

Response of Nottinghamshire County Council to Regulation 28: Report to Prevent Future Deaths relating to Heather Frances PAGE dated 23rd June 2021

Executive Summary:

- A. Of the 5 level crossings in this area, 4 are within the remit of Nottinghamshire County Council (“NCC”) as the Local Highway Authority. NCC is under an express statutory duty to assert and protect the exercise of the public’s historic highway rights to use and enjoy those crossings as they have historically found them.
- B. The operation, maintenance and improvement of a safe national rail network (including level crossings), is the responsibility of Network Rail, with oversight and funding specifically provided to them by the Office of Rail and Road for improving safety at such crossings.
- C. Closure of level crossings can be achieved under 4 separate Acts of Parliament, with only the Highways Act powers available to the Local Highway Authority. Such powers were successfully used by NCC, following an application by Network Rail, in relation to the nearby Barratt’s Lane No.2 crossing (Beeston Footpath No.66) in 2014.
- D. Rail crossing extinguishment orders are subject to public consultation and, if objected to, must be determined by the Secretary of State, usually following a public inquiry. Network Rail consulted the public regarding a proposal to close the Meadow Lane and Long Lane level crossings but received significant public objection in response. As a result, Network Rail did not apply for a rail crossing extinguishment order but instead made safety improvements to those crossings.
- E. Contrary to the indication given in the Assistant Coroner’s report, NCC has been (and remains) supportive of the aim of improving level crossing safety and has, as set out below, sought to support and assist Network Rail in achieving this. NCC wishes it noted that it has received no further applications from Network Rail for a rail crossing extinguishment order in relation to the 4 crossings in this area but would continue to consider any that it receives.

Narrative:

- 1. NCC is grateful for sight of the Assistant Coroner’s report relating to Heather Frances PAGE and would be happy to attend any future inquests if it can provide information of assistance to the coroner. NCC is concerned that, in the report, it is stated that evidence was heard that *“(4) Efforts by Network Rail to reduce / rationalise the number of crossings along that stretch have failed due, in part, to opposition from the relevant local authorities”*. As the Assistant Coroner will be aware, NCC was not invited to be an interested party at the inquest and was provided with no opportunity to answer this assertion which is, for the reasons set out below, incorrect.
- 2. In response to the Assistant Coroner’s report, NCC hopes that the information below helps to put NCC’s position into context in terms of the action that it can take, has taken,

and will continue to take. It appears from the context of the report that it has been provided to NCC due to the deceased having obtained access to the railway line from a nearby level crossing, and that it therefore relates to NCC's role as Local Highway Authority. It is not clear to NCC as to which level crossing the Assistant Coroner is referring, but the situation is similar for each of 5 at-grade crossings in this area; 4 of which being within the administrative area of NCC. The 5 at-grade crossings in the Attenborough area are:

- Meadow Lane (Beeston Bridleway No.72);
- Long Lane (Beeston Footpath No.130);
- Attenborough Lane crossing Barratt No.1 (Beeston Footpath No.65);
- Barton Lane road crossing (public carriageway); and
- in Derbyshire, Barton Road (Long Eaton Footpath E8 7/2).

3. Closure of level crossings can be achieved under 4 separate Acts of Parliament¹, with only the Highways Act powers available to the Local Highway Authority. The prescribed process which Highway Authorities must follow in order to divert or extinguish certain minor public highways² involve the making of an Order and formal public consultation. Should objections be received and maintained to the diversion or extinguishment, an Order cannot be brought into effect but must be referred to the Secretary of State for determination which often necessitates the holding of a local public inquiry, though it is possible, at the Secretary of State's discretion, for such an Order to be determined following a hearing or, rarely, to be dealt with by an exchange of written representations.
4. Where there are concerns for rail safety, Network Rail can apply to the Highway Authority for a rail crossing extinguishment order or a rail crossing diversion order under Sections 118A and 119A, Highways Act 1980, respectively. NCC is aware that level crossing safety is a key focus of both Network Rail and the Office of Rail and Road ("ORR) and that, for the last funding period (2014-2019) the ORR provided £109 million to Network Rail specifically for improving safety at level crossings. Indeed, pursuant to this, level crossing Barratt No.2 (Beeston Footpath No.66) was successfully diverted by NCC in 2014 following an application by Network Rail. Apart from that application, however, no further applications have been submitted by Network Rail seeking to close or divert any of the above-named crossings.
5. NCC actively contributes to and attends bi-annual 'Road and Rail Partnership' meetings, organised by Network Rail and attended by Network Rail staff including Level Crossing managers and their Liability Negotiations Team, British Transport Police and Train Operating Companies such as East Midlands Railway. The meeting is to discuss issues relating to level crossings both on carriageways and public rights of way, and bridge strikes.
6. Additional to the above, NCC and Network Rail are in regular dialogue regarding level

¹ Highways Act 1980; Town and Country Planning Act 1990; Transport & Works Act 1992; Planning Act 2008

² Footpaths, Bridleways, and Restricted Byways, within the meaning of S.329, Highways Act 1980

crossings across the county, including those in the Attenborough area. While such discussions have looked at diversions and providing bridges it has proved difficult for NCC and Network Rail to take matters forward due, mainly, to objections from the public as highway users. For example, Network Rail proposed a bridge at the former Cemex site to replace the nearby level crossings for Long Lane (Beeston Footpath No.130) and Meadow Lane (Beeston Bridleway No.72). Discussions were held on site and meetings attended, and Network Rail arranged a mailshot to local residents in December 2017 regarding the proposals. This elicited a lot of concern from local residents and user groups about closing these crossings and a public meeting / drop in with stakeholders was subsequently held at Attenborough Village Hall in February 2018 to see if the proposals could be refined such that the public would be in agreement. This generated a high number of objections from the local community, however, and no application was received from Network Rail to close any crossings. Instead, due to the nature and number of objections from members of the public, Network Rail instead made improvements at the Meadow Lane bridleway crossing including changes to the decking and the installation of miniature stop lights (MSLs). In November 2018, Network Rail wrote to local residents again, citing the MSLs and a proposal to 'downgrade' Meadow Lane Crossing to those on foot and cycle only, preventing further equestrian use, and another public meeting was held in December 2018. No application was received by NCC, however, which NCC presumes to have been due to a significant level of objection from the public once again.

7. NCC's Countryside Access Team has regular contact and a good working relationship with Network Rail's Liabilities Team; this being the team within Network Rail with responsibility for the stopping up and diversion of public highway rights across railway lines and operational property. As part of this, NCC are currently discussing a number of at grade crossings in the County regarding their future management, as well as discussing opportunities for access on their non-operational land, which would increase public safety. Any proposals arising from this would, however, be subject to the formal legally prescribed consultation referred to above and thus may potentially be unable to be taken forward due to objections from highway users.
8. Notwithstanding the above, it has been possible to obtain public support to take forward a number of safety improvements in recent years, and several crossings in Nottinghamshire have been diverted by NCC and bridged by Network Rail to remove at grade crossings over operational lines. For example:
 - at Kings Mill between Mansfield and Sutton-in-Ashfield, bridleway rights have been diverted from an at-grade crossing to a bridleway bridge across the Robin Hood Line;
 - a footpath in Hucknall was diverted and bridged from an at grade crossing across the tram and Robin Hood Line;
 - Newark FP11 was extinguished across the East Coast Mainline; and

- in Attenborough in 2014, Beeston FP66 was diverted by NCC on Barratt Lane No.1 from an at-grade crossing to the barrier crossing over the Attenborough Lane vehicular level crossing.
9. Separate to the above, NCC continues to work closely with Network Rail's Level Crossing Managers in order to help manage public safety at level crossings. For example, NCC recently provided a temporary emergency closure on Burton Joyce Footpath No.6 (Chestnut Grove) following a near-miss incident which prevented public access while Network Rail undertook some emergency improvement works.
 10. Additionally, officers of NCC in its capacity as Local Highway Authority are to meet with officers of NCC in its capacity as Public Health Authority next week to discuss 'Network Rail Deaths and Near Misses', which it is understood is specifically in relation to work by the British Transport Police, Network Rail and Public Health colleagues regarding suicides on the railway.
 11. NCC also manages and administers meetings of the Nottinghamshire Local Access Forum, at which Network Rail attend annually to update members and officers on matters relating to public rights of way crossings; level crossings being a standing item on the LAF's quarterly meetings. The LAF is established under S.94, Countryside and Rights of Way Act 2000 and is a group of volunteers who represent different stakeholders with an interest in countryside access and public rights of way.
 12. Accordingly, while NCC is supportive of the aim of zero injuries or fatalities it must also acknowledge both that: -
 - a. as with the highways network, it is inevitably the case that where a person intends to take their own life, there are no measures that can be put in place to prevent it (and widespread closure of all such crossings would meet with overwhelming public resistance due to the level of interference that would represent with people's enjoyment of such routes); and
 - b. that the legislative tools available for restricting public access are, through the inclusion of the public consultation process, intended to help achieve a reasonable and proportionate balance of such interference.
 13. As such, the matter is not simply one of NCC's support or opposition – indeed it is supportive of the aim. However, the overwhelming preponderance of power in terms of whether such crossings can be closed or rationalised is, at law, not with NCC but is with the public as highway users and, notwithstanding the Highway Authority's support, it is not within the Highway Authority's gift to unilaterally achieve closures of the kind intimated in the coroner's report.
 14. The Authority can therefore confirm that, in terms of the action that this Authority may and will take to prevent future deaths, this is limited to continuing to undertake those actions referred to above and this Authority hereby confirms that it will continue to do so insofar as this remains compatible with the legally-prescribed duties and

responsibilities of the Highway Authority.

15. Finally, as referred to above in relation to the assertion that *“(4) Efforts by Network Rail to reduce / rationalise the number of crossings along that stretch have failed due, in part, to opposition from the relevant local authorities”*, NCC would reiterate that it was not an interested party at the inquest and was provided with no opportunity to challenge this. Given the matters set out above we would respectfully invite the Assistant Coroner to now formally acknowledge that, in respect of NCC, that assertion is incorrect. Should the Assistant Coroner remain of the view that efforts to rationalise have failed in any part due to opposition from NCC in its capacity as Local Highway Authority, NCC would be grateful if further specific details could be provided.


Corporate Director, Place
Nottinghamshire County Council
16 July 2021