

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>29 APRIL 2014</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 118A. PROPOSED RAIL CROSSING EXTINGUISHMENT ORDER FOOTPATH LY9A (PART) IN THE PARISH OF LLANCILLO</b>
<b>PORTFOLIO AREA:</b>	<b>CONTRACTS AND ASSETS</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Golden Valley South

### **Purpose**

To consider an application under section 118A of the Highways Act 1980, to make a rail crossing extinguishment order in relation to part of the definitive public footpath LY9A in the Parish of Llancillo.

### **Key Decision**

This is not an executive decision.

### **Recommendation**

**That a rail crossing extinguishment order is made under the provisions of section 118A of the Highways Act 1980, in relation to part of definitive public footpath LY9A, as shown on drawing number: D443/240-9A, appended to this report, the Sub-Committee being satisfied that it meets the specified statutory criteria in that it is expedient, in the interests of safety of members of the public who use, or are likely to use, the path or way in question that the way in question should be stopped up.**

### **Key Points Summary**

- Network Rail have applied for a rail crossing extinguishment order.
- The section of path is a loop to the south of the railway and therefore crosses the railway twice.
- There is an alternative path to the north of the railway so that users do not need to cross the line.
- Inspections of the site by Network Rail have identified that the use of the crossings poses a significant danger.

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Further information on the subject of this report is available from  
Susan White, Assistant Rights of Way Officer on (01432) 349512

- A pre-order consultation has been carried out and there were no objections to the proposed extinguishment.

## **Alternative Options**

- 1 Under Section 118A of the Highways Act 1980 the Council has the power to make rail crossing extinguishment orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

## **Reasons for Recommendations**

- 2 The public path order should be made because it is felt that it meets the criteria set out in section 118A of the Highways Act 1980, as referred to below, and the Council's Public Path Order Policy. In addition, there have been no objections at the informal pre-order consultation stage.

## **Introduction and Background**

- 3 Decisions on these type of matters are presently within the remit of the Regulatory Committee. On 1 February 2011 the Regulatory Committee resolved, inter alia, that the responsibility for those rights of way matters which presently fall within the remit of the Regulatory Committee, be delegated to the Regulatory Sub-Committee.

## **Key Considerations**

- 4 The applicant, Network Rail, made the application in October 2012. The reasons given for making the application were that the lines of sight in both directions is limited and that the crossings pose a significant danger to walkers, and potentially rail users, as a suitable alternative route is already available and in use, and it is felt that the proposed extinguishment does not limit the public's access to the countryside.
- 5 Section 118A of the 1980 Act gives a local authority power to make an order stopping up a footpath crossing a railway, other than by a tunnel or bridge, where it considers the stopping-up expedient in the interests of safety of members of the public who use, or are likely to use, the path or way in question.
- 6 The applicant has carried out all pre order consultation. The proposal has general agreement and the adjoining landowner, Mr A Ling, whose property is also affected by the application, has agreed to the proposals.
- 7 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the extinguishment order.
- 8 The local member, Councillor G J Powell, has stated that, 'These paths have not been used for many years since they cannot be accessed across the railway line and they don't go anywhere useful. I have no issues with the paths being extinguished.'
- 9 It is considered that the proposed order meets the specified criteria as set out in the said Council policy and in section 118A of the Highways Act 1980, in particular that: the proposal is expedient in the interests of safety of members of the public who use, or are likely to use, the path or way

## **Community Impact**

- 10 The applicant has consulted the local Parish Council as part of the pre-order consultation. There were no objections to the proposals from the Parish Council, or any other person or body.

## **Financial Implications**

- 11 Network Rail, who are the applicants, have agreed to pay for the advertising and administration costs and any works necessary for this order. If objections are received and not withdrawn, any costs in relation to dealing with the consequent appeal cannot legally be reimbursed

## **Legal Implications**

- 12 Under the provisions of section 118A of the Highways Act 1980, subject to the statutory criteria being met, as mentioned in this report, the Council may make such an order. However does not have a duty to do so. If the order is made it is then formally advertised for objections and, if any are received and not withdrawn, the matter must be referred to the Secretary of State for a final decision.

## **Risk Management**

- 13 There is a risk that if an order is made, as proposed, it may receive objections. If this occurs then the matter must be referred to the Secretary of State for a decision. Prior to making such a decision the Secretary of State would take a view as to whether any objections could be dealt with by way of written representations or by public inquiry. In either case, this would increase the demands on officer time and resources, which cannot be recouped from the applicant, as only costs in relation to the making of the order can be legally reimbursed.

## **Equality Implications**

- 14 The alternative route is broadly similar to the route to be extinguished except for the fact that users will not need to cross and re-cross the railway. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

## **Consultees**

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Councillor G J Powell
- Ewyas Harold Group Parish Council.
- Statutory Undertakers.

## **Appendices**

- Order Plan, drawing number: D443/240-9A.

## **Background Papers**

- Defra Rights of Way Circular 1/09.