

## **Regulatory Committee**

Meeting to be held on 25 January 2017

Electoral Division affected: Chorley Rural East
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**Highways Act 1980 – Section 119A Rail Crossing Diversion Order**  
**Wildlife and Countryside Act 1981 – Section 53A**  
**Proposed Diversion of Part of Heath Charnock Footpath 44, Chorley Borough.**  
(Annexes 'B' and 'C' refer)

Contact for further information:

Ros Paulson, 01772 532459, Planning and Environment Group

[ros.paulson@lancashire.gov.uk](mailto:ros.paulson@lancashire.gov.uk)

### **Executive Summary**

The proposed diversion of part of Heath Charnock Footpath 44, Chorley Borough.

### **Recommendation**

1. That an Order be made under Section 119A of the Highways Act 1980 to divert part of Heath Charnock Footpath 44, from the route shown by a bold continuous line and marked A-D on the attached plan, to the route shown by a bold dashed line and marked A-B-C-D.
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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
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**

Lancashire County Council have received an application from Network Rail to divert part of the above mentioned public footpath in connection with its proposal to replace Heath Charnock Level Crossing with a stepped footbridge.

Heath Charnock Level Crossing is a public footpath railway crossing, located approximately 1.5 miles south of Chorley, on the Bolton to Preston railway.

The operational railway in this area is affected by Network Rail's Northern Hub transport improvement programme which will help meet growing demand for rail

travel across the north. This will lead to an increase in the number of trains and the speed at which they will be travelling.

Network Rail has explored all alternative options for a permanent means by which the risk can be reduced and their preferred option is to provide a new stepped footbridge to ensure that the public can cross the railway safely. Network Rail has applied for a diversion order to change the legal alignment of the footpath to enable the level crossing to be closed when the footbridge is in place.

The length of the existing path proposed to be diverted is shown by a bold continuous line marked on the plan as A-D. The proposed alternative route is shown on the plan by a bold dashed line and marked A-B-C-D.

## **Consultations**

The consultation with the statutory undertakers has been carried out and no objections or adverse comments on the proposal have been received.

Chorley Borough Council and Heath Charnock Parish Council have also been consulted and similarly raised no objection to the proposal. The Clerk to Heath Charnock Parish Council has replied to say the Parish Council understand that this proposed change is necessary for health and safety reasons given the increased speed and frequency of trains that will use the line following the electrification works. Under these circumstances the Parish Council has no objection to the closure of the Heath Charnock level crossing and the provision of a new footbridge. The Council noted that Network Rail says that on this occasion it is unable to provide a disabled / ramped access facility due to the nature of the terrain, visual impact and cost grounds.

The Peak and Northern Footpaths Society and the Chorley branch of the Ramblers Association have also been consulted. Peak and Northern Footpaths Society have confirmed that they have no objection to the proposal. The Chorley Ramblers have indicated that they do not have a problem with the proposal but have raised a query regarding the access to either side of the footbridge. On the day of their site visit the west side of the railway the adjacent field was flooded with two or three feet of water and on the east side of the railway, the land falls away steeply. They have asked for reassurance that the access to the flight of steps on each side of the railway will be safe, flat and dry.

## **Advice**

### **Description of existing footpath to be diverted**

The part of Heath Charnock Footpath 44 as described below and shown by a bold continuous line marked A-D on the attached plan (Lengths and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 5973 1567)	D (SD 5970 1566)	Generally WSW	30	The entire width

### Description of new footpath

Footpath as described below and shown by a bold dashed line A-B-C-D (All lengths, number of steps and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 5973 1567)	B (SD 5972 1570)	Generally NNW	30	2	Compacted stone path on ground level, then a flight of 6 steps in the banking to access base of footbridge, then 2 flights of 16 steps to access point where footbridge turns 90 degrees.
B (SD 5972 1570)	C (SD 5970 1570)	W	20	2	10 steps (5 at each end) to access the upper deck of footbridge
C (SD 5970 1570)	D (SD 5970 1566)	Generally S	35	2	2 flights of 16 steps then compacted stone surface at ground level.
Total distance of new footpath:			85		

The surface of the steps and upper deck of the footbridge will comprise of a non-slip surface and the footbridge will stand approximately 10 metres from the ground.

It is proposed that the right of way to be created by the proposed Order will not be subject to any limitations or conditions.

### Variation to the particulars of the path recorded on the Definitive Statement

If this application is approved by the Regulatory Committee, the Head of Service Planning and Environment suggests that Order should also specify that the Definitive Statement for Heath Charnock Footpath 44 be amended to read as follows:

The 'Position' column to read: "Junction of footpaths 43 and 45 westwards to SD 5973 1567 then runs generally north north west for 30 metres on a compacted stone path on ground level then a flight of 6 steps in the banking to access base of the railway footbridge then 2 flights of 16 steps to access point where footbridge turns 90 degrees at SD 5972 1570. The footpath continues for 20 metres west ascending 5 steps to the footbridge deck over the railway then descending 5 steps to SD 5970 1570, continuing 35 metres generally south descending 2 flights of 16 steps then running on a compacted stone surface at ground level to SD 5970 1566 then westwards over canal to Parish Boundary (All lengths, number of steps and compass points given are approximate)."

The 'length' column be amended to read: "0.57 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 5973 1567 and SD 5970 1566 and the width between those points is 2 metres."

### **Criteria satisfied to make and confirm the Order**

To make an Order under S119A of the Highways Act 1980, the County Council must be satisfied 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).

The railway currently has 72 stopping passenger services and 288 non-stop passenger services in operation per day (total in both directions) with current permissible speeds at this location of 75mph in both directions over the crossing. The transport improvement programme will increase the frequency of trains and the permitted line speed to 100mph.

The increase in line speed requires an increase in the sighting distance that has to be available to users at the level crossing. Following the electrification works the minimum sighting distance will no longer be achieved. As part of the electrification works, stanchions will be erected within Network Rail's operational land to support the overhead power lines. These structures, together with the increase in line speed and frequency of services, means some method of mitigation is required to reduce the risk to users of the level crossing.

Currently there are warning signs either side of the crossing but no telephones or lighting. The train driver sounds the horn as the train approaches the level crossing but there are no other audible or visual warnings. Other measures to mitigate the risks at this level crossing are a kissing gate on either side of the railway and the surface of the crossings consists of proprietary crossing boards with an anti-slip surface.

The crossing is in an isolated area therefore there is the potential for misuse or irresponsible behaviour such as not paying due care and attention or crossing the railway with dogs off the lead.

An added risk factor of the current level crossing is the potential for accidental collisions resulting from an incidence such as a slip or trip, a user of the path not seeing a train approaching or not hearing the train's warning horn. Modern trains are quiet and weather conditions such as high winds or fog can reduce a person's ability to hear or see a train approaching and a warning horn might not be heard if a person has a hearing impediment, is wearing headphones or is talking on a mobile telephone.

Another high risk to users of a level crossing is that on occasions, trains pass each other, going in different directions on or close to the crossing. The risk is that a person might wrongly assume the train they have sighted is the only one to be concerned with, without assessing whether another train is approaching in the other direction.

Although there is no evidence or reports of any incidents of misuse of the crossing as a point of access onto the railway at this particular location, there is always that risk and a footbridge would prevent such an incident occurring.

In addition to the inherent risks currently at this level crossing, the significant increase in the speed and frequency of trains and further restriction of sighting distances due to the installation of electrification equipment means there will be a significant increase in the already high risk to the public using the level crossing.

Network Rail has explored all alternatives and as it is accepted that some means of crossing the railway at this location is necessary.

At some level crossings, Miniature Stop Lights (MSL) are installed to provide a user with a visual warning of approaching trains. However, Network Rail does not support the installation of MSL's at certain locations as they only provide a limited mitigation of risk. This is because it is reliant on the public using them correctly and industry evidence has shown that when groups of people are at level crossings, then a 'pack' mentality can arise and each individual may not pay attention to their own personal safety, instead just follow the pack.

The suitability of this measure was assessed and rejected for this location. Network Rail does not accept that it would afford an adequate level of protection due to remote location of the crossing.

Bearing in mind that the frequency and speed of the trains is planned to increase, coupled with the assessment that it is not reasonably practicable to make the crossing safe by any other means, it is suggested that there is a justifiable case for constructing a stepped footbridge providing the crossing is closed and removed.

Network Rail has carried out a Diversity Impact Assessment in order to determine the type of footbridge that would be appropriate in this instance. The assessment looked in detail at the considerations given into the different types of user and why some options were not considered feasible.

Wherever possible Network Rail provides a ramped access in addition to steps but the Diversity Impact Assessment explains why ramps are not considered feasible in this location.

The Diversity Impact Assessment states that ramps require considerable land take both in linear extent and width and are commonly intrusive and unsightly. Therefore, in order to build a structure with ramps over the operational railway, a significant area of land would need to be purchased from adjoining landowners and have an adverse effect on the visual impact of the structure from the surrounding countryside. In addition, a ramped crossing would require adequate lighting throughout the structure and may well require CCTV coverage. There are also other issues that arise with obtaining consents regarding the environmental impact and appropriateness of that type of structure in certain locations. Network Rail also has to justify the higher financial outlay of public funds for the provision of a structure with ramps.

An example of the two differing types of structures is provided below to visually demonstrate the scale of a bridge with ramps in comparison to a stepped structure.



Figure 1: An example of a stepped structure



Figure 2: Examples of combined stepped and ramped footbridge structures.

Network Rail has secured the necessary funding to construct and deliver a stepped structure to replace the existing crossing. The proposed site for the footbridge lies immediately to the north of the existing crossing and is in the ownership of Network Rail.

In the event that the Order is successful, 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 route, 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 proposed diversion will not alter the points of termination of Heath Charnock Footpath 44.

The applicant, Network Rail, has 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 and also to provide and maintain the alternative route to the satisfaction of the County Council.

With regards to the comments made by the Chorley Ramblers about the approaches to the footbridge, Network Rail has confirmed that the steps and compacted surfaced path will be constructed to a suitable standard, with gabion baskets being installed where necessary to stabilise the groundworks. With regards to the flooding in the adjacent field to the existing footpath, it noted that the area that floods is several metres below the railway that is located on an embankment. The field is not owned by Network Rail and this land would not be affected by the footbridge. Therefore Network Rail does not intend to carry out any works to alleviate the flooding of these areas. There are no records to suggest that the flooding in the field has ever affected the footpath or railway in this location, therefore it is not anticipated that it will be a problem in the future. The approach to the flight of steps on each side of the railway will have a safe and convenient surface that is suitable for use in wet weather conditions.

The Committee is advised that so much of the Order as extinguishes part of Heath Charnock Footpath 44 is not to come into force until the County Council has certified the satisfactory physical implementation of the footbridge and the compacted stone and stepped approaches to each side of the bridge.

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; and
- (b) what arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.

It is felt that, if the Order were to be confirmed, the new way will be reasonably convenient to the public.

The level crossing is set in a rural area, forming a link in the network of country paths and does not link any schools, employment or residential areas. It is generally understood that a majority of the use is for leisure purposes such as dog walking and circular walks including the footpaths along the nearby canal towpaths.

The railway is raised up on a large embankment in this location and the approach to both sides of the crossing is by means of unmade footpaths, requiring the user to negotiate a number of steps and gradients, including stepped access up and down the railway embankment. It is proposed that the existing kissing gates remain if they are required for stock control but these are located on parts of the route that are not affected by the diversion proposal.

The construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. It is acknowledged that the new route is longer than the existing route and requires more steps to be negotiated, however given the substantial improvement in the safety of the crossing it is suggested that this is reasonable. In addition, users of the railway crossing that are in a hurry (and would be inconvenienced by waiting for a train to pass), may find a footbridge to be the preferred option.

It is suggested that there will be no adverse effect on the rights of way network as a whole or on the land served by the existing route or on land over which the new path or way is to be created.

It is advised that the needs of the disabled have been actively considered and as such, the proposal is compatible with the duty of the County Council, as a Highway Authority under the Equality Act 2010. Although it is the intention that only steps will be provided over the footbridge which may therefore be inaccessible or difficult for some users it is considered that the increased protection from the danger of crossing at grade a high speed railway track makes this a reasonable solution.

The provision of a footbridge will enable a safer means of crossing the railway for persons with a hearing impairment as the warnings sounded by the train's horn might not be as effective. Furthermore, the footbridge would be safer means of crossing for those with a visual impairment.

It is also advised that the effect of the proposed Order is compatible with the material provisions of the County Council's 'Rights of Way Improvement Plan'. In particular policy RMVI2-2 whereby the Local Authority will aspire to meeting the British Standard for gaps, gates and stiles. In this instance BS5709:2006 has been applied and accordingly, as it is proposed that there will not be any gates or barriers on the stepped access, the proposed alternative route is fully compliant with the British Standard.

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

## **Stance on Submitting the Order for Confirmation (Annex C refers)**

It is recommended that the County Council should not necessarily promote every Order submitted to the Secretary of State at public expense where there is little or no public benefit and therefore it is suggested that in this instance the promotion of this diversion to confirmation in the event of objections, which unlike the making of the Order is not rechargeable to the applicants, is not undertaken by the County Council. In the event of the Order being submitted to the Secretary of State the applicants can support or promote the confirmation of the Order, including participation at public inquiry or hearing. It is suggested that the Authority take a neutral stance.

## **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: Insist on a ramped footbridge

To not decide to make an Order: Requiring Network Rail to improve the current crossing and implement further safety measures such as further speed restrictions of the trains. It is suggested that this is not be feasible given the imminent implementation of the Network Rail's Northern Hub transport improvement programme.

To decide to make an Extinguishment Order: this footpath is well used and there is no convenient alternative route nearby. It is therefore not appropriate to recommend extinguishment of the crossing instead of diversion.

To agree the Order be made but not yet be satisfied regarding the criteria for confirmation and request a further report at a later date.

To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State and promoted to confirmation by the County Council.

To agree that the Order be made and if objections prevent confirmation of the Order by the County Council that the Order be submitted to the Secretary of State to allow the applicant to promote confirmation, according to the recommendation.

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

Paper	Date	Contact/Tel
File Ref: PRW-09-16-44		Mrs R J Paulson, 01772 532459
File Ref:		
Reason for inclusion in Part II, if appropriate		
N/A		