

Full Council

20 July 2023

Report of the Director of Transport, Environment and Planning
Portfolio of the Executive Member for Economy and Transport

Public Footpath Copmanthorpe No 2 - Proposed closure of Level Crossing and footpath diversion – City of York Council objection to Network Rail’s application under the provisions of the Transport and Works Act 1992

Summary

1. This report considers the application made by Network Rail to the Secretary of State for Transport for an Order under the Transport and Works Act 1992 (TWA) to authorise the closure of an existing pedestrian level crossing and the diversion of the existing public footpath between Copmanthorpe and Bishopthorpe.
2. The path is part of the Ebor Way and currently runs over a level crossing, known as Beckett’s Crossing), which Network Rail proposes to replace with a new stepped footbridge at Yorkfield Lane, Copmanthorpe.
3. Full Council is asked to endorse the objection to the proposed Order which was submitted by the Council to the Secretary of State following the decision made by the Chief Operating Officer using their urgency powers to oppose the order on 15 May 2023, in accordance with the procedures set out in Section 239 of the Local Government Act 1972

Recommendations

- 1) Full Council is asked to endorse the objection to the proposed Order which was submitted by the Council to the Secretary of State following the decision made by the Chief Operating Officer using their urgency powers to oppose the order on 15 May 2023, in accordance with the procedures set out in Section 239 of the Local Government Act 1972.

Reason: To confirm the objection submitted by the Chief Operating Officer using their urgency powers, as the proposed footbridge would

not allow disabled pedestrians to use the crossing. The footbridge proposal being unlit and enclosed was also considered to be unsafe particularly at night.

- 2) Subject to legal advice, full Council to authorise the representation of the Council at any public inquiry in respect of the proposed Order.

Reason: To enable the Council to be represented at any public inquiry in respect of the proposed Order

Background

4. Network Rail has applied to the Secretary of State for Transport for an Order under the Transport and Works Act 1992 (TWA) to authorise the closure of an existing pedestrian level crossing and the diversion of the existing public footpath (part of the Ebor Way) currently running over the level crossing by means of a new stepped footbridge at Yorkfield Lane. These proposals are part of Network Rail's Transpennine Route Upgrade (TRU) Programme. A plan summarising the proposed changes is included overleaf and the TWA application documents are available here: www.networkrail.co.uk/running-the-railway/railway-upgrade-plan/key-projects/transpennine-route-upgrade/copmanthorpe-level-crossing/#twao
5. The application to divert the footpath via a stepped footbridge was initially submitted to City of York Council under Section 119 of the Highways Act 1980. The Executive Member for Transport rejected Network Rail's application on 17 May 2022 (decision published here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6534>).
6. An update was brought to the Executive Member for Transport on 14 March 2023 in preparation for the submission of a TWA application by Network Rail (documents available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6816>).
7. As the TWA application was submitted during the pre-election period and objections needed to be submitted by 17 May 2023, a decision was made by the Chief Operating Officer using their urgency powers to make a representation to the Secretary of State to oppose the Order. This was needed because full Council did not meet before the strict deadline to submit an objection due to the local elections (documents available here: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6857>).
8. This objection now needs to be endorsed by full Council in accordance with the procedures set out in Section 239 of the Local Government Act 1972.



Plan provided by Network Rail

Consultation

9. Network Rail undertook a consultation process to develop their proposals. This is presented in the TWA application documents (see NR06 Consultation report available here: www.networkrail.co.uk/running-the-railway/railway-upgrade-plan/key-projects/transpennine-route-upgrade/copmanthorpe-level-crossing/#twao)
10. CYC internal consultation for this decision:
 - a. Executive Member for Economy and Transport
 - b. Officers in the highway and transport team, including Public Rights of Way officers and Access officer
11. The Council will gather additional evidence on the use of the path to support the preparation of evidence for the inquiry. This will take the form

of a questionnaire (online mainly), which will need to be disseminated and promoted to encourage a good response rate from residents and users of the path.

Options

12. The options available for Members to consider are:
 - a. Endorse the objection to the proposed Order which was submitted by the Council to the Secretary of State following the decision made by the Chief Operating Officer using their urgency powers to oppose the order on 15 May 2023, in accordance with the procedures set out in Section 239 of the Local Government Act 1972;
 - b. Remove the Council's objection to the proposed Order and formulate and submit a representation in support of the TWA Order;
 - c. Remove the Council's objection to the proposed Order and submit a representation that neither supports nor objects to the TWA Order i.e. effectively adopt a neutral position with no positive case in relation to the principle of the TWA Order.

Analysis

13. When considered from the junction of Farmer's Way and Ploughman's Close, the proposed diversion route will increase the length of the public right of way (footpath) route between Copmanthorpe and Bishopthorpe (where the footpath meets Copmanthorpe Lane) by approximately 200m, from approx. 1.6km to 1.8km.
14. The proposed diversion route will provide a stepped bridge (44 steps on either side, 88 steps in total) at Yorkfield Lane to take users over the railway line once the existing level crossing is closed.
15. For users who are not able to use the proposed stepped bridge, alternative routes available between Copmanthorpe and Bishopthorpe would be much longer as they would need to use:
 - a. The road network and cycle route to the north for approx. 3.9 km, using Tadcaster Road and the Sustrans cycle route (National Cycle Route 65); or
 - b. The road network to the south for approx. 4.8km, using Station Road, Temple Lane (footway provision stops after number 61

Temple Lane when travelling from Copmanthorpe to Bishopthorpe) and Appleton Road (no footways available).

16. As the TWA application was submitted during the pre-election period and objections needed to be submitted by 17 May 2023, a decision was made by the Chief Operating Officer using their urgency powers to oppose the order. City of York Council submitted an objection to Network Rail's application on the following grounds:
 - a. The proposal removes accessibility for those with protected characteristics and builds in discrimination by prohibiting access for those with protected characteristics. The proposed stepped footbridge will preclude some users with protected characteristics under the Equality Act 2010 (age, disability, pregnancy and maternity) from using the crossing over the railway line and Footpath 2 once it is diverted and the proposals raise concerns for the personal safety of future users as the bridge will be "unlit and enclosed". Network Rail's initial application to divert the footpath (submitted under Section 119A of the Highways Act 1980) was refused on these grounds by the Executive Member for Transport's at the 17 May 2022 decision session.
 - b. In the application submitted to the Secretary of State under the provisions of the Transport and Works Act 1992, Network Rail has not demonstrated how the organisation's duties under the Equality Act 2010, and specifically under the Public Sector Equality Duty, have been considered with regard to the proposed diversion route and stepped bridge.
 - c. The proposals have not adequately considered the needs of the future residents of the proposed housing development on the field lying to the south of and adjacent to No. 1 Tadcaster Road, Copmanthorpe. Outline planning permission (18/00680/OUTM) has been granted for this site for the erection of 158 dwellings. The site is likely to include a significant proportion of larger family houses and the footpath off Yorkfield Lane will provide direct access to the public right of way between the site and Bishopthorpe, although this will be limited to residents who can use steps, excluding some families with young children and people living with a disability or mobility issues, if the current proposals are implemented.

Council Plan

17. The proposals relate to the following Council outcomes, as set out in the Council Plan 2019-2023 (Making History, Building Communities):
 - a. Good Health and wellbeing – Following the 2021 Review the council is to ensure that ‘Open spaces will be available to all for sports and physical activity, including healthy walking, outdoor gyms and green spaces, which improve both physical and mental health and wellbeing’ so that in 4 years’ time, ‘We will increase the emphasis on the wider determinants of health, by understanding that how the city runs, how people live their lives and interact with one another and the way the Council creates, protects and enhances the environment which has positive impacts on the health and wellbeing of York’s population’ and ‘Health and wellbeing will continue to be a key driver in everything we do as a city - from the design of housing and infrastructure through to ensuring that transport options meet the needs of the most vulnerable’.
 - b. Getting around sustainably – Following the 2021 Review the Council is to ‘Review city-wide public transport options, identifying opportunities for improvements in walking and cycling, rail, buses and rapid transit, which lay the groundwork for the new Local Transport Plan’ so that in 4 years’ time ‘More people will travel by sustainable means, such as walking, cycling and clean public transport throughout the year’.

Implications

18. The decision to object to the TWA application will result in the following:
 - a. The Council will need to attend and present its case at a Public Inquiry
 - b. The Council will need to meet the costs related to the Public Inquiry (Counsel, expert witness, staff time to prepare reports and attend the inquiry)
 - c. The Council could be liable for additional costs if Network Rail were to successfully defend an application for costs
 - d. Reputational impact for the Council if the Secretary of State decides to grant the TWA application despite the Council’s objection

- e. The Council can decide to withdraw its objection at a later stage if a different approach were approved or an agreement were to be reached with Network Rail

- **Financial**

Those who take part in an inquiry are normally expected to meet their own costs. However, there may be limited exceptions.

Network Rail will be required to meet the cost of the inquiry venue and costs associated with it. The Council would be required to meet its own costs, including legal and officer costs. These would need to be funded from the Rights of Way/Transport budget.

If there are relatively few objections, and no statutory objector wishes to use their right to be heard, rather than hold a public inquiry, the Secretary of State may deal with the application on the basis of written submissions alone. This usually provides a quicker route to a decision and is less costly and time-consuming for everyone involved. The Secretary of State has however stated their intention to hold a public inquiry into this TWA application.

Going forward any footbridge installed over the railway line would be maintained by Network Rail. The Council as highway authority would maintain any new footpath diversion links as a result of the diversion and the surface of the new bridge.

- **Human Resources (HR)** – no implications identified
- **One Planet Council / Equalities**

Equality implications were identified in the Council's Equality Impact Assessment (EQiA) prepared for the decision on Network Rail Section 119 application (available here, see Annex 4: <https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6534>)

The key equality issues identified in the EQiA are:

- A proposed stepped footbridge may impact older people who have mobility impairments (but who are currently able to negotiate the existing level crossing), due to the large number of steps to be negotiated on either side of the proposed footbridge. Copmanthorpe has a higher than national average of people aged over 65 years.

- The proposed stepped footbridge may impact disabled people who have a mobility or cognitive impairment (but who are currently able to negotiate the existing level crossing), due to the large number of steps to be negotiated on either side of the footbridge.
- A stepped bridge would not be accessible to people whose disability means they have to use a wheelchair. Improvements could more easily be made to the existing level crossing to allow easier access for wheelchairs.
- Users who are pregnant may find the additional distance of the footpath and the stepped bridge difficult to negotiate due to reduced mobility. A stepped bridge would cause difficulty to maternal/paternal groups with pushchairs who may find the steps in accessible or challenging to use
- The proposed stepped footbridge, which is also proposed to be unlit, is an enclosed structure and may make lone users, especially women or other protected characteristic groups feel vulnerable, due to the fact that there is no easy escape route. The current level crossing is overlooked by housing and benefits from latent lighting from streetlights and neighbouring properties. The crossing is also more open with direct sightlines.

- **Legal**

A TWA Order is a statutory instrument made under the Transport and Works Act 1992. TWA Orders are required to authorise the construction or operation of railways, tramways, trolley vehicle systems and other guided transport; the construction or operation of canals; the carrying out of certain works that interfere with rights of navigation in waters in and around England and Wales. The main features of a project that requires authorisation under a TWA Order are that they may involve the construction and/or use of works which affect public rights such a public right of way and/ or the provision of powers of compulsory acquisition of land and/or the extinguishment of private rights.

Applications for TWA Orders, other than those relating to Wales, are normally made to, and determined by, the Secretary of State for Transport. There are statutory rules of procedure for making applications and for objecting to them. Currently, these are the

Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Applications Rules”). In addition, there are separate statutory rules of procedure relating to the holding of public local inquiries into TWA applications.

Rule 21 of the Application Rules provides that objections and other representations must be made in writing to, and received, by the Secretary of State no later than the expiry date for objections, being no less than 42 days from the date of the application.

Formal representations (for or against) the proposed Order were invited to be made to the Secretary of State by 17 May 2023. On 15 May 2023 the Council submitted a representation in objection to the proposed Order pursuant to a decision made by the Chief Operating Officer on 15 May 2023.

Section 239 Local Government Act 1972 provides that a resolution of a local authority to promote or oppose a Bill must be passed by a majority of the whole number of the members of the authority at a meeting of the authority held after the requisite notice of the meeting and of its purpose has been given by advertisement in one or more local newspapers circulating in the area of the authority, such notice being given in addition to the ordinary notice required to be given for the convening of a meeting of the authority. That section, although originally concerned only with local authorities promoting or opposing a Bill in Parliament, has been applied by section 20 of the Transport and Works Act to local authorities objecting to a TWA Order.

However, where an authority is unable to comply with this requirement within the prescribed representation period, its objection is treated by the Secretary of State as a holding objection subject to endorsement by a meeting of the full Council.

- **Crime and Disorder** – no implications identified
- **Information Technology (IT)** – no implications identified
- **Property** – no implications identified
- **Other** – no implications identified

Risk Management

19. Key risks identified are:

- a. The Secretary of State may find in favour of Network Rail following the public inquiry, rejecting the Council's position and enabling a stepped footbridge to be built.
- b. There is a limited risk that Network Rail could apply for costs, with the Council having to meet some of Network Rail's costs.
- c. The objection is likely to delay the completion of Network Rail's project, resulting in associated risks of cost increases, reduced funding and safety risk for users of the line and existing level crossing.

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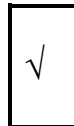
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Report
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Date 11/07/2023

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Wards Affected: Copmanthorpe and Bishopthorpe

All



For further information please contact the author of the report

Background Papers:

- Network Rail TWA application documents available here:
<https://www.networkrail.co.uk/running-the-railway/railway-upgrade-plan/key-projects/transpennine-route-upgrade/copmanthorpe-level-crossing/#twao>
- 15 May 2023 officer decision:
<https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6857>
- 14 March 2023 Executive Member for Transport update
<https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6816>
- 17 May 2022 Executive Member for Transport decision on Network Rail's application under S119 Highways Act 1980:
<https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6534>
- CYC's equality impact assessment of Network Rail's proposal is available here (see Annex 4):
<https://democracy.york.gov.uk/ieDecisionDetails.aspx?ID=6534>

Annexes

No annexes provided

List of Abbreviations Used in this Report

EQiA - Equality Impact Assessment

TRU - Transpennine Route Upgrade

TWA – Transport and Works Act