

PERTH AND KINROSS COUNCIL

ENVIRONMENT AND INFRASTRUCTURE COMMITTEE

7 NOVEMBER 2018

**DIVERSION OF RIGHT OF WAY AND CORE PATH AT PANHOLES LEVEL
CROSSING, BLACKFORD**

**Report by the Executive Director (Housing and Environment) (Report No.
18/370)**

This report relates to the proposed diversion of a right of way and core path, the stopping up of the pedestrian level crossing and the construction of a replacement footbridge at Panholes, near Blackford.

1. BACKGROUND TO THE PATH

- 1.1 Panholes is a public level crossing given that it was recognised as *public* in the Scottish Central Railway Act of 1845. The route was asserted as a public pedestrian right of way on 5 May 1979 and was also included as a core path within the Core Paths Plan adopted on 25 January 2012. The right of way reference is 21/29/3 and the core path code is BLFD/3. The route is locally important as it connects the village of Blackford with a network of paths to the north of the railway line. Public access around the village is otherwise constrained by A9 dual carriageway, by the railway as well as by the Allan Water and the Danny Burn.

**2. NETWORK RAIL REQUEST TO CLOSE THE LEVEL CROSSING AND
DIVERT THE PATH**

- 2.1 Network Rail Infrastructure Management has requested the Council to promote an Order under Section 208 of the Town and Country Planning Act for the Closure of the Panholes Level Crossing, Blackford; and the Diversion of the above path. That request is included at Appendix 1. A location plan is included at Appendix 2. A site plan showing the proposed diversion is included at Appendix 3. A Network Rail Justification Statement is included at Appendix 4.

**3. BACKGROUND TO THE STOPPING UP OF THE LEVEL CROSSING AND
THE PROPOSED FOOTBRIDGE**

- 3.1 Network Rail has a long standing policy of closing level crossings in the interests of public safety. The Panholes crossing has been identified for closure as it is difficult to maintain safe sighting relative to linespeed (90mph trains); a propensity for misuse due to the lack of “interlocking” between train signals and pedestrian gates which would prevent conflicting movements of trains and people; and the eventual electrification of the line which would compound the problem with faster accelerating, and quieter, trains.

- 3.2 Planning consent [18/01311/FLL](#) for the installation of a footbridge and provision of link to core path was granted on 6 September 2018. This consent is subject to a condition which requires the submission and agreement of a management plan which requires the developer to outline temporary diversions, signage and timescales for these during construction operations. Further conditions address trees adjacent to the path on the south side, the requirement to install a wheeling ramp for bicycles and the connection to the existing path on the north side of the tracks. The report makes reference to the requirement for an order to stop up and divert the path once consent is in place. We are awaiting the management plan, which as above, is subject the Council's written agreement.
- 3.3 It is recognised that this development is linked to Highland Spring's rail halt development, further detail of which is set out below.

4. BACKGROUND TO THE RAIL HALT, THE REQUIREMENT TO DIVERT THE PATH AND THE PROPOSED NEW RAIL CONNECTION AT THE WESTERN END OF THE SITE

- 4.1 Planning consent [15/01637/FLL](#) for the alterations and extension to the rail yard including associated works was initially granted 17 March 2016. This consent was subject to a condition relating to the diversion of the right of way and core path at the western end of the site.
- 4.2 Planning consent [18/01191/FLL](#) for alterations and extension to the rail yard including associated works (revised design and layout and addition of welfare cabin) Yard, Moray Street, Blackford was granted on 26 September 2018 and supersedes the 2016 consent. The revised layout includes a new rail connection at the western end of the rail yard site crossing the existing path as it goes across the existing level crossing. This consent was subject to a similar condition which requires a detailed plan and phasing proposal for the diversion including temporary arrangements to be made during construction works.
- 4.3 The rail halt allows Highland Spring to move a significant amount of their existing haulage off the road and onto the railway. Therefore, there are important sustainability and carbon reduction issues associated with it. The diversion of the core path will help to facilitate this.
- 4.4 Highland Spring and Network Rail have a collaborative working agreement to cover their respective developments.

5. PROPOSED DIVERSION OF THE RIGHT OF WAY AND CORE PATH

- 5.1 Section 208 of the Town and Country Planning (Scotland) Act 1997 provides a power for the stopping up and diversion of footpaths and bridleways where it is considered necessary to do so in order to enable development to be carried out in accordance with planning permission. This power applies to both core paths and rights of way and is considered the most appropriate mechanism to

formally stop up the level crossing and divert the path over the proposed new bridge.

- 5.2 If the Committee agrees, a Diversion Order must be published with a period of 28 days for representations or objections. If none are submitted or are withdrawn, the order can be confirmed. Where any representation or objection is not withdrawn, the order must be submitted to the Scottish Ministers for confirmation with a local inquiry to be held. Once confirmed, the Order will only be brought into force once the replacement bridge is complete and available for public use. This follows the approach adopted by Stirling Council in the case of the St Ninians Crossing in 2015-16.
- 5.3 The needs of wheelchair users, horse riders and cyclists were considered during initial discussions with Network Rail, as part of the Development Management process and addressed in the Report of Handling for the planning application. The proposed footbridge, which has steps rather than ramps, would restrict access over the railway for these groups, but it should be recognised that on the south side of the tracks the bridge over the Alan Water is not fully accessible, on the north side the land is steep and at the road-end there is a wicket gate.
- 5.4 It is considered that the diversion via the new bridge will provide a safer crossing and adequate pedestrian connections to the core paths on the north side of the village. The needs of other users, particularly cyclists, horse riders and wheelchair users are better met via the public highway manned barrier level crossing on the B8081 some 500 metres to the east of the Panholes Crossing.
- 5.5 Once the Order is made and advertised, notice will be served on the landowners and statutory undertakers. Blackford Community Council, the Scottish Rights of Way and Access Society, and the Perth and Kinross Outdoor Access Forum will also be consulted and invited to comment or object. The Access Forum have an important role to play in relation to the diversion as one of their statutory functions is to advise the local authority on matters to do with the exercise of access rights, the existence and delineation of rights of way or the drawing up and adoption of a plan for a system of core paths. The Blackford Community Council and the Access Forum were consulted in advance of the recent planning applications. Both organisations responded to Network Rail's planning application. The Community Council's response was neutral. The Access Forum and one other individual submitted objections, largely on the grounds of the design of the proposed bridge which has steps rather than ramps as outlined above.
- 5.6 As a consequence of the diversion order, the Council's Register of Public Rights of Way and the Core Path Plan will have to be amended to reflect the new path route, if approved.

6. CONCLUSION

- 6.1 The proposed diversion of the right of way and core path at Panholes is required in the interests of improved public safety and continued public access. It is also required for the construction of a replacement footbridge and the closure of the level crossing to be progressed. In addition, the proposed diversion facilitates the development of the adjacent rail halt and the new rail connection to the main line at the western end of that site.
- 6.2 It is considered that the diversion via the new bridge will provide a safer crossing and adequate pedestrian connections to the core paths on the north side of the village. The needs of other users, particularly cyclists, horse riders and wheelchair users are better met via the public highway manned barrier level crossing on the B8081 some 500 metres to the east of the Panholes Crossing.

7. RECOMMENDATIONS

- 7.1 It is recommended that the Committee:
- (i) agrees to the stopping up and diversion of the footpath from A to B via C (the level crossing) to an area of ground from A to B via D and E, as shown in Appendix 3, at Panholes, Blackford (pedestrian right of way 21/29/3 and core path BLFD/3), in terms of the Town and Country Planning (Scotland) Act 1997, Section 208;
 - (ii) authorises the Head of Legal & Governance to undertake the diversion order process to confirm the order, including participating in a local inquiry, if required;
 - (iii) authorises the Executive Director (Housing & Environment) to amend the Council's Register of Public Rights of Way and the Core Path Plan to reflect the stopping up and diversion order; and
 - (iv) agrees that the developer, Network Rail Infrastructure Limited should meet the costs associated with the Diversion Order.

Author

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Approved

Name	Designation	Date
Barbara Renton	Executive Director (Housing & Environment)	17 October 2018

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	Yes
Consultation	
Internal	Yes
External	Yes
Communication	
Communications Plan	Yes

1. Strategic Implications

Community Plan

- 1.1 The proposals relate to the delivery of Perth and Kinross Community Plan/Single Outcome Agreement in terms of the following priorities:
- (i) Giving every child the best start in life
 - (iii) Promoting a prosperous, inclusive and sustainable economy
 - (iv) Supporting people to lead independent, healthy and active lives
 - (v) Creating a safe and sustainable place for future generations

2. Resource Implications

Financial

- 2.1 There are no financial implications arising directly from this report.

Workforce

- 2.2 There are no workforce implications arising directly from this report.

Asset Management (land, property, IT)

- 2.3 There are no asset management implications arising directly from this report. The Council does not maintain the existing level crossing and will not maintain the proposed footbridge.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

- (i) Assessed as not relevant for the purposes of EqIA

Strategic Environmental Assessment

- 3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.

- (i) no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

- 3.3 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. Under the Climate Change (Scotland) Act 2009 the Council also has a duty relating to climate change and, in exercising its functions must act:

- in the way best calculated to delivery of the Act's emissions reduction targets;
- in the way best calculated to deliver any statutory adaptation programmes; and
- in a way that it considers most sustainable.

- 3.4 The proposals outlined within the report do not have a direct bearing on sustainability, however diversion facilitates the rail halt development which does have significant carbon reduction benefits associated with it.

Legal and Governance

- 3.5 The Head of Legal and Governance has been consulted in the preparation of this report.

Risk

- 3.6 The proposals within this report relate to the diversion order process which is subject to objections and a local inquiry. As outlined in the report the Order can only be confirmed once that is complete and will only be brought into force once the bridge is complete and available for public use.

4. Consultation

Internal

- 4.1 The Head of Legal and Governance has been consulted in the preparation of this report.

External

- 4.2 External stakeholders were consulted in relation to the planning applications which have now been consented.

5. Communication

- 5.1 Once the Order is made and advertised, notice will be served on the landowners and statutory undertakers. Blackford Community Council, the Scottish Rights of Way and Access Society, and the Perth and Kinross Outdoor Access Forum will also be consulted and invited to comment or object.

2. BACKGROUND PAPERS

- 2.1 To include Development Management Reports and any supporting documents?

3. APPENDICES

Appendix 1. Network Rail Letter requesting the closure of the level crossing and the diversion of the path.

Appendix 2. Location Plan.

Appendix 3. Site Plan showing the proposed diversion.

Appendix 4. Network Rail Justification Statement