

**Decision Session – Executive Member for  
Transport**

**14 March 2023**

Report of the Director Environment, Transport and Planning

**PROW: Public Footpath Copmanthorpe No2, proposed closure of  
Copmanthorpe Level Crossing – Update**

**Summary**

1. This report provides an update on the proposed closure of the level crossing at Copmanthorpe and diversion of Public Footpath, Copmanthorpe No 2 via Beckett’s Crossing, Copmanthorpe (Annex 1 Location Plan).
2. Following an Executive Member decision (17 May 2022) not to support a Highways Act 1980 s119A (HA80 s119A) Rail Crossing Diversion Order application made by Network Rail to close the level crossing in Copmanthorpe and divert Footpath No2 over a new stepped footbridge at Becket’s Crossing, Network Rail have now expressed their intention to submit, to the Secretary of State for Transport (SoS), an application under the Transport and Works Act 1992 (TWA) to put in place the changes proposed in the original HA s119A application (Annex 2: HA 80 s119A, Proposed Diversion Plan).

**Recommendations**

3. The Executive Member is asked to:
  - i. consider the report and, in the event that the anticipated TWA Order application is made to the SoS, delegate to the Director for Environment, Transport and Planning the decision make one of the decisions a to c below in consultation with the Executive Member for Transport :
    - a) object to the TWA Order; or
    - b) support the TWA Order; or

- c) neither support nor object to the TWA Order i.e. effectively adopt a neutral position with no positive case in relation to the principle of the TWA Order.
- ii. to delegate authority to the Director for Environment, Transport and Planning in consultation with the Executive Member for Transport, in accordance with paragraphs 15 or 16 of this report (as the case may be), to:
  - a) formulate and submit an objection to the TWA Order; or
  - b) formulate and submit a representation in support of the TWA Order; or
  - c) 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.

Reason – So that an outline decision can be made to Network Rail’s TWA Order application before the restrictions of the pre election period come into effect, by giving specific delegation to an Officer to complete and submit the detail of the relevant submission on behalf of the Council, within the 6 week statutory consultation period, or to review that decision if circumstances change.

## **Background**

- 4. Public Footpath, Copmanthorpe No 2 links the villages of Bishopthorpe and Copmanthorpe. The footpath currently crosses the East Coast Mainline at Bishopthorpe Crossing. Walking from Copmanthorpe, users of the footpath currently have to cross 4 lines of electrified line before heading off through farmland towards Bishopthorpe to the east.
- 5. Network Rail originally applied to divert Footpath 2 (HA80 s119A) via a stepped footbridge at Beckett’s Crossing as a consequence of their Trans-Pennine Route Upgrade (east) works which, it was argued, would likely create an increased safety risk to users of the crossing due to increases in both the speed and the number of trains in service across all 4 lines.
- 6. The HA80 s119A application was refused on the grounds that the ‘proposed stepped footbridge would not provide provisions to allow disabled pedestrians to use the crossing’ and ‘the footbridge proposal being unlit and enclosed was also considered to be an unsafe crossing particularly at night.’

7. Following the refusal of the HA80 s119A application, Network Rail have recently expressed their intention to submit an application under the TWA to put into effect the changes previously requested in the HA80 s119A application. At a recent update meeting with Network Rail no indication was given that there would be a change to the original proposal to install a stepped bridge.
8. Network Rail advised that the TWA Order application will be submitted directly to the SoS via the Transport Infrastructure Planning Unit (TIPU), a department within the Department for Transport (DfT), who will manage the application and subsequent procedures on behalf of the Secretary of State for Transport. The Council is a statutory consultee in this process.
9. It is likely that Network Rail will submit the TWA Order application to the Secretary of State just prior to or within the pre-election period. Given the 6 week statutory consultation period for the council to respond to the application and taking into account the restrictions in place during the pre-election period this report is to consider what stance the council will take in regard to the TWA Order application if it is submitted.

## **Options**

- 10 There are 3 options available.
  - a) object to the TWA Order; or
  - b) support the TWA Order; or
  - c) neither support nor object 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**

11. Network Rail have advised that the intended TWA Order application to the SoS will not include changes to the design of the proposed stepped footbridge to be located at Beckett's Crossing.
12. Network Rail's original application to divert Footpath 2 over a stepped bridge at Beckett's Crossing was refused on the grounds that certain people with a protected characteristic, as defined by the Equality Act 2010 (EA), who are able to use the current level crossing, would not be able to use the diverted route over a stepped footbridge. These

people would therefore be prevented from using the well-used, promoted route between Copmanthorpe and Bishopthorpe.

13. Once Network Rail's TWA Order application is received by the SoS, a Notice will be served on the Council with details of the application. The Council has 6 weeks to respond to the Notice. This 6 week period is likely to fall within the Council's period of purdah with its associated restrictions on decision making.
14. Any objection/representation must be in writing (letter or email) and if objecting, must give the reasons for the objection. It should be noted that the council is not, at this pre- application stage, required to give the full details of any objection it may decide to submit. This would be done at a later date through the submission of a statement of case prior to any subsequent public inquiry or written representations procedure.
15. If the Council receives notice that an application has been made for a TWA Order and the details of the proposed diversion (including the design of the footbridge), remain the same or substantially the same as for the HA80 s119A application, it is recommended that the matter be delegated to the Director for Environment Transport and Planning to submit an objection to the SoS on the same grounds as the refusal of the original HA80 s119A application i.e. concerns about accessibility of the proposed stepped footbridge. This is recommended because the Council has already assessed and taken into account the impact on highway users of the proposed TWA Order for the HA80 s119A application.
16. If when the council receives notice of the application, it is clear that the design of the footbridge has changed substantially, it is recommended that the matter be delegated to the Director for Environment Transport and Planning to assess the changes made and then submit either a representation in support of the TWA Order, or an objection to the Order or take a neutral position in respect of the principle of the Order.
17. If the Council decides to object to the TWA Order, the Council is considered to be a statutory objector (other statutory objectors include landowners affected by the proposal and the local parish council. It should be noted that they would be required to submit their own independent objections/representations, separate to the Council).

18. If an objection is submitted by the Council, the council may still withdraw it at a later date.
19. If the application has opposition, the SoS must decide, within 28 days of the end of the objection period, whether to hold a public inquiry, a hearing, or whether to carry out 'exchanges of written representations' between everyone involved. On occasion, the aforesaid mentioned 28 day period may be extended by the SoS if it is thought that matters can still be resolved by further negotiation for example.
20. If there are many objections to the application, or more complicated issues are raised, the Secretary of State is likely to arrange for a public inquiry
21. The above notwithstanding, if the Council submits an objection to the application, as a statutory objector, the council would have the right to have the objection heard before an independent inspector appointed by the SoS at a public inquiry or a less formal (but still public) hearing. If a public inquiry is held anyone, not just the council, would be entitled to speak at it. An unaccompanied/ accompanied site visit would also be held by the inspector.
22. If the council decides not to object and there is no other opposition to the application, the SoS of State can proceed to give their decision based on the information contained in the TWA application.

### **Timescales**

23. If a public inquiry is held, it may be 6 months or more from the date of the application before the inquiry opens. The inspector will then write a report, and the Secretary of State will consider the report and come to a decision. The written representations procedure normally provides a quicker route to a decision.
24. At the decision stage, the following target timescales for issuing the Secretary of State's decision for the application are usually:
  - if no objections are made, within 3 months from the end of the objection period
  - if all objections made are withdrawn, within 3 months from when the last objection is withdrawn
  - if the application is dealt with by written representations, within 4 months after the end of the written exchanges

- if a hearing is held, within 6 months from when we receive the report of the hearing
- if a public inquiry is held, within 6 months from when we receive the inspector's report

25. It should be noted that from first submission of the TWA application by Network Rail it may take 6+ months before a public inquiry is held. It is therefore unlikely that Network Rail will be able to proceed as planned (with or without amendments to the design of the footbridge) within a year of submitting the TWA application to the Secretary of State.
26. The above timescales are likely to cause a delay to the Trans-Pennine Route Upgrade (east), and also increased costs that the delay would bring.

### **Council Plan**

27. 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.
28. 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'.
29. 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-** 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 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 SoS 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.

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.

- **Human Resources (HR)** – Either option will be met using existing staff resources, although Legal representation and or consultants with specialist knowledge may be required.
- **Equalities** - The Council needs to take into account and have due regard for the Public Sector Equality Duty (PSED) under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions). Having 'due regard' involves consciously thinking about the aims of the PSED as part of the process of decision-making. The PSED is a positive duty to eliminate discrimination, advance opportunity or foster good relations. It should ensure that decisions which may impact on equality are taken from an informed position. A fair and proportionate balance has to be found between the needs of people with protected characteristics and the interests of the community as a whole.

Initial comments from the Council's Access Officer indicate that putting in a ramped crossing would improve the accessibility of the

public path for walkers, wheelchair users, people with pushchairs etc and open it up to more users in the future.

An Equalities Impact Assessment was undertaken by the council to assess Network Rail's previous HA80 s119A application. Network Rail carried out their own Equality Impact Assessment for their application. As the principle party for the TWA Order application, Network Rail should undertake and present an Equality Impact Assessment.

- **Legal** – An order made under the Transport and Works Act 1992 (the TWA) is the usual way of authorising a new railway or tramway scheme in England and Wales.

Promoters of schemes, in this case Network Rail, often need a wide range of powers to put schemes into practice. A TWA Order gives these powers which include compulsory powers to buy land or to close highways such as in this case a public right of way. Network Rail have indicated that the TWA Order application they plan to make will be to:

- gain authorisation the closure of the level crossing at Copmanthorpe;
- divert Public Footpath, Copmanthorpe No 2 over the proposed stepped footbridge at Beckett's Crossing
- To gain permanent and temporary possession of land to facilitate the diversion

Applications for TWA orders are made to the relevant Secretary of State, in this case the Secretary of State for Transport. The procedure that must be followed allows any interested person to have their say before the Secretary of State.

The purpose of the TWA Order application procedure is to allow the Secretary of State to come to an informed view on whether it is in the public interest to make a TWA order.

The Secretary of State will make a decision only after considering all the comments made — sometimes through a public inquiry. TWA orders can be made (with or without amendments) or be rejected.



As statutory consultees, if the council submit an objection to the TWA Order application the council is considered to be a statutory objector and has the right for the objection to be heard before an independent inspector appointed by the SoS at a public inquiry.

- **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**

30. 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.

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Wards Affected: Copmanthorpe

All

**For further information please contact the author of the report**

### Background Papers:

- Transport and Works Act Orders – A Brief Guide (2013)  
<https://www.gov.uk/government/publications/transport-and-works-act-orders-a-brief-guide-2006/transport-and-works-act-orders-a-brief-guide>
- Report\_Decision Session Executive Member for Transport PROW – Copmanthorpe Level Crossing Closure, proposed diversion of Public Footpath Copmanthorpe No2  
<https://democracy.york.gov.uk/documents/s158937/Copmanthorpe%20report.pdf>
- Executive Member Report Decision details\_  
<https://democracy.york.gov.uk/ieDecisionDetails.aspx?AllId=62197>
- Equality Impact Assessment  
<https://democracy.york.gov.uk/documents/s158941/Annex%20EqIA%20Final.pdf>

## **Annexes**

Annex 1: Location Plan

Annex 2: Proposed diversion plan

## **List of Abbreviations used in this report**

CYC – City of York Council

DfT – Department for Transport

EA – Equality Act 2010

HA80 s119A – Highways Act 1980 s119A Rail Crossing Order

SoS – Secretary of State for Transport

TWA – Transport and Works Act 1992