

North Yorkshire Council

Environment Executive Members

22 February 2024

Opposed Public Footpath No.35.59/5 South Milford Rail Crossing Extinguishment Order 2023

Report of the Assistant Director – Integrated Passenger Transport, Licensing, Public Rights of Way and Harbours

1.0 Purpose of the report

- 1.1 To advise the Corporate Director of Environment of the proposed submission to the Secretary of State (SoS) of an opposed Public Path Extinguishment Order. A location plan is attached to this report as **Plan 1**. The route is shown on **Plan 2**.
- 1.2 To request the Corporate Director, in consultation with the Local Member and Executive Member for Highways and Transportation, to decide whether to refer the opposed order to the SoS, and if so, to decide what stance the Authority should take in its submission, regarding the confirmation of the opposed Extinguishment Order.

2.0 Scheme of Delegation

- 2.1 Within the Council's scheme of delegation, it is delegated to the Assistant Director of Integrated Passenger Transport, Licensing, Public Rights of Way and Harbours, to decide whether to abandon an opposed Public Path Order where the Authority is of the opinion that the requirements to confirm the Order may not be met and where an Inspector appointed by the Secretary of State may decline to confirm the Order, or to recommend to the Corporate Director of Environment that the Order be referred to the Secretary of State.

3.0 The Application

Applicant:	Liability Negotiations – Network Rail, York
Date of application:	16/06/2023
Type of Application	Rail Crossing Extinguishment Order S.118A Highways Act 1980
Parish:	South Milford
Local Member:	Cllr Tim Grogan
Applicant's grounds for making the application	As the requirements for a previously applied for Diversion Order could not be met, Network Rail decided to apply for an Extinguishment Order because having assessed the crossing, they remain firmly of the view that it is unsafe, and cannot reasonably be made safe for the following 3 reasons. 1. Sighting deficiencies - Sighting is severely limited at the crossing due to a railway bridge carrying another railway in very close proximity to the crossing which means that users have less visibility of oncoming trains.

	<p>2. Audibility - Audibility is an issue at this crossing that cannot be mitigated to allow the crossing to be made safe for use by the public, using reasonably practicable means.</p> <p>3. The risk of hidden trains (“Second Train Coming”). At Milford level crossing it is known that “hidden” trains are an additional risk to members of the public using the level crossing. This is when one train generally travelling away from the level crossing blocks visibility of another train approaching the level crossing, on the other line.</p>
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4.0 General Description of Route(s) & Proposal

- 4.1 The Extinguishment Order would extinguish all of Public Footpath 35.59/5 which commences just off the A162 and runs generally eastwards via a railway level crossing along the foot of the embankment of the Leeds to Hull railway, then generally south via a further railway level crossing to join Common Lane; points A--B--C--D--E on Plan 2. A total length of approximately 1.2 km.

5.0 Relevant legal criteria

- 5.1 Under Section 118A of the Highways Act 1980, having consulted any other local authority, the Council may make an Order to extinguish a Public Right of Way if it finds it is expedient that the line of the route described in the Order should be extinguished in the interests of Rail Safety.
- 5.2 The Council charges applicants for the costs incurred in the processing/making of Public Path Orders, as provided for by the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (S.I. 1996/1978).
- 5.3 Where an Order is opposed, the Council cannot confirm the Order; it can only be confirmed by the Secretary of State. The Council may either decide to abandon the process or to forward the opposed Order to the SoS for resolution. The Secretary of State will confirm the Order if satisfied that it is expedient that the line of the route described in the Order should be extinguished in the interests of Rail Safety; having particular regard to whether it is reasonably practicable to make the crossing safe for public use and also to what arrangements have been made for ensuring that, if the Order is confirmed, any appropriate barriers and signs will be erected and maintained.

6.0 Reason for the proposed extinguishment of the footpath

- 6.1 The crossing is classified by Network Rail as a “passive crossing” in that there are no measures in place such as warning lights, telephones or audible warning system to control or assist pedestrians using the crossing; there are “stop, look, listen” signs in place. Network Rail consider this crossing unsafe due to a bridge immediately adjacent to the crossing, limited sight lines and another bridge which compromise users’ ability to see or hear approaching trains. Network Rail have investigated the full range of mitigation measures which might be used to ensure user safety at the crossing but have determined that the high cost of any measure, renders implementation unjustified at this location. As required by the Highways Act 1980, Network Rail have carried out an assessment of the risks and provided full details of

all mitigation measures, a copy of the application form (redacted) which includes those details is included at Appendix 1 for information and an extract from the Network Rail Safety Assessment including costs is included at Appendix 2.

- 6.2 The path has been subject to a series of Temporary Traffic Regulation Orders (TTROs) since 2015. To the east of the railway crossing the path runs along the foot of the railway embankment and a length of the railway embankment partially collapsed resulting in closure whilst the repair work was carried out. This led to the new embankment and an enclosing fence obstructing the path; an attempt was made to divert the path outside of the fencing and onto Common Lane to the south, but this met with opposition from the adjacent landowners. In 2017, Network Rail closed the crossing on safety grounds and a TTRO was put in place, that TTRO has been subject to extensions and remains in place.
- 6.3 In August 2022, Network Rail submitted an application for a Rail Crossing Diversion Order to be made which diverted the path from near to its junction with the A162 south onto Common Lane. An informal consultation was carried out which resulted in objections from landowners, members of the public and the Parish Council. The Countryside Access Service (CAS) also had concerns in that the diversion directed users onto Common Lane and anyone intending to walk east would be required to negotiate a single track narrow road bridge used by heavy commercial vehicles where there was not sufficient space to provide a footway of any type. The view of CAS was that whilst we are not in a position to question Network Rail's assessment of Rail Safety, we are able to make a judgement on road safety and the application was therefore rejected.
- 6.4 In June 2023 Network Rail submitted the current application. An informal consultation on the proposal attracted objections.

7.0 Responses to the initial consultations

- 7.1 Three objectors opposed the proposed making of the Extinguishment Order, broadly on the same grounds as are detailed below in the responses to the Sealed Order consultation. The objectors at this stage were objectors 1, 2 and 3 as listed in 8.2 below.
- 7.2 One landowner supported the Extinguishment Order, on the grounds that the path had no modern useful purpose; the A162 crossing at the western end of Common Lane was safer than that at the western end of the Footpath, and the lane already had higher public rights so served a wider cross-section of the community.
- 7.3 Despite the objections received at the informal consultation stage it was felt the appropriate course of action would be to allow the proposal to be tested by following the formal process, including referral to the SoS if necessary and considered appropriate.
- 7.4 Therefore, the Extinguishment Order was made in September 2023, and was duly advertised by notice on Thursday 28 September 2023.

8.0 Responses to the publication of the sealed order

8.1 The objections received were as follows:

- Five objectors sent in opposition to the Order. All of them are detailed and raise several objections, most of which are admissible grounds (without judgement of their value at this point). Overall, 18 grounds of objection were made, some made by more than one objector.
- The objectors are:
 1. South Milford Parish Council (PC)
 2. The Ramblers Association ('The Ramblers'/ RA)
 3. Member of public – Objector 3
 4. Member of public – Objector 4
 5. Member of public – Objector 5
- The representations from the public appear to have been individually composed, although one of them copies the PC's last sentence. Their submissions were all received by email and do not bear their home addresses although they would all appear to be local people

Grounds for the Objection	Objector(s)
<p>(i) Network Rail (The Applicant) has failed to demonstrate that there is a safety issue at the level crossing in question</p>	<p>1, 4, 5</p>
<p>Officer Comment: NYC Countryside Access Service does not believe it can reasonably arbitrate on the relative safety of level crossings versus alternatives; Network Rail is the specialist and CAS would put the Council in an invidious position if it sought to contradict a rail safety assessment on safety grounds. Network Rail carried out a Level Crossing Risk Assessment, dated 09 June 2023 which runs to 38 pages, a summary of the options with costs is attached as Appendix 2.</p>	
<p>(ii) Network Rail (The Applicant) has failed to either take into account or discuss publicly the full range of options available to address perceived safety concerns, including technological solutions.</p>	<p>2, 3, 5</p>
<p>Officer Comment: An informal consultation of local Councils, statutory consultees, user-groups, affected landowners and parties with a legal interest in the affected land did take place with a view to diverting the Footpath, but any diversion would still either have to cross the railway line or make use of the narrow, traffic-light controlled bridge on Common Lane which is widely held to be unsafe for pedestrians. The landowners opposed a diversion. It was determined that if a Diversion Order was made and publicly consulted on, it would be objected to and would also suggest that the Applicant (and possibly the Council), were (by placing Footpath users onto Common Lane) implying that it was safer than the level crossings. Network Rail has studied technological solutions and building a footbridge, as part of their Level Crossing Risk Assessment, dated 09 June 2023 but their assessment is that the costs of any feasible mitigation measure far outweigh justification at this location. (See Appendix 2)</p>	

<p>(iii) There has been a long-running series of temporary closures on the Footpath without satisfactory reasons being given. Early reasons for closure were to make improvements to the surface of the crossing - and in 2017 to undertake embankment work - neither of which suggests there were any concerns then with the safety of the crossing. Plans were drawn up to reposition the Footpath as embankment reinforcements blocked the original position of the path, but the work was not completed, and no explanation given. (Only in 2019 were possible safety concerns about the crossing raised, even though the only material change in the intervening time had been a reduction in the number of trains using the track due to the closure/repurposing of 2 nearby power stations the line served)</p>	<p>1, 2, 3, 4</p> <p>1, 4</p>
<p>Officer Comment: On the temporary installation of a camera in 2020, vulnerable users were identified using the level crossing. Due to findings in other cases which have discussed risk at other level crossings, completed by the Rail Accident Investigation Bureau, general understanding of risk management has improved. Some earlier temporary closures did occur between 2012-2017; NR has limited records as to why, although from photographs held, one of these seems to have been to install decking where there was once none at all.</p>	
<p>(iv) Network Rail has failed, despite frequent requests, to explain why improvements were made to the fabric of the crossing if it was a dangerous crossing, or what has changed to make it now not safe</p>	<p>1, 4</p>
<p>Officer Comment: See (iii) above</p>	
<p>(v) Network Rail's proposed diversion to improve the safety of the footpath was to take users onto a single-track road with no roadside pavement which crosses two humpbacked bridges with poor visibility, one of them with three- way traffic control and heavy use by HGVs. Objectors' position, upheld by NYC, was that this was not a safe alternative. It suggests that NR was only interested in closing the crossing, (<i>and not in public safety - implied</i>). (Prior to consultations and without the permission of the landowner Network Rail carried out works to start to put this diversion in place)</p>	<p>1, 2, 3, 4</p> <p>1</p>
<p>Officer Comment: NYC Countryside Access Service does not believe it can reasonably arbitrate on the relative safety of level crossings versus alternatives; Network Rail is the specialist body regarding public safety in the vicinity of railways, and NYC are unlikely to contradict a rail safety assessment on safety grounds. Under S.119(A) HA 1980, Network Rail has the powers to pursue a diversion of a public right of way to avoid public use of a level crossing without the affected landowner(s)' consent and statutory compensation is payable, but they initially chose to apply for an alternative proposal rather than pursue what was certain to be an opposed Order. CAS had concerns regarding the diversion of the footpath onto Common Lane.</p>	
<p>(vi) Network Rail failed to adequately explain why they considered a diversion on the western side of the railway to be viable, but not on the eastern side, leaving the vast majority of the existing undisputedly safe footpath 'unnecessarily' closed</p>	<p>1</p>

Officer Comment: A diversion such as described would still leave the public needing to cross the railway line via Common Lane using the traffic-light controlled narrow bridge. This would mean most of the objections herein would still apply and the resultant route would also be considerably longer as well as potentially producing landowner objections.	
(vii) The crossing and the Footpath's future cannot be decided without proper investigation of the need for any action, with consideration of future options being revisited. The Applicant is also the body charged with assessing the safety of rail crossings and this duty should be separately evaluated.	1, 5
Officer Comment: This is the purpose of the proposed submission of the Order to the Secretary of State for determination.	
(viii) The proposed extinguishment is a disproportionate response to a perceived danger and significantly reduces the local traffic-free walking network. It should be rescinded rather than forwarded for determination.	2
Officer Comment: NYC Countryside Access Service does not believe it can reasonably arbitrate on the relative safety of level crossings versus alternatives; Network Rail is the specialist body and NYC are unlikely to contradict a rail safety assessment on safety grounds. The Footpath although long, does not lead anywhere; it mainly hugs the railway embankment and does not link to a wider network nor lead to a point of resort or another settlement, and does not seem to form part of a potential off-road commuter route. Abandoning the Order is an option open to the Council, however, this would imply that it is intended to enforce reinstatement of the current legal route or re-visit the options for diversion, neither of which are realistically feasible on safety grounds.	
(ix) By extinguishing the Footpath, the Council will expose walkers to greater danger from vehicles on the alternative route, Common Lane, (both when walking in the lane and when crossing the A162)	1, 2, 3
Officer Comment: NYC Countryside Access Service does not believe it can reasonably arbitrate on the relative safety of level crossings versus alternatives; Network Rail is the specialist and CAS would put the Council in an invidious position if it sought to contradict a rail safety assessment on safety grounds. A local supporter of extinguishment states he believes the crossing of the A162 at Common Lane is safer than that at the western end of the Footpath due to the relatively better visibility; the National speed-limit applies at both. NYC CAS is not seeking to infer that the minor road (Common Lane), is less dangerous than the Footpath, it is responding to an application based on the assessment of the specialists as to the safety of the level crossing on its own merits.	
(x) Objectors to the present order are unable to supply much evidence of the demand for the Footpath due to repeated Temporary Traffic Regulation Orders, gauged not least by the use people are making of the nearby Common Lane instead – a risk assessment cannot be carried out.	2, 3, 4

<p>Officer Comment: Network Rail have investigated the full range of mitigation measures which might be used to ensure user safety at the crossing but have determined that the high cost of any measure, renders implementation unjustified at this location. Network Rail has carried out an assessment of the risks and provided full details of all mitigation measures, some with costs. (See Appendix 2).</p>	
<p>(xi) The public has reported issues on the Footpath which must mean that intended / attempted usage is considerable, as most users will not make the effort to report issues.</p>	<p>2</p>
<p>Officer Comment: Between January 2012 and March 2017 there were two recorded reports of overgrown vegetation and one of missing signage. Between January 2015 and the end of 2020 there were six reports all related to the TTROs or related work by Network Rail to close the crossing. Three typical reports in five years does not of itself suggest high usage.</p>	
<p>(xii) If the order is submitted to the Secretary of State for determination, an Inspector would be asked by this objector to find that the alternative route, Common Lane, is so dangerous for pedestrians as to make it inexpedient to confirm the order. (Expediency is a test for Confirmation).</p>	<p>2</p>
<p>Officer Comment: NYC Countryside Access Service does not believe it can reasonably arbitrate on the relative safety of level crossings versus alternatives; Network Rail is the specialist and CAS would put the Council in an invidious position if it sought to contradict a Level Crossing Risk Assessment on safety grounds. This objection is based on the opinion of the Objector. It illustrates the purpose of referral to the Secretary of State. NYC CAS is not seeking to infer that the minor road (Common Lane), is less dangerous than the Footpath, it is responding to an application based on the assessment of the specialists as to the safety of the level crossing on its own merits.</p>	
<p>(xiii) Over a kilometre of good-quality, off-road walking will be lost if the path is extinguished. This is unfortunate given the environmental and health benefits of walking, for recreation or as part of everyday travel.</p>	<p>2</p>
<p>Officer Comment: The Footpath although long does not lead anywhere; it mainly hugs the railway embankment and does not link to a wider network nor lead to a point of resort or another settlement and does not seem to form part of a potential off-road commuter route.</p>	
<p>(xiv) The level crossing is close to a railway bridge. Visibility to the north is restricted somewhat, by the bend in the line. This problem could be mitigated by moving the crossing further away from the bridge</p>	<p>2</p>
<p>Officer Comment: The sighting is hindered by the rail bridge to the north of the crossing, which is a permanent structure. Network Rail state that discussions considering moving the level crossing (either further north or further south) have concluded that sighting requirements</p>	

still wouldn't be met, rather the risk would be moved from one location to another. Further south are sidings, adding an attendant noise interference problem.

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| <p>(xv) HGV usage of Common Lane has increased vastly over the past 4 years. The road provides access to various properties and businesses. Objectors believe it is less safe than the rail crossing.(On a site visit on Friday 13 October 2023, one objector's local member, while walking on the road, says he/she was passed by a dozen or more HGVs, most of them delivering to the compound just to the east of the narrow bridge, as well as by a number of vans and private vehicles)</p> | <p>2, 4</p> |
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Officer Comment:

The site at 'G' is believed to be a biodigester plant for converting organic waste into green electricity. The proposed extinguishment of the Footpath makes no assumptions about the safety of the road as an alternative route whereas a Diversion Order would have done.

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| <p>(xvi) The duty for the Council to provide a footway (under S.66(1) HA 1980), in the low-visibility and narrow sections of Common Lane will engage if this order is confirmed, because pedestrians will be obliged to use the road instead; failure to do this will be judicially reviewable. Improvements to the junction with the A162 will be required as the speed limit here is 60 mph and it requires crossing.</p> | <p>2</p> |
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Officer Comment:

The public will not be obliged to use the road. The Council would not be diverting the Footpath onto an alignment that took pedestrians to any particular section of the road, and therefore would not be imposing the Council's values as to the safety of the road, or parts of it, versus the Footpath, upon the public. It would be a matter for the public to choose whether to use the road or not as they saw fit. This objection illustrates the purpose of submitting the Order to the Secretary of State for determination.

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| <p>(xvii) The safety case for closure is vastly exaggerated, being based on booked train movements rather than actual data. (Objector 2 estimates 15 trains a day).</p> | <p>2, 3</p> |
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Officer Comment:

Data is based on actual movements, using the Real Time Trains website, which at the time of the Narrative Risk Assessment showed 174 trains a day and running for 24 hours per day*. Freight train frequencies vary unpredictably with demand. Diversions of other routes which are undergoing upgrades, will result in a future increase. (*N.R. response).

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| <p>(xviii) This footpath currently connects South Milford to Monk Fryston, Sherburn aerodrome and Bishops Wood and its loss would result in a greatly diminished network. Other routes do not exist.</p> | <p>5.</p> |
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Officer Comment:

Monk Fryston is some distance to the SE of South Milford and walking there via this Footpath is circuitous, there are alternatives via Lumby village, and via minor roads. The airfield and Bishops Wood can be accessed using this path plus a section of Common Lane to the east but these are also circuitous walks of several Km. which would take many people most of a day to complete as a circular walk. They can both be

reached as easily by starting off northwards towards Sherburn in Elmet, or via Monk Fryston using minor roads, a Bridleway and other Footpaths. The Footpath in question is somewhat isolated from the wider network.

8.2 Responses in support of the Order (at the Informal Consultation) were as follows:

- One local resident with land near (east of) the A162 sent in a letter of support with three grounds; referred to below as Supporter 1. This representation was received to the initial Informal Consultation.

Grounds for Support	Supporter
<p>(i) The road crossing of the A162 at the western end of Common Lane is safer than the one at the western end of the Footpath (due to a bridge in the line of sight at the latter), despite being wider.</p>	<p>1.</p>
<p>Officer Comment: No official comment – Definitive Map Officer is not qualified to make this nature of judgement.</p>	
<p>(ii) Common Lane serves a wider sector of the community better than the Footpath because it has a higher highway status and has always been well used by non-motorist users</p>	<p>1.</p>
<p>Officer Comment: This statement may be true as written, but the NYC Countryside Access Service does not believe it can reasonably arbitrate on the routes' relative safety. The Extinguishment application is on the basis of an expert assessment of the rail-crossing on its own merits.</p>	
<p>(iii) The existing Public Right of Way was used by railway workers to walk from the railway cottages in South Milford to their work; it traversed the northern edge of a field, crossed the railway and went along the base of the railway embankment to Gascoigne Wood sidings and was never meant to be used by the general public, being on a railway embankment.</p>	<p>1.</p>
<p>Officer Comment: This may or may not have been true but it is by now unverifiable, in any event the route was recorded as a public right of way on the Definitive Map following the NPAC Act 1949 demonstrating its current public status.</p>	

9.0 Representation made by the local member

9.1 The Local Member did not oppose the Order at the Formal Consultation but had opposed it at the Informal Consultation. He had stated that he did not feel Network Rail had at that time made a clear and compelling case based on evidence. He accepted the organisation is committed to closing crossings on the grounds that trains and pedestrians do not mix, but he believed that correct procedures had not been followed in the past.

10.0 Financial implications

- 10.1 If the opposed Order were to be submitted to the SoS, the Order would be resolved by written representations, a Local Hearing or a Public Inquiry.
- 10.2 There would be a non-rechargeable cost to the Authority in preparing a submission to the SoS and responding to any queries raised by the SoS and these costs would be for officer time which would be met by the respective staffing budgets. If the Inspector chose to hold a Public Inquiry or Local Hearing, the costs of arranging, hosting and supporting the Inquiry/Hearing would fall to the Council, which excluding any external advocacy, would be likely to be less than £1,000.

11.0 Equalities implications

- 11.1 There are no significant equalities implications arising from this report.

12.0 Legal implications

- 12.1 The opposed Extinguishment Order would be determined by an Inspector appointed by the SoS, by way of, as stated above, either a Public Inquiry, a Local Hearing or written representations.
- 12.2 The Inspector, on the basis of the legal criteria summarised in paragraph 4.3 above, will decide whether or not to confirm the opposed Order. If he/she decides to confirm the Order, the existing route would be removed from the Definitive Map and Statement.

13.0 Climate change implications

- 13.1 There are no significant climate change implications arising from this report.

14.0 Current decisions to be made

- 14.1 The decisions to be made at this stage are, firstly, whether the Order is to be abandoned, or is to be forwarded to the SoS for resolution.
- 14.2 Secondly, if it is decided that the matter is to be forwarded to the SoS then a decision will also need to be made, namely which stance the authority would take within its submission to the SoS towards the confirmation of the Order; that is the Authority needs to decide if it:
- supports confirmation of the Order, or not
 - considers the circumstances are so finely balanced or are particularly unclear and wishes to take a neutral stance.

15.0 Conclusions

- 15.1 The NYC Countryside Access Service does not believe it can reasonably arbitrate on the relative safety of level crossings versus any alternatives; Network Rail is the specialist in terms of public safety in the vicinity of railways, an area which NYC would not be able to comment meaningfully upon. By making the Order NYC was responding to an application based on the assessment of the specialists as to the safety of the level crossing on its own merits.

- 15.2 Whilst some objections to the proposed loss of the footpath have been received there is also some acceptance by the public that the risk to the public cannot be ignored, and that there is no realistic alternative to the path being extinguished.
- 15.3 The Assistant Director, Integrated Passenger Transport, Licensing, Public Rights of Way and Harbours has approved that it would be appropriate that the final decision on this matter is made by the SoS who have experience of making such comparative assessments relating to public safety, from dealing with other similar cases across the country. It is felt that the most appropriate procedure now is the determination of the opposed Order by the SoS.

16.0 Recommendation

- 16.1 It is therefore recommended that: the opposed Extinguishment Order should be referred to the Secretary of State and that the Authority takes a neutral stance towards the confirmation of the Order within its submission to the SoS.

Appendices:

APPENDIX 1 – Redacted copy of the Application Form

APPENDIX 2 - Extract from Milford Network Rail Safety Assessment

Background Documents: File Ref: SEL/2023/03/EO

PAUL THOMPSON

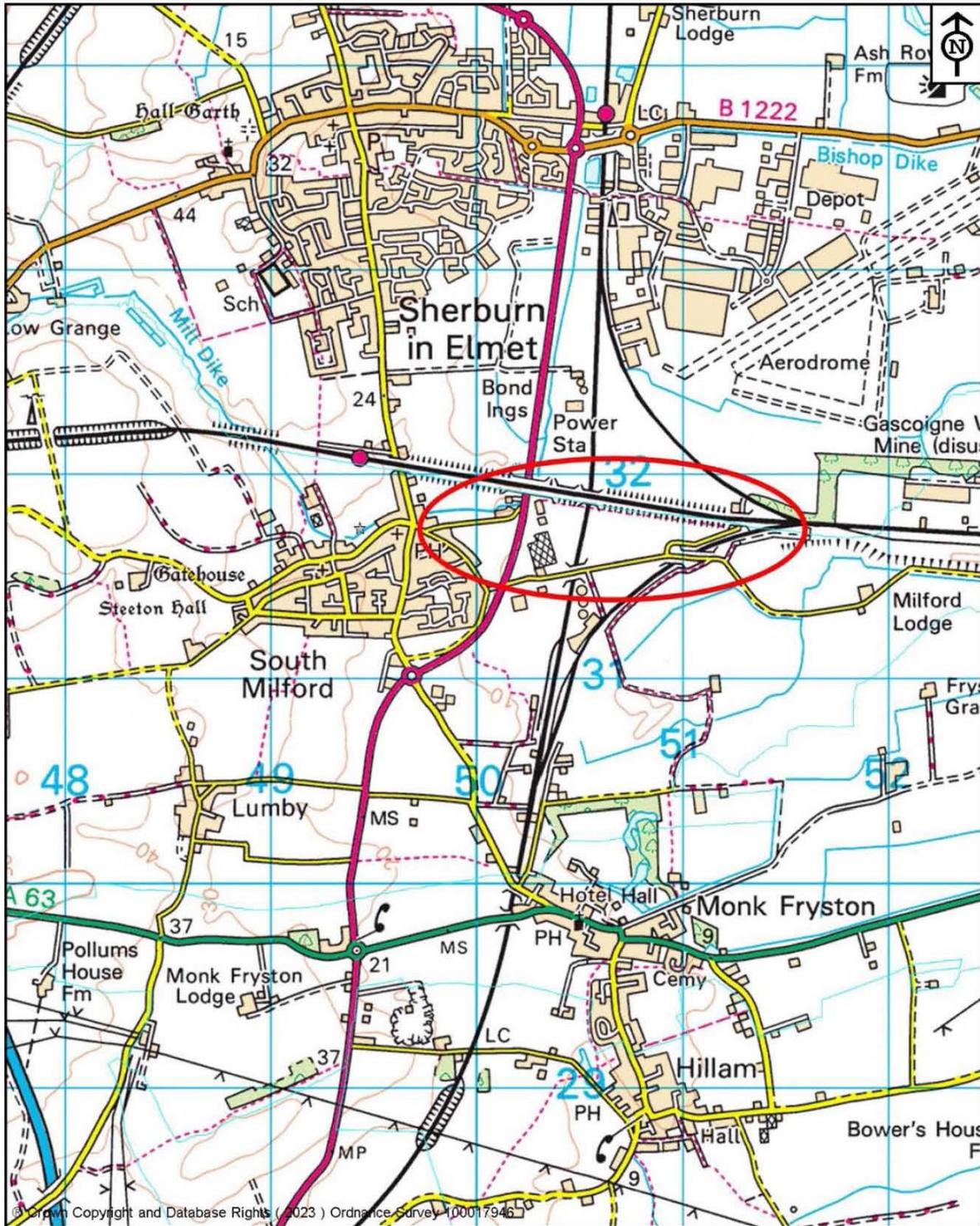
Assistant Director – Integrated Passenger Transport, Licensing, Public Rights of Way & Harbours

Report Author – ROBIN RICHARDSON – DEFINITIVE MAP OFFICER

Presenter of Report – PENNY NOAKE – PRINCIPAL DEFINITIVE MAP OFFICER

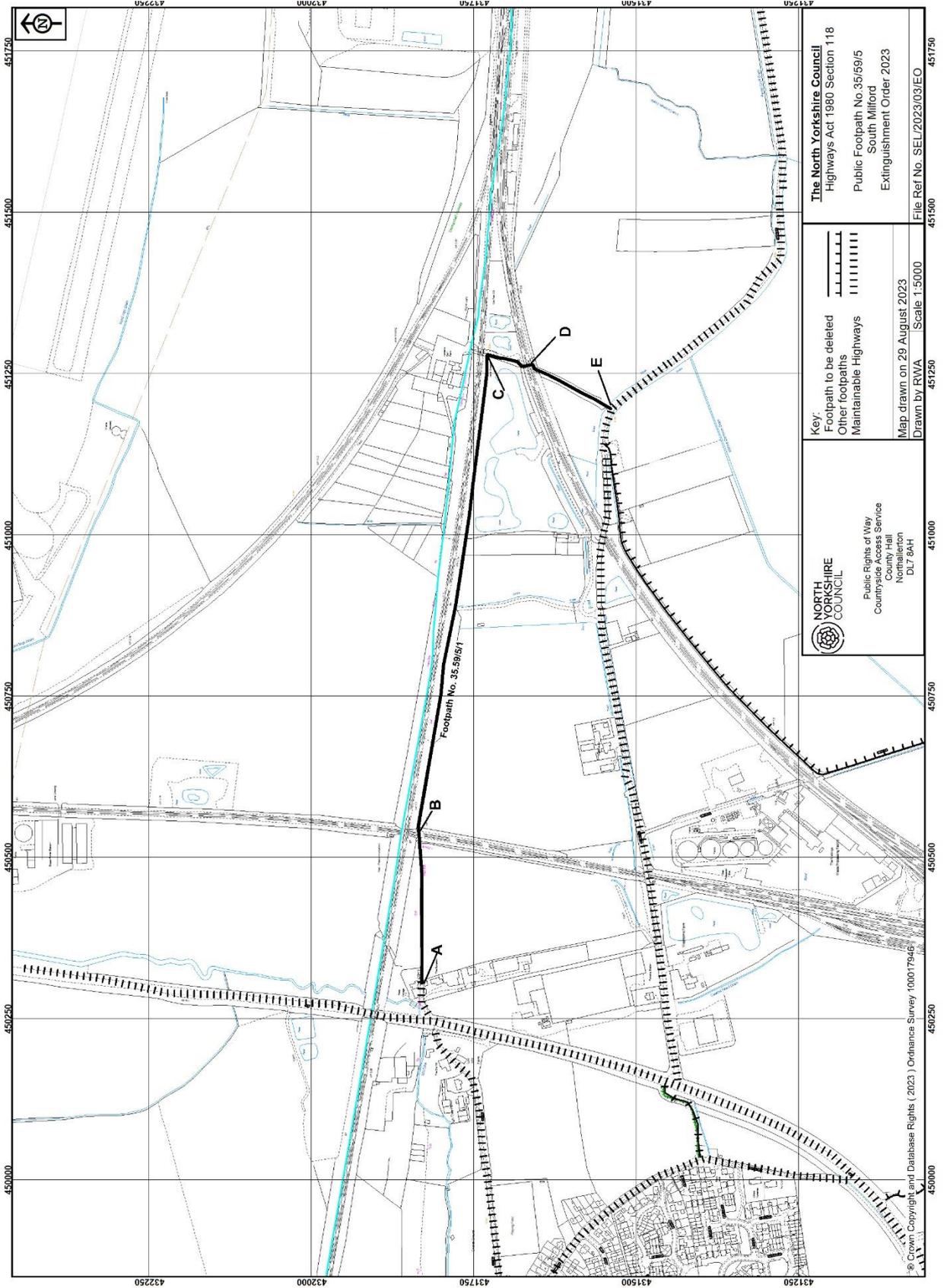
Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

PLAN 1



 <p>NORTH YORKSHIRE COUNCIL</p> <p>Public Rights of Way Countryside Access Service County Hall Northallerton DL7 8AH</p>	<p>KEY</p> <p>Public Footpaths ————</p> <p>Bridleways ————</p> <p>Map drawn on 26 July 2023 Drawn by RWA Scale 1:25000</p>	<p>The North Yorkshire Council</p> <p>South Milford Location Plan</p> <p>SEL/2023/03/EO</p>
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PLAN 2





**REQUEST FOR A RAIL CROSSING EXTINGUISHMENT ORDER TO BE MADE
UNDER SECTION 118A OF THE HIGHWAYS ACT 1980
(INSERTED BY THE TRANSPORT AND WORKS ACT 1992)**

The following questions are to be answered and the information and maps requested to be supplied by the applicant to North Yorkshire Council which is to be requested to make the order. Circle/delete the relevant answers shown in some of the questions. **Note:** the council will need all the relevant information to enable them to proceed.

FOR AUTHORITY'S USE ONLY

File Ref:

Date acknowledged:

1. RAIL CROSSING TO BE EXTINGUISHED

- a) Name and location of rail crossing (including Grid Reference and Parish or District in which it is located).

Milford Level Crossing, South Milford Parish, Selby, GR 45053:431834

- b) Name(s) and Number(s) of any footpaths and/or bridleways and/or restricted byways leading to the crossing to be extinguished. (Indicate whether footpath or bridleway or restricted byway).

Public Footpath 35.59/5/1 to be extinguished

- c) Length in metres of any path or way to be extinguished:

Approximately 1204 metres

- d) Description of length of any path or way to be extinguished by reference to terminal points shown on attached map which must be to a scale of not less than 1:2,500 or, if no such map is available, on the largest scale readily available. (Please give grid references for the ends of the path or way and provide the map showing the section of path to be extinguished in brown).

From 450312:431829 on the west of the railway, heading in an easterly direction over Milford level crossing (450535:431834) then proceeding in an easterly direction to Nordens Barn Farm (451279:431732). Then heading in a southerly over Markham Lane Level Crossing (Markham Lane) to 451262:431668, then continuing in a southerly direction to Common Lane at 451192:431540 shown coloured brown on the attached plan titled 'Milford Level Crossing 118A Plan'

- e) List the name (s) and Address(es) of the owners, lessees and occupiers of the land on either side of any path or way to be extinguished.

Landowner	Address	Interest	Title number if registered
[REDACTED]	[REDACTED]	Freehold	N/A
[REDACTED]	[REDACTED]	Freehold	NYK371230
[REDACTED]	[REDACTED]	Freehold	NYK117208
[REDACTED]	[REDACTED]	Freehold	NYK312285
[REDACTED]	[REDACTED]	Freehold	NYK130763 NYK138566 NYK79585
[REDACTED]	[REDACTED]	Freehold	NYK420384

- f) Have you obtained the written consent of every person having an interest in the land over which any path or way to be extinguished passes, in so far as such consent is needed?

~~YES~~ / ~~NO~~ / **NOT NEEDED**

~~If YES, enclose all the written consents.~~

~~If NO, enclose all written consents that you now possess, and give particulars of those where consent has been refused or has yet to be obtained.~~

Network Rail states as the application is under Rail Safety, prior consent from landowners is not required.

- g) Are you prepared to enter into an agreement with North Yorkshire Council in accordance with section 118A (5) – (see regs)

YES NO

If NO give reasons.

- h) Is the crossing, or any path or way to be extinguished, subject to any limitations or conditions?

YES NO

If YES, give details.

2 gates either side of Milford Level Crossing and 2 stiles either side of Markham Lane Level Crossing.

The Crossing is also subject to a TTRO (Temporary Traffic Regulation Order)

- i) Give reasons for the proposed extinguishment of the rail crossing (use separate sheets if necessary). Include information about:
- i) The use currently made of the existing path, including numbers and types of users, and whether there are significant seasonal variations, giving the source for this information (any circumstances preventing or inhibiting such use must also be mentioned);

There is no current use of the level crossing. Due to safety concerns, the Level Crossing Manager instructed that the crossing (where footpath 35.59/5/1 crosses the operational railway) be locked out of use on the basis there is no mitigation available that would enable the level crossing to be made compliant to allow its reopening. TTRO have been in place since 3rd September 2020 and have been extended whilst Network Rail investigated all available options. At the time of applying under s118A to extinguish the route, a TTRO is in place. The expectation is that a further extension to this will be requested until such time that a permanent solution is found and implemented.

When the crossing was available to use, the most recent census (12/03/2020 to 12/04/2020) identified 20 pedestrians crossing 40 times in total. The footage showed that all but 1 user, turned back immediately and traversed back over the crossing again. The census identified a number of vulnerable users (defined as a user who is at a greater risk when using level crossings) such as young children, users with dogs, users wearing ear buds or using mobile phone devices when crossing the line.

- ii) The risk to the public of continuing to use the present crossing, and the circumstances that have given rise to the need to make the proposed Order;

The crossing is known in railway terminology as a “passive” crossing; it does not use forms of mitigation, such as warning lights, telephones or audible alarm system (i.e. covtec which sounds an alarm at the crossing itself). Users are asked to “Stop, Look and Listen” but it is ultimately down to their own judgement as to when they feel it is safe to cross the railway.

Network Rail's Level Crossing Manager has assessed that the crossing as being unsafe, and it cannot reasonably be made safe for the following 3 reasons;

1. Sighting deficiencies
2. Audibility and
3. The risk of hidden trains ("Second Train Coming")

1. Sighting deficiencies.

Sighting is severely limited at the crossing due to a railway bridge carrying the Hull to Leeds (HUL3) railway over the Normanton to Colton Junction Line (NOC) in very close proximity to the crossing which means that users have less visibility of oncoming trains. The bridge is approximately 16 metres from the level crossing and blocks sighting when members of the public are stood at either side of the crossing. This means members of the public are unable to accurately assess if it safe to cross the railway at the crossing.

Trains passing over the level crossing can travel up to 80 mph in both directions. In order to allow sufficient time to cross the railway safely, the distance users need to be able to see, to judge that it is safe to cross, when stood at the crossing (from either side) is 452 metres. This is not achievable at this level crossing because of the railway bridge obstructing the sightline. Common Lane road bridge to the east of the crossing also limits the available sighting. This risk cannot be mitigated against, as neither bridge can be moved.

The below table indicates the short fall sighting distances

Location of user	Minimum sighting distance required – metres	Measured sighting distance	Shortfall between Measured and Minimum
Up side looking south towards Selby (i.e., towards the nearside approaching train)	452	379	72
Up side looking toward York	452	683	N/A
Down side looking toward York	452	140	310
Down side looking toward Selby	451	351	100

It should be noted that 'Down Side looking toward York' is in the direction of the rail over rail bridge where 'Down Side Looking towards Selby' is in the direction of Common Road Bridge.

Vulnerable users such as children, people on mobile phones, and with dogs have been identified at this crossing, and need additional time to cross the crossing safely, therefore the distance referenced above will need to be longer.

2. Audibility.

Audibility is an issue at this crossing that cannot be mitigated to allow the crossing to be made safe for use by the public, using reasonably practicable means. The level crossing currently has whistle boards that provide a warning of approaching trains but they are ineffective because they do not provide sufficient warning to users that a train is approaching the crossing.

A whistle board tells a train driver to sound their horn, providing users at a level crossing with an audible alert of an approaching train. At Milford level crossing the whistle boards are placed 408 metres on the up line (heading south) and 363 metres on the down line (heading north) from the crossing.



Under current ORR (Office of Rail and Road) and Level Crossing standards whistle boards should not be positioned further than 400 metres from a level crossing because it cannot be heard at the crossing. At Milford level crossing whistle on the down line is situated within the 400m distance, but the whistle board on the up line is not. This therefore results in members of the public being unable to hear whistle of an approaching train at the appropriate volume, warning them not to cross. The whistle boards on the up or down line cannot be moved to make it compliant for vulnerable users. Both whistle boards would need to be moved considerably further than the 400m distance to accommodate the traverse of a vulnerable user.

At Milford level crossing, audibility is further hindered by the bridge carrying the HUL3 line over the NOC line (approximately 16 metres from the crossing) and train movements/ noise at Milford sidings which starts circa 400 metres south of the crossing. Additionally aircraft from Sherburn Airfield may hinder audibility of trains further.

3. Second train coming.

At Milford level crossing it is known that “hidden” trains are an additional risk to members of the public using the level crossing. This is when one train generally travelling away from the level crossing blocks visibility of another train approaching the level crossing, on the other line. This is a significant risk as members of the public may deem the crossing safe to cross, as they have seen one train but are unable to view the second train coming in the opposite direction and therefore are unaware that another train is approaching and this is further exacerbated by the limited sighting and audibility issues in both the up and down directions.

As trains are timetabled to run 24 hours a day on this railway line there is a potential for this at any time during the day/night. There are also engineering trains and special trains such as steam trains that are not scheduled into a timetable which may also cause the ‘hidden’ train effect at any time.

- iii) The effect of the loss of the crossing on users, in particular whether there are alternative rights of way, the safety of these relative to the existing rail crossing, and the effect on any connecting rights of way and on the network as a whole;

If the footpath is extinguished the crossing can be closed, and the public is therefore protected from the risk that the crossing poses. In this instance this application is the last resort after all reasonably practicable measures (including relatively small changes, and a diversion of the Public Footpath) have been thoroughly explored, tested and discounted.

Public Footpath No. 35.59/5/1 (footpath No. 5) of which this application seeks to extinguish) does not connect to any other Public Rights of Way but is connected to two national speed limit Public Roads- the A162 and Common Lane (See Appendix 1). Users of footpath No. 5 currently must navigate one or both these roads to use the footpath. The A162 is a national speed limit road, where pedestrians crossing to use footpath No. 5 also have limited sighting due to the railway bridge to the north (carrying HUL3 line). Once over the A162 users would either use footpath No. 5 or use Common Lane. The Level Crossing carrying footpath No.5 has been closed on and off for the last 10 years, during which time members of the public would have had to use Common Lane instead if they wanted to access the remainder of Cross Lane to the east. Reported data along Common Lane (from Crashmaps.co.uk) indicate in the last 23 years (2021- 1999) there have been 2 minor incidents along Common Lane (2009 and 2013) and one serious incident at the junction with the A162 (2009) all involving vehicles. (See Appendix 2)

Common Lane, being the alternative route for pedestrians, forms access to Waste Processing Facilities as well as a dog rescue/ kennel business before continuing in an eastern direction. HGV's use Common Lane, over the road bridge to Turpin Lane to access the Waste Processing Facility. Information from one of the businesses along Turnpin Lane, Maltings Organic is “We are a 24hr facility with permits in excess of 200k tons. Our current vehicle movements are in excess of 30 HGV movements per day and 50 staff vehicle movements.” Because the road bridge over Common Lane is one way controlled by traffic lights this means traffic would only travel in one direction at a time and once over the bridge, road traffic along Common Lane is lighter. Network Rail is prepared to fund the cost of reasonable improvements for pedestrians on Common Lane (should any be identified) where the costs are within reason.

- iv) The opportunity for taking alternative action to remedy the problem such as a diversion, bridge or tunnel, or the carrying out of safety improvements to the existing crossing;

A Narrative Risk Assessment (NRA) was undertaken by the Level Crossing Manager (LCM) to identify if additional mitigations or any small changes could be implemented to reduce the risk at this crossing. It was identified that there are no mitigations or changes that could be made that are viable or financially proportionate given the crossing was lightly used when it was available. As such, closure of the crossing is the only appropriate/ way to address all of the safety concerns and protect members of the public.

Diversion of the Public Footpath- Network Rail has previously applied for a diversion application (under Rail Safety 119A of the Highways Act 1980) which would have seen the footpath diverted on the western side of the railway and link onto Common Road, it would still have required users to walk on part of Common Lane. This however, received 5 objections including the landowners and Parish Council and was ultimately rejected by the Local Highway Authority (LHA) on 7th December 2022. A diversion on the east of the railway was considered by Network Rail, but ultimately ruled out due to significant physical works to bring the route into existence (most likely a ramp up to meet Common Lane bridge) and the level of usage of the Public Footpath.

Bridge- Whilst it would be physically possible to construct a footbridge at this crossing location it is not considered a viable option for the following reasons- it would need to straddle 2 tracks of operational railway with the estimated cost in excess of £2 million. As an arm's length government body, Network Rail is funded by the taxpayer and is required to demonstrate that it is managing its funding appropriately. Given the minimal levels of public use, a footbridge is considered to be a disproportionate cost.

Tunnel- Network Rail has not explored the feasibility of installing an underpass here but if it were possible, the cost of works would be in excess of £10m.

Aside from major changes (i.e., bridges/ underpasses) the following relatively small changes have also been considered, but ultimately discounted.

- **Installing telephones** - Telephones at Public Footpath only crossings are not now recognized as suitable industry risk mitigation due to the high levels of non-compliance with the instructions to call from experience at other sites, plus additional workload for signallers etc. It is therefore considered to be unsuitable at this location.
- **Covtec-** Whistle boards must be compliant to enable covtec to be successfully used, as this is a supplementary audible warning device. As the whistle boards at Milford are not compliant, covtec is not suitable at this location.
- **Making improvements to the permanent way crossing point to speed up crossing times** - Whilst an anti-slip deck would minimize any slips, trips or fall hazards it does not address the sighting risks and the issues with ambient noise referenced above. Additional signage at the crossing is not considered to be appropriate as it would not address the safety concerns and would not mitigate the lack of sighting.
- **Improving the sight lines by removal of vegetation, trees, and hedges – reasonably practicable** - The sighting is hindered by the rail bridge to the north of the crossing, which is a permanent structure and would require relocating the HUL3 line for a considerable distance to achieve the required sighting lines. Discussions considering moving the level crossing (either further north or further south) have also concluded that the sighting

requirements still would not be met, rather the risk would be moved from one location to another.

- **Miniature stop lights (msl)**

An overlay system would not be feasible at this location due to proximity of signals. It is possible for a system fully integrated into the signalling system to be used at this site, however it has an estimated cost of £1.5 million. The expenditure of such a sum of money at this particular crossing, is considered to be disproportionate.

- **Reducing the speed of rolling stock**

The line speed at this location is 80 mph. The speed of all trains would have to be significantly reduced to bring the crossing into compliance- the estimated speeds that would make the crossing compliant is approximately 20mph. This would have a significant and extremely negative effect on the timetable and operational efficiency across this route and it is therefore not considered to be a practical measure. This measure is also not likely to be accepted by Train Operating Companies (TOC) or Freight Operating Companies (FOC).

- **Constructing steps, waiting platform and decking over the railway.**

Not appropriate at this location to reduce the risk to a suitable level.

- **Combining the above/ any option**

Combining the above options/ or a few of the options would not mitigate the risk at the crossing sufficiently to an acceptable level.

v) The estimated cost of any practicable measures identified under (iv) above;
The costs of the measures outline in (iv) are set out above and the associated costs are also referenced and fall within a bracket of £100,000 to £10 million.

vi) The barriers and/or signs that would need to be erected at the crossing or the point from which any path or way is to be extinguished, assuming the Order is confirmed;

Network Rail will erect fencing at the site of the level crossing to prevent access to the existing route. There is already palisade fencing on one side of the crossing which will need to be extended and the other side will be to be palisaded too.

Please note that the reasons given may be included in the initial consultation with users groups and other local authorities.

2. NAMES AND ADDRESSES OF PUBLIC UTILITY UNDERTAKERS IN AREA (whether or not their apparatus is likely to be affected):

- a) Public gas supplier
British Gas plc
Millstream, Maidenhead Road, Windsor, Berkshire SL4 5GD.
- b) Public electricity supplier
National Grid plc 1-3 The Strand London WC2N 5EH

- c) Water undertaker
Yorkshire Water Services limited
2nd Floor, Western House Western Way
Halifax Road Bradford BD6 2LZ
- d) Sewerage undertaker (if different)
Same as water undertaker
- e) Public telecommunications operator
British telecommunications plc
Providence Row, Durham, DH98 1BT
- f) Others (specify).
None known

3. MAPS AND PLANS

List all maps and plans, accompanying this request giving details of their scale and content. In addition to the map mentioned in paragraph 1(d), this must include a map of a scale not less than 1:25,000 or, if no such map is available, on the largest scale readily available, showing the crossing and any paths or ways to be extinguished, and any connecting paths or ways, within the context of the general rights of way network.

4. OTHER INFORMATION

Give any other information you consider relevant

5. CHARGES PAYABLE BY THE APPLICANT

The amount payable in respect of making the Order will not exceed the costs actually incurred and will comprise the following elements:

- A. The administration charge for the making of the Order.
- B. The full cost of two newspaper advertisements both for the making and for confirming the Order.

See charges schedule (as attached)

DECLARATION

I/ We

(a) understand that no authority for the extinguishment or obstruction of any path or way in this request is conferred unless or until a Rail Crossing Extinguishment Order has been confirmed and comes into force;

(b) request that a Rail Crossing Extinguishment Order be made to stop up the crossing and any path or way described in Section 1 above; and

(c) declare that, to the best of my / our knowledge and belief, the factual information included in this form is correct.

Signed: [REDACTED]

Name in Capitals: [REDACTED]

On behalf of (name or railway or tramway operator) Network Rail Infrastructure Limited.

Address: Network Rail Infrastructure Limited

Registered office: Waterloo General Office, London SE1 8SW

Registered in England and Wales No. 02904587

For Correspondence : Floor 4B, George Stephenson House, Toft Green, York, YO1 6TJ

Position held: Liability Negotiations Adviser

Date: 13/06/2023

Please return this form and associated documents to: Definitive Map Team, Countryside Access Service, North Yorkshire Council, Northallerton, DL7 8AH. We require a signed copy of the application form to be sent by post to this address.

OFFICIAL

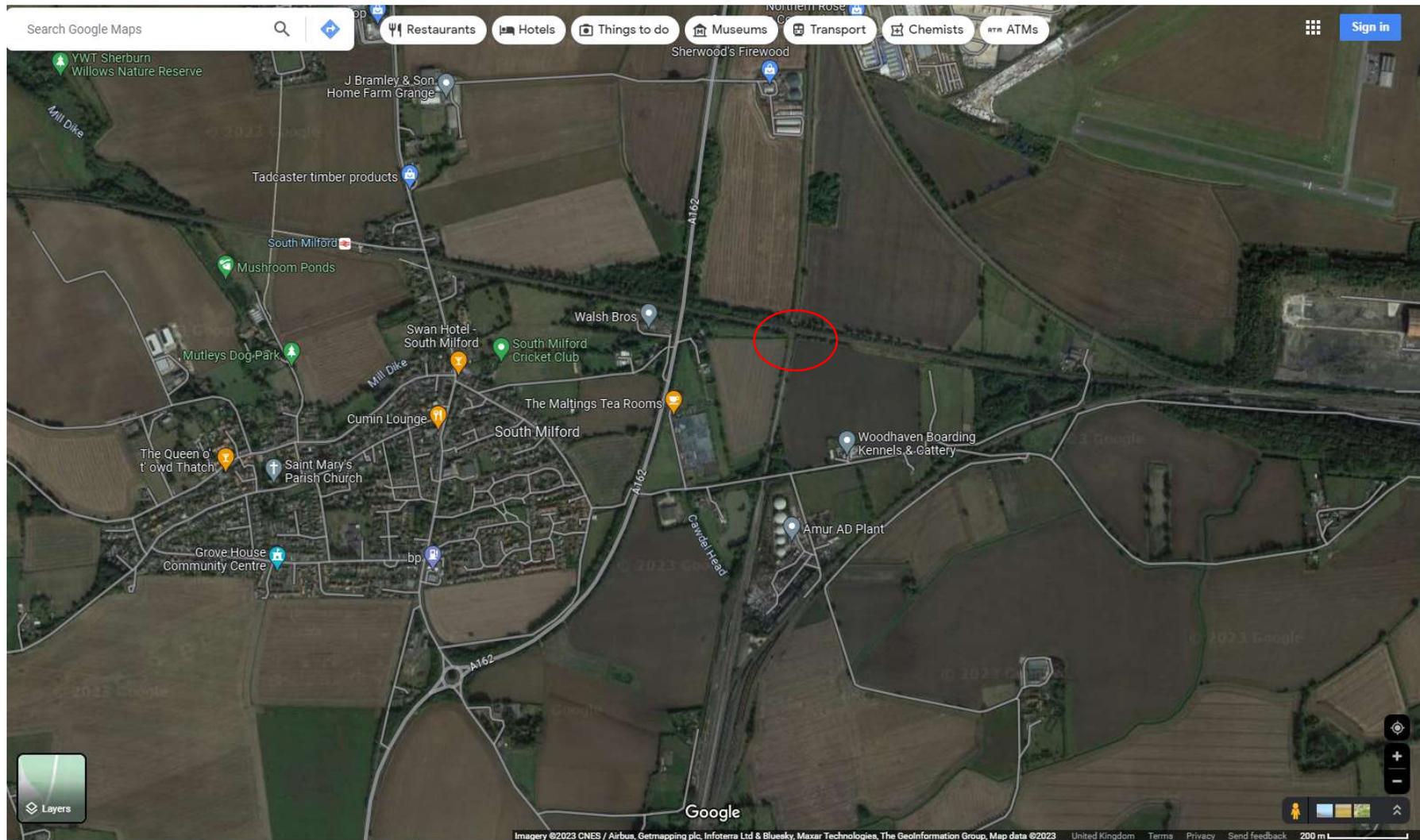
Supplemental Information- 118A Extinguishment Application- Milford Level Crossing

Appendix 1- location plan



Milford Level Crossing shown in red circle

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Milford Level Crossing shown in red circle

Appendix 2- Data from crashmaps.co.uk

The screenshot displays the CrashMap website interface. At the top, the browser address bar shows 'crashmap.co.uk/Search'. The website header includes the logo 'crashmap.co.uk', the text 'CrashMap Data: Great Britain 1999 - 2021 (verified)', and navigation links for 'Home', 'CrashMap Pro', 'FAQ', 'Contact us', and 'Log In'. The main map area shows a street view of South Milford with numerous crash markers. A legend in the bottom-left corner, titled 'Incident Severity', shows three icons: a yellow arrow for 'Slight', a red arrow for 'Serious', and a black arrow for 'Fatal'. Below the legend, it states '78 results found'. On the right side, a filter panel is visible with the following sections: 'Location' (set to 'South Milford'), 'Years' (set to '23 of 23 years selected'), 'Severity' (with checkboxes for 'Fatal', 'Serious', and 'Slight', all of which are checked), 'Casualty Types' (set to 'All Casualty Types'), and 'Vehicles Involved' (set to 'All Vehicle Types'). A 'Search' button is located at the bottom of the filter panel. The map also shows various local businesses and landmarks such as 'Sherburn Aero Club', 'Sainsbury's Distribution Centre', and 'The Motorist Garage, MOT Centre & Bodyshop'.

The screenshot displays the crashmap.co.uk interface. At the top, the logo and navigation links (Home, CrashMap Pro, FAQ, Contact us, Log In) are visible. The main area is a map of South Milford, populated with crash markers of different colors and shapes representing severity levels. A sidebar on the right contains filters for Location (South Milford), Years (23 of 23 selected), Severity (Fatal, Serious, Slight), Casualty Types (All Casualty Types), and Vehicles Involved (All Vehicle Types). A search button is located at the bottom of the sidebar. Three incident detail pop-ups are overlaid on the map, providing specific information for each crash event.

Incident Severity

Slight Serious Fatal

99 results found

Incident Details
Date: 18/12/2009
Severity: Slight
Number of Vehicles Involved: 2
Number of Casualties Involved: 1
View Detailed Report

Incident Details
Date: 30/01/2009
Severity: Serious
Number of Vehicles Involved: 2
Number of Casualties Involved: 3
View Detailed Report

Incident Details
Date: 20/12/2013
Severity: Slight
Number of Vehicles Involved: 1
Number of Casualties Involved: 1
View Detailed Report

Map Satellite

CrashMap Data: Great Britain 1999 - 2021 (verified)

Home CrashMap Pro FAQ Contact us Log In

Hide

Location: South Milford

Years

23 of 23 years selected

Severity

Fatal

Serious

Slight

Casualty Types:

All Casualty Types

Vehicles Involved:

All Vehicle Types

Search

Measure	Cost (where known)	Notes
Closure of the level crossing due to rail safety	Estimated £4,000,000 (cost of pedestrian over-bridge spanning two running lines is £2,100,000)	Due to the identification of vulnerable users in this location an Equalities Act compliant structure capable of traverses by users with vulnerabilities is likely to be required here, requiring a significant land purchase as well as significantly sized structure. Due to the proximity of the HUL3 rail line, with may also require some diversion of the public footpath. This option does not prove to be of cost benefit.
Closure by statutory diversion of public right of way	£50,000	Passed CBA. A statutory stopping up of the public right of way over the crossing has been sought.
Upgrade to Overlay Miniature Stop Light Crossing	£150,000	This option is not feasible at this location due to the proximity of signals and South Milford Station to the crossing. These features are outside of the usability criteria of this technology
Upgrade to a Miniature Stop Light Crossing that is fully integrated with the signalling system.	£1,500,000	This option would provide a level crossing solution integrated with the signalling system to overcome the limitations of an OMSL. An integrated MSL will allow a compliant solution regarding the signals within the strike in. However, the presence of the station so close to the level crossing would still lead to significant variability in level crossing warning time, which is outside of the design standards. Extended warning times are known to lead to increased levels of misuse. This option is not regarded as feasible and is rejected
Installation of telephones	£10,000	Telephones at Public Footpath only crossings are not now recognized as suitable industry risk mitigation due to the high levels of users ignoring this mitigation and failing to telephone. With the instructions to call from experience at other sites, this mitigation is deemed unsuitable. Plus, this creates additional workload for signallers etc
Installation of a supplementary audible warning device (SAWD)		This is a device that is fitted in conjunction with existing compliant whistle boards and provides a warning sound at the crossing itself. This option is not suitable as the whistle boards are non-compliant at this location. This system has also been phased out due to other mitigation will be needed to replace it come 2024.
Crossing deck and track level improvements		Whilst an anti-slip deck would minimize any slips, trips or fall hazards it does not address the sighting risks and the issues with ambient noise referenced above. Additional signage at the crossing is not considered to be appropriate as it would not address the safety concerns and would not mitigate the lack of sighting. The track levels result in undulations over the crossing though again this would not mitigate the lack of been able to sight or hear trains. The removal of excess vegetation would not mitigate the

		issues at this location. The sightlines are affected by permanent structures and so clearing vegetation would not help sight/hear trains. The option to move the crossing further North or South was also looked at though doing this would still not achieve the required sighting and would only be moving the current problem to a different location
Constructing steps, waiting platform and decking over the railway.		Creating a safe access area would not aid in the sighting/hearing of an approaching train and so this option is discounted.
Introduce speed restriction 20mph		The line speed at this location is 80 mph. The speed of all trains would have to be significantly reduced to bring the crossing into compliance- the estimated speeds that would make the crossing compliant is approximately 20mph. This would have a significant and extremely negative effect on the working timetable and operational efficiency across this route and it is therefore not considered to be a practical measure. This measure is also not likely to be accepted by Train Operating Companies (TOC) or Freight Operating Companies (FOC)
Combination of some of the no engineering solutions options above		A combination of some of the short-term options considered above is not considered to mitigate the inherent issue at this crossing which is the ability to sight and hear trains. The options are deemed insufficient to mitigate the risk so far is reasonably practicable.