

**UPDATE ON CHANGES TO THE ANGLIA LEVEL CROSSING REDUCTION STRATEGY –
CAMBRIDGESHIRE COUNTY COUNCIL FORMAL RESPONSE**

To: Highways and Community Infrastructure Committee

Meeting Date: 21st February 2017

From: Camilla Rhodes, Assets Manager - Information

Electoral division(s): Ely North and East, Ely South and West, Soham and Fordham, Littleport, Melbourn

Forward Plan ref: N/a **Key decision:** No

Purpose: To seek approval of the County Council's formal response to updated proposals for 7 of Network Rail's level crossing proposals as part of its Anglia Level Crossing Reduction Strategy, and to note that potential ecological concerns have been mitigated.

Recommendation: The Committee is asked to:

- a) Approve the County Council's proposed response to Network Rail's proposals with regard to C09 Second Drove and C24 Cross Keys, Ely, and C26 Poplar Drove and C27 Willow Row Drove Littleport in accordance with the recommendations at 2.5-2.6 of the report
- b) Approve the recommendation that the County Council objects to the proposal for crossing C06 Barrington Road, Foxton, and requests that NR works with the County Council and City Deal on the long term solution for the whole junction (section 2.8 of the report)
- c) (i) Approve the recommendation to object to proposal C08 Ely North as it stands, and
(ii) To accept the proposed diversion if an unobstructed width of 2m can be achieved throughout the length of the path, and retain the dead-end eastern section (extent to be agreed through local consultation) (section 2.11-2.13 of the report).
- d) Approve the recommendation to object to proposal C20 Leonards, FP101 Soham on the basis of the grounds set out at section 2.14-2.15 of the report, and, should the Secretary of State allow the proposal, to offer an alternative solution that would make the proposal more acceptable to the County Council and stakeholders.
- e) Note that concerns regarding the lack of consultation over ecological interests have now been mitigated to the satisfaction of the Ecology Officer.
- f) Authorise officers to pursue the payment of commuted sums by Network Rail to the Authority for the future maintenance of new infrastructure in accordance with relevant legislation, and to seek the opportunity to inspect new infrastructure prior to it coming into operation.

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1. BACKGROUND

- 1.1 Network Rail (NR) has initiated a major project to close or downgrade a number of public rights of way (PROW) and road level crossings. NR's stated objectives include improving the safety of crossing users and reducing NR's asset liability (see **Appendix 1** for more detail). Implementation of the proposals would be through an Order under the Transport & Works Act 1992 (the 'TWA'), granted by the Secretary of State.
- 1.2 The relevant legal framework is set out at **Appendix 2**. In summary, the TWA provides that the Secretary of State (SoS) can make an order for an applicant relating to 'the operation of a railway' to alter, maintain and carry out works on a transport system. It authorises an applicant to stop up and alter roads and footpaths, and to compulsorily create rights across land to achieve this. The only legal test with regard to rights of way is that the extinguishment of a public right of way cannot take place without provision for a satisfactory alternative right of way, unless the SoS is satisfied that the provision of an alternative right of way is not required (section 5(6) TWA). The Department for Transport's *Guide to TWA Procedures* advises that the SoS will need to be satisfied that any alternative will be a convenient and suitable replacement for users (p105, Annex 2). Objections must be cogent and not frivolous or trivial.
- 1.3 In Cambridgeshire, crossings on the King's Lynn, Bury St Edmunds and King's Cross lines are affected. Many crossings are also affected in Suffolk, Essex and Hertfordshire. The proposals can be seen on the project website at <http://www.networkrail.co.uk/anglialevelcrossings/>. There has been much concern over the proposals, and a public inquiry is likely. NR is seeking to reach a final decision by mid-2018. Further information on the project and a link to an online map of the local road and public rights of way network can be found at Appendix 1.
- 1.4 NR held two public exhibitions and consultations in June and September 2016, with a further, limited, consultation in December 2016 on 8 of the proposals. Officers have liaised with stakeholders including County Councillors, Parish Councils, Public Health, user groups and interested local members of the public to understand local concerns and assess each proposal against the legal tests and relevant policies. These have informed ongoing negotiations with NR.
- 1.5 The County Council's position on all 33 proposals (as they were at the time) was approved at the HCI Committee meeting on 7th December 2016. The meeting also approved that, when consulted by the SoS, the County Council would advise that it intended to object to as many of the proposals as are unresolved by the time that the TWA Order application is made.
- 1.6 A paper concerning NR's 8 changes was taken to HCI Committee on 17th January 2017. At that meeting, the matter was deferred following concerns over crossing C20 Leonards/Public Footpath No 101 Soham 'to enable a full discussion with Local Members, Soham Town Council and other stakeholders on proposal C20 Leonards (FP101 Soham), to establish the reasons for supporting or objecting to the proposal, and to explore alternative proposals.' Discussions have now taken place, resulting in the recommendation at 2.15 below.
- 1.7 NR intends to submit its TWAO application in early March 2017. The County Council will make a formal response to NR prior to this as to its position on each crossing setting out its formal position, to assist NR in making its decisions in shaping the scheme, and to assist the Secretary of State (SoS) in deciding whether or not to hold a public inquiry.

2. MAIN ISSUES

- 2.1 The County Council remains supportive in general of Network Rail's desire, where possible, to close level crossings across the region. However, it must balance wider strategic transport objectives with its own strategic objectives, including its duty to keep users of the highway network safe; to enable healthy and sustainable communities; to support vulnerable individuals; and to minimise its own future asset liability.

- 2.2 To minimise the Authority's future maintenance liabilities associated with new/additional infrastructure arising from these proposals, officers will seek the payment of commuted sums from Network Rail to the County Council. Such payments typically cover maintenance costs for 30 years. Officers will also seek the opportunity to inspect such new infrastructure prior to it coming into operation. This will help ensure that any concerns regarding the quality of materials and workmanship are addressed at the appropriate juncture. If commuted sums cannot be agreed with NR, the matter will be determined by the Lands Tribunal.
- 2.3 The County Council has reviewed the 8 proposals altered in December. A summary of these together with the recommendation for each is set out below.
- 2.4 C19 Wicken Road, FP106 Soham
The County Council welcomes the removal of C19 Wicken Road, Soham from the scheme, which resolves significant concerns for the local community.
- 2.5 C09 Second Drove, FP49 Ely and C24 Cross Keys, FP50 Ely
Users, councillors and officers are satisfied that the additional footpath link solution for the C09 Second Drove and C24 Cross Keys, Ely, proposals now sufficiently mitigates the loss represented by closure of the two crossings. It is therefore proposed that the County Council withdraws its holding objection, provided that the solution is fully delivered and maintenance liability concerns over the use of an agricultural underpass are resolved.
- 2.6 C26 Poplar Drove (UCR) and C27 Willow Row Drove, BOAT 30 Littleport
Similarly, the new proposal for C26 Poplar Drove and C27 Willow Row Drove, Littleport, mitigates the impact of the closure of C27 on public users and the local community by retaining circular leisure routes and through-access for all non-motorised users ('NMUs') and motorbikes. Future maintenance liability for the Authority would also be mitigated by retaining the crossing over the tarmacked route rather than the heavily rutted soft byway. The British Horse Society supports the proposal; the Trail Riders Fellowship is currently considering its position. It is proposed that the County Council withdraws its objection, on the proviso that the scheme is delivered in full.
- 2.7 The County Council is aware that there is a significant impact on private users and the landowner. Should the outcome of NR's negotiations with these parties result in a change to the current proposal, the County Council will reassert its objection and further negotiations will be required.
- 2.8 C06 Barrington Road, Foxton
It is understood that the gate is a safety concern because it is not interlocked with the level crossing barriers, and its unusual design makes it an expensive asset to maintain. The proposed scheme will cost approximately £1m. The County Council acknowledges that NR has worked to improve this proposal. However, it appears that the only benefit to highway users would be for confident cyclists, with the introduction of an on-road two-way cycle track over the crossing. Non-motorised user ('NMU') movements between Barrington and Foxton would not be resolved, and there is a view locally that the current gate is still the safest passage. Significant road safety and technical issues have been raised by the County Council's Accident Investigation team following an initial review (full safety audits are still required). In addition, the proposal does not resolve congestion and misuse problems arising from the significant downtime of the barriers, which will worsen with an increase from four to six passenger trains an hour in each direction in 2018.
- 2.9 All parties (NR, the County Council, parish councils, councillors and City Deal Executive Board) acknowledge that there is a wider long-term issue to replace the crossing with an overbridge, and it has been addressed in NR's own feasibility study. NR states that this proposal will not prevent the long-term goal from being taken forward. However, there is concern that this is a disproportionate and expensive solution that diverts resources from resolving the ultimate solution to the junction.
- 2.10 Given the complexity and potential implications of the proposal, it is proposed that the County Council:
(i) Objects to it on grounds that the proposal achieves little public benefit, inconveniences non-motorised users travelling to and from Barrington, and

(ii) Requests that NR works with the County Council and City Deal to put the effort and resources into developing and bringing forward the permanent long term solution

2.11 C08 Ely North – FP11 Ely

This proposal is significantly improved, as it reduces on-road walking, the length of diversion and the impact on enjoyment. However, the proposed width of 1.5m for the northernmost section does not comply with the County Council's adopted policy for diverted paths, which is an unobstructed 2m. Fencing means that maintenance would be constrained, costing the Authority more. The proposal achieves 20% on the County Council's emerging NMU scoring criteria for diverted paths (threshold is 70%). NR has agreed to review the design to see if the width can be achieved.

2.12 In addition, it is proposed to retain a dead-end section of the existing path on the basis of requests from the public that it has local ecological and historical interest, and is used for dog walks. This would result in the County Council taking on more overall liability, but the value to the local community should also be recognised.

2.13 It is therefore recommended that the County Council objects to the proposal as it stands, and should the width issue be resolved, that the County Council withdraws its objection. It is proposed that the County Council agrees to retain the dead-end eastern section as a community amenity footpath, the extent to be agreed on the basis of consultation with local Members and users.

2.14 C20 Leonards, FP101 Soham

The map at **Appendix 3** shows NR's revised proposal. This proposal satisfies the basic legal test, in that an alternative route is proposed to be provided. However, there is a significant body of objections from the two local County Councillors, five East Cambridgeshire District Councillors, the Chair of Soham Town Council, and the East Cambridgeshire Ramblers' Group. A number of objections have also been made by local residents to Councillor James Palmer, who is representing those views. The objections are made on the grounds that the alternative route is not a suitable replacement because:

- The majority of users travel from the south, making circular routes with South Horse Fen Common and the popular 'Wicken Walks'. People walk to the pub in Wicken to the south-west. The alternative route is two and a half times as long for these users (rising from 200m to 555m).
- Local opinion is that the enjoyment of these users would be significantly affected by the closure.
- NR has recently invested in the crossing with new gates, and the County Council has recently installed two new bridges, none of which could be reused on the new route. Closure would therefore represent a waste of resources at a time of scarce public resource.
- There are no recorded safety incidents. It is a long, straight stretch of line. The crossing is close enough to the Mill Drove road crossing that footpath users may be able to hear the automated warning sounds from the road crossing when a train is approaching.
- In addition, the Ramblers consider that the approach along FP114 would be unattractive, as it traverses a heavy clay field.

2.15 It is therefore proposed to object to the proposal on the above grounds and request that the crossing remain open. However, if the SoS were to decide in favour of the proposal, the County Council would propose an alternative route which stakeholders agree would be more acceptable. This is shown on the map at Appendix 3. This would require:

- An alteration to the NE end of the route, reducing the length for users travelling from the north. A new bridge would be needed at point G (the width of the drain is wider than at point H).
- A hoggin path should be provided within the verge between points C, I and J, for safe refuge.
- A bridge is required at the end of FP114 at point N to bring the path back into community use.

2.16 Biodiversity duty

The County Council was consulted by Department for Transport on NR's Screening for its Environmental Impact Assessment. Officers were concerned that there had been no consideration of the impact on County or local wildlife sites, habitats or species. The County Council requested that NR do this, and welcomes the fact that NR's contractor, Mott MacDonald, has now agreed satisfactory mitigation for each site affected. On 24th January, the Department for Transport issued its decision, which was that a full EIA is not required.

- 2.17 Table 1 below is a summary of the County Council's revised overall proposed position as a result of the changes to NR's proposals. This shows a reduction in the Authority's objections.

CCC Position	As at 10.11.2016 (No. of Crossings)	As at 31.01.2017 (No. of Crossings)
No objection	12	15
Holding objection (including one crossing in Newmarket, Suffolk)	10	7
Objection	11	10
TOTAL crossings	33	32

- 2.18 **Appendix 4** summarises the proposed position of the County Council on each of the 32 crossings still in the scheme. The updated proposals covered in this paper are highlighted in bold. Officers will continue to work with NR on the resolution of the outstanding objections where possible, but it is likely that some objections will remain by the time of the formal consultation on the draft TWAO.

3. ALIGNMENT WITH CORPORATE PRIORITIES

- 3.1 Developing the local economy for the benefit of all:** There are no overall significant implications for this priority. However, the proposal for C06 Barrington Road, Foxton could have significant economic implications for the Cambridge sub-region, as set out at sections 2.5-2.7 above.
- 3.2 Helping people live healthy and independent lives:** There are no overall significant implications for this priority. However, the crossing proposal at C06 Barrington Road Foxton, C08 Ely North (FP11 Ely) and at C20 Leonards (FP101 Soham) could have significant implications in those areas. Closure of these routes could limit the scope for people to live healthily and independently. Solutions must recognise the importance of these routes in engendering the physical and mental well-being of the local community through access to the wider network and areas of common land.
- 3.3 Supporting and protecting vulnerable people:** There are no overall significant implications for this priority. However, some individual crossing proposals could have significant implications in those areas. The County Council has made a detailed response to NR's Diversity Impact Assessment concerning this.

4. SIGNIFICANT IMPLICATIONS

- **Resource Implications:** There are no significant implications within this category. However, there is a risk that the County Council will not be able to negotiate the receipt of commuted sums requested, and if this happens the County Council will then immediately become responsible for the maintenance costs of the alterations. The total cost is not yet known as the proposals are not yet finalised, but a full evaluation will be undertaken when they are.
- **Statutory, Legal and Risk:** There are no significant implications within this category. However, as a whole the TWAO will have a significant effect, as it will permanently alter the local highway network. This will also affect the Authority's maintenance liability, and its duty to keep highway users safe, as highlighted at sections 2.5-2.7 above with regard to the Foxton crossing.
- **Equality and Diversity:** There are no significant implications within this category. However, the points at 3.2-3.3 above should be noted.
- **Engagement and Communications:** There are no significant implications in this category. NR are managing the consultation process for the TWAO. The timeline can be seen on their website at <http://www.networkrail.co.uk/anglialevelcrossings/>. However, officers are engaging with members, district councils, parish councils and user groups at each stage to ensure that they are aware and have opportunity to reflect local opinion.
- **Localism and Local Member Involvement:** There are no significant implications within this category. However, there are implications for communities with regard to C06 Foxton, C08 Second Drove Ely and C20 Leonards, Soham, the approach for which has been agreed through engagement with members and local communities. C06 Foxton is particularly sensitive and may generate media interest.
- **Public Health:** There are no significant implications within this category. However, the points at 3.1-3.3 above should be noted.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes Name of Financial Officer: Eleanor Todd
Has the impact on Statutory, Legal and Risk implications been cleared by LGSS Law?	Yes Name of Legal Officer: Fiona McMillan Head of Districts and Planning LGSS Law Limited
Are there any Equality and Diversity implications?	Yes (no implications) Name of Officer: Tamar Oviatt-Ham
Have any engagement and communication implications been cleared by Communications?	Yes Name of Officer: Simon Cobby
Are there any Localism and Local Member involvement issues?	Yes (no implications) Name of Officer: Tamar Oviatt-Ham
Have any Public Health implications been cleared by Public Health	Yes Name of Officer: Iain Green

Source Documents	Location
Transport & Works Act 1992	http://www.legislation.gov.uk/ukpga/1992/42/contents
Department for Transport <i>Guide to TWA Procedures</i>	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4502/procedures-guide.pdf
Network Rail proposals including maps	http://www.networkrail.co.uk/anglialevelcrossings/
Cambridgeshire Rights of Way & Improvement Plan	http://www.cambridgeshire.gov.uk/info/20006/travel_roads_and_parking/66/transport_plans_and_policies
Cambridgeshire Health & Well Being Strategy	http://www.cambridgeshire.gov.uk/info/20004/health_and_wellbeing/548/cambridgeshire_health_and_wellbeing_board