

STATEMENT OF CASE ON BEHALF OF THE PEAK & NORTHERN FOOTPATHS SOCIETY

TRANSPORT & WORKS ACT 1992

NETWORK RAIL (LEEDS – MICKLEFIELD ENHANCEMENTS ORDER) 2023

Your Ref: - TWA/23/APP/03/OBJ/20

Our Ref: - LE-MIC-TRU

On behalf of the Society that I represent, I have objected to certain aspects of the above draft Order, as it pertains to the extinguishment of two “at grade” Level Crossings (LC) without any commensurate provision of a replacement means of crossing for legitimate users of those crossings. Nor has the applicant for this Order made sufficient provision for a replacement route, where an over or under bridge is not feasible for whatever reason put forward by the applicant.

These are as follows:-

- A) That “at grade” LC known as “Garforth Moor LC” which takes definitive Footpath No. 7 (Garforth) across the railway line.
- B) That “at grade” LC known as “Peckfield LC” which takes definitive Bridleway No.8 (Micklefield) across the railway line.

A1. Footpath No. 7 (Garforth) uses what the applicant refers to as the “Garforth Moor LC”. This crossing has been closed for some time by a temporary Traffic Regulation Order, published by the Highway Authority at the behest of the applicant, on public safety grounds.

A2. In 1999, this Society was consulted by Leeds City Council, via a Public Rights of Way Consultant Mrs. Windett, about a proposal to extinguish Garforth Moor LC using the provisions set out in section 118A of the Highways Act 1980. A concurrent proposal was to create a new public footpath using the provisions set out in section 26 of the Highways Act 1980. This newly created footpath, linking Barwick Road to the section of Footpath No.7 north of the LC, would provide a compensatory route avoiding the need to use the LC.

A3. On that basis, this Society did not object to the extinguishment of the “at grade” LC even though the compensatory creation was not a “like for like” replacement. It minimised the inconvenience of the LC closure, as far as was reasonably feasible in the absence of a replacement over-bridge or under-bridge.

A4. In 2022, this Society received Public Path Orders from Leeds City Council to effect the changes outlined in paragraph **A2** above. We did not object to either Order, as we were led to believe that the extinguishment of the LC would not go ahead unless the Creation Order was confirmed.

A5. Only recently has this Society found out that in fact objections to the section 26 Creation Order had been received by the Order Making Authority (OMA). We have been led to understand by Network Rail that one objection was from the landowner of the field along the edge of which the newly created public footpath would run off Barwick Road. Other objections were from residents of houses on Barwick Road. Reasons cited included intrusion on the privacy of the occupants by the adjacent new

footpath and loss of access to Footpath No.7 where it runs along the rear of their property north of the LC.

A6. In the opinion of this Society, the fact that the OMA had published a section 26 Public Path Creation Order concurrently with the section 118A Public Path Extinguishment Order demonstrates to us that both the applicant for the Orders Network Rail, and the Highway Authority who would have the statutory maintenance liability for the new public footpath, felt that a new public footpath was justified and needed in this location.

A7. Section 26 of the Highways Act 1980 states in sub section 1 and I quote: *“Where it appears to a local authority that there is a need for a footpath.....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.....”*.

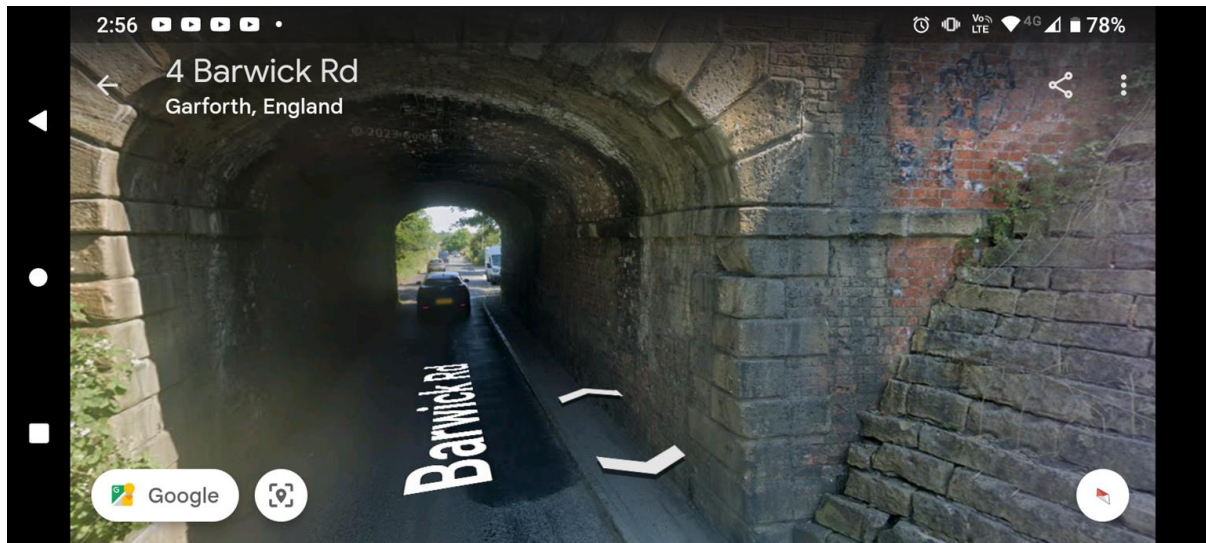
A8. It is the view of this Society that four years ago both the applicant for the current T&WA Order, and Leeds City Council as the OMA and Highway Authority, were of the view that a new public footpath was needed in that location as an alternative to the extinguished Garforth Moor LC. It would add to the convenience and enjoyment of a substantial section of the public or the convenience of residents in the area. Yet, there is no commensurate creation included in the current draft Order before the Secretary of State. What has changed in the intervening four year period? The proposed LC closure remains the same. Therefore, in our judgement, the need for the creation of a public footpath remains the same. The objections to the Public Path Creation Order do not, in our opinion, outweigh the overall public benefits of the creation of the footpath proposed in that Order.

A9. The alternative on offer here for pedestrians, denied the use of the LC taking Footpath No. 7 over the railway line “at grade”, is to detour via vehicular highway pavements down Barwick Road until reaching that road’s junction with Footpath No.7A. Then turn right along Footpath No.7A, right again along Footpath No. 7 to reach the point that would have been reached had the LC still been available. Footpath No.7A is also acknowledged by Leeds City Council on its digital website mapping portal to be a public bridleway, albeit not yet recorded on the Definitive Map.

A.10. The width of the footway along the eastern edge of Barwick Road, which is a two lane vehicular highway, is inadequate in our opinion. Barwick Road carriage way and footway narrows considerably under the over-bridge carrying the railway line above. It is our view that 760mm, (a measurement provided to us by Network Rail), is inadequate as a width for two pedestrians to safely pass each other. One or the other would have to step off the pavement into the vehicular section of road. We have been informed by Network Rail that no improvements to this pavement are intended in terms of width or surfacing due to Highway Authority opposition. Traffic will be increased due to the proposed construction of a private car park mentioned in paragraph A11.

A11. We know from the draft Order, that there is provision for a private vehicular access from Barwick Road along Footpath No. 7A and then along Footpath No.7 to a proposed parking area for allotment holders who previously used the LC to access their plots on foot. Understandably, this was a cause of concern to the applicant as plot holders were using the LC to carry allotment-related materials across

the railway using wheelbarrows, making the risk of an incident that much higher. Therefore, vehicles will be using two sections of public footpath to access this car parking area, one section of which is accepted to be a public bridleway. The risk to pedestrians, cyclists and horses of incidents between themselves and vehicles is therefore increased by this proposal. The assumption seems to be that allotment holders will use vehicles to reach their plots, if the LC is permanently extinguished. What if they don't? The narrowness of the Barwick Road footway, especially underneath the railway over-bridge, is a cause of concern if pedestrians are encumbered by allotment-related impedimenta. Underneath the over-bridge it is also dark, even in daytime. (See attached screenshot from "Street View").



A12. We know that the applicant has applied to Leeds City Council as the Planning Authority for consent to carry out the works needed to enable the allotment holders' car park to be constructed. This is a retrospective application we understand. Therefore the works needed have been completed or substantially so. This Society submits that, in these circumstances, the use of the legislation in the Transport & Works Act 1992 which is intended for a wide range of issues associated with a major infrastructure project is not relevant in this case (see link below to the Transport & Works Act 1992 – Guide to Procedures 2006 Page 12 paragraph 1.14). The applicant has admitted in its own Statement of Case that the works needed to close the Garforth Moor LC have already been completed. Only the legal closure of the LC remains to be done, no physical works. The applicant should have used legislation specifically intended for the extinguishment of LCs carrying public right of way over railway lines "at grade" i.e. Highways Act 1980 section 118A.

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A13. We invite the Secretary of State's inspector to decline to confirm this aspect of the Order. First of all, on the grounds that the applicant is using inappropriate legislation. Second of all, on the grounds that the Order fails to address the need for an alternative highway to replace the closed one. The 2022 package of Public Path Orders is an explicit recognition that to compensate for a closure of the LC, an alternative creation was justified. Those circumstances remain unchanged in our opinion.

B1. Bridleway No. 8 (Micklefield) takes this public bridleway across the railway line “at grade” on the outskirts of the village of the same name. The applicant has applied to extinguish this LC without any replacement under or over bridge commensurate with a public bridleway.

B2. The applicant states that no over bridge is required as no horse riders use this public bridleway. This conclusion is based on surveys carried out by the applicant’s staff or contractor at indeterminate dates and times. This conclusion is, this Society contends, based on spurious assumptions. A public bridleway was added to the Definitive Map under the relevant 1949 legislation based on the historic evidence of horse use. Either express dedication by a statute such as an Enclosure Award, or by presumed dedication based on unchallenged user for over twenty years, or a combination thereof. The fact that the applicant’s surveys of use found no use by horses, led or ridden, on those days, during the hours the surveyors were on site is a poor excuse to avoid their obligation to provide a safe crossing or an adequate substitute. Their wish to minimise costs, has led them to the conclusion they wanted to reach based on very limited evidence. Nor does it take account of future demand as the owning and riding of horses for recreation and exercise gains in popularity.

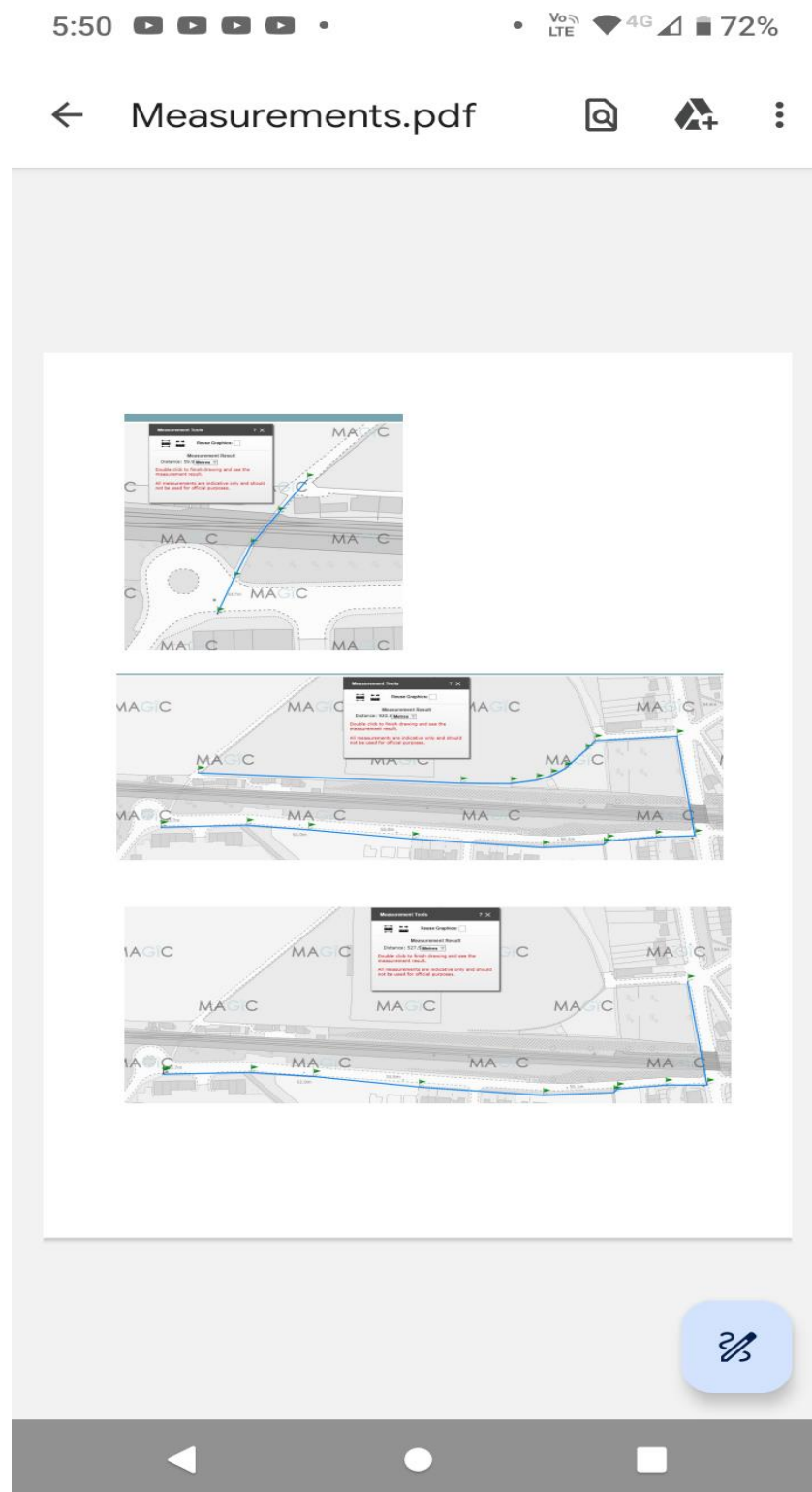
B3. The applicant’s two suggested alternatives to the closure of Peckfield LC are either a public footpath along the southern edge of the village Recreation Ground to link with the main road or, a public bridleway on the same line. This latter alternative is not supported by the Parish Council.

B4. Option 1, a public footpath, would effectively leave that part of Bridleway No. 8 north of the railway line, a legal cul de sac for legitimate users such as horses and pedal cyclists. Option 2 would at least enable a continuous public bridleway to be ridden to/from different points on the Great North Road. In this Society’s opinion, notwithstanding our view that the LC should be retained or replaced by an over or under bridge, Option 2 the public bridleway is the least bad option should the Secretary of State be minded to confirm the closure of the LC here? An inspector, representing the Secretary of State should, we contend, avoid any action which leaves a public right of way as a legal cul de sac unless there is absolutely no feasible alternative.

B5. We know that extensive house building has taken place in the Pit Lane area south of the railway crossing. This would mean that the alternative route south of the railway line to connect the main road with the southern ‘stump’ of Bridleway No.8 is potentially unsuitable for non-vehicular users who might be using the public bridleway south of the railway line for recreational purposes (see attached screenshot from “Street View” looking west towards the LC).



B6. If, for the sake of argument, the LC was extinguished without any compensatory over or under-bridge being provided (as proposed by the draft Order), then the extra distances to be travelled to reach the same points increases dramatically (see attached diagrams).



B7. We concur with Micklefield Parish Council's opinion that a complete closure of the Peckfield LC public bridleway crossing would be detrimental to the village of Micklefield in terms of the connectivity of the village north and south of the railway line. We concur also with their view that a replacement for the LC by means of an over or under-bridge is the best option in this locality given the current ongoing expansion of this settlement. Where we disagree is with the Parish Council's opinion that a foot crossing only would suffice in terms of a replacement bridge. Only a public bridleway over-bridge would satisfy this Society, if the LC has to be closed for operational reasons.

B8. In conclusion, we ask the Secretary of State not to confirm the extinguishment of the Peckfield LC, but if the appointed inspector is minded to confirm the extinguishment, that he/she chooses Option 2 – a public bridleway along the southern edge of the Recreation Ground. If steps are required to separate Recreation Ground users from the bridleway users, that is a separate matter outside the remit of the Order.

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