

INQ-24

Proposed Network Rail (Tackley Level Crossing) Order

BHS Response to Network Rail (NR) Inquiry Note 08: Note on Road Traffic Act and Permissive Path Agreement

1. At the Inquiry on 19th and 20th June 2024 BHS raised three issues, which did not appear to be addressed within the NR paperwork. In response NR provided INQ-08. BHS does not accept that INQ-08 provides an adequate response to the matters raised. This Note provides the BHS response to INQ-08.

Issue 1: Maintenance of the New Bridleway

2. BHS note that, despite protestations to the contrary at the time, NR now within INQ-08, accept (as per the issue originally raised) that their scheme does not make any provision for the future maintenance of the new bridleway to a standard suitable for cyclists.
3. The draft Order provides for the provision of a new bridleway but does not extinguish the majority of the existing bridleway, only the section over the level crossing. The draft Order therefore creates additional “public purse” maintenance liabilities which will rest, in part, with the Highway Authority.
4. It is accepted that the existing bridleway is not a cycle track, nor is it a Sustrans route. It is however understood to form part of the National Cycle Network (NCN). As such it may be expected to be subject to higher levels of use by cyclists than bridleways which do not form part of the NCN. The proposed new bridleway will have to be used in place of the existing bridleway for this purpose, even more so if permissive access for pedestrians and cyclists over the footbridge is withdrawn.
5. It is, and has always been, accepted that the draft Order provides for the creation of the new bridleway and that the new bridleway will be a highway maintainable at public expense (to the standard of a bridleway).

6. With regard to the said standard of maintenance (bridleway) Section 30(3) of the Countryside Act 1968 provides that there is no obligation, on any person or body, as respects maintenance of the proposed bridleway, to maintain it to a standard suitable for cyclists.
7. NR are therefore creating an additional “public purse” maintenance liability, the burden for which is partially placed on the Highway Authority, and partially remains unaccounted for within the scheme.
8. BHS simply pointed this fact out. It was NR who appeared to dispute this conclusion (by reference to Art 9 of the draft Order) and sought to suggest there was such maintenance provision.
9. To conclude, in terms of the long-term sustainability of the proposed new bridleways, as part of the NCN, this clearly has implications. BHS does not seek to pursue the matter further than raising this point as a matter of awareness to the Inspector.

Issue 2: Road Traffic Offence

10. NR have set out within INQ-08 the relevant legislation so there is no intention to duplicate that here.
11. The draft Order clearly seeks to create new public bridleway rights over the land running between Points B1 and B2 on the Land and Rights of Way Plan. This corridor of land is also understood to be used by residents for access, with mechanically propelled vehicles, to garages/land.
12. Given that it will be an offence, contrary to Section 34 of the Road Traffic Act 1988, to drive, without lawful authority, a mechanically propelled vehicle on the newly created bridleway, BHS submit that the necessary “lawful authority” should be clearly and unequivocally set out within the terms of the draft Order. The fact that the land is already crossed by an existing footpath is immaterial to this point.

13. In support of the BHS case the Inspector is referred to the Rights of Way Law Review Article 3.3 pages 1-6 “*Greater Rights over Minor Highways*” by Colin Sydenham (Barrister) [June 1993] (copy attached). This sets out some useful overarching principles and confirms the need for private rights to be properly recorded.
14. BHS also suggest that, so far as the creation of the bridleway is concerned, the draft Order is analogous to a Public Path Creation Order made pursuant to Section 26 of the Highways Act 1980.
15. The Encyclopaedia of Highway Law and Practice (Section 2-060.2 [3rd para]) (copy attached), under General Notes on the Scope of Section 26 of the 1980 Act advises:
- “The right of way which is created can be unconditional or subject to such conditions or limitations as may be specified in the order. The order could, therefore, be made expressly subject to the rights of the landowner to use his land in ways which would otherwise amount to an obstruction of the highway or a public nuisance. Examples might include gating the path, ploughing the land **or driving motor vehicles over the path (so as to avoid committing the offence under s34 of the Road Traffic Act.)**”* [my emphasis.]
16. BHS take the view that this demonstrates a clear need to confirm and secure the private rights over the relevant section(s) of the proposed bridleway and provide the necessary defence of “lawful authority”.
17. BHS further consider that this is not a particularly controversial point which can be easily remedied by an amendment to the draft Order.

Issue 3: Permissive Path Agreement

18. BHS is fully aware of the means by which a permissive path may be brought into effect. That was not the issue raised during the Inquiry. BHS noted that whilst NR state that a permissive path was to be provided, there was nothing

within the NR case paperwork which sets out how NR will be compelled to actually provide the permissive path in the first place.

19. INQ-08 does nothing to address this issue.

20. It is clear from Point 5 of the Statement of Matters that the Secretary of State considers, by reference to the impact that withdrawal of the permission, that the issue of the permissive path to be important to his/her consideration of the overall scheme.

21. If the permissive path is to form any material consideration in the approval of the scheme, BHS submit that there should be some mechanism by which NR are compelled to provide it in the first instance. Such a mechanism need not prejudice NR's ability to withdraw the permission in the future, but it should again provide the means (inc notice periods etc) for permanent withdrawal of the permission.

22. For the avoidance of doubt BHS support the provision of the permissive path and would not seek to see such a valuable resource lost. On the contrary BHS simply seek clarification over the mechanism used to ensure that the permissive path is provided, as indicated.

Robin Carr

On behalf of the British Horse Society

28th June 2024