

Regulatory Committee

Meeting to be held on 17 January 2018

Electoral Division affected: Fylde West
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Highways Act 1980 – Section 119A Rail Crossing Diversion Order Wildlife and Countryside Act 1981 – Section 53A(2) Proposed Diversion of Part of Westby-with-Plumpton Footpath 7, Fylde Borough.

(Annexes 'B' and 'C' refer)

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Executive Summary

The proposed diversion of part of Westby-with-Plumpton Footpath 7, Fylde Borough.

Recommendation

- (i) That subject to satisfactory responses to the consultations, an Order be made under Section 119A of the Highways Act 1980 to divert part of Westby-with-Plumpton Footpath 7, from the route shown by a bold continuous line and marked A-B on the attached plan, to the route shown by a bold dashed line and marked A-C-D-E-F-B.
- (ii) 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the event of no objections being received, the Order be confirmed and in the event of objections being received and not withdrawn, the Order be sent to the Secretary of State and the Authority take a neutral stance with respect to its confirmation.
- (iii) 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 Kirkham Tip Level Crossing with a stepped footbridge.

Kirkham Tip Level Crossing is a public footpath railway crossing on the Preston to Blackpool line, in a rural location to the north east of the village of Great Plumpton,

positioned between agricultural land to the north and railway land to the south, the footpath continues onto further agricultural land to the south. The railway runs in a cutting and the approach to both sides of the crossing requires steep embankments to be negotiated. The footpaths leading to the crossing on either side are unlit. There are no telephones or visual warnings.

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 of England. This requires additional infrastructure to be installed on the railway line, that will impact sight lines, and will lead to an increase in the number of trains and the speed at which they will be travelling.

There is currently a temporary closure order in place, prohibiting use of the crossing whilst works are taking place. This closure has been extended by the Secretary of State until June 2018.

The level crossing is set in a rural area, forming a link in the network of country paths. The site, known as Kirkham Tip is used by Network Rail and their contractors for storage, however there are no industrial units or residential properties in the immediate vicinity of the crossing. It is understood that the footpath and level crossing is regularly used by local residents and visitors to the area. A 9 day level crossing census was undertaken in 2013. On the busiest day, there were 5 pedestrians using the crossing. The census recorded 3 unaccompanied children using the crossing over the 9 day period.

Network Rail has explored all alternative options for a permanent means by which the increased risk to the footpath users can be reduced. Their preferred option is to provide a new stepped footbridge to ensure that the public can cross the railway safely. They have therefore, 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-B. The proposed alternative route is shown on the plan by a bold dashed line and marked A-C-D-E-F-B.

Consultations

Fylde Borough Council, Staining Parish Council, the Peak and Northern Footpaths Society and the Fylde branch of the Ramblers Association have been consulted and at the time of writing, their responses are awaited.

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

Advice

Points annotating the routes on the attached plan

(All lengths and compass points given are approximate).

Point	Grid Reference	Description
A	SD 3899 3352	Point immediately north of private access track that runs through the Kirkham Tip site.
B	SD 3897 3358	Point where Westby-with-Plumptions Footpath 7 crosses the top of the north side of the railway embankment.
C	SD 3896 3355	Northern end of the compacted stone surfaced path, at the foot of the first flight of footbridge steps, on south side of the railway.
D	SD 3897 3356	90 degree bend at the top of the first flight of 19 footbridge, on south side of the railway.
E	SD 3896 3356	90 degree bend at the top of the second flight of 19 footbridge steps, on south side of the railway.
F	SD 3897 3358	90 degree bend where the deck of the footbridge meets the top of the embankment on north side of the railway.

Description of existing footpath to be diverted

The part of Westby-with-Plumptions Footpath 7 as described below and shown by a bold continuous line marked A-B on the attached plan. (Length and compass points given are approximate).

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH
A (SD 3899 3352)	B (SD 3897 3358)	Generally NNW	70	The entire width

Description of new footpath

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

FROM	TO	COMPASS DIRECTION	LENGTH (metres)	WIDTH (metres)	OTHER INFORMATION
A (SD 3899 3352)	C (SD 3896 3355)	NW	40	2	Compacted stone path on ground level.
C (SD 3896 3355)	D (SD 3897 3356)	NNE	10	2	Flight of 19 steps.
D (SD 3897 3356)	E (SD 3896 3356)	WNW	10	2	Flight of 19 steps.
E (SD 3896 3356)	F (SD 3897 3358)	NNE	25	2	Deck of footbridge
F (SD 3897 3358)	B (SD 3897 3358)	ESE	3	2	Compacted stone path on ground level.
Total distance of new footpath:			88		

The surface of the steps and upper deck of the footbridge will comprise of a non-slip surface and the footbridge will stand approximately 7 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 the Order should also specify that the Definitive Statement for Westby-with-Plumpton's Footpath 7 be amended to read as follows:

The 'Position' column to read: "From Great Plumpton to SD 3899 3352. The footpath then runs north west for 40 metres on a compacted stone path on ground level to SD 3896 3355, then north north east for 10 metres up a flight of 19 steps to SD 3897 3356, then west north west for 10 metres up a further flight of 19 steps to SD 3896 3356, then north north east for 25 metres on the deck of the footbridge to SD 3897 3358, then east south east for 3 metres on a compacted stone path on ground level to SD 3897 3358 then to Westby." (All lengths, number of steps and compass points given are approximate)."

The 'length' column be amended to read: "0.68 km"

The 'Other Particulars' column be amended to read "There are no limitations between SD 3899 3352 and SD 3897 3358 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).

As part of the electrification of the Preston to Blackpool line, supporting structures will need to be installed that will have an impact on sighting distances for users of the crossing. These structures, together with the increase in line speed and frequency of services, means that some method of mitigation is required to reduce the risk to users of the level crossing.

Currently, there are warning and advisory 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. A further measure to mitigate the risks at this level crossing is that the surface of the crossings consists of proprietary crossing boards with an anti-slip surface.

As the crossing is unattended, 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.

There is also 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.

A further 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.

The Kirkham Tip Footpath Crossing Risk Assessment carried out by Sotera Risk Solutions in 2016, reported that there have been no recorded incidents at this crossing.

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, as they can be subject to deliberate misuse.

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, coupled with the steep embankments required to be negotiated to reach the crossing, it is suggested that there is a justifiable case for constructing a stepped footbridge providing the level 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 in this case, ramps are not considered necessary, due to the current need for steps to negotiate the embankments due to the gradient of the land and given consideration to the rural location and lack of amenities in the surrounding area. Furthermore, ramps are considered not to be realistically feasible in this particular location.

None of the land crossed by the existing public footpath or the proposed alternative route is registered with the Land Registry. Both routes are, however, either part of the operational railway, the embankment, or the land occupied by Network Rail and the land is included in the digitised record of Network Rail's land and property ownership. No other landowners or occupiers crossed by the existing or the proposed alternative route have been identified. As the land is unregistered, if Network Rail are unable to provide proof of ownership, Notices will be displayed on site to notify any owner or occupiers when the Order is publicised.

In the event that the Order is successful, Network Rail will ensure that the existing level crossing is removed, 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 Westby-with-Plumpton Footpath 7.

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.

The Committee is advised that so much of the Order as extinguishes part of Westby-with-Plumpton's Footpath 7 is not to come into force until the County Council has certified the satisfactory physical installation of the footbridge and the compacted stone 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 construction of a stepped footbridge would eliminate the risk to the public when crossing the operational railway. The new route is approximately marginally longer (13 metres) than the existing route, but it requires an equivalent number of steps to be negotiated as the existing route. Therefore, 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 a 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 decide not to make an Order: Insist on a ramped footbridge.

To decide not 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-05-15-07		Mrs R J Paulson, 07917 836628
File Ref:		
Reason for inclusion in Part II, if appropriate		
N/A		