

Name of meeting: Full Council
Date: 17th November 2021
Title of report: Network Rail – Trans-Pennine Route Upgrade Transport and Works Act
Order submission Update: Council Withdrawal of Objection

Purpose of report: In light of Network Rail's Transport and Works Act Order submission to the Secretary of State on 31st March 2021, this item is for information to enable Council to understand the reasons for the Council's formal withdrawal of its objection to the Order and its resultant exclusion from the public inquiry.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No – This is not an Executive Decision
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u> ?	Key Decision – No
The Decision - Is it eligible for call in by Scrutiny?	No
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal Governance and Commissioning?	David Shepherd (Strategic Director - Growth and Regeneration) Delegated Decision Notice dated Eamonn Croston (Service Director – Finance) Julie Muscroft (Service Director – Legal, Governance and Commissioning)
Cabinet member portfolio	Cllr Peter McBride, Cllr Naheed Mather, Cllr Eric Firth

Electoral wards affected: Ashbrow, Newsome, Dalton, Greenhead, Mirfield, Dewsbury West and Dewsbury South

Ward councillors consulted:

The following ward councillors have been consulted / briefed on this item:

- Cllr McBride and Cllr Firth via email (6th and 13th October 2021)
- Leading Members (18th October 2021)

Public or private: Public

Has GDPR been considered? Yes, there is no personal information contained in this report.

1. Summary

- 1.1 Network Rail formally submitted a Transport and Works Act Order¹ ("TWAO") application – (The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order) to the Secretary of State on 31 March 2021 seeking authorisation to upgrade the existing railway and undertake electrification works between Huddersfield and Westtown (about half a mile south-west of Dewsbury Station). The proposed Order would also authorise the construction of station improvement works at Huddersfield Station and works for the construction or reconstruction of stations at Deighton, Mirfield and Ravensthorpe.
- 1.2 Nine listed building consents were also submitted to the Council in March 2021 in association with the works proposed as part of the TWAO. On 12 May 2021, Kirklees Strategic Planning Committee considered the nine committee reports whereby officers concluded they had no objections to the proposed works, subject to the suggested conditions, and Members of the Kirklees Strategic Planning Committee provided their own additional comments. In the case of some of the applications concerns were raised and these comments have since been referred to Secretary of State for final determination.
- 1.3 The works are expected to cost c. £1.56 Billion. The Council had a statutory 45-day period to submit its response to the application. Officers submitted a response on 17th May 2021 and whilst supportive of the proposal in principle included several significant issues that it was felt, required further work or negotiation to resolve.
- 1.4 The Secretary of State deemed the Council's response to the submission as an 'objection' to the proposals. As a result of this it was a requirement that under s239 of the Local Government Act 1972, a Full Council endorsement was needed to support the objection. This was unanimously endorsed by Full Council on 14th July 2021. The report to Full Council made it clear that at any point up until the public inquiry, the Council could withdraw its objection either in whole or in part and in fact it was our hope to be able to do so, if negotiation with Network Rail was able to resolve matters satisfactorily. Section 239 power relates to submitting an objection or consent to a local Bill it does not directly relate to transport, infrastructure or planning matters.
- 1.5 Since Council endorsement in July, numerous detailed workshop sessions have been held with Network Rail to cover all issues raised in the Council's Statement of Case. The Council have been fully supportive of Network Rail's proposals and initial concerns raised have now been resolved through extensive and positive negotiations. Officers were satisfied with the outcome of the negotiations and as a result have formally withdrawn the objection and consequently the Council will not attend the public inquiry.
- 1.6 It should be noted that this positive outcome was made possible by Full Council's unanimous resolution on 14th July. Formally objecting to the scheme ensured issues of concern were taken seriously by Network Rail, to the extent that all major issues have been resolved satisfactorily. This is a strong vindication of the overall approach taken.

2 Information to note - Kirklees Negotiations with Network Rail July-October 2021

- 2.1 Since July, technical officers have worked intensively with Network Rail in numerous workshops sessions hosted and arranged by the major projects team to resolve key concerns that were raised in the Council's Statement of Case. These issues related to:

¹ TWAO: Orders under the Transport and Works Act 1992 (the TWA) are used to authorise, amongst other transport, rail schemes in England. The powers that can be given in a TWAO can be very wide-ranging. For example, the promoter of a scheme may need planning permission or compulsory powers to buy land or to close streets. A TWAO, if confirmed by the Secretary of State, can grant these powers.

1. Environment and Biodiversity	Detail of the application stated loss of areas of trees/woodland and associated consideration of biodiversity net gain as per Environment Bill requirements.
2. Climate Change	General considerations around the project's aspirations for net zero carbon in the light of the Council's declaration of a Climate emergency
3. Noise and Air Quality	Works at Hillhouse for a construction compound and how this may impact on residential properties
4. Highways disruption	Key concerns on replacement public transport provision during construction works, congestion around the town centre/Mirfield, diversions of traffic and re-routing of public rights of way. Retaining structures, infill of bridges and landscape maintenance
5. Dewsbury Riverside Housing Allocation	Whilst Officers were of the view that the TRU scheme did not prevent the housing development coming forward, clarification was required regarding the Western Gateway access arrangements and its interaction with the realignment of Calder Road proposed as part of the TRU scheme.
6. A62 Leeds Road Bridge	Consideration of future liability and maintenance of the new bridge and design concerns for the replacement bridge.
7. Operation of Waste/Recycling sites at Emerald Street and Weaving Lane	Continued public and commercial access to these sites are vital during the construction phase and a solution needed to be agreed.
8. Heritage Assets	Considerations around the Huddersfield Conservation Area and how works may impact on the setting and how works directly affect listed structures along the route
9. Development Management	Proposed structures/operations that required planning permission or further detail in their own right out of the scope of the TWAO
10. Minerals and Waste	Clarification required around the restoration and landscaping of Forge Lane Quarry site

3 Outcome of Negotiations

- 3.1 The issues initially raised have now been negotiated away through extensive further working between Council officers and Network Rail using the following mechanisms:

Three legally binding agreements to cover:

- Highways
- Waste operations during construction
- Environment protection and biodiversity

A 'Statement of Common Ground' (SoCG) between the Council and Network Rail which identifies which mechanism has been used to resolve each of our concerns identified in the Council's Statement of Case.

An agreed list of planning conditions (appended to the SoCG) to be attached to the deemed planning consent if/when the Order is granted by SoS. These have been discussed at length during negotiation workshops with Network Rail and have been submitted to the Planning Inspector running the public inquiry.

- 3.2 Without the formal resolution from Council to support the Council's objection back in July, matters that were of concern to Kirklees officers and residents have been afforded increased weight and importance in advanced negotiations with Network Rail, the key driver being to achieve 'common ground' between the two parties. As a result, the agreed SoCG has been submitted to the Secretary of State and identifies where issues initially raised by the Council have now been resolved. In summary, the outcomes for each issue initially raised is as follows:

1.Environment and Biodiversity	Resolved through revised and agreed planning conditions including biodiversity net gain condition, further clarification and legal side agreement (environment protection and biodiversity) including future commuted sum payments to the Council for long term management and maintenance of re-planted areas.
2. Climate Change	Resolved through clarification of information from Network Rail and agreement reached in the SoCG.
3.Noise and Air Quality	Resolved through revised and agreed planning conditions and legal side agreement (environment protection and biodiversity) to protect the amenity of surrounding residents.
4. Highways disruption and design processes	Resolved through legal side agreement (highways) including the establishment of a highways network management group between the Council and Network Rail to oversee a programmed approach to all highway diversions/closures during the lifetime of the project. Protocols agreed via the side agreement as to technical design of new bridge structures and road layouts.
5. Dewsbury Riverside Housing Allocation	Resolved through clarification of information from Network Rail and SoCG. Partnership programme with Network Rail initiated and both parties formally committed to working towards the full delivery of Dewsbury Riverside housing allocation as far as practicably possible.
6. A62 Leeds Road Bridge (structure and liability)	Resolved through legal side agreement (highways) with Network Rail retaining structure and future liabilities for the newly constructed bridge structure
7. Operation of Waste/Recycling sites at Emerald Street and Weaving Lane	Resolved through planning conditions and legal side agreement (waste operations) including agreement with Suez for protection of on-going operations at Emerald Street and Weaving Lane household waste recycling centres during construction and re-configuration of the Weaving Lane site for a temporary period during construction
8. Heritage Assets	Resolved through clarification of information from Network Rail, revised planning conditions and SoCG.
9. Development Management	Resolved by revised and agreed planning conditions attached to the SoCG
10. Minerals and Waste	Resolved through clarification of information from Network Rail and SoCG

- 3.3 As agreement had been reached on all matters attendance at the Inquiry (commencing on 2nd November) meaning that attendance was not necessary or required a delegated decision was made on 19th October 2021 by Strategic Director for Growth and Regeneration with the decision to formally withdraw the Council's objection to the TWAO submission and therefore remove the Council from participation in the public inquiry.

4. Implications for the Council

- 4.1 The main implications for the Council in withdrawing its objections from the public inquiry is that Council officers and their legal advisors no longer need to attend the public inquiry as the Council is satisfied through negotiations that our concerns have been adequately addressed via planning conditions or legal side agreements.
- 4.2 The issues which led the Council to make the formal objection pursuant to Section 239 of the Local Government Act 1972 have been resolved. The Local Government Act does not include the need to revert to Full Council to make a decision about whether to withdraw the objection and not to attend the public inquiry when the issues leading to an objection are resolved. The practical implications of that and its implementation is not a Council (non-executive) power and the delegated decision was made on 19th October 2021.

Working with People

- 4.3 Network Rail has conducted their own engagement with members of the public and statutory consultees as it is their project including a separate meeting at Mirfield Town Council. The Council has responded to two previous TRU consultations. Officers have held individual ward member briefing sessions for those affected along the route and attended a Mirfield Town Council meeting to answer concerns from town councillors.

Working with Partners

- 4.4 The Council has worked extensively with Network Rail and their array of technical consultants to ensure issues/concerns are addressed. Internal teams have held specific workshops to focus on each technical discipline affected by the proposals alongside other relevant external partners for example Suez in relation to household recycling sites and also affected businesses along the route. The Council has worked closely with West Yorkshire Mayoral Combined Authority in our response to the proposals, especially with regard to any impacts on the bus station and impacts in relation to strategic transport schemes/funding.

Place Based Working

- 4.5 The proposals affect Ashbrow, Dalton, Newsome, Greenhead, Mirfield, Dewsbury West and Dewsbury South wards critically during the construction phase. Officers have conducted specific ward member briefing sessions to go through the proposals in relation to each ward. Considerations for the whole district on a strategic level were included in the comprehensive overall response.

Climate Change and Air Quality

- 4.6 The proposals have been considered by the Council's Climate Change and Environmental Services team in the context of climate change and impact on air quality. These have been included in the Council's response to Network Rail's TWAO submission and the Council have highlighted key areas of concern relating to addressing climate change including the design of the new stations and the loss of trees/green infrastructure along the route. These issues have been pursued during negotiations with Network Rail prior to the public inquiry.

Improving outcomes for children

- 4.7 As per the information above, officers have raised technical concerns throughout the process around the health and well-being of Kirklees residents including children.

Financial and Other implications

- 4.8 Continued collaborative working and negotiations with Network Rail to fulfil the provisions of the legal agreements will need to be funded by the Council, however the non-attendance at the public inquiry will now not need additional Council funding. Human resources – Officers in relevant teams are aware of work post inquiry and aware of the work involved in fulfilling the terms of the legal agreements. In terms of project management there are dedicated resources in both Major Projects service and Planning service to lead on fulfilling commitments and discharging planning conditions and, if necessary, extra resources will be procured. In addition, the Council retain Womble Bond Dickinson to provide legal support if required under the WYLA Framework.

Communications

- 4.9 Communications (external) – This is a Network Rail project and communications have been driven by them to date during two previous periods of consultation and the 45-day statutory period for the submission. All relevant landowners/business have been consulted by them as part of the TWAO legislative process.
- 4.10 It was a legislative requirement that the Council ratifies its objection via a Full Council resolution, held after the requisite notice period has been given. A public notice was published 10 days prior to the Full Council meeting (14th July 2021) on 1st July in Huddersfield Examiner, Dewsbury and Mirfield Reporter. Full Council ratified the submission of the objection.
- 4.11 The Council may wish to consider a communications strategy following the outcome of the TWAO inquiry to publicise when construction may commence and what it means for residents.

Integrated Impact Assessment (IIA)

- 4.12 It is considered a full Integrated Impact Assessment (IIA) is not required as the decision to approve the TWAO application rests with the Secretary of State not the Council in this case.

In undertaking continued negotiations with Network Rail, officers are aware of the need to discharge the authority's equality duties with regard to those with protected characteristics and will ensure for example any road or public rights of way diversions take account of this moving forward. In addition, Network Rail will have to comply with the relevant legislation around providing for those with protected characteristics in any scheme design.

Consultees and their opinions

- 4.13 Cllr McBride, and Cllr Firth were briefed on the decision to withdraw the Council's objection on 13th October 2021. Members supported the decision to withdraw the Council's objection to the TWAO submission.
- 4.14 Group Leaders and some Group deputies were briefed on the proposed approach to the Council's response to the TWAO submission on the 18th October 2021. Leaders indicated their support for the withdrawal of the objection and there were no dissenting voices or major concerns raised.
- 4.15 Consultation has taken place internally with a wide array of Council officers who input into planning applications (e.g. Energy & Climate Change, Environmental Services, Conservation and Design, Highways, Landscape, Waste Strategy, Employment and Skills) and officers who determine planning applications (Development Management). Consultation has also been had with the Council's Senior Legal Officer and external legal representatives, as above.

5. Next steps and timelines

- 5.1 It is the intention of officers to continue working with Network Rail and other organisations to fulfil the provisions of the legal side agreements and the discharge of the agreed planning conditions

should the Order be granted at the outcome of the public inquiry. The public inquiry will conclude on 2nd December 2021 whereby the Inspector will provide a timescale for reaching a recommendation on his findings. The inspectors report will then be presented to the Secretary of State for a final decision on whether to grant the Order application.

6. Officer recommendations and reasons

This item is brought to Council for information only and therefore no decision is required.

7. Contact officer

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8. Background Papers and History of Decisions:

TWAO Public Inquiry website:

[Inquiry programme - Gateley \(gateleyhamer-pi.com\)](http://gateleyhamer-pi.com)

Network Rail – TWAO submission documentation:

[Huddersfield to Westtown \(Dewsbury\) - Network Rail](#)

Strategic Planning Committee papers (12th May 2021):

[Agenda for Strategic Planning Committee on Wednesday 12th May 2021, 1.00 pm | Kirklees Council](#)

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9. Service Director responsible

David Shepherd
Strategic Director for Growth and Regeneration