

**Decision Session – Executive Member for  
Transport**

**17 May 2022**

Report of the Director Environment, Transport and Planning

**PROW – Copmanthorpe Level Crossing Closure, proposed diversion of  
Public Footpath Copmanthorpe No2**

**Summary**

1. Network Rail are proposing to close the current level crossing in Copmanthorpe that carries Public Footpath, Copmanthorpe No 2 and divert the footpath across a new stepped footbridge which will be installed at the Beckett's Crossing site to the north of the current crossing (Annex 1: Location Plan. Annex 2: Proposed Diversion Plan).
2. Network Rail wish to close the level crossing due to the Transpennine Route Upgrade (east) plans, which will create an increased safety risk to users of the crossing. Network Rail have submitted an application under s119A of the Highways Act 1980 - Rail Crossing Diversion Order - to enable the above proposal to take place.
3. However, the bridge proposed by Network Rail does not include a ramp (Annex 3: Proposed stepped footbridge design), despite lobbying by Council Officers of Network Rail to provide a ramped, more accessible bridge.
4. This report includes a CYC Equalities Impact Assessment which assesses the proposal in the context of the Council's responsibilities under the Equalities Act 2010 and considers whether the application to divert the path over the stepped footbridge should be supported at this stage of the process.

**Recommendations**

5. The Executive Member is asked to:

- i) Support Network Rail's application to divert the footpath via a stepped footbridge at Beckett's Crossing and resolve that it is expedient in the interests of the safety of members of the public using the footpath or likely to use it to make and advertise the diversion order.

*Reason:* The public safety evidence supports the making of an order. Making an order will engage the public through the advertising of the order and the statutory consultation process. It will help evidence if the accessibility concern and premise that a stepped bridge is not as convenient for users as the current level crossing are concerns within the local community.

- ii) Should objections be received to bring a report to the Executive Member for Transport to consider the objections.

*Reason:* To consider any objections and determine if these outweigh the safety benefits of the proposal. The Council can at this future decision point determine if it wishes to continue to support the application and refer the order with the objections to the Secretary of State for confirmation, or, withdraw support and decide not to confirm the order based upon the objections received.

## **Background**

6. Public Footpath, Copmanthorpe No 2 links the villages of Bishopthorpe and Copmanthorpe (Annex 2: Proposed Diversion Plan). The footpath currently crosses the East Coast Mainline at Bishopthorpe Crossing. Walking from Copmanthorpe, users of the footpath currently have to cross 4 tracks of electrified line before heading off through farmland towards Bishopthorpe in the east.

### **Safety of the Crossing**

7. The railway at this location comprises of 4 lines of rails: Two lines carry trains between York and London, 2 lines between York and Leeds. The maximum speed on both the York/London lines is currently 125mph. The maximum speed on both the York/Leeds line is currently 90mph but is due to rise to 125mph when the Transpennine Route Upgrade (east) works are completed in the next 2 to 3 years.

8. On a typical weekday, approx. 690 trains pass over the rail crossing. Following the increase in speed on the Leeds/York line it is expected that the number of trains passing the crossing will rise.
9. Safe crossing of the tracks is currently controlled by miniature red and green stop lights on both sides. However, users are able to ignore a red light and cross the railway when they chose to do so. The green light changes to red when a train activates the mechanism. The system trigger is located at a distance from the crossing so when a train travelling at 125pmh activates it, the light changes to red so that there are 45 seconds before the train reaches the crossing. This timing allows for anyone crossing the lines when the lights are activated to safely reach the other side. If the lights are activated by a slower moving train, for example one of the 200 or so freight trains that use the line each day, the train may not reach the crossing for 2 minutes.
10. Due to the number of trains on the line it is common for the red light to remain on for more than one train. This possibility is highlighted on the signage at the crossing. Despite this, Network Rail have stated that they have evidence to suggest that some users chose to cross once a train has passed, possibly believing that it is safe to cross after a train has gone.
11. The planned upgrade, will mean an increase in line speed and a probable increase in train frequency. This will increase the number of times the lights will be activated. It will also increase the number of times 2 or more trains will pass in quick succession which will cause the lights to stay on red for longer. It is therefore thought more likely that one or more users will chose to ignore the red lights and cross under their own judgement.
12. Network Rail have recorded 8 incidents involving users of the crossing in the last 11 years, such as driver reported near misses, people trying to cross while a train is approaching, and children playing on the crossing, and believe that following the planned upgrades if the crossing remains open, there will be an increased safety risk to users.
13. Network Rail are therefore proposing to close the current level crossing and divert the footpath across a new stepped bridge which will be installed at the Beckett's Crossing site 342m to the north of the current level crossing. The current crossing would be fenced off with security fencing to prevent unauthorised use. This is the application submitted under s119A of the Highways Act 1980 to be considered.

## **Equalities**

14. Network Rail have carried out their own Diversity Impact Assessment in regard to the changes.
15. Whilst the council is supportive of the obvious improvements to safety which a bridge would undoubtedly bring officers have voiced concern that a stepped bridge is not as accessible as one with ramps. Officers have raised this with Network Rail through their formal consultation.

## **Network Rail Consultation**

16. Due to Covid restrictions, Network Rail carried out a virtual public consultation in September/October 2021. 351 responses were received. 67% agreed/strongly agreed to the closure and replacement of the crossing.
17. The consultation was limited to Network Rail's 2 preferred options for closing the level crossing and diverting the footpath. The first option was the provision of a 2.34km diversion via Temple Lane road bridge to then link back in with the public footpath on the Bishopthorpe side of the railway line. The second option was the provision of 430m diversion via a stepped footbridge over the railway line at Beckett's Crossing to again link back into the public footpath on the Bishopthorpe side of the line.
18. Other possible options such as keeping the current level crossing open; providing a footbridge at the current level crossing site, providing a subway or footbridge at Copmanthorpe sports ground; or a ramped bridge at Beckett's Crossing were not consulted upon. All these options were discounted by Network Rail early on in the process due to reasons of safety, cost, their impact on the landscape/environment, or surrounding land take requirements. The public and consultees were therefore not given the opportunity to comment on any of these.
19. Network Rail also consulted with 26 groups who represent people with protected characteristics as defined under the Equality Act 2020. Only one response was received. No further attempts at engagement with these groups to why no response was received from them was undertaken.
20. There was no evidence that Network Rail's own Built Environment Access Panel (BEAP) had been consulted on the proposal.

21. The council was also consulted about the proposal and stated that out of the 2 options presented by the consultation the preferred location of the footbridge was the Beckett's Crossing site and that the Temple Road bridge diversion was too long. The consultation response concluded that a ramped bridge at the Beckett's Crossing location would be the council's preferred option.
22. In regard to the provision of a ramped bridge at the Beckett's crossing location, this was discounted by Network Rail due to the fact that the height of the structure would be approx. 2m higher than a standard footbridge, which would increase the amount of ramps required, which would further increase the length of the diversion and private land take for a ramped structure. It was not thought possible for the ramped bridge to be contained within land under Network Rail's ownership.
23. The option of lowering the wires to reduce the height of the ramped structure was considered to be too costly and disproportionate to the scheme.
24. If approval is given to proceed with the application for a Rail Crossing Diversion Order, this would trigger a period of statutory consultation on the proposal by advertising the order.
25. The council would then need to consider any objections to the order and if it is still supported the order would be referred to the Secretary of State for confirmation.

## Options

26. Network Rail having submitted an application under s119A of the Highways Act 1980 - Rail Crossing Diversion Order, the Council needs to determine whether to make and advertise the order and start a period of statutory consultation. A rail crossing diversion order under s119A can only be made where it appears to the council expedient in the interests of safety of members of the public using it or likely to use it that the footpath should be diverted. Therefore the following options are available:
27. **Option 1:** Reject Network Rail's application to divert the footpath via a stepped footbridge at Beckett's Crossing.
28. **Option 2:** Support Network Rail's application to divert the footpath via a stepped footbridge at Beckett's Crossing. Advertise the order and then

consider any objections. If objections are raised it would need to be considered at a future Executive Member Decision Session whether to decide not to confirm the order or to refer it to the Secretary of State for confirmation if the Council still supports the application.

## **Analysis**

29. Public Footpath Copmanthorpe No 2 provides the only off road link between the neighbouring villages of Copmanthorpe and Bishopthorpe. The footpath forms part of the Ebor Way promoted walking route and is well used despite the requirement to cross the East Coast main line, at grade, via the traffic light system.
30. The footpath was in existence prior to the railway line. Since its construction the line has seen a number of upgrades which have made the footpath crossing increasingly difficult and dangerous to use and has systematically excluded and discouraged use of the public footpath by a number of groups protected under the Equalities Act 2010.
31. A 9 day census completed by Network Rail in October 2021 - showed that an average 52 people per day used the footpath crossing. These included adults, accompanied and unaccompanied children, Network Rail employees and walkers pushing cycles. The vast majority of users were adult. It was recognised that the 9 day census carried out may not have given a full picture of use of the path for the year. It should also be noted that the census would not perhaps pick up use of the path by people who have a hidden disability.
32. The current use of the path is likely to be restricted for some people with protected characteristics due to the short, steep inclines on either side of the railway embankment. These inclines act as effective barriers to use for those people with a disability that requires them to use a wheelchair, people with very young children or pushchairs and people with other limited mobility such as older or pregnant users. People in these groups would perhaps choose to use the existing crossing if the access was improved.
33. From a safety aspect, although the traffic light system allows users to cross the rails safely, some users may still be put off from using the crossing if they have limited mobility or are not confident in their ability to manage the crossing. It is also likely that unaccompanied children are discouraged from using the crossing for safety reasons.

34. Improving the safety of people who need to cross the railway line is obviously a positive improvement. Especially when considering that with the proposed rail improvements Network Rail consider the current crossing is inappropriate and will become more dangerous.
35. However, a stepped bridge without ramps potentially reduces the accessibility of those who can physically use the current surfaced level crossing. Equally a bridge may be more attractive to some people as it is a much safer way to cross four lines of railway track than the current surface crossing which may intimidate some potential users of the footpath.
36. The Council could chose at this point in the process not to support the diversion of the footpath via a stepped footbridge at Beckett's Crossing - this is Option 1.
37. However, the case for closing the current level crossing for safety reasons is strong. Given that a safer means of crossing the line at its current location cannot be accommodated, it is agreed that the path should be diverted and the lines crossed by means of a new footbridge; Beckett's Crossing being the least inconvenient location for this. However, a stepped footbridge is less accessible than one which includes ramps.
38. All users would be expected to use the new diversion route over the stepped footbridge and this in itself is likely to cause issues for a number of people with protected characteristics, a ramped footbridge may mitigate these impacts.
39. The additional length (approx. 430m) of the proposed route may impact a number of groups with protected characteristic (older people who have mobility impairment, people with a disability, Pregnancy/Maternity) and younger and older users may not wish to travel the extra distance to the footbridge. The increased walking distance for those wishing to do a shorter walk will also be a greater effort for those less able to manage longer walking distances.
40. Young people may be attracted to the new location and structure as a place to 'hangout' causing a perceived safety risk to users who may feel intimidated by groups of young people.
41. The proposed location of the footbridge may make users such as lone travellers and people with a protected characteristic feel more vulnerable

(Sex, Sexual Orientation, Age, Pregnancy/Maternity Race, Religion or Belief, Disability, Gender reassignment), especially given that the bridge is not proposed to be lit. Additionally, the new route is not as overlooked as the current crossing is.

42. Of the proposals consulted upon by Network Rail, the outcome of the consultation exercise was that a stepped footbridge should be provided at Beckett's Crossing and the public footpath diverted over it.
43. Undeniably a new footbridge crossing the rails at this point would continue to provide access to the countryside and recreational walks for the public, especially residents living at the northern end of the village. This is the only access to a countryside walk for these residents without a long walk through the village to either the footpath leading off the end of Moor Lane to the south, or a long on-road walk to the public bridleway leading off Hallcroft Lane, near Colton to the east (see Annex 1). However the introduction of a stepped bridge is likely to discourage or prevent more people from using the footpath, than the current level crossing does. The impact of providing a stepped footbridge crossing on people with a protected characteristic is considered within the council's Equalities Impact Assessment at Annex 4.
44. Once the new stepped footbridge has been constructed it is very unlikely that it will be changed in the foreseeable future, even if provision is made to be able to fit ramps retrospectively. The structure would be expected to remain "as is" for 120 years, so any future aspirations to improve the off-road route between Copmanthorpe / Bishopthorpe to provide an off-road cycle link between the 2 villages for example, would be more difficult to take forward.
45. It is also debatable whether as a new build project, the proposal of a stepped bridge meets Network Rail's responsibilities under the Equality Act 2010. Furthermore, the expectations of people with protected characteristics are expected to grow rather than diminish and their needs should be accommodated whenever it is reasonable to do so.
46. The council's Equalities Impact Assessment concluded that the inclusion of a stepped bridge as a means to cross the lines is not as convenient and accessible to current users of the level crossing. The outcome of the application does not align with the council's public sector duties introduced by the Equality Act 2010 to ensure that people with certain protected characteristics as defined by the Equality Act 2010 are not unlawfully discriminated against. It concluded that a ramped bridge



would better serve the needs of all those people who would wish to use the route.

47. However, the council has not engaged the public on this matter. For that reason it is recommended to advertise the order and consider any objections.
48. The nature of the objections will help inform the council and decision makers if the Council should continue to support Network Rail's proposal and refer the objections to the secretary of state or if it should reject the proposal at that point. In determining that future decision the council will have to weigh the safety improvements of closing the crossing with the equality impacts of a non-ramped bridge
49. It does not preclude Network Rail from considering the objections that may be triggered by the advertising of the order and Network Rail may choose to modify their proposal at this point, all be it this may require a new order.

## **Council Plan**

50. As set out in the Council Plan 2019 - 2023 - Making History, Building Communities, two of our key outcomes are: Getting around sustainably and Good Health and wellbeing.
51. 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'.
52. 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’.

## Implications

- **Financial-** If it is determined to support Network Rail’s application to divert the footpath over a stepped bridge at Beckett’s Crossing, the cost of the legal orders and the proposed new stepped bridge will be met by Network Rail. Going forward the bridge would be maintained by Network Rail and the council as highway authority would maintain the new footpath diversion links.
- **Human Resources (HR)** – Either option will be met using existing staff resources.
- **Equalities** - Equalities Impact Assessment attached at Annex 4.
- **Legal** – Under the Highways Act 1980 section 119A the council, as highway authority, has powers to divert footpaths, bridleways and restricted byways crossing railways otherwise than by a tunnel or a bridge where it appears to the council expedient in the interests of the safety of members of the public using it or likely to use it that it should be diverted (whether on to land of the same or of another owner, lessee or occupier subject to payment of compensation). As a rail crossing diversion order under order under s119A can only be made where it appears to the council expedient to do so in the interests of safety of users or likely users of the footpath, the risk the public face when using the route would need to be established, for example with accident data. The courts have held that the word ‘expedient’ implies no more than that the action should be appropriate in all the circumstances. Other considerations as part of the ‘expediency test’ include the length and convenience of the diversion and the public interest in keeping the existing path open over its present route.

### The Public Sector Equality Duty

- The Equality Act 2010 which sets out the Public Sector Equalities Duty, requires the Council, in the exercise of its functions, to have due regard to the need to:
  - i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

- The Equality Act further states:

“Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- i. remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- ii. take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- iii. encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”

- Officers in the preparation of the recommendations in this report have given due regard to the impacts on those with protected characteristics. The decision maker needs to do the same.
- **Crime and Disorder** – There is the possibility that the provision of a footbridge across the railway line may attract ASB to the location.
- **Information Technology (IT)** – No implications identified
- **Property** – Council property is not affected by either option
- **Other** – Outline planning permission has been granted at York Field for 160 houses. Some improvements to the section of Yorkfield Lane leading up to Beckett’s Crossing are planned. The housing profile for the development has not yet been determined but use of the footpath is likely to increase as people take advantage of it for the recreational, health and well-being benefits it presents.

## Risk Management

51. A key part of the considerations is the safety and risk of the current crossing arrangements. These need to be weighed against the equality impacts of Networks Rail's proposal for a non-ramped bridge. Advertising the order allows the council to understand public sentiment through the statutory consultation process.

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## Background Papers:

- Network Rail, Rail Crossing Diversion Order Application (Highways Act 1980 s119A)
- Network Rail, Diversity Impact Assessment – Copmanthorpe Level Crossing Closure, Transpennine Route Upgrade (version P04 21/01/2022)

- Council response Network Rail's consultation to the closure of the level crossing and the proposed diversion of public footpath, Copmanthorpe No2

## **Annexes**

Annex 1: Location Plan

Annex 2: Proposed diversion plan

Annex 3: Proposed stepped footbridge design

Annex 4: Equalities Impact Assessment

## **List of Abbreviations Used in this Report**

CYC – City of York Council