

23/11/2023

Lead official:

For consideration by the Minister

# Copmanthorpe no. 2 level crossing: Transport and Works Act order Public Inquiry

**This advice must not be shared or discussed with Lord Davies of Gower, who in his capacity as the decision maker in this case, must not be influenced by matters that were not considered in the course of the Public Inquiry.**

## Issue

1. A Transport Works Act order was submitted by Network Rail (NR) to allow for the installation of a stepped footbridge. There was much opposition and the issue went to Public Inquiry, which concluded in late October. NR are concerned about the risks associated with various possible outcomes of this process.

## Recommendation

2. Following the conclusion of the Public Inquiry, the Rail Minister and Secretary of State are asked to NOTE the risks associated with each outcome of the report, including that of withdrawal of the application.

## Background

- a) Earlier this year, NR made an application to confer powers to compulsorily acquire land and rights in land in connection with works required for the construction and maintenance of a new stepped footbridge. The footbridge would be constructed over the East Coast mainline and Transpennine railway, between Ulleskelf station and York station near Copmanthorpe in the City of York.
3. This application received national attention and many objections from campaigners, arguing on accessibility grounds that the order to divert a public right of way should not be granted, preventing the stepped footbridge being installed.
4. NR maintain that there would not be a sufficiently strong case to acquire the land required to provide a ramped bridge for several reasons, including the condition of the rural paths and lack of natural accessibility on the other side of the railway.
5. NR are concerned that the way in which the Public Sector Equality Duty (PSED) was applied in this case could affect all future attempts to close level crossings, particularly in light of the high likelihood (in NR's view) that the application for an order will be unsuccessful. This fundamentally drives and increases the chance of withdrawal.
6. There are many planned closures of Level Crossings across the country, both as part of enhancements investment, and as part of the aspiration to remove as many as possible for safety reasons. Many of these crossings are extremely remote and have very little use.

## Considerations

7. Following the conclusion of the Public Inquiry, a report is being drafted for consideration. There are four possible scenarios:
  - A) Approval
  - B) Rejection
  - C) Rejection, with reference to NR's adherence to their Public Sector Equality Duty
  - D) Withdrawal of the application
8. In the case of Rejection or Withdrawal (B,C,D) there are the following adverse ramifications:
  - Significant safety risk - the Level Crossing would remain open with the public continuing to cross 4 tracks of railway, with trains passing at 100-125mph.
  - The proposed increase in linespeed at this location (enabled by the TransPennine Route Upgrade) to 125mph would not be possible, reducing journey-time benefits by c.10s.
  - There would be limited scope for reopening the case for a crossing in the future, even with the inclusion of ramps, as there is unlikely to be a strong enough case for obtaining the necessary compulsory purchase powers.
9. Further to this, in the case of Scenario C, Network Rail feel there is a risk that a high benchmark could be set for compliance with PSED of structures crossing the railway, resulting in requirement for step-free access elsewhere, even where this is not practicable. This carries network-wide cost implications, orders of magnitude larger than this individual case.
10. If NR choose to mitigate this risk and withdraw (D), there is the risk of reputational damage as a result of NR's spending public money to progress, and subsequently withdrawing, this application. However the report and its findings would not be published, and the risk of precedent-setting is mitigated.
11. NR will shortly take a decision on their course of action and will update the Programme executive, including DfT officials, accordingly. In the case of withdrawal (D), officials will be writing to NR at a senior level for a whole portfolio review of this issue, and will return to Ministers with further advice.
12. *Network Rail have conducted their own Equality Impact Assessment for this TWAO with regard to Public Sector Equality Duty. This advice does not ask for a decision, and does not form any part of the decision-making process of the application. As a result, there is no direct impact of this advice on PSED.*

## Presentation and handling

13. The conclusion of Public Inquiry is likely to receive local and regional media attention, particularly given the Department is preparing a proactive announcement on the TRU project shortly. While this is a Network Rail lead, press office will handle this reactively and ensure robust lines to take are in place.