

## **NETWORK RAIL (LEEDS TO MICKLEFIELD) ENHANCEMENTS ORDER 2023**

### **TRANSPORT AND WORKS ACT 1992**

#### **CLOSING STATEMENT ON BEHALF OF THE PEAK & NORTHERN FOOTPATHS SOCIETY**

- The Transport and Works Act 1992 (TWA) states as follows in section 5(6): *“An Order.....  
.....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”.*
- This Society believes that the above legislation is reinforced by guidance set out in “Guidance to Transport and Work Acts Procedures” Dept. for Transport 2006 Annex 2 Commentary on Schedule 1 to the TWA Paragraph 4. The Secretary of State would wish, when considering an “alternative” route, to be satisfied: - *“that it will be a suitable and convenient replacement for existing users.”* NR has questioned whether this Guidance is still extant, and even if it is, whether the Sec. of State need feel bound to heed the Guidance. This Society’s view is that this is a matter for the Sec. of State to rule on, and if it is still valid guidance it should be given its due weight when considering the objections submitted by this Society and others.
- The Society is broadly supportive of the overall ‘goals’ of the Scheme, and we have not objected to other extinguishments such as Barrowby Lane, Barrowby Foot and Highroyds Wood LCs. Adequate alternatives are going to be installed assuming the Sec. of State is minded to confirm those parts of the draft Order.
- However, this Society has objected to the proposed extinguishment of two Level Crossings (LCs), the Garforth Moor LC which carries Garforth Footpath 7 across the Leeds-York line, and the Peckfield LC which carries Micklefield Bridleway 8 across the same line further east. This is because these elements of the Scheme have not included measures which this Society considers are acceptable.
- The Garforth Moor LC (which has been closed to pedestrians by a temporary TRO since 2017), if closed permanently by the Secretary of State without any satisfactory alternative route being provided, would in our view be detrimental to the walking public. Leeds City Council, as the Highway Authority for this footpath, recognised this fact in 2017. When Network Rail (NR) applied for a Railway Crossing Extinguishment Order under s.118A of HA80, the response was that a concurrent Public Path Creation Order under s.26 HA80 would be needed to provide an “alternative” to the extinguished section of Footpath 7. NR we were told agreed with this course of action, even supported it (according to the pre-Order consultation received by this Society in February 2019). Now we know that NR officers did not believe a new footpath was needed, but NR as an organisation went along with this as the price of getting the extinguishment. Nevertheless, the public stance of NR was to support the confirmation of both Orders, and fund the construction of the new public footpath with its attendant works and compensation to the landowner. Even as late as December 2022, NR officers were meeting objectors on site to find a way of resolving the objections to the Public Path Creation Order.

- The decision by NR not to include a new “alternative” footpath, when applying to the Sec. of State for this draft Order is a retrograde decision in this Society’s view. The obvious alternative, for any walker who had used the LC, is to now walk along the footway of Barwick Road and take public rights of way which could also be used, in part, by horse riders, cyclists and vehicles from properties which use Footpath 7A for access. The creation of a new private access for allotment holders, including a car park, has the potential for further mixing of pedestrians, horse riders, cyclists and vehicles using parts of Footpath 7A for access. A section of enclosed Footpath 7 will permit access for vehicles to the car park.
- The footway of Barwick Road narrows to as little as 0.76 metres when passing underneath the railway bridge to accommodate single file vehicular traffic. Vehicles have been noted as parking partially onto the footway north of the railway bridge outside a row of houses, and the footway narrows north of the houses where a NR witness, in evidence, said that pedestrians could walk in “single file” to reach the footway’s junction with Footpath 7A.
- The Leeds Council Officer report, seeking authority to publish concurrent Public Path Orders to extinguish the public footpath rights over the LC, and create a new public footpath as an alternative, made it clear that it was the Highway Authority’s belief that the extinguishment, without a concurrent creation, failed to accord with a number of City Council policies with regard to health, climate and transport which she listed in her Report. This Society does not believe that circumstances have altered so much since 2017 that this is still not the case in 2024.
- With regard to the proposed closure of the Peckfield LC and the proffered alternative options in the draft Order, it is this Society’s view that the closure of the LC is a retrograde step which the proposed options do little to compensate for. The LC which carries Micklefield BW 8 is an important link between two sections of the village for those seeking an off tarmac alternative to sharing space with vehicles on Pit Lane and the Old Great North Road. The public bridleway is used for private access to properties along the route both north and south of the LC. However, the amount of such vehicular traffic is likely to be less than that which a user of the bridleway would encounter along the section of Pit Lane parallel with the railway line, and the Old Great North Road. This traffic is likely to be further increased by the further expansion of the housing estate to the south of Pit Lane. The footway along Pit Lane is not continuous on one side for walkers and is of inadequate width for shared use by higher rights users according to the Highway Authority officers’ evidence. Any cyclists or horse riders that would have used the LC will have to share space with vehicles going to/from the new estate and from the industrial units further west. Vehicles park on the footways including construction traffic which could force pedestrians onto the carriageway to get by.
- The legal status of Pit Lane seems to be, from the evidence of a NR witness, that of “unclassified road”. This usually means that, although included on the “List of Streets” as a highway maintainable at public expense, exactly what category of highway user is entitled to use it is indeterminate, except for that of pedestrians. If this is correct, then it begs the legitimate question as whether any cyclist or horse rider prevented from crossing the LC from

the south can legitimately use Pit Lane before the existence or otherwise of higher rights than footpath has been determined, or higher rights dedicated or created. We believe that the Sec. of State must satisfy himself that if the closure of the Peckfield LC is confirmed, Pit Lane has been adopted as an all-purpose highway by the Highway Authority.

- The options in the draft Order, for the creation of a new public footpath or public bridleway along the southern edge of the Recreation Ground, are supposedly “alternatives” for the closed LC. Is either of these, a “*suitable and convenient replacement*”? Certainly, it is the Society’s view that a new public footpath cannot be a “replacement” for an existing public bridleway. Such a creation would create a ‘cul de sac’ public bridleway along Lower Peckfield Lane, between the Old Great North Road and the LC, for horse riders and pedal cyclists. The alleged non-use of BW 8 by horse riders and occasional use by pedal cyclists is, in the Society’s view, a spurious reason for not trying to provide a ‘like for like’ at least in terms of legal status.
- Even a ‘like for like’ public bridleway simply returns users back to or from the Old Great North Road from whence they came or were going. Is this alternative either “*suitable or convenient*”? The proposed footpath or bridleway option also has the potential to create conflicts of interest between users of the Recreation Ground such as footballers and rugby players playing immediately adjacent to the new public right of way which will be unsegregated from the rest of the site. Whilst this Society has said, in response to a question from the inspector, that we believe the risk of a conflict of interest is small given some good will on both sides, nevertheless it remains a potential issue that has been insufficiently addressed by the applicant.
- This Society would submit that these so-called “alternatives” fail the requirement in section 5(6) of the TWA 1992, endorsed by the Annex to the 2006 Guidance, to find a genuine alternative to the extinguished LC.
- In conclusion, this Society submits that the permanent extinguishment of the Garforth Moor LC as per the draft Order should be not confirmed, as no suitable and convenient alternative will be provided by the applicant. We have argued that one is needed due to issues surrounding the alternative via Barwick Road, and that NR was willing to pay for one as a ‘quid pro quo’ for the LC extinguishment.
- Also, that the permanent extinguishment of the Peckfield LC, as per the draft Order, should be not confirmed as neither of the suggested options are a suitable and convenient alternative to the existing crossing; and because the detour via Pit Lane and the Old Great North Road is circuitous and unpleasant due to adjacent vehicular movement.

**John Harker**

Courts & Inquiries Officer (Leeds metropolitan area)

March 12<sup>th</sup>. 2024