

6 February 2024

TRANSPORT AND WORKS ACT 1992: PROPOSED NETWORK RAIL  
(LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER

PROOF OF EVIDENCE  
OF

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LEEDS CITY COUNCIL

## **SUMMARY PROOF**

The evidence provided in this proof covers the below issues in support of the objection being made to the scheme, and specifically in relation to the closure of the Peckfield Level Crossing.

Public Bridleway Micklefield No. 8 provides the public with a right of way on foot, horseback and on pedal cycle, including where Bridleway No. 8 crosses the railway at the Peckfield Level Crossing. Such use can be for any legal purpose, such as for leisure or utilitarian reasons. As a public right of way recorded on the Definitive Map Bridleway No.8 legally subsists and there is no suggestion that it is not needed for public use.

The proposed closure of Peckfield level crossing in the draft Transport and Works Act Order (TWAO) under consideration would, if made, have the effect of extinguishing a section of Public Bridleway Micklefield No.8 (which is also known as Pit Lane track) and thus removing this from the Definitive Map and Statement for the Leeds Metropolitan District and dividing this public bridleway into two halves. Network Rail are proposing that an alternative right of way is provided via publicly maintainable vehicular highways and through the Micklefield Recreation Ground (MRG) which will not provide a safe traffic free route for bridleway users.

Additionally, the needs of users with regard to the Equality Act 2010 need to be fully considered and catered for in accordance with access & inclusion for people with protected characteristics. I understand that no equality impact assessment (EIA) has been submitted for review in respect of this proposed level crossing closure. Safe ingress and egress onto and from the Great North Road is of paramount importance for users of the proposed alternative right of way through the MRG. There is potential to cause a hazard for bridleway users and motorists alike when manoeuvring to negotiate entering and leaving the MRG other affected road junctions. British Horse Society (BHS) guidance should be followed to mitigate risk.

The effect of closing the Peckfield Level Crossing will be to compel the public to use connecting adopted highways thus adding substantial distance and time to their journey to reach community facilities and the permanent closure of the level crossing is likely to discourage use as the bridleway will cease to be a through route. Safety considerations in this regard are examined further in the associated documentation provided by John Booth, Principal Engineer in Transport Development Services at Leeds City Council (LCC) and the legal tests to be considered by the Secretary of State are considered further in the legal submissions made by LCC.

The proposed alternative right of way through the MRG has been analysed and is considered to be unsuitable and inconvenient for the following reasons:

- The recreation ground has a number of mature trees present within a tree root protection zone which introduces a risk of deadwood falling onto the public using the alternative highway and of damage to tree roots and other ecological impacts.
- There is currently no lighting and it is unclear if there would be any lighting included within the proposals as the information has not been shared by Network Rail.
- Whether there are any protected species inhabiting the scrub land adjacent to the recreation ground and in the recreation ground itself.
- The proposed route would run immediately adjacent to football and rugby pitches, which may pose a risk to users and players, together with spectators when matches are being played. This is especially the case in relation to potential bridleway users such as horse riders, if the route were to be provided as a bridleway.
- The proposed route would utilise a car park access road which is potentially more dangerous and hazardous for walkers and other bridleway users, who regardless of what is dedicated will inevitably attempt to use the route. The same access road includes height restrictions for vehicles which would also restrict horse riders from use of the same and would not be in compliance with BHS standards. Photographs of the proposed alternative route are attached to this proof of evidence at **BB 5**.
- It is also not clear who would maintain the footpath / bridleway as the MRG is not LCC owned land. In addition, the proposals do not show the alternative right of way being built to an acceptable standard that could enable LCC to assume responsibility for its maintenance as a recorded public path.
- If the new right of way to be provided through the MRG is to be created as a public bridleway it will not provide a suitable or convenient right of way unless an appropriate width is dedicated for users to pass each other conveniently and safely. The same applies to the creation of public footpath but crucially a public footpath will not provide public rights for horse riders and pedal cyclists as provided by the Public Bridleway.

The effect on the local community of the loss the railway crossing and associated connectivity within the public rights of way network, particularly when the population locally is rising due to new housing development is considered a relevant factor. Local representatives, including the Leeds Local Access Forum, have expressed opposition to the proposals which reinforces this contention.

Earlier proposals from Network Rail for PROW connectivity may have been discounted but provide background as to wider concerns and relevant standards of bridleway provision.

Evidence and information provided regarding a previous Public Path Diversion Order case cited consideration of potential future usage as a supporting factor in the published decision report and provides a germane argument that such factors should be considered.

Safety concerns regarding the use of the alternative route where it utilises the adopted highway and railway underpass not forming part of the recorded public rights of way network will be considered by colleagues in LCC Transport and Development Services together with consideration of likely adverse effects on users with protected characteristics.

It is clear that there are significant negative impacts of the Network Rail proposals for users of this public bridleway, taking into account the points raised in this proof. The level crossing currently offers a public a right of way on foot, horse-back and by pedal cycle and the crossing closure will sever the bridleway. A footpath through the recreation ground would only serve walkers with no public rights for equestrians and cyclists. Also, it would not meet LCC's Rights of Way Improvement Plan which is an approved strategic plan for the improvement and long term development of the public rights of way network in Leeds and seeks to join up a fragmented public bridleway network, amongst other stated objectives, and the proposals under consideration act against this aim and are in conflict with wider LCC aspirations for sustainable travel.

The evidence brought before this inquiry provides a compelling case that the proposed alternative right of way is neither suitable or convenient, particularly in the light of the ambiguity concerning what is to be dedicated and how, and it may prove to be excessive, unreasonable and more inconvenient for users of the public right of way network. Additionally, there is doubt as to whether the needs of those with protected characteristics or the local community have been properly considered in the draft TWAO application.

The evidence presented above seeks to secure a fair and efficient design and allocation of structural transport infrastructure assets, pursuant to the public interest. It supports the contention that the objection made by LCC is relevant and reasonable and should be taken into consideration by the Secretary of State.

It is LCC's contention that, when considered with the circumstances in the Essex case<sup>1</sup>, these factors are sufficient to show that the proposed alternative right of way is not suitable or convenient and therefore fails the legal tests regardless of any mitigation measures that may be offered to support the closure of the level crossing to render the proposals sufficiently acceptable to meet such tests. In order for the Council to consider withdrawing its objection such mitigations concerning the crossing closure would need to outweigh the significant safety concerns relating

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<sup>1</sup> Considered by the Inspector and the Secretary of State in the recent decision (16 March 2022) which confirmed (with modifications) The Network Rail (Essex and Others Level Crossing Reduction) Order 2022

to the alternative right of way. Consequently, a bridleway bridge should be provided as the alternative right of way if the Secretary of State decides that the proposed alternative right of way is not suitable and convenient.

On the basis of my evidence, and the other evidence presented to the Inquiry on behalf of Leeds City Council, I respectfully ask the Inspector to recommend to the Secretary of State that the TRANSPORT AND WORKS ACT 1992: PROPOSED NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER be modified in this case to include the provision of a bridleway bridge instead of Network Rail's existing proposals for the Peckfield Level Crossing.

## **1. INTRODUCTION**

- 1.1 My name is Robert Buckenham. I have been involved in consultations and discussions with Network Rail regarding the draft Network Rail (Leeds to Micklefield Enhancements) Order both prior to its submission to the Secretary of State for Transport and during ongoing discussions with Leeds City Council officers. I have been asked to prepare this Proof of Evidence in relation to the proposed extinguishment of a section of Public Bridleway Micklefield No. 8 where it crosses the Trans Pennine Railway at Micklefield, known as the Peckfield Level Crossing, and to address the effects on the public of using the alternative proposed route and to examine the benefits of a suitable bridge to replace the level crossing in connection with the Council's Statement of Case.
- 1.2 All cross references to appendices in this proof are referenced by my initials (for example BB1, BB2 etc).
- 1.3 This Proof of Evidence needs to be read in conjunction with associated documentation provided by John Booth, Principal Engineer in Transport Development Services at Leeds City Council (LCC) and the legal submissions made by LCC.

## **2. QUALIFICATIONS AND EXPERIENCE**

- 2.1 My name is Robert Buckenham. I hold an BA honours degree in Town and Country Planning from Leeds Polytechnic, awarded in 1989. I am a member of the Institution of Public Rights of Way Officers. I have 30 years of experience in Public Rights of Way law and practice.
- 2.2 I was first employed by Leeds City Council in December 1993 as a Definitive Map Officer and I have been the City Council's Senior Definitive Map Officer and Principal Definitive Map Officer, as well as Assistant Countryside Access Manager. Since 2010 I have been the Public Rights of Way Manager.
- 2.3 I am experienced in the management of Local Authority assets with regard to public rights of way recorded on the Definitive Map and Statement and procedures for making Modification Orders affecting the Definitive Map by virtue of both evidential and legal events, in particular Public Path Orders. The Public Rights of Way Section manages and maintains the recorded public rights of

way network and manages and reviews the Definitive Map and Statement, which is the Council's legal record of public rights of way.

2.4 I have represented LCC at Local Public Inquires in connection with the above procedures.

### **3. SCOPE OF EVIDENCE**

3.1 This Proof of Evidence focuses on the impact on the Council's Public Rights of Way network of the proposed closure of the Peckfield Level Crossing, which carries Micklefield Public Bridleway No.8 and the proposed alternative and the additional liabilities and risks associated with the efficient, safe, and sustainable management of the assets in the long term. It will also seek to address issues around the design of structural elements of the Transpennine Route Upgrade (**TRU**) proposals, which the Council has a statutory duty to ensure are safe for use and fit for purpose.

3.2 As part of the Leeds to Micklefield section of the TRU Network Rail are proposing to close Peckfield Level Crossing, which is crossed by a Public Right of Way recorded on the Definitive Map and Statement for the Leeds Metropolitan District as Public Bridleway Micklefield No. 8 and provides a public route for walkers, horse riders and pedal cyclists.

3.3 As well as carrying a Public Bridleway No.8, the lane on which this bridleway subsists, known as Pit Lane, is used to reach private property along the way. It is consequently probable that private vehicular rights co-exist with the public bridleway but no recorded public vehicular rights subsist.

3.4 The proposed closure of Peckfield Level Crossing and the severing of Public Bridleway Micklefield No. 8 would have an impact on the connectivity of the public rights of way network which would adversely affect local users in Micklefield and the wider public, There is a clear requirement to adequately address the needs of users with regard to the proposed alternative. The proposals have attracted opposition from local elected representatives, together with the Leeds Local Access Forum.

3.5 When looking at whether a public right of way can be extinguished under a TWAO, the test that the Secretary of State must consider is set out in section 5(6) of the Transport and Works Act 1992 as follows:

*5. (6) 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.*

3.6 The question of whether the alternative proposed will provide a suitable and convenient right of way between either end of Pit Lane track, which carries Bridleway No. 8 will be examined in Section 4 of this Proof of Evidence.

- 3.7 The proposed alternative route would utilise adopted sections of highway, namely, Pit Lane, where it is adopted, leading to Enterprise Court, south of the railway and running parallel to it, and the Great North Road, including where the road subsists in a tunnel under the railway. As adopted highways these roads are already available for public use.
- 3.8 With regard to the Micklefield Recreation Ground (**MRG**) where an alternative route is proposed to be created there are disadvantages that have not been properly considered by Network Rail. These are;
- 3.8.1 in relation to the proposed route and accessibility,
- 3.8.2 what the proposed public right of way is to be dedicated as and
- 3.8.3 how it will be safely provided and maintained.
- 3.9 The distance of the public right of way to be extinguished compared to that proposed to be provided as an alternative must be considered by the Secretary of State and will be considered as will the implications of this.
- 3.10 The loss of the railway crossing and connectivity within the public rights of way network, and the effect on the local community, particularly with reference to new housing development, will also be considered in Section 4 of this Proof of Evidence. In this regard the relevance of LCC's Rights of Way Improvement Plan will also be considered.
- 3.11 In earlier consultations by Network Rail in 2018 as part of proposals for a diversion under Section 119A of the Highways Act 1980 consideration was given to a diversion of Bridleway No. 8 to the Ridge Road (A656) parallel to the railway with a connection to the south utilising a linking Public Footpath.
- 3.12 The Council is seeking a bridleway bridge over the railway line to replace the existing level crossing. Network Rail have dismissed a bridge as an option on the following grounds:
- 3.12.1 Landscape and visual impacts and the extent of Grade 2 agricultural land take it would require,
- 3.12.2 that NR considers that there is an appropriate alternative,
- 3.12.3 the impact on adjoining properties,
- 3.12.4 lack of current use (not taking in account the cumulative impact of future proposed residential and commercial development nearby that would generate increased use.
- 3.13 Network Rail have stated that the cost of building a bridge is not within the TRU budget, which is estimated could amount to approximately £6-8 million.

- 3.14 Lastly it is contended by Network Rail that potential future usage cannot be taken into account with regard to the TWAO and the alternative proposed right of way under consideration and that LCC should have secured funding through the planning process to bring about better bridleway facilities. This point will also be considered in main issues below.

#### 4. ISSUES

##### 4.1 Issue 1: Current Status and Location and use of Public Bridleway Micklefield No. 8

4.1.1 Public Bridleway Micklefield No. 8 is described in the Definitive Statement, that accompanies the Definitive Map, as having a length of 1609 metres and a width of 2.1 metres with the first section of 370 metres being described as metalled and the remainder described as having an earth surface. To the south it connects to Selby Road via Public Bridleway Ledston No. 1 which is 290 metres long and has a width of 2.4 metres and is described as having an ashed surface type. A plan taken from the Council's Arc GIS digitised mapping for the area shows Bridleway 8 and 1 in solid line and cross bars and is labelled **BB 1**. This is taken from digitised data based on the West Yorkshire Metropolitan County Council Definitive Map and Statement, covering Leeds, relevant date 30 April 1985.

4.1.2 The track that carries Bridleway No. 8 and its southern continuation to Selby Road is shown on Ordnance Survey mapping from the mid nineteenth century and the route was shown as a bridleway on the Draft Map and Statement published by West Riding County Council (WRCC), with a relevant date of 22 September 1952. As a recorded public bridleway, it provides the public with a right of way on foot, horseback and on pedal cycle, including where it crosses the railway at the Peckfield Level Crossing. Such use can be for any legal purpose, such as for leisure, pleasure or utilitarian reasons.

4.1.3 Surveys provided by Network Rail in their Alternative Options Evaluation Summary (dated 31 March 2023) undertaken between 2014 and 2023 show that the Peckfield Crossing is well used by a variety of users. The maximum daily use consistently occurs at the weekend with up to 126 users being surveyed in 2016.

4.1.4 An additional public consultation on the closure of the crossing in 2022 showed that:

The largest used purpose (48%) was for leisure reasons:

- 73% of crossing were on foot.
- 18% of crossings were by bicycle.

- 2% of crossing were by wheelchair or mobility scooter; and
- 3% crossed with a horse.

4.1.5 This demonstrates that the crossing is well used by all categories of bridleway user who, if the crossing was to be closed and public rights extinguished, would have to use adopted sections of Pit Lane and the Great North Road.

4.1.6 As a public right of way recorded on the Definitive Map, Bridleway No.8 legally subsists and there is no suggestion that it is not needed for public use.

4.1.7 The recorded width of Bridleway No. 8 provides evidence of a minimum width for public bridleway rights and the route may be physically wider on the ground. Likewise, the surface may have changed from the recorded description and the northern section of Bridleway 8 has some element of metalled surfacing, as shown in photographs at **BB 2**.

4.1.8 To the south of the railway line Bridleway 8 co-exists with the end of the adopted section of Pit Lane near Enterprise Court for approximately 80 metres. Photographs of the northern and southern approaches to the gates leading to the level crossing in this location are attached as **BB 3**.

## **4.2 Issue 2: Effect of TWAO on Public Bridleway Micklefield No. 8 and the Proposed Alternative**

4.2.1 The draft TWAO under consideration would, if made, have the effect of extinguishing a section of Public Bridleway Micklefield No.8 (which is also known as Pit Lane track) and thus removing this from the Definitive Map and Statement for the Leeds Metropolitan District and dividing this public bridleway into two halves. This is discussed in further detail at paragraphs 4.2.15 to 4.2.18 below.

4.2.2 Wider issues concerning the utilisation and safety of the adopted highway network as an alternative route for bridleway users will be addressed by colleagues in LCC Highways and Transportation as part of their evidence. Nevertheless, use of the main road by bridleways users as part of the scheme, particularly in the railway bridge road underpass, raises safety concerns that need to be considered as part of the feasibility of safe pedestrian / horse / cycle use of the road and for points of ingress and egress onto it and travelling along it.

4.2.3 The Draft TWAO under consideration would, if confirmed, have the effect of severing Public Bridleway Micklefield No.8 with the proposed alternative right of way being via

publicly maintainable vehicular highways, recorded on the List of Streets, and through the Micklefield Recreation Ground (MRG).

- 4.2.4 The public have right of way on both Pit Lane and on the Great North Road, although these by their nature are not traffic free routes and the public would have no option but to use these highways, whether on foot, horse back and on pedal cycle, if the public right of way over the Peckfield Crossing is extinguished and the Secretary of State accepts the alternative proposed by Network Rail.
- 4.2.5 The proposed alternative right of way through the MRG would run easterly from Bridleway No. 8, immediately adjacent to football and rugby pitches, to then utilise a car park access road, to reach Great North Road. It is currently available for the public to use, although Micklefield Parish Council are believed to object to the proposal. It does not currently carry a recorded public right of way but as a site with ongoing public access to reach sporting and community facilities it is effectively available for public use at all times. There is no overall gain or benefit for the public in the provision of an alternative right of way through the recreation ground given its current availability if the level crossing is closed. The proposed route is not claimed as a public right of way either and if LCC investigated its status as an evidential matter in connection with an application to modify the Definitive Map this would be a separate matter.
- 4.2.6 As set out in the Council's Statement of Case, the proposed diversion of the current bridleway is not considered to be suitable for bridleway users. In addition, Network Rail's proposal to create a footpath through the MRG could bring about the risk of deadwood falling on users of the footpath as the area is covered in flora and mature trees. The proposed diversion also incorporates a tree protection zone which has the potential to cause damage. The proposed route would run immediately adjacent to football and rugby pitches, which may pose a risk to users and players, together with spectators when matches are being played, especially in the event that the public right of way is categorised as bridleway and is used by horse riders. The proposed route would utilise a car park access road which is potentially more dangerous and hazardous for walkers and other bridleway users, who regardless of what is dedicated will inevitably attempt to use the route. In addition, the access road is not suitable for some bridleway users as it includes a height restriction. 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. Current use by the public occurs by virtue of the open nature of the site but an application for a Definitive Map Modification Order in connection with the proposed alternative route has not been made to LCC and the owners views on this are unknown. In addition, Network Rail's proposals

do not show the footpath being built to an acceptable standard that could enable LCC's to assume responsibility for its maintenance as a recorded public path (and Network Rail has yet to provide information as to the standard the route will be built). These issues would also apply in the event that the same route was given bridleway status under the proposed Order.

- 4.2.7 The proposal to take an alternative right of way through the MRG will also bring the public into conflict with users of motorised vehicles, off the public highway, as part of the proposed route is utilised by drivers accessing car parking on site. This could create an unsafe situation and confusion for both those using the MRG as a through route and those simply visiting the site for leisure and recreation. There is also a vehicle barrier present set at a height of 2.1 metres which may constitute an obstruction of the right of way to be created if not removed or modified, with adequate spacing, for the convenience of users. The barrier is designed for use by vehicles with no segregated access for pedestrians or those using mobility assistance. It would be too low for bridleway users as horse riders need a minimum height of 3.4 metres. This figure is taken from British Horse Society (BHS) guidance concerning width, area and height for riders which states, '*where underpasses are constructed to enable equestrians to cross below a road or railway, the ideal recommended height is more than 3.4 metres*'. A copy of this guidance is attached at **BB 4**. Additionally, gates or gaps on public bridleways are required to be a minimum of 1.5 metres wide but can be narrower on public footpaths. Department of Transport guidance (DoT LTN 1/20) advises, at section 8.3 that for routes subject to rights for pedal cyclists, which would include public bridleways, a 1.5 metre spacing rather than access controls should be provided. Every effort should be made to ensure that whatever is installed is the least restrictive whilst allowing for safe use and manoeuvring.
- 4.2.8 Photographs of the MRG and the proposed alternative right of way through it are attached as **BB 5**.
- 4.2.9 There is ambiguity regarding the public status and extent of the new right of way to be created through the MRG which requires clarification by Network Rail. This is important as the route to be created will need to be added to the Definitive Map and Statement as a consequence of the proposed granting of the Transport and Works Act Order and will have a defined legal status. Public Rights of Way recorded on the Definitive Map and Statement are in four categories:
- Public Footpath, giving the public a right of way on foot;
  - Public Bridleway, giving the public a right of way on foot, horse-back and pedal cycle.

- Restricted Byways which give the public on right of way on foot, horse-back, pedal cycle and with using non-motorised vehicles
- Public Byways which give the public on right of way on foot, horse-back, pedal cycle, with using non-motorised vehicles and with motorised vehicles.

4.2.10 If the new right of way to be created through the MRG is only to the status of a public footpath it will not provide a suitable alternative or convenient right of way for current bridleway users. Clarification is still required from Network Rail as to the dimensions of the route to be created and any limitations (gates etc), as referred to in paragraph 4.2.7 above, that the rights of the public may be subject to as these details are required for the Definitive Statement.

4.2.11 If the new right of way to be created through the MRG is to be created as a public bridleway it will not provide a suitable or convenient right of way until suitable physical provision is made and an appropriate width is dedicated. This is to allow for walkers, horse riders and pedal cyclists to pass each other comfortably and safely. Any proposed new routes would need to be provided to a minimum width of two metres for footpaths and five metres (three metre surface with a metre verge on either side) for bridleways. In this connection the Rights of Way Review Committee Practice Guidance Note 6: Planning and public rights of way, states in Part 4 - Layout and design on site - at Paragraph 8 *'Where ways are not enclosed, footpaths should be of a minimum width of 2 metres and bridleways and byways 3.5 metres. If the way is to be enclosed by fencing, hedging or buildings then footpaths should be of a minimum width of 4 metres and bridleways and byways 6 metres'*. A copy of this document is attached to this Proof as **BB 6**. Any new diverted / created routes will need to be provided to a fit condition to become public bridleways / footpaths but once dedicated need to be signposted and waymarked to meet the council's statutory responsibilities and aims of the Rights of Way Improvement Plan.

4.2.12 Furthermore, the needs of users with regard to the Equality Act 2010 need to be fully considered and catered for. In this connection the new right of way should be provided with facilities in accordance with access & inclusion for people with protected characteristics, such as persons using mobility assistance wheelchairs and those who are partially sighted. The new right of way should be of a sufficient width with passing places, street lighting, robust all weather even surfaces which are appropriate for either status of the way to be dedicated. I am not aware that Network Rail has considered such impacts on those with protected characteristics through an EIA and would expect, as a minimum, that this would be completed.

- 4.2.13 Safe ingress and egress onto and from the Great North Road is of paramount importance for users of the proposed right of way here. The proposed junction is already utilised by drivers visiting the MRG and where the proposed right of way is to join the main road is in a location opposite another road junction and where the vehicular access road to the existing railway station is present. This has the potential to cause a hazard for walkers and bridleway users and motorists alike when manoeuvring to negotiate entering and leaving the MRG other affected road junctions. My Colleague John Booth will explore these issues in more detail as advised above.
- 4.2.14 Bridleways users in particular would need to join or leave the carriageway as part of the scheme. This raises safety concerns that need to be considered as part of the feasibility of safe pedestrian / horse / cycle use of the road and for points off it and travelling along it. In this connection the BHS recommend that suitable waiting areas (for a horse waiting to cross / join a road: 4 metre x 4 metre is advised) are provided where public bridleways meet the adopted road. BHS guidance, entitled Road Crossings for Equestrians, with regard to joining a road advises that: *'Bridleways or byways ending at a main road should not have a gate within several metres of the road edge, partly to ensure there is space well off the road for equestrians to wait, and partly so that equestrians are not negotiating a gate while at risk from motor traffic close by. (A gate is a difficult and hazardous manoeuvre for a rider and for a driver requires one person to be on foot.)'* A copy of this guidance is attached at **BB 7** and is also referred to in **BB 4** on page 3.
- 4.2.15 The effect of closing the Peckfield Level Crossing will be to compel the public to use the connecting adopted highways. In this regard, Network Rail prepared an Alternative Options Evaluation Summary which concluded that their Option 1 was preferred which consists of diverting the route along Pit Lane (south of the railway) to Great North Road, then along Great North Road to its junction with Pit Lane. My Colleague John Booth, LCC Highways and Transportation will explore these issues in more detail as advised above.
- 4.2.16 Travelling northwards from south of the railway, this is approximately 880 metres from the proposed southern terminus at the adopted section of Pit Lane to the point where the northern part of Bridleway 8 joins to the Great North Road. The distance to return to the northern side of the level crossing on Bridleway 8 is approximately 590 metres.
- 4.2.17 The alternative right of way through the MRG is approximately 400 metres in length, which when added to the extent of adopted road included in the alternative right of way gives a combined distance of 900 metres as the shortest distance.
- 4.2.18 Calculations based on the Chartered Institution of Highways and Transportation publication "Planning for Walking" (April 2015) indicate that the proposed alternative

route will add 3 minutes and 22 seconds to journey times, which represents a significant increase in journey time of 43%. Again, my colleague John Booth refers to additional distance and journey times in his Proof of Evidence at 4.2.2.

- 4.2.19 The closure of the level crossing is likely to discourage public use as the bridleway will cease to be a through route as it will be permanently divided with only use of the existing adopted road, and possibly the MRG, as an alternative. There is consequently potentially likely that the northern section of Bridleway No. 8 will become redundant for public use as it will serve no useful purpose for the general public.

### **4.3 Issue 3: Test to be considered in Extinguishing a public right of way under TWAO**

- 4.3.1 When looking at whether a public right of way can be extinguished under a TWAO, the test that the Secretary of State is to consider is set out in section 5(6) of the Transport and Works Act 1992 as follows:

*5. (6) 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.*

- 4.3.2 When looking at what is considered an "alternative" guidance<sup>2</sup> suggests that the main point to consider is whether the alternative route is "suitable and convenient".

- 4.3.3 The issue to be considered by the Secretary of State is whether the proposed alternative right of way has been or will be provided and that it is suitable and convenient. LCC's position is that the alternative routes suggested by Network Rail are not suitable and convenient, and that the only suitable and convenient alternative would be the provision of a bridleway bridge.

- 4.3.4 When looking at what is considered an "alternative" guidance suggests that the main point to consider is whether the alternative route is "suitable and convenient". However, there is no known set description in case law as to what length a "longer" route would be still considered acceptable. This is considered in more detail in LCC's legal submissions.

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

- 4.3.5 In addition, in a recent case in Essex where Network Rail proposed the closure of several level crossings, the Secretary of State cited that *“if an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users”*
- 4.3.6 In order to determine whether proposed level crossing closures which sought to sever or divert existing PROWS were appropriate, the following points were considered by the Secretary of State:
- Whether the alternative is excessive or unreasonable?
  - Whether the proposed alternative is longer and more inconvenient for users?
  - Whether the current route is used mainly for recreation?
  - Whether safety concerns of the alternative exist and what is an unacceptable level of risk. (As advised John Booth in LCC Highways will be examining these issues as part of his evidence).
  - Whether the alternative is likely to affect those users with protected characteristics?
  - Whether there are any modifications that can be made ?
- 4.3.7 The points above are covered in more detail in LCC's legal submissions on the closure of the Peckfield Level Crossing.
- 4.3.8 As stated above, the level crossing currently offers a public a right of way on foot, horse-back and by pedal cycle and is subject to such use by all users, including those using mobility assistance, as cited at paragraph 4.1.4 above. Closure of the crossing will sever the bridleway. The proposed footpath through the recreation ground will only serve walkers with no rights for equestrians and cyclists. Also, it would not meet the strategic objectives of the Rights of Way Improvement Plan which sets out areas for improvement and identifies priorities for action to deliver the long-term development of the public rights of way network in Leeds.
- 4.3.9 The proposed alternative right of way through the MRG has been examined in section 4.2 above. As a result of the findings in this regard it is the Council's contention that these factors are sufficient to show that the proposed alternative right of way is not suitable or convenient in this case.

#### **4.4 Issue 4: Effect on PROW connectivity and Local Community factors**

- 4.4.1 Micklefield is a very long established settlement and Bridleway No. 8 is situated near its centre. The effect on the local community of the loss of the railway crossing and

associated loss of connectivity within the public rights of way network is likely to be significant.

- 4.4.2 The population of Micklefield is rising due to significant new housing developments on both sides of the Great North Road and south of Pit Lane which lie in close proximity to Peckfield Crossing. This is likely to lead to greater demand for traffic free off road routes provided by local public rights of way and likely to increase vehicle movements and frequency on the adopted highway which doesn't appear to have been taken into account by Network Rail.
- 4.4.3 Bridleway No. 8 provides a traffic free route to Micklefield Primary School at its northern end and to other public bridleways in Garforth, lying approximately 400 metres west along Selby Road, which is reached via Ledston Bridleway No. 1.
- 4.4.4 HS2 Technical standard for Public Rights of Way document Reference no.: HS2-HS2-HW-STD-000-000002 states the following at paragraph 4.1.2: *'Some public rights of way provide important connections between residential areas and local destinations such as health and social services, retail facilities, schools and educational facilities, community and leisure centres and faith centres. People who use public rights of way to access local destinations may be more sensitive to any increased distances associated with realigned or diverted public rights of way. Users of these public rights way could form a broad cross-section of the community and may include people with reduced mobility or people with push-chairs or trolleys'*. A copy of this is attached as **BB 8**.
- 4.4.5 The Leeds Local Access Forum (LLAF) has objected to the proposals. The LLAF is a statutory advisory body which was established under the provisions of the Countryside and Rights of Way Act 2000. Its main purpose is to advise the Council on making improvements to public access to make the countryside more accessible and enjoyable for open-air recreation in the Leeds Metropolitan District. In this context Local Access Forums are well-placed to help deliver improvement schemes to enhance the public rights of way network in Leeds.
- 4.4.6 The Public Rights of Way network provides an invaluable resource for local communities for activities that lend themselves to health and wellbeing, as well as being a practical and sustainable off road transportation system that is available free at the point of use. The Rights of Way network is a key element in the interconnected 'Green Infrastructure' of Leeds and its enhancement can provide 'added value' for local communities in providing better access for walkers, horse riders, pedal cyclists, off road drivers and those with specific mobility needs, who seek good quality and well way marked routes. As such the fragmentation of the network by the proposed TWAO is of great concern to the Council and to the local community.

4.4.7 In this regard the relevance of the City Council's Rights of Way Improvement Plan will also be considered. The Council has published a Rights of Way Improvement Plan (**RoWIP**), under the provisions of the Countryside and Rights of Way Act 2000, which is a strategic plan for the improvement and long term development of the public rights of way network in Leeds. Where relevant reference will be made to this document in main issues below. Other Council aspirations in connection with Vision Zero, Local Cycling and Walking Infrastructure Plans and sustainable Active travel are also relevant.

4.4.8 The RoWIP has the following in Statements of Action:

*8.2 Path improvements and signposting*

*PI13 We will seek to improve path surfaces & drainage but there will be a presumption against using Tarmac to re-surface bridleways.*

*PI14 In conjunction with landowners, we will seek to improve path furniture for all legitimate path users.*

*8.6 Missing links and developing the path network*

*ML3 We will seek to secure new funding to make paths more accessible for people with disabilities.*

*ML4 We will concentrate on creating new links to join up the fragmented bridleway network*

4.4.9 In this connection a new bridleway bridge would be in accordance with the Council's aims and objectives for public rights of way as stated in the RoWIP and would ensure that the public bridleway is protected and remains open at all times and accessible by all and will improve the safety of the crossing here.

4.4.10 Implementation of this scheme will also contribute towards the objectives of the Best Council Plan, West Yorkshire Transport Strategy 2040, Leeds Transport Strategy, Local Transport Plan, Climate Change Plan, Leeds Vision 2030 and the Leeds Health and Wellbeing Strategy which all encourage the development and improvement of facilities to promote walking and cycling, active travel, access to green space to improve physical and mental health and reduce pollution and noise.

#### **4.5 Issue 5: Earlier proposals from Network Rail for PROW connectivity**

4.5.1 Options including consideration and feasibility of a diversion alongside the railway, onto Roman Ridge Roman Road were discussed by interested parties previously in 2018. This would have diverted Bridleway No. 8 to the west to join to the Ridge Road (A656)

on the north side of the railway with a connection to the south of the railway utilising Public Footpath Micklefield No. 9, which would have needed to be upgraded. This would have been a longer route but was thought to have been possibly acceptable to horse riders and cyclists using the route for primarily recreational purposes.

4.5.2 At the time advice was provided by Council Rights of Way officers to the effect that any proposed new bridleway routes would need to be a minimum width of five metres (three metre crushed stone surface with a metre verge on either side).

4.5.3 The objection from the LLAF refers to these earlier proposals.

#### **4.6 Issue 6: Construction of a Bridleway Bridge**

4.6.1 The replacement of the bridleway level crossing at Whitehouse Farm with a ramped bridleway bridge, together with the creation of associated public bridleway access, is proposed in relation to Public Bridleways Austhorpe No. 9 and Barwick No. 10 as part of the TWAO.

4.6.2 It is consequently contended that the construction of a bridleway bridge could be considered further if the Secretary of State decides that the proposed alternative right of way is not suitable and convenient.

#### **4.7 Issue 7: Consideration of potential future usage**

4.7.1 It is contended by Network Rail that potential future usage cannot be taken into account with regard to the TWAO and the alternative proposed right of way under consideration. Network Rail has also stated that proposals need to be appropriate for the established current need, adding that if future developments come forward that drive different requirements for recreation/amenity or connectivity in the area, it should be those developments that are tasked with providing the corresponding improvement using local planning policies.

4.7.2 By way of comparison, Network Rail applied for the diversion by Order of Public Footpath Morley No. 37 in 2013 and funded and constructed a new railway footbridge in connection with this diversion. At the time the officer's report, dated 26 April 2013, referred to the fact that the level crossing was located on the Trans-Pennine Leeds to Manchester railway line, which as part an enhancement programme, would see an increase in the number of train services in coming years which would increase the risk to footpath users on a level crossing. The report also referred to associated development

plans in the surrounding area for commercial and residential developments likely to lead to a significant increase in footpath use on the crossing and an increased safety risk to members of the public at paragraph 2.6.

4.7.3 Advice was given that the diversion of the footpath from the level crossing onto a bridge over the railway line would remove pedestrians from the railway line and subsequently increase the safety of the public using the footpath and the railway line at paragraph 2.7.

4.7.4 Whilst this Order was made under the provisions of the Highways Act 1980 this case provides evidence that consideration was given to potential future usage as a supporting factor in the published officer's decision report and appears to provide a germane argument that such factors should be considered. A summary copy of the report from the time is attached as **BB 9**.

4.7.5 With regard to securing developer contributions via planning agreements in relation to residential development in the nearby area, negotiations in relation to approved development schemes were concluded prior to the publication of the draft TWAO. Additionally, LCC would need to demonstrate that any planning obligations would meet the legal tests to secure a sufficient individual contribution to fund a new bridleway bridge. This is covered further in LCC's legal submissions.

## **5. CONCLUSION**

5.1 It is the Council's contention in this case that the evidence brought before this inquiry provides a compelling case that the proposed alternative right of way is neither suitable or convenient, particularly in light of the ambiguity concerning what is to be dedicated and how it would be provided, and it may prove to be excessive, unreasonable and more inconvenient for users of the public right of way network. In terms of the impact on public safety it has not been shown that the alternative has any advantage over the existing situation whereas a new bridleway bridge would clearly offer a safer option. Additionally, there is doubt as to whether the needs of those with protected characteristics or the local community have been properly considered in the draft TWAO to extinguish the Peckfield level crossing carrying Public Bridleway Micklefield No. 8.

5.2 On the basis of my evidence, and the other evidence presented to the Inquiry on behalf of Leeds City Council, I respectfully ask the Inspector to recommend to the Secretary of State that the TRANSPORT AND WORKS ACT 1992: PROPOSED NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER be modified in this case to include the provision of a bridleway bridge instead of Network Rail's existing proposals for the Peckfield Level Crossing.

## **6. WITNESS DECLARATION**

6.1 I hereby declare as follows:

- 6.1.1 This proof of evidence includes all facts which I regard as being relevant to the opinions that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion.
- 6.1.2 I believe the facts that I have stated in this proof of evidence are true and that the opinions expressed are correct.
- 6.1.3 I understand my duty to the Inquiry to help it with matters within my expertise and I have complied with that duty.

**SIGNED:**



**DATED:**

6<sup>th</sup> February 2024