

Appendix 4. Network Rail Justification Statement.



Closure of Panholes Level Crossing, Blackford and Diversion of Right of Way and Core Path

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1. Introduction

- 1.1 This Statement is submitted in support of a request by Network Rail that Perth & Kinross Council promote an Order for the diversion of a path across Panholes Level Crossing which lies to the north and west of the village of Blackford. Perth & Kinross Council advise that the crossing is part of an asserted right of way (29/3) and is part of the core paths network (BLFD/3).
- 1.2 The request is accompanied by a plan showing the extent of the closure and the route and nature of the diversion (Annex 1).
- 1.3 The closure of the crossing; the diversion of the paths; and the inter-relationship between these works and the development of the adjoining yard by Highland Spring has been discussed with Perth & Kinross Council at officer level and in the wider context as part of the Highland Spring Ministerial Task Force.
- 1.4 The Statement demonstrates that the closure and the diversion meet the legislative tests and that there are no material considerations which would prohibit the promotion of the Order.

2. Project Context

Panholes Level Crossing

- 2.1 Panholes Level Crossing is a public footpath crossing to the north of Blackford. The railway carries 75 passenger and freight trains per day and is in use for up to 21 hours per day. The level crossing has metal self-closing pedestrian gates and warning signs are present on both the north and south approaches to the level crossing. Network Rail has statutory duties regarding the safe and efficient operation and stewardship of its network. In compliance with its statutory duties and obligations, this crossing has been identified for closure for the following reasons:
 - Safety - provision of timetabled service to customers. The linespeed in the area (90mph) takes account of safe sighting for level crossing users. If safe sighting distances are reduced, and that can be by factors outwith Network Rail control, there is a risk that an emergency reduction in train speed may be introduced at some point; which would impact the train timetable. Stopping up would support compliance with statutory and licence obligations in this regard;
 - Safety – reducing misuse. Panholes has a significant propensity for misuse and; it is not possible for a signaller to close access to the crossing, either automatically or manually when a train is approaching. Stopping up provides the most appropriate solution to manage this risk; and
 - Safety – future electrification. This line will be upgraded in compliance with Network Rail licence obligations and will be electrified which will

introduce a new risk at a crossing which is subject to misuse. This risk (25kV electrified line) could further impact on any user being able to make an informed decision about crossing the line due to the presence of faster accelerating and quieter electric trains and is best managed via stopping up.

- 2.2 The most recent censuses of users of the crossing were undertaken in 2015 and 2017. Between 6th and 14th November 2015 (inclusive) there was an average total of 35 crossings per day. Between 30th May and 8th June 2017 (inclusive) there was an average total of 79 crossings per day; the higher number probably reflective of the season, better weather and more daylight hours. The closest alternative crossing of the railway is around 879 metres away (via the sports/play area, Abercairney Place and Moray Street/B8081) using Blackford Level Crossing.
- 2.3 Panholes currently meets all the conditions of suitability for a footpath crossing as per the Railway Safety Principles and Guidance (Version 7) with any risks being managed So Far As Is Reasonable Practicable (SFAIRP) by signage, warning lines, appropriate surfacing and whistle boards. However, level crossing safety is of the utmost importance to Network Rail and we are committed to reducing the risk at level crossings where reasonably practicable.

Highland Spring Development Proposals

- 2.4 Highland Spring has planning consent (18/01191/FFL) to develop a site to the east of Panholes level crossing. That includes formation of a rail connection at the west end of the site. This would impact on both the level crossing and the right of way/core path. Consent for the development is subject to a condition requiring the diversion of the path.

Blackford Level Crossing

- 2.5 Blackford Level Crossing lies east of the Highland Spring development site. As noted above the closure of the Panholes Level Crossing and re-routing of the core path will facilitate the creation of the connection between the railway and the Highland Spring site at its west end and so avoid the need for turnback manoeuvres to take place from the east and increase the downtime of the crossing on the B8081; potentially reducing journey time for users of this level crossing. The downtime may also increase risk of pedestrian misuse of this crossing.

3. The Proposal

Proposed Development

- 3.1 Network Rail proposes to close Panholes Level Crossing which is a public footpath crossing in Blackford providing access from the village to open fields and countryside. That access will be maintained by a new stepped

footbridge and provision of a route for a path link. The bridge must be located further west than the existing level crossing in order to safeguard future rail freight access from the south into the Highland Spring site just to the north of the crossing. The existing path, which is not a constructed path but trodden grass more akin to a desire line, will be diverted from the south of the crossing and run to the west, south of the railway boundary and north of the Allan Water, to link with the proposed footbridge.

- 3.2 There are no utility services accommodated under the sections of path and level crossing affected by these proposals.

Site and Surroundings

- 3.3 The railway in this area runs roughly east to west. Panholes Level Crossing lies north and west of the village of Blackford; and to the north and west of the sewage works. There is undeveloped ground between the crossing and the village. The level crossing links Blackford to farmland beyond. The route over the level crossing is an asserted right of way and is part of the core paths network (BLFD/3).

Development Timescale

- 3.4 Although not all aspects of these works are within the control of Network Rail and are subject to further detailed programming, and consents, it is currently intended that work begins by November 2018, and that the bridge will be open and the crossing closed by March 2019.

4. Processes

Planning Consent Requirements

- 4.1 Planning Consent has been granted for the proposed bridge and route for the path diversion (Annex 2). The bridge will be stepped and will incorporate motion sensitive lighting and a bike wheeling rail. The path route will be provided to the same standard of surface as the existing path; that is it will not be a made path. If bridge construction works disturb the ground over which the path route will be diverted it will be re-instated and grass seeded as required.

Permitted Development

- 4.2 It should be noted that physical works to close the level crossing by means of replacement of existing gates with fences, are permitted development under Part 13 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992; being works by the statutory undertaker, on their operational land and required in connection with the movement of traffic by rail and not excluded by any of the exceptions to Part 13.

Diversion of the Right of Way

- 4.3 The crossing is part of a right of way and will have to be legally diverted under the provisions of the Town and Country Planning (Scotland) Act at Section 208 relating to stopping up and diversion of footpaths. Subject to the necessary Committee approval we understand this process can commence now that planning permission for the footbridge and path link has been granted.

Diversion of the Core Path

- 4.4 The process related to diversion of the Core Path will be carried out in tandem with the Stopping Up Order; as enabled by Section 208(5) of the Planning Act as amended by the Land Reform (Scotland) Act 2003.

5. Material Considerations

- 5.1 The legislation permits a local authority to authorise the diversion of a footpath where it is necessary to enable a development with planning permission, granted under Part III of the Act, to go ahead. The local authority is also required to consider the potential effect of an order on the wider community.
- 5.2 In addition the authority may use the order to:
- create an alternative footpath to be used or formed;
 - authorise or require works to be carried out to the footpath being diverted;
 - preserve the rights of any statutory undertakers with apparatus under, in, on, over, along or across the footpath; and
 - require payment for or contribution to any works to be carried out.

Need

- 5.2 In this case the footpath diversion is both necessary to enable a development to go ahead and that development has planning permission. While the closure of the crossing for safety reasons in itself necessitates the construction of a replacement crossing by a footbridge; the consent for the footbridge cannot be implemented without closure of the crossing. Level Crossings are one of the biggest public safety risks on the rail network in the UK today and the CP5 High Level Output Statement provides clear guidance from Scottish Ministers that they support Network Rail working with the industry and stakeholders to close level crossings, and specifies a fund to facilitate this. It would not therefore be possible for the footbridge and the level crossing to co-exist in such proximity because the safety risk would not be mitigated and the building of the footbridge would not comply with the requirements of managing public money and value for money that Network Rail must adhere to in the discharge of its operations following its re-classification as an arm's length

body of the Department for Transport in 2014. Further retention of the level crossing would prohibit the development of the Highland Spring freight facility.

Consideration of Alternatives

- 5.4 Consideration was given to either upgrading the existing level crossing or to closing it and diverting users to Blackford Level Crossing. The first option was rejected as offering few safety and business benefits; and not enabling the Highland Spring development without also requiring relocation. The latter option was rejected as not being supported by the local community given the length of the diversion route.

Effect on the Community

- 5.5 The potential effects on the wider community which may need to be considered here include the impact of the length and nature of the diversion on path users; and any change in amenity for users.
- 5.6 For walkers coming from the village via the track and bridge over the Allan Water then using the level crossing to cross the railway and walk west along the railway boundary; the difference in distance walked will be limited as the additional distance travelled along the south of the railway towards the footbridge will be similar to the current distance travelled on the north. Effectively the additional distance will be limited to the turnback to the west after leaving the bridge stairs on the north side of the railway. For walkers currently using the crossing to cross the railway and walk east the difference in distance will be around 395 metres.
- 5.7 This severance distance would be described as 'slight' to 'moderate', based on the presence of a footbridge and the diversion distance respectively and not 'severe' all as described in the Design Manual for Roads and Bridges, Vol 11, Section 3, Part 6. Groups most likely to be impacted are those already least likely to use the crossing as a result of the existing nature of the path and approaches; including the narrow timber bridge over the Allan Water. It is also noted that there is no severance of the community from key facilities such as schools and doctors' surgeries for example.
- 5.8 The diversion will have two elements; the footbridge and an area of ground over which a core path link may be established. It is proposed that the nature of the latter will be the same trodden grass path as the existing paths in the vicinity of the crossing. The nature of this path should therefore have a neutral effect on users. The footbridge will be different in nature to the trodden grass paths in the area. However, the change in effect on users should be limited as the nature of the surrounding land and existing paths effectively already limits use.
- 5.9 Since March 2016 Network Rail has been actively engaged in consulting key stakeholders and the public on its plans to close the level crossing

and construct a bridge replacement. This included meetings with locally elected representatives, Blackford Community Council and Perth Access Forum Chairperson. These meetings were well received and feedback from these meetings has informed the design of the footbridge.

- 5.10 The development of the proposal has been informed by Network Rail's own processes for consideration of Diversity and Inclusion issues as part of its Public Sector Equality Duty (PSED) under the Equalities Act 2010. In relation to changes to the built environment Network Rail demonstrates it has discharged its PSED via a Diversity Impact Assessment (DIA) which is used to anticipate the likely effects of a development on people with the characteristics that are protected by the Equality Act (age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation, marriage and civil partnerships), in short everyone.

Impact on Network Rail

- 5.11 Network Rail was reclassified as an arm's length body of the Department for Transport in 2014 and must comply with the requirements of managing public money and value for money in the discharge of its operations. The Council must also have regard to the public sector funding requirements and cannot impose or transfer a burden onto another public body such as Network Rail. Given this; it is suggested that the proposal to close the crossing and divert the path be considered acceptable for promotion by the Council; as to do otherwise would place a burden on another public body.
- 5.12 In addition, Network Rail must also comply with the terms of its Network Licence which is regulated by the independent economic and safety regulator, the Office of Road and Rail. The licence includes obligations to grow the network and improve service for customers. This may include changes driven by safety considerations. Stopping up as requested will support compliance with its statutory and licence obligations.

6 Conclusion

- 6.1 Level crossing safety is of the utmost importance to Network Rail and we are committed to reducing the risk at level crossings where reasonably practicable. The Stopping Up of the Panholes Level Crossing and diversion of the asserted Right of Way and Core Path, following construction of the footbridge, would enable this safety improvement without detriment to current path users. Network Rail therefore requests that Perth and Kinross Council promote the necessary Order to enable this.

Annex 1

Annex 2

PERTH AND KINROSS COUNCIL

Network Rail
Ms Sandra Hebenton
George House
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Date 6 September 2018

Town and Country Planning (Scotland) Acts.

Application Number **18/01311/FLL**

I am directed by the Planning Authority under the Town and Country Planning (Scotland) Acts currently in force, to grant your application registered on 30th July 2018 for planning permission for **Installation of a footbridge and provision of link to core path** at Land 250 Metres North West Of Waste Water Treatment Works Moray Street Blackford subject to the undernoted conditions.

Interim Development Quality Manager

Conditions referred to above

- 1 The development hereby approved must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed by this decision notice.

Reason - To ensure the development is carried out in accordance with the approved drawings and documents.

- 2 Prior to the commencement of the development hereby approved, a management plan indicating any temporary diversions and signage needed to facilitate the development and/or any works proposed to the right of way/core path as part of the development shall be submitted for the further agreement of the Council as Planning Authority. The management plan shall include detailed timescales for the proposed diversions. The plan as agreed shall be implemented in accordance with the timings identified in the plan.

Reason - To ensure that public access is maintained at all reasonable times, to the local path network.

- 3 Prior to the commencement of any development on site, details of a bike wheeling rail to be installed on the bridge shall be submitted to and approved in writing by the Planning Authority. The bike wheeling rail, as approved in writing, shall be installed as part of the site development and completed in its entirety prior to the bridge being brought into use.

Reason - To ensure adequate provision for cyclists.

- 4 Prior to the commencement of the development hereby approved, details of the proposed boundary treatments for the site shall be submitted for the further written agreement of the Council as Planning Authority. The scheme as subsequently agreed shall be implemented prior to the completion or bringing into use of the development, whichever is the earlier.

Reason - In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.

- 5 Prior to the commencement of any development, details of an appropriate "step off" point from the bridge shall be submitted to and approved in writing by the Planning Authority. The "step off" point shall take the form of a 2 metre square area finished in type 1 aggregate. The step off point details, as approved in writing, shall be installed as part of the site development and completed in their entirety prior to the bridge being brought into use.

Reason - To ensure the provision of an appropriate step off area for the bridge and to prevent the area being damaged during inclement weather.

- 6 Prior to the commencement of any works on site, all trees on site (other than those marked for felling on the approved plans) and those which have Root Protection Areas which fall within the site shall be retained and protected. Protection methods shall be strictly in accordance with BS 5837 2012: Trees in Relation to Design, Demolition and Construction. Protection measures, once in place, shall remain in place for the duration of construction.

Reason - In the interests of visual amenity; to ensure a satisfactory standard of local environmental quality.

- 7 The conclusions and recommended action points within the supporting biodiversity survey submitted and hereby approved shall be fully adhered to, respected and undertaken as part of the construction phase of development.

Reason - In the interests of protecting environmental quality and of biodiversity.

- 8 Storm water drainage from all paved surfaces, including the access, shall be disposed of by means of suitable Sustainable Urban Drainage Systems to meet the requirements of best management practices.

Reason - To ensure the provision of effective drainage for the site.

- 9 Prior to the bridge being brought into use, any land which is disturbed during construction operations upon inspection by the Planning Authority, shall be re-instated to a level surface and grass seeded to the satisfaction of the Council as Planning Authority.

Reason - In the interests of visual amenity and to ensure appropriate access to the bridge is provided.

Justification

The proposal is in accordance with the Development Plan and there are no material reasons which justify departing from the Development Plan.

Informatives

- 1 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period (see section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2 Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.
- 4 An application for Building Warrant may be required.
- 5 The stopping up of the existing pedestrian crossing and diversion of the core path is subject to agreement under Section 208 of the Town and Country Planning (Scotland) Act 1997 (As amended). All relevant approvals in this regard should be in place prior to any stopping up or diversions taking place.

The plans and documents relating to this decision are listed below and are displayed on Perth and Kinross Council's website at www.pkc.gov.uk "Online Planning Applications" page

Plan and Document Reference

18/01311/1

18/01311/2

18/01311/3

18/01311/4

18/01311/5

18/01311/6

18/01311/7

18/01311/8

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