

THE NETWORK RAIL (LEEDS TO MICKLEFIELD) ENHANCEMENTS ORDER 2023

APPENDICES TO 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)

LIST

APPENDIX 1 *included as CD 2.29*

“A Guide to Transport and Works Act Procedures 2006”

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February 2019 consultation from Leeds Council re extinguishment of Garforth Moor Level Crossing and creation of alternative public footpath from Barwick Rd to Footpath No. 7

APPENDIX 3 **Page 13**

Highways Act 1980 section 26 legislation criteria for creating a new public right of way

APPENDIX 4 **Page 17**

Leeds Council Report by Claire Tregembo seeking authority to publish concurrent Public Path Orders under ss. 26 & 118A HA80 to extinguish a section of Garforth FP 7 and create a new public footpath off Barwick Rd.

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Public Path Extinguishment and Public Path Creation Orders published by Leeds Council September 2022 under the Highways Act 1980 ss. 26 and 118A

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Photos of the Garforth Moor and Peckfield Level Crossings areas, all taken on 01/02/2024 unless otherwise stated.

APPENDIX TWO

LE - GAR - 7

Alan Hooley

From: "Kath Windett" <[REDACTED]>
 Date: 18 February 2019 10:51
 To: "Kath Windett" <[REDACTED]>
 Attach: Consultation Plan Garforth 7.1to2000.pdf; Garforth moor Risk Assessment.pdf; S118a Supporting Evidence Garforth Moor.pdf; Garforth 7 Wider Area copy 2.pdf.zip
 Subject: Garforth Moor Level Crossing - proposed public path orders

Highways Act 1980 Section 118A – Rail Crossing Extinguishment Order, and Section 26 - Public Path Creation Order, at Garforth Moor Level Crossing, LS25 1QG and LS25 2DG Grid References – SE 40435 33649 to SE 40363 33787

I have been engaged by Leeds City Council as a consultant to assist the Council with processing public path order applications. I am sending you this consultation on behalf of the Council's Public Rights of Way Team.

The Council is considering an application to make a Rail Crossing Extinguishment Order for part of Garforth Public Footpath No.7. This would permanently close the section of public footpath shown by the red line on the attached Consultation Plan. The Council is also considering making a Creation Order which would formally create a new public footpath on the route shown in green on the Consultation Plan.

Background & Legislation

Network Rail has applied for the extinguishment of the public footpath which crosses the Hull to Leeds Railway line at Garforth Moor Level crossing following a risk assessment of this crossing. A copy of Network Rail's Supporting Evidence and Risk Assessment are attached for your information. They have considered alternative methods to reduce, mitigate or remove the risks but they have not found any of these to be viable.

Leeds City Council, as Highway Authority have powers under Section 118A of the Highways Act 1980 to make an Extinguishment Order for a footpath, if it is considered expedient in the interests of the safety of members of the public using it that the footpath which crosses a railway, other than by a tunnel or bridge, should be stopped up.

The applicant has considered options for diversion of the path but does not have control over land that would enable the route to be diverted as a fully segregated footpath, or for the creation of a bridge. Alternative routes are available to both the east and west, partly using roadside footways. To minimise the use of roadside footways and create a route as close as possible to the existing route, it is proposed that a new section of public footpath should be created as shown by the green line on the Consultation Plan. The Council, as Highway Authority, has powers under Section 26 of the Highways Act 1980 to promote a Creation Order where it considers there is a need for a new public footpath. The applicant states that they would support this as part of the wider scheme, in parallel with the proposed Extinguishment.

forwarded to John Harker
for comment
JH

REF: [REDACTED] JMG-18/2/19

REF	
SFL	
REF	
WIT	

LE-GAR-7

assessors@peakandnorthern.org.uk

From: "David Brown" [REDACTED]
Date: 19 February 2019 18:33
To: "A Hooley" <assessors@peakandnorthern.org.uk>
Attach: Consultation Plan Garforth 7 1to2000.pdf; Garforth moor Risk Assessment.pdf; S118a Supporting Evidence Garforth Moor.pdf; Garforth 7 Wider Area copy 2.pdf.zip
Subject: Fwd: Garforth Moor Level Crossing - proposed public path orders

PEAK & NORTHERN FOOTPATHS SOCIETYwww.pnfs.org.uk

David C Brown dcb.pnfs0@gmail.com
Hon Secretary [REDACTED]

----- Forwarded message -----

From: Kath Windett <[REDACTED]>
Date: Mon, 18 Feb 2019 at 10:47
Subject: Garforth Moor Level Crossing - proposed public path orders
To: Kath Windett <[REDACTED]>

Highways Act 1980 Section 118A – Rail Crossing Extinguishment Order, and Section 26 - Public Path Creation Order, at Garforth Moor Level Crossing, LS25 1QG and LS25 2DG

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The applicant has considered options for diversion of the path but does not have control

P.a.o. JH
 BH 25/2/19.

25/02/2019

over land that would enable the route to be diverted as a fully segregated footpath, or for the creation of a bridge. Alternative routes are available to both the east and west, partly using roadside footways. To minimise the use of roadside footways and create a route as close as possible to the existing route, it is proposed that a new section of public footpath should be created as shown by the green line on the Consultation Plan. The Council, as Highway Authority, has powers under Section 26 of the Highways Act 1980 to promote a Creation Order where it considers there is a need for a new public footpath. The applicant states that they would support this as part of the wider scheme, in parallel with the proposed Extinguishment.

Description of change

The route to be extinguished is a 129 metre length of Garforth Public Footpath No. 7, shown by a solid red line on the Consultation Plan. The section commences at its junction with Dale Croft, Garforth and continues northward, crossing the Hull to Leeds railway line at a level crossing, to the junction of Garforth Public Footpaths 7 and 8A.

The existing path is recorded in the Statement accompanying the Modified Definitive Map as having a width of 1.5 metres and a part ashed, part arable surface.

The alternative route to the west would be via the road-side footways of Dale Croft, Town End and Barwick Road, to a point to the north of number 10 Barwick Road. The route would then turn east, leaving Barwick Road on a new public footpath near the southern edge of the field. The new path would run for approximately 96 metres to re-join the remaining section of Garforth Public Footpath No. 7 approximately 17 metres north of the intersection of Path 7 with Path 8A. The total length of this alternative route is approximately 450 metres. This route relies on the successful advertising and confirmation of the proposed Public Path Creation Order to create the 96 metre length of new footpath.

An alternative route to the east, to connect back into the footpath network at footpath number 44 would be approximately 860 metres via roads, or 690 metres via Tesco's car park.

Next steps

The purpose of this consultation is to enable interested parties to comment, whether this is in support of the proposal or to raise any concerns or objections. Wherever possible we will seek to resolve any concerns before the Council takes a formal decision on the application.

Please note that the path across the level crossing is securely fenced off. It has been subject to a temporary closure order, which is currently being renewed. The route can be viewed from either end, but there is currently no public access on the level crossing itself.

I would be grateful to receive any comments that you may have regarding the proposed Extinguishment and Creation Orders by 29 March 2019, so that they may be taken into consideration by the Council.

After that date, I will collate all responses received and prepare a report for the Council to consider. If this results in the Council making and advertising the Extinguishment Order and the Creation Order, there would then be a formal consultation period of at least 28 days for any representations or objections the orders to be made. If any such representations or objections are made during the formal consultation, the Council would not be able to confirm the Order, but would have to refer it to the Planning Inspectorate for determination on behalf of the Secretary of State. This could result in a local public inquiry being held.

If you require further information about this case, please do not hesitate to contact me.

Please could you acknowledge receipt of this consultation, even if you do not wish to comment.

Yours faithfully,

Kath Windett

Enclosures: Consultation Plan; Applicants Supporting Evidence and Risk Assessment; Wider Area Plan

Kath Windett

Public Rights of Way

Research : Advice : Consultancy

Phone: [REDACTED]

Email: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[LinkedIn](#)



Leeds 7 Public Path Order Consultation Plan

Path to be extinguished

Path to be created

Key

	Definitive	Claim/Review	Permissive	Recreational
Footpath				
Bridleway				
Restricted Byway				
Byway				



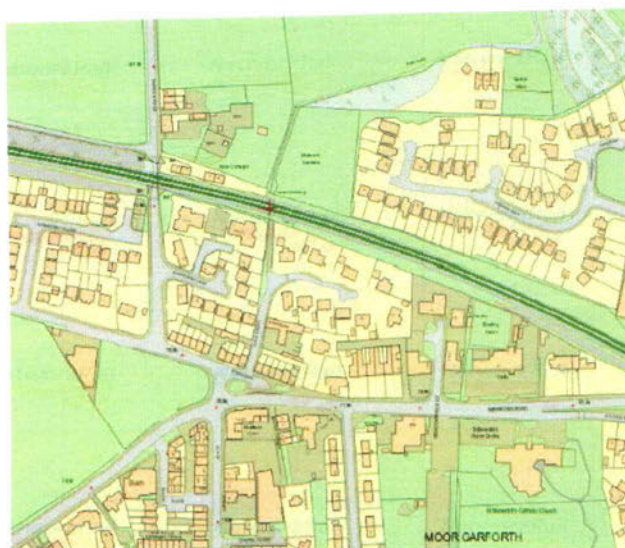
0 256 913.518
Meters

Please Note: This is a working copy of the Definitive Map and is not a legal document. It should only be treated as an indication of public rights of way. Furthermore, the data shown on this map has currently not been corrected according to the OS Provisional Accuracy Improvement Programme. The map base used by Leeds City Council follows the Ordnance Survey data from Pre August 2004 so some rights of way may be misaligned to the current Ordnance Survey maps. Any queries or errors in relation to public rights should be raised with the Definitive Map Team on 0113 3722906



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Garforth Moor Level Crossing



A public footpath crossing located west of Garforth Station.

Garforth Moor foot crossing is located approximately 400m west of Garforth station, West Yorkshire, it gets daily regular use by locals and allotment holders at the adjacent site.

The foot crossing has limited sighting looking towards Garforth Station with mitigation provided by whistle boards sited at 281m and 434m (for stopping and non-stopping trains) up direction trains and 371m for down direction trains. Trains sound their horns on approach to warn pedestrians.

Line speed	90mph
Crossing traverse	9.1m
Crossing traverse time	7.1 seconds (able bodied users)
	11.48 (vulnerable/encumbered users)

As part of a recent risk assessment a 10 day video census was carried out at the crossing. This census has identified that 65% of the users of this crossing are encumbered or vulnerable. Encumbered or Vulnerable level crossing users can be defined as people who, when compared with typical users: Are likely to take an extended time to traverse; and/or might be at greater risk of harm.

This can include the elderly, dog walkers, young children and people carrying heavy bags or objects. All of these user groups can take an increased time to cross the railway, these user groups were observed in this census conducted at this location.

The whistle boards provide adequate warning for able bodied users (9.52 seconds) but do not provide a sufficient warning for vulnerable /encumbered persons. Based on the calculation used by Network Rail to cover this type of use, the whistle board warning is 2.52 seconds deficient compared to the time required for a person to cross safely calculated from All Level Crossing Risk Model.

This high percentage of vulnerable / encumbered users means that additional action in risk mitigation is required at the crossing.

However;

Moving the position of the whistle boards is not an option as this will take them over the maximum permitted distance.

A temporary speed limit has been imposed on the line as a short term measure while options for the permanent solution are investigated. A permanent speed restriction cannot be implemented due the impact and inconvenience this would bring to the wider traveling public.

MSL overlay (Miniature Stop Lights) cannot be installed due to existing engineering features which include Garforth station and signalling equipment which precludes the installation of this type of equipment.

To enable Network Rail to explore longer term solutions a Temporary Stopping Up Order is required.

		Totals for each day			
Day	Date	Pedal/Motor Cyclists	Pedestrians	Total	
Fri	14/04/2017	0	29	29	
Sat	15/04/2017	0	64	64	
Sun	16/04/2017	0	38	38	
Mon	17/04/2017	0	53	53	
Tue	18/04/2017	0	51	51	
Wed	19/04/2017	0	32	32	
Thu	20/04/2017	0	40	40	
Fri	21/04/2017	0	43	43	
Sat	22/04/2017	0	39	39	
Sun	23/04/2017	0	66	66	
Average - 10 Days		0	46		
Average - Weekdays		0	41		
Average - 7 day 1st Weekend		0	44		
Average - 7 day 2nd Weekend		0	46		
Maximum		0	66		

Between 23:00 & 07:00				
Day	Date	Pedal/Motor Cyclists	Pedestrians	Total
Fri	14/04/2017	0	0	0
Sat	15/04/2017	0	0	0
Sun	16/04/2017	0	0	0
Mon	17/04/2017	0	0	0
Tue	18/04/2017	0	2	2
Wed	19/04/2017	0	1	1
Thu	20/04/2017	0	1	1
Fri	21/04/2017	0	2	2
Sat	22/04/2017	0	4	4
Sun	23/04/2017	0	2	2
Maximum		0	4	4
Percentage based on Max		0%	6%	6%

V. User					
Day	Date	Encumbered User	Vulnerable user	total	Percentage
Fri	14/04/2017	0	12	12	41%
Sat	15/04/2017	2	41	43	67%
Sun	16/04/2017	1	18	19	50%
Mon	17/04/2017	8	28	36	68%
Tue	18/04/2017	7	18	25	49%
Wed	19/04/2017	6	14	20	63%
Thu	20/04/2017	1	17	18	45%
Fri	21/04/2017	2	21	23	53%
Sat	22/04/2017	0	24	24	62%
Sun	23/04/2017	4	31	35	53%
Maximum		8	41	43	65%

Sighting required table	Current Line Speed	90 MPH
Maximum Recorded Traverse time from Census	18 Seconds	724m
Average Traverse Time from Census	11 Seconds	443m
Calculated Traverse Time	12 Seconds	483m

Minimum Available sighting	270m
Minimum Whistle board (Stopping trains)	281m
Minimum Whistle board (none stopping trains)	371m

Garforth Moor – s118a Application

Supporting evidence

Network Rail uses ALCRM (All Level Crossing Risk Model) as a tool to standardise its approach to calculating risk at level crossings. Data relating to a level crossing is input into the system and an individual and collective risk rating is calculated for the crossing. A Risk Assessment is also completed to look at human factors and options for additional mitigation etc.

In 2013 Network Rail introduced the role of Level Crossing Managers – the idea being that each manager would oversee a smaller number of crossings with the benefit of having more localised knowledge, a closer relationship with authorised users and a more detailed understanding of the levels of use throughout the year rather than a snapshot in time.

Historically, risk was calculated using a 30 minute census taken on site, this was then multiplied to work out average use per day/year. Censuses were done in 2014 and 2016 but the information provided shows the number of users but makes no reference to any misuse. A 9 day census was done in April 2017 and after an internal analysis of the results, the risk at the crossing was reported to have increased by 109%. The cameras on site recorded the number of vulnerable users and the frequency of misuse over the 9 days and showed multiple occasions where encumbered users walked over the railway – in one instance, a pedestrian walked over the crossing holding a water barrel and had an obscured view of where they were walking.

The document attached is a copy of the risk assessment produced by the Level Crossing Manager which was provided as supporting evidence to accompany Network Rail's request for an emergency closure of the footpath (thereafter followed by a Temporary Traffic Regulation Order).

Risk to the public

The crossing has limited sighting looking towards Garforth station. There is vegetation on either side of the crossing as the footpath approaches the operational railway corridor but the curvature of the line is such that cutting it back further than what it is already would not alter the limited sighting.

The crossing is protected by whistle boards sited at 281m and 434m (for stopping and non-stopping trains) in the up direction and 371m for trains travelling in the down direction. Trains are instructed to sound horns on approach to the crossing to warn pedestrians.

The maximum line speed is 90mph in both directions. The crossing is passed by approximately 269 trains per day. 259 are passenger trains and are normally 80 metres in length and 10 are freight trains being approximately 300 metres in length. It is believed that the majority of these trains are scheduled during the hours of 06.00 and 23.59 although delays to trains means this is not guaranteed. This also doesn't account for other trains connected with maintenance and repairs of the railway which often run during the night. The scope of the Transpennine Route Upgrade project has not yet been determined but it is inevitable that the crossing will be impacted by one or more of the following - increased number of trains, quieter trains, faster trains etc.

The whistle boards cannot be moved nearer to the crossing – they are situated at a distance designed to provide the optimum warning time to crossing users, which must be greater than the sighting distance, but not too far away for the sound to be lost. Relocation of the whistle boards will take them beyond the maximum permitted distance.

At some crossings spanning no more than two running tracks it is possible to install miniature stop lights which show red or green lights at the crossing and therefore act as an aid for users – user behaviour at other locations has shown that the crossing can continue to be mis-used as users can

and do ignore them. In any event, the proximity of Garforth railway station and signalling equipment precludes this mitigation option.

Use made of existing path

The footpath over the level crossing is predominantly used by dog walkers to access a larger footpath network and occupiers of the allotments to the north east of the level crossing. The path (and level crossing) are subject to a TTRO; when the last census was undertaken prior to its closure in April 2017 the crossing showed an average of 46 users per day with up to 65% of those considered 'vulnerable users' including the elderly, dog walkers and those encumbered, specifically at Garforth Moor there were several users clearly going to the allotments carrying equipment which could potential impede their visibility and/or be a distraction.

Effects of closure/Alternative routes

To the west, access to the footpath network to the north of the railway line will be via Barwick Road to the west and through the underbridge. The bridge is narrow but there are 'Give Way' signs which should encourage road users to decrease their speed on the approach to the bridge. There is also a kerb running along the entirety of the alternative access (before it cuts across the field) although it is narrower as it passes through the bridge. The 60mph signs are placed further north so traffic approaching the bridge has slowed down to a maximum of 30mph. There are also 'Slow' signs on the road approaches with horizontal lines on the road as a further warning to motorists. The section of Barwick Road which provides the alternative route is also lit. The intention is for the footpath to turn east at 90 degrees to the road onto a field after the last house on the north side of Barwick Road and then run along the field boundary to back into Garforth No 7.

To the east, the alternative route is along Aberford Road and then Parkinson Approach which provides access to Garforth 44 and then Garforth 7 footpaths. The majority of this route is also kerbed and has street lighting. Due to the proximity of residential and commercial properties the speed limit will be no more than 30mph.

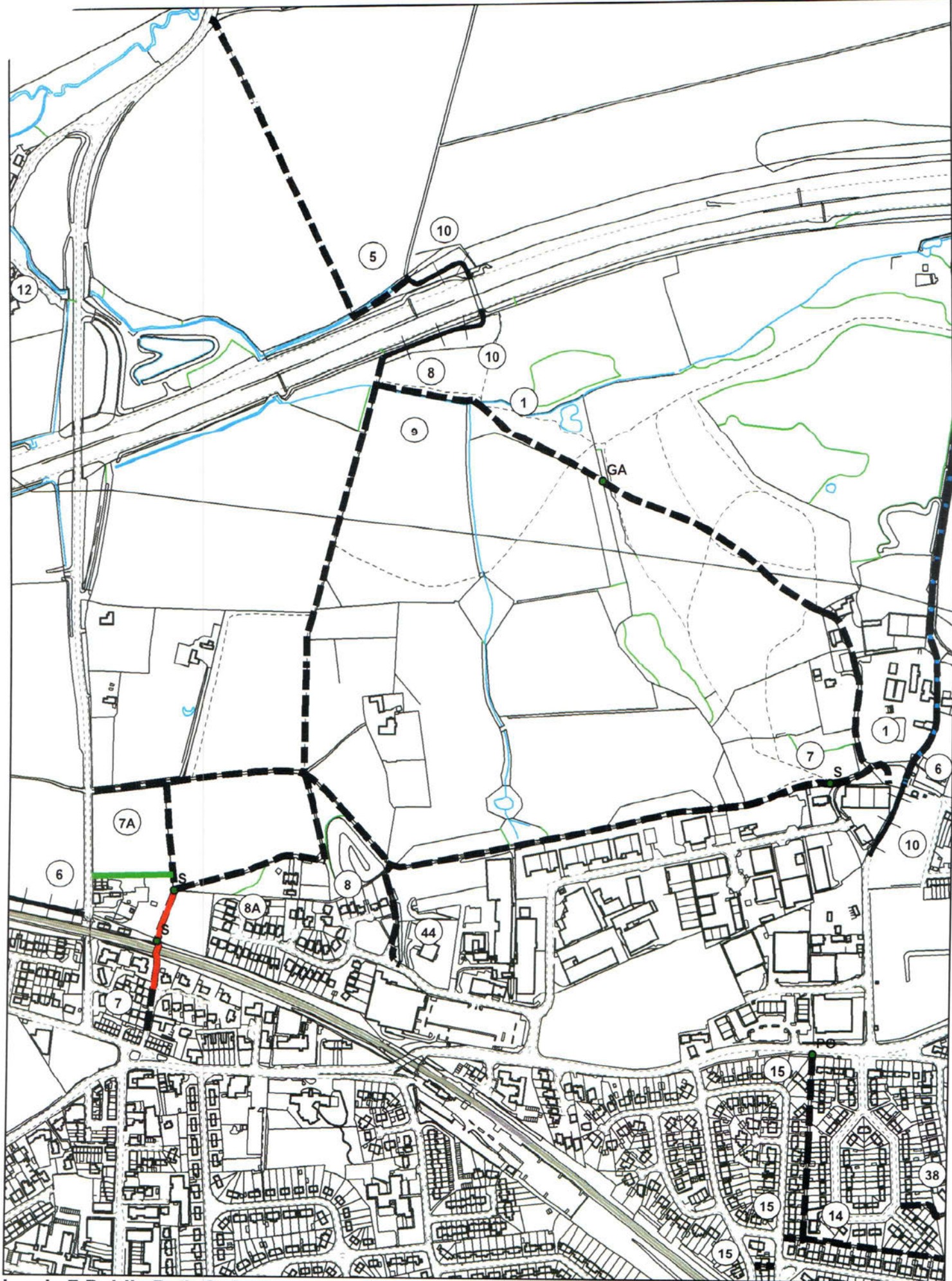
Alternative measures to closure and associated costs

Bridge:

There does not appear to be sufficient land within Network Rail's boundary to land a bridge and as such land purchase will most likely be needed. In addition, the height of any structure will be over 6 metres (allowing for electrification) which will no doubt be objected to by residents. The cost of such a structure would be circa £2,000,000 not allowing for land purchase etc.

Diversion:

An alternative route for pedestrians does exist but as some of this is on existing highway the footpath cannot be diverted, although an alternative footpath to link the highway with the existing footpath network can be created at the discretion of the Highway Authority – Network Rail would support this as part of the wider scheme in parallel with the extinguishment.



Leeds 7 Public Path Order - Wider Area Plan

Path to be extinguished Path to be created

Key

	Definitive	Claim/Review	Permissive	Recreational
Footpath				
Bridleway				
Restricted Byway				
Byway				

09 0203040
Meters

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Changes to legislation: Highways Act 1980, Section 26 is up to date with all changes known to be in force on or before 08 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes



Highways Act 1980

1980 CHAPTER 66

PART III

CREATION OF HIGHWAYS

26 **Compulsory powers for creation of footpaths ^[F1], bridleways and restricted byways**].

- (1) Where it appears to a local authority^[F2] or a strategic highways company] that there is need for a footpath ^[F3]bridleway or restricted byway] over land in their area and they are satisfied that, having 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 interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

it is expedient that the path or way should be created, the authority^[F4] or company] may by order made by them^[F5] or it] and submitted to and confirmed by the Secretary of State, or confirmed by them^[F5] or it] as an unopposed order, create a footpath ^[F3]bridleway or restricted byway] over the land.

An order under this section is referred to in this Act as a “public path creation order”; and for the purposes of this section “local authority” has the same meaning as in section 25 above.

- (2) Where it appears to the Secretary of State in a particular case that there is need for a footpath ^[F3]bridleway or restricted byway] as mentioned in subsection (1) above, and he is satisfied as mentioned in that subsection, he may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating the footpath ^[F3]bridleway or restricted byway].

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- (3) A local authority^[F6] and a strategic highways company] shall, before exercising any power under this section, consult any^{F7}... local authority or authorities in whose area the land concerned is situated.

[F8(3A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm or make a public path creation order, and
 - (b) a local authority^[F9] and a strategic highways company] are to have regard in determining whether or not to confirm such an order as an unopposed order, include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the proposed footpath [F3]bridleway or restricted byway] would be created.]
- (4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.
- (5) A public path creation order shall be in such form as may be prescribed by regulations made by the Secretary of State, and shall contain a map, on such scale as may be so prescribed, defining the land over which a footpath [F3]bridleway or restricted byway] is thereby created.
- (6) Schedule 6 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path creation orders.

Textual Amendments

- F1** Words in s. 26 sidenote substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F2** Words in s. 26(1) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 18(2)(a)**; S.I. 2015/481, reg. 2(a)
- F3** Words in s. 26(1)(2)(3A)(5) substituted (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2, **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F4** Words in s. 26(1) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 18(2)(b)**; S.I. 2015/481, reg. 2(a)
- F5** Words in s. 26(1) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 18(2)(c)**; S.I. 2015/481, reg. 2(a)
- F6** Words in s. 26(3) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 18(3)(a)**; S.I. 2015/481, reg. 2(a)
- F7** Word in s. 26(3) omitted (5.3.2015) by virtue of [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 18(3)(b)**; S.I. 2015/481, reg. 2(a)
- F8** S. 26(3A) inserted (12.2.2003 for E. and 1.4.2004 for W.) by [2000 c. 37](#), s. 57, **Sch. 6 Pt. I para. 1**; S.I. 2003/272, **art. 2(a)(b)**; S.I. 2004/315, {art. 2(c)}; S.I. 2006/3257, art. 2(a)(i)
- F9** Words in s. 26(3A)(b) inserted (5.3.2015) by [Infrastructure Act 2015 \(c. 7\)](#), s. 57(1), **Sch. 1 para. 18(4)**; S.I. 2015/481, reg. 2(a)

Modifications etc. (not altering text)

- C1** Ss. 26-29 extended by [Norfolk and Suffolk Broads Act 1988 \(c. 4, SIF 81:1\)](#), ss. 2(5)(6), 23(2), 27(2), **Sch. 3 para. 47(1)**

Changes to legislation: Highways Act 1980, Section 26 is up to date with all changes known to be in force on or before 08 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- C2** Ss. 25-29 extended (with modifications) (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 11(a)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**).
- C3** S. 26: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), **Sch. 1**
- C4** Ss. 25-28 applied (2.5.2006 for E. and 11.5.2006 for W.) by The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177), regs. 1(2)(4), 2, **Sch. Pt. I**; S.I. 2006/1172, art. 2; S.I. 2006/1279, art. 2
- C5** S. 26(1) functions exercisable concurrently (1.4.2018) by The Sub-national Transport Body (Transport for the North) Regulations 2018 (S.I. 2018/103), regs. 1(2), **9(3)**, 11(d)
- C6** S. 26(2) amended (30.1.2001) by 2000 c. 37, ss. **58(1)**, 103(2)
- C7** S. 26(2)(3)(3A) modified (1.4.2018) by The Sub-national Transport Body (Transport for the North) Regulations 2018 (S.I. 2018/103), regs. 1(2), **12(c)(ii)**

Changes to legislation:

Highways Act 1980, Section 26 is up to date with all changes known to be in force on or before 08 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 79(15)(aa) inserted by 2023 asc 3 Sch. 13 para. 54(b)
- s. 90B(1A) inserted by 2015 c. 20 Sch. 10 para. 15(3)
- s. 90C(2)(2A) substituted for s. 90C(2) by 2015 c. 20 Sch. 10 para. 16(3)
- s. 90FA inserted by 2015 c. 20 Sch. 10 para. 20
- s. 115E(5) inserted by 2023 c. 55 Sch. 22 para. 11(3)
- s. 118ZA(5)(a) words inserted by 2015 c. 20 s. 25(3)
- s. 120(3ZA) inserted by 2000 c. 37 Sch. 6 para. 13(6)
- s. 121E(1A)(1B) inserted by 2015 c. 20 s. 23(5)
- s. 146(6) inserted by 2015 c. 20 s. 24(6)(d)
- s. 147(1A) inserted by 2015 c. 20 s. 24(3)
- s. 147(5A) inserted by 2015 c. 20 s. 24(5)
- s. 203(2)(b)(ia) inserted by S.I. 2023/908 reg. 6(2)(b)
- s. 219(1)(a)(i)(ii) inserted by S.I. 2023/908 reg. 6(3)
- s. 220(1A) inserted by S.I. 2023/908 reg. 6(4)(b)
- s. 223(1A) inserted by S.I. 2023/908 reg. 6(5)(b)
- s. 223(5A) inserted by S.I. 2023/908 reg. 6(5)(d)
- s. 223(5B)-(6) s. 223(6) renumbered as s. 223(5B)(6) by S.I. 2023/908 reg. 6(5)(e)
- s. 322(5)(ab) inserted by 2004 c. 18 s. 64(2)
- s. 325(2B) inserted by 2015 c. 20 Sch. 10 para. 21
- Sch. 6 para. 1(3ZA) inserted by 2015 c. 20 Sch. 7 para. 8(2)(b)
- Sch. 6 para. 2(2ZA)-(2ZE) inserted by 2015 c. 20 Sch. 7 para. 8(3)
- Sch. 6 para. 2(4) inserted by 2015 c. 20 Sch. 7 para. 8(4)
- Sch. 6 para. 2(5)(6) inserted by 2015 c. 20 Sch. 7 para. 8(5)
- Sch. 6 para. 2ZZA inserted by 2015 c. 20 Sch. 7 para. 8(6)
- Sch. 6 para. 4A(2) inserted by 2015 c. 20 Sch. 7 para. 8(7)(c)
- Sch. 6 para. 5(ba) inserted by 2015 c. 20 Sch. 7 para. 8(8)
- Sch. 6 para. 4A(1) words renumbered as Sch. 6 para. 4A(1) by 2015 c. 20 Sch. 7 para. 8(7)(a)
- Sch. 6 para. 4A(1) words substituted by 2015 c. 20 Sch. 7 para. 8(7)(b)
- Sch. 6 Pt. 1 para. 2B(4) inserted by 2015 c. 20 s. 25(6)



Report author: Claire Tregembo

Tel:

Creation Order for a footpath between Barwick Road and Garforth Footpath No.7 and Extinguishment Order for part of Garforth Footpath No.7 from Dale Croft

Date:

Report of: Principal Definitive Map Officer

Report to: Natural Environment Manager

Will the decision be open for call in?

☐Yes ☒No

Does the report contain confidential or exempt information?

☒Yes ☐No

What is this report about?

Including how it contributes to the city's and council's ambitions

- To seek authority to create, under Section 26 of the Highways Act 1980, a public footpath over land owned by a family trust between Barwick Road and Garforth Footpath No. 7 and thus enabling the recording of a public footpath on the Definitive Map and Statement.
- To seek authority to extinguish a section of public footpath over land between Dale Croft and the north side of the railway level crossing, and thus modify the Definitive Map and Statement of Public Rights of Way, following an application under Section 118A of the Highways Act 1980 from Network Rail Infrastructure Limited.
- Statement of Action DM11 of the Rights of Way Improvement Plan states that we will determine all applications for Public Path Orders within 12 weeks of receipt. This application was received in November 2018 but ongoing discussion and negotiation regarding this complex situation has resulted in determination being delayed.
- The Best Council Plan, West Yorkshire Transport Strategy 2040, Leeds Transport Strategy, Local Transport Plan, Climate Change Plan, Leeds Vision 2030 and the Leeds Health and Wellbeing Strategy all encourage the development and improvement of facilities to promote walking and cycling, active travel, access to green space to improve physical and mental health and reduce pollution and noise. The creation of a footpath will help achieve this by providing an additional route for use by the public. The extinguishment of a footpath is unlikely to meet these criteria unless an alternative footpath is also created.

Recommendations

The Natural Environment Manager is requested to authorise the City Solicitor to make a Public Path Creation Order in accordance with Section 26 of the Highways Act 1980 to create a public footpath between Barwick Road and Garforth Footpath No 7 to a width of 2 metres shown by a solid green line on the map attached in Background Paper 1, and to confirm the Order subject to their being no objections or in the event of objections being received which cannot be withdrawn, for the Order to be referred to the Secretary of State for the Department of the Environment, Food and Rural Affairs for determination.

The Natural Environment Manager is also requested to authorise the City Solicitor to make a Public Path Extinguishment Order in accordance with Section 118A of the Highways Act 1980 to extinguish part of Garforth Footpath No. 7 over a railway level crossing as shown by the solid red line on the attached map in Background Paper 1, and to confirm the Order subject to their being no objection or in the event of objections being received which cannot be withdrawn, for the Order to be referred to the Secretary of State for Environment, Food and Rural Affairs for determination.

Why is the proposal being put forward?

- 1 To request authorisation to make a Public Path Creation Order under Section 26 of the Highways Act 1980. This will add a public footpath to the Definitive Map and Statement, and
- 2 To consider the making of a Public Path Extinguishment Order under Section 118A of the Highways Act 1980 to extinguish a public footpath.
- 3 Network Rail have applied for an order to extinguish part of Garforth Footpath No.7, on the grounds that it would be in the interests of safety of members of the public. The application followed a risk assessment of the level crossing by which the footpath crosses the rail line. Their Risk Assessment and Supporting Evidence for the extinguishment are in Background Papers 2A and 2B. These describe the existing use of the crossing, risks to users, analysis of options for improvement and consideration of alternatives to closure, which have led to their decision to make the current application for Extinguishment and Creation. The Risk Assessment also led to Network Rail obtaining a Temporary Closure of the footpath across the level crossing in 2017.
- 4 The original application was for stopping up a longer length of Garforth Footpath No.7, extending from Dale Croft to its junction with Garforth Footpath No 8A as shown in Background Paper 3. Following consultation and further investigations, as discussed below, the length proposed for stopping up has been reduced to that shown in Background Paper 1. The length now proposed for extinguishment is approximately 59 metres.
- 5 Network Rail's application also proposed that a new public footpath be created, under Section 26 of Highways Act 1980, from Barwick Road, along the southern edge of a field to the north of house number 10 Barwick Road, in an easterly direction to the remaining section of Garforth Footpath No.7, joining it approximately 17 metres north of the junction of Footpath 7 with Footpath 8A, as shown by a green line in Background Paper 1.
- 6 There is currently no public right of way on this route. The footpath to be created will be provided by Network Rail and will be constructed to standards specified by Leeds City Council Public Rights of Way. The footpath to be created will have a length of 100 metres and a width of 2 metres and will run on a compacted crushed stone surface. Network Rail will fund provision of the new path and will arrange the required works.

What impact will this proposal have?

Wards Affected: Garforth and Swillington

Have ward members been consulted?

☒ Yes

☐ No

- 7 The Creation Order would create a pedestrian route as close as possible to the route proposed for extinguishment. It would minimise the need for walking on roadside footways and would provide a pedestrian link from Barwick Road and the Moor Garforth area into the

wider public rights of way network to the north of the railway line. The position of the path where it joins Barwick Road would also create improved connectivity in the network to the west, being only about 55 metres from the junction of the road with Garforth Footpath No.6.

- 8 The proposed Extinguishment Order would reduce the risk to pedestrians by removing the public footpath from the level crossing across an active rail line.
- 9 Private access to property for Garforth Allotments Association and Moor Cottages will be maintained through the retention of a section of Garforth Footpath No 7 from the level crossing northward to the junction with Garforth Footpath No.8A.
- 10 Owners of land crossed by the proposed Creation Order have a right to claim compensation. Network Rail is currently in negotiation with them regarding arrangements for the path, relevant compensation and other works.
- 11 The owners of 10 Barwick Road allege that the Creation Order would impact their privacy, security and local wildlife. This is discussed in Paragraph 16 to 18 below.

What consultation and engagement has taken place?

- 12 Although consultation is only required with other local authorities, consultation was also undertaken with Statutory Undertakers, Prescribed Organisations, Local Footpath Groups, Ward Members and appropriate Council Departments. The consultation was based on the proposal as submitted by Network Rail, as shown on the plan in Background Paper 3. A summary of all responses received is in Background Paper 4.
- 13 Concerns about the proposed changes were raised by owners and occupiers of Garforth Allotments, one Ward Councillor, the owner of one of the properties at Moor Cottages, a resident of Barwick Road and Council Officers from the Allotments Section of Parks and Countryside Service, Transport Development and Highways Assets. The owner of the land over which the proposed Creation Order would run also commented.
- 14 Comments supporting the proposed extinguishment were received from an occupier of a property at the Dale Croft end of the path and the West Yorkshire Police Architectural Liaison Officer.
- 15 Two statutory undertakers have equipment along or crossing parts of the proposed closure route but did not object to the proposals.
- 16 The owner of 10 Barwick Road was the only consultee to question the necessity for extinguishment of the path over the level crossing. They suggested that the census information supplied by Network Rail is flawed because it was over two years old at the time of consultation. They also objected to the proposed creation order as they consider it could affect their privacy and peace and could impact on wildlife.
- 17 This census information is the latest available. The data gathered in the user census contributed to Network Rail's decision to apply for temporary closure of the path, followed by the application for permanent closure. Network Rail have emphasised that existing arrangements, including the whistle boards do not provide sufficient time for less able and encumbered users to cross the tracks. Options other than extinguishment have been considered by Network Rail, as described in Background Papers 2A and 2B, but are not believed by them to be practicable solutions.
- 18 The new path would be immediately adjacent to the property at 10 Barwick Road but impacts could be mitigated through accommodation works such as strategically placed fencing or planting.

- 19 Other concerns raised regarding the proposed extinguishment relate to requirements for continued access to properties currently served by the path at the Garforth Allotments Association site and at Moor Cottages.
- 20 The Garforth Allotments Association site, known as Bank Row Allotments, is to the north of the level crossing and borders the eastern side of Garforth Footpath No.7 between the railway and Garforth Footpath No 8A. The allotments have a pedestrian access gate from this section of path. The site is owned by Leeds City Council and leased to the Trustees of Garforth Allotment and Home Gardens Association under a 25-year lease. Allotment holders previously used the path across the level crossing to access the site from Dale Croft.
- 21 The allotment holders do not challenge Network Rail's evidence regarding the safety of the level crossing. However, they do state that the proposal shown in the Network Rail's application is not the plan they were expecting as it fails to address a permanent solution for suitable access to the allotments either on foot or by vehicle.
- 22 The comments made by the allotment holders are supported by Ward Councillor Suzanne Mc Cormack and by comments from Leeds City Council's Senior Allotments Officer.
- 23 Network Rail are aware of the concerns of the allotment holders. Various ways of accommodating their needs have been considered, including possible re-location of the allotment site. Network Rail are negotiating with a landowner near the allotments regarding the provision of an access road and parking for the allotments and have recently stated that they are prepared to use their powers under the Transport and Works Act to extinguish private rights for the allotment holders and provide alternative access and parking if other negotiations do not produce an acceptable solution. This, with the reduction in length to be closed described in Paragraph 26 below means that concerns regarding pedestrian and vehicle access to the allotments will be addressed separately from the Creation and Extinguishment Orders.
- 24 The owner of one of the properties at Moor Cottages responded to the consultation stating that he and the occupants of the other three cottages have a right of way recorded in their deeds which leads, via a pedestrian gate, to the section of path next to the allotments. He states that they would need the ability to use this route after the crossing is closed.
- 25 This private access runs on the southern boundary of the Moor Cottages properties. Its eastern terminus is at the junction with Garforth Footpath No. 7 where there is a pedestrian gate onto the public footpath.
- 26 The land crossed by the Garforth Footpath No.7 between the level crossing and its junction with path No. 8A does not have ownership registered at the Land Registry. This reduces the options for negotiating alternative private access rights if the public footpath is extinguished as originally proposed. Network Rail have therefore asked that the proposal be modified to stop up only the level crossing and the footpath south of the crossing to Dale Croft leaving the section to the north as a public footpath. This would leave part of Garforth Footpath No. 7 as a cul-de-sac public footpath but would mean that the private pedestrian access to the allotments and to Moor Cottages could still be used. Network Rail are willing to provide signage advising the public that this section of path is a cul-de-sac route with access to private properties and the allotments only.
- 27 The owners of the land crossed by the proposed Creation Order commented through their agent. They require both the new public footpath and the new vehicle access to the allotments to be in the same location at the south side of the field. However, they do not object to the Creation Order as long as it does not inhibit the proposed vehicle track.

- 28 Network Rail are negotiating the details of vehicle access to the allotments with the owners of this land. However, the Creation Order for a footpath can proceed independently of the vehicle access.
- 29 Concerns were also raised about the future maintenance of the land between Dale Croft and the railway after the path is extinguished. Ownership of this land is unregistered and Network Rail would be expected to ensure that the land is fenced off and to commit to ongoing maintenance of the fences.
- 30 As described in Paragraph 7 above, the creation of a public footpath on the route shown in green in Background Paper 1 would add to the convenience and enjoyment of the public including local residents.
- 31 Network Rail's risk assessment for the level crossing has shown that the safety of the public using or likely to use the level crossing is at risk if the crossing remained open to pedestrians. Alternatives to Extinguishment were considered by Network Rail before making the application. However, options such as alterations to whistle boards, miniature stop lights for pedestrians, a bridge or diversion of the path were not found to be possible. They do not consider that it is reasonably practicable to make the crossing safe.
- 32 Network Rail have confirmed that they will make arrangements to ensure that appropriate barriers and signs are erected and maintained at the site of the crossing and will cover the costs associated with them.

What are the resource implications?

- 33 Network Rail have agreed to pay the Council's reasonable costs and disbursements in relation to this application.
- 34 If the Orders are opposed, referred to the Secretary of State and taken to Public Inquiry, then the additional costs are incurred, not covered by the application fees. Public Inquiry will cost approximately between £4000 and £8000.
- 35 Should the Creation Order be confirmed as made, minor maintenance may be required occasionally, the cost of which can be met through existing budgets.
- 36 Compensation can be claimed for the making of Creation Orders under section 28 of the Highways Act 1980. Network Rail is negotiating with the owner of the land affected by the proposed creation order and will pay for any compensation claimed. We do not have to confirm the Creation Order if it is made.
- 37 There are no additional staffing implications resulting from the making of the Order.

What are the legal implications?

- 38 The Natural Environment Manager has authority to take decisions relating to the creation of public rights of way under Section 26 of the Highways Act 1980 as set out in the Constitution under Part 3, Section 2C(f), Officer Delegation Scheme (Council (non-executive) functions), Director of Communities, Housing and Environment (1u).
- 39 The Natural Environment Manager also has authority to take decisions relating to the extinguishment of public rights of way under Section 118A of the Highways Act 1980 as set out in the Constitution under Part 3, Section 2C(f), Officer Delegation Scheme (Council (non-executive) functions), Director of Communities, Housing and Environment (1y).
- 40 Section 26 of the Highways Act, 1980 provides compulsory powers for the creation of footpaths, bridleways and restricted byways where it appears to a local authority that there

is a need for footpaths, bridleways or restricted byways in their area and that they are satisfied that having 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 residing in the area, and;
- (b) the effect which the creation of the path or way would have on the rights of persons having a legal interest in the land, account being taken of the provisions as to compensation, it is expedient that the path or way should be created.

- 41 Section 28 of the Highways Act 1980 provides for compensation to be paid for loss caused by the making of any Public Path Creation Order where it can be shown that the value of any interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order.
- 42 Section 118A of the Highways Act 1980 enables a Council as respects to a footpath, bridleway or restricted byway that crosses a railway in their area, if it is expedient in the interests of the safety of members of the public using it or likely to use it that the path or way should be stopped up, to make an Extinguishment Order.
- 43 The Secretary of State shall not confirm, and the Council shall not confirm an unopposed rail crossing Extinguishment Order unless they are satisfied that it is expedient so to do having regard to all the circumstances and in particular to whether it is reasonably practicable to make the crossing safe for use by the public and what arrangements have been made for ensuring that any appropriate barriers and signs are erected and maintained.
- 44 The personal information in Background Paper 4 of this report has been identified as being exempt under Access in Information Procedures Rule Number 10.4 (1 & 2) because it contains personal information about a member of the public. This information is exempt if and for so long as in all the circumstances of the case, the public's interest in maintaining the exemption outweighs the public interest in disclosing this information. The comments relating to the proposed orders made in the exempt documents are considered in Paragraphs 12 to 32 therefore the public's interests in relation to the diversion have not been affected.
- 45 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

What are the key risks and how are they being managed?

- 46 There is always the risk that objections will be received to any orders made, leading to public inquiry. Pre-Order consultations have identified objections and concerns. Most of these relate to potential loss of private rights of access following the Extinguishment Order as originally proposed. The concerns regarding private access rights have been addressed by reducing the length of path to be extinguished as described in Paragraph 26 above.
- 47 An objection from the owner of 10 Barwick Road could be resolved by design of the path and accommodation works to minimise intrusion on privacy and security.

Does this proposal support the council's 3 Key Pillars?

☒ Inclusive Growth

☒ Health and Wellbeing

☒ Climate Emergency

- 48 The proposed orders would provide a new connection in the local rights of way network while also closing a path with a high level of risk to users. The new path supports options for healthy and active travel and leisure. Where route control is needed, accessible options will be considered. The extinguishment would remove a section of path over the level crossing which is difficult and presents a risk for many users, especially those who are vulnerable or encumbered.
- 49 As the decision is not a Significant Operational Decision an EDCI impact assessment is not required. However, a completed EDCI screening is attached at Appendix 1

Options, timescales and measuring success

a) What other options were considered?

- 50 Options other than creation and extinguishment have been considered as described in Network Rail's supporting evidence and Risk Assessment (Background Papers 2A and 2B). Extinguishment of a longer section of path was originally proposed but following the consultation this has been reduced to allow for the accommodation of private access to properties.

b) How will success be measured?

- 51 The making of a Public Path Creation Order under Section 26 of the Highways Act 1980 and confirmation as an unopposed Order or determination by The Planning Inspectorate if objections are made.
- 52 The acceptance and use of the created footpath by the public.
- 53 The making of a Public Path Extinguishment Order under Section 118A of the Highways Act 1980 and confirmation as an unopposed Order to determination by The Planning Inspectorate if objections are made.

c) What is the timetable for implementation?

- 54 The Public Rights of Way Section will make the Public Path Creation Order within 12 weeks of approval and confirm it shortly after the end of the objection period if none are received.
- 55 The Public Rights of Way Section will make the Public Path Extinguishment Order within 12 weeks of approval and confirm it shortly after the end of the objection period if none are received.
- 56 Network Rail will aim to provide the new path within three months of the Creation Order being confirmed.

Appendices

- 57 Appendix 1: EDCI Screening

Background papers

Background Paper 1	Plan showing proposed Creation and Extinguishment
Background Paper 2A	Network Rail Risk Assessment
2B	Network Rail Supporting Statement
Background Paper 3	Plan of original proposal showing longer length to be closed
Background Paper 4	Summary of Consultation Responses (confidential)

LEEDS CITY COUNCIL

PUBLIC PATH EXTINGUISHMENT ORDER

HIGHWAYS ACT 1980, SECTION 118A

**LEEDS CITY COUNCIL
(GARFORTH FOOTPATH NO.7)
EXTINGUISHMENT ORDER 2022**

This Order is made by the Leeds City Council ('the Authority') under Section 118A of the Highways Act 1980 ('the 1980 Act').

The footpath in the authority's area described below crosses a railway otherwise than by a tunnel or bridge.

It appears to the authority that it is expedient in the interests of the safety of members of the public using, or likely to use, the said footpath that it should be stopped up.

The authority has required the operator of the railway to enter into an agreement to make arrangements for appropriate barriers and signs to be erected and maintained and to cover the associated costs.

THIS ORDER EXTINGUISHES the public right of way over the land situated at Garforth shown by a bold continuous line on the map attached to this Order and described in the schedule after 21 days from the date of confirmation of this Order.

SCHEDULE

GARFORTH FOOTPATH NO. 7 (Part)

A public footpath commencing from a Point A, SE 4043 3365, at the junction with Dale Croft, adjacent to 1 Dale Croft, and proceeding for a distance of 59 metres in a northerly direction on an ashed surface and a level crossing to a Point B, SE 4043 3371, at the junction with the continuation of Garforth Footpath No. 7 at the north side of the railway level crossing. The footpath has a width of 1.5 metres.

THE COMMON SEAL of

LEEDS CITY COUNCIL

was hereunto affixed this 8th day of September 2022

in the presence of:-

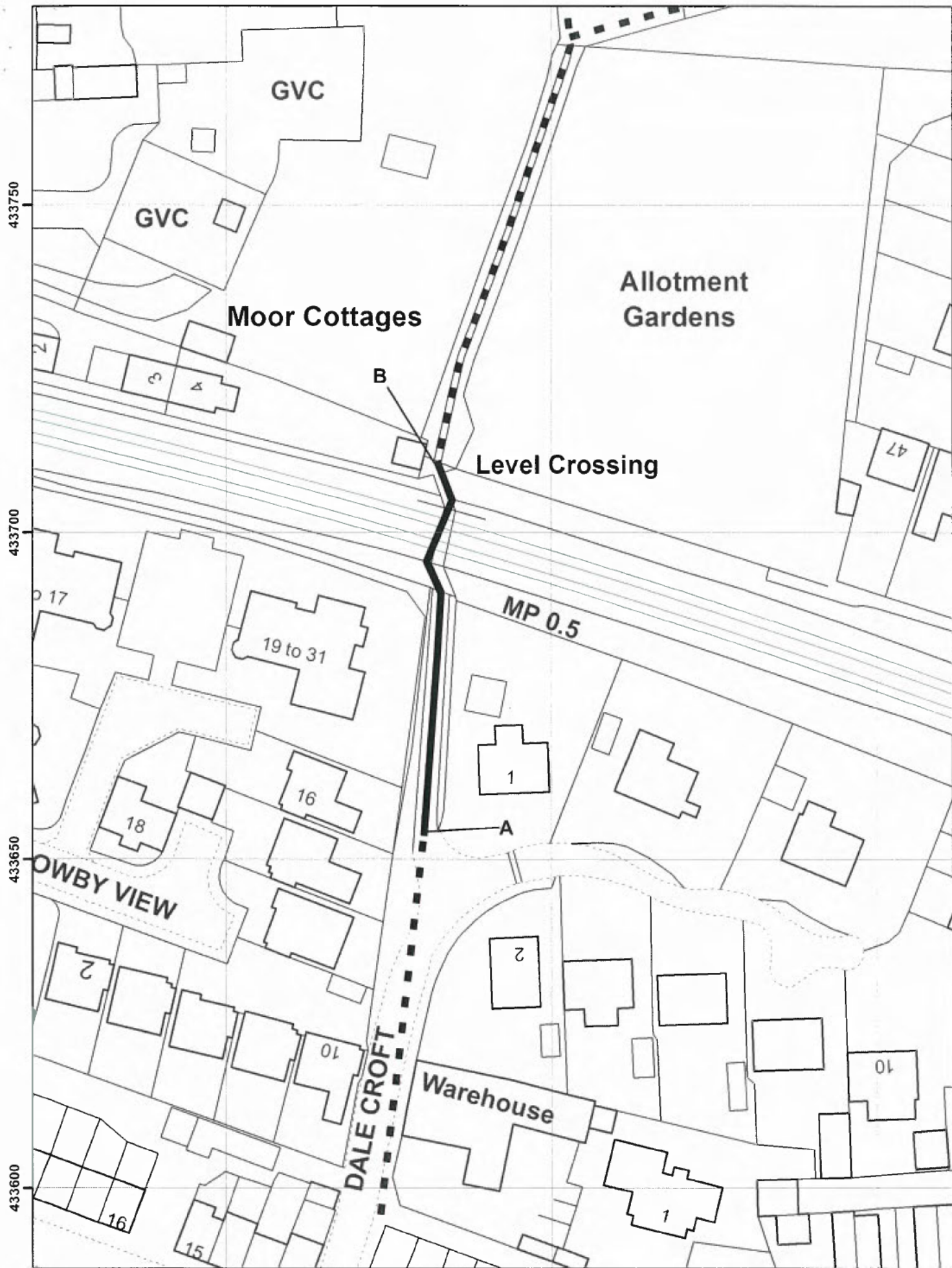


Name

Philippa Plumtree-Varley
Development Team Leader

Seal No. 104530

Title



LEEDS CITY COUNCIL
(GARFORTH FOOTPATH NO. 7)
EXTINGUISHMENT ORDER 2022

Key
Extinguished Path ———
Unaffected Path - - - - -
Scale: 1:750 SE 43 SW or 4033



Legal Services
Leeds City Council
Civic Hall
Leeds
LS1 1UR



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APPENDIX 6

Photos of the Garforth Moor and Peckfield Level Crossings areas, all taken on 01/02/2024 unless otherwise stated.



Photo G1 – looking south up Barwick Rd towards houses on left and the railway bridge. Vehicle parked on footway.



Photo G2 – vehicles partially blocking footway outside houses on Barwick Rd.



Photo G3 – footway under the railway bridge narrows to less than 1 metre to accommodate vehicular traffic.



Photo G4 – Barwick Rd going under the railway bridge from opposite side to G3. Note severe narrowing of the footway and darkness under the arch.

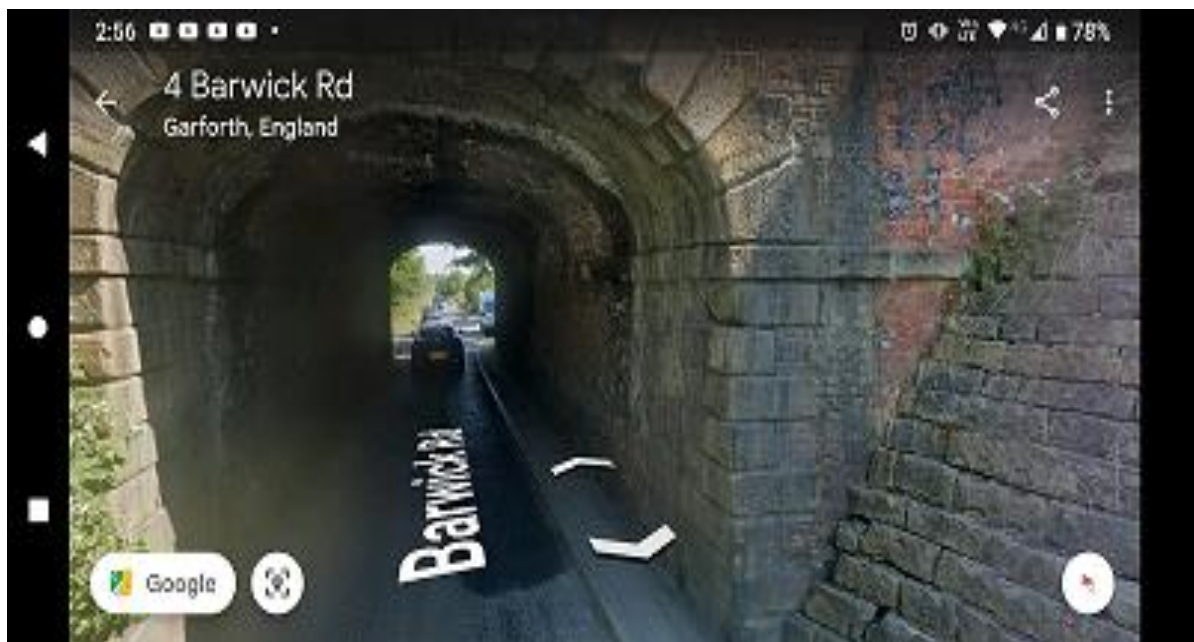


Photo G5 – similar view to photo G4, but a screenshot from Google Earth in late 2023



Photo M1 – VIEW NORTHWARDS UP OLD GREAT NORTH ROAD FROM THE STATION BRIDGE – entrance to parish-owned Recreation Ground on the left.



Photo M2 – VIEW UP PIT LANE FROM JUNCTION WITH OLD GREAT NORTH ROAD – no footway on level crossing side of road until a substation is reached.



Photo M3 – Pit Lane new houses with driveways close to footway and vehicles parked on both sides of the Lane on the footways.



Photo M4 – Pit Lane looking back towards junction with Old Great North Road – footway on level crossing side of Pit Lane ends at substation on left of photo.



Photo M5 – Pit Lane industrial units on the left, below where Pit Lane does a 90 degree bend to the left, opposite the Peckfield Level Crossing.