

THE NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER

CLOSING SUBMISSIONS ON BEHALF OF NETWORK RAIL

Overview

1. The North TransPennine rail route (“NTPR”) is one of the key East-West arteries across the Northern economy. It is in urgent need of improvement.
2. Reflecting that need, the NTPR is subject to Network Rail’s TransPennine Route¹ Upgrade (“TRU”): a series of projects whose objective is to improve journey times and capacity between key destinations on the NTPR and to improve overall reliability and resilience, as well as providing environmental benefits, including a contribution to the Government’s objective of reducing carbon emissions.
3. Each of those projects is at a different stage. The benefits of the TRU will not all be delivered at once, but there will be an incremental increase as the improvements effected by the various projects come into effect. The early milestone of most relevance to the consents under consideration at this Inquiry is that of 2025, with a proposed timetable change that will reflect the improvements arising from the installation of modern signalling across the NTPR. The next, is the proposed timetable change in 2028 which is premised (inter alia) upon the full electrification of the NTPR east of Leeds. The authorisations and powers sought through the draft Order and associated consents are required to ensure the timely and effective delivery of those incremental benefits, in addition to ensuring that the full benefits of the TRU programme are realised.

¹ Mr Vernon explained in his XIC (Day 2) by reference to Figure 1 in his Proof (**CD 7.02**) that the NTPR is the green line shown on that plan whereas the TransPennine Route includes all of the lines shown on that Figure. He also explained that that it is on the NTPR as shown on that plan where the objectives and deliverables which Network Rail is required to deliver under the TRU are to be delivered.

4. At the Inquiry there was, notably, no objection to or questioning of the strategic aims or objectives of the Order Scheme (or wider Scheme which it would enable). That is unsurprisingly, given the clear and strong support at national, regional and local level for the Scheme.² Nor³ was there any real objection or questioning as to how each of the 17 ‘elements’ of the Order Scheme are required to deliver those aims and objectives.
5. Whilst objections have been made, and remain, to some of those 17 ‘elements’ (or aspects thereof), when considering those objections it is, in Network Rail’s submission, critical to do so in the context of the improvements to the NTPR which they are required to deliver. If any of the 17 ‘elements’ are removed from the draft Order (or associated consents) this would impact upon the TRU benefits which would be enabled, facilitated or otherwise contributed to by the Order Scheme, meaning that full achievement of those benefits, and/or of the incremental benefits currently scheduled for December 2025 and 2028 would be, at the very least, jeopardised. Without the Order Scheme, and the works associated with its 17 ‘elements’, the overall benefits of the TRU programme will not be realised in full.³
6. Network Rail does not, in any way, seek to diminish the objections which remain outstanding, nor to suggest that they warrant anything other than the most careful consideration. But they must be considered in the context of the purpose of an Order which is promoted to secure much needed improvements to the NTPR: a key East-West artery, improvement to which is a high priority for Central Government, and regional and local transport and planning authorities. ‘Nice to have’ should not be permitted to jeopardise those critical ‘need to have’ improvements.

² Indeed, support for the Scheme was confirmed by Leeds City Council in the Revised Statement of Common Ground, Table 1 entry 3 (**CD 6.02**), by Cllr Lewis (Day 4) – “*We do as local councillors support overall objectives of the TRU scheme and improvement [it] brings to rail services in the area*” - - and by Cllr Crossley on behalf of Micklefield Parish Council (Day 4).

³ DV PoE para 6.3.14.

7. I conclude this Overview as I did that in Network Rail's Opening Statement. The strategic case for the Order is straightforward. The TRU is a pressing national, regional and local objective. For the TRU's full benefits to be delivered, the Order Scheme must be delivered. The case for the Order and associated consents rests on three simple yet compelling propositions:
- (i) The NTPR is in urgent need of improvement;
 - (ii) The TRU, of which the Order Scheme forms part, is key to realising the early delivery of some of those much needed benefits; and
 - (iii) The Order Scheme is an integral part of the TRU and the TRU's full benefits cannot be realised without it.
8. The case for the Order is both clear and compelling.

Statement of Matters

9. The remainder of these Closing Submissions is now structured by reference to the Statement of Matters⁴.
10. In these Closing Submissions, as in Network Rail's Statement of Case and Proofs of Evidence, the term "Order Scheme" is used to describe the Scheduled Works (i.e. those contained within Schedule 1 to the draft Order), other works and land uses which would be authorised under the Order or associated consents (such as the closure of the level crossings or construction of Micklefield TSC). The wider programme of works which would be facilitated or enabled by the Order, which would be authorised either pursuant to the Order, requested deemed planning permission, permitted development rights and/or separate planning permissions (such as the works to replace the bridges at Kirkgate and Marsh Lane) are referred to as "the Scheme".

⁴ CD 3.02

Issue (1) The aims and objectives of, and the need for, the proposed Leeds to Micklefield Enhancements (the scheme) including its effects on railway operations

11. See generally Section 6 of Network Rail’s Statement of Case (**CD 1.19**), the Statement of Aims and Objectives (**CD 1.04**), and the evidence of David Vernon (**CD 7.02**).

NTPR: The need for improvement

12. The North TransPennine rail route (“NTPR”) is one of the key East-West arteries across the Northern economy. It forms the most direct existing rail link between Manchester and Leeds; it is used as a ‘spine’ to link wider economic centres, including Newcastle, Hull and Liverpool; and connects city centres to smaller towns, commuting areas and key sites such as Manchester Airport.
13. It is one of the busiest lengths of rail at peak times on the national rail network. It is identified for significant growth in the future,⁵ but has not seen significant infrastructure investment to increase capacity for many years. The network is becoming increasingly crowded and congested; journeys are slow and unreliable; and there is limited capacity to accommodate growth on the existing infrastructure.

⁵ DV PoE paras 3.3.1 – 3.4.4, in particular at para 3.3.1 “Up to the outbreak of the COVID-19 pandemic, demand on the route had doubled to 50 million passengers per year since the mid-1990s but the historic reduction in carrying capacity of the infrastructure means the route has reached its practical capacity limit”; para 3.3.4 “In the years before the COVID-19 pandemic struck, growth was indeed proportionality greater in the North than in other regions, albeit from allow aggregate base. ORR data from the period pre-COVID shows that rail travel within the North grew at an annual rate of over 6% compared with just over 4% at national level. In addition, growth in longer-distance passenger services was higher along the NTPR than for other services.”; and at para 3.4.2 (in respect of rail demand post COVID-19 more generally) “DfT’s latest modelling scenarios suggest late-2020s demand growth could be between 68% (worst case) and 97% (best case). At the strategic level, however, the scenario analysis indicates that even in the low demand (red) case, demand is likely to have come back to at least the levels seen in 2018/19 by the end of this decade (and may well have grown further). Even if one were to consider the future performance of the NTPR against the static 2018/19 levels of travel demand, early investment will be crucial when looking to rectify the chronic problems NTPR currently faces in service and performance.”

14. The NTPR does not, therefore, currently meet the needs of passengers or train operators because it lacks the capacity and resilience to enable it to do so. As a result, it does not fulfil its role as a key rail transport artery serving the great cities on either side of the Pennines which it was built to fulfil.
15. Further, it currently acts as a constraint, rather than an enabler, in building back the Northern economy, as was recognised by the Secretary of State for Transport in confirming the TWAO for another Scheme within the TRU programme - the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022.⁶
16. The importance of public transport networks, and improving current infrastructure, to achieving the Government's levelling-up agenda is well-recognised. As Mr Vernon highlights, in sections 5.2 – 5.4 of his PoE:
 - (i) A key-pillar of the Government's National Infrastructure Strategy (NIS) is levelling-up the whole of the UK, with the NIS stating (inter alia) that *"A well-designed public-transport network is fundamental to the operation of any city. London is the only city in Europe where you can access more local services by public transport than by car. But the story is different in regional cities, where access to those same services by public transport lags behind continental peers. This is why the government will invest in the North, Midlands and South West to help rebalance the UK economy"*⁷;

⁶ Para 17 of the Secretary of State's decision letter of 27 June 2022 (**CD 3.05**). See also the recent decision in respect of a second order, the Network Rail (Church Fenton Level Crossing Reduction) Order 2023, in particular paras 12-14 of the Secretary of State's decision letter of 27 November 2023 (**CD 3.06**).

⁷ NIS (**CD 2.23**) quoted in para 5.2.3 of DV's PoE.

- (ii) The Integrated Rail Plan (“IRP”) (November 2021) highlights the critical role that the rail network has to play in the economic and social goal of levelling-up the UK economy⁸;
- (iii) Transport has *“a vital role to play in providing greater connectivity to improve regional productivity and incomes”; “[as] well as increasing trade and agglomeration, better transport can also link job-seekers to jobs which, along with complementary investment in skills, can increase employment opportunities and help spread the benefits of a growing economy”; “Rail transport has a particular advantage because it can efficiently and sustainably take a large number of people and freight swiftly right into the heart of major economic centres, effectively increasing the connection between wealth-generating area, their markets and areas that supply supporting inputs (especially labour) and services. This is the essence of agglomeration”; and “In practical terms, rail can support connectivity and productivity through providing fast, frequent and reliable services which are efficient in terms of the use of resources such as transport corridors and labour”*⁹; and
- (iv) In confirming the Government’s commitment to TRU in July 2020, the then Chancellor highlighted that *“Levelling-up opportunities will be key in our recovery from coronavirus and our long-term success will rely on having world class infrastructure in all parts of the country. The Transpennine Rail Upgrade shows we are delivering on our promise to the North”*.¹⁰

⁸ IRP (**CD 2.05**) as paraphrased in para 5.2.5 of DV’s PoE

⁹ DV PoE paras 5.3.4 – 5.3.5

¹⁰ Quoted in the DfT’s letter of 5 March 2021 from Ms Farha Sheikh, Programme Director- TransPennine Route Upgrade Department for Transport, to Mr John Reed, Industry Programme Director TRU, Network Rail, at Appendix C to DV’s PoE (**CD 7.03** page 249 at page 250).

17. The time has come to reverse the historic disinvestment which the NTPR has experienced, and to restore the railway to the capacity that will enable it to play its proper part again in meeting the transport needs of the Northern region, both now and in the future. That is not merely the judgment of Network Rail as applicant for this Order. There is clear support for the project from Government, regional and local transport and planning authorities.¹¹ It is the clear position adopted in transport planning policy at national, regional and local level.¹² Funding has been committed (most recently, the additional £3.9bn announced on 4 December 2023) and secured.¹³
18. The improvements to the NTPR are needed, and are needed now.

The TRU

19. In order to address current challenges on the route and support the objectives of supporting economic growth and “levelling up opportunities” across the North of England, Network Rail is promoting a series of projects as part of the TRU programme. This is a series of railway upgrade projects between Manchester, Huddersfield, Leeds and York, the purpose of which is to improve journey times and capacity between key destinations on the NTPR; to improve the overall reliability and resilience of the NTPR; and to promote environmental benefits from modal shift to rail and the part electrification of the NTPR.
20. Each project will bring its own benefits, but all must be delivered if the full benefits of the TRU are to be achieved.

¹¹ See, e.g. Appendix 2 to David Vernon’s Proof of Evidence (**CD 7.03**); Table 1 point 1 of the Revised Statement of Common Ground dated 24 February 2024 (**CD 6.02**); **CD 4.Sup/02** and **CD 4.Sup/03**.

¹² See Section 7 of Network Rail’s Statement of Case (**CD 1.19**)

¹³ DV PoE section 5. See also Appendices C (**CD 7.02** page 249) and F (**CD 9.06**) to his PoE

21. The TRU aims to deliver:

- (i) An improved journey time for Leeds – Manchester Victoria of 43-44 minutes;
- (ii) An improved journey time for York – Manchester Victoria of 67-69 minutes;
- (iii) Capability to operate 8 ‘express’ services an hour on the route;
- (iv) Capability to operate 6 ‘local’ services an hour on the route;
- (v) Performance of the TransPennine Route of 92.5% (Public Performance Measures)¹⁴;
- (vi) Retention of freight paths / rights as existing; and
- (vii) A contribution to Network Rail’s Decarbonisation Strategy and climate policy.¹⁵

22. Those targets may be contrasted with the current performance and capacity of the NTPR¹⁶ of:

- (i) A journey time of Leeds – Manchester Victoria of 46 – 52 mins, rarely achieved due to congestion and incidents on the route;
- (ii) A journey time of York – Manchester Victoria of 76 – 82 mins, rarely achieved due to congestion and incidents on the route;
- (iii) Capability to operate 6 ‘express’ services per hour on the route;
- (iv) Capability to operate ‘4’ express services per hour on the route; and
- (v) A PPM with an average mostly between 73 – 80%.

¹⁴ A measure of punctuality: trains arriving within 5 minutes of scheduled time (for regional trains). (See **CD 9.34**).

¹⁵ As Mr Vernon explained in his evidence (PoE para 3.5.2 – 3.5.5), the NTPR is currently a diesel-operated railway, TRU has been designed to electrify as much of the NTPR as possible, and “*Alongside modal shift, encouraged by more reliable and frequent passenger trains, TRU aims to make a strong contribution to the Net Zero Target, as the largest rail enhancement in the current portfolio.*”

¹⁶ **CD 9.34**

23. The works which would be authorised, or enabled by, the Order Scheme are primarily associated with the E234 project, which comprises, in broad terms, the electrification of the line, Journey Time Improvements (“JTI”) through line speed increased capacity as a result of the JTI, electrification and signalling, and enhanced resilience and reliability of the line between an area to the west of Cross Gates Station and an area just to the south west of Church Fenton.¹⁷
24. As Mr Vernon explained in his evidence, the works authorised or facilitated by the draft Order and associated consents are in part associated with two proposed interim milestones of the TRU Programme where incremental benefits are due to be realised en route to the achievement of the full TRU benefits once all projects have been completed and brought into operation.
25. The first, is the proposed timetable change in December 2025. Mr Vernon explained in his evidence that all necessary civil and signalling works for modern signalling on this section of the NTPR needs to be complete and installed and available for use in time for the proposed timetable change in December 2025, and that, for the level crossings in the Order, that means that they also need to be closed in advance of that date.¹⁸ The second is the proposed timetable change in December 2028. This requires all electrification equipment is to be in place by the end of 2027, for the energising of the route in 2028.¹⁹

¹⁷ DV PoE para 3.1.7. Church Fenton being within project area E1, and the subject of a recent decision by the Secretary of State to make an Order under s.1 TWA 1992, with direction under s.90(2A) TCPA 1990 that planning permission for the works be deemed granted, for the closure of three level crossings and their replacement with a new road bridge and access road together with replacement of an existing footbridge which was required to enable electrification of the line and realignment of existing tracks to enable the extension of a existing section of third track. A copy of the Secretary of State’s decision is **CD 3.06** and the Inspector’s Report is provided as Appendix E to DV’s PoE (**CD 7.03**).

¹⁸ DV PoE para 6.3.13 and oral evidence Day 2. In para 6.3.13 of his PoE, he referred to those works all needing to be in place by December 2024 to allow for testing and sign off to take place. He updated this in his oral evidence to 2025.

¹⁹ DV PoE para 6.3.13 and oral evidence Day 2.

26. The importance of the TRU, and delivery of its full benefits, cannot be understated. It is within the first of each of the packages of rail investments that prioritise regional links (Annex B²⁰) and long distance links (Annex C²¹) in the NIC's Rail Needs Assessment for the Midlands and the North (December 2020)²². It has been designated as Phase 1 of Northern Powerhouse Rail in the IRP, a key aim being to realise the intended benefits of TRU faster and ensure the delivery of infrastructure is more efficient.²³ Funding has repeatedly been committed by Government – most recently in December 2023. The Scheme, of which the Order Scheme forms part and which in turn forms part of the wider TRU programme is thus, to adopt Mr Vernon's terminology at para 5.2.8 of his PoE, *"a key building block on the wider works across the North"* and *"a critical piece of infrastructure in unlocking the significant benefits available"*.

The Order Scheme

27. In order to facilitate the increases in line speed, and subsequent capacity improvements, and enhancements to resilience and reliability, a number of works are required across the E2-4 footprint. Those works include, but are not limited to those which would be authorised under the Order and/or its associate consents, but also works which would be consented or authorised under other consenting regimes, including permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GDPO") or separate planning permissions.

²⁰ 2nd bullet point: *"- deliver the Transpennine Route Upgrade, which includes line speed increases and full electrification from Manchester to York and four tracking between Huddersfield and Dewsbury to allow fast trains to bypass stopping services"* (DV Appendix D pg 251 **CD 7.03**).

²¹ 2nd bullet point *"- Transpennine Route Upgrade: electrification of sections of the line between Manchester and York and some line speed increases"*. It is also included within the second package in Annex C (2nd bullet point) *"- a mix of new lines and upgrades between Manchester and Leeds as well as the Transpennine Route Upgrade between Manchester and York"* (DV Appendix D pg 259 **CD 7.03**).

²² **CD 2.24**

²³ DV PoE paras 5.2.7 & 5.2.8

28. The Order, if made, together with the associated consents under consideration at this Inquiry, would bring together all remaining works, rights and consents required to ensure that the benefits required across the E2-4 footprint can be delivered in full, with a view to ensuring achievement of the full TRU benefits, and the timely and cost effective delivery of the works required, delivering value for money across all projects.²⁴
29. As Mr Vernon set out in his evidence, the Order Scheme (and wider Scheme of which it forms part) would contribute to all but the first of the TRU objectives (improved journey times from Leeds to Manchester). As he detailed in section 6.3 of his Proof, it would do so by contributing towards:
- (i) Improved line speed, with the Order Scheme (and/or wider Scheme which it would enable) allowing for the introduction of modernised signalling, and track realignments which will allow trains to run faster and closer together, with journey times reduced and an increase in train capacity (paras 6.3.2 & 6.3.3);
 - (ii) Improved efficiency and reliability of the railway, with the closure of level crossings, installation of overhead line equipment (“OLE”), electrification of the line, installation of modern signalling and general rail infrastructure improvements, including track alignment, helping to reduce conflicts between slow and fast trains, increasing railway capacity, removing the at-grade crossings with their associated potential for severe impacts on train performance and reliability in the event of an incident, and fewer equipment and signalling failures which can cause service disruption (paras 6.3.4 – 6.3.6); and

²⁴ DV PoE para 3.2.2.

- (iii) Environmental benefits, with the electrification of the NTPR enabling diesel-powered trains to be replaced by electric²⁵ trains.
30. In addition, the Order Scheme would also deliver further important benefits in the form of:
- (i) Safety benefits, arising from the closure of 5 level crossings, with removal of those at-grade crossings not only removing the risk to those using them, and trains passing over them, from the conflict between users and trains, but also improving accessibility across the railway by directing users to grade-separated crossing points, thus removing the need to wait at a level crossing until it was safe to cross²⁶; and
- (ii) Reduced operating and maintenance costs, with new track and electrification equipment delivered by TRU (and the reduction in the number of level crossings requiring inspection, assessment and maintenance) reducing maintenance costs when compared with the existing railway, with associated benefits for taxpayers, the travelling public, freight operators and freight end users²⁷.
31. The safety benefits that would be delivered by the closure of the 5 level crossings are again benefits whose importance cannot be understated.
32. As Mr Vernon sets out in section 3.6 of his PoE, safety is paramount in all that Network Rail does, be that operations and maintenance or design and implementation of new projects. All level crossing carry risk, and they are the largest single contributors to train accidents and risks on the railway network. The only way to remove the risk is by closing the crossing, thus removing the at-grade interface.

²⁵ Or bi-modal: as per Mr Harrison's evidence on Day 2, but with proposed electric running.

²⁶ DV PoE paras 6.3.7 – 6.3.9

²⁷ DV PoE paras 6.3.10 – 6.3.11

33. These matters are addressed in more detail in the evidence of Jerry Greenwood **(CD 7.20)**.
34. As Mr Greenwood sets out in section 3 of his PoE, as a regulated statutory undertaker, Network Rail has a statutorily prescribed duty and key responsibility to promote safety, encompassing all who enter onto railway operational land, including users of level crossings. In terms of public safety, if a level crossing cannot reasonably be made safe for continued public use, that would be incompatible with various of Network Rail's duties and responsibilities, including those under s.117 of the Railways Act 1993 and ss.1-3 of the Health and Safety at Work Act 1974, and under its Licence.
35. In section 5 of his PoE, Mr Greenwood addresses Network Rail's policy for managing level crossing risk, as set out in its policy document 'Enhancing Level Crossing Safety 2019-2029' **(CD 2.01)**. He explains that, designed around SFAIRP (so far as is reasonably practicable) and ALARP (as low as is reasonably practicable) principles, that policy document sets out a long-term strategy targeting improved safety on Britain's railways, with a level crossing safety 'vision' of "*No accidents at level crossings on Britain's main line network*". At paras 5.3 and 5.5, he sets out Network Rail's strategic long term goals for level crossings (as set out in the Strategy) of (a) reducing safety risk to the public, passengers and the workforce; (b) increasing rail capacity and performance across the network; and (c) reducing operational and financial risk, with strategic objectives to achieve those goals including maximising risk reduction, and improving reliability at level crossings (PoE para 5.4).
36. As Mr Greenwood sets out at para 5.9 of his PoE, it is widely accepted in the rail industry that closure of level crossings is the most effective way to remove safety risk, which is consistent with the General Principles of Prevention set out in Schedule 1 of the Management of Health and Safety at Work Regulations 1999. This approach is supported by the ORR – in particular, in its

‘Principles for managing level crossing safety’²⁸ (**CD 2.02**) – and Central Government, with in excess of £230m of funding being allocated by the ORR and DfT during Control Periods 4 (04/2009 – 03/2014), Control Period 5 (04/2014 – 03/2019) and Control Period 6 (04/2019 – 03/2024) to enable the closure of level crossings or mitigation of risk SFAIRP.²⁹

37. Where Network Rail wishes to introduce changes or enhancements to railway operations which could increase the risk at level crossings, they are required to carry out an assessment of that potential increased risk and to take appropriate measures to mitigate that risk before the enhancement can be implemented.³⁰ The increased risk to public safety which would result from more frequent services as a result of the Scheme, and wider TRU enhancements, is therefore a constraint to those improvements to services which must be addressed before they can be implemented.
38. In addition to posing a constraint to the proposed improvements by reason of increased risk to public safety which would need to be managed SFAIRP, level crossings also pose a risk to the operational efficiency of the NTPR and wider rail network. As Mr Vernon explains in his evidence,³¹ incidents at level crossings have the potential for severe impacts on train performance and reliability where at-grade incidents occur. Such incidents are typically more complex to resolve and recover from than railway infrastructure issues such as wires failing or broken signals, with impacts on service and timetables

²⁸ See in particular, at JG PoE paras 4.5 and 4.6, where he sets out that the Principles “*emphasise that risk should be reduced through the design of a level crossing or through an alternative way of crossing the railway where this is reasonably practicable ...*” and the extract from para 26 of the Principles set out in his para 4.6 that “*the first consideration for all level crossing should be whether there are reasonably practicable alternative to a level crossing*” and, from pg 27 of the Principles, that “*we encourage alternatives such as diversions, bridges or tunnels to be fully explored and delivered where reasonably practicable*”.

²⁹ JG PoE para 4.9, and see also his para 5.11 for the safety-led initiatives taken by Network Rail to date in the promotion of improved safety standards at level crossings, including the closure of over 1366 level crossings since 2009.

³⁰ See, inter alia, AC PoE para 2.4.1 and 2.2.4 (**CD 7.23**)

³¹ PoE para 6.3.5

often experienced for longer periods due to the nature of such incidents and, where applicable, requirement for subsequent on-site investigation.

39. Further information on the impacts of level crossings on operational efficiency of the network was also provided by Mr Greenwood in his evidence. As he explains, at paras 3.22 – 3.25 of his PoE in particular, operational inefficiency as a result of incidents at a level crossing (which could be a train strike, near miss, or other misuse³²) could result in delay to services not only on the NTPR, but on the adjoining East Coast Main Line and on Cross-Country services using the route (and then travelling on to the ECML, Midlands Main Line or WCML). Widespread delays can cause major timetable disruption,³³ with knock on effects for the wider travelling public. Adherence to timetable is critical if operational efficiency is to be maintained. It is also a core duty under Network Rail's Licence that it secure (inter alia) the operation and maintenance of the network, and the improvement, enhancement and development of the network, "*to the greatest extent reasonably practicable having regard to all relevant circumstances*",³⁴ and, as Mr Greenwood notes at paras 3.29 – 3.31 of his PoE, in particular by reference to an Inspector's Report on an application under s.118A of the Highways Act 1980 (a rail crossing extinguishment order) included as Appendix A to his PoE³⁵ there is at least the potential for disruptions occasioned by incidents at level crossing, or for such crossings acting as a restraint to network enhancements, to be considered a breach of or at least inconsistent with, that core duty under Network Rail's licence.

³² Or, indeed, an equipment failure: see MW PoE para 3.2.8 (**CD 7.26**)

³³ With obligation for derivative compensation claims to Train Operating Companies (see JG PoE paras 3.26 to 3.28)

³⁴ See para 3.15 of JG PoE

³⁵ **CD 7.21**

The 17 ‘elements’ of the Order Scheme

40. The need for each of the 17 ‘elements’ included within the Order Scheme, and their impacts on or interface with railway operations is detailed in the PoE of Paul Harrison (**CD 7.05**) and Michael Westwood (**CD 7.26**). They can broadly be considered as falling within one of five categories:

- (i) Works to listed railway overbridges (with their associated compounds);
- (ii) Strategic compounds;
- (iii) Compounds to facilitate works to bridges to be undertaken under permitted development rights;
- (iv) Level crossing closures; and
- (v) Discrete works required in connection with railway operations between Leeds and Church Fenton.

41. Mr Harrison’s evidence addresses the first to third and fifth category. Mr Westwood addresses level crossings.

42. I address each in turn below.

Works to listed bridges

43. There are four overbridges within the Order Scheme. Each is Grade II listed. Each of them requires some form of intervention if this section of the line is electrified, there currently being insufficient distance between track and soffit of bridge to allow for the installation of OLE.

44. The existing clearances (or lack thereof) can be seen from the figures contained within the Alternative Options Evaluation Study (“**AEOES**”) for each

of the bridges,³⁶ and were spoken to by Mr Harrison in his evidence.³⁷ The current position, as can be seen from the Figures showing existing clearances within the AOES for each of the bridges is that the height of the existing bridges is such that above the Up Hull lines under all of the bridges, there is simply no room to install OLE, let alone OLE with standard (or even below-standard) clearance. The clearance would, in fact, be 'FOUL' above those lines, meaning that the train pantographs would be striking the bridge, above the height of the existing soffits, as shown on the Figure 3 within each of the AOES.

45. As Mr Harrison explained in his evidence, where OLE is to be installed under a bridge, standards require a minimum clearance of 270mm between the underside of the bridge and electric line (i.e. where the train's pantograph would make contact). Whilst it is possible to install OLE with lesser clearances (installing a voltage limit device, also referred to a surge arrester) that would require Network Rail to seek and obtain a derogation from standards.³⁸ None of the bridges as currently constructed, and with tracks in their current position, are capable of providing OLE with even sub-functional electrical clearance.
46. Therefore, works to each of the bridges is required if this section of the NTPR is to be electrified. Network Rail has given careful consideration as to how appropriate clearances can be achieved, as was spoken to in Mr Harrison's evidence and as detailed in the AOES for each of the four bridges. The options considered included track lower and track slue, including options which would not achieve the minimum 270mm clearance but would require a derogation from standards, and, for Austhorpe Lane, Brady Farm Bridge, and Ridge Road bridge, bridge jacking (seeking to raise the height of the existing bridge). All of these options were ultimately discounted, for the reasons set

³⁶ Austhorpe Lane (**CD 1.18.12**), Crawshaw Woods Bridge (**CD 1.18.28**), Brady Farm Bridge (**CD 1.18.19**), and Ridge Road Bridge (**CD 1.18.37**)

³⁷ XIC Day 5.

³⁸ XIC Day 5

out in the AOESs and in Mr Harrison's evidence, which included (1) the extent of the track alterations that would need to be made if track lower or slue were to be taken forward (around 1km at Austhorpe Lane for a track lower of 600mm³⁹) which would have to undertaken all at one time; (2) the impacts of the same on railway operations, such works involving lengthy periods of closure beyond the 2 x 29 hour possessions required for the Order proposals (at Austhorpe Lane and Ridge Road, 1 x 29 hour possession at Brady Farm); and (3) construction risk – particularly with regards to bridge jacking as yet untrials in the UK over a busy operational railway or carrying a public highway.

47. Structural intervention to each of the bridges was therefore identified as the only feasible solution. In relation to Austhorpe Lane, Ridge Road, and Brady Farm, this requires the demolition of each of the existing structures, with, at Austhorpe Lane and Ridge Road, a replacement structure being provided to carry the existing highways over the railway. At Crawshaw Woods, Network Rail has been able to identify a solution whereby it can remove the existing cast iron arch, build up the height of the existing abutments, install a new weight bearing bridge deck and reassemble the cast iron arch to raise the soffit of the bridge to a sufficient height to enable the installation of OLE underneath it. Details of the works proposed in each location and broad construction methodology, including indicative timescales, were provided through Mr Harrison's evidence.⁴⁰ An indicative comparison⁴¹ of the current and proposed structures at Austhorpe Lane and Ridge Road is provided at Figures 7 & 8 and Figure 14 of his Proof.

³⁹ PH XIC Day 5

⁴⁰ PH PoE sections 3.5.1 (Austhorpe Lane); 3.5.2 (Crawshaw Woods); 3.5.3 (Brady Farm) and 3.5.4 (Ridge Road) (**CD 7.05**) and XIC Day 5.

⁴¹ Whilst the dimensions provided between track/rail and soffit as shown on those Figures and on Figure 3 within the AOES for each of the bridges do not lend themselves to exact comparison, they do provide an indicative illustration of the increased height between track level and bridge soffit for the existing and proposed structures, with Figures 8 and 14 in PH's PoE in particular illustrating the particular constraint imposed by the existing curve of the arch (shown in green) over the UP HULL line is addressed by both the higher and wider arch of the proposed replacement (shown in red).

48. The removal and reconstruction of Austhorpe Lane and Ridge Road bridges, the removal of Brady Farm bridge, and the raising of Crawshaw Woods bridge will therefore remove a key constraint to the electrification of this section of the NTPR.

Strategic compounds

49. The draft Order also includes powers for Network Rail to temporarily possess land⁴² required for 3 strategic compounds: at Wykebeck Avenue, Manston Lane and Phoenix Avenue.
50. As Mr Harrison explained in his evidence,⁴³ a number of strategic works compounds are required to facilitate construction of the TRU E2-4 Project, for example in respect of track renewal and electrification works. Those compounds need to be located strategically across the Scheme Route to minimise nightly travel time during ‘rules of the route’ possessions, allowing rapid access by construction teams to the relevant working area/s, thereby optimising the project delivery programme.
51. Wykebeck Avenue is required as a temporary compound (including storage) to enable track renewal and overhead line clearance works, and to enable upgrade of track and electrification of line in that area.⁴⁴ The site has been chosen due to there being no other possible locations with an existing RRAP (rail road access point) or where it would be feasible to install a RRAP between Manston Lane (to the east) and Shannon Street (to the west), and without this compound, working on this section of the NTPR could potentially mean an approx 2.5 mile travel to the furthest place of work from another compound,

⁴² The compounds themselves would be provided under permitted development rights under the GDPO 2015. See the Schedule at Appendix 2 to Network Rail’s Statement of Case (**CD 1.19**).

⁴³ PoE section 3.3.1 and XIC Day 2.

⁴⁴ PH PoE para 3.3.2.1

with the loss of up to an hour work time from the approx 4-5 hour ‘rules of the route’ possession.⁴⁵

52. Manston Lane compound, located further to the east within the Crossgates area, will also be used to enable track renewal and overhead line clearance works, and to enable upgrade of tracks and electrification of the line.⁴⁶ The compound is strategically located central to the ‘E3’ project area works and is the only suitable location for a strategic ~~compound~~~~location~~ and RRAP due to an existing cutting. Without this compound, the nearest RRAP would be at an existing compound at Garforth, over 5 miles away from Wykebeck Avenue.⁴⁷
53. Phoenix Avenue compound is located in Micklefield. It is a key requirement for the Scheme, and will facilitate track renewals and electrification works, as well as providing access for the new Micklefield ~~PISC~~ and the works associated with the closure of Peckfield Level Crossing.⁴⁸
54. The powers conferred on Network Rail under the draft Order to temporarily possess land for these strategic compounds would therefore enable ~~it~~ to facilitate the timely and efficient delivery of the wider TRU enhancement works on this section of the NTPR, including track renewals and realignments which allows trains to run faster and journey times to be reduced, as well as the installation of infrastructure needed for electrification of the line.

Other bridge compounds

55. The Order would also authorise Network Rail to temporarily possess land for compounds to support bridge replacement works at Kirkgate, Marsh Lane and Osmondthorpe Lane.

⁴⁵ PH PoE paras 3.3.27 & 3.3.28. During his XIC on Day 2, PH illustrated the location of the nearest available compounds by reference to the Maps showing location of all the compounds at pgs 7-8 of his PoE.

⁴⁶ PH PoE para 3.3.3.1

⁴⁷ PH PoE para 3.3.3.8

⁴⁸ PH PoE para 3.3.4.1

56. As Mr Harrison explained in his evidence, the existing railway bridges at Kirkgate and Marsh Lane need to be replaced with new modern bridges to accommodate the increased dynamic loads of proposed line speed increases (currently 35 mph to 55mph) together with the additional weight of bi-modal trains.⁴⁹ The works will primarily be managed from the main Marsh Lane construction compound (to the east of Marsh Lane temporary compound)⁵⁰ but compounds are required next to the existing bridge locations to enable the replacement works to be carried out. Further details of those works, and how they would be undertaken, are provided in Mr Harrison's PoE at sections 3.2.3 and 3.2.4, and were discussed in his XIC on Day 2.
57. The existing underbridge at Osmondthorpe Lane needs to be replaced due to significant track modifications to the track layout in the area, which will affect the alignment of the track as they approach and travel over Osmondthorpe Lane.⁵¹ Mr Harrison explained in his oral evidence (XIC Day 2) the track alignment in the vicinity of the existing Neville Hill Depot (shown on Order Sheet 2) means that linespeed is currently limited to 55mph. The works in this area will involve the creation of a new curve to the south, enabling line speeds to be increased to 75mph, but meaning that the new curve will finish more or less on top of the bridge. The replacement of the bridge is thus primarily driven by those track modifications, but also by the need to ensure that it can accommodate the increased dynamic loads associated with line speed increases and the heavier trains.
58. The provision of land for temporary compounds to support works to the railway viaduct at Kirkgate and Marsh Lane, and Osmondthorpe Lane is thus required to ensure the delivery of the bridge renewals which allow trains to run faster and journey times to be reduced.

⁴⁹ PH PoE paras 3.4.2.5, 3.4.3.4 & 3.4.3.5, and his XIC Day 2.

⁵⁰ Shown on the far right hand side and to the south of Marsh Lane on Works and Land Plans Sheet No 1. **(CD 1.09)**. This main compound is not included within the draft Order or associated consents.

⁵¹ PH PoE para 3.4.4.3

Level crossings

59. The 5 level crossing included within the Order are a significant constraint on the proposed upgrades to this part of the NTPR.
60. The additional risks which the enhancements to capacity and journey time improvements to be delivered by the TRU would import to users of the level crossing need to be addressed before those enhancements could be implemented if risk is to remain as low as reasonably practicable, and if Network Rail is to comply with its statutory obligations and Licence Conditions (detailed by Mr Greenwood in his PoE).
61. As Mr Cunningham explained in his evidence:
- “Introducing additional train services with longer, quieter trains raise the risk at all level crossings along the route. ORR requires that where there is a change in railway operations so as to raise the risk then Network Rail must undertake a new assessment and consider all options that will mitigate the risk so far as is reasonably practical. This necessitates that the risk is reduced to at least the same level of risk prior to any railway enhancements being implemented.”*⁵²
62. At para 2.5.4 of his PoE (**CD 7.23**), Mr Cunningham has provided the current ALCRM score (or, for Garforth Moor and Highroyds Wood, the last ALCRM score prior to their temporary closure) for each of the crossings together with an estimated impact assessment (in the form of a predicted ALCRM score) for each of the crossings when the model is re-run allowing for the installation of OLE and using the proposed increased capacity provided in the Indicative Train Service Specification (ITSS) for the proposed December 2025 timetable change⁵³. As he noted, at para 2.55, that information provides an estimated impact assessment only. Comprehensive risk assessments carried out in the future with the ITSS train information, new development, changes in use and

⁵² AC PoE para 2.4.1 (**CD 7.23**) See, to similar affect, his para 2.2.4 and JG PoE (**CD 7.20**) paras 3.4 & 3.5,

⁵³ Confirmed in XIC Day 3

other qualitative inputs could change that risk assessment. But those results give an indication of the likely increase in risk, underscoring the need for steps to be taken to manage that increase risk SFAIRP if those enhancements are to come forward.

63. In section 3.2 of his PoE (**CD 7.26**), Mr Westwood explains how level crossings would interface with the proposed improvement works to this section of the NTPR.
64. Firstly, as he explains at paras 3.2.4 – 3.2.6, the presence of certain type of level crossings materially affect OLE design, with the minimum height of wires above rail being 5.2m at bridleway crossings. As he explains at para 3.2.6, whilst changes in wire height can be accommodated within the design, this *“should be minimised for high-quality, high speed current collection between the train pantograph and the contact wire by minimising the loss of contact between the pantograph and the contact wire (which can increase the wear on the contact wire material)”*. The closure of the level crossings means that the OLE height would not have to be raised to account for any of the level crossings, thus obviating the need for a variation in OLE heights at and around the level crossing, with a consistent wire height increasing the reliability of the railway.
65. Secondly, as he explains at para 3.2.8, the presence of a level crossing on the network not only permits an interaction between members of the public and trains, but also introduces a potential break-point in the railway ‘system’ itself, with the removal of level crossings from the network generally improving the reliability and resilience of the train service provided as well as enhanced safety.
66. There is also an interface with the modern signalling to be installed in time for the December 2025 timetable change. Mr Vernon explained in his evidence that all necessary civil and signalling works for modern signalling on this

section of the NTPR needs to be complete and installed and available for use in time for the proposed timetable change in December 2025, and that, for the level crossings in the Order, that means that they also need to be closed in advance of that date.⁵⁴ Whilst modern signalling would be installed across the level crossing locations even if the level crossings remained in situ: “... *the impact would be a programme and resource impact however, as when the crossings do close, a package of works to revisit the signal sites of the crossing, and recontrol them to the modern standards would be required to be done. This would further delay the delivery of TRU benefits*”.⁵⁵

67. Mr Westwood also detailed in his evidence the specific operational railway benefits which would follow from the closure of each of the level crossings respectively.⁵⁶

68. The removal of the 5 level crossings from the network, through their closure and diversion of users to new and/or (part) existing routes, would therefore remove the constraint which they currently pose to the proposed improvements to be enabled or facilitated through the Order Scheme,⁵⁷ but will also contribute to the improved resilience and reliability of the railway,⁵⁸ as well as delivering an important public safety benefit to those crossing the railway as well as those on the trains passing along it. Network Rail would highlight the particular signalling interfaces which would potentially arise if MSL were to be retained at Barrowby Lane, or installed at Peckfield, as discussed in Mr Westwood’s PoE in sections 3.3 and 3.4 respectively. This is

⁵⁴ DV PoE para 6.3.13 and oral evidence Day 2. In para 6.3.13 of his PoE, he referred to those works all needing to be in place by December 2024 to allow for testing and sign off to take place. He updated this in his oral evidence to 2025.

⁵⁵ PoE para 6.3.15. My note of his oral evidence on Day 2: “*When doing digital modelling for signalling you don’t want the [level crossings] to be there because alters what can run / map. It can be done when they are there but it means a programming, duplication of work and slower realisation [of benefits]*”

⁵⁶ PoE paras 3.3.60 – 3.3.46 (Barrowby Lane/Barrowby Foot), paras 3.4.13 – 3.4.14 (Garforth Moor), paras 3.5.73 – 3.5.73 (Peckfield) and paras 3.6.14 – 3.6.15 (Highroyds Wood).

⁵⁷ Or indeed, potential future enhancements: see MW PoE para 3.2.9.

⁵⁸ By removing the potential for incidents or misuse at the existing at-grade interfaces, with the potential implications for operational efficiency discussed by JG in his PoE (and referred to at para 39 above)

also addressed in Mr Cunningham's evidence: see his Optioneering Tables (CD 9.38).

Other works

69. Works at Penny Pocket Park. As Mr Harrison explained in his evidence,⁵⁹ the four small parcels of land at the top of the railway embankment in Penny Pocket Park are required for installation of a new signal gantry and for 'Signalling Lock Out devices'. The new signalling gantry is required to provide bi-directional signalling, which means that in the event of a failure of break down on one of the existing lines into Leeds station, it will enable trains to be diverted onto the other line, thus increasing flexibility – and indeed, the resilience and reliability of the railway – as it will no longer mean that all other trains needing to use that line will need to stop. The lock out devices will enable contractors needing to work on this section of the line to 'lock out' the section of line they need to work on closer to the area where the work is required, thus avoiding the need to 'lock out' larger sections of the track and/or for them to have to walk long distances to reach the work point.
70. Micklefield TSC. As Mr Harrison explained in his evidence,⁶⁰ this new track sectioning cabin is needed to safely regulate the power supply to OLE in the local area and thus to enable electrification of the line.
71. New Access off Newmarket Approach. As Mr Harrison explained,⁶¹ the new access road off Newmarket Approach is needed to re-provide a suitable access into the Neville Hill Railway Sidings (where the Neville Hill main compound will be located⁶²), the existing access off Red Lane now being

⁵⁹ PoE section 3.6.1 and XIC Day 2

⁶⁰ PoE section 3.6.2 and XIC Day 2

⁶¹ PoE section 3.6.3 and XIC Day 2.

⁶² See PH PoE para 3.3.1.2 and Maps showing location of all the compounds, pg 7 of his PoE.

constrained by the installation of a TSC which is due to be commissioned in the middle of March. That new TSC was required because the current electric feed for the overhead lines for the Neville Hill depot is taken off the main line, and if Network Rail wishes to do any works on the main line, they would have to switch off the power to the depot. Installation of the new TSC means that the time available to Network Rail to carry out work in possessions on a Saturday night will be increased from around 1 ½ hours to 4 hours.

Summary

72. Each of the 17 ‘elements’ included within the draft Order and/or its associated consents is required in connection with one or more of the proposed improvements to be carried out along this section of the NTPR. All are required if the full benefits of the TRU programme are to be delivered. The implications of removing any one of those elements may vary in its exact consequences⁶³ but the removal of any would mean that the timely delivery of the full benefits of the Order Scheme and the wider Scheme of which it forms part, including the incremental benefits as discussed above would, at the very least, be jeopardised.

Issue (2) Whether all statutory procedural requirements have been complied with

73. Network Rail provided an affidavit on Day 1 of the Inquiry confirming compliance with the statutory procedural requirements.⁶⁴

⁶³ For example, the impact on timely delivery of the track renewal and electrifications works in this area if one or more of the strategic compounds were to be removed from the Order Scheme, or, in the case of Peckfield Level Crossing, both the practical implications of removing it from the Order as can be seen from the evidence of DV, MW and AC summarised in **CD 9.33** quite apart from the wider consequences in terms of operational efficiency discussed in JG’s PoE.

⁶⁴ **CD 9.05 & CD 9.12**

Issue (3) The main alternatives considered by Network Rail and reasons for choosing the preferred options set out in the Order

74. The alternatives considered by Network Rail, design development, and reasons for choosing the preferred options now included in the Order are addressed in Section 8 of the Statement of Case (**CD 1.19**), in the Design and Access Statement (**CD 1.15**), in the Alternative Options Evaluations Studies for Austhorpe Lane Bridge (**CD 1.18.12**), Crawshaw Woods Bridge (**CD 1.18.28**), Brady Farm Bridge (**CD 1.18.19**), and Ridge Road Bridge (**CD 1.18.37**) and in the evidence of Mr Vernon (**CD 7.02**), Mr Harrison (**CD 7.06**), Mr Stamper (**CD 7.08**), Mr Westwood (**CD 7.26**) and Ms Bedford (**CD 7.29**).

Strategic Alternatives

75. As Mr Vernon explained in his evidence,⁶⁵ the remit of TRU is to address the performance issues related to the existing service, increase the capacity on the NTPR and to decrease journey times. There are no high level strategic alternatives that would deliver those benefits without investing directly in the infrastructure. As he set out in paras 7.2.2 to 7.2.4 of his PoE, and spoke to in his oral evidence on Day 2, the only other major cross-Pennine route infrastructure would be the M62, which has recently undergone a full modernisation and capacity increase scheme but is already at capacity. There are other routes, such as the South Transpennine Route or Calder Valley line, but those are at a small scale and already subject to works to address their own issues: *“We are doing works to those but they are required in order to be able to deliver NTPR. Would not be able to get the benefit we can deliver on either of those that we can get on the NTPR if we were to adopt either of*

⁶⁵ PoE section 7.2. My note of his oral evidence (Day 2) *“At the highest level, at a strategic point of view, our remit from Government is to improve the service on the NTPR so that is it a rail focussed deliverable, so strategically the capacity, the issue is east-west routes, arterial routes. Remit of TRU is to address performance relating to existing services on the NTPR”*.

those as the key primary route.” “For me there are no other strategic alternatives”.⁶⁶

76. Whilst there have been some improvements as result of investment in new rolling stock, and those improvements are a positive steps towards relieving overcrowding on the route, challenges remain around performance, reliability and capacity for local and express services, which can only be resolved through infrastructure investment.⁶⁷ As Mr Vernon stated in response to a question from the Inspector on Day 2, investment in new rolling stock has “*not fixed but improved*” the situation, but “*for want of a better phrase, it’s a sticking plaster for the next few years*”.

Order Scheme elements

77. Mr Vernon provides a summary of the Network Rail GRIP process in section 5 of his PoE. He also provides examples of where feedback received through engagement or consultation has resulted in amendments to Network Rail’s proposals. Further examples can be found in section 4 of the Design and Access Statement (**CD 1.15**) and in the Consultation Report (**CD 1.07**).

Works to listed bridges

78. Details of the options considered for the works to each of the listed bridges is set out in the Alternative Options Evaluation Study which accompanies each of the listed building consent applications,⁶⁸ and addressed further by Mr Harrison in his evidence.⁶⁹ They have been developed through an iterative

⁶⁶ Response to Inspector’s question, Day 2.

⁶⁷ DV PoE section 7.4

⁶⁸ Austhorpe Lane Bridge (**CD 1.18.12**), Crawshaw Woods Bridge (**CD 1.18.28**), Brady Farm Bridge (**CD 1.18.19**), and Ridge Road Bridge (**CD 1.18.37**)

⁶⁹ PoE section 3.5.5 (Austhorpe Lane 3.5.5.9 – 3.5.5.15, Crawshaw Woods 3.5.5.16 – 3.5.5.22, Brady Farm 3.5.5.23 – 3.5.5.29, Ridge Road 3.5.5.30 – 3.5.5.33) & XIC Day 5.

design process which recognises the historic significance of the railway and the individual structures, and ensuring great weight is given to the conservation of heritage assets in accordance with the NPPF.⁷⁰ Ms Jones explained in her evidence (by reference, inter alia, to the Heritage Assessment for Austhorpe Lane, Brady Farm and Ridge Road⁷¹) that Network Rail has worked closely with Historic England and Leeds City Council throughout the development of the Scheme, with the result that there is no objection to any of the listed building consents from either of those key stakeholders.

79. As Ms Jones explained in her evidence,⁷² each of the options considered for each of the bridges was assessed against set criteria defined in order to allow and objective and consistent assessment of the alternative options. A copy of the matrix against which they were assessed is provided as Appendix A to the AEOEs. Ms Jones confirmed in evidence that this was a matrix which she had developed, following a request by Historic England at the meeting of 2 August 2018, and to which she had provided the ‘cultural heritage’ criteria input when each option was being considered.
80. In his evidence, Mr Harrison explained the consideration that had been given to avoiding the need for structural intervention to the bridges through lowering or slueing of the existing tracks running under them (including options which would result in a clearance of less than 270mm and so requiring a derogation from standards to be obtained), or, in the case of Crawshaw Woods, a combination of the two and why, in each case, track lower/slue was not considered feasible by reference to the topography (in particular, the need for cutting into bedrock and, in some places, proximity to mine voids); the extent of works required either side of the bridges as a result of the lowering or slueing of the tracks (up to 1km at Austhorpe Lane for a track lowering of 600mm); and the impacts on railway operations due to the extensive time

⁷⁰ AJ PoE (CD 7.32) para 4.2.1

⁷¹ In particular, the chronology at para 2.3.2 CD 1.18.1

⁷² PoE para 4.2.6 (CD 7.32)

which those operations would take. He explained why bridge jacking – an option as yet untried (certainly in terms of a permanent jacking) over a busy operational railway and/or carrying a public road – was not taken forward by the project. In response to Cllr Crossley, when asked for his view as to the “*deal breaker*” with that option, he said it was that of risk: “*Not really a proven method on this type of bridge therefore if I was to jack that bridge up and it started falling to bits I’m stuck with a railway line and a road that is shut and then I need a plan B and I haven’t gone away and designed Plan B and got materials around Plan B. Personally that is the big one for me. Many others but that would be top of my list*”. Mr Harrison also explained, in response to questions from the Inspector (Day 2) why an option whereby the train drivers could lower and raise the pantographs as they approached / passed under the bridges would not be a workable option, having regard to the distances required for lowering/raising of a pantograph, and issues that could arise if, for example, a train were to have to stop in an area where its pantograph was down.⁷³

81. With regards to the design of the replacement bridges, Ms Jones set out in her evidence the iterative design process that had resulted in the replacement bridges proposed at Austhorpe Lane and Ridge Road.⁷⁴
82. Save for questions raised by Micklefield Parish Council as to whether the loss of Ridge Road bridge could have been avoided through bridge jacking, and a number of general objections to the loss of Brady Farm bridge or Austhorpe Lane bridge, there has been no real challenge to Network Rail’s evidence that the loss of Austhorpe Lane bridge, Brady Farm bridge or Ridge Road bridge, regrettable though each loss is, cannot realistically be avoided if this section

⁷³ He also confirmed, in Re-IX on Day 2, the potential for fully electric trains in the future.

⁷⁴ PoE paras 5.1.44 -5.1.47 (Austhorpe Lane) and paras 5.1.7 – 5.1.11 (Ridge Road) and XIC (Day 5). See also the AEOS for Austhorpe Lane (**CD 1.18.12**) and Ridge Road Bridge (**CD 1.18.37**) and also section 7 of the Design and Access Statement (**CD 1.15**)

of the NTPR is to be electrified. Notably, it appears to be accepted by both Historic England and Leeds City Council that that is the case.⁷⁵

83. Mr Stamper detailed in his evidence the alternative design options which were considered for the replacement highways carried by the new bridge at Austhorpe Lane and Ridge Road.⁷⁶ He explained the careful work that had been undertaken to achieve the best design achievable within existing constraints and to try to achieve a design that was compliant with relevant standards or where those were not met to reduce the number of departures from standards to a minimum (the primary design standard being Leeds City Council Transport SPD for Austhorpe Lane⁷⁷ and DMRB CD 109 for Ridge Road⁷⁸). There has, again, been extensive engagement with Leeds City Council regarding those designs, and by the time of the Inquiry Leeds City Council were content with the same.⁷⁹

Compounds

84. Mr Harrison's evidence discusses the criteria that were applied in considering the location of strategic works compounds and of the temporary compounds associated with the bridge replacement works at Kirkgate, Marsh Lane and Osmondthorpe Lane: see sections 3.3 and 3.4 of his PoE (**CD 7.05**).

⁷⁵ See CD 4.Rep/09, CD 4.Rep/14, CD 4.Rep/19 and CD 4.Rep/22 (Historic England) and CD 4.Report/1, CD.4.Report/2, CD.4.Report/3 and CD.4.Report/4 (Leeds City Council)

⁷⁶ PoE sections 4.2 – 4.10 (Austhorpe Lane) and sections 4.11 – 4.20 (Ridge Road).

⁷⁷ PoE para 3.6.1

⁷⁸ PoE para 3.17.1

⁷⁹ Confirmed GS in oral evidence Day 5, and see also the Revised Statement of Common Ground Table 1 Entry 24 (re Austhorpe Lane. No objection was raised to the design of Ridge Road) and Leeds City Council's letter of partial withdrawal dated 26 February 2024 (**CD 7.47**).

Level crossings

85. Mr Westwood explained in some detail in his evidence the options which had been considered to provide an alternative means of crossing the railway for users of Barrowby Lane, Barrowby Foot and Peckfield Level Crossings.⁸⁰ He explained how each option was subjected to a multi-criteria analysis encompassing considerations including land & property (land access and availability concerns), cost, design/engineering feasibility, construction and deliverability,⁸¹ and provided a summary of how each option performed against the various criteria and reasons why it was or was not taken through into the Order Scheme.
86. In respect of Barrowby Lane/Barrowby Foot, the options assessed comprised (1) a new ramped bridleway bridge to the west of Barrowby Lane level crossing to provide a diversion for both Barrowby Lane and Barrowby Foot; (2) a new subway at Barrowby Foot to provide a diversion for both Barrowby Lane and Barrowby Foot; (3) localised enhancements of Barrowby Lane with closure of Barrowby Foot; and (4) localised enhancements of Barrowby Lane and renewal of Barrowby Foot with MSLs and telephones. Whilst the provision of a new bridleway bridge carried significant construction costs, and would involve a new large-scale structure in the Green Belt, that was the preferred option: *“Overall it improves the safety of both the railway and the general public by closing the level crossings and it retains the existing PRow connectivity with accessible, modest diversions comparable with the usage of each level crossing”*.
87. In respect of Peckfield, five options were considered against the multi-criteria analysis: (1) a new footpath (or bridleway) through Micklefield Recreation Ground and Lower Peckfield Lane improvements (2) as per Option 1 but with

⁸⁰ At paras 3.3.22 – 3.3.59 (Barrowby Lane & Barrowby Foot) and paras 3.5.20 – 3.5.72 (Peckfield).

⁸¹ PoE paras 1.2.5 – 1.2.6

a new bridleway heading west to East Garforth; (3) as per Option 1 but with an additional section of bridleway running north-south through Micklefield Recreation Ground; (4) a new ramped bridleway bridge to the west of the existing level crossing and (5) a new stepped footbridge to the west of the existing level crossing.

88. Option 1 (the Order Scheme) was considered to provide a simple, accessible alternative access route with minimal cost and environmental impact, with the impact of the level crossing closure on the residents of the Railway Cottages (immediately to the north east of the level crossing) mitigated by the provision of the new footpath (or bridleway) through Micklefield Recreation Ground to the Great North Road, and improvements to Lower Peckfield Lane (including passing places and a new turning area).⁸² As will be clear from Ms Bedford's evidence, the availability of this alternative route was a key distinction between the options taken forward into the Order for Barrowby Lane/Barrowby Foot and for Peckfield.⁸³ Option 2 was developed based on historical discussion with Leeds City Council to improve connectivity in the local area, but ultimately not supported by the Council by reference to the operational highways impacts that would result from the measures necessary to provide a safe means of providing the A656 at Ridge Road bridge (single carriageway working for vehicular traffic over the bridge).⁸⁴ Option 3 was developed following consultation with Micklefield Parish Council but not taken forward due to safety concerns due ~~of to~~ and existing children's play area within the Recreation Ground.⁸⁵ Regarding the "golden opportunity" referred to in para 3.6 of Cllr Crossley's Closing Statement, as he fairly

⁸² MW PoE para 3.5.33

⁸³ My note of her evidence regarding a diversionary route at Barrowby (where bridge proposed) when considering the difference with Peckfield (where it is not) (XIC Day 4): "*Principle issue there is alternative route which would be via Barwick Road - 1.68km. Not a hard and fast line but I think liabilities team through conversations with highway authority, when diversion beyond 500m, it starts to become too far in terms of the view of the community at Peckfield the diversion route is considerably less, at Barrowby it's considered 1.6km is substantial and therefore appropriate to provide a bridge at that location.*"

⁸⁴ MW PoE paras 3.5.44 and 3.5.38

⁸⁵ MW PoE paras 3.5.45 and 3.5.54.

accepted in XXC, this was not an option which the Parish Council had asked Network Rail to consider prior to the order being submitted. So Network Rail cannot properly be criticised for not having considered it.

89. In respect of Options 4 and 5 (ramped bridleway bridge / footbridge), Mr Westwood explains the reasons why they were not taken forward as follows:

“[3.5.63] Overall, Option 4 would deliver an accessible alternative access route to the existing level crossing but the diversion would be approximately 500m. The landscape and visual impacts would be greater than those associated with Options 1, 2 and 3 due to the scale of the new structure. Option 4 would involve a greater amount of permanent land acquisition as well as a loss of some Grade 2 BMV agricultural land to accommodate the new bridleway bridge and the associated access to it. There would be significant built cost and additional disruptive railway access would be required to construct it when compared with Options 1, 2 and 3. The cost and level crossing usage profile do not justify the provision of a replacement ramped bridleway bridge. This option was ultimately discounted for these reasons.

[...]

[3.5.72] Overall, Option 5 would deliver an alternative access route,⁸⁶ but the diversion route would be approximately 300m. The landscape and visual impacts would be greater than Options 1, 2 and 3 due to the scale of the structure, although slightly less than Option 4. Option 5 would involve the permanent acquisition of land and the loss of some Grade 2 BMV agricultural land (again slightly less than Option 4). It would have significant build cost, which is more than Options 1, 2 and 3 although less than Option 4, and disruptive railway access would be required for construction. This option was ultimately discounted for these reasons.”

⁸⁶ At para 3.5.68 MW referred to this option as being a “safe alternative route for all users”. He amended/corrected this oral evidence (Day 3) to being such a route for those who were able to use it.

90. Mr Westwood also confirmed, in his XIC, that consideration had been given to a potential subway/underpass in a GRIP 2 pre-feasibility report (2016) but had been discounted at an early stage, there being on the face of it two options for where an underpass could go and both being problematic. With regards to the first, being in an area similar to the bridge options considered, it was likely that bedrock would be around 2m down below, and a considerable amount of rock would therefore have to be removed to construct an underpass in that location, allowing for a bridleway underpass with a height of 3.4m and cover of at least 1m between the underpass and track level. With regards to the second, being to the east and within Micklefield Recreation Ground, similar to the option considered at Barrowby Foot, there would be the constraints of doing an open cut through the embankment, with impacts also on mature trees and on the Recreation Ground.
91. Ms Bedford explained the options considered for Garforth Moor, at the time of and following its temporary closure under a TTRO in December 2017 and why the Order Scheme did not include a proposed new public right of way (or section thereof), instead considering that no alternative route was required as an appropriate diversion route was already available via the existing highway and PROW network, with the Order limited to providing a new private right of way for the benefit of the allotment holders to the north of the level crossing. Similarly, Ms Bedford's evidence also addressed the consideration given to the diversion route for users of Highroyds Woods level crossing since its temporary closure on safety grounds in 2021.
92. In his evidence, Mr Cunningham detailed the optioneering process which would be undertaken in respect of level crossings as part of the Narrative Risk Assessment for each crossing, and how different options are considered against cost benefit analysis, including gross disproportionality factor, and other considerations.⁸⁷ He has separately considered the options previously

⁸⁷ AC PoE section 2.4 (CD 7.23)

considered for each of the level crossings through that process.⁸⁸ That process supports the options included within the Order Scheme.⁸⁹

Other works

93. Mr Harrison explained in his oral evidence the limitations on where the new signal gantry and lock-out devices can be located at Penny Pocket Park by reference to existing infrastructure and feed distances. He also explained the reason behind the location of the ~~Mickelfield~~Micklefield TSC. Development of the Newmarket Approach access road, and design changes which have been made, were addressed in Mr Stamper's evidence.

Summary

94. As will be apparent from Network Rail's evidence, there has been robust consideration of potential alternatives to the options included within the Order Scheme. The scheme development and optioneering process has been informed by consultation and engagement with key stakeholders (including landowners). Careful consideration has been given to (inter alia) impacts on those using existing infrastructure (including those with protected characteristics),⁹⁰ impacts on affected landowners, and the importance afforded to heritage assets in designing and developing the Order Scheme, as well as to the operational needs of the railway, constructability and cost.⁹¹ Whilst there are objectors who disagree with the options that Network Rail has selected, Network Rail maintains that the proposals it has taken forward into

⁸⁸ AC PoE para 2.4.13.

⁸⁹ AC PoE tables at 3.9.1, 4.8.1, 5.7.1, 6.7.1 and 7.8.1 as amended/corrected orally and as shown on **CD 9.38**.

⁹⁰ As a public body, Network Rail is subject to the public sector equality duty in s.149 of the Equality Act 2010. This is addressed, inter alia, in the Proof of Evidence of Jerry Greenwood (**CD 7.20**) and Suzanne Bedford (**CD 7.29**). See also sections 4 and 4 of the Design and Access Statement (**CD 1.15**).

⁹¹ As a publicly funded body, Network Rail is obliged to demonstrate that the TRU programme, and each of the projects included within it, provide Value for Money (VfM). See para 5.1.2 of David Vernon's Proof of Evidence (**CD 7.02**) and section 5 of Jerry Greenwood's Proof of Evidence (**CD 7.20**).

the Order Scheme are the right options for achieving the Order Scheme's objectives.

PSED

The duty under s.149 of the Equality Act is a duty to have due regard to the matters set out therein. Essentially it is a process obligation – it is not an obligation to achieve an outcome. The duty is one of substance not of form. It does not require the production of a specific document. It is a duty to have regard to the matters set out therein, not a duty to produce an EQIA. It is apparent from Network Rail's evidence the careful consideration which Network Rail has given to the potential impacts on those with protected characteristics during the development of the Order Scheme. It is clear, from Mr Westwood's PoE that detailed consideration was given to this in the options considered for level crossings: see, in particular, paras 3.5.27, 3.3.35 and 3.3.68 (as amended). It is also clear from Ms Bedford's PoE: see, in particular, paras 5.35, 6.21, 6.22, 7.19 and 7.20.

Network Rail's scheme development in particular in the context of level crossings has been informed by level crossing user survey data. Mr Cunningham set out in his evidence the consideration given to protected characteristics in that context, for example age and disability. You also have before you in Mr Greenwood's evidence and that of Ms Bedford Network Rail's recognition of its duties under the 2010 Act.

With regards to the matters raised by Leeds City Council in respect of Peckfield Level Crossing, Ms Bedford, in her evidence, explained what her understanding was of the 'EIA' referred to in Mr Buckenham's evidence: i.e. consideration of users with protected characteristics, which she said was talked to at length in proofs of her colleagues about consideration of users of the crossing. She also said she believed those matters had been considered from conversations she had had and documents she had seen. There can be no doubt that Network Rail has properly considered these matters, and that it has had due regard to the matters in s.149. I repeat that the duty is not an obligation to achieve an outcome.

Notably, despite the assertion from Leeds City Council as to Network Rail's alleged failure in that regard, there has notably been no attempt by Leeds City Council to identify anything they say should have been considered but has not been. It is also notable that Leeds City Council, has not, for example, in its evidence given any consideration to the implications of additional distances involved with ramps / to get to a ramped bridge, as identified and discussed by Ms Bedford in her evidence.

With regards to the Secretary of State's duty, no doubt the Secretary of State will wish to have regard to all material before this inquiry which is relevant to the issues. Network Rail wholly reject any suggestion that in the absence of a document such as an EQIA or DIA the Secretary of State would be unable to fulfil his duty, considering the substantial information before this Inquiry with regards to diversions / closure of level crossings, as to the potential impact on users due to additional distance or journey time, or terrain they may encounter on those routes, as well as the representations received from objectors to the proposal(s).

Issue (4) The impact of the closure of Peckfield and Garforth Level Crossings: (a) the impact on users (b) the rationale for the preferred option and the alternatives considered (c) the approach used for the safety audit and user survey (d) the impacts of the proposed bridleway diversion including impacts on biodiversity, wildlife, highway safety & Micklefield Recreation Ground

Peckfield Level Crossing

95. The Order includes two alternative options for the closure of Peckfield Level Crossing. The first would be a new footpath through Micklefield Recreation ground running east to the Great North Road via the existing entrance. The second would be a new bridleway on the same route. Either option would also include improvement works to Lower Peckfield Lane, to improve access (specifically, vehicular access) to the Railway Cottages to the north east of the

level crossing, including the provision of passing places and a new turning area at the south.

96. Peckfield Level Crossing currently carries Micklefield 8 bridleway over the railway. At either end of the bridleway, there is no onward connection to a bridleway network: equestrians and cyclists will need to continue their onward journeys (or indeed reach the bridleway) via vehicular highways: Great North Road at the north of Lower Peckfield Lane, and the A63 (or Pit Lane) to the south.⁹² There is a public footpath network to the north, and a footpath running west to the south of Phoenix Avenue.

SOM 4(a) Impact on users & (d) impacts on highway safety

97. In considering the proposals for closing Peckfield Level Crossing, and the options for alternative means to enable users to cross the railway, Network Rail has been informed by and drawn on 4 level crossing surveys undertaken in 2014, 2016, 2021 and 2023, the origin and destination [survey](#) undertaken in parallel with the 2023 level crossing user survey, and public consultation on the proposed closure of the level crossing.⁹³ None of the level crossing user surveys showed any evidence of use by equestrians, although there was some ‘anecdotal evidence’ of such use provided through the public consultation on the closure proposals.⁹⁴ Ms Bedford explained in her evidence the need for caution when considering the weight that can be placed on such anecdotal evidence in the context of a consultation on the proposed closure of a crossing. She also explained that from her observations on site, there was no physical evidence showing any use by equestrians, noting, for example, the current condition of the mounting blocks.⁹⁵

⁹² SB PoE paras 6.1 – 6.4 (**CD 7.29**) and see also BB1 to Robert Buckenham’s PoE (**CD 7.35**)

⁹³ Summarised in Table 1 of the Peckfield Level Crossing - Alternative Options Evaluation Summary (**CD 3.11**)

⁹⁴ 3% (5 respondents) said they crossed with a horse: see section 1.4 of the AOES (**CD 3.11**)

⁹⁵ Oral evidence Day 4. See also section 2.1.8 of the NMU RSA (**CD 3.10**)

98. Segueing briefly, at this point, into SOM 4(c), Mr Cunningham explained in his evidence how level crossing user surveys are carried out as part of the level crossing risk assessment process: see in particular paras 2.3.11 – 2.3.18 of his PoE **(CD 7.23)**. A copy of the LCG (Level Crossing Guidance) 02 Level Crossing Guidance Document – Census Good Practice Guide is provided at Appendix 1 to his Proof **(CD 7.24)**. A more detailed breakdown of the results of the level crossing user surveys from the 2021 and 2023 surveys are provided in section 6.5 of his Proof.⁹⁶ An explanation as to how Network Rail assess risk at level crossings (which involves both a quantitative and qualitative assessment of risk), key inputs into the risk assessment, and the application of structured expert judgment is provided in section 2.3 of his Proof, and the current (or most recent, prior to temporary closure) risk scores for each of the crossings at paragraph 2.5.4.⁹⁷ Mr Stamper explained in his evidence how the NMU RSA for Peckfield was carried out (XIC Day 3) and see also section 1 of the RSA itself. [NB: This paragraph also addresses SOM 4c for Garforth Moor, save for the last sentence. Details as to where the level crossing survey data and risk assessment can be found in Mr Cunningham’s PoE for Garforth Moor are provided in footnotes 96 and 97).

99. To return to SOM 4(a), the proposed diversion route under the draft Order would provide users of the level crossing coming from the north today with a choice between continuing straight down the Great North Road and then turn right into Pit Lane (if they were, for example, wishing to access the industrial estate) or to travel down Lower Peckfield Lane, then east along the new bridleway/footpath, out to the Great North Road, then south to Pit Lane if they preferred to be off road for part of their journey.

⁹⁶ Similar information for the other crossings is provided in section 3.7 (Barrowby Lane), section 4.6 (Barrowby Foot), section 5.5 (Garforth Moor) and section 7.6 (Highroyd Wood).

⁹⁷ More detailed information as to the risk assessment and particular concerns at individual crossings is provided at section 3.4 (Barrowby Lane) section 4.4 (Barrowby Foot), section 5.4 (Garforth Moor) section 6.4 (Peckfield) and sections 7.4-7.5 (Highroyds Wood).

100. Ms Bedford explained in her evidence that the alternative options of either a footpath or a bridleway through the Recreation Ground has been included in the Order in light of differing views received from stakeholders during consultation and engagement.⁹⁸ Those differing views were apparent during the Inquiry. The Peak and Northern Footpath Society consider that if a replacement route is to be provided, it should be a bridleway (although their preferred option is a bridge).⁹⁹ Micklefield Parish Council again would prefer a bridge to be provided, by as Cllr Crossley accepted in XXC on Day 4, their position would be that if not a bridge, then it should be a footpath rather than a bridleway, although he also confirmed that the Parish Council's primary concern was with use of the route by equestrians, and they would in principle be content for its use by cyclists. It is unclear what Leeds City Council's position is, if their primary request for a modification of the draft Order to include a bridge is not accepted.

101. In response to questions from Cllr Crossley, Ms Bedford explained that as between the options of a bridleway and a footpath provided for in the draft Order, it was her personal view that it should be a footpath¹⁰⁰. She also identified the possibility of provision being able to be made for cyclists to use that route (if the Order was made with provision for a footpath) by means of an

⁹⁸ SB PoE para 6.29 **(CD 7.29)**

⁹⁹ Mr Harker's PoE paras 22-23 **(CD 7.44)**.

¹⁰⁰ With regards to SOM issue 4(d) however, and in particular the impacts of the proposed route on users of the Recreation Ground, Network Rail would highlight that impacts on users/usage of the Recreation Ground were considered during development of the proposals (MW confirmed in XIC on Day 3); that there has been engagement/consultation with the Parish Council going back to "at least" 2022 (as Cllr Crossley fairly offered in XXC on Day 4) and that having regard to the likely equestrian use of the diversion route given the absence of any evidence of equestrian use of the level crossing today from the user surveys, evidence on the ground, and lack of any onward connectivity to a wider bridleway network in the area, it is not considered that a proposed bridleway through the Recreation Ground would be fundamentally incompatible with its use as such. See also Mr Stamper's evidence regarding interaction of equestrian and other users at the eastern end of the new route within the Recreation Ground / at the entrance to Great North Road in section 3.33 of his PoE **(CD 7.08)**.

order made by Leeds City Council as highway authority under the Cycle Tracks Act 1984.¹⁰¹ Ms Bedford confirmed that Network Rail would be content to discuss that prospect with Leeds City Council and, of course, Micklefield Parish Council as the landowner.

102. Ms Bedford explained in her evidence why she considered that the alternative routes to taking Micklefield bridleway 8 over the level crossing, either via the new footpath/bridleway and/or Lower Peckfield Lane and under the bridge on the Great North Road, or continuing north-south down the Great North Road would be acceptable diversion routes for users of the crossing,¹⁰² having regard (inter alia) to the length of the alternative routes (and likely additions to journey times), desire lines, the interfaces with trafficked roads which users of ~~Mickelfield~~Micklefield Bridleway 8 will likely be experiencing today, that Great North Road provides a step free, tarmacked and lit route with segregation for pedestrians from vehicles (unlike the situation on Lower Peckfield Lane) and the Non-Motorised User Route Safety Assessment (RSA) which has been carried out which considers both the existing routes and

¹⁰¹ The relevant provision is s.3 which provides (inter alia) that:

“(1)A local highway authority may in the case of any footpath for which they are the highway authority by order made by them and either—

(a)submitted to and confirmed by the Secretary of State, or

(b)confirmed by them as an unopposed order,

designate the footpath or any part of it as a cycle track, with the effect that, on such date as the order takes effect in accordance with the following provisions of this section, the footpath or part of the footpath to which the order relates shall become a highway which for the purposes of the 1980 Act is a highway maintainable at the public expense and over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles) and a right of way on foot.

(2)A local highway authority shall not make an order under this section designating as a cycle track any footpath or part of a footpath which crosses any agricultural land unless every person having a legal interest in that land has consented in writing to the making of the order.

In this subsection “agricultural land” has the meaning given by section 1(4) of the Agricultural Holdings Act 1986; and “legal interest” does not include an interest under a letting of land having effect as a letting for an interest less than a tenancy from year to year.

(3)An order made under this section by a local highway authority—

(a)may be confirmed by the Secretary of State either in the form in which it was made or subject to such modifications as he thinks fit;

(b)may be confirmed by the authority as an unopposed order only in the form in which it was made.

¹⁰² As set out in section 6 of her PoE and in her oral evidence.

proposed diversions, and which was addressed in more detail by Mr Stamper in his evidence.¹⁰³

103. With regards any ‘tests’ to be applied when considering the alternative route/s proposed under the draft Order, Network Rail would stress that the proposed extinguishment of the public right of way over this (and indeed, the other crossings) and proposed new right of way falls to be considered under s.5(6) of the Transport and Works Act 1992. It is not an application under s.119 or s.119A¹⁰⁴ or s.118A of the Highways Act 1980. The tests specified under those sections are not found in s.5 of the Transport and Works Act 1992 (or in Schedule 1 of the OrderAct). They should not be read across or imported into s.5(6). As set out in Network Rail’s Response to Legal Submission on behalf of Leeds City Council and legal issues raised by the Peak and Northern Footpath Society (**CD 8.06**) considerable caution should also be applied to elevating guidance in a guidance document, which may or may not remain extant, or considerations to which Inspectors had particular regard in a different TWAO to some form of ‘test’ or ‘gloss’ on the statutory language of s.5(6). It is not Network Rail’s submission that that guidance, if extant, should not be considered or put to one side. Merely, that it should not be equated to some sort of statutory test. As set out in Opening, it is Network Rail’s submission that when considering those parts of the Order Scheme concerned with the closure of level crossings and extinguishment of public rights of way over them, it should be borne in mind that:

- (i) the purpose of the Act is to enable orders to be made relating to, or matters ancillary to, the construction or operation of (inter alia) railways, including the alteration of railways. The power to make such

¹⁰³ GS PoE sections 3.32 - 3.35 (**CD 7.08**). Oral evidence Day 3. He was notably not questioned on this part of his evidence by any of the objectors, save for some questions from Cllr Crossley regarding turns for equestrian users across the Great North Road if they were turning onto Lower Peckfield Lane from the north, then onto Great North Road from the Recreation Ground, and then onto Pit Lane from Great North Road.

¹⁰⁴ Two provisions which Cllr Crossley took Ms Bedford to in XXC on Day 4.

an order, in s.1, is the principal power to which the other powers are mainly incidental. To the extent that the proposed alternative route at Peckfield, and the decision not to provide a new right of way at Garforth Moor, are disputed by those objecting to the Order, those objections must necessarily be considered against the backdrop of the purpose of the Order being to effect alterations to the railway which are required to improve the NTPR and deliver better transport services.

- (ii) where new rights of way are to be created under the Order, those new rights of way are replacements for those currently passing over the crossings. This is not a public right of way improvement project. It is about considering what provision is to be made by way of alternative for the public right of way which is to be extinguished;
- (iii) each of the public rights of way at issue either form part of a longer footpath/bridleway or the wider PROW network. The alternative routes therefore need to be considered in the context of those wider routes, including use, usability and existing features or constraints; and
- (iv) when considering the proposed replacement routes, it is appropriate to focus, at least in the first instance, on how the public right of way to be extinguished is used and able to be used today, against the overarching context of an Order which is sought for the purpose of a railway project, being the much needed improvements to the NTPR, and the wider considerations discussed by Mr Greenwood in sections 6, 7 and 8 of his Proof of Evidence (**CD 7.20**), and Ms Bedford's explanation as to how those considerations are applied in practice by Network Rail when considering any proposed closure of a level crossing carrying a public right of way.

104. Returning to Peckfield, Ms Bedford has provided indicative additional distances and journey times for both of those routes at paras 6.9 – 6.10 of her PoE. In broad terms:

- (i) For a user travelling from the north end of Micklefield 8 to a point to the south of the level crossing the distance would be around 640m. Based on an average walking speed of 1.2m/s, for a pedestrian this journey would take approximately 9 minutes.
- (ii) The distance a user would walk from the same point remaining on the Great North Road and then taking Pit Lane west to the same point would be around 900 m. Based on average walking speeds that journey would take approximately 12.5 mins, an increase of around 3.5 minutes.
- (iii) Those distances/journey times are broadly comparable to those set out at paras 4.2.2 – 4.2.3 of Mr Booth’s PoE (**CD 7.36**). He suggests that additional journey time is a “significant increase” making the route unattractive for some. Ms Bedford does not agree, for the reasons she explained in her XIC.
- (iv) For those users wishing to travel from the north end of Micklefield Road to the industrial units on Pit Lane this would be a distance of approx. 871m as opposed to a distance of approx. 654m using Lower Peckfield Lane and the level crossing today, approximately 3 mins longer at a 1.2 m/s walking speed;
- (v) For those instead wishing to use Lower Peckfield Lane and the new route through the Recreation Ground before joining Great North Road and turning onto Pit Lane to reach a point to the south of the level crossing, this would add around 828 metres to the journey, approximately 11 minutes.

105. The longest addition to journey distances and times via the diversion route as opposed to the existing route over the level crossing would be for occupants of the Railway Cottages wanting to reach a point immediately to the south of

the level crossing, as Ms Bedford fairly accepted in response to questions from Cllr Crossley. As set out in section 1.5 of the Peckfield Level Crossing - Alternative Options Evaluation Summary **(CD 3.11)** the diversion route via the new footpath/bridleway through the Recreation Ground and via the Great North Road and Pit Lane would substitute a journey distance of around 40 m and journey time of less than a minute (excluding any wait time at the crossing) for one of around 900 m, a journey of around 11 minutes. However, it should be stressed that (1) that would be the worst case in terms of diversion distance/length; (2) as noted in the Alternative Options Evaluation Summary, the 2023 origin-destination survey indicated that the most level crossing use was by local people involving dog walking; (3) the alternative route for those residents, via Lower Peckfield Lane and the Great North Road to access facilities such as Micklefield Railway Station or the bus stops and shops south of the railway would be a much longer route ; and (4) it is in recognition of that potential impact on those residents that the Order Scheme includes the new section of footpath / bridleway running on the northern side of the railway to the Great North Road.¹⁰⁵

SOM 4(d) Impacts on highways safety

106. With regards to the safety of the proposed diversion route, having regard to (1) equestrians / cyclists having to use the carriageway on the Great North Road (2) the use by vehicles, pedestrians, cyclists and equestrians of the parking area and entrance to the Micklefield Recreation Ground and (3) the entry/exit points onto the Great North Road / Pit Lane these matters were all addressed in the Non-Motorised User Route Safety Assessment which was commissioned in respect of the existing and proposed routes, has been provided to Leeds City Council, is before this Inquiry **(CD 3.11)** and was

¹⁰⁵ SB PoE para 6.28

spoken to by Mr Stamper in his evidence. In his evidence,¹⁰⁶ he explained how that NMU RSA had been carried out, and confirmed there was nothing raised in that NMU RSA with regards to the proposed diversion routes that he saw as a problem and ~~not~~ something that could not be dealt with. Nor was there anything he had seen in the evidence of either Mr Booth or Mr Buckenham that had caused him to change his view, or that he felt had been raised and which had not been taken account of in his assessment or evidence. Nor did he regard the barrier currently erected at the entrance to the Recreation Ground, which he identified in his evidence as being lower than the design standards for equestrians / cyclists, as being a ‘deal breaker’, identifying that there were possible modifications which could be made to the barrier to enable such users to pass through it, or signage advising equestrians or cyclists to dismount.

107. None of the other objectors who appeared at the Inquiry in relation to Peckfield has called any technical evidence, or indeed, particularly questioned¹⁰⁷ Mr Stamper on these matters. In respect of the evidence submitted by Leeds City Council in the form of the Proofs of Robert Buckenham (**CD 7.34**) and John Booth (**CD 7.36**) in circumstances where the Council has chosen not to tender those witnesses for questions at the Inquiry, such that there has been no opportunity for testing of their evidence, ~~no~~^{rt} chosen to attend the Inquiry to question Network Rail’s witnesses on the content of their evidence, it is submitted that very little if any weight at all should properly be attached to that evidence, certainly where and to the extent that it differs from or has been answered by the evidence of Network Rail’s witnesses. In that context, it is somewhat surprising – and somewhat disappointing – that the Council’s position in Closing remains as it was in Opening and that there does not appear to have been an attempt to engage

¹⁰⁶ GS PoE sections 3.32 – 3.35 (**CD 7.08**)

¹⁰⁷ See fn 103 above

with Network Rail's evidence with regards to, for example, the NMU RSA, deadwood or ecology.

SOM 4(b) – Alternatives and reasons for choosing the preferred route

108. With regards to alternative options considered, and Network Rail's reasons for choosing the option provided for in the Order (SOM 4(b)), I have addressed this under SOM 2 above. However, given the preferred position of the majority of those objecting to the closure of the level crossing have stated they would wish to see it replaced with a bridge if it is to be closed, there are 5 further matters which Network Rail would stress at this juncture.
109. Firstly, that either a ramped or a stepped footbridge would itself add additional distance to the diversion route.¹⁰⁸
110. Secondly, that a stepped footbridge (proposed by some objectors as an alternative to a ramped footbridge) would not be accessible to all users. Those unable to use steps would be required to use the routes via Lower Peckfield Lane / Great North Road and/or Pit Lane (depending on origin/destination).
111. Thirdly, that whilst cost has not been the determinative factor in Network Rail's decision to proceed with the diversion proposed under the Order Scheme (as opposed to installation of a bridge), Network Rail is under an obligation to demonstrate value for money in its projects.¹⁰⁹ As Mr

¹⁰⁸ As discussed by Ms Bedford in her evidence, and indicated on Table 2 (section 1.7) of the Peckfield Level Crossing – Alternative Options Evaluation Summary (**CD 3.11**)

¹⁰⁹ On which, see generally DV's PoE at para 5.1.2 (**CD 7.02**) and JG's PoE at sections 7 and 8 (**CD 7.20**)

Cunningham's evidence demonstrates, even applying Gross Disproportionality Factor, a ramped or stepped bridleway bridge in this location does not currently pass a CBA: see para 6.7.1 of his PoE (**CD 7.23**). As Ms Bedford indicates at para 6.23 of her PoE, in ~~the context of a proposed stepped footbridge, with its associated circumstances where a stepped footbridge, in particular, costs, the likely and any~~ reductions in journey distances involved for those able to use a stepped bridge, ~~and the fact it is not usable by all,~~ that does rather raise the question of whether it would be proportionate to the inconvenience of having to walk/cycle the additional distance on the diversion routes proposed under the Order;

112. Fourthly, that either a ramped or stepped footbridge would require the acquisition of land outside of Network Rail's boundary, and, in the case of a ramped bridge at least, seem to place the ramps hard up against the existing highway, an interface which would need to be resolved.¹¹⁰ It would also require Network Rail to demonstrate that there was a compelling case in the public interest that justified acquisition of that third party land (if not able to be acquired by agreement) and a justified and proportionate interference with the landowners' ECHR protected rights, which might not be straightforward in circumstances where there is/are an alternative route / routes which would have less of an impact on such protected rights; and

113. Fifthly, with regards to timings, as Mr Westwood confirmed in his XIC on Day 3, that in the context of when things would need to be in place for the proposed December 2025 timetable change, if a bridge option were to be required to close the level crossing, having regard to the work and approvals involved "the timescales wouldn't be achieved".

¹¹⁰ See MW PoE Figures 27 and 28 (the green line on Figure 28 shows Network Rail's boundary, as he confirmed in XIC) and his XIC (Day 3)

114. These matters are addressed in the evidence of Jim Pearson, in particular in section 7 of his PoE (**CD 7.11**) and in his rebuttal proof (**CD 8.04**).
115. The potential effects of ecology arising from the works associated with the closure of Peckfield Level Crossing are addressed in Appendix 7 within Volume 3 of the ER (**CD 1.16.03**). As Mr Pearson sets out in para 7.1.3 of his PoE, the ecology assessment identified the potential loss of scattered trees, and hence loss, fragmentation and/or degradation of District and Local value habitats. To address that potential impact, the Order Scheme includes embedded mitigation, in the form of micro-siting of the proposed passing places along Lower Peckfield Lane to avoid tree loss (see para 4.1.1 of Mr Pearson's PoE) and the design of the path surface of the proposed new bridleway/footpath to avoid a requirement for excavation and protect the root protection area of veteran tree T44 in particular. These measures will be secured through draft planning conditions 4, 5 and 12 (the LEMP¹¹¹ to be submitted and approved under (draft) condition 5 would detail the final location of the 3 passing places required on Lower Peckfield Lane). With regards to the condition of trees more generally, and in particular concerns raised regarding dangers to users of the new footpath/bridleway as a result of falling deadwood, as Mr Pearson confirmed in XIC (Day 5) no such concerns were identified in the Tree Schedule Survey (Appendix 9A in Vol 3 of the ER) or within the Arboriculture Impact assessment itself (Appendix 9, section 3.9), which did, however, identify works that would be required to one tree on Lower Peckfield Lane (regardless of the scheme) due to cracking, stress and lean (para 3.9.6). In any event, as Mr Pearson confirmed in his XIC, under Article 37 of the draft Order, Network Rail would have the power fell or lop any tree or shrub near any part of the authorised works if reasonably believed necessary

¹¹¹ The outline LEMP for this location is included in ER Vol 2 at figure 8.5.6 (**CD 1.18.01**)

to do so to prevent it constituting a danger to persons using the authorised works.

116. With regards to other potential ecological effects, Mr Pearson confirmed in his evidence, having walked through the general and specific mitigation measures identified in Appendix 7 and the environmental/ecological measures provided for in section 4 of the COCP Part A (**CD 1.17**) that best practice environmental management is sufficient to mitigate the potential effects identified (which he explained, in any event, were more in the nature of the ‘could potentially arise’ if, for example, certain species were found to be present on the site, rather than an effect that was going to arise).

117. With regards to biodiversity, Network Rail has committed to achieve a BNG of 10%. This is to be provided within Leeds City Council’s administrative boundary, and would be secured through draft planning condition 10.¹¹²

Garforth Moor Level Crossing

118. At Garforth Moor Level Crossing, the draft Order would provide for the extinguishment of Definitive Footpath Garforth 7 between points P21, P22 and P23 on Land and Works Plan Order Sheet 7¹¹³ (**NR 1.09**) and for the extinguishment of private rights of way over the crossing with a new right of access created over plots 10-001, 10-002, 10-003 and 10-004 on Order Sheet 7.¹¹⁴

¹¹² See generally section 4.3 of Mr Pearson’s PoE

¹¹³ See Schedule 4 Part 2 of the draft Order. A question was raised with Ms Bedford on Day 4 of the Inquiry regarding the extent of the stopping up, and she explained that this was by reference to some issues that had arisen when the s.118A application was being progressed. Further details of the same can be found at paras 9 and 26 in the Report prepared by Leeds City Council a copy of which is at Appendix 4 to Mr Harker’s PoE (**CD 7.45**)

¹¹⁴ See Schedule 9 Part 1 of the draft Order.

119. The works to upgrade the access route over those plots (which is required to provide an alternative means of access and parking facility for the allotments on the north side of the level crossing) are the subject of an extant application to Leeds City Council (ref 22/03144/FUL) which Network Rail anticipates will be determined in the near future. Mr Rivero confirmed in XIC (Day 2) that he is not aware of any issue/s having been raised regarding the application which would be likely to lead to its refusal. It is anticipated that it would be determined under delegated authority.¹¹⁵ No objections have been raised by either Leeds City Council as freeholder, or any of the allotment holders as to the proposals in respect of the private rights of way over the crossing. Whilst a concern has been raised in two later objections to the Order (Obj 31 and 32, received following consultation on the proposed amendments to the right sought in Schedule 10 of the draft Order) regarding the maintenance of the existing track providing access to their properties if it is to be used in addition by the allotment holders, and to the costs associated with the same, as Mr Thomas confirmed in his evidence (XIC Day 7) that is a matter which can be addressed when the necessary rights are granted to Leeds City Council (as freeholder of the allotments) to allow for the rights of access over that track to the allotment holders.

120. No new public right of way is proposed in connection with the extinguishment of Definitive Footpath Garforth 7, it being Network Rail's position that a suitable diversionary route already exists over public highway (via Barwick Road) and existing PROW network, commencing with Definitive Footpath 7A which meets Barwick Road to the north of the underbridge. There is one objection to that part of the Order, from the Peak and Northern Footpath Society, by reference, in particular, to an application previously being pursued by Network Rail under s.118A of the Highways Act 1980 which referred to and

¹¹⁵ Mr Rivero XIC Day 2. See also **CD 9.07**

was intended to proceed alongside a public path creation order to be made by Leeds City Council under s.26 of the Highways Act 1980 creating a new section of footpath from Barwick Road to Definitive Footpath 7, approx. 100m south of the point where Definitive Footpath 7A meets Barwick Road.

121. Ms Bedford explained in her evidence why the s.118A application as submitted for determination proceeded on the basis of a new section of footpath being provided by a public path creation order: essentially, on the basis of it having been sought by Leeds City Council. She reiterated in her oral evidence, that she did not consider that such a replacement section of footpath was required either at the time when she initially submitted the (draft) application to Leeds City Council or now.¹¹⁶ In particular, she did not consider that it was necessary to provide such a route, given that footpath Garforth 7A is less than 100m north of the alternative which would have been the subject of the s.26 public path creation order, an additional 1 ¼ minutes walk,¹¹⁷ and that, from her perspective there was no material difference between that last 100m and the sections of Barwick Road which preceded it.¹¹⁸ She confirmed that she was not aware of any issues having been raised regarding the route since the temporary closure of the level crossing under TTRO in 2017 and, during XXC by Mr Harker, that she was not aware of Leeds highways having raised any issues. She confirmed, in Re-IX, that Leeds City Council had not asked for an RSA to be carried out on the proposed route, and that in considering the diversion route consideration had been given to the use of Definitive Footpath 7A by both pedestrians and vehicles, given its proposed use as an access to the allotments as well as an existing public right of way for walkers.

¹¹⁶ PoE para 5.29 – 5.31.

¹¹⁷ She also explained in XIC that on a worst case scenario (i.e. from the furthest house on Dale Croft to the south) the diversion route would add around 400m to a point to the south of the level crossing to the junction of Footpaths 7 and 7A to the N (approx. 6 mins).

¹¹⁸ XIC Day 4.

122. With regards to the Peak & Northern Footpath Society's objection to the Order, the position really appeared to be that they disagreed with the closure of the level crossing without creation of a new section of public footpath and walkers having to walk the additional 100m on Barwick Road. In his Proof, the only particular issues which Mr Harker identified as problematic with the proposed diversion route were the underbridge and a user having to undertake 'two right angled turns' (PoE para 14), both of which issues, he had to acknowledge, were common to the route proposed under the s.118A / s.26 orders. There was notably no reference to any particular concerns specific to the 100m section of Barwick Road which a pedestrian would need to traverse under the Order Scheme as opposed to under the s.118A / s.26 proposals. That is somewhat surprising, given his focus on the same in his oral presentation. It is, in Network Rail's submission, not a concern which is substantiated on the evidence, nor one which should cause the Inspector to recommend (or Secretary of State to conclude) that the Order (if made) should be modified to remove the Garforth Moor proposals.
123. There is notably no objection to the Order Scheme (with regards Garforth Moor) from Leeds City Council.
124. There are no impacts on ecology, wildlife or biodiversity arising from the Garforth Moor closure: see para 7.1.6 of Jim Pearson's PoE (**CD 7.1.6**).

Issue (5) Highway impacts: (a) Impact of the closure of Ridge Road due to the demolition and reconstruction of Ridge Road Bridge (b) impact on irrigation systems at Peckfield House Farm from the demolition of Brady Bridge (c) Impact of construction traffic (d) Impact on cycleway at Neville Hall

125. Matters relating to highway design and highway safety are addressed in Mr Stamper's evidence (**CD 7.08**) and traffic management during construction in section 4 of Mr Harrison's PoE (**CD 7.05**). Impacts on traffic and transport arising from those elements of the Order Scheme which fall within the request

for deemed planning permission are considered in Chapter 11 of Volume 1 of the ER (**CD 1.16**) with more detailed consideration in the Technical Note on Traffic and Transport in Appendix 11 (Vol 3 of the ER **CD 1.16.02**) Specific transport assessments with regards to the works to replace Austhorpe Lane and Ridge Road bridge are set out in Appendices 11A and 11B respectively.

SOM 5(a) Impact of the closure of Ridge Road

126. As Mr Harrison explained in his evidence, Ridge Road will be closed whilst the works are being undertaken to demolish and remove the existing bridge deck, until the new bridge deck has been installed and works to create the new highway it will carry are completed. In his XIC on Day 5, he confirmed that on current programme this could be a period of up to 9 months, but that was primarily driven by the fact the works to remove and to replace the bridge deck would have to be undertaken in 2 x 29 hour rail possession and the likely gap between the two, although Network Rail was working hard to try to negotiate a shorter timeframe between those two possessions.¹¹⁹ At para 3.5.20 of his PoE (**CD 7.05**) he drew attention to the assessment in Appendix 11B, and the suggested diversion route via the A63 Selby Road/A642 Wakefield Road (an additional journey term of around 11 minutes). He also set out in his evidence that save for some periods during the work, it would be possible to maintain pedestrian and cycle access via a temporary scaffold bridge.

127. In his oral evidence on Day 5, Mr Makin (Obj 09) raised concerns about the impacts of the road closures on his business and on an existing weight restriction on the proposed diversion route. As was identified in Appendix 11B of the ER, other diversion routes to the A63 Selby Road/A642 would be available. Network Rail has provided a note on the same to the Inquiry in response to Mr Makin's evidence (**CD 9.39**) A note has also been provided

¹¹⁹ This is a similar position at Austhorpe Lane.

regarding the concerns he expressed in connection with the mobile crane to be situated on Plot 11-003 and its proximity to his airstrip on the opposite side of Ridge Road (**CD 9.35**) With regards to compensation for road closures, as Mr Thomas explained in his XIC on Day 7, compensation is not generally available under the Compensation Code for losses resulting from temporary closure to the public highway (absent the claimant being able to demonstrate interference over and above the general public, which case law had demonstrated to be quite a high bar). Clearly, compensation is not a matter which falls to be determined at this Inquiry. However, as Mr Thomas confirmed in his evidence it would, of course, be open to Mr Makin to submit a claim to Network Rail if he considers that such a claim can be substantiated under the Compensation Code and/or the draft Order.

128. In response to concerns raised by Micklefield Parish Council (as well as Mr Makin) as to the routes that vehicles might take when Ridge Road is closed, Network Rail recognises that the diversions and their potential effects will require careful management. These are matters which would be discussed and managed through the Highways Working Group and the various protocols provided for under the Highways Agreement which has been entered into with Leeds City Council, which make provision (inter alia) for the provision of a Traffic Management Plan to be produced to and approved by Leeds City Council to manage the impact of its construction works on highway users, including details of temporary road closures and diversion (see more generally, sections 2.2 – 2.4 of Mr Harrison’s PoE (**CD 7.05**) and the NR/LCC Summary of the Highways Agreement (**CD 9.10**).

SOM 5(b) Impact on irrigation systems at Peckfield House Farm as a result of the demolition of Brady Farm Bridge

129. This was a matter raised in the objection of Obj 09 (Makin Enterprise Limited & Christopher William Makin). Obj 9 own and farm land to north of the railway. The land to the south – Peckfield House Farm – is owned by Obj 30 and farmed by a third party. As Mr Thomas explained in his evidence, it is Network Rail’s understanding that the water pipe which was installed in the surface of Brady Farm bridge without consent¹²⁰ was not in fact in use, and had not been in use for some time. That position had been indicated to Network Rail by Obj 30’s agent.¹²¹ It was also confirmed by Mr Makin when he appeared at Inquiry on Day 5. Obj 30’s agent has also confirmed, in withdrawing her objection to the Order, that Obj 30 has no claim to use the water pipe and has no objection to the permanent removal of either the bridge or the water pipe **(CD 4.Obj/30A)**.

130. There therefore need be no concern about the impacts on the demolition of Brady Farm Bridge on the irrigation systems at Peckfield House Farm.

SOM 5(c) Impact of construction traffic

131. The general measures for managing the impacts of construction traffic, and impacts of the Order Scheme on the highway network during construction more generally, are set out in section 4 of Mr Harrison’s PoE.

132. Under proposed planning condition 7, Network Rail is required to submit a Construction Traffic Management and Travel Plan to Leeds City Council for its approval prior to commencing a stage of development which must include the details referred to in Schedule 1 of the Environmental Agreement **(CD 9.09)**. The Environmental Agreement, which extends controls such as compliance with COCP Part A and COCP Part B to compounds not otherwise subject to the request for deemed planning permission and any conditions attached

¹²⁰ Mr Makin confirmed in XXC on Day 5 that that was the case

¹²¹ BT PoE **(CD 7.17)** para 8.7.12.

thereto,¹²² includes, in Schedule 1, the requirements which the CTMP must include as a minimum, which include matters such as construction access routes, the package of interventions and mitigations outlined in Section 11.3 of Chapter 11 of Vol 1 of the ER (**CD 1.16**), details of anticipated off-site traffic movements of vehicles associated with (inter alia) construction vehicles and construction activities, prohibited routes for construction traffic, any proposed time restrictions on any routes and details of the monitoring of construction HGV for compliance with the CTMP.

133. Control of matters such as construction traffic will also be controlled through the provisions and protocols set out in the Highways Agreement: see the references at para 128 above, and, more generally, sections 3.9 and 11 of the COCP Part A (**CD 1.17**).

SOM 5(d) Impacts on users of Neville Hill cycleway

134. Mr Stamper's evidence addressed the works that are to be undertaken to create the new access to Neville Hill Railway Sidings from Newmarket Approach and works to the non-definitive bridleway required in connection with the same, including the features included to ensure the continued safety of those using the cycleway and the priority of those users over vehicular traffic.¹²³ Those works are the subject of an extant planning application to Leeds City Council (ref: 23/03522/FUL). As the Inspector identified during questions of Mr Stamper on Day 3, issues to do with safety, design for or priority of the users of the non-definitive bridleway have been squarely before

¹²² Mr Pearson explained in his XIC on Day 2 how the Environmental Agreement extends protections and controls to certain aspects of the Order Scheme, and it should be considered more generally within the wider package of measures to control the environmental impacts of the Order Scheme detailed in section 5 of his PoE (**CD 7.11**).

¹²³ GS PoE sections 3.24 – 3.31

Leeds City Council on that application. Network Rail understands that, save potentially for one matter in connection with drainage which can be dealt with by way of condition if needs be (see **CD 9.07**) Leeds City Council is content with the proposals and that there is no reason to suppose that planning permission will not shortly be forthcoming. As to impacts during construction, as set out in the Revised Statement of Common Ground (Table entry 25), temporary construction impacts will be managed via an appropriate diversion during the short duration of the construction associated with the new Neville Hill Access Road. Leeds City Council accepts that the protocols included in the Highway Agreement are capable of adequately managing impacts on the cycle route network.¹²⁴

Issue (6) Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the DLUHC Guidance on Compulsory purchase process and the Crichel Down Rules (a) whether there is a compelling case in the public interest to justify conferring on Network Rail powers of compulsory acquisition (b) whether the purposes for which the compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected (having regard to the Human Rights Act 1998) (c) whether there are likely to be any impediments to Network Rail exercising the powers contained within the Order, including the availability of funding (d) Whether all the land and rights over land which Network Rail has applied for is necessary to implement the scheme.

135. As set out above, the Order, if made, would authorise Network Rail to permanently acquire or to temporarily use land required not only in connection with the works authorised under the Order itself, but the remaining land required to deliver the wider package of works across the TRU E2-4 footprint, including works which would be consented or authorised under other consenting regimes, including permitted development under the

¹²⁴ Revised Statement of Common Ground Table 1 entry 25 pg 24 (**CD 6.02**)

Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GDPO”) or separate planning permissions.

136. The lands included with the Order limits are required for that purpose.
137. The evidence of Mr Harrison, Mr Westwood and Mr Stamper provides the design, engineering and construction management justification for that proposition. The evidence of Mr Cunningham, Ms Bedford, Mr Westwood and Mr Thomas provide the justification where rights are required (or required to be extinguished) in connection with the closure of level crossings.
138. In the case of each plot included within the Order, Mr Thomas has provided an schedule setting out whether the land subject to compulsory purchase, temporary possession, or acquisition of rights,¹²⁵ and in respect of landowner objectors to the Order, and explanation as to the rights or powers sought over their land and why.
139. The Order has been drawn to ensure that it includes sufficient land and rights to ensure that the Order Scheme (and the wider Scheme of which it forms part) can be delivered. Where it has been possible for Network Rail to identify that land may be needed only temporarily, or that only the acquisition of rights, ~~or imposition of restrictions,~~ is required, that is provided for in the Order: see, for example, Article 25 (read with Schedule 10) and Article 28 (read with Schedule 12) of the draft Order.
140. There are some instances in which it has now been possible to reach agreement with the landowner (or tenant) for Network Rail to use or occupy land required in connection with the Order Scheme and for which powers of compulsorily acquisition or temporary possession are included within the draft Order. As explained in Mr Thomas’s PoE at para 5.15, where draft terms have been agreed, or licence agreements completed, as with Manston Lane

¹²⁵ See, in particular, his Appendix 1 (**CD 7.17**)

where a licence agreement has been entered into with the tenant of the land, that land remains – and needs to remain -within Order limits, to ensure the that the Scheme can be delivered in the event that agreed heads of terms do not ultimately progress to legal agreement, or in the event that a licence agreement is not complied with or is terminated for any reason. That situation (i.e. of Network Rail having reached agreement to acquire or use land by agreement whilst a TWAO is pending) is not uncommon. Whilst it might seem, at first, that that agreement obviates the need for Network Rail to be granted powers to acquire or use that land, it is an important safeguard for Network Rail to ensure that it can deliver the Scheme at issue. It may be a ‘fall back’ (to use the term put to Mr Thomas on Day 7) But it is an important one.

141. The Order provides for compensation where land or rights are acquired, restrictions or imposed, or loss or damage suffered as a result of land being used temporarily for construction of the Scheme. Mr Thomas summarises those compensation arrangements in section 4 of his proof (**CD 7.17**).

142. The Scheme is compellingly justified on transport planning grounds. The Scheme will deliver or contribute to significant transport, social and economic benefits. The need for the works and land included within the Order Scheme is detailed in Network Rail’s evidence, as summarised above. The strategic, policy and business case is stated in set out in sections 5 to 7 of the Statement of Case, substantiated in the evidence of Mr Vernon, Mr Greenwood and Mr Rivero and summarised in these Closing Submissions.

143. There is no impediment to delivery of the Scheme. It enjoys express support from Government and funding to enable its implementation is committed, as Mr Vernon confirmed in his XIC on Day 2.

144. It is submitted that the following conclusions may firmly be drawn from the evidence before the Inquiry:

- (i) The land and rights included in the Order are necessary to deliver the Scheme.
- (ii) There are no impediments to delivery of the Scheme.
- (iii) There is a compelling case in the public interest to justify conferring powers to compulsorily acquire land and rights included within the Order limits and for which the Order seeks compulsory purchase powers, and temporarily to possess and to use the land within the Order limits, for the purposes of the Scheme.
- (iv) That the purposes for which the Order is sought are sufficient to justify interference with rights protected by Article 1 of the First Protocol to the ECHR.

Issue (7) The wider impact of the proposed works on the surrounding wildlife and biodiversity, including the proposed tree felling at Manston Lane

145. This is addressed in Mr Pearson's evidence, in particular in Section 7 of his Proof (**CD 7.11**) and in his rebuttal proof (**CD 8.04**), alongside Chapters 7 and ~~11~~9 of Volume 1 of the ER (**CD 1.16**) and Appendix 7 in Volume 3 of the ER (**CD 1.16.02**).

146. There is no proposed tree felling at Manston Lane. An outline ~~d~~ restoration plan for the site (secured through the Environmental Agreement) can be found at Figure 8.6.2 in Volume 2 of the ER (**CD 1.16.02**).

147. Mr Pearson has provided a detailed explanation, in his Rebuttal Proof, as expanded upon in his oral evidence on Days 2 and ~~8~~7 of the impacts on trees in connection with the works at Austhorpe Lane, and the steps which have been taken to avoid or reduce impacts on the same. An outline LEMP and

outline restoration proposal showing the mitigation proposed can be found at Figure 8.5.2 and 8.6.1 in Volume 2 to the ER.

148. With regards to BNG, as noted above, Network Rail has committed to achieve 10% BNG within Leeds City Council's administrative boundary. This is secured through draft planning condition 10. Network Rail has also agreed, through the Environmental Agreement (**CD 9.09**) to work with the Council in a BNG Working Group in order to identify and agree opportunities to deliver BNG through enhancements on sites within the Council's administrative boundary, where 10% cannot be achieved onsite.

Other matters

The request for deemed planning permission

149. The assessment of the Order Scheme, and development included within the request for deemed planning permission, against national, local and regional transport and planning policy is addressed in detail in Section 7 of the Statement of Case (**CD 1.19**), in the Planning Statement (**CD 1.13**), and in the evidence of Mr Rivero (**CD 7.14**). Mr Vernon and Mr Rivero both drew attention to the support which the Scheme enjoys in strategic transport policy, both regional and national¹²⁶. The Scheme also finds strategic support in local policy: specifically, Leeds Core Strategy Policy SP11 'Transport Infrastructure Investment Priorities' discussed in para 6.2.3 of Mr Rivero's PoE.

150. Although the request for deemed planning permission under s.90(2A) TCPA 1990 does not fall to be determined in accordance with section 38(6) PCPA

¹²⁶ See in particular section 4 of DV's PoE and sections 4 and 5 of Mr Rivero's PoE where he drew attention (inter alia) to Transport for the North's Strategic Transport Plan (section 5.3) and West Yorkshire Combined Authority's Transport Strategy (section 5.4).

2004,¹²⁷ it is submitted that the Scheme is in accordance with the broad thrust of national and local planning policy and attracts support from both the National Planning Policy Framework and the development plan. That view is shared by Leeds City Council, as confirmed by Ms Harris in oral evidence on Day 3.¹²⁸

151. The Order Scheme works will involve some development in the Green Belt at Barrowby Lane, Peckfield Level Crossing, Crawshaw Woods bridge and Ridge Road.

152. With regards to the works at Barrowby Lane and Peckfield Level Crossing, as Mr Rivero explained in his evidence, these are considered to be local transport schemes which can justify a location in and do not compromise the openness of the Green Belt, and thus falling within paragraph 155c of the NPPF.¹²⁹ Even if the works to Barrowby Lane were not to be regarded as falling within paragraph 155c, it was his view that there were, in any event, very special circumstances which would outweigh the harm caused, as with Crawshaw Woods bridge and Ridge Road.

153. With regards to works at Crawshaw Woods bridge and Ridge Road, Mr Rivero confirmed that works are not considered to fall under paragraph 155 c) of the NPPF as they are of more than local importance being required for electrification of the route. Mr Rivero's assessment is that very special circumstances are present in this case to clearly outweigh the harm caused by these elements of inappropriate development, given the importance of the

¹²⁷ *R (on the application of Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Energy and Climate Change* [2012] EWHC 46 (Admin)

¹²⁸ My note of her evidence: "My conclusion would be that the proposals are in accordance with the development plan or no fundamental conflict with the development plan in terms of overall what is being proposed ... If look at scheme as a whole no long term policy conflict".

¹²⁹ PoE para 6.2.4, oral evidence Day 2. A similar view was reached in respect of the works to create a new access road and bridge at Church Fenton to effect the closure of 23 level crossings under the Church Fenton TWAO (see para 153 of the Inspector's Report, at Appendix E to DV's PoE (**CD 7.03**). An assessment of the landscape visual assessment of the new Barrowby Lane bridge can be found in [Appendix 8 Vol 3 ER \(CD 1.16.2\)](#);

TRU as a key component of national transport infrastructure, with the Scheme being essential to maintaining and improving the performance and capacity of the line, and supporting Government policy on sustainable transport and achieving reductions in green gas emissions, reducing congestion and delivering economic benefits.¹³⁰

154. In her evidence on Day 3, Ms Harris set out that whilst recognising the distinction drawn between local works which fell under the exceptions in the NPPF and works of more than local importance needing to demonstrate very special circumstances, the Council was focussed more on the “ultimate end result”. My note of her evidence: *“I think it’s the ultimate end result we’ve been particularly interested in. Position is almost regardless of which provision of NPPF come under we as LCC agree v special circumstances to justify that work in GB location. Almost regardless of how you get there, acceptable because it’s local or because v special circumstances, ultimately our view is it’s acceptable. So I think that would be my position on that – no concern from a planning policy perspective.”*

155. With regards to SOM 10 (in connection with the listed building consents) Mr Rivero also confirmed in his evidence his view that significant weight should be given to the Local Plan policies mentioned in his PoE and contained within Leeds Core Strategy (discussed in section 6.2 of his PoE), the saved policies of the Unitary Development [Plan](#) (discussed in section 6.3 of his PoE) and the Garforth Neighbourhood Plan (discussed in section 6.6 of his PoE), forming part of the up to date development plan for Leeds (PoE paras 10.1.2 – 10.1.4) and that as the emerging development plan update has yet to be tested, only limited weight could be given to its revised policies.

¹³⁰ TR PoE para 6.3.5.

156. A list of conditions which had been agreed with Leeds Council was submitted as an Appendix to the Revised Statement of Common Ground (**CD 6.02**). They were discussed during the conditions session on Day 8. Mr Rivero has confirmed in his evidence that he is content that the conditions suggested meet the tests in the NPPF.¹³¹

The listed building applications & cultural heritage (SOM matters 9, 11 and 12)

157. There are four applications for listed building consents which fall for determination alongside the application for the Order and the request for deemed planning permission.

158. Those consents relate to works that need to be undertaken to four Grade II listed bridges over the railway for this section of the NTPR to be electrified.

- (i) Austhorpe Lane Bridge (23/04387/LI)¹³²;
- (ii) Crawshaw Woods) Bridge (23/04388/LI)¹³³;
- (iii) Brady Farm Bridge (23/04389/LI);¹³⁴ and
- (iv) Ridge Road Bridge (23/04390/LI)¹³⁵.

159. None of those bridges currently have sufficient clearance between track level and soffit for electrification of this section of the line (as discussed above). Works to those structures, and the harms in policy terms that that would be involved, cannot, therefore, be avoided.

160. Each application is accompanied by a detailed Heritage Assessment (a composite document for Austhorpe Lane Bridge, Brady Farm Bridge, and Ridge Road Bridge, and separate document for Crawshaw Woods Bridges¹³⁶)

¹³¹ TR PoR para 8.1.1.

¹³² **CD 1.18.01 & CD 1.18.04 – 1.18.12**

¹³³ **CD 1.18.01 & CD 1.18.20 – 1.18.28**

¹³⁴ **CD 1.18.01 & CD 1.18.13 – 1.18.19**

¹³⁵ **CD 1.18.01 & CD 1.18.29 – 1.18.37**

¹³⁶ **CD 1.18.1**

and Alternative Options Evaluation Study,¹³⁷ which appraises the significance of each asset,¹³⁸ the impact of the Order Scheme, the options considered for the works affecting the asset, the mitigation or compensation proposed, and by detailed plans for the works proposed.

161. Network Rail has worked closely with Historic England and Leeds City Council throughout the development of the Order Scheme. The value of that process is clear. There is no substantive objection either to the making of the Order (insofar as it affects those structures) or to the grant of listed building consent for any of the 4 bridges from Historic England or Leeds City Council.

162. Ms Jones detailed in her evidence the significant work undertaken to arrive at the proposals for which listed building consent is now sought. It started with seeking to understand the railway, and its components, drawing on the TransPennine Route Upgrade Route-wide Statement of Significance' prepared by Alan Baxter Associates in August 2019 (**CD 1.18.03**), and a second report prepared by Alan Baxter Associates back in 2014 'NTP-E Statement of History and Significance: East of Leeds' (**CD 1.18.02**, replaced by **CD9.23**) together with other historic records and research described by Ms Jones in paras 4.1.1 and 4.1.2 of her PoE.

163. In respect of the individual structures, their significance lies in part in their signature design related to the engineers that constructed them. I reiterate as I stated in Opening that each of the assets affected are railway assets. Their significance is inextricably linked with the railway which they were built to serve. Ms Jones discusses the history and significance of each asset in her PoE (with more detail to be found in the Heritage Assessment and AEOS for each structure), before going on to summarise the optioneering process

¹³⁷ Austhorpe Lane Bridge (**CD 1.18.12**), Crawshaw Woods Bridge (**CD 1.18.28**), Brady Farm Bridge (**CD 1.18.19**), and Ridge Road Bridge (**CD 1.18.37**)

¹³⁸ As required by NPPF para 194

undertaken and the assessment of harm to each structure against local plan and national policy.

164. As set out above, Ms Jones and, in respect of the engineering matters, Mr Harrison, set out in some detail in their evidence the engagement, optioneering and design work that was undertaken, before arriving at the option that has been included in the Order Scheme for each of the bridges including the proposals included in the Order Scheme to provide compensation or offsetting of the (in NPPF terms) substantial harm caused by the loss of ~~Authorpe~~[Austhorpe](#) Lane and Ridge Road bridges through a bespoke design for their replacements which reflects but does not seek to replicate the structure they replace. This work is also recorded in the Heritage Assessment for each of the assets, and AEOS, and summarised in Section 11 of the Statement of Case **(CD 1.19)** and Section 7 of the Design and Access Statement **(CD 1.15)**.

165. Ms Jones illustrated that work, in her XIC, talking through the particular features of the proposed works to Crawshaw Bridge, and of the proposed replacement structures at Austhorpe Lane and Ridge Road which has informed her appraisal of these matters set out in her PoE and the other documents referred to above. She discusses the assessment of harm, and consideration of the effect on significance in each case in accordance with the NPPF and Local Plan policy, in section 4 of her proof.

166. The heritage assessments, read with the AOES for each structure and the evidence of Ms Jones and Mr Harrison provide the necessary details of the works to the listed assets to enable judgments to be made as to the degree of harm to significance in each case; and for that harm to be balanced against both the need for those works to enable delivery of the rail improvements proposed by the Scheme, and the public benefits which are the objective of the Order, as required under the NPPF and local plan policy. Putative

conditions have been suggested for each of the listed building consents applications, including, in respect of Crawshaw Woods, a condition requiring production and approval of a Conservation Implementation Management Plan.¹³⁹

167. What then needs to be considered is the balance between the harm which will be caused by the proposed works to the significance of each heritage asset, the need for those works to deliver the Scheme and the public benefits of the Scheme. Is there a clear and convincing justification for the harm that would result from the proposed works? For Crawshaw Woods bridge, that requires weighing the less than substantial harm against the public benefits of the proposal including, where appropriate, securing the optimum viable use of the asset (NPPF para 208). For the other 3 bridges, to which there will be substantial harm it must be shown that their demolition is necessary in order to achieve substantial public benefits that outweigh their loss (NPPF para 207).

168. It is Network Rail's submission that, in the case of each asset, the evidence of Ms Jones, supported by that of Mr Harrison and by the Heritage Assessments and AEOS produced in support of the application for listed building consent, substantiates the case for the proposed intervention in accordance with those policy requirements. In each case, the process whereby the necessary works have been identified and formulated in order to enable the delivery of the Scheme is explained, including the options considered with the view to avoiding the need for intervention. Those assessments are in effect unchallenged in evidence before the inquiry. They are convincing work and merit acceptance.

169. I have also detailed above, by reference to the evidence of David Vernon, the clear need for the Scheme and the very substantial benefits of the TRU programme which the Order Scheme is needed in order to deliver. Those

¹³⁹ Discussed at para 6.3 of Ms Jones' PoE.

benefits cannot be achieved without the engineering interventions which would be authorised by this Order. That is clear from Mr Harrison's evidence. In short, the evidence establishes that the Order Scheme cannot be delivered without the interventions to these assets for which listed building consent is sought: a position which appears to be accepted (indeed, arguably endorsed) by both Leeds City Council and Historic England.

170. I return again to the context in which these applications are made. The listed building consents are sought in relation to four structures whose significance is intrinsically linked with the railway. The works for which the consents are sought are part of a Scheme that seeks to revitalise that railway – to make it fit for operation in and through the 21st century and to serve the needs of a resurgent local and regional economy on both sides of the Pennines. In order to achieve that purpose, it is inevitable that changes are needed to the historic fabric of the railway line. Those changes are, however, necessary in order to achieve the functional and operational improvements that must be secured if the NTPR is to continue to fulfil the purpose for which those early railway engineers had as their objective: to meet the needs of its passengers and other users, to serve the needs of the local and regional economy, and to connect communities large and small across the northern region.

171. With regards to the matters raised in the Statement of Matters in respect of the applications for listed building consent it is therefore Network Rail's position that it is clear from the evidence before this Inquiry that:

- (i) The works to the listed buildings are in accordance with the local development plan, and in particular Policies N14 and N10 of the Leeds Core Strategy (for the reasons set out in Ms Jones' PoE, in particular at paras 5.1.12 – 5.1.15, 5.1.24 – 5.1.27 and 5.1.48 – 5.1.51); and

- (ii) The works would be in accordance with the NPPF policies with regards to cultural heritage (summarised above, and confirmed by Mr Rivero in his XIC on Day 2).

172. It is respectfully submitted that the listed building consents are merited and ought properly to be granted as justified in accordance with the policy provisions of the NPPF.

173. The heritage assessment work undertaken has not been limited to the 4 assets for which listed building consent is sought. There is a careful assessment of the impacts of the Order Scheme on the historic environment, including designated and non-designated assets, in Chapter 5 of Vol 1 of the ER (**CD 1.16**). Ms Jones also set out in section 5.2 of her PoE her assessment of the potential impact of the scheme on 3 of those assets: Leeds Minster, the Leeds City Conservation Area and the railway itself. With regards to Leeds Minster and the Leeds City Centre Conservation Area there appears to be a disagreement between Ms Jones and Mr Ward of Leeds City Council as to whether the change which would be effected by works within the Conservation Area (specifically, the works within Penny Pocket Park) would cause harm, albeit less than substantial harm to the setting of Leeds Minster, the Conservation Area or – an asset raised for the first time in Mr Ward’s Heritage Statement of 26 February 2024 (**CD 7.46**) – the grade II northern boundary and war memorial. Ms Jones has explained her assessment. Mr Ward has explained his. The Inspector will no doubt reach his own view, including as to whether the works at Penny Pocket Park can properly be regarded as being within the setting of the boundary wall and war memorial (which Ms Jones considered to have a more localised setting than the Minster) or whether in the particular view points identified by Mr Ward there is a discernible impact on those heritage assets. Ultimately, it is common ground between Network Rail and Leeds City Council that even if there is less than substantial harm to those assets, that harm is clearly outweighed by the

public benefits of the Order Scheme. Any such harm is not, therefore, a reason why the Order or associated consents should be refused.

Public Open Space

174. Section 12 of the Transport and Works Act 1992 provides that where an Order made under sections 1 or 3 of the Act would authorise compulsory acquisition of certain categories of land which, if authorised by an order under s.2(1) of the Acquisition of Land Act 1981 would be subject to special parliamentary procedure, that the relevant provisions within the 1981 Act will apply to such an Order.

175. As set out in Mr Thomas's PoE at section 7 (**CD 7.17**), Network Rail has identified, in the Book of Reference, that fifteen plots of land could, taking a precautionary approach, fall within the definition of 'open space' in s.19 of the 1981 Act. Of those plots, seven are subject only to rights of temporary possession.¹⁴⁰

176. Four small plots of land are required at Penny Pocket Park to allow for the installation of the new railway infrastructure, amounting in total to 229.5 square yards. Network Rail has applied for a certificate under s.19(1)(b) of the ALA 1981, that the Order need not be subject to special parliamentary procedure the extent of the open space over which compulsory acquisition powers are sought being less than 250 square yards and the giving of exchange land being unnecessary. Network Rail set out its covering letter with the application¹⁴¹ why it considered that to be the case, essentially by reason of the size, location and quality of the land sought to be acquired, being four small plots of land at four points immediately adjacent to the railway at the

¹⁴⁰ See BT PoE para 7.1.2

¹⁴¹ **CD 1.18.38**

stop of a steep railway embankment, a position confirmed by Mr Thomas in his oral evidence. Leeds City Council is now satisfied as to the extent of the land to be provided and agree that no exchange land is necessary.¹⁴² No objections have been raised to Secretary of State's letter of 25 September 2023¹⁴³ indicating he is minded to grant the certificate, either in respect of the loss of these parcel of open space and the impact of the same on enjoyment of Penny Pocket Park, or the acquisition of those plots without the providing of exchange land.

177. Two small parcels of land are also required at Austhorpe Lane – plots 7-010 and 7-16B – which are located between the railway and Austhorpe Lane on the southern side of the railway. These plots of land amount, in total, to 156.7 square yards. It has therefore sought a second certificate under s.19(1)(b), that the Order need not be subject to special parliamentary procedure the extent of the open space over which compulsory acquisition powers are sought being less than 250 square yards and the giving of exchange land being unnecessary. Network Rail set out its covering letter with the application¹⁴⁴ why it considered that to be the case, essentially by reason of the size, location and quality of the land sought to be acquired (a position confirmed by Mr Thomas in his oral evidence) being two small plots of land immediately adjacent to the active railway, parts of which are in steep embankment, and of no inherent value or significance in terms of being used as open space.

178. Network Rail also seeks to acquire rights over two further plots, Plots 17-017A and 7-016A, being *in effect* an easement for the installation and maintenance of an underground gas pipe (the high pressure gas main to be diverted as Scheduled Work No 2) and a small monitoring post at surface level. With

¹⁴² Revised Statement of Common Ground Table 1 entry 9 (**CD 6.02**).

¹⁴³ **CD 18.38.05**

¹⁴⁴ **CD 1.18.39**

almost all of that apparatus being underground, it is not considered that those rights would prevent recreational use of the land as open space (the land has, in fact, either been transferred to Leeds City Council or is due to be transferred to Leeds City Council to be a ~~s~~ part of a public park¹⁴⁵) or that the imposition of the rights would result in the land being less advantageous to the person in whom it is vested or the interests of the public that it was before. Again, a position confirmed by Mr Thomas in his oral evidence (Day 7). A certificate was therefore sought under paragraph 6(a)(1) of Schedule 3 to the 1981 Act.

179. No objections have been raised to Secretary of State's letter of 9 January 2024¹⁴⁶ indicating he is minded to grant the certificate, in respect of the loss of these parcel of open space per se (or their burdening with the proposed rights¹⁴⁷) and the impact of the same on enjoyment of the wider open space available to the public for informal recreation in this location, or the acquisition of plots 17-010 or 17-016B without the providing of exchange land.¹⁴⁸

180. Network Rail's position remains, therefore, that there is no reason why the certificates which the Secretary of State indicated that he was minded to issue on 25 September 2023 and 9 January 2024 should not be granted.

Objections to the Order

181. Save for those objections or representations received close to the commencement of the Inquiry, Network Rail has provided responses to all

¹⁴⁵ As Mr Thomas confirmed in his XIC, it can continue to be used the same way as it is today

¹⁴⁶ **CD 18.39.05**

¹⁴⁷ There is, for example, notably no objection from Leeds City Council.

¹⁴⁸ The sole remaining objection to the public open space certificate (**CD.4.Obj/60**) focuses on the potential ecological impacts of the proposed works (addressed in Mr Pearson's rebuttal proof – **CD 8.04**) and whether the works could be carried out from another sites / the line of the gas main diversion instead follow the public highway (addressed in Mr Harrison's rebuttal proof – **CD 8.01**).

objections, representations and letters of support, as set out in the Schedule provided in advance of the Written Responses session on Day 8 of the Inquiry **(CD 9.)** and as summarised in Section 15 of its Statement of Case **(CD 1.19)**. A number of objections or representations have been withdrawn and/or resolved. A number are responded to specifically within Network Rail's evidence, as indicated during the course of Inquiry and at the Written Responses session, or by its evidence more generally.¹⁴⁹ With regard to outstanding objections from landowners, these are addressed in Section 8 of Mr Thomas' PoE, supplemented, in respect of the subsequent matters raised by Obj 9 by his rebuttal proof **(CD 8.05)**, that of Mr Harrison **(CD 8.01)** and **CD 9.** and **CD 9.**

Modifications to the draft Order

182. As discussed during the Technical Matters and Modifications session on Day 2 of the Inquiry, Network Rail has sought to make a number of discrete modifications to the draft Order (with corresponding changes on the Land and Works Plan **(CD 1.09)**) since the draft Order was submitted. A redline copy of the draft Order has been provided, together with a Schedule explaining the amendments made.¹⁵⁰ No objections having been raised to those proposed modifications, and given the nature of the same, the Inspector is requested that if he is minded to recommend that the Order be made that it be made with those modifications.

183. The Inspector has, however, also been requested by Leeds City Council to recommend that the Order be made with a modification to require a replacement bridleway bridge at Peckfield. Network Rail acknowledges that following an Inquiry into a draft Order, the Secretary of State has the power to

¹⁴⁹ Network Rail has also highlighted where responses to those objections have been provided either specifically within Network Rail's evidence or by its evidence more generally, as discussed at the 'Written Responses' session.

¹⁵⁰ **CD 1.02.02 & CD 1.02.01** (January 2024) as superseded by **CD**

make such an Order with modifications under s.13 of the TWA 1992 and that, under s.13(4):

(4)Where the Secretary of State proposes to make an order which gives effect to the proposals concerned with modifications which will in his opinion make a substantial change in the proposals—

(a)he shall notify any person who appears to him to be likely to be affected by the modifications,

(b)he shall give that person an opportunity of making representations to him about the modifications within such period as he may specify in the notice, and

(c)he shall before making the order consider any representations duly made to him.”

184. Network Rail does not consider, however, that this is a case where a modification of the nature and extent sought by Leeds City Council could or should be recommended even having regard to the provision of s.13.

185. Firstly, the modification sought is not merely a substantial change but a fundamental alteration to what is proposed to be provided in order for Peckfield Level Crossing to be closed. The proposal would be to replace what is essentially a provision within the Order to extinguish the public right of way over the crossing following the creation of a new section of public right of way running through Micklefield Recreation Ground with a new Scheduled Work, requiring its own plans and sections, limits of deviation and planning permission.

186. Secondly, no such plans have been provided to the Inspector at this Inquiry. There is no detailed design for a bridleway bridge showing location, dimensions or land required which would need to accompany a modification

of that nature (even leaving aside the absence of any assessment of the potential impacts of such a proposal, of the sort provided for those elements of the Order Scheme which are the subject of the request for deemed planning permission, within Vol 1 of the ER).

187. Thirdly and relatedly, in the absence of such plans – or indeed, any land referencing having been undertaken to ascertain what land interests might be affected by such a proposal – it is not clear how Leeds City Council (who have drawn attention to the provisions of s.13(4) TWA 1992) consider that the Secretary of State would know or be able to identify such persons as might be affected by the proposed modification whom he ought to notify and consult upon such a proposed modification.

188. Thus, whilst Network Rail does not dispute the power conferred on the Secretary of State under s.13 TWA 1992, it maintains that the modification sought by Leeds City Council in the present case is not one which it would realistically be open to the Inspector to recommend.

Conclusion

189. Network Rail respectfully invites the Inspector to recommend that the Order be made, and associated consents granted, to ensure that this much needed upgrade to this NTPR can proceed without delay.

JACQUELINE LEAN

12th March 2024

Updated to include oral corrections / text added orally and referencing

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