

THE NETWORK RAIL (LEEDS TO MICKLEFIELD) ENHANCEMENTS ORDER 2023

PROOF OF EVIDENCE FROM JOHN HARKER

COURTS & INQUIRIES OFFICER (LEEDS metropolitan area)

ON BEHALF OF THE PEAK & NORTHERN FOOTPATHS SOCIETY (a registered charity founded in 1894)

1. On behalf of this Society, I have objected to certain aspects of the draft Order as it pertains to two public rights of way. Namely Public Footpath No. 7(Garforth), which Network Rail (NR) refers to as the Garforth Moor Level Crossing; and Public Bridleway No. 8 (Parish of Micklefield), which NR refers to as the Peckfield Level Crossing.

2. This draft Order is published under the Transport and Works Act 1992. Section 5 sub section 6 states as follows: *“An Order under section 1 or 3 above, shall not extinguish a public right of way over land unless the Secretary of State is satisfied- (a) that an alternative right of way has been, or will be provided, or (b) that the provision of an alternative right of way is not required”*. This Society submits that in the case of the Garforth Moor crossing, the draft Order fails to satisfy the ‘test’ in (b); and that in the case of the Peckfield crossing, the draft Order fails to satisfy the ‘test’ in (a).

3. In addition, **“A Guide to Transport and Work Act Procedures 2006” (see Appendix 1 - (included as CD 2.29))** states on page 12 paragraph 1.14 and I quote: *“In addition, the following are unlikely to be approved in TWA Orders on policy grounds, unless compelling reasons can be shown:*

“Proposals that could be more properly dealt with under other existing statutory procedures – for example the closure.....of a public right of way where no associated new works requiring a TWA Order are proposed”. This Society submits that the fact that, prior to the application to the Secretary of State for this current TWA Order, NR were working with Leeds Council, demonstrates that NR were of the opinion that the changes that they wanted could be achieved by confirmed Public Path Orders and the granting of planning consent for the proposed allotment holders car park. We expand on the Public Path Order aspect of this starting in the next paragraph.

4. I will address the issues surrounding the Garforth Moor Level Crossing first. This carries definitive footpath No.7 (Garforth) across the railway line “at grade”. For this we have to turn the clock back about five years.

5. On the 18th. February 2019 the Society’s Head Office received an email from Kath Windett, a Public Rights of Way consultant. She was under contract to Leeds Council to carry out consultations concerning potential Orders on behalf of the Council’s Public Rights of Way Team. That email with attachments was forwarded to me as the Society’s Courts & Inquiries Officer covering Leeds. **(See Appendix 2)**.

6. The thrust of her email was that Leeds Council was considering an application from NR, under section 118A of the 1980 Highways Act, to extinguish the public footpath rights across Garforth Moor Level Crossing due to the perceived danger to users of the crossing. **In**

return NR would support the making and confirming of a Public Path Creation Order under section 26 of the Highways Act 1980 to provide an alternative to the existing section across the railway line level crossing (our emphasis). The effect of this package was shown on the draft Order Plan that Kath Windett attached to her email (See Appendix 2).

7. After due consideration, the decision was reached that the Society would not object to the package of proposals, since the new footpath being put forward for creation was a not unreasonable alternative to the section of Footpath No. 7 proposed for extinguishment. The concurrent nature of the two Public Path Orders gave the Society reassurance that if there were objections to the creation of the new footpath, the existing footpath across the railway line would not be extinguished by a confirmed Rail Crossing Order under section 118A.

8. On behalf of the Society, I would draw the inspector's attention at this point to the legislation which allows a Public Path Creation Order under section 26 of the 1980 Highways Act to be published (see Appendix 3). Sub section (1) states and I quote: "*Where it appears to a Local Authority that there is need for a footpath or bridleway over land in their area and they are satisfied with regard to –*

(a) *The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area and,*

(b) *The effect which the creation of the path or way would have on the rights of persons with an interest in the land, account being taken as to the provisions for compensation contained in section 28 below,*

It is expedient that the path or way should be created the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land".

9. The Order before this public inquiry is made under the Transport and Works Act 1992. So why is this Society drawing attention to events that took place before NR applied to the Secretary of State for Transport for an Order under the 1992 legislation? It is because this Society believes that it is clear from the time Leeds Council consulted about concurrent Public Path Orders, that NR was happy or content for a footpath to be created as a substitute for the extinguished route across Garforth Moor crossing. I do not believe that Leeds Council would have agreed to the package of extinguishment and creation unless that was the case. Indeed, Kath Windett's email of February 2019 sent out to consultees, confirms this (see paragraph 6 above and Appendix 1).

10. Next, I would draw the inspector's attention to the words and phrases in section 26 which are important in respect to the continuing need for a substitute route in the draft Order before this public inquiry. Words or phrases such as: "**need for a footpath.....over land in their area". "The extent to which the path.....would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area....."** (Our emphasis).

11. Also, I would draw the inspector's attention to the Leeds Council's Principal Definitive Map Officer's Report to the Council's Natural Environment Manager (undated), (see Appendix

4). The report by Claire Tregembo, deals with both the application for a Public Path Extinguishment Order from NR and the proposal to create a new footpath from Barwick Road by means of a Public Path Creation Order. In the section of the report entitled **“What is this report about?”** the fourth bullet point makes reference to a number of West Yorkshire and Leeds Council strategic policies which relate to climate change, transport, and health which the creation of this new public footpath would contribute to in a positive manner. It specifically says that the extinguishment of the level crossing footpath would be unlikely to satisfy the policies mentioned in the report unless the new public footpath was created in lieu of the closed one.

12. In the section of the report entitled **“Why is the proposal being put forward?”** (Paragraphs 1-6), paragraphs three, five and six clearly relate directly to the proposed creation of a new footpath. It is clear to this Society from reading those paragraphs that NR believed that the creation of a new public footpath from Barwick Road to connect with Footpath No. 7 was both desirable and necessary in order to compensate the walking public for the loss of Garforth Moor level crossing and the section of public footpath which crossed it. NR was going to not only pay for the costs incurred by the application for an Extinguishment Order and, if it were confirmed, its associated signage and gating works, but fund the construction of the new footpath themselves, should the Public Path Creation Order be confirmed.

13. In the section of the report entitled **“What impact will this proposal have?”** (paragraphs 7-11), paragraph 7 refers to the proposed new footpath *minimising the need to walk on roadside footways and that the new footpath would improve connectivity in the network for residents in Moor Garforth and provide a connection to Footpath No. 6 only 55 metres away (our emphasis)*. This Society submits that this is further evidence that NR, at the time of this Officer’s Report, were of the opinion that a concurrent Public Path Creation Order to establish a new public footpath was the optimal solution to the issues raised by the closure of a section of Footpath No. 7 across Garforth Moor level crossing. We submit to this inquiry that this is still the case and circumstances have not changed sufficiently to justify the extinguishment of a section of Footpath No. 7, without a commensurate creation of an alternative route for walkers to minimise the length of detour required to reach the same point, and minimise potential danger to pedestrians by walking along Barwick Road. This is what the Order, in front of this inquiry, is proposing pedestrians do. Extinguish one section of footpath, without providing a substitute. Therefore, this Society submits that this extinguishment cannot be confirmed as it fails test (b) referred to above in Paragraph 2.

14. We will be asking the inspector prior to this inquiry to conduct a site visit to see for himself what the alternative is for pedestrians to the closure of the level crossing and associated public footpath. It is our submission that the only alternative on offer, a walk along the footway of Barwick Road, passing under a railway bridge where the footway narrows for about 18 metres to a width of 0.76 metres, and is darkened by the bridge above is in no way an adequate substitute for the footpath set out in the Public Path Creation Order. Not only that, but a pedestrian then has two right angled turns to conduct. Along part of a public footpath which is acknowledged by the Highway Authority to be an unrecorded public bridleway, and the whole alternative is, and will be, open to vehicular traffic; either on Barwick Road; leading to a proposed allotment car parking area, or private access to several properties

off Barwick Road. NR's proposal will force allotment holders into vehicles whether they want to or not. If they don't, the alternative is a long walk down Barwick Road and then two 90 degree turns carrying allotment-related items, or wheeling a barrow. How is that proposal good for the environment? We submit that the Public Path Creation Order pointed to the optimal solution which minimised inconvenience to walkers and allotment holders alike. The draft Order should have put this forward as an option for the inspector to consider, as he is already considering other compulsory purchase applications (a Public Path Creation Order is analogous to a compulsory purchase order).

15. In the section of the report entitled **“What consultation and engagement took place?”** (paragraphs 12-32). The occupant of No.10 Barwick Road commented on the proposal to create a new footpath which would follow the field edge next to their property. The concern was the impact on privacy, security and wildlife. The Officer Report (**paragraph 18**), said that the privacy and security concerns could be addressed by planting or fencing. Given that NR were willing to pay for constructing the new footpath, we submit that some extra funding for planting and/or fencing would not have been unduly unreasonable to address those concerns.

16. Paragraph 27 makes it clear that, in 2022 at least, the owner of the land across which the newly created footpath would run was not opposed in principle to a Creation Order as long as the new footpath coincided with any private vehicle rights for allotment holders along the southern edge of the field. The fact is that the draft Order before this inquiry does not do that, but forces both members of the public on foot, and allotment holders in vehicles or on foot, to travel all the way down Barwick Road, or on a footway adjacent to the road; then under a bridge which casts deep shade before turning off the road and around two sides of a rectangle. This Society is led to believe that both the landowner, and the occupant of No.10 Barwick Road, objected to the subsequently published Public Path Creation Order. We assume that this is because the former did not succeed in getting the public footpath to carry the private vehicular rights for allotment holders, and the latter was opposed to the new public footpath's impact on the privacy and security of No.10.

17. In the section of the Report entitled **“What are the key risks and how are they being managed?”** (paragraphs 46-47) the Officer concerned makes clear that any impact on the occupants of 10, Barwick Road can be successfully mitigated by the design of the new path and accommodation works such as planting and/or fencing as referred to earlier in the Report.

18. In the section of the Report entitled **“Does this proposal support the council's 3 Key Pillars?”** (Paragraphs 48-49), all three of the boxes shown **“Inclusive Growth”**; **“Health and Wellbeing”** and **“Climate Emergency”** are marked with a X, thus indicating that this proposal does support the 3 Key Pillars. It is patently obvious to this Society that a new public footpath was considered an essential component in the package for the Garforth Moor Crossing 'problem' as late as the autumn of 2022 looking at the dates of the published Public Path Creation and Rail Crossing Extinguishment Orders (**See Appendix 5**); and it contributed towards the Council's wider strategic 'goals' as referred to in the Report (**see paragraph 11 above**).

19. To summarise - this Society submits that the inspector should concur with this Society that the circumstances surrounding the proposed Garforth Moor crossing closure have not

changed so radically from the Leeds Council round of consultations in 2019 (and the published Public Path Orders in October 2022), and the current situation set out in the draft Order before this public inquiry.

20. Therefore, we request that the inspector **DOES NOT CONFIRM** that part of the draft Order as it relates to the extinguishment of Public Footpath No.7 across Garforth Moor level crossing. The alternative proposed by the draft Order (that walkers be forced to detour via the footway of Barwick Road, and then paths which will be open to vehicles, and in part to horses riders and cyclists), is quite unacceptable. The Secretary of State should not be satisfied that no alternative footpath is needed. Therefore he cannot confirm the extinguishment of that section of Footpath No. 7, as this proposal fails to meet the proviso in test (b) referred to in Paragraphs 2 and 13 above.

21. On behalf of this Society, I turn now to the proposed extinguishment of a section of Bridleway No. 8 (Parish of Micklefield) across Peckfield Level Crossing, and the alternatives put forward by NR in the draft Order.

22. Firstly, this Society submits that if the Secretary of State is minded to confirm the extinguishment of the Peckfield Level Crossing, then he must confirm the creation of a 'like for like' replacement i.e. a public bridleway. The Secretary of State should not countenance the 'dead-ending' of a public highway leaving its legitimate cycle and horse users with nowhere to go without having to commit the act of trespass. NR user survey data of the relevant level crossing shows low numbers of cyclists and no horse riders using the crossing at the times of the surveys. The fact that the data shows such numbers is, in the view of this Society, irrelevant. The route concerned has the legal status of public bridleway. No evidence is forthcoming that this Society is cognisant of, that this legal status is incorrect, notwithstanding assertions that use by horses and cyclists is minimal or non-existent. The Secretary of State cannot, this Society submits, confirm this extinguishment and replace it with a public footpath.

23. **Without prejudice** to the above opinion, this Society is opposed to the extinguishing of the said level crossing. The proposed alternatives on offer in the draft Order before this Inquiry are quite inadequate. This Society concurs with the submission put forward by Micklefield Parish Council from last year when NR initially consulted. In other words, that the closure of this level crossing, without a replacement bridge or tunnel, will sever the two parts of the village from one another. This is all the more so as the village south of the line is expanding. However, this Society believes it must be a ramped bridleway bridge incorporating a stepped alternative for pedestrians if feasible. NR's proposed alternatives have a variety of 'downsides' that render them inadequate as replacements for the said crossing.

24. One alternative seems to be for bridleway users, using Bridleway No. 8 to approach the village from the south-west, to turn right at the crossing, and use the remainder of Pit Lane which is now a made-up vehicular highway serving an industrial estate, and a new housing estate being built south of Pit Lane. This Society submits that this is not an acceptable proposal. It forces pedestrians, cyclists and horse riders to mix with vehicular traffic to reach a main road and then have to use the footway of that main road to reach the point that they would have reached had the crossing not been extinguished. **(See photos in Appendix 6)**. Pedestrians would have to switch sides as the footway is not continuous on both sides of the

vehicular highway. Vehicles would be crossing the footway to access the new houses on Pit Lane and entering/exiting the industrial premises where Pit Lane turns sharply near the crossing. Vehicles are parked on the footway as the photos in the appendix mentioned above show. This option, which we would call the 'mandatory option' will be the route walkers, cyclists and horse riders HAVE TO USE (our emphasis) irrespective of whether the inspector chooses to confirm the option of a public footpath or public bridleway through the Park, or neither of those. That is what will happen if Peckfield Level Crossing is closed permanently.

25. Another option on offer is to create a new public footpath north of, and parallel to, the railway line so that pedestrians can reconnect to the main road if traveling southward along the northern section of Bridleway No.8 (aka Lower Peckfield Lane), or reconnect to Bridleway No.8 if traveling northward. This option is manifestly not 'like for like'. Cyclists and horse riders will effectively be using a 'cul de sac' to the crossing and then have to turn around and go back whence they came if traveling south-westerly from the Old Great North Road, along Lower Peckfield Lane (Bridleway No.8).

26. The final option on offer is a public bridleway along the same line as the footpath option. This is an option that the Parish Council (PC) disagrees with. This Society can understand the PC's dislike of this option given the layout of the Park and its facilities. The bridleway would have to run immediately adjacent to the cottages by the crossing, and then behind one end of the football ground, separated from the pitch by only a low tubular railing and some metal fencing behind the 'goal' (which we assume is to stop a ball going onto the railway line during a game). However, as we said in paragraph 22 above, the Secretary of State should not countenance the creating of a legal cul de sac. If he is minded to confirm the extinguishment of public bridleway rights over the crossing, he should consider the public bridleway option in the draft Order as the least bad alternative.

27. To summarise, this Society requests that the inspector **DOES NOT CONFIRM** that part of the draft Order which extinguishes the public bridleway rights across Peckfield Level Crossing. We submit that the options on offer are inadequate, especially the option to create a public footpath along the edge of the Recreation Ground between the northern side of the crossing and the Old Great North Road. The Secretary of State cannot confirm the extinguishment unless he is satisfied that the route being created as the alternative is adequate compensation; or if he believes that no alternative is required to the route being extinguished. We submit that neither of these applies in this specific case.

28. If the inspector is minded to confirm that part of the draft Order as it relates to extinguishing public rights over Peckfield Level Crossing then, without prejudice to paragraph 27 above, we submit that the option of a public bridleway creation along the edge of the Recreation Ground is the least bad option on offer. It is a pity in this Society's opinion that the option of a public bridleway creation along the eastern edge of the Recreation Ground, to minimise the detour required to link Bridleway No. 8 with the Old Great North Road, was not included in the final options on offer in the draft Order being determined at this inquiry.

END.