

North Yorkshire County Council

Executive

23 August 2022

Transport Works Acts Order (TWAO) known as The Network Rail (Church Fenton Level Crossing Reduction) Order

Report of the Corporate Director – Business and Environmental Services

1.0 Purpose of Report

- 1.1 To advise the Executive on the TWAO known as The Network Rail (Church Fenton Level Crossing Reduction) Order.
- 1.2 To authorise a response to the draft TWAO which may include objections to the TWAO, being aware that if the objection is not resolved this may lead to the Council being involved in a public inquiry.
- 1.3 To advise the Executive that in the event we make representations or objections which are not resolved this could result in a Public Inquiry.

2.0 Background

- 2.1 The Government is investing between £9.5 - 11bn in modernising the rail route between York, Leeds, Huddersfield and Manchester known as the Trans Pennine Route Upgrade. As part of the modernisation Network Rail are looking to remove 3 level crossings near Church Fenton and replace these with a new road, bridge and parking and to provide access to the houses in Rose Lane. The existing Rose Lane footbridge will also be removed and replaced with a new footbridge to accommodate electrification of the line.

3.0 Transport Works Acts Order (TWAO) Process

- 3.1 Network Rail (the promoter) are using a Transport Works Acts Order (TWAO) to deliver the above, under the Transport and Works Act 1992 (the TWA) which authorises guided transport schemes and certain other types of infrastructure project in England. Promoters of schemes of this kind often need a range of powers to put their scheme into practice. Under the TWA, a promoter can apply to the Secretary of State for an order giving those powers. The order, if made, is known as a TWA order. The powers that can be given in a TWA order can be very wide-ranging. For example, the promoter of a new railway or tramway scheme may need compulsory powers to buy land or to close streets. A TWA order can grant these powers. In addition, the Secretary of State in granting the TWAO can grant planning permission for the development described in the Order. For a brief guide to a TWAO see this link <https://bit.ly/3ByPVU2>.

4.0 The TWAO known as The Network Rail (Church Fenton Level Crossing Reduction) Order

- 4.1 Network Rail has submitted a draft TWAO in respect of the scheme at Church Fenton. A copy of the draft order is attached as Appendix A but there also a considerable number of supporting documents submitted with draft Order.

- 4.2 It was published on Thursday 25 July 2022 and there is a period of 42 calendar days (Thursday 8 September 2022) for responses. An extension of time may be requested, but there is no guarantee this would be granted. NYCC together with Selby District Council are consultees in respect of the TWAO.
- 4.3 Over the last 18 months NYCC and SDC have held regular meetings with Network Rail about the plans for the TWAO and the potential for impacts in the area (See Appendix B). For further details, contact Graham North, Strategy and Performance Officer (graham.north@northyorks.gov.uk). Elements of the TWAO have been drafted to take into account the outcome of the discussions, however not all issues have been resolved. The Council considers that there are areas which require further discussion with officers to achieve a satisfactory resolution which is acceptable to the Council. Areas which remain of concern to the Council include (but are not limited to) highway issues, construction standards, landscaping, drainage and flood risk, impact on public rights of way as well as future maintenance of new structures and landscaping. It may be that some issues can be resolved through the imposition of planning conditions, but for other matters separate agreements may have to be reached.
- 4.4 In order to respond to the TWAO a team of officers from NYCC and SDC has been created to consider the following areas:
Highways incl. bridges
Planning (both NYCC and SDC)
Water & Flood risk
Archaeology
Landscape and visual
Ecology
Countryside Access
- 4.5 Discussions with Network Rail will continue throughout August with a view to resolving as many issues as possible, however bearing in mind the tight timescale for responding to the draft TWAO it is considered unlikely that all issues will be able to be resolved within that timeframe. In order to protect the Council's position it is likely that there will be a need to make formal representations and/or objections to the draft TWAO. As a result of the time constraints it is proposed that the making of representations or objections to the TWAO be delegated to the Corporate Director Business and Environment in consultation with the Executive Member. Depending on what progress is made there may also be scope to submit a joint response with Selby District Council.
- 4.6 The risk to the Council of not making representations or objections in response to this consultation is that the TWAO could be agreed as submitted. This would result in the Council having to take on responsibility for future maintenance of a new highway and bridge in which it has limited input regarding design and construction and for which the Council would be liable for future maintenance.

5.0 Equalities

- 5.1 Consideration has been given to the potential for any equality impacts arising from the making of representations in respect of the draft TWAO. The Equalities Impact Assessment Screening Tool is attached at Appendix C. It is the view of officers that the proposals should not have any significant adverse impact on any groups of people with protected characteristics identified in the Equalities Act 2010.

6.0 Finance

- 6.1 NYCC are to submit a response to the draft TWAO which may include objections to the proposed scheme. The reason being that the proposals could lead to additional ongoing liabilities for the Council in relation to the proposed new road and bridge. Officers are not in a position to give an estimate of those costs yet or how those costs might be met e.g a commuted sum. These details will become known as the application is assessed and discussions with the applicant continues.
- 6.2 There have been on-going discussions over the last 18 months with Network Rail in development of the draft TWAO and this work has continued using existing officer time as required. At this point, the costs incurred are limited to officer time. In recent discussions with Network Rail, NYCC started the process to agree a Planning Performance Agreement (PPA) and Network Rail have advised that they would be happy to enter into a PPA with the Authorities in relation to the Church Fenton TWAO. Network rail have agreed in principal to pay the reasonable fees, subject to a cap, but that would not include any fees incurred in the submission of an objection. If an objection was submitted by the Council but through engagement with Network Rail the objection is withdrawn, and therefore the Council would not need to attend a public inquiry as an objector, then a PPA could be agreed to address the matters going forward. Negotiation of the PPA is ongoing. Officers would normally negotiate compensation under a PPA to be backdated to when the work began, but those negotiations are ongoing.
- 6.3 If the Secretary of state deemed that the response from NYCC constituted one or more objections, there could be a need for NYCC to attend a public enquiry. If this was to happen, this would be at a cost to NYCC. The cost of the public enquiry would depend on the nature and number of objections but is likely to be in the region of £50,000 including legal representation and consultant support plus existing officer time to support the process. There is currently no identified budget for this.
- 6.4 If the process leads to a Public Inquiry then there will need to be a further report to the Executive to seek approval for funding, once the full extent of the ask is known.

7.0 Legal

- 7.1 The making of the TWAO follows a statutory process and the Council are a consultee as part of that process. Although Network Rail has engaged with the Council prior to the making of the TWAO not all the issues of concern to the Council have been resolved. Making formal representations as part of the consultation process is the most appropriate way to ensure regard is had to our concerns and to seek to protect our position.
- 7.2 In the event there are representations/objections on the TWAO the Secretary of State must decide with 28 days from the end of the consultation period whether to hold a public inquiry, hearing or written representation process. Throughout this period, there will still be the opportunity to liaise with Network Rail to seek resolution of our concerns. There is also scope for Network Rail to seek further time for negotiation if withdrawal of an objection looks likely.

7.3 If the Secretary of State decides to proceed with a Public Inquiry, we would need to consider whether to continue with any unresolved issues to public inquiry or if a compromise can be achieved which would enable us to withdraw the objection. The costs for the Council of being involved in a public inquiry could be significant. Legal costs would be likely to be at least £20,000 and there would be a need for officers or appropriate consultants to prepare evidence and attend at the inquiry which is very time resource intensive. If consultants were required, the costs would be likely to be at least £30,000. In the event that a Public Inquiry is proposed to consider the Council's representations or objection a further report will be brought back to the Executive.

8.0 Climate Change

8.1 The TWAO includes an Environmental Report in 3 sections and the response to the TWAO will include the NYCC aspiration to achieve net carbon neutrality by 2030, or as close to that date as possible. A Climate Change Impact Assessment is attached as Appendix D.

9.0 Recommendation

- 9.1 The Executive approve:
- i. the making of representations and/or objections in respect of the draft Network Rail (Church Fenton Level Crossing Reduction) Order.
 - ii. the contents and submission of any representations and /or objections be delegated to the Corporate Director Business and Environment in consultation with the Executive Member and Corporate Director, Strategic Resources.
 - iii. the submission of a joint response with Selby District Council if appropriate.
 - iv. continuing to negotiate with Network Rail on representations and or objections made in respect of the Network Rail (Church Fenton Level Crossing Reduction) Order
 - v. engaging in the preliminary stages of the Public Inquiry process including but not limited to preparation of statements and proofs of evidence.

Karl Battersby
Corporate Director – Business and Environmental Services

Author of Report: Graham North

Background Documents: None