

DATE 19 JANUARY 2024

The Network Rail (Leeds to Micklefield Enhancements) Order 20[XX]

Department for Transport reference: TWA/23/APP/03

Transport and Works Act 1992 and The Transport & Works (Applications and Objections) (England and Wales) Rules 2006

Addendum to Statement of Case dated 17 November 2023
On behalf of Leeds City Council

1. INTRODUCTION

- 1.1 This addendum represents an update to the Statement of Case submitted by Leeds City Council (**Council**) dated 17 November 2023 (**Statement of Case**) and relates to points previously raised in the holding objection submitted by the Council on 18 August 2023 (**Objection**), in respect of Network Rail Infrastructure Limited's (**Network Rail**) application to the Secretary of State for Transport (**SoSfT**) for an order to be made under the Transport & Works Act 1992 (**Order**) to authorise the construction, maintenance and operation by Network Rail of works on the Transpennine route between Leeds and Micklefield (**Scheme**), details of which are set out in more detail in Network Rail's application document reference NR07.
- 1.2 The Council is the relevant highway authority responsible for the public rights of way and public road network for the area concerned, is the relevant planning authority and a landowner affected by the works proposed in the Order. The Council is in receipt of various listed building consent applications from Network Rail.
- 1.3 This is an addendum to the Council's Statement of Case, as required under rule 7 of the Transport and Works (Inquiries Procedure) Rules 2004.

2. BACKGROUND

- 2.1 This addendum deals with the Council's position in respect of Network Rail's proposals to close the Peckfield Level Crossing, and supplements the statements made by the Council in relation to this issue in section 8 of the Statement of Case.
- 2.2 In the Statement of Case the Council addressed two key issues with Network Rail's proposal to close the Peckfield Level Crossing:
 - 2.2.1 The proposed diversion of the current bridleway is not considered suitable for bridleway users.
 - 2.2.2 Network Rail's proposal to create a footpath diverting through the recreation ground could bring about a risk of deadwood falling on users of the footpath as the area is covered in flora and fauna and mature trees. The proposed diversion also incorporates a tree route protection zone which has potential to cause damage. It is also not clear who would maintain the footpath through the recreation ground as that is not Council-owned land and it is understood that the owners (the Parish Council) do not support the proposal. In addition, Network Rail's proposals do not show the footpath being built to adoptable standard (and Network Rail has not yet provided information as to the standard the footpath will be built to). These issues would also apply in the event that the same route was given bridleway status under the proposed Order.
- 2.3 Section 5(6) of the Transport and Works Act 1992 (**Act**) provides that:

'An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied—

- (a) that an alternative right of way has been or will be provided, or*
- (b) that the provision of an alternative right of way is not required.'*

2.4 Given that Network Rail is seeking as part of its proposals to close the Peckfield Level Crossing to extinguish a public right of way over the railway, in doing so the Secretary of State must be satisfied that there is an alternative right of way that is being proposed as part of the Scheme.

2.5 This addendum seeks to address:

2.5.1 the recent updates to the Highway Code and the relevant safety implications of this to the proposed closure and subsequent diversion of Peckfield Level Crossing;

2.5.2 safety concerns raised by the proposed access route to the car park of the recreation ground and the nearby residential cottages as a result of Network Rail's proposals being:

- (a) conflicts between use of the access track between pedestrians, horse riders and vehicles; and
- (b) issues of a lack of proposed lighting on the same access track, and

2.5.3 whether Network Rail, in the Council's view, has satisfied the test in section 5(6) of the Act.

2.6 The Council's position is set out in the following paragraphs.

3. THE HIGHWAY CODE

3.1 Background

3.1.1 The Highway Code is made up of a series of rules that are to be complied with by users of the highway in England, Scotland and Wales. Many of the rules in the Highway Code are legal requirements, stemming from legislation passed by Parliament concerning the use of highways, and the breach of which will amount to an offence. The remainder of the Highway Code is made up of guidance that is to be complied with by all users of the highway.

3.1.2 Even though not all the rules in the Code are legal requirements, and only constitute guidance, breaches of the Highway Code may still be used as evidence in any court proceedings under various Traffic Acts to establish liability.

3.1.3 The latest version of the Highway Code is dated September 2023. This update was made after the submission of the application for the Scheme.

3.1.4 One of the updates to the Highway Code that the Council is concerned with relates specifically to Rule 215. This Rule states:

"Horse riders and horse-drawn vehicles. *Be particularly careful of horse riders and horse-drawn vehicles especially when approaching, overtaking, passing or moving away. Always pass wide and slowly. When you see a horse on a road, you should slow down to a maximum of 10 mph. Be patient, do not sound your horn or rev your engine. When safe to do so, pass wide and slow, allowing at least 2 metres of space.*

Feral or semi feral ponies found in areas such as the New Forest, Exmoor and Dartmoor require the same consideration as ridden horses when approaching or passing.

Horse riders are often children, so take extra care and remember riders may ride in double file when escorting a young or inexperienced horse or rider. Look out for horse riders' and horse drivers' signals and heed a request to slow down or stop. Take great care and treat all horses as a potential hazard; they can be unpredictable, despite the efforts of their rider/driver. Remember there are three brains at work when you pass a horse; the rider's, the driver's and the horse's. Do not forget horses are flight animals and can move incredibly quickly if startled."

3.1.5 It is currently proposed by Network Rail that the alternative bridleway public right of way (**PROW**) route to be used following their proposed closure of the Peckfield Level Crossing, will require bridleway users, such as horse riders, to use the carriageway on Pit Lane and Great North Road as part of an alternative route.

3.1.6 This alternative route would include crossing under the railway bridge on Great North Road until the access to the Micklefield Recreation Ground, where it will then proceed along the access track in a westerly direction, along the boundary of the recreation ground car park, and following the railway line boundary to join the existing bridleway PROW on Lower Peckfield Lane.

3.1.7 The proposals include a route under the railway line on Great North Road, under an existing tunnel. The tunnel itself is narrow, unlit and would not leave sufficient room for both horses and cars to safely use the highway in accordance with Rule 215.

3.1.8 In addition, the heightened traffic noise created by, and the enclosed, narrow nature of the crossing under the railway bridge creates an unsafe environment for horses,

horseriders, especially younger horseriders, and consequently any other bridleway users using the crossing.

- 3.1.9 As such the current diversion proposed by NR would make it difficult for bridleway users to use the crossing under the railway bridge in accordance with the Highway Code and presents numerous safety concerns.
- 3.1.10 This should be considered in alongside the Council's previous comments at paragraph 8.1.6(c)(ii) of the Statement of Case, in which the Council highlighted the likelihood of paddocks and stables arising, as "infill" proposals around new and existing developments. An increase in horseriders in the area can only increase the number of potential interactions between the different users of the highway and the crossing at Great North Road will be a particular pinch point and higher risk area.
- 3.1.11 The safety concerns presented by the proposed diversion, and challenges it presents for compliance with the Highway Code should be a material consideration for the Inspector when considering Network Rail's Application.
- 3.1.12 The Council submits that the current proposed diversion under the railway bridge is not suitable or safe for bridleway users and has the potential to put users of the highway in breach of the Highway Code.

4. ACCESS TRACK AT MICKELFIELD RECREATION GROUND AND LIGHTING ISSUES

4.1 Background

- 4.1.1 As is set out in paragraph 3.2.2 above, the proposals for the alternative route of the bridleway PROW will include use of the access track that provides access to the Mickelfield Recreation Ground (**MRG**) car park, as well as the cottages sited on the north side of the railway line in this location.
- 4.1.2 Network Rail has confirmed that it will not be taking any additional land for the access route to the car park into the MRG, nor does it have any proposals to upgrade either the existing track or provide any additional street furniture to facilitate the use of the access track by pedestrians, bridleway users or vehicles as part of the Scheme.

4.2 Concerns

- 4.2.1 The Council has serious safety concerns with the proposals by Network Rail in this area.
- 4.2.2 Specifically, the route that is being proposed for diversion of the bridleway PROW will put pedestrians, horse riders and other bridleway users in direct conflict with vehicles that also use the access track to the MRG and the residential cottages nearby.

- 4.2.3 In addition to the above, the Scheme does not include any proposed works in this area to upgrade the condition of the access track, nor to provide any form of separation between pedestrians/bridleway users (including pedal cyclists) and vehicles. For example, new bridleways are required to be provided to the Council's satisfaction as normally a Council would take on maintenance responsibility once an order is made, confirmed and implemented. The Council usually requires that a bridleway has a hard carboniferous limestone surface, with a width of three metres within a five metre corridor. In addition the Council understands that the British Horse Society also recommend suitable waiting areas at road junctions which have not been provided as part of the Scheme. Similarly there are no proposals to include any form of lighting in the area to address any safety concerns..
- 4.2.4 The Council, as Highway Authority, is concerned that the consequences of the proposals of the Scheme in this area have not been adequately considered by Network Rail. Whilst the Council appreciates that there are limitations with the level of work that can be undertaken by Network Rail in this area as it is considered to be public open space (**POS**), this is not sufficient justification to provide an inadequate alternative to the extinguishment of a public right of way.
- 4.2.5 As Highway Authority, the Council is responsible for ensuring the safe use of the highway in its area and from a safety perspective the Council submits that Network Rail's proposed use of the access route to the MRG car park is not safe due to the potential direct conflict of bridleway users using the route at the same time as vehicles, which has not been mitigated against.

5. WHILST THE COUNCIL AND NETWORK RAIL HAS BEEN IN DISCUSSIONS IN RELATION TO THE PROPOSALS AT THE PECKFIELD LEVEL CROSSING, AGREEMENT HAS NOT BEEN REACHED AS TO AN ACCEPTABLE ALTERNATIVE TO THE CLOSURE OF PECKFIELD LEVEL CROSSING. TEST IN SECTION 5(6) OF THE ACT

- 5.1 Section 5(6) of the Transport and Works Act 1992 (**Act**) provides that:

- 5.1.1 'An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied—

- (a) that an alternative right of way has been or will be provided, or
- (b) that the provision of an alternative right of way is not required.'

- 5.2 In considering an "alternative" route, guidance¹ states that that the Secretary of State in making a decision "*would wish to be satisfied that it will be a convenient and suitable replacement for existing users*".

¹ Guide to Transport and Works Act Procedures, DfT (2006) Annex 2 Commentary on Schedule 1 to the TWA Para 4

- 5.3 The Council's position is that the current proposals by Network Rail would not constitute a "convenient and suitable" alternative to the existing bridleway PROW for the reasons set out in the Statement of Case and in this addendum, and as such would not meet the test in section 5(6) of the Act.

6. CONCLUSION

- 6.1 This addendum to the Statement of Case sets out the Council's position in relation to the closure of the Peckfield Level Crossing. The Council would welcome further discussions with Network Rail in relation to its concerns as set out in the Statement of Case and this addendum.