

North Yorkshire Local Access Forum

4 February 2016

Rail Crossings

Report of the Chair

1.0 Purpose of the Report

- 1.1 To invite members of the Local Access Forum to consider whether to undertake any work in relation to rail crossings.

2.0 Background

- 2.1 The Chairman has been in touch with James Perkins, the person responsible for overseeing changes to the railway network in the North East. Every grade-crossing has been assessed with a safety rating, and Network Rail is very aware of the need to consult with all the statutory bodies (including the LAFs) when changes are proposed.
- 2.2 Do we as a LAF wish to raise safety concerns on particular crossings, or is this rather a hit and miss approach as many will not be familiar to us? The alternative is to wait until Network Rail approach us to close/change a crossing and then respond with our advice.
- 2.3 The attached letter dated 19 January 2015 from Defra to Network Rail provides background information.

3.0 Recommendation

- 3.1 That the Local Access Forum considers whether to undertake any work in relation to rail crossings.

Rachel Connolly, Chair



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Our ref: DW711

19 January 2015

From Dan Rogerson

Parliamentary Under Secretary of State for Water, Forestry, Rural Affairs and Resource Management

Dear Mr Gisby,

Thank you for your letter of 11 August 2014 to Patrick McLoughlin about level crossing closure and using the Secretary of State's powers under section 120 (3) and (3A) of the Highways Act 1980 ("the 1980 Act"). Your letter was forwarded to Defra as the Department responsible for the policy on railway crossings which are on a public right of way. I apologise for the delay in replying; I wanted to give your letter a considered response.

Firstly, I think that Network Rail needs to improve its existing approach to applications for rail crossing orders. Whilst I understand that safety is Network Rail's top priority, this must be balanced with local authorities' responsibility to assert the public's right to use a right of way. Where a crossing needs to be closed on safety grounds, there is a duty to consider alternative options. These alternatives must be considered with regards to the needs of the users of the routes and within the requirements of the Equality Act 2010. Network Rail needs to work closely with local authorities and their respective Local Access Forums for each proposed level crossing closure. This should enable Network Rail to understand the local sensitivities of the public rights of way network, and best meet local access needs, thus making it more likely that closure and diversion orders are made and confirmed.

I note that you are finding that local authorities are on multiple occasions rejecting applications for rail crossing orders due to disagreement about Networks Rail's safety statements. Any safety statement presented to a local authority needs to satisfy them that associated issues have been fully explored and that the crossing could not reasonably practicably be made safe, as required by sections 118A (4)(a) and 119A (4)(a) of the 1980 Act. It is perfectly proper for authorities not to accept safety reports at face value, and to test them. Should Defra exercise the Secretary of State's powers, Defra would need to be similarly satisfied.

You report that disagreement over on-going maintenance and responsibilities for crossings after closure is causing local authorities to reject rail crossing orders. The arrangements for responsibility for signage and on-going maintenance are required by sections 118A



(4)(b) and 119A (4)(b) of the 1980 Act, and as such local authorities are right to request agreement before an order is confirmed. This would also be a requirement if the Secretary of State's powers were exercised. I note that the railway operator seeking the order may be required to agree to meet all or part of the cost of erecting and maintaining any such barriers and signs. In order to consider the use of the Secretary of State's powers I would need assurance that these issues will be resolved in advance.

I understand that Network Rail has recently met with the ADEPT Rights of Way Managers Group to discuss these issues. It is important that you continue this engagement in order to come to an agreed consistent procedure and standard of safety statement for rail crossing closures. I would expect this to be achieved before asking the Secretary of State to consider using her powers.

Secondly, regarding the information which is required to consider using the Secretary of State's powers to determine rail crossing orders. Determination by the Secretary of State would require significant resource and I would need convincing that I should override our policy that decisions of this type should normally be made locally. I would need to see evidence which demonstrates the need for Secretary of State intervention.

It may be appropriate for the Secretary of State to determine exceptional cases, although I would expect such circumstances to be rare. I would welcome your advice on what such exceptional cases might be, and I should like to understand the quantity of orders of this type which Network Rail anticipates might be submitted.

You also ask how the process for rail crossing order determination by the Secretary of State might operate. Should it be deemed appropriate to use this power, it would necessitate the process described by Schedule 6 to the 1980 Act. The regulations prescribing the form of the order to be made are contained in Schedule 6, paragraph 1 (2) of the 1980 Act, and the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (S.I. 1993/9). I attach a flow chart to illustrate how this process might work. The tests to be met for an order to be considered are the same, regardless of whether it is the local authority or the Secretary of State who considers it.

As I hope you will appreciate, it would not be right for me to comment at this stage on the merits of specific cases such as Grange-over-Sands which you mention in your letter, so as not to prejudice any consideration by another Government Minister or the Planning Inspectorate on behalf of Defra should it subsequently come before them.

I expect that your upcoming position paper will be relevant to both Defra and the Department for Transport, and I encourage you in the paper to address the issues which I've raised. As the Minister responsible for this policy I invite you to share the paper with Defra when it is ready.

I am copying this letter to Patrick McLoughlin, Secretary of State for Transport

Thank you again for writing.

DAN ROGERSON MP

