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| **Order Decision** |
| Inquiry opened on 17 January 2023 |
| **by Sue M Arnott FIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 3 May 2023** |

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| **Order Ref: ROW/3281308** | |
| * This Order is made under section 257 of the Town and Country Planning Act 1990. It is known as the Council of the Borough of North Tyneside – Borough Road Footbridge Path – Footpath Stopping Up Order 2021. | |
| * The Order is dated 25 May 2021. It proposes to stop up a public footpath over a footbridge crossing Borough Road in North Shields, as shown on the Order map and described in the Order schedule. | |
| * There were 19 objections outstanding when North Tyneside Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs. | |
| **Summary of Decision:** | **The Order is not confirmed.** |

**Procedural Matters**

1. I held a public inquiry to consider this Order on 17, 18 and 19 January 2023 and later (virtually) on 2 February 2023. Although I opened the event at the Registry Office in Howard Street, North Shields, I was forced to adjourn after an hour when the noise of engineering works outside the building made continuation of the inquiry impractical. I am grateful to Mr Nattrass of North Tyneside Council (NTC) and his colleagues for seeking an alternative venue at very short notice, such that I was able to resume the inquiry in the afternoon of 17th at The Exchange Theatre.
2. The proceedings continued there until I adjourned at lunchtime on 19 January in order to carry out an accompanied site visit during that afternoon. Although I had visited the area around the Order route on 16 January to familiarise myself with the surroundings prior to opening the inquiry, it was helpful to look again more specifically of aspects of the alternative route(s) accompanied by representatives of the order making authority (NTC) and several objectors.
3. Whilst giving his evidence to the inquiry, objector Mr Hastie asked that, while undertaking this site inspection, I push him in a wheelchair across the bridge on the existing path and also along the alternative way(s) suggested by NTC so as to experience at first hand the challenges presented by the gradients. I acceded to his request for the first part of my visit before then continuing to inspect other routes in a wider area.
4. The inquiry was completed on 2 February, this time with the aid of Microsoft Teams technology. I am extremely grateful to all concerned for their forbearance in making this arrangement.
5. The Order that is before me for determination replaced an earlier one made in 2020 that did not proceed due to a technical error within the order. Not all 42 objectors to the first order resubmitted their objections when the second was advertised. However, I have been provided with copies of all the earlier submissions and have noted the reasons given for opposing the closure of this public right of way.
6. I made clear at the inquiry that the process of determining this Order is not an opportunity to review the workings of NTC. It was apparent that several individual objectors and groups were unhappy with aspects of NTC’s procedures and its handling of this case. It is not my role to examine, or to comment on, the Council’s administration and I have only taken on board remarks where these are directly relevant to the main issues in this case.

**The Main Issues**

1. The main questions I must address are (a) whether it is necessary to close the public right of way to enable the bridge over Borough Road to be demolished in accordance with the planning permission that has been granted, and (b) whether any disadvantages to the public that would result from closure are outweighed by the benefits that would flow from the removal of the bridge.

Legal Framework

1. The Order is made under section 257 of the Town and Country Planning Act 1990 (the 1990 Act). Therefore, if I am to confirm it, I must be satisfied that it is necessary to permanently close the way in question (shown as A-B on the Order map) to allow development to be carried out in accordance with a valid planning permission.
2. Government Circular 1/09 version 2 (Defra) makes clear that, in determining an order of this kind, the merits of the development are not at issue. However, it should not be assumed that because planning permission has been given necessitating closure of a footpath that confirmation of the ensuing order will automatically follow.
3. As was established in the case of *Vasiliou v Secretary of State for Transport [1991] 61 P&CR 507,* any disadvantages or losses likely to arise as a result of the path realignment (or closure) to members of the public, or to persons whose properties adjoin or are near to the existing highway, may be weighed against the advantages arising from the development when determining the Order.
4. In short there are two issues that must be considered here. These legal tests were described in the case of *R (Network Rail Ltd) v SSEFRA [2018] EWCA Civ 2069* as ‘the necessity test’ and ‘the merits test’. Confirmation of the Order requires that both are satisfied.
5. In reaching my conclusions I have taken into account the requirements of the Equality Act 2010 where appropriate.

**Preliminary Matters**

*The status of the Order route*

1. A preliminary issue arises here insofar as the route at issue is not recorded on the definitive map of public rights of way for the area. Nevertheless, it is widely accepted that it has been open to, and enjoyed by, the public without restriction since it was opened in 1936.
2. NTC acknowledged that the bridge had always been owned and maintained by the Council and had been dedicated as a public path. It had made this Order on that basis, recognising that the width of the bridge was suitable for pedestrians but no other type of users.
3. However, during the course of the inquiry, from details of the surveys presented in evidence and from the personal statements of objectors, it became clear that the bridge has been used by cyclists for many years with no evidence of notices prohibiting such use.
4. As I explained at the inquiry, it is not the purpose of these proceedings to establish the legal status of the Order route. The process for making and determining a definitive map modification order to record a public right of way is very different to that applicable here which is to close an acknowledged public path.
5. It is not a requirement that a path is marked on the definitive map before an order can be pursued for its diversion or closure. All that is necessary is that it is a highway.
6. Here, a public right of way on foot is not disputed and has been accounted for in the Order. If the Order is confirmed, the public’s right to walk over the bridge would be extinguished. However, if long-standing use by cyclists has established a right of way, then the status of the highway over the bridge *may* be a restricted byway (or bridleway). In that case those rights would not be affected by the Order as made and would continue to exist even after confirmation.
7. To remedy this conundrum, NTC suggested that I modify the Order so as to amend the status of the way to ‘restricted byway’, in effect to cover the highest public rights likely to subsist over the bridge. That would protect against the possibility that the Order may in such circumstances otherwise be ineffective and thereby remove the likelihood of further public funds being expended to achieve closure.
8. I cannot ignore the use by cyclists and, although it is not my role to judge the legal status of the Order route, I can see merit in this approach. Section 257 of the 1990 Act does provide powers for the stopping up of a restricted byway, so to make such a modification appears to be within scope of the legislation. Further, it would not be necessary to advertise such a change since the requirements of paragraph 3 (4) of Schedule 14 to that Act do not apply.
9. Therefore, if minded to confirm the Order, I would consider addressing this issue by modifying the status of the way so as to identify it as a restricted byway rather than as a footpath.

*The granting of planning permission*

1. The Order was made by NTC in its capacity as local planning authority. Acting through its delegated officer, the Council was satisfied that it is necessary to close the public right of way carried by the bridge over Borough Road (A-B) to enable development to be carried out in accordance with planning permission granted under the 1990 Act under reference number 18/01497/FUL.
2. That development comprises the demolition of the bridge that carries the public right of way from Waldo Street to Tennyson Terrace. The application for planning permission was submitted by NTC in its capacity as highway authority through its partner, *Capita*.

[NTC’s role as highway authority is managed through a long-term strategic partnership with *Capita* which commenced on 1 November 2012.]

1. Following an extensive report to its Planning Committee on 17 December 2019, and referral to the Secretary of State who declined to call-in the application, planning permission was granted on 4 February 2020.
2. Although not a listed structure, the bridge lies within a conservation area. The conclusion of the planning authority was that the harm to the significance of this heritage asset was *less than substantial*. In accordance with the requirements of the National Planning Policy Framework (now found at paragraph 202) this harm was weighed against the public benefits of the proposal in reaching its decision to grant planning permission for demolition of the bridge.
3. As the applicant, NTC (as highway authority) was required to provide clear and convincing justification to demonstrate that the harm would be outweighed by other public benefits. These were identified in the planning application as follows:

“*Demolition of the footbridge will remove the associated long term maintenance costs and the necessity for significant repairs that would be required immediately. In addition, NTC recognise that the proposal is supported by public complaints, condition reports, the bridge’s limited use and cost per capita to repair or replace. It is recognised that the proposal will have a localised effect on public access at this location. However, it is felt that the proposal, inclusive of the forthcoming highways improvement scheme at the junction of Waldo Street with Borough Road, will strengthen public benefits. The proposal will strike a balance between North Tyneside Council’s priorities, planning requirements and the public’s concerns for providing value for money*.”

1. Although many of the objections to this Order challenge a number of the premises upon which the planning authority reached its decision on the planning application, I made clear at the inquiry, and emphasise now, that it is not open to me to revisit the decision to grant consent.
2. As NTC made clear, through its advocate Mr Riley-Smith, the issue of planning permission for this development was not challenged through the Courts and the period in which to do so has long passed.
3. However, there are some aspects of the planning process which I do consider to be of relevance here.

*The expiration of planning permission*

1. The planning permission states that the development must begin within three years of the issue date (4 February 2020) otherwise consent expires. When the inquiry opened on 17 January 2023 it was acknowledged by NTC that work had not yet commenced. However, without endangering the public who continue to use the bridge, NTC proposed to start the works to ensure the permission remained valid.
2. Indeed, on the final day of the inquiry, NTC submitted a statement by the Highways and Infrastructure Manager (Mr Newlands) confirming that, on Monday 30 January 2023, works had been undertaken including clearance of vegetation within the works area below the bridge, demolition of a section of the structure to facilitate ladder access to the embankment works area, and installation of bracing to facilitate the future demolition of the central span of the structure.
3. The statement also confirmed that NTC’s Planning Manager was satisfied that these works constitute a material operation insofar as implementation of the planning permission is concerned. In addition, it was noted that pre-commencement conditions 3, 5 and 7 of the planning permission (relating to a construction method statement, a bat working method statement and an archaeological building record respectively) had been discharged by the planning authority on 24 January 2023. A certificate signed by the Director of Regeneration and Economic Development (Mr Sparkes) was submitted to this effect.
4. Therefore, any doubts that the planning permission might expire before the Order is determined have been dispelled.

*The process employed by NTC to close the public right of way*

1. The second point is one raised by a number of objectors. They contend that the use of powers under the 1990 Act to close the public right of way over the bridge circumvents the procedure provided in the Highways Act 1980. The process set out in section 118 of that Act facilitates the extinguishment of a public path where the right of way in question is not needed for public use and (at the confirmation stage) takes account of the likely use of the path in future.
2. The statutory test that must be satisfied for orders under the 1990 Act is significantly different and is set out in my paragraph 7 above. This does not prevent consideration of the need for the path or its future use but, such considerations rely on the interpretation introduced by the Courts (the ‘merits test’) rather than the legislation in strict terms.
3. The argument put forward by objectors is that NTC is effectively using a ‘legal loophole’ to avoid addressing the provisions in the 1980 Act which focusses on the use of the path by the public rather than the development. In response, Mr Riley-Smith submitted that the Council is fully entitled to use the 1990 Act for this purpose and that it would be usual to do so in these circumstances.
4. I was referred to an order decision which dealt with a similar point, relying on the conclusions of Lindblom LJ in his judgement in the *Network Rail* case (referred to in my paragraph 11 above) which concerned a railway crossing. At paragraph 59 he comments that whilst the footpath diversion in that case may have been more appropriately achieved through the procedure for a rail crossing order under the Highways Act 1980, “*this does not mean that the council was wrong to provide as it did … for the process under sections 257 and 259 of the 1990 Act*”.
5. Whilst I take on board the general principle that stems from that *Network Rail* case, there is a very significant difference. In that case, a condition of the planning permission for residential development issued to a private company required that an order be made and confirmed to stop up and divert a public footpath before certain works could commence. In his judgement, Lindblom LJ recognised that the developer had a choice: it could have applied to the planning authority (the district council) for an order under the 1990 Act or to the highway authority (the county council) for an order under the 1980 Act. It chose the former although, viewing the matter retrospectively, the judge considered this was not wrong, but nevertheless the latter would have been more appropriate in the circumstances.
6. Although I accept that demolition of a bridge in a conservation area would require planning permission in any event, this case differs insofar as the ‘developer’ **is** the highway authority. In that capacity, NTC itself has the power to initiate, make and confirm orders under the 1980 Act. It is therefore an entirely fair question to ask why, instead, it chose to pursue this wholly as a planning issue, particularly when the sole reason for closing the highway is to save money from the highway budget that could be spent instead on other highway projects in the borough.
7. Nevertheless, the conclusion I must reach is essentially the same as articulated by Lindblom LJ. NTC (as highway authority) is entitled to apply for planning permission to demolish the bridge. NTC (as planning authority) is entitled to use its powers under the 1990 Act to make the Order to close the right of way. However, I disagree with Mr Riley-Smith that it is usual for a highway authority to apply for an order under the 1990 Act when it has powers of its own to deal with the matter. That said, I am not aware of any rule that prevents such action and therefore I have no reason to reject this Order on that basis. As Mr Riley-Smith correctly pointed out “*there is no statute, caselaw or statutory guidance which suggests (NTC) should prefer the 1980 provisions*”.

***The necessity test: whether it is necessary to stop up this public right of way to allow development to be carried out in accordance with the planning permission***

1. In planning terms, demolition constitutes ‘development’. Planning permission for the demolition of the bridge over Borough Road has been granted and sufficient work has been started to ensure that the permission does not expire. In simple terms, the statutory test questions whether it is necessary to close the public right of way to enable the demolition to take place. It is hard to envisage a situation where the public could continue to utilise the right of way if the bridge that supports it is removed and therefore the obvious answer must yes, closure is necessary.
2. This is unusual insofar as the development consists of removing a physical structure, rather than placing one across the line of a public path as is generally the case for orders under section 257. Since the bridge and the right of way over it are interrelated, removal of the physical structure would leave the right of way completely unviable. Given the profile of the ground beneath the bridge, the public’s right of passage could not realistically continue on the same line but instead at a lower level.
3. In his submissions, Mr Stamp made reference to examples given in published guidance where orders had been made under section 257 for ‘development’ in questionable circumstances. The Rights of Way Review Committee Practice Guidance Note 6 (second edition, December 2007) emphasises that closure must be *necessary*, not merely *desirable* or *expedient*. For example, it cites attempts to realign paths using section 257 where the development is simply the conversion of a public path to garden land; it advises that this is not a legitimate use of the legislation and “no more than a contrivance to get a way closed”.
4. In Mr Stamp’s view, it must never have been intended that section 257 should legitimately be used for the demolition of a bridge carrying a public right of way in a conservation area. Although I am inclined to agree in general terms, the guidance is non-statutory and the test in section 257 remains one of necessity. It may or may not be strictly necessary to divert or close a footpath to allow a change of use to private garden but there is no conceivable way that the Order route could continue to be used if the bridge were demolished. Therefore, it must be necessary to close the right of way if the development is to proceed.
5. That is a very different question to one asking whether the development itself is necessary. Although many of the objectors challenge the argument advanced by NTC that demolition is justified on cost grounds, that is not the point at issue here.
6. In conclusion, I accept that it will be necessary to stop-up the public right of way over Borough Bridge between A and B as proposed to enable the approved development to proceed.

***The merits test: whether the disadvantages to the public that would flow from closure are outweighed by the benefits that would result from removal of the bridge***

1. Whilst I state again that the merits of the development itself are not at issue here, my attention was drawn by Mr Riley-Smith and others to the *Vasiliou* case (referred to in paragraph 10 above). A useful summary of the relevant principles established there were set out by Mr Justice Holgate in the *Network Rail* case. In short, the necessity for the stopping up (or diversion) to enable development to take place is required by section 257, but even where that test is satisfied, the decision-maker still has a discretion.
2. The judgement continues: “*In the exercise of that discretion the Secretary of State is obliged to take into account any significant disadvantages or losses flowing directly from the stopping up order which have been raised, either for the public generally or for those individuals whose actionable right of access would be extinguished by the order. In such a case the Secretary of State must also take into account any countervailing advantages to the public or those individuals, along with the planning benefits of, and the degree of importance attaching to, the development. He must then decide whether any such disadvantages or losses are of such significance or seriousness that he should refuse to (make) the order*.” (My underlining added.) I interpret that to mean that all advantages and disadvantages that may follow from confirmation of the Order may be weighed in the balance in reaching a decision.
3. On one side of that balance are the disadvantages to the public who currently make use of this route, that is both from the immediate area and more widely. [No additional persons with a private right of access over the bridge have been identified here]. On the other side are the wider benefits to the residents of North Tyneside deriving from the cost savings that would fund other highway projects in the area.

*Any significant disadvantages or losses flowing directly from the stopping up order which have been raised, either for the public generally or for those individuals whose actionable right of access would be extinguished by the order*

1. To be specific, the development concerns the bridge over Borough Road. Whilst its demolition would directly affect the greater part of the Order route between points A in Waldo Street and B in Tennyson Terrace, the connecting passageway between numbers 16 and 18 Tennyson Terrace would also be stopped up by the Order. No particular point was taken by the objectors on this, and it seems pragmatic that this should not be left as a cul-de-sac to nowhere if the bridge were to be removed. In such circumstances there could be benefits to the occupiers of both adjacent properties although no representations from either have been tendered.

*The alternative route*

1. If the Order route is closed, NTC has identified on the Order plan “alternative highways for use as a replacement”, this forming the shortest possible way of walking between points A and B (other than over the bridge). Whilst the Order route is measured at approximately 78.5 metres in length, the alternative is around 330 metres, that is an increase of 320%. NTC estimates it would take an average pedestrian an additional 4 minutes (and a cyclist much less).
2. This alternative route would follow the footways of existing highways. Although NTC is pursuing a possible new ‘zig-zag’ path on the north-east side of the Borough Road crossing to lessen the gradient on the rise up to Waldo Street, that is not proposed in the Order. At this stage there is no guarantee that the present owner of the land will be persuaded to accede to NTC’s plan although I note the Council’s assurance that this would be pursued.
3. The Tennyson Terrace area is relatively flat and broadly on a level with Waldo Street and Yeoman Terrace so that the bridge links the roads to the south and north of Borough Road with virtually no gradient at all. Beneath the bridge, Borough Road descends from west to east down to New Quay and Clive Street which run parallel to the River Tyne.

[*Mr King described this area as ‘the canyon’, with its steep embankment sloping down from Yeoman Street and new high-rise residential development on the riverside. He says Borough Road is known locally as ‘Heart-Attack Hill’*.]

1. To better facilitate the safe crossing of Borough Road, in July 2019 NTC installed a user-controlled (zebra) crossing opposite the end of Addison Street with segregated areas for pedestrians and cyclists, built out kerbs, safety guard railings and tactile paving. Whilst NTC considers this crossing to be both safe and convenient for pedestrians, cyclists and people with limited mobility, several objectors criticised this crossing for its cross-slope, the compromised visibility caused by road-side parked cars but most of all the unavoidable slopes down to the kerbsides.
2. Tyne and Wear Public Transport Users Group (TWPTUG) submitted an email sent to Mr Stamper by NTC on 30 April 2019 in response to his questions about slopes at the crossing. The reply noted that the nationally accepted gradient standard for pedestrians and less-abled people is 1:12. In the email, the representative of NTC recognised that the slope down from Addison Street would not be compliant and therefore people with disabilities would need to take a longer route via Trinity Street in order to benefit from the slightly less steep gradient there. To do so would of course add to the increased distance to connect points A and B.
3. Despite this criticism, it is a fact that for the last three years, people have had the opportunity to make a choice – to use the bridge route or to walk or cycle the alternative via this crossing. A survey undertaken in November 2022 for NTC showed the at-grade crossing was generally used twice as much as the bridge and by more motorised disabled users. NTC says this demonstrates clearly that the crossing in neither unsafe nor unsuitable.
4. Yet, as objectors pointed out, the crossing serves other purposes too and functions as a convenient crossing point for people travelling from the south and west approaching via Trinity Street, or people coming from the north, or those simply crossing Borough Road heading to the ferry, none of whom would necessarily consider using the bridge in any event. Making a direct comparison here is of little value without a more detailed level of analysis.

*Local needs and preferences*

1. It was NTC’s position that the effects on users of the Order route stemming from closure of the public right of way would be “fairly minimal” and that there is a lack of significant public disadvantage.
2. Indeed, it is quite true that for some people the extra time and effort required to follow the alternative rather than use the Order route will cause little inconvenience although the absence of long-distance views from the journey may result in a loss of enjoyment. To compensate, NTC points out that a viewing platform would be provided at point A and that very similar views are available by walking or cycling along Yeoman Street.
3. However, at the inquiry I heard from several witnesses who explained why they deliberately chose not to use the at-grade crossing on Borough Road and why they found using the bridge far preferable.
4. Many objectors readily acknowledged that encountering gradients up to the town centre from this locality is inevitable because of the geography of the area, whichever route is taken. Even so, their choice is to use the bridge for three main reasons: it avoids the need to descend to Borough Road and then regain height again; it is a traffic-free option which many consider to be safer and more enjoyable, and it provides spectacular views of the River Tyne.
5. Mrs A has lived near to the bridge for over 25 years and is a regular user of the route. Both she and her husband have health conditions which limit their mobility. They regard the bridge as an ideal way to get fresh air and exercise in good weather on a level but would not consider the alternative. They would not be averse to taking a longer route to avoid steeper gradients but the cross slope on the road crossing is of serious concern to them. Neither would they contemplate walking there with their young grandchildren.
6. Mr B lives within 800 metres of the bridge and has walked and cycled over it for many years. He now cycles for exercise and is aware of National Cycle Route 72 but chooses not to use this; he prefers a 10 mile circuit that uses the bridge. If he instead followed the alternative, it might add a minute or less to his journey but would take away the view – arguably the best view of the river.
7. Another local resident, Mrs C, has lived in North Shields all her life and wants to support the town centre shops. She had been a regular user of the bridge until March 2022 since when a recent illness has limited her mobility. She had complained to NTC about the lack of maintenance on the bridge and felt the communities around it were forgotten when it came to amenity improvements.
8. Mr D challenged the surveys undertaken, arguing that without identifying the users’ actual start and termination points, it is impossible to make a judgement as to the relative convenience of the alternative. He disputed NTC’s conclusion that the bridge serves only a relatively small number of people (around 60 dwellings immediately to the north and south of the bridge) with all other recreational journeys being possible using alternative routes. He himself had cycled over the bridge for many years.
9. Ms E lives outside the immediate area around the bridge but, along with others in the wider community, uses it regularly for its spectacular views. She argued that walking routes like this support the health and well-being policies advocated by NTC. She walks every day for health and has used the bridge with her family for 33 years. She argues that the potential of the bridge is greatly undervalued by NTC. Closure would not stop her walking but the pleasure she derives from it would be significantly impacted.
10. Ms F likewise lives outside the area immediately around the bridge but uses it regularly for walks. She highlighted use of the bridge by a group of young autistic people from a centre in Addison Street who would find use of the zebra crossing a significant challenge.
11. Mr G regularly uses the bridge with a walking group comprising 20-30 people, many of whom are pensioners. They find the road crossing hazardous and prefer the bridge.
12. Mr H had previously worked for NTC and in the past been responsible for gritting the roads and footways in the borough. He highlighted the difficulties for pedestrians on slopes in icy conditions, especially for people with disabilities or unsteady on their feet.
13. In addition, Mr King, Chair of RAYS (the Residents’ Association of Yeoman Street), argued that the bridge was a community asset and should be incorporated into the North Shields’ Master Plan, not ignored and demolished.
14. On behalf of North Tyneside Friends of the Earth, Mr Manchee drew attention to the 2600 people who had signed a petition against the proposal (which was said to have been mislaid by NTC).
15. Chair of DPAC-NE (Disabled People Against the Cuts - North East) Mr Harrison expressed his opinion that the Council’s action amounted to discrimination towards people with disabilities. He considered the new crossing to be problematic for some people, particularly those with limited vision. He also argued that the significant increase in time and distance required for the alternative to the bridge could present difficulties for people with some disabilities.
16. Writing on behalf of the Ramblers’ Association – Northumbria Group, Dr Germaine questioned NTC’s reliance on its consultation process and submitted that the alternative route is not a practical option for people with baby buggies and wheelchair users “because of all the slopes involved and the road crossing”.
17. These (and other) contributions from local people are echoed in the many written objections and representations submitted in relation to the Order(s) (see paragraph 5 above).
18. Towards the end of the inquiry I heard cogent evidence from Mr Young, a civil engineer with professional experience in statistical modelling and a member of RAYS. He did not appear as an expert witness but I found his evidence credible and well worthy of attention. He presented an assessment from various data sources which demonstrate that the wards around the Borough Road bridge lie within a band of the most severely deprived communities in England. Further, it is an area which suffers from higher levels of deprivation compared to the rest of North Tyneside. In his submission, this is particularly relevant here insofar as it reveals a disproportionately large population of people suffering from poor physical and mental health, and lower incomes bringing a greater reliance on public transport and walking or cycling to work since car ownership is also lower.
19. Mr Young argued that removing the public right of way over the bridge would exacerbate negative aspects associated with the various domains of deprivation he identified: income, employment, education, health and disability, crime, barriers to housing and services, and living environment. Indeed, the evidence I heard from local witnesses at the inquiry supported some of these concerns. As I have noted above, people with limitations on their mobility and disabilities (some of which are not immediately apparent) spoke movingly of their use of the bridge for fresh air and exercise, not simply in preference to the at-grade crossing but because they felt the alternative could not meet their individual needs.
20. NTC’s approach suggests that recreational use should be viewed as non-essential, as more flexible and more easily be directed elsewhere. However, this fails to take into consideration the intrinsic value of the route chosen by those individuals, whether for exercise or pleasure or indeed for a more utilitarian purpose such as shopping. Here, many people make a positive decision to use the Order route because it is traffic-free, with minimal slopes and good views. In contrast the alternative has none of these features.
21. A point made by objector Ms Hawkins is a sobering one: in her view it seems clear from the evidence that many people with relevant protected characteristics are already deterred from attempting the alternative route and the "potential to discourage" such persons (as identified in the Equality Act) would be engaged if access across the bridge were to be closed.
22. In fact, the 2019 Capita Equality Impact Assessment Report for the Demolition of the Foot Bridge over Borough Road recognised that it was based on limited survey data and states quite clearly that “a visual inspection has been undertaken with no intrusive investigation”. It concluded that demolition of the bridge would result in approximately 90 households having a 66% increase in distance if obliged to use the alternative route. It continued: “… at present, the alternative route has the potential to discourage persons with limited mobility () due to footpath provision from the east end of the crossing to Waldo Street not being fully compliant with current DDA standards. This might have a disproportionate impact on people with these protected characteristics.” I regard that as a significant observation, albeit NTC intends to address the issue (as I noted in paragraph 52 above).

*Levels of usage*

1. NTC does not argue there is no use of the bridge at all but rather that the level of usage is relatively low compared with other urban paths. Surveys were carried out over four days in August 2015, and on single days in November 2018 and November 2022. Average daily usage in 2015 was 160, 91 in 2018 and 113 in 2022. Only one elderly person was recorded in 2018 and none in 2022, and it was not used by wheelchair users at all in the 2022 survey. NTC concluded that this showed low usage generally and little evidence of use by people with limited mobility or disabilities. However no comparable figures for daily usage from other similar routes within North Tyneside were available.
2. A consultation carried out by NTC had prompted only 39 objections to demolition of the bridge despite a letter drop to 900 properties in the locality as well as two engagement events and notices on the bridge, in the local newspaper and on NTC’s website. In response, objectors pointed to the time of year this was conducted (in the winter months and just before Christmas) and the irrelevance of the bridge to a large proportion of households within the area consulted.
3. Mr Young (and others) criticised NTC’s reliance on its limited survey data. It transpired that, in its choice of survey dates, NTC had followed Department of Transport guidance which applies to vehicle counts on highways, not specifically pedestrian movements. Consequently, the choice of single survey days in November (regarded as a relatively neutral period for traffic survey purposes) are unlikely to be representative of average daily pedestrian usage throughout the year where weather can be a significant influence, especially on recreational use. Nevertheless, whilst pointing out flaws in the methodology, he drew attention to the two most recent surveys in which the absolute figures counted could not be relied upon as typical but, being ‘like for like’ figures, would be sufficient for comparison purposes. These showed a 24% increase in the number of pedestrians using the bridge between 2018 and 2022.
4. I am reluctant to place any great weight on the survey data collected in 2015, 2018 or 2022. I regard the information gathered over 7 years ago as potentially out of date without more recent comparable surveys to support its validity, and the two November days as useful only for direct comparison to indicate change between those two dates. NTC accepts that the surveys represent only a snapshot in time but nonetheless relies on them to underpin its conclusion that usage is low for an urban footpath.
5. Yet even if the average daily figure lies between 100 and 150, I do not consider that to be innately low. For example, 113 journeys daily equates to an annual footfall of around 40,000. As a public highway with use at that level, it would be hard to argue that the way was not needed for public use or that closure using powers provided by the 1980 Act could be justified. I fully recognise that this is not the test to be applied to this Order but the issue is still one to be weighed in the balance, even without taking into consideration potential use that might arise in future from housing developments planned for the area.

*Strategic and policy considerations*

1. NTC argued that the location of the bridge limits its wider public utility; that it does not provide direct access to shops, facilities, services or amenities but serves only to link two communities. It contended that use of the bridge is essentially by preference rather than utility. Mr Riley-Smith noted that the predominant evidence given to the inquiry by members of the public was of use as part of a longer recreational journey. NTC did not consider this use irrelevant but argued that it reduces the public utility of the bridge, especially when those same recreational benefits could be obtained instead from Yeoman Street, from the River Tyne Trail, the England Coast Path or North Shields Heritage Trail, all of which run along Clive Street. Therefore, any disadvantage to the public would be limited.
2. Objectors made a very different case. For example, the North Tyneside Green Party pointed out the value of the bridge as part of longer walking and cycling routes, used individually and by groups, because it gives access to the fine views over the river. Similar views may be enjoyed along Yeoman Street but there is a special quality attached to standing on a bridge to take in the landscape. In fact the Order route forms part of a local walking trail promoted by NTC itself – the Robert Westall Walk – in which the bridge is featured and referred to in stories published by the author. Whilst other promoted trails follow the lower level along Clive Street, objectors contend that the bridge offers scope for developing further this higher level alternative.
3. TWPTUG and North Tyneside Friends of the Earth support NTC’s health and active travel initiatives alongside its other environment policies, all aimed at improving physical and mental health as well as lowering CO2 emissions. These policies are especially relevant in the Tennyson Terrace and Yeoman Street areas, which (as Mr Young explained) are deprived areas where 69% of residents do not have cars. Active travel – through walking and cycling - is particularly important for those who do not have the choice of private transport. Equally it is significant for improving health and well-being in a community where other data shows a general need for support.
4. TWPTUG pointed to evidence collected in 2018 when 25 local users of the bridge completed forms to confirm their use of the route over many years. Taken together with the 2600 people who signed the petition to keep the bridge, they argued this shows clearly that the route has been enjoyed by people from a much wider area within North Tyneside than just the communities on either side, in Tennyson Terrace, Waldo Street and Yeoman Terrace.
5. As I have noted above, witnesses at the inquiry with individual limitations on their mobility or other vulnerabilities spoke of relying on use of the bridge for their health and well-being, making clear that the proximity to traffic at the Borough Road crossing as well as the gradients either side effectively discounted this alternative as an option for them.
6. Although the North Tyneside Green Party argued that closure of the bridge would force people into using cars if unable to make use of the alternative, I have seen no evidence to support this. However, I do agree with their submission that closure of the Order route would conflict with other NTC policies aimed at supporting opportunities for walking, both for health and to contribute towards climate-change related targets.
7. In drawing a conclusion on the disadvantages or losses to the public I take into account the very limited nature of the survey material available to inform NTC’s decision. To consider only the numbers of people who use the bridge misses the value of those journeys, measured not only in terms of utility but the physical and mental health benefits, both to the individuals themselves and to the local community. Most importantly, the evidence highlights the potential to discourage activity by some people within this community who are otherwise limited in their choices because of cost, disability, or other protected characteristics.

*Any countervailing advantages to the public (or to those individuals whose actionable right of access would be extinguished by the order), along with the planning benefits of, and the degree of importance attaching to, the development.*

1. NTC submits that the planning benefits of demolishing the bridge were established in the granting of the permission. Whilst I agree that this is not a matter to be reopened here, I am required to consider how much weight should be placed in the balance on account of the benefits of the development permitted.
2. There is no intrinsic benefit to the public that I can see from demolishing (and not replacing) a public asset such as a bridge supporting a highway and redirecting people onto other existing routes. Those who currently use the bridge would gain no direct advantage from its demolition; indeed, many disadvantages have been highlighted by objectors. The argument supporting the Order is that the indirect benefits that would flow from closure are sufficient to outweigh any disadvantages.
3. The primary justification for the Order is that the cost to the public purse of keeping the bridge open is disproportionate to its low usage and that such funds can be more beneficially used for delivering other transport and highway improvements across the area which will bring considerable benefits to the community of North Shields as a whole.
4. In short, the cost savings from not repairing or replacing the bridge, and therefore not maintaining it in future, could instead fund other projects which would be to the advantage of a wider group of people in the borough.

*Background to the proposal*

1. In considering the expense issue, it is worth briefly summarising the steps that have been taken by NTC leading to its decision to demolish the bridge.
2. In 2011, NTC commissioned an assessment of the bridge. The *WSP* Principal Inspection Report advised that “The steel lattice arch footbridge is in fair condition”. The removal of vegetation and algae from, and repointing repairs to, abutments and piers was recommended, as was footway resurfacing to prevent water ingress to the deck slab and a special inspection to verify the condition of paint on the structure. The estimated cost of remedial work was £72,000.
3. In 2013 the *Capita* Borough Road Footbridge Special Inspection Reportnoted: “Footbridge is generally in a fair condition and considered stable although there are several defects which need addressing”. Four options were considered: 1 Do nothing (with an estimated cost £0); 2 Minimal repairs (estimated cost £66.5k); 3 Full refurbishment (£113k) and 4 Demolition of the bridge (£100k). At that stage *Capita* did not recommend options 1 or 4. (No further detailed inspections have been carried out since then, only visual examinations by engineers.)
4. Between 2014 and 2015 NTC conducted further studies into the feasibility of refurbishment to firm up costs. The Refurbishment Study (2014/15) provided a quotation for the construction work only of around £360,000.
5. In 2016, the *Capita* Borough Road Bridge Options Study: Options Appraisal began: “Borough Road Bridge is 80 years old and is in a poor state of repair.” NTC had “commissioned Capita to undertake an Options Study to investigate and confirm () demolition of Borough Road Footbridge as the preferred option for the footbridge’s future” whilst also developing options for provision of a pedestrian crossing on Borough Road. The Study considered four options and assessed each for “cost and quality” where quality was defined as the impact on pedestrians and vehicles, the conservation area and anti-social behaviour, and cost was assessed over the next 40 years. The four options were similar but significantly different figures: 1 Do nothing (now estimated cost £73K); 2 Minimal repairs (£420k); 3 Replacement (£650k) and 4 Demolition of the bridge (£63k).
6. The report recommended the bridge be demolished, providing cost savings to the council and reducing anti-social behaviour in the area. In addition, routine maintenance of vegetation, a public consultation exercise and a survey of pedestrians currently crossing Borough Road (but not using the bridge), a survey of traffic using Borough Road and a more detailed estimate of the costs for each option were advised.
7. The recommendation to demolish was accepted and, in 2017, NTC commissioned *Capita* to undertake the preliminary design and remediation measures for demolition of the bridge. This work was presented to the public at two drop-in consultation events in December 2017 (which I have noted above).
8. This was followed by the 2018 *Townscape* Borough Road Footbridge Heritage Statement and Impact Assessment to support the planning application and the 2018 *Capita* Borough Road Footbridge Public Consultation and Feasibility Study including a pedestrian survey. In 2019 NTC considered another detailed report from *Capita* on Borough Road Footbridge Cost Information and an Equality Impact Assessment Report for the Demolition of the Foot Bridge over Borough Road, North Shields.
9. Although the matter of anti-social behaviour was not argued to be a particularly relevant factor here, I have noted a report from the Northumbria Police Architectural Liaison Officer which does not identify any major concerns about crime associated with the bridge. It appears the point had been raised in reports to NTC on account of youths on the bridge being observed throwing stones at vehicles travelling below on Borough Road during one of the survey days.

*The cost of works to the bridge*

1. In terms of costings, the assessment in 2019 updated the 2016 figures to 1 Do nothing £73,246; 2 Do minimum £420,412; 3 Demolish and replace £653,332 and 4 Demolish only £62,802.

[Other figures have been discussed, some slightly less and others slightly more, but these give a good enough guide for the purposes of considering the principle here.]

1. These costs need to be considered in the context of NTC’s overall annual capital budget of four million pounds to maintain the entire highway network of which one million is allocated for bridges. This one million must cover the maintenance and repair of around 200 bridges and other structures within the borough for which the Council is responsible. NTC argues that public finances are finite and always under pressure. Consequently, it must look to spend its limited resources in the most cost-effective way for the taxpayer.
2. In its view, using the majority of the annual budget for bridges to keep open one with a limited lifespan, with low usage and where a suitable alternative is in place, is simply disproportionate and unjustifiable, particularly when other highway projects could benefit from the savings.
3. TWPTUG, Mr Stamp and other objectors questioned the validity of this argument. They had originally been told that cost savings were needed in order to fund the major refurbishment of another substantial footbridge but this has since been completed with the assistance of outside funding. When planning permission was granted for demolition of the Borough Road bridge, NTC had intended that these costs savings would be channelled towards the renewal of Tanners Bank railway bridge but this project is now nearing completion with the majority of funding (£2.7m) obtained from the Highways Challenge Fund with a contribution (£300k) from NEXUS (the Tyne and Wear Passenger Transport Executive).
4. NTC had not sought grants for Borough Road Bridge since it is pessimistic about the success of any such applications. Instead, it argues that the savings from demolishing this bridge would now contribute to (presently unfunded) amenity works in the town centre programmed within the North Shields’ Master Plan and/or other major highway works, particularly on the A193.
5. That argument is not accepted by North Tyneside Green Party (and others) who dismissed as marginal any likely benefits from improvements to North Shields town centre for local residents. On the other hand, they argue that residents view the bridge as a local asset and its removal would be a detriment to their quality of life which could not be replaced by the pedestrian crossing and/or trees and planters in North Shields shopping centre. Whilst having historical connections with the past, the bridge also offers step-free, slope-free access; residents submit that it is wrong to sacrifice this simply in order to save a fraction of the overall costs being allocated to achieve the goals of the North Shields’ Master Plan which, ironically, is promoting safe pedestrian car-free walkways.
6. As a retired civil engineer, Mr Summers queried the costings for repairs and refurbishment of the bridge. Although he was not in a position to provide alternate estimates, in his opinion these had been vastly over-priced.
7. Other objectors argue that the bridge has been left to deteriorate for many years so it is inevitable that it is now costly to maintain. [In response, NTC produced evidence of repairs being carried out in 1995 and 2011.] However, objectors submit that restoration can be done at a more reasonable cost and future maintenance commitments minimised through the use of innovative techniques and paints.

*Weight to be attached to the costs savings*

1. On behalf of NTC, Mr Riley-Smith submitted that the stark reality is that funding will always be a challenge to an authority managing extensive highway assets. He did not suggest that any council could simply plead poverty and this be adequate justification to close a public path. But where that public right of way is shown to be of limited public utility, requiring a disproportionate level of funds to keep it open, where there is a suitable alternative, and where the funds can be used to deliver beneficial and much-needed highway schemes nearby, he argued that it is lawful to take into account the overall effect on the public purse.
2. In his submission, read together, the cases of *R (Health and Safety Executive) v Wolverhampton City Council [2012] UKSC 34 (the HSE case)* and *Vasiliou* (see my paragraph 10 above) show that cost can be taken as a countervailing advantage. I should therefore be justified in giving significant weight in the ‘merits test’ to this public benefit, that is the savings to the public purse and better usage of those funds to assert and protect the rights of the public elsewhere.
3. In the *HSE case* the planning authority considered revoking planning permission for development which would have entailed compensation being paid to the developer from public funds. The decision of the Supreme Court was that when “deciding whether to exercise a discretionary power to achieve a public objective, (a public authority is) entitled and usually required to take into account the cost to the public of so doing, at least to the extent of considering in any case whether the cost (is) proportionate to the aim to be achieved and taking account of any more economic ways of achieving the same objective”. In *Vasiliou*, the Court found that the adverse financial implications of the proposed stopping up of a highway on a business could be taken into account when determining the order.
4. I have no difficulty in attaching *some* weight to the cost-savings anticipated by NTC if the Order to close the bridge were to be confirmed and to the alternative projects which NTC says could be funded instead. However, the extent of that weight is tempered for a number of reasons.
5. As Mr Stamp highlighted, the quantification of the costs associated with retaining the bridge is explored in some detail, but there is relatively little evaluation of the benefits this public asset contributes to the borough. As a notable heritage feature within the conservation area that clearly supports a sense of place, there is no assessment of its value in terms of attracting visitors to the area, for example those following the Robert Westall Walk.
6. Whilst I am aware that Historic England eventually withdrew its opposition to the demolition of the bridge, I find some of its comments to be pertinent to my consideration of this Order. In particular it noted that: “Although unlisted, the maintenance of this route and retention of the bridge make a positive contribution to the character of the conservation area. … The demolition of the bridge and the closure of this pedestrian connection will result not only in the loss of an important asset to the conservation area, but in the disappearance of a route which is relevant to the memory and history of the place.” For example, several objectors referred to the bridge being re-opened by the great-great-grandmother of a present Waldo Street resident after its (third) refurbishment in 1936.
7. Neither does the research undertaken for the Cost Information Report contemplate promoting increased use of the bridge that might justify expenditure on maintenance, nor take into consideration the active travel options for the future residents of the new homes planned in forthcoming years. Of course, the at-grade crossing is available in Borough Road but the attraction of the bridge could have much to commend it, being traffic free.
8. I find the extent of the actual survey work undertaken disappointing, both in terms of its length (only 6 days in total during the 10 years in which the future of the bridge has been under consideration) and its depth (with only visual observation of users ever taking place). NTC appears to undervalue recreational use of the bridge when considering its utility, and its contribution to the health and well-being of local residents is not recognised.
9. The prioritisation of a highway authority’s funds is not a matter for me to comment on but since the potential cost savings envisaged by NTC is the sole reason for closing this public path, it seems fair to scrutinise the basis for that proposition. However, it appears to me that many non-financial factors have been missed in NTC’s analysis, leaving questions unanswered and its conclusion somewhat unreliable as a result.
10. At paragraph 7 above I noted that one of the questions for me is whether any disadvantages to the public that would result from closure are outweighed by the benefits that would flow from the removal of the bridge. This is based on the description of the ‘merits test’ in the *Network Rail case* as set out in my paragraph 48. More specifically this refers to “*any significant disadvantages or losses flowing directly from the stopping up order*”. Although the corresponding *“countervailing advantages to the public”* are not explicitly stated to flow directly from the order, that is implied.
11. Mr Stamp submitted that there is a clear difference between advantages or disadvantages that would ‘flow directly from’ as opposed to ‘arise from’ the order. In the former case there would be a clear connection and an overt consequence of the closure whereas the latter would have no causal link. He argued that cost savings might arise from the removal of this bridge but they did not flow directly from it.
12. In this context I can see some justification for a degree of proximity between the savings from the closure of one highway and expenditure on another. However I do not consider it necessary for me to delve too deeply into semantics when, in any event, I am not persuaded that the ‘countervailing advantages to the public’ from the potential redistribution of NTC resources deserves the significant weight it would need to prevail over the disadvantages highlighted by the objectors.

***Final conclusions***

1. At paragraph 46 above, I concluded that it is necessary to stop up the public right of way at issue here if the development is to be carried out. The ‘necessity test’ is therefore satisfied.
2. As regards the ‘merits test’, the final stage of this process requires me to weigh the relative benefits of this development against any disadvantages likely to flow from the Order.
3. NTC has been clear that the advantage that would result from demolition of the bridge is wholly one of cost savings. The money retained in its highway budget as a result of not maintaining the bridge could instead by used on other highway projects elsewhere in the borough to the benefit of the wider North Shields community. That must be weighed against the effects of the path’s closure on residents of the areas on either side of Borough Road, on other people living in North Shields and on members of the public from outside the area who choose to walk this route.
4. The Council’s case for closure rests on the proviso that four conditions have been met: that the public right of way has been shown to be of limited public utility, that a disproportionate level of funding is required to keep it open, that there is a suitable alternative and that the funds can be used to deliver beneficial and much-needed highway schemes nearby. I will address these in turn.
5. I have found that NTC’s assessment of the utility of the bridge to be based on limited investigation of its actual use. Yet even if the numbers surveyed are truly indicative of current use, 100 journeys per day is not low usage for a footpath in my view. Adding into the equation the scope for increasing opportunities for walking as a means of active travel, especially with additional housing projected for this area, removal of this bridge would take away the possibility of a traffic-free crossing over Borough Road. Weighing in the balance the value local residents place on this as a recreational route, I cannot agree that the Order route is of limited utility.
6. NTC’s assessment of the relative value of retaining the infrastructure supporting this public right of way relies on its levels of use. No alternative costings for the bridge works are before me and I must therefore accept the estimates produced by NTC although objectors consider these to be exaggerated. However, the Council’s conclusion that the money required would be disproportionate to the relative benefits of maintaining the bridge is based on a somewhat cursory survey of usage. As I have already acknowledged, the priorities set by highway authorities for expenditure is a matter for them and in that sense a conclusion on whether funds spent on maintaining a long-standing public right of way would be ‘disproportionate’ would likewise be beyond my remit. However, my view is that such a conclusion that rests solely on numbers fails to acknowledge the intrinsic value of each journey to individuals within the local community who have particular needs and limited options.
7. That said, I accept NTC’s assurance that any funds saved within its budget as a result of closing this right of way and dismantling the bridge would be used instead on other highway schemes in the borough to the overall benefit of residents of North Tyneside.
8. I fully agree that the alternative route will be suitable for some people. It is clearly used by many already and provides a managed crossing over Borough Road which most people will be entirely comfortable with for utilitarian journeys. Yet there is no doubt in my mind that a walk over the bridge is the more enjoyable option and one more likely to be chosen by those people seeking recreation. Whilst the proposed viewing point would go some way towards preserving the superb views from the bridge itself, the direct link with the history of the locality would be lost if the bridge were no longer available for use.
9. The bridge offers pedestrians a way to avoid any interaction with Borough Road and obviates the need to descend and then climb the slopes on either side of this main road; this is clearly a very significant barrier for many of the people who objected to or made representations against the Order.
10. In this balancing exercise, I place significant weight on the representations which have highlighted the disproportional effect closure of this right of way would have on people with disabilities, living with other limitations and with protected characteristics. I consider there to be a very real risk that this proposal would have the potential to discourage such people from exercise and recreation with the consequential effect on their health and well-being. That leads me to conclude that the alternative is not suitable for all those people who currently use the Order route.
11. Finally, in considering the merits test and balancing all the factors I have examined above, I am not satisfied that the advantages anticipated by NTC outweigh the significant disadvantages that would result from the loss of this bridge and the public right of way it carries. It follows therefore that the Order should not be confirmed.

**Other matters**

1. At the close of the inquiry, I invited all parties, but particularly NTC, to address in their closing submissions the apparent conflict between the Council’s duty as highway authority under section 130 of the 1980 Act “*to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority*” and its decision to seek closure of the Order route on grounds of cost.
2. NTC also has a duty under section 41 of the 1980 Act to “*maintain highways maintainable at the public expense*”. Although not recorded on the definitive map, it is accepted that the bridge and the highway over it are so maintainable.
3. Throughout this case, NTC’s primary justification for the Order has been that the cost to the public purse of maintaining the bridge is disproportionate to its low usage and that such funds can be more beneficially used for delivering other highway improvements across its area.
4. The Council has argued, and I accept, that there is nothing to prevent the overall cost to the public finances from being a relevant factor when considering the merits of this or any other order. At the same time the Council acknowledged Lord Carnwath’s view in the *HSE* case that “*Of course, the weight attributable to cost considerations will vary with the context*”. Importantly, NTC does not argue that the financial benefits to any developer should be taken into account when determining an order made under section 257 of the 1990 Act but in these circumstances, where it is the Council itself seeking closure, it says the overall costs savings should carry considerable weight.
5. NTC relies on this premise as a basis for rejecting suggestions that this approach could set a precedent for local authorities to close public rights of way where the level of use is not judged to justify the money needed to maintain them. I regard that as somewhat optimistic and possibly naïve. In the current economic climate, I suspect there may be a very real likelihood of others following suit.
6. I recognise there might be occasions where closure of a public path may be proposed by a highway authority where cost is a significant factor; for example, where ground conditions or constant erosion makes continued maintenance of a highway practically and financially unsustainable. However, to remove a highway from the network solely on the grounds of cost and/or low usage would, in my view, set a worrying precedent.
7. In the present case, the cost saving from not maintaining the bridge is the **only** reason for the Order, not simply one factor to be weighed alongside other benefits and disadvantages. In fact, NTC has been very honest in that regard.
8. Although this has not been a matter that has directly influenced my decision on this Order, I consider it important to reflect on the implications of what objectors described as “*the sacrifice of a public right of way*” solely to fund other public projects. Further, in this case there seems to have been an unhelpful blurring of roles and responsibilities between the highway authority and the local planning authority.
9. I understand the burden that maintenance of the Borough Road bridge places on the highway authority; that is an ongoing duty requiring significant public money in challenging times, but it is one entirely anticipated by the legislation. In my view, the decision to retain a public right of way or not cannot be driven by financial considerations alone; otherwise, a great many paths across the country may be vulnerable to closure, simply to facilitate savings for cash-strapped councils.

Conclusion

1. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude the Order should not be confirmed.

Formal Decision

1. I do not confirm the Order.

Sue Arnott

**Inspector**

**APPEARANCES**

**In support of the Order**

Mr P Riley-Smith Of Counsel, instructed by Mr D Rackstraw, Solicitor, of North Tyneside Council (NTC)

*Who called*

Mr J Sparkes Director of Regeneration and Economic Development, NTC

Mr A Saunders Technical Director – Environment Team, WSP Consultants

**Objecting to the Order**

Mr J Hastie Local Resident

Mr J Harrison Representing DEPAC

Mr S Manchee North Tyneside Friends of the Earth, Chairman

Mrs D Attersol Local Resident

Ms P Remfry North Tyneside Green Party

Mr D Summers Local Resident

Mr M King Residents Association of Yeoman Street

Mr C Walton Local Resident

Mrs Lee Local Resident

Ms V Gilbert Tyne and Wear Public Transport Users Group, Secretary

Ms F Swindell Tyne and Wear Public Transport Users Group, Chairman

Ms C Hawkins Local Resident

Mr H Stamp Local Resident

Ms A Stenning Living Streets, North Tyneside

Mr A Young Residents Association of Yeoman Street

**DOCUMENTS**

1. Copies of the statutory objections

2. Statement of case submitted by North Tyneside Borough Council with exhibits BRB1-BRB16

3. SCC Statement of grounds on which it is considered the Order should be confirmed and comments on the (statutory) objections

4. Proof of evidence of Mr J Sparkes and summary proof of evidence

5. Proof of evidence of Mr A Saunders and summary proof

6. Statement of case of Tyne and Wear Public Transport Users Group

7. Proof of evidence of Tyne and Wear Public Transport Users Group (revised copy with references added)

8. Statement of case of Mr H Stamp with list of documents

9. Proof of evidence of Mr H Stamp and summary proof of evidence

10. Statement of case of Ms C Hawkins

11. Proof of evidence of Ms C Hawkins

12. Statement of case on behalf of Living Streets, North Tyneside

13. Statement of case of Mr M King of Residents Association of Yeoman Street

14. Proof of evidence of Mr D Summers

15. Statement of Mr S Manchee, Chairman of North Tyneside Friends of the Earth, dated 19 December 2022

16. Statement of case of Ms P Remfry on behalf of North Tyneside Green Party

17. Proof of evidence of North Tyneside Green Party

18. Statement of Ms L Cave dated 21 October 2022

19. Statement of Ms M Cable dated 19 October 2022

20. Statement of Ms J Hewitt dated 19 October 2022

21. Statement of Mr J Hastie dated 4 April 2022

22. Statement of Cllr Mr A Percy dated 20 October 2022

23. Statement of Mr M Husmann dated 19 October 2022

24. Statement of Ms L Rigon dated 20 December 2022

25. Proof of evidence of Mr J Harrison dated 18 December 2022

*Submitted at the inquiry*

26. Addendum to bundle of documents submitted by NTBC – Items 1-12

27. Details relating to the England Coast Path and River Tyne Trail

28. Email to NTBC from Dr S Germain (Footpath Secretary, Ramblers’ Association) sent 17 June 2021

29. Extract from NTBC Bridge Inspection and Maintenance Work Record

30. Extracts from *Wright v Forest of Dean [2019] UKSC 53* and from Order Decision FPS/H0928/5/1R issued 26 July 2019 submitted by Mr Stamp

31. Statement of Ms C Cansdale dated 18 January 2023

32. Statement of Mr G Cansdale dated 18 January 2023

33. Statement of Mr G Ball dated 18 January 2023

34. Statement of Mrs M Jarrett-Ruecroft dated 18 January 2023

35. Statement of Mr W Jarrett dated 18 January 2023

36. Statement of Mr T Patterson dated 18 January 2023

37. Borough Road Bridge – Summary Assessment of Deprivation submitted by Mr A Young

38. Email to the Planning Inspectorate from Ms V Gilbert sent 28 January 2023

39. Emails to the Planning Inspectorate from Mr H Stamp sent 27 January and 30 January 2023 with attachments

