

## **HAMBLETON DISTRICT COUNCIL**

**Report To:** Planning Committee  
13 October 2016

**From:** Executive Director

**Subject:** **UPDATE ON IMPLEMENTATION OF PUBLIC RIGHT OF WAY RISK ASSESSMENT & MITIGATION CONDITION – FORMER YORK TRAILERS SITE, YAFFORTH ROAD, NORTHALLERTON (13/01956/FUL)**

**Northallerton North and Brompton Ward**

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### **1.0 PURPOSE OF THE REPORT**

- 1.1 The Committee previously considered the details required by a planning condition relating to public safety in respect of a Public Right of Way (PRoW) crossing the East Coast Main Line (ECML) close to the Former York Trailers development site.
- 1.2 Concern had been expressed by Members regarding the suitability of the mitigation measures being put forward by the applicant. Members were last briefed on this matter in April 2016 and this report has been prepared to up-date Members on activity in relation to this matter.

### **2.0 BACKGROUND**

2.1 The site is being developed by Barratt/David Wilson Homes, who secured planning permission for 241 dwellings in May 2014 on completion of a legal agreement. Construction is now well advanced with a significant number of dwellings completed and occupied.

2.2 The permission included a condition, number 16, requiring a risk assessment and mitigation measures in respect of a nearby PRoW crossing the ECML:

16. *PROW Level Crossing – Risk Assessment & Mitigation*

*Prior to occupation of the first dwelling, a full risk assessment of the impact of the development hereby approved upon the public right of way level crossing with the East Coast Mainline. Any mitigation measures identified within the risk assessment shall be implemented and maintained in accordance with the approved details prior to occupation of the first dwelling.*

*Reason: To safeguard the amenity of the future residents and other users of the PROW level crossing in accordance with the aims of Policies CP1, CP2, DP1, DP3 and DP4 of the Hambleton Local Development Framework.*

- 2.3 The developer complied with this by submitting a risk assessment and mitigation measures on 29 January 2015.
- 2.4 The risk assessment included a safety audit of the ECML crossing carried out by a consultant, Road Safety Initiatives. The safety audit proposed mitigation measures intended to improve the safety of the crossing.
- 2.5 Network Rail, British Transport Police and the Rights of Way Authority were all consulted. In view of Member concerns regarding the safety of the crossing, officers requested safety advice from the Health & Safety Executive and the Royal Society of Prevention of Accidents (RoSPA). Neither organisation has a statutory duty to comment on the submission and

both declined to comment. However, RoSPA recommended a specialist safety consultant, TMS Consultancy, and TMS was engaged by Hambleton District Council to review the risk assessment and mitigation measures.

- 2.6 The proposed additional mitigation measures suggested by TMS included a traffic light system. However, on consultation with Network Rail this was found to be ineffective for operational reasons. An alternative solution of a diversion of the footpath was then discussed with Network Rail, which undertook to progress the matter, seeking internal agreement for works on railway land, adjacent to the track.
- 2.7 In applying a planning condition and subsequent enforcement of that condition the following points are noteworthy:
- Planning controls, including conditions, cannot require developers to resolve problems that already exist, unless they are a direct barrier to the development going ahead. The PRow and its crossing of the ECML have been in place for many years.
  - Planning conditions cannot apply to land outside the control of the developer. The PRow and its crossing of the ECML lie outside the development site and are not under the control of the developer. Therefore the condition cannot require the developer to stop up or divert the PRow. However, it can require the developer to undertake reasonable mitigation of any identified risk arising from the development taking place in close proximity to it. The risk assessment is intended to assist in this.

### **3.0 CURRENT POSITION**

- 3.1 Agreement within Network Rail and the railway operators has been achieved for the principle of the use of the land adjacent to the railway for a diverted footpath.
- 3.2 An application has been submitted by Network Rail to North Yorkshire County Council to divert the footpath, south along the east side of the railway, re-joining the public footpath network at Springwell Lane.
- 3.3 The application is pending determination by the County Council at this time, which is assessing a number of objections that have been submitted against the proposed diversion. The County Council is examining options for negotiation with those objectors who have raised material objections to the proposed Diversion Order in order to establish whether or not a Public Inquiry will need to take place. The County Council has been asked what the likely time scale for this will be and any advice received will be reported to the meeting.
- 3.4 The County Council has received four objections and one request for clarification for the proposed diversion. It advises that one objection is largely irrelevant, two are marginal but one is considered to be significant.
- 3.5 Network Rail has taken up the option to negotiate with the objectors to determine if their concerns can be withdrawn by revising the scheme. The County Council has not agreed a timescale for this but considers that a month or so would seem reasonable. Depending on the outcome of these negotiations Network Rail will then decide whether to proceed with the diversion.
- 3.6 If Network Rail does proceed the County Council's internal process to determine their stance will take about a month, followed by another month to advertise the order and a then probably another two months to review the case and prepare it for the Secretary of State if formal objections are received. The lead in to the inquiry would be six months or so and one would expect a decision a month or so after the enquiry. As such the most likely earliest resolution date would be autumn of next year if a Public Inquiry is necessary.

- 3.7 In the interim, the developer remains in breach of condition 16 because the mitigation measures identified within their risk assessment have not been implemented. This is not considered to make enforcement action expedient for two reasons. The first reason is that Network Rail has carried out improvements to the crossing and advises that the measures identified by the developer would make little practical difference. The second reason is that there is currently no direct pedestrian connection between the development site and the PRow.
- 3.8 Notwithstanding this, the developer has been advised to seek a variation of condition 16 in order to provide clarity on how the safety issues will be managed pending the County Council's consideration of Network Rail's proposed diversion.
- 3.9 For the time being the access point from the application site remains closed off with security fencing and the developer has agreed that the connection will not be made until the matter of the diversion is resolved. An application for an amendment to the condition attached to the permission is being prepared.

#### **4.0 OTHER PRow ISSUES**

- 4.1 Discussions are under-way between the developer, the County Council's highways team and Network Rail, with regard to the connection of the footpath in the opposite direction, leading toward the town centre, through to the end of Tannery Lane. The requirement in the Planning Permission is for this to be up-graded to a cycle way.
- 4.2 Various issues have been raised in the pursuit of this connection. Two issues in particular have slowed down progress on this matter: the ownership of the land neighbouring the route and the Network Rail bridge.
- 4.3 Additional land is required in certain locations along the route in order to facilitate the widening of the route to allow the up-grade to a cycleway. Some of the land is owned by the County Council and discussions are on-going between the applicant and the County on this basis. It was not possible to progress negotiations with the landowner to the south of the route. Resolution of this will still leave a couple of pinch points along the route, whereby the width will fall below the minimum requirement for a cycleway although the County Council has agreed that this is better than downgrading the proposed route back to a public footpath only and has accepted this principle.
- 4.4 The second issue revolved around the use of the Network Rail bridge, in terms of the structural condition of the bridge, for use as a cycle way and in terms of whether or not the parapets of the bridge were high enough for use as a cycleway. Terms have now been agreed for this element of the scheme.

#### **5.0 RECOMMENDATION**

- 5.1 It is recommended that the report be noted.

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**Background papers:** None

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