

Network Rail proposed closure of level crossings – Objections to application for Transport and Works Act Order

Report by Councillor David Finch, Leader of the Council.

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1. Purpose of Report

- 1.1. The purpose of this report is to seek endorsement of the objections to the changes to level crossings carrying footpaths across railway lines in Essex which are proposed as part of the Transport and Works Act 1992 Order (TWAO) application by Network Rail to the Department of Transport. The objections support the Council's duties as highway authority to protect the rights of the public to use the footpath network.

2. Issues

- 2.1. For several years Network Rail have been considering the safety impacts or level crossings carrying footpaths and bridleways across their railway lines.
- 2.2. The stated purpose of the Anglia Level Crossing Reduction Strategy is to improve safety, allow Network Rail to more effectively manage their assets, reduce the ongoing maintenance liability of the railway and help enable various separate potential enhancement schemes in the future. Network Rail has developed the Strategy to further consider options to provide alternative means of crossing the railway to help expedite the process. In particular the Network Rail strategy stated to provide the following benefits:
 - Improve the safety of level crossing users;
 - Deliver a more efficient and reliable railway, which is vital in supporting the regional and UK economy;
 - Reduce the ongoing operating and maintenance cost of the railway;
 - Reduce delays to trains, pedestrians and other highway users;
 - Improve journey time reliability for all railway, highway and other rights of way users.
- 2.3. The principles underlying the Anglia Level Crossing Reduction Strategy are in line with ECC's long term transport strategy supporting economic growth.

- 2.4. ECC has a responsibility to protect and maintain the Public Rights of Way (PRoW) network, ensuring that it is accessible and safe for users, providing opportunities for healthy living and contributing to the local economy.
- 2.5. To date, some individual changes have been achieved by processes carried out using the County Council's powers under section 119A of the Highways Act 1980 with the Council's support. In those cases applications for changes to specific crossings have been made following consultation and advertisements.
- 2.6. More recently Network Rail decided that since they wish to close a considerable number of crossings, they would do so by making bulk applications under the Transport and Works Act 1992, a statutory procedure which results in an order which can cover multiple crossings.
- 2.7. Network Rail has identified 57 crossings in Essex which they wish to close or remove some traffic. All of these affect public rights of way (ie footpaths, bridleways or byways open to all traffic). Network Rail believe it is possible to close or downgrade the crossing by:
- Diverting public users to an nearby alternative means to cross the railway;
 - Providing a new public route as a nearby alternative means to cross the railway;
 - Amending the existing public right to cross the railway to include or exclude certain user groups
- 2.8. In consultation with the Cabinet Member the Council has maintained informal objections on 26 proposals - 16 where commuted sums for additional future maintenance contribution by Network Rail had yet to be agreed and 11 where the fundamental merits or principles of the proposal were considered to be unacceptable. Proposals were unacceptable for a number of reasons including:
- The excessive length of the proposed diversion route or lack of alternative routes.
 - Diversion routes requiring people to walk in the carriageway or on a verge which is unsuitable to be used for walkers.
 - The proposed closure of crossings where the Council believes that alternative mitigation measures would be achievable and more appropriate, for example a new bridge or installation of a pedestrian warning system, but Network Rail has refused to agree to this. Lack of clarity concerning future maintenance liability for structures, surfacing of alternative routes and other assets proposed as a result of new routes being implemented under the Transport and Works Act Order, often to be resolved by Network Rail providing a commuted sum to fund this.

Additionally, the Council requested but not been supplied with additional information or detail relating to 10 of the proposals.

- 2.9. Since then officers have continued to meet with Network Rail. Network Rail developed a specific communications plan for Essex and the programme has passed through a public consultation process.
- 2.10. ECC officers have not been able to achieve a satisfactory solution on the following crossings and it is proposed to object to these proposals:
- Footpath 12 and 22, Benfleet (E30 Ferry and E31 Brickyard – Main Line)
 - Footpath 23, Rettendon (E38 Battlesbridge – Branch Line)
 - Footpath 7, Alresford (E42 Sand Pit – Branch Line)
 - Footpaths 4 and 5, Alresford (E43 High Elm – Branch Line)
 - Footpath 19, Wrabness (E48 Wheatsheaf – Branch Line)
 - Footpath 11, Wakes Colne (E51 Thornfield Wood – Branch Line)
 - Footpath 21, Mount Bures (E52 Golden Square – Branch Line);
 - Footpaths 27, 28 and 42, Ardleigh (E56 Abbots - Main Line).
- 2.11. A more detailed analysis of each the above sites is included at Appendix 1 to the report, but in each case the County Council considers that the safety advantages of closing the crossing – which appear limited, particularly where the crossings are located on branch lines in locations where highway users have very good visibility and audibility of approaching trains - are outweighed by a combination of the loss of amenity and the increase in safety risk to users of the highways network.
- 2.12. In addition the County Council proposes to maintain a holding objection to all crossings where commuted sums in respect of work and maintenance liability are still to be agreed in line with the Commuted Sum Framework.
- 2.13. Network Rail has now applied for an order under the Transport and Works Act. The matter is now with the Department for Transport and the deadline for the receipt of objections to the Essex proposals is 12 May 2017. A holding objection has been submitted (this is permitted under Department for Transport guidance) and this will be confirmed if the Council passes the necessary resolution.
- 2.14. The Secretary of State for Transport may exchange written representations between relevant parties, hold a hearing or appoint an inspector and hold a Public Inquiry before a final decision is made. Network Rail is hoping that an order will be made by October 2018, after which construction work can take place.

3. Financial implications

- 3.1 As part of the TWAO process the Secretary of State can include an order for costs from either party. This means that ECC could seek to recover its costs but could also be held liable to pay the costs of Network Rail in relation to unsuccessful objections. In practice we are unlikely to have to pay costs unless we have behaved unreasonably. Any costs will be met from existing budgets.

4. Legal implications

- 4.1 The effect of section 239 of the Local Government Act 1972 as applied by section 20 of the Transport and Works Act 1992 is that a local authority can only object to a Transport and Works Act order by a resolution of full Council passed at a meeting of which 10 days' public notice has been given
- 4.2 Ultimately the Secretary of State will decide whether or not to make the orders; this is a matter over which he has discretion after considering arguments put forward by objectors.

5. Equality and Diversity implications

- 5.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.3 The equality impact assessment indicates that the proposal to object to Network Rail's application for a Transport and Works Act Order contained within this report will not have a disproportionately adverse impact on any people with a particular protected characteristic such as age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation but the Council will expect Network Rail to demonstrate that the Equality and Diversity implications of their proposals have been appropriately considered. Some of the proposals to which the Council is objecting will have a disproportionately adverse effect on highway users with restricted mobility as they will require path users to climb stairs up embankments and walk on the carriageway.

6. Recommendations

- (1) That the County Council objects to the application for the Network Rail (Essex and Others Level Crossing Reduction) Order and in particular to

- Footpath 12 and 22, Benfleet (E30 Ferry and E31 Brickyard – London Tilbury and Southend Main Line);
- Footpath 23, Rettendon (E38 Battlesbridge – Southminster Branch Line);
- Footpath 7, Alresford (E42 Sand Pit – Walton/Clacton Branch Line);
- Footpaths 4 and 5, Alresford (E43 High Elm – Walton/Clacton Branch Line);
- Footpath 19, Wrabness (E48 Wheatsheaf – Harwich Branch Line);
- Footpath 11, Wakes Colne (E51 Thornfield Wood – Sudbury Branch Line);
- Footpath 21, Mount Bures (E52 Golden Square – Sudbury Branch Line);
- Footpaths 27, 28 and 42, Ardleigh (E56 Abbots – Great Eastern Main Line).

- (2) That the County Council objects to all other crossing closures proposed where the County Council has not yet reached agreement with Network Rail on the commuted sum to be paid for the future maintenance of the new highways network to be created as part of the proposals.
- (3) That the Director, Highways and Transportation may take any steps to progress the objections and the Director, Legal and Assurance may take steps to arrange for the County Council to be represented at public inquiry.
- (4) That the Director, Highways and Transportation be authorised to withdraw the Council's objections in whole or in part after consulting the Cabinet Member with responsibility for highways