

Name of meeting: Planning sub-committee (Heavy Woollen Area)

Date: 17 March 2022

Title of report: Application to divert part of public footpath Batley 20 at Lady Anne Level Crossing, Batley. Town & Country Planning Act 1990, Section 257

Purpose of report: **Members are asked to consider** an application for an Order to divert part of public footpath Batley 20. The footpath route to be stopped up (via railway level crossing), and the replacement route to be created (via a new railway footbridge) are shown on appended plans. **Members are asked to make a decision** on making the order and seeking its confirmation.

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?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Colin Parr 07 March 2022
Is it also signed off by the Service director Finance?	James Anderson on behalf of Eamonn Croston 07 March 2022
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Julie Muscroft 09 March 2022
Cabinet member portfolio	Not applicable

Electoral wards affected: Batley East

Ward councillors consulted: Cllrs. Loonat, Zaman and Akhtar.

Public or private: Public

Summary

- 1.1 The Council has received an application from Network Rail for an Order under s.257 of the Town and Country Planning Act 1990 to divert part of public footpath Batley 20 at the Lady Anne level crossing, Batley.¹ The existing footpath crosses the Manchester – Leeds railway line adjacent to the Batley signal box, running between Rutland Road and

¹ Sometimes also spelled 'Lady Ann'.

Howley Street. This is a 'Manned Gated Crossing' controlled from the adjacent signal box.

- 1.2 It is proposed that the public right of way is diverted over a new footbridge to be constructed just over 100m south of the existing level crossing. A planning application has been submitted for the construction of a new footbridge, ramps and stairs (within a conservation area) (application ref 2021/93311). The proposed development includes the erection of walls and fences in place of the existing level crossing gates. The proposed wall on the west side of the crossing, to be constructed in place of the level crossing gates, would be on the boundary of the Upper Batley Conservation Area and thus planning consent will be required for that element of the proposal.
- 1.3 Should planning permission be granted it would be necessary to stop up the public right of way to enable development to take place and fully implement the planning permission. In particular the works to physically close off the crossing.
- 1.4 The related planning application is to be considered by this committee prior to the consideration of the proposed diversion. Should members refuse / reject the planning application, it logically follows that Members should not resolve to make an Order to stop up / divert the public footpath. Notwithstanding any other recommendations in this report.
- 1.5 The public pedestrian level crossing is adjacent to a private vehicular crossing. The proposed diversion of the public footpath would not itself affect any private rights that exist. Removal of such private rights is a matter for Network Rail and the rights holders and is outwith the scope of this report.
- 1.6 It is Network Rail's stated aim to achieve the closure of the level crossing. It is Network Rail policy to seek removal of level crossings wherever possible for safety reasons. This particular proposal is made in connection with the Transpennine Route Upgrade (TRU) project. This includes electrification of the line and the introduction of faster, longer and more frequent trains.
- 1.7 As part of TRU programme, the signalling is to be modernised. The Batley signal box would be closed, and signalling would be controlled from the signalling centre at York. That would affect the future operation of the level crossing and the level of risk to users and the railway in general. However, that in itself would not necessitate the stopping up / diversion of the public right of way via an Order under s257, the tests for which are described at paragraphs 2.4 to 2.8 below.

- 1.8 Network Rail have previously carried out various public consultations regarding proposals for closure of the level crossing and replacement with a footbridge. Those consultations have informed the design / position of the proposed replacement bridge and thus the route of the replacement path. The current design utilises an existing disused railway embankment, to provide for support a ramped path and steps, in order to reach the deck of the proposed bridge, rather than requiring structural steel elements.
- 1.9 The effect of the proposal is shown on the appended Plan 1. The route proposed to be stopped up is shown by the bold solid line between points A & B, and the new routes to be created are shown by the bold dashed line via steps B-C-D-E-F and via a ramp B-C-G-H-E-F.
- 1.10 In Autumn 2021 the Council consulted regarding the related planning application. A preliminary consultation has since been carried out regarding the proposal to stop up / divert the public footpath. Comments received are included at appendix F and discussed at section 4. Responses from a user group (Peak & Northern Footpaths Society) and local residents were generally negative towards the proposal.
- 1.11 Officers have been in discussion with the applicant / their agent regarding future maintenance of the replacement path. It is understood that the structure of a new railway footbridge would be the responsibility of Network Rail. However, the responsibility for maintenance of a new path created under a s257 diversion Order would ordinarily be the responsibility of the Council. That would include the surface of the path over the bridge along with the steps and the ramped path leading to the bridge from Howley Street. It is also clear that street lighting will need to be provided.
- 1.12 There would be an increased liability on the Council when compared with the existing short route over the level crossing. The bridge construction may also be such that the path surface, for which the Council would normally be responsible, would be integrated with the bridge structure. In light of these factors, should members approve the making of an Order, it is proposed that the Council enter into formal agreement with Network Rail regarding the responsibility for the bridge surface (proposed to be retained by Network Rail) and provision of a commuted sum to offset the increased maintenance liability above and beyond the council's current liabilities. It is also proposed that street lighting should be provided by Network Rail or the Council. Negotiations are ongoing regarding the details of such an agreement, which would be made pursuant to s111 Local Government Act 1972 or s278 Highways Act 1980. Officers consider that any such agreement should be made before an Order is made.

1.13 The statutory procedure is a two-stage process which involves the making of a public path diversion order, and its confirmation. If members approve the making of an Order under s.257, notice of the making of the Order would be formally advertised. If any objections were made and not withdrawn, the Council would not be able to confirm the order as an unopposed Order. An opposed Order could only be confirmed by the Secretary of State at Defra. This may involve the holding of a public hearing or inquiry. The Council is not obliged to forward an opposed Order. If the Council decides not to make the requested Order the applicants have no right of appeal.

1.14 The Council should form a view on making an Order, and also on whether to forward an Order if opposed, and on what stance to take on an opposed Order.

2. Information required to take a decision

2.1 An application has been received to stop up and divert part of public footpath Batley 20 at Lady Anne Level Crossing, Batley. The replacement route would cross the railway via a footbridge from Rutland Road, continuing via steps, ramps, and a path alongside the railway line to join Howley Street near to the east side of the current level crossing.

2.2 The application is made in connection with a planning application ref 2021/93311 proposed to be determined immediately prior to consideration of the proposed stopping up / diversion of the footpath. Details are available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021/93311>

2.3 Section 257 of the Town & Country Planning Act 1980 gives an authority the power to make Orders to divert public footpaths, bridleways or restricted byways if it is satisfied that the relevant criteria are satisfied.

2.4 The Council may make and confirm a diversion Order under Section 257 of the Town & Planning Act 1990 Act if it considers that it is expedient to do so when the following criteria are met:-

- a) it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
- b) The Council must also take into account the suitability of the proposal and the effect the change would have on those entitled to the rights that would be extinguished.

2.5 Circular 1/09 is guidance published by Defra for local authorities regarding PROW matters. Section 5 deals with changes to the public rights of way network. This is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf

At paragraph 7.11, it states: “It cannot be assumed that because planning permission has been granted that an order under section 247 or 257 of the 1990 Act, for the diversion or extinguishment of the right of way, will invariably be made or confirmed...”.

2.6 Paragraph 7.15 of Circular 1/09 states: “The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”

2.7 In addition, when considering whether or not to confirm an Order, the Authority (or the Secretary of State if an opposed Order) would need to take into account:

- any significant disadvantages or losses the stopping up of the path would cause to the general public, or to other individuals whose actionable rights of access would be extinguished by the process
- any countervailing advantages to the public, or those individuals
- the planning benefits, and the degree of importance attaching to, the development.

2.8 The plan at appendix A shows the proposed diversion.

2.9 Indicative visuals of the replacement bridge, provided by Network Rail, are included at appendix B. Photographs of the current route / level crossing and Rutland Road are at appendix C. The applicants submitted supporting statement is found at appendix D.

2.10 The applicant has also recently submitted supplementary information (located at appendix E). This includes:

- Rationale for closure of the level crossing
- The impact on the TRU programme and costs associated with retaining a level crossing (including keeping a manned signal box or controlling the gates from the York Rail Operating Centre)
- The future end user experience if the crossing was to remain
- Alternative options considered
- Public consultation carried out

2.11 The existing footpath route over the level crossing is approximately 17 metres between point B to the east of the railway line at Howley Street and point A to the west of the railway at the junction with Stoney Lane and Rutland Road.

2.12 The current pedestrian level crossing is gated with heavy metal gates. These are electrically unlocked by the signaller in the nearby signal box when is considered safe for pedestrians to use the crossing. These gates impact on the accessibility of the route, e.g., for disabled users, people with pushchairs / prams etc. However, there are no steps or significant gradients to be negotiated. There is also a degree of risk associated with the use of a level crossing, although this is currently mitigated by the crossing being manned and only available for use when deemed safe. Network Rail have not provided specific information about the current level of risk at the crossing or any history of incidents.

2.13 The proposed replacement route would commence on the east side of the crossing at point B. The footbridge would be reached by a ramped footpath approximately 200m in length. The ramps are proposed to be 2.15 metres wide with a gradient of 1:15. The ramps would have 2.15m long landings for every 5 metres of ramp. The first approximately 44 metres of the ramp from Howley Street at point B would have a gradient of 1:30. The footbridge would have solid 1.8m parapets and a non-slip surface. A set of steps would also be provided. There would be no steps or ramps on the west side at point F which would have level access from the footway on Rutland Road. The specification proposed for the replacement path is acceptable.

- 2.14 It is proposed that the footbridge, steps and ramped footpath path will be lit. Discussions are still ongoing between Network Rail and the Council regarding the technical specifications and future responsibility.
- 2.15 Further descriptions of the footbridge and the replacement routes are included in the detailed Design and Access statement submitted with the associated planning application. This is available at: https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2021/93311&file_reference=890941
- 2.16 Members of the public intending to travel along Stoney Lane to or from the west side of the crossing at point A . I.e., to or from locations to the west or north-west, would be presented with a long diversion, including via Rutland Road. The replacement route via the footbridge and footway along Rutland Road would to be 255m via steps or 335m via ramps. I.e., a significant increase in overall length.
- 2.17 For anyone intending, after crossing the railway, to continue in a south westerly direction along Rutland Road in the general direction of Batley town centre, the increased overall length (via footbridge and step) appears to be only slightly greater than at present. I.e., approximately 150m (via steps) compared with existing approximate. 122m (via the level crossing and south along Rutland Road). The route via ramps would add an additional approx. 80m to this distance. This is considered acceptable.
- 2.18 Although the diversion route is significantly longer than the existing route via the crossing – at least if travelling via Stoney Lane to / from point A - the replacement route has the advantage of not having to cross the railway line on the level. The existing route, while level, has gates. This may affect its accessibility to some users. There would be no gates or barriers on the diversion route.
- 2.19 Pedestrians using the crossing are currently required to wait until the signaller confirms it is safe to cross and the gates are unlocked. In contrast, the diversion route would be available at all times. There would be no delay to journeys caused by having to wait at the crossing. It is noted that waiting time at the crossing will likely increase in future with proposed increase in line speed and more frequent services.
- 2.20 There is currently some risk to users and the railway in general associated with the use of the level crossing. The proposed diversion would allow Network Rail to physically close off the crossing and remove / reduce that risk

- 2.21 A preliminary public consultation has recently been held on the proposal; the details are included in section 4 of this report.
- 2.22 In considering this application for an Order under s. 257, members have a number of options.
- 2.23 Members may take into account the proposal for entering into agreement with Network Rail regarding future responsibility for the path surface on the bridge and in respect of a commuted sum which would offset the Council's increased liabilities regarding the steps and ramped path.
- 2.24 Option 1 is to decide to refuse the application for an Order.
- 2.25 Option 2 is to authorise the Service Director, Legal, Governance & Commissioning to make an Order under section 257 of the Town & Country Planning Act **and only to confirm it if unopposed**, but to defer its decision on sending any opposed Order to the Secretary of State at Defra. Members would then need to make further a decision as to whether or not to refer an opposed Order to the Secretary of State or withdraw it. If to be referred to the Secretary of State, Members would need to decide the stance to be taken regarding confirmation of the opposed Order.
- 2.26 Option 3 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990. This would also authorise confirmation of an Order by the Council if unopposed and authorise seeking confirmation of any opposed Order by forwarding it to the Secretary of State for confirmation. The Council would actively support confirmation of the Order at hearing or public inquiry.
- 2.27 Option 4 is to authorise the Service Director of Legal, Governance & Commissioning **to make** an Order under section 257 of the Town & Country Planning Act 1990 **and to confirm it if unopposed. But if opposed, to submit the Order to the Secretary of State requesting confirmation, without actively supporting the confirmation of the opposed Order.** This would authorise confirmation of the Order by the Council if unopposed or forwarding an opposed Order to the Secretary of State to determine, where promotion of confirmation of the Order at inquiry or hearing (or via written representations) may be undertaken by another party and where the Council would look to fulfil its administrative role in proceedings. It would passively support its Order; however, the Council would look to the applicant to pursue confirmation.

2.28 This approach is described in the Planning Inspectorate's Rights of Way Section's Advice Note 1, paragraph 2.4, available at:
<https://www.gov.uk/government/publications/rights-of-way-advice-note-1-conduct-of-inquiries-into-orders-where-the-order-making-authorities-do-not-actively-support-an-order/rights-of-way-advice-note-1-conduct-of-inquiries-and-hearings-into-rights-of-way-orders-where-order-making-authorities-do-not-actively-support-an-or>

“Sometimes an OMA is content to make the requested order but is not prepared to support it at an inquiry if it is opposed. This often occurs when an order is made under the Town and Country Planning Act 1990 to enable development to proceed, or an order to divert a path is made under the Highways Act 1980 in the interests of a landowner; the developer or the landowner is often asked to make the case for confirmation. The OMA may choose to remain neutral as regards confirmation of the order, to passively support it or even to oppose it if new information or objections following advertisement cause a change of mind.”

3. Implications for the Council

3.1 Working with people

3.1.1 There has been public consultation regarding this application.

3.2 Working with partners

3.2.1 There has been consultation with partners regarding this application.

3.3 Place based working

3.4 Climate change and air quality

3.4.1 Promoting walking and other green transport and providing better facilities for physical activity works towards local and national aims on healthy living, climate change and air quality.

3.5 Improving Outcomes for Children

3.5.1 See 3.4.1

3.6 Other (e.g. Legal/Financial or Human Resources)

3.6.1 The Council receives applications to change public rights of way, and facilitate future land management changes, including development. In this case to

facilitate development associated with changes to signalling as part of upgrades to the Trans Pennine railway line.

- 3.6.2 The Council may make Orders which propose to change public rights of way and may recharge its costs of dealing with applications and making Orders, as appropriate.
- 3.6.3 Any person may make an objection or representation to the Order.
- 3.6.4 The Council may choose to forward an opposed Order to the Secretary of State at Defra (“SoS”) to determine or may abandon it. If an Order is forwarded, any such objection would be considered by an Inspector appointed by the Secretary of State, who may or may not confirm the Order. The Council recharges the costs of applications to the applicant as appropriate, but the Council may not recharge the costs incurred by it in the process of determination of an opposed Order by the Secretary of State. The Council would have to cover its own costs of forwarding the opposed Order to the Secretary of State and its costs associated with that decision process, potentially including a public inquiry.
- 3.6.5 If the Council confirms its own Order, or after an Order has been confirmed by the Secretary of State, the Council may recharge its costs of concluding the order process, including bringing an Order into force.
- 3.6.6 Land management and development proposals, potentially including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, changes to land use and other infrastructure projects and development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy.

4. Consultees and their opinions

- 4.1 Prior to the making of the application, Network Rail carried out its own consultation process regarding closure of the level crossing and provision of alternative routes. That consultation informed the position and design of the footbridge to be provided in the current proposal. That process and the options considered is described in the applicants’ supporting statement and the supplementary information provided by Network Rail. See appendices D and E.

- 4.2 Consultation regarding the associated planning application led to submission of a significant number of objections, many of which related to the closure of the crossing and diversion via the proposed new bridge. These will not be repeated in this report as they have been aired in connection with the consideration of the planning application.
- 4.3 Following receipt of the diversion application the Public Rights of Way Team also carried out its own informal preliminary consultation. This included the posting of notices on site, publication of information on the Council's website at <https://www.kirklees.gov.uk/beta/countryside-parks-and-open-spaces/changes-to-definitive-map.aspx> and correspondence with various statutory consultees, interested parties including utility companies and user groups, as well as ward councillors.
- 4.4 A range of comments were received, mirroring the concerns of local residents raised in response to the planning application. These were all negative. Comments received are found at appendix F.
- 4.5 Some comments referred matters such as loss of heritage – e.g., loss of the historic signal box, also the visual impact / intrusive nature of the proposed new bridge.
- 4.6 There was also concern that closure of the level crossing. and more specifically removal of surveillance of the locality of the crossing from the manned signal box. may lead to misuse of the site of the crossing and increase risk of incidents including suicide. There was also a perception that there may be a suicide risk associated with the new bridge. However, it is noted that this would be mitigated by the bridge design (with 1.8m parapets and anti-climb features) along with walling / fencing at the current crossing site and alongside the path..
- 4.7 These concerns also relate more generally to the construction of the new bridge and to Network Rails' intention to de-man the signal box and remove the level crossing, rather than directly from the diversion of the public rights on to the proposed new bridge.
- 4.8 There were also concerns regarding on impact on wildlife and the local environment due to construction of the bridge. These will have been addressed in connection with the planning application.
- 4.9 A range of other concerns were raised which are of more direct relevance when considering the impact of the diversion on persons entitled to use the way.
- 4.10 Various respondents raised the potential for the footpath and the bridge to attract various kinds of crime and anti-social behaviour, including vandalism, drug dealing,

muggings and sexual assault, which might deter people from using the path, particularly women and at dawn / dusk and in hours of darkness. A lack of clear sight lines due to the arrangement the ramp was also raised as a concern.

- 4.11 Many respondents also raised concerns about the potential for misuse of the replacement route by cyclists, skateboarders, with electric scooters and with motorbikes, presenting potential safety risk and deterrent to other users. The possibility was mentioned that the footbridge may also be misused with horses, putting pedestrians at risk; horses are reportedly sometimes taken across the line at the separate private crossing adjacent to the public pedestrian level crossing.
- 4.12 Concerns were also raised about future maintenance of the footpath and bridge, including need for gritting etc in winter, with clarification required as to whether Network Rail or the Council will be responsible.
- 4.13 There were also some concerns raised regarding road safety. The west end of the bridge / diversion route joins Rutland Road near a bend / corner. However, this a residential neighbourhood which is observed to generally have low levels of traffic and low speeds, although no formal road safety audit has been carried out.
- 4.14 The length of the proposed diversion route was a concern for many people. There was a perception that this would negatively affect some users of the path, particularly the elderly, or e.g., those pushing wheelchairs, pushchairs etc.
- 4.15 Comments were also received from some individuals who indicated they had private rights at the level crossing associated with land to the east side and who regularly used the crossing. (Note: There are separate vehicle gates adjacent to the pedestrian gates – this report does not concern the removal of any private rights at the crossing).
- 4.16 Some people expressed concerns about the impact on the user experience of walking in close proximity to passing trains, particularly in wet weather. The fence alongside is to be 'weld mesh' construction rather than solid construction to ensure good surveillance of the path, but this may have some negative impact as well as assisting with reducing any threat of crime or anti-social behaviour.
- 4.17 Comments were received from Cllr Zaman who is opposed to the diversion. She raised a range of concerns of residents, including the length of the proposed diversion and the impact this may have on some users, particularly the elderly. She described many of the

same concerns raised by members of the public. Cllr Zaman's comments are included with other responses at appendix F.

4.18 Peak & Northern Footpaths Society (PNFS) objected to the proposed diversion highlighting the significant overall increase in length of 255m / 355m and need for steps and ramps, replacing a 17m level path. PNFS are of the view that the "greatly increased distance combined with the ramps and steps would create a much less convenient route for the public and reduce accessibility to many members of the public". PNFS also noted that diversion would not in itself be necessary for the construction of the footbridge.

4.19 KCOM has no apparatus or proposal for any in the vicinity.

4.20 Auto Cycle Union, Byways & Bridleways Trust, Cycle Touring Club, British Horse Society, Huddersfield Rucksack Club, Kirklees Bridleways Group, British Gas, YEDL, National Grid, West Yorkshire Fire Service, NAVTEC, West Yorkshire Ambulance, BT, NTL, Yorkshire Water, MYCCI, Freight Transport, Passenger Transport Executive, RAC, and Road Haulage Association offered no response.

5. Next steps

5.1 If an Order is made, it would be advertised, and notice served. There would be a period of at least 28 days for representations and objections.

5.2 If the Order is unopposed the Council may confirm it.

5.3 If any objections are duly made and not withdrawn, the Council may forward the Order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the Council may decide to abandon the Order.

5.4 If members decide to authorise the making of an Order, but do not authorise officers to seek confirmation by the Secretary of State of an opposed order, a further decision would then be required on:

5.4.1 any objections that are received, and

5.4.2 potential referral of the Order (if opposed) to the Secretary of State, or

5.4.3 abandonment of an opposed Order.

5.5 If sub-committee refuses the application, the Order is not made. There is no appeal right for the applicant against a refusal.

6 Officer recommendations and reasons

6.1 Officers recommend members to choose option 4 at 2.27 above and to give authority to the Service Director, Legal, Governance and Commissioning to make an Order under section 257 Town & Country Planning Act 1990 to stop up Batley footpath 20 (part) at the Lady Anne Level Crossing and provide an alternative public footpath via a footbridge as shown on the plan at Appendix A. **Also, to confirm the Order if unopposed, But if opposed, to submit the Order to the Secretary of State requesting confirmation, without actively supporting the confirmation of the opposed Order** at a hearing or public inquiry.

Also to:

Require that before making the Order the Council enter into formal agreement with Network Rail regarding division of maintenance responsibility, the offsetting of future increased liabilities and arrangements for lighting of the path, as described at paragraph 1.12 above.

6.2 The diversion would enable the implementation - if approved - of planning application 2021/93311 (in particular respect of construction of a wall in place of the crossing gates on the west side) and by extension achieve closure of the public footpath over the level crossing and rerouting into via the new footbridge. It is considered that the necessity test is met (this assumes planning permission has already been granted).

6.3 It is recognised that there will be negative effects on some users, in particular due the increased length of the route. Although that must be weighed against the necessity of diverting the path to allow the approved development to be carried out. There will also be some countervailing benefits to users of the path by removing the inherent risks associated with the level crossing and any delay waiting for it to be safe to cross. There will also be a wider public benefit of reducing risk to the railway, facilitating the planned improvements to the rail network and reducing costs to Network Rail that would be associated with retaining the manned signal box / crossing.

6.4 It is noted that many of the concerns described relates to the perception that the replacement route will attract significant levels of crime and antisocial behaviour, and misuse by people other than pedestrian users. However, it is unclear to the extent to which that perception may be correct, and concerns are to some extent hypothetical. It is accepted that the replacement path must have street lighting. A proposed condition on

the granting of condition of planning permission is the carrying out of a crime impact assessment and implementing any recommendations.

6.5 If an Order is opposed the Council would not be able to confirm its own Order. If referred to the Secretary of State and actively supported to by the Council there would be significant un-rechargeable costs, in financial terms and in terms of officer time. It appears appropriate for the applicant to step forward to pursue the case for confirmation and the Council as Order Making Authority to take a more passive role.

6.6 There is currently little maintenance burden to the Council associated with the footpath, the majority of which falls within the railway and is effectively outside the Council's control. That would not be the case if the footpath is diverted as the much longer replacement route would ordinarily become maintainable at public expense by the Council. It would be appropriate for the making of any Order to be conditional on Network entering into agreement with the Council (pursuant to s111 Local Government Act 1972 or s278 Highways Act 1980) in respect of the offsetting via a commuted sum of the impact of increased liabilities. Any agreement may also include provisions regarding responsibility for street lighting. The inclusion in an agreement that responsibility for the bridge surface would rest with Network Rail would also avoid future difficulties for the Council.

7 Cabinet Portfolio Holder's Recommendations

Not applicable

8 Next steps

8.1 If the diversion Order is made and advertised, there will be a statutory 28-day minimum, notice period during which time the public may make representations and objections. Any opposed Order could only be confirmed by the Secretary of State following referral of the Order. That may result in a public inquiry or hearing.

8.2 If the diversion order is not made, then footpath would remain on its current alignment via the Lady Anne Level Crossing and the planning permission (if granted) could not be fully implemented.

9 Contact officers and relevant papers

Contact Officer: Phil Champion Direct Dial (01484) 221000

Email: phil.champion@kirklees.gov.uk

10 Background Papers and History of Decisions

10.1 PROW file 872/DIV/Bat20

10.2 Rights of Way Improvement Plan

10.3 Planning application 2021/93311.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F93311>

10.4 Appendices

10.4.1 Appendix A - Plan showing proposed diversion

10.4.2 Appendix B - Indicative visuals of the replacement bridge

10.4.3 Appendix C - Photographs of the current route and Rutland Road

10.4.4 Appendix D - Applicant's supporting statement

10.4.5 Appendix E - Supplementary supporting information

10.4.6 Appendix F – Consultation responses

11 Service Director responsible

Sue Procter, Service Director:

Highways and Streetscene, Environment & Climate Change Directorate