

PLANNING AND REGULATORY COMMITTEE

28 NOVEMBER 2023

APPLICATION FOR A PUBLIC PATH ORDER (EXTINQUISHMENT)

Reference Number

Public Rights of Way Public Path Order D598

Applicant

Network Rail (NR)

Local Member

Councillor Kit Taylor

Purpose of Report

1. To consider a public path order under section 118A Highways Act 1980 ('Stopping up of footpaths, bridleways and restricted byways crossing railways') to stop up (extinguish) the public rights of way recorded on the Definitive Map and Statement for Worcestershire, footpath TC-504 in the parish of Tutnall and Cobley and footpath LK-524 (part) in the parish of Lickey, at the Network Rail railway crossing at Blackwell near Bromsgrove as indicated A - B on the plan (Appendix 1).

Background

2. Public right of way, Tutnall and Cobley footpath TC-504, passes over the Birmingham to Gloucester railway at the Blackwell rail level crossing situated north of Bromsgrove Station in Blackwell, Bromsgrove. The public right continues to the north-west of the railway line as Lickey footpath LK-524 to connect to Fairways Drive, a highway with a like right of way, within the residential area centred on Linthurst Newtown road. To the south-east the public right continues over Blackwell Golf Club grounds as Tutnall and Cobley footpaths TC-503 and TC-505 (plan, Appendix 2).
3. The Birmingham to Gloucester railway is one of the main cross-country routes connecting the North East and the West Midlands to the South West of England. Blackwell rail crossing is over a three-track line and there is an associated goods loop. The crossing is on a curve, the up (north west) side being on the inside of the curve. The curve in the line presents a natural restriction to the sight line of people on the level crossing to see oncoming trains. Until 2016 NR had measures in place to mitigate danger to the public on the crossing including a restriction on train speed and the use by train drivers of a train's whistle.

4. In 2016 Network Rail undertook works on this length of the line as part of the Birmingham to Bromsgrove Electrification Project. The line was electrified with the installation of overhead line equipment (OLE). Stanchions were erected within Network Rail's operational land to support the overhead power lines. The stanchions have a limited separation distance and restrict the sighting distances available for users of the crossing to see oncoming trains.
5. Electrification has enabled the use of quieter electrified trains on the line running more frequent services and at higher speeds.
6. In response to the alterations made to the rail infrastructure and use of the line, Network Rail carried out a risk assessment of the public use of Blackwell rail crossing using its All Level Crossings Risk Model (ALCRM). With electrification of the line it graded the crossing as B3 and concluded the danger to the public in use of the crossing exceeds an acceptable level of risk which cannot within reason be mitigated.
7. In May 2017 a Temporary Closure was placed on footpath TC-504 and the length of footpath LK-524 between the rail crossing and Fairways Drive. The Temporary Closure was made at the request of NR due to, 'concerns about the safety of people using Blackwell Footpath crossing over the railway. These concerns lead from a recent Quantitative Risk Assessment which identifies a high probability of a future fatal incident at the crossing.' The public right of way continues to be subject of a Temporary Closure Order arising from concerns for public safety.

The Proposal

8. Network Rail has made application to Worcestershire County Council as the highway authority for an order under Section 118A Highways Act 1980 to stop up footpaths TC-504 and Lickey LK-524 (part).
9. The grounds upon which NR seeks a public path order, based on NR's risk assessments of the Blackwell level crossing, are contained in the Statement of Grounds (Appendix 3).
10. Alternative routes between the residential area to the north west of the railway and the golf course and rural area to the south-east are provided by U22401, Station Road / Agmore Road to the south west of the railway crossing and to the north east by C2157 Linthurst Newtown and onward by the C2174 Blackwell Road and connecting public rights of way (plan, Appendix 2).
11. Station Road / Agmore Road is a single carriageway rural road with no footway or walkable verge for its length running from the north west side of the railway to its junctions with public right of way footpath TC-500 south east of the railway.
12. Linthurst Newtown has a footway along its length from its junction with footpath LK-504 north-east as far as the north west end of a bridge over the railway line (Wadham's overbridge). Footways on the bridge are narrow and are primarily to distance vehicles from the bridge walls. South east of the bridge and along

Blackwell Road, a single carriageway rural road, there is no footways or walkable verge.

13. With the proposed stopping up of the public right of way over Blackwell rail crossing, the feasibility of improving pedestrian access on Wadham's overbridge at Linthurst Road and constructing a footway along Blackwell Road to connect with the east end of the public right of way, footpath TC-505 (plan, Appendix 2), is being studied however no feasible solution has currently been found. This is separate from the application and the public rights of way team would support progressing the proposed closure of the crossing for safety reasons even if no alternative route can be provided.

Worcestershire County Council public path order procedures

14. The Planning and Regulatory Committee has delegated authority to the Public Rights of Way Team Mapping Manager to arrange the making of public path orders and the confirmation of any unopposed orders subject to agreement by the local member for the relevant County Council division.

15. In accordance with this requirement a report was sent to the local member for Bromsgrove East division setting out the proposal to stop up Tutnall and Cobley footpath TC-504 and Lickey footpath LK-524 (part) (Appendix 4).

16. The local member did not support the application to stop up the public right of way citing the lack of an alternative dedicated pedestrian route.

17. The matter is now outside the remit of the Mapping Manager and is submitted to this Committee for permission to advertise the order for public consultation with a view to confirming it if there are no objections.

Provisions of Section 118(A) of the Highways Act 1980

18. The Highways Act 1980 makes specific provision for the stopping up of public right of way crossing railways by way of Section 118A of the Act.

19. By sub section (1), Section 118A, 'applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath or bridleway in their area which crosses a railway, other than by tunnel or bridge, should be stopped up.'

20. Further, by sub section (2), the Council may by order made by them, 'extinguish the right of way over the path or way (a) on the crossing itself, and (b) for so much of its length as they deem expedient from the crossing to its intersection with another highway over which there subsists a like right of way'.

21. Therefore, the questions for the Committee to consider are whether in the interests of the safety of members of the public the public right of way Tutnall and Cobley footpath TC-504 over Blackwell level crossing should be stopped up and if

so whether it is expedient to stop up the length of public right of way Lickey footpath LK-524 between the railway crossing and its junction with Fairways Drive.

Conclusion

22. The Strategic Director for Economy and Infrastructure concludes that a public path order be made for the following reasons:

- a) Following the electrification of the Birmingham to Bromsgrove rail line, the railway crossing at Blackwell over which the public right of way Tutnall and Cobley footpath TC-504 passes has been assessed by Network Rail through its All Level Crossings Risk Model (ALCRM) as B3, a level of risk to the public that is not considered acceptable.
- b) NR has examined options to mitigate the danger to the public crossing the railway by way of the public right of way TC-504 and concluded no available measures would be effective in reducing the risk to an acceptable level.
- c) NR has considered alternative provision for the public to cross the railway at the location of the Blackwell rail crossing, such as a bridge or tunnel and concluded they are not technically appropriate or feasible to the location or cost prohibitive.

23. Should the Committee approve the Strategic Director for Economy and Infrastructure's recommendation, the County Council will make and advertise an order. There is a very strong possibility an order will receive objections that will subsequently result in the matter being determined by the secretary of state's inspector.

24. Should the Committee refuse the Strategic Director for Economy and Infrastructure's recommendation, then (as this is an order being requested under section 118A of the Highways Act 1980 on safety grounds) Network Rail would have the right to apply to the Secretary of State asking them to progress the extinguishment. This would be a separate process and would be dealt with by the secretary of state although the County Council would be a consultee on any order made.

Recommendation

25. **The Strategic Director for Economy and Infrastructure recommends that AN ORDER BE MADE under Section 118A Highways Act 1980 to stop up the public right of way, Tutnall and Cobley footpath TC-504, in the interests of the safety of members of the public and to stop up the length of footpath Lickey LK-524 running from its junction with footpath TC-504 to its junction with Fairways Drive it being expedient to do so.**

Supporting Information

Appendix 1: Plan of proposed stopping up, footpaths TC-504 and LK-524 (part)
Appendix 2: Plan of Blackwell area showing highways including public rights of way
Appendix 3: Statement of Grounds for public path order
Appendix 4: Local Member Report

Contact Points

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Background Papers

In the opinion of the proper officer (in this case the Strategic Director for Economy and Infrastructure) the following are the background papers relating to the subject matter of this item:

- Public Path Order application form.
- Network Rail Diversity Impact Assessment
- Network Rail Narrative Risk Assessment