a well-used permissive footpath.

The applicant owns part of the land crossed by the section of footpath proposed to be diverted. The majority of the route is owned by Lancaster City Council, who support the application. The small section adjacent to Moss Lane is in private ownership and the owners oppose the diversion.

The applicant, Network Rail, have agreed to defray any compensation, and has also agreed to bear all advertising and administrative charges incurred by the County Council in the order-making procedures. However, there is no power to recharge the costs of pursuing the Order to confirmation following an objection and the County Council will incur costs in this respect. Refer to 'Annex C'

The Committee are advised that so much of the Order as extinguishes part of Silverdale Footpath No. 39 is not to come into force until the County Council has certified that the alternative route is in a suitable condition.

Network Rail have agreed to pay for any necessary works to bring the new route into a suitable condition, should any such works be necessary.

Should the Committee agree that the proposed Order be made and, subsequently, should no objections be received to the making of the proposed Order, or should the proposed Order be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation, it is felt that it is expedient to confirm the Order 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. This would not be possible in this case as the existing crossing is on a bend in the railway.
- (b) what arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained. Network Rail have given assurance of this.

Consideration was given to whether all or part of the diverted route should become repairable by Network Rail but it was not considered appropriate in this case as none of the proposed route was over or abutting the railway land.

As the landowners object to the proposal further consideration was given to any adverse effect that the diversion would have on that land adjacent to Moss Lane over which the short section of footpath would lie. The route is subject to private vehicular rights and therefore cannot be obstructed or used for a purpose which would be incompatible with a public path. The length of path on this land is very short; approximately 16m as indicated on the Land Registry plans. The land through which the path would run is a fairly small enclosure not suitable for significant grazing or arable use. Compensation for any material loss could be claimed by the landowner under the Highways Act 1980 S28; such loss is not expected to be significant and the compensation is underwritten by Network Rail.

It is considered that, having regard to the above, it would be expedient to confirm the Order.

Risk Management

Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that, provided the decision is taken in accordance with the advice and guidance contained in Annex 'B' (item 5) included in the Agenda papers, and is based upon relevant information contained in the report, there are no significant risks associated with the decision-making process.

Alternative options to be considered

To not decide to make an Order: improvement of the crossing in order to leave it open as the only access to the nature reserve from the north and west was considered. However the curve of the railway line and presence of Red Bridge are the limiting factors which prevent the at grade crossing being able to be made safe. A footbridge was considered by Network Rail but this would be visually intrusive within the Area of Outstanding Natural Beauty and much less convenient for members of the public, especially those with impaired mobility, the elderly or young children. It would also be very expensive.

To decide to make an Extinguishment Order: this footpath is extremely well used by local residents and visitors as it facilitates access to the nature reserve. It is therefore not appropriate to recommend extinguishment of the crossing instead of diversion.

To decide to make a Diversion Order for a different route: other routes for the diversion were sought but there is no other suitable route which could take members of the public across the railway.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Tel
File Ref: 211/661	various	Megan Brindle, Legal and Democratic Services 01772 535604
File Ref: PPROW/1-30-FP39	various	Alex Toogood, Planning and Environment Group 07917836607

Reason for inclusion in Part II, if appropriate

N/A