

**APPLICATION OF NETWORK RAIL FOR AN ORDER  
UNDER THE TRANSPORT AND WORKS ACT 1992 FOR:**

**The Network Rail (Leeds to Micklefield Enhancements) Transport and Works Act Order**

**(REF DPI/N4720/23/19)**

**CLOSING SUBMISSIONS**

**On behalf of Leeds City Council**

**1. INTRODUCTION**

- 1.1 Network Rail Infrastructure Limited ("**Network Rail**") has made an application for a Transport and Works Act Order for the Leeds to Micklefield ("**Application**") part of its works for the Transpennine Route Upgrade to improve rail transport links across the North of England.
- 1.2 The Application consists of:
- 1.2.1 An application for a Transport and Works Act Order ("**Order**") which will include a range of powers including the acquisition of all necessary land and rights, the temporary use of land; the authorisation of works and deemed planning permission, the diversion or stopping up of public rights of way, environmental consents, closure of the level crossings and powers to alter public highways and to undertake street works;
  - 1.2.2 Four separate applications for listed building consents in relation to proposed works to a number of bridges; and
  - 1.2.3 Two applications for certificates in relation to open space pursuant to section 19 Acquisition of Land Act 1981.
- 1.3 Leeds City Council ("**the Council**") is the local planning authority and the local highway authority for the administrative area in which the Application is sought. The Council is also a landowner affected by the Application.
- 1.4 On 18 August 2023 the Council submitted to the Department for Transport its holding objection to the Application ("**the Objection**"). The Council did make clear in its submission that it supported the Application in principle but that there were a number of issues with the Application that

needed to be resolved or mitigated against before the Council would be willing to withdraw its objection. That remains the Council's position at the closing of this Inquiry.

- 1.5 The Council submitted to the Department for Transport its statement of case on 17 November 2023 which set out an updated position in relation to the issues raised in its Objection ("**Statement of Case**"). This was followed by an addendum to the Statement of Case that was submitted on 19 January 2024 ("**Statement of Case Addendum**"). The Statement of Case Addendum was submitted to supplement the Statement of Case in particular in relation to the issue of the closure of the Peckfield Level Crossing.
- 1.6 On 6 February 2024 the Council submitted to the Inquiry its proofs of evidence in relation to the closure of the Peckfield Level Crossing, together with legal submissions in relation to the same.
- 1.7 The Council's submissions on its remaining outstanding point of objection in relation to the closure of the Peckfield Level Crossing have been made and presented to the Inquiry in writing. Given the in principle support for the Order from the Council, with one principal issue outstanding, the Council has had to adopt a proportionate position for this Inquiry including in relation to the availability of resource and the protection of limited public funds. The effect of this is that it has necessarily limited the Council's ability to attend the Inquiry to the full extent that may be otherwise required. The Council previously offered, and remained open throughout to, attendance at a roundtable to discuss the closure of the Peckfield Level Crossing, albeit this was not ultimately necessary.

## **2. OBJECTIONS TO THE APPLICATION**

- 2.1 The Council set out in its Objection its concerns with the Application. Since August 2023 progress has been made with Network Rail in resolving those concerns, such that Network Rail and the Council have submitted a statement of common ground ("**SoCG**") setting out the points agreed and still in issue between the parties. The latest SoCG is dated 23 February 2024.
- 2.2 In addition to the SoCG, Network Rail and the Council have reached agreement on a number of issues that are being addressed by the parties through a highways agreement and an environmental mitigation agreement.

- 2.3 Both agreements are in agreed form and were completed on Friday 23 February 2024.  
Accordingly the Council has withdrawn its objection in relation to the items that are addressed in the highways agreement, environmental mitigation agreement and the SoCG.
- 2.4 The Council understands that a summary note on the terms of the highways agreement and copies of the completed environmental agreement were submitted to the Inquiry by Network Rail on Tuesday 5 March 2024.
- 2.5 The only remaining issue upon which the Council maintains an objection is in relation to the closure of the Peckfield Level Crossing.
- 2.6 The Council has set out its reasons for its objection in the proofs of evidence submitted by:
- 2.6.1 Robert Buckenham; and
- 2.6.2 John Booth, and
- and in the legal submissions made by its legal advisers Womble Bond Dickinson (UK) LLP.
- 2.7 The Council's position remains that the Application for the Order should be modified in relation to the proposed closure of the Peckfield Level Crossing to provide for a suitable alternative in the form of a replacement bridleway bridge. The Council has submitted evidence from its public rights of way and highways officers setting out how the current proposals in the Application:
- 2.7.1 would sever the existing Public Bridleway Micklefield No. 8 with the provision of an alternative route which does not provide a safe, traffic free route for bridleway users;
- 2.7.2 would in relation to the alternative route see users having to, at points, enter onto the highway and share the same routes as vehicular traffic with a number of instances where the highway would need to be crossed, where there is no provision for safely crossing;
- 2.7.3 do not appear to have been considered in light of duties under the Equality Act 2010 allowing for access and inclusion for all users of the bridleway, as no equality impact assessment appears to have been submitted with the Application to enable the Secretary of State to discharge the statutory duty in decision making;

2.7.4 provide an unsuitable and inconvenient alternative through the Micklefield Recreation Ground ("**MRG**") . It is considered that the proposed alternative would be unsuitable for the following reasons;

- (a) the MRG has a number of mature trees present which introduces a risk of deadwood falling onto the public;
- (b) there is currently no lighting in the area and none proposed as part of the Application;
- (c) there is the potential for protected species to be inhabiting the scrub land adjacent to the MRG and the MRG itself;
- (d) the proposed alternative route through the MRG could pose a risk to users of the MRG and the bridleway, particularly where the route would run alongside the football pitches and in relation to horse-riders;
- (e) the proposed alternative route through the MRG would utilise the existing car park which is potentially more dangerous and hazardous for walkers and other bridleway users;
- (f) if the new public right of way is to be dedicated as a bridleway it will not be an appropriate width for users to pass each other conveniently and safely. Similarly if this is to be provided as a public footpath, it will not afford the same rights to horse riders and cyclists as they currently enjoy.

2.7.5 the effect on the local community of the loss of 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.

2.8 Accordingly, the Council's position remains that the proposals do not meet the relevant tests in section 5(6) of the Transport and Works Act 1992 for the provision of an alternative.

2.9 The Council invites the Inspector to recommend to the Secretary of State that, should the Order be made, that it is modified to provide for a replacement bridleway bridge. .

### **3. OTHER ISSUES**

- 3.1 The Inspector requested at the Pre-Inquiry Meeting ("**PIM**") that planning policy and heritage officers from the Council attend to assist the Inquiry, which the Council was happy to assist with.
- 3.2 Relevant Council officers duly attended the Inquiry and responded to questions raised by the Inspector in relation to planning policy and heritage.
- 3.3 For the avoidance of doubt, the Council does not have any outstanding objections in relation to planning or heritage and submitted position statements in relation to these matters ahead of the Inquiry so that the Inspector had an up-to-date view of the position.
- 3.4 The Council did not raise any further points on planning policy and heritage and has no further points to raise in this regard,

### **4. ADDITIONAL ITEM DISCUSSED AT INQUIRY**

- 4.1 During the course of the Inquiry, in relation to the closure of Peckfield Level Crossing, Network Rail's Counsel raised in discussion the nature of the employment site to the south of the Peckfield Level Crossing
- 4.2 In particular, the Council's consistent position has and remains that local people use the existing Peckfield Level Crossing to access local services, move between residential dwellings on either side of the railway line and use this for access to employment sites either side of the railway line, but particularly south of the railway.
- 4.3 Network Rail indicated during the Inquiry that the Peckfield Level Crossing was mostly used by the travelling community for access to the employment site south of the Peckfield Level Crossing. Network Rail referred to this as a site for travellers only. The Council would like to place on record that the site is in the process of being acquired by Travelling Showpeople.
- 4.4 For the purposes of planning policy "gypsies and travellers" are defined as "persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel

temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."

- 4.5 "Travelling showpeople" are defined as "Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily or permanently, but excludes Gypsies and Travellers."
- 4.6 The two terms are distinct and are defined in the Department for Communities and Local Government guidance "Planning policy for traveller sites"<sup>1</sup>.
- 4.7 The Council understands that Network Rail's inference in the references to travellers (as opposed to the correct reference to travelling show people) was to suggest that the numbers of people using the Peckfield Level Crossing are transient in nature. The Council has previously set out in submissions that the employment sites to the south of the Peckfield Level Crossing are accessed on a regular basis by the local community and the railway crossing is often used as the primary route for this. As has previously been put forward by the Council in submissions, the closure of the Peckfield Level Crossing would lead to the local community being required to take a longer route to get to their destinations, the route would be unlit and the proposals unsafe in comparison to the current provision.

## **5. ITEMS REQUESTED BY THE INSPECTOR**

- 5.1 On Wednesday 28 February 2024, the Inspector raised a number of questions of the Council which the Council responded to in writing on Thursday 29 February 2024. The Inspector's questions and the Council's responses in writing were as follows:

- 5.1.1 The Inspector asked for clarification in respect of the Council's position in relation to what it is requesting with regard to the proposed Order.

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<sup>1</sup> Published 23 March 2012; last updated 19 December 2023

- (a) The Council's position continues to be that it supports the making of the Order, in principle, but that the Order should be subject to modifications in relation to the closure of the Peckfield Level Crossing to require Network Rail to provide for a replacement bridleway bridge (as opposed to its proposals submitted in the application).
- (b) This is as set out in paragraph 4.1 of the Council's opening statement, paragraphs 2.6 and 6.1 of the Council's legal submissions dated 6 February 2024, paragraph 5.2 of the proof of evidence of Robert Buckenham dated 6 February 2024, and paragraph 6.3 of the proof of evidence of John Booth dated 6 February 2024.

5.1.2 The Inspector has queried whether he has powers to modify the Order such that the modifications would require the inclusion of additional land within the Order limits.

- (a) For clarification, it is the Secretary of State's decision in respect of whether an order should be made, or if this should be made with modifications. The power for the Secretary of State to do so is set out in section 13(1)(b) of the Transport and Works Act 1992. Section 13(1)(b) states that:

*(1) Where an application has been made to the Secretary of State under section 6 above, or he proposes to make an order by virtue of section 7 above, and (in either case) the requirements of the preceding provisions of this Act in relation to any objections have been satisfied, he shall determine—*

*[...]*

*(a) to make an order under section 1 or 3 above which gives effect to the proposals concerned without modifications, or*

*(b) to make an order which gives effect to those proposals with modifications, or*

*(c) not to make an order.*

- (b) In addition to the above, under section 13(4), where the Secretary of State proposes to make an order with modifications and those modifications will result,

in the Secretary of State's opinion, in a substantial change to the proposals, then the Secretary of State needs to follow the position as set out in section 13(4), such that he has to notify anyone who may be affected by the modifications, will need to give that person an opportunity to make representations and the Secretary of State is to consider such representations made to him. This would include consultation with affected landowners where it requires the proposed compulsory acquisition of additional land.

## **6. CONCLUSION**

- 6.1 The Council remains of the view that its evidence on the closure of the Peckfield Level Crossing should be taken as read as the Council's submissions on this matter. The Council invites the Inspector to consider its evidence in relation to the closure of the Peckfield Level Crossing and to conclude that the Order should be made with modification to include a requirement for a replacement bridleway bridge in lieu of the closure of Peckfield Level Crossing and the proposals submitted in the Application by Network Rail.

**Womble Bond Dickinson (UK) LLP**

**12 March 2024**