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| **Order Decision** |
| Site visit made on 27 June 2023 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 20 July 2023** |

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| **Order Ref: ROW/3290290** |
| * The Order is made under Section 119A of the Highways Act 1980 and is known as the Public Footpath over railway between Holts Lane and Footpath Poulton-Le-Fylde 4, Rail Crossing Diversion Order 2019. |
| * The Order is dated 29 October 2019 and proposes to divert the public footpath shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Lancashire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. Lancashire County Council (the Council) is not promoting the Order and is taking a neutral stance. The case for confirmation of the Order is made by Network Rail (NR).
2. The Order route is not recorded on the Definitive Map (DM). Footpath Poulton-Le-Fylde 4 currently ends on the eastern side of the railway level crossing. The draft DM showed a public footpath commencing on the western side of the railway running west and north, along what is now Holts Lane, to Garstang Road. It is also shown on the first DM but is crossed out in red. There is no evidence that this footpath has been stopped up, but it has been subsumed within vehicular roads that are part of the adopted highway network. No footpath is shown crossing the railway line, effectively leaving a gap in the network. The Council advises that gaps are often shown on the DM where footpaths cross railways and usually denote a level crossing or subway.
3. Private vehicular rights over the railway crossing were relinquished by a Deed of Release in 1966. The British Railways Board and a developer applied to extinguish public footpath rights in 1967 but were unsuccessful. There is no evidence that pedestrian rights over the crossing have ever been extinguished and NR accept that public footpath rights exist. Therefore, I am satisfied that public footpath rights exist, and an Order is required to divert them.
4. The pedestrian crossing was fenced off and the decking removed when I undertook my site visit. However, there is no evidence it has been permanently or temporarily closed by due legal procedure. For the purposes of my decision, I shall consider the Order as if the footpath is open and available for use.

The Main Issues

1. The Order route crosses the Preston to Blackpool line at-grade with the operational railway. The Order was made because it appeared to the Council that it was expedient to divert the footpath in the interests of the safety of the public using or likely to use it.
2. If I am to confirm the Order, I need to be satisfied that it is expedient to divert the footpath, having regard to all the circumstances, and in particular to:

a) whether it is reasonably practicable to make the crossing safe for use by the public, and

b) what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs are erected and maintained.

1. I consider that the key points to be considered are as follows:

a) the current safety of the railway crossing for the public;

b) whether it is reasonably practicable to make the crossing safe for use by the public;

c) the safety, convenience, and enjoyment of the suggested alternative route for pedestrians in comparison; and

d) whether adequate arrangements will be made to secure the redundant crossing if the Order is confirmed.

**Reasons**

1. The level crossing runs between Holts Lane, a residential street on the western side of the railway and Poulton Industrial Estate on the eastern side. The railway is a twin track and has been electrified as part of the North West Electrification Project. Before it was fenced, the crossing was accessed by kissing gates with a wooden deck and anti-slip material over the tracks. ‘Stop, Look and Listen’ boards are still present, and I am advised these are the only safety measure provided on the crossing.
2. It is proposed to divert the footpath level crossing to an alternative route over the railway line by way of a new stepped footbridge. Prior approval for the construction of the footbridge has been granted by the Council.

***Whether the current crossing is safe***

1. NR uses an application called All-Level Crossing Risk Model (ALCRM) to provide a consistent method of assessing risk safety at level crossings. It incorporates a quantitative and qualitative approach to achieve a rounded and balanced analysis of risk. It has been developed through extensive research and a collaborative partnership between NR and the Rail Safety Standards Board (RSSB).
2. The level crossing risk assessment determined an ALCRM Risk Rating of C4. The letter represents the risk to an individual per traverse. A represents the highest risk and M the lowest. The number represents the collective risk based on total harm or safety loss with 1 representing the highest risk and 13 representing no risk. However, this is expected to rise significantly to C2 due to the erection of new stanchions for the overhead power lines, the increased use of quieter electric trains, and the completion of three approved residential developments with over 300 new homes on the Holts Lane side of the railway. NR consider this increased risk unacceptable.
3. Pedestrians are primarily responsible for their own safety when using level crossings and unprotected, passive crossings, such as this one, present the most risk. Eight reported incidents of near misses were recorded on the Holts Lane level crossing between 2004 and 2017. I am advised this is well above the average for this type of footpath crossing.
4. In March 2016, a nine-day census was undertaken along with origin-destination surveys. On average, the crossing was used eighteen times a day, which NR considers to be a moderately high level of use. On completion of the new homes, use is likely to rise significantly.
5. Use was predominantly by dog walkers with additional use for shopping, recreation, business, and commuting. During this period, one person sprinted over the crossing as a train approached and it missed them by a few seconds. Several potentially vulnerable people used the crossing including elderly users with walking aids, partially deaf individuals, unaccompanied children, and people using telephones or wearing headphones. A large portion of the crossing users were over 55. The RSSB has found the number of accidents at crossings increases with the age of the pedestrians.
6. The platforms at Poulton and Burn Naze stations have been extended to accommodate eight to eleven cars for the previous franchise operator. A new signal 220 metres away from the crossing could result in longer trains straddling the crossing or impacting on sighting causing additional safety issues. The current franchise operator is not running longer trains but reserves the right to do so.
7. The electrical clearance at the crossing is also significantly below the current required standard for pedestrians due to existing bridges nearby.
8. Based on the ALCRM risk rating and the number of incidents on the line, I consider the crossing presents a risk to the public. This risk is likely to increase significantly due to quieter, faster, electric trains, insufficient electrical clearance, and increased use by the residents of the new homes.

***Whether it is reasonably practicable to make the crossing safe for use by the public***

1. As part of the risk assessment, several options were considered to make the crossing safer. Miniature stop lights (MSL) linked to the signals can mitigate some of the risks, but pedestrians will often ignore the red light if a train is not visible. The cost of these could not be justified here due to the level of use. Vamos, a similar system to MSLs with red and green lights to indicate if it is safe to cross, is more cost-effective. The lights change when a train strikes a treadle on the tracks. However, they are not suitable for use at this crossing due to the strike-in-times and the position of nearby signals. Furthermore, these options do not address the issues associated with the electrification of the line.
2. Safety can be improved by the removal of a pipe bridge to achieve adequate wire height, optimisation of signal locations to prevent trains from straddling the crossing, clearly marked decision points for path users, improved decking and signs warning of quieter trains. However, if an at-grade crossing is retained, these measures only reduce risk to an acceptable level if the approved new housing developments are not built. The development directly off Holts Lane is under construction. An aerial photograph shows another approved development is largely complete.
3. For these reasons, I consider it is not reasonably practicable to make the crossing safe for use by the public.

***The safety, convenience, and enjoyment of the alternative route in comparison to the existing route***

1. The proposed diversion of the crossing onto a bridge over the railway will remove the public from the operational railway and completely remove the risks associated with the crossing. The bridge is designed with appropriate clearances from the railway infrastructure, including the overhead power lines.
2. A footbridge will maintain a direct link between Holts Lane and the industrial estate maintaining the convenience and enjoyment for the public. However, the proposed footbridge is stepped which will have some impact on the convenience and enjoyment of some members of the public, particularly those with mobility issues, older people, and families with young children.
3. Ramped footbridges are more accessible, and this option was considered by NR. They undertook a Diversity Impact Assessment (DIA) and gathered information about the use of the crossing. They found the kissing gates restricted access to some people and made it difficult to use for other path users, particularly disabled people, and families with young children. It also found the complete closure of the crossing would have a negative impact on some people with protected characteristics and commuters to the industrial estate.
4. Overall, it considered a ramped footbridge to be of limited benefit for individuals with protected characteristics and some users could be deterred by the additional length. The additional £2 million for a ramped footbridge provides limited cost benefit over a stepped footbridge given the minimal benefit to people with protected characteristics.
5. Furthermore, a ramped footbridge requires a much larger footprint. There is not enough space to build one on land within NR ownership and they could not negotiate the purchase of the necessary additional land.
6. I consider the proposed diversion route will significantly improve the safety of the existing crossing at previous and projected future levels of use. The Order route will be slightly less convenient and enjoyable for some path users due to the use of steps, but I do not consider this to be substantially less convenient. It will also be more convenient, enjoyable, and safer than the alternative road route if the crossing were to be completely extinguished as proposed by some parties.

***Arrangements for appropriate barriers and signs to be erected and maintained***

1. Under the terms of Article 1 of the Order, the diversion will not come into effect until all work to bring the new footpath into a fit condition for use by the public has been carried out to the satisfaction of the Council.
2. NR has also entered into an agreement with the Council to defray any expenses incurred in the erection or maintenance of barriers and signs and any expenses which are incurred in bringing the new footpath into a fit condition for public use. At the time of my site visit, fencing was in place to prevent the use of the crossing and I understand this has been in place since 2018.
3. Therefore, I am satisfied appropriate arrangements have been made for the erection of suitable barriers and signs to deter the public from using the crossing after its closure.

***Public Sector Equality Duty***

1. Under the Equalities Act 2010, all public authorities have a duty to give due regard to the need to eliminate unlawful discrimination, harassment, or victimisation, to advance equality of opportunity, and to foster good relations when carrying out their functions. NR have considered the impact the diversion will have on those with the protected characteristics of age, disability, and pregnancy within their DIA. Although ramped footbridges enable use by wheelchairs, pushchairs, and bicycles, in this location there will be minimal benefits considering the additional costs and site constraints. I agree with the findings of the DIA.

***Other Matters***

1. It is suggested the crossing should remain closed as the public can gain access to Poulton Industrial Estate, shops and other services via the existing road network, other rights of way or by vehicle. Therefore, the proposed footbridge will have little or no use by the public, at a cost of over £1 million. I am only able to consider the Order before me. However, this option is not supported by the Council because the alternative route is less commodious, and a crossing or bridge is necessary for sustainable connectivity. The DIA also found complete closure will adversely affect people with protected characteristics.
2. Concerns are raised about the impact the bridge will have on the privacy, security, and enjoyment of the adjoining residential properties. Concerns are also raised about anti-social behaviour, children climbing or falling from the bridge, objects being thrown from it, and parking issues.
3. As part of the prior approval under a General Permitted Development Order, consideration was given to the impact the bridge will have on adjoining properties, security, and privacy. The bridge incorporates solid, high parapets to the west side to mitigate privacy concerns. As prior approval has been granted, I am unable to revisit these issues.
4. There is no evidence to suggest a bridge in this location will attract anti-social behaviour or be a danger to children. The parking of vehicles on roads is a matter for the Council’s Highways team and traffic wardens or the police if parking violations occur.
5. I have not been provided with a copy of the ROWIP, but none of the parties have raised any matters relating to it.

***Whether it is expedient to confirm the Order having regard to all circumstances***

1. I must consider if it is expedient to confirm the Order, taking into account all circumstances. I have concluded the level crossing presents a risk to members of the public which will increase significantly following electrification and increased use. I do not consider it is reasonably practicable to make the crossing safe for public use.
2. I consider the provision of a footbridge will provide the public with a safe means of crossing the railway and will ensure a level of convenience, connection and enjoyment that is only slightly less convenient than the existing crossing. Consideration has been given to the impact on those with protected characteristics and the impact on nearby properties.
3. I am satisfied that provisions are in place to provide and maintain suitable barriers and signs as well as the new footbridge.
4. Accordingly, I consider it is expedient to confirm the Order.

Conclusions

1. Having regard to these and all other matters raised in the written representations, I conclude the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Claire Tregembo

INSPECTOR

