



**Report Reference Number 2018/0742/FULM**

**To: Planning Committee**  
**Date: 16 January 2019**  
**Author: Rachel Smith (Principal Planning Officer)**  
**Lead Officer: Ruth Hardingham (Planning Development Manager)**

APPLICATION NUMBER:	2018/0742/FULM	PARISH:	Womersley Parish Council
APPLICANT:	Network Rail (Infrastructure) Ltd	VALID DATE: EXPIRY DATE:	16th July 2018 15th October 2018
PROPOSAL:	Proposed new access road to serve existing agricultural fields on the north-eastern side of the railway line together with the formation of a turning head adjacent to Cow Lane to allow the removal of vehicular crossing rights over Post Office Lane Level Crossing		
LOCATION:	Level Crossing On Cow Lane Cow Lane Womersley Doncaster South Yorkshire		
RECOMMENDATION:	APPROVAL		

This application has been brought before Planning Committee because it constitutes inappropriate development within the Green Belt.

## **1. Introduction and background**

### **The Site**

- 1.1** The application site is located to the north of the village of Womersely within the Green Belt. The majority of the site lies within Flood Zone 1 with a portion of the site within Flood Zone 2. The application site lies outside Womersely conservation area.

## 1.2 The proposal

When the application was submitted, permission was sought for the removal of the existing level crossing between Cow Lane and the north side of the railway. To maintain access to the agricultural land to the north eastern side of the railway it

was proposed to form a new access track alongside the railway line, to provide access for agricultural vehicles. Pedestrian access was to be provided by a bridge over the railway to include ramped access. A turning area for vehicles was shown at the end of Cow Lane. Concerns were raised by officers in relation to impact of the bridge on the openness of the Green belt and the character of this rural area. Neighbour objections also raised similar concerns. As a result, the application has been amended to delete the pedestrian bridge from the proposal. Accordingly whilst the level crossing will be closed to vehicles, pedestrian access will be maintained.

## 1.3 Planning History

The following historical application is considered to be relevant to the determination of this application.

Application Number: 2012/0110/LPA, Renewal of level crossing. Decision: No Objection.

## 1.4 Consultations

**North Yorkshire Bat Group** – No comments received.

**Conservation Officer** – No comments received.

**Historic England** - On the basis of the additional information, do not wish to offer any comments. It is suggested that the Council seeks the views of its specialist conservation and archaeological advisers, as relevant.

**NYCC Highways Canal Rd** – At present Cow Lane is a Highway maintainable at public expense (HM@PE) which means the public highway rights are maintained by the County Council. Network Rail have been in discussions with the County Council about a 'Stopping Up Order' (removing the Public Highway Rights) on a section of Cow Lane (hence the above planning application for a new access road).

However, as the 'Stopping Up Order' (Section 116 Highway Act 1980) is an integral part of the application (without the 'Stopping Up Order' being approved, there is no need for the new access road to be provided), to take it forward NYCC would expect the applicant to either:

1. apply for the 'Stopping Up Order' prior to applying for the new access road (because the decision is made by a Magistrate and is not guaranteed)
2. or apply for a Section 247 (T&CPA) to remove the highway rights under planning legislation which is a quicker way of the removal of highway rights.

The submitted drawing shows an overrun of the grass verges by the HGV's and the Steel Barrier is not far enough away from the turning area to allow safe

turning. Before a formal response is made, clarification is needed of how the applicant wishes to remove the Highway Rights (under Section 116 or Section 247) and an amended plan of the turning head is required.

**Drainage Commissioners Shire Group Of IDBs** The above application lies within the IDB district and indicates that the application will increase the impermeable area to the site and the applicant will therefore need to ensure that any surface water systems installed have the capacity to accommodate any increase in surface water discharge from the site. If the surface water were to be disposed of via a soakaway system, the IDB would have no objection in principle but would advise that the ground conditions in this area may not be suitable for soakaway drainage. It is therefore essential that percolation tests are undertaken to establish if the ground conditions are suitable for soakaway drainage throughout the year. If surface water is to be directed to a mains sewer system the IDB would again have no objection in principle, providing that the Water Authority are satisfied that the existing system will accept this additional flow. If the surface water is to be discharged to any watercourse within the Drainage District, Consent from the IDB would be required in addition to Planning Permission, and would be restricted to 1.4 litres per second per hectare or green field runoff. No obstructions within 7 metres of the edge of a watercourse are permitted without Consent from the IDB. Consent required from the IDB as described above should be made a condition of any Planning decision. Regarding the amended plans submitted for the above planning application; on behalf of the Selby Area IDB there are no further comments to make, and original response still applies.

**Natural England** – Comments on application as submitted

No objection. The proposed development will not damage or destroy the interest features of the Forlorn Hope Meadow Site of Special Scientific Interest. In terms of general advice paragraph 109 of the NPPF (now para 170) of the NPPF highlights the need to protect and enhance valued landscapes through the planning system. Development should provide opportunities to secure a net gain for nature and local communities, and take account of the mitigation hierarchy referred to in the NPPF. The contribution that the development makes to the wider environment should also be taken into account.

In relation to the revised plan - Natural England made no objection to the original proposal, and the proposed amendments are unlikely to have significantly different impacts on the natural environment than the original proposal.

**National Grid** – No comments received.

**Parish Council** – The submitted information makes reference to the risk of the development being visually intrusive. The Parish Council therefore request the submission of a visual impact display of the bridge taken from the Playing Field at Cow Lane and also displays from the other aspects of the bridge so to ascertain the visual impact on the village .

**Parish Council** – In relation to revised plans - Pedestrian access over the railway line must be maintained, as it is used by Womersley residents as access to amenity land and footpaths on the other side of the railway. Whilst the new road will allow access from the southern end of the village, those from the northern end will have long walk, and a dangerous pavement crossing at the double bend in the middle of the village.

The Parish Council requested a meeting with the applicant to discuss the proposed development. Final comments are therefore awaited.

**Public Rights Of Way Officer** – Recommend an informative that states that no works are to be undertaken which will create an obstruction, either permanent or temporary, to the Public Right of Way adjacent to the proposed development.

**LNE Network Rail** – No comments received.

**Yorkshire Water Services Ltd** – No comments received.

**SuDS And Development Control Officer** - No objections to this proposal from a flood risk or drainage perspective.

**Yorkshire Wildlife Trust** – No comments received.

**The Environment Agency (Liaison Officer)** - The proposed development site appears to have been the subject of past industrial activity which potentially poses a high risk of pollution to controlled waters. The Environment Agency has not provided site-specific land contamination advice for this site, as a result of prioritisation of other more sensitive sites. It is therefore recommended that the Council refer to the EA's published "Guiding Principles for Land Contamination" It is also recommended that consultation be carried out with the Council's Environmental Health / Environmental Protection Department in relation to land contamination management. Where planning controls are considered necessary it is recommended that requirements for human health protection are integrated with those for protection of the water environment. This approach is supported by Paragraph 109 of the National Planning Policy Framework Model Procedures and Good Practice.

Waste on site

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. It is recommended that the developer refers to the Position statement on the Definition of Waste: Development Industry Code of Practice and The Environmental regulations page on GOV.UK.

Waste to be taken off site

Contaminated soil that is, or must be, disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes Duty of Care Regulations 1991, Hazardous Waste (England and Wales) Regulations 2005, Environmental Permitting (England and Wales) Regulations 2010, and The Waste (England and Wales) Regulations 2011.

**HSE Web Consultation** – The site lies within the consultation distance of at least one major hazard site and/or major accident hazard pipeline; HSE needs to be consulted on any developments on this site. You will also need to contact the pipeline operator as they may have additional constraints on development near their pipeline. **HSE Web Consultation** – Updated comments. The Health and Safety Executive (HSE) **does not advise, on safety grounds, against the granting of planning permission in this case.** As the proposed development is

within the Consultation Distance of a major hazard pipeline you should consider contacting the pipeline operator before deciding the case. HSE's advice is based on the situation as currently exists; our advice in this case will not be altered by the outcome of any consultation you may have with the pipeline operator.

### Unidentified Pipelines

There is at least one unidentified pipeline in this Local Authority Area. The Local Authority may wish to check with the pipeline operator before proceeding.

**Northern Gas Networks** –No objection however the promoter should contact Northern Gas Networks direct prior to any construction work.

**Coal Authority** – Falls within the defined development low risk area and therefore a coal mining risk assessment is not required.

**Contaminated Land Consultant - York City Council** - The submitted report is acceptable and provides a good overview of the site's history, its setting and its potential to be affected by contamination. Confirm that the report and the proposal to complete site investigation works are acceptable. Agree that the potential risk to the human health and controlled waters is low and that chemical analysis will help assess any potential contamination at the site and aid waste classification. No significant risks have been identified to potential receptors following the development of the site due to the proposed use of hardstanding as part of the development of the footpath. Potential risks to construction workers during the development works can be addressed by compliance with normal health and safety precautions. The site lies in a Coal Authority Reporting area although the site is not within an area that could be affected by past, present or predicted future underground mining. The report concludes that generally the risk of potential contamination and pollution on the site is considered to be low due to the limited historical use. If contamination is found, appropriate remedial action may be required to make the site safe and suitable for its proposed use. The following Planning conditions are therefore recommended in relation to land contamination investigation.

## 2.0 Publicity

2.1 The application was advertised on site and immediate nearest neighbours consulted. Further neighbour consultation was carried out on November 20<sup>th</sup> in relation to the revised plans. In addition two pipeline operators who have apparatus in the area were contacted. 9 letters of objection have been received including the following points:

- Disgusted by the proposal. This is a dead end for traffic and only used by dog walkers.
- The proposal is more suited to a city centre. An eyesore not suited to a location adjacent to a pretty historic village and Conservation area.
- The bridge is too large.
- Why can't pedestrian access be secured by an electronic gate?
- Don't want the crossing closed as it is used by dog walkers.
- Invasion of privacy from people looking from the bridge into the rear garden. The proposed trees will take a long time to mitigate this.

- A waste of money. Money could be used to replace the gates as is being carried out elsewhere.
- Conflicts with Green Belt Policy.
- The new track could lead to problems with security, vandalism, theft and fly tipping.
- The path is currently used by dog walkers and horse riders and the proposed bridge is not suitable or safe for horse riders. Have been riding horse over it for 16 years.
- Network Rail want to increase the speed on the line and the number of trains using the line, and taking this crossing out will enable them to do this, this I do not feel is right for Womersley, the increased number of trains will increase the noise pollution, disturb the wildlife and increase the numbers of times traffic is stopped for trains.

A letter of objection has also been received from Cllr Mary Mc Cartney on the following grounds:

- The massive bridge will be a permanent blot on the landscape and should be rejected.

A letter of objection has also been received from County Councillor John McCartney on the following grounds:

- Womersley is a rural village parts of which have conservation status. The proposed bridge would be a blot on the rural landscape and should be refused.

## **2 Report**

- 2.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". This is recognised in paragraph 11 of the NPPF, with paragraph 12 stating that the framework does not change the statutory status of the development plan as the starting point for decision making. The development plan for the Selby District comprises the Selby District Core Strategy Local Plan (adopted 22nd October 2013) and those policies in the Selby District Local Plan (adopted on 8 February 2005) which were saved by the direction of the Secretary of State and which have not been superseded by the Core Strategy.

### **2.2 Selby District Core Strategy Local Plan**

The relevant Core Strategy Policies are:

SP1 - Presumption in Favour of Sustainable Development

SP3 - Green Belt

SP15 –Sustainable development and climate change

SP18 - Protecting and Enhancing the Environment

SP19 - Design Quality

### **2.3 Selby District Local Plan**

Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework.

This application has been considered against the 2018 NPPF.

Annex 1 of the NPPF provides as follows:-

*“213. ....existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”*

The relevant Selby District Local Plan Policies are:

ENV1 - Control of Development

ENV2 - Environmental Pollution and Contaminated Land

T7 - Provision for Cyclists

T8 - Public Rights of Way

## **2.4 National Guidance and Policy – National Planning Policy Framework (NPPF), National Planning Practice Guide (NPPG)**

The 2018 NPPF does not change the status of an up to date development plan and where an application conflicts with such a plan, permission should not usually be granted (para 12).

## **3. Policy Background**

### **3.1 Core Strategy**

Section 3 of the Core Strategy includes “Visions Aims and Objectives”. One of the aims is to ensure that new development and other actions protects and enhances the built and natural environment, reinforces the distinct identity of towns and villages, and supports health and well-being, including new communities. One of the objectives (Paragraph 3.5 (4)) is concerned with safeguarding the open character of the Green Belt and preventing coalescence of settlements. Bullet point 6 seeks to ensure that new development is located in areas of lowest flood risk. Bullet point 8 refers to minimising the need to travel and providing opportunities for trips to be made by public transport, walking and cycling. Bullet point 11 refers to ‘protecting and enhancing the character of the historic environment, including buildings, open spaces and archaeology and acknowledges the contribution of the District’s heritage to economic prosperity, local distinctiveness and community well-being. Bullet point 14 it refers to protecting, enhancing and extending green infrastructure.

**3.2** Policy SP3 (B) provides that within the defined Green Belt, planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted.

**3.3** Policy SP15 makes reference to incorporating sustainable drainage systems which promote groundwater recharge, protecting, enhancing and creating habitats to improve biodiversity resilience to climate change, mitigation and adaptation and

provision for cycle lanes and cycling facilities, safe pedestrian routes and improved transport facilities.

- 3.4** Policy SP18 encourages sustaining the local distinctiveness of the natural and man-made environment by safeguarding and enhancing the historic and natural environment, conserving historic assets which contribute most to the distinct character of the district, ensure developments retain, protect and enhance features of biological interest, and identify, protect and enhance locally distinctive landscapes areas of tranquillity, public rights of way and access...
- 3.5** Policy SP19 requires that proposals for all new development will be expected to contribute to enhancing community cohesion by achieving high quality design. In addition, proposals should have regard to local character, identity and context of its surroundings including historic townscapes settlement patterns and the open countryside. Within the criteria it also makes specific reference to creating rights of way or improving them, incorporating landscaping and taking account of risk in relation to soil, air water, light or noise pollution or land stability.

### **Selby District Local Plan**

- 3.6** Policy ENV 1 seeks to secure a good standard of development in relation to a number of criteria. Of particular importance to this application are the **following criteria**;
- 1 The effect on the character of the area or the amenity of adjoining occupiers;*
  - 2 The relationship of the proposal to the highway network, the proposed means of access, the need for road/junction improvements in the vicinity of the site, and the arrangements to be made for car parking;*
  - 4 The standard of layout, design and materials in relation to the site and its surroundings and associated landscaping,*
  - 5 The potential loss, or adverse effect upon, significant buildings, related spaces, trees, wildlife habitats, archaeological or other features important to the character of the area; and*
  - 6 The extent to which the needs of disabled and other inconvenienced persons have been taken into account;*
- 3.7** Policy ENV2 seeks to ensure that development does not give rise to unacceptable levels of noise, contamination or other environmental pollution unless satisfactory remedial or preventative measures are included as an integral element in the scheme.
- 3.8** Policy T7 states that the District Council will seek to promote the objectives of the national cycling strategy by a number of identified criteria.
- 3.9** Policy T8 states that development which would have a significant adverse effect on any route in the districts public rights of way network will not be permitted unless a number of criteria can be met.

### **National Planning Policy Framework (NPPF)**



- 3.10** Paragraph 11 of the NPPF includes a presumption in favour of sustainable development. For decision making, this means approving development that accords with an up to date development plan without delay.
- 3.11** Paragraph 38 includes that Local Planning Authorities should approach decisions on proposed development in a positive and creative way.
- 3.12** Paragraph 47 states that Planning Law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
- 3.13** Chapter 8 seeks to promote healthy and safe communities. At Paragraph 98 it states that planning policies and decisions should protect and enhance public rights of way...
- 3.14** Chapter 9 seeks to promote sustainable transport. Paragraph 102 states that *'Transport issues should be considered from the earliest stages of plan-making and development proposals so that:*

*c) Opportunities to promote walking, cycling and public transport are identified and pursued.*

*d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gain.*

At Paragraph 104 d) it states that planning policies should

*Provide for high quality walking and cycling networks and supporting facilities such as cycle parking.*

- 3.15** Chapter 12 seeks to achieve well designed places. It states that *'The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'*. At paragraph 127 f) it requires that plans and decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Paragraph 128 states that *'Design quality should be considered throughout the evolution and assessment of individual proposals.'* And at paragraph 130 it is made clear that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area, and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.
- 3.16** Section 13 highlights the importance that the Government attaches to the Green Belt. It states that *'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics of Green Belts are their openness and their permanence.*
- 3.17** Paragraph 143 it states that *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances'*. And at Paragraph 144 *' When considering any planning application, local planning authorities should ensure that substantial weight is*

*given to any harm to the Green Belt, Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposals is clearly outweighed by other considerations.'*

**3.18** Chapter 15 relates to Conserving and enhancing the natural environment, and at 170 B refers to '*recognising the intrinsic character and beauty of the countryside...*'

**3.19** Chapter 16 relates to conserving and enhancing the historic environment. It emphasises that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance.

## **4.0 Appraisal**

**4.1** The main issues to be taken into account when assessing this application are:

- Green Belt
- Landscape impact
- Highway considerations, including loss of vehicular crossing
- Heritage
- Flood Risk and Drainage
- Contamination
- Neighbour amenity
- Biodiversity

### **Green Belt**

**4.2** Both Policy SP3 of the Core Strategy and Section 13 of the NPPF require that inappropriate development should not be approved unless the harm resulting from the proposal is outweighed by very special circumstances. Paragraph 146 of the NPPF provides that certain forms of development are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. These include:

- C) local transport infrastructure which can demonstrate a requirement for a Green Belt location.

The development includes the formation of a new access road to serve the agricultural land on the eastern side of the railway by forming a new access track to run parallel to the railway line and drainage ditch between Cow Lane and Highfield Lane. It will be 700m long and surfaced in crushed aggregate. Where it joins Highfield Lane there will be a bell mouth formed from concrete and covered in tarmac. A further bell mouth will be formed at the north western end. A turning head will be provided at the Womersley side of the level crossing close to the junction of Cow Lane with the level crossing. A steel barrier will be erected to prohibit vehicles. It is clear that the access and turning require a Green Belt location because the development is directly related to the location of the railway crossing and access to land on the other side. It is not considered that the access track will be readily visible because in the locality as it runs alongside the railway line, and the majority of the existing planting will be maintained. Indeed it will look like any other agricultural track that criss crosses the fields. The Courts have previously held that openness equates to an absence of development. It has also

been decided that the concept of the "openness of the green belt" had to be interpreted in the specific context in which it fell to be applied under the equivalent policy in the previous version of the NPPF (paragraph 90). Visual impact was one of the relevant factors in interpreting that concept. When a development is likely to have visual effects within the green belt, the decision-maker is required to consider the effect of this on the question of whether the development would preserve the openness of the green belt. Given the natural texture of the surface, its location next to the existing railway and its limited use, it is not considered that the track itself will impact on openness. However it is considered that the bell mouth at either end of the track and the turning area will have some impact on openness, and they introduce a form of development including a tarmacked entrance that will appear more urban. Furthermore the turning area at the end of Cow Lane is in an existing landscaped area adjacent to the road.

- 4.3** It is therefore considered that the development is inappropriate and therefore harmful by definition. As such it should not be approved unless Very Special Circumstances outweigh the harm by definition and any other harm.

### **Removal of level crossing and other highway considerations**

- 4.4** Policies SP15 and SP18 of the Core Strategy make reference to provision for cycle lanes and cycling facilities, safe pedestrian routes and improved public rights of way and access. Chapter 8 of the NPPF seeks to promote healthy and safe communities. Paragraph 98 provides that planning policies and decisions should protect and enhance public rights of way. The level crossing at the end of Cow Lane currently provides vehicular access for farm vehicles together with access for pedestrians. The proposal seeks the removal of the level crossing between Cow Lane and the north side of the Askern branch line.
- 4.5** The application as submitted sought to retain access for agricultural vehicles to land on the other side of the railway line by creating a new access track that runs parallel to the railway line between Highfield Lane and Cow Lane. To provide pedestrian access over the level crossing it was proposed to construct a ramped footbridge located to the north west of the current crossing position. The new footbridge would have consisted of ramps on either side of the railway line rising from ground level to the bridge height which would be 5.2 metres above the railway line. The application was accompanied by a survey of usage of the crossing which demonstrated that during a 9 day survey 146 people used the level crossing averaging 16 pedestrians per day. A further survey was carried out in June 2017 and showed similar results. This census also recorded the number of vehicles using the crossing over the period. A total of 113 vehicles including 26 tractors were recorded. The report concluded that a ramped structure was the most appropriate to replace the existing level crossing because full closure without re-provision would result in a lengthy diversion for pedestrians and a ramped structure would provide for people with reduced mobility, those with pushchairs and cyclists.
- 4.6** Officers raised concerns however regarding the scale of the pedestrian bridge due to the urbanisation of this rural area, the landscape impact and impact on the openness of the Green Belt. This was an issue that was raised in objections to the development. In response to this the development has been amended to exclude the bridge. Pedestrian access will be retained over the crossing. The exact details of the design are to be approved; however it is considered that this can be addressed by condition. The Public Rights of Way Officer has not objected but

recommended a condition to require that there is no obstruction to any right of way.

- 4.7** It is noted that the Highway Authority have requested additional information regarding the stopping order for the end of Cow Lane, and a revised plan for the turning area is also required. They have however confirmed that the details of the turning head can be secured by condition.
- 4.8** Whilst the precise details of the access over the crossing have yet to be agreed, the agent has confirmed that the access will be suitable for wheelchair users and pushchairs. Because of this, it will be wide enough for cyclists, although it is understood that there are no cycle rights on the public footpath. This will equally apply to horse riders. Subject to details of the turning head and crossing, it is considered that the new access to provide vehicular access to the fields together with pedestrian and wheel chair access over the crossing will accord with those identified parts of the NPPF that relate to enhancing rights of way, and Policies ENV1 (6), T7 and T8 of the Selby District Local Plan by retaining access to the countryside and linking with other footpaths in the vicinity.

### **Landscape and Character assessment**

- 4.9** The site does not lie within a locally important landscape area. However the NPPF at paragraph 170(b) requires that planning policies and decisions should recognise the intrinsic character and beauty of the countryside. The application site is located in a rural area that forms the setting to the village of Womersley. It was considered that the initial proposal that included a large pedestrian bridge would introduce a very urban structure into this rural landscape. This is a matter that was raised in a number of objections to the application. In response that element of the proposal has been omitted. and is considered that the works respect the rural character of their location. The majority of the access will be surfaced with crushed aggregate which is not out of keeping with a rural area. It is also considered that the location of the track alongside the railway minimises its impact. Those more urban elements of the development relate to the bellmouth at either end of the access, and the turning head at the end of Cow Lane. However it is considered that any impact is much localised and will not therefore have an adverse impact on the wider area. As such it is considered that the development will accord with the requirements of Section 15 of the NPPF and criteria 1 and 5 of Policy SP 18 of the Core Strategy and criteria 1 of Policy ENV 1 of the Selby District Local Plan.

### **Heritage**

- 4.10** The site does not lie within a Conservation area however it is within the setting of Womersley Conservation area. It was considered that the pedestrian bridge would have had some impact on the setting of the Conservation area by virtue of its scale and urban form which would harm the rural setting of the village. However the bridge has been excluded from the proposal and it is not considered that the revised development will harm the setting of the conservation area. Nor is it considered that the new access or turning area will harm the setting of the listed buildings that are located to the south eastern end of the village. According to a recent Court of Appeal decision (Catesby Estates Ltd), for a proposed development to affect the setting, there has to be a distinct visual relationship between the two. That relationship has to be more than remote or ephemeral, and it has to bear on how the asset was experienced in its surrounding landscape.

However, that does not mean that other factors are to be ignored and economic, social and historical considerations are also relevant. However in this case the impact of the development is very localised and there is no visual relationship or other connection between the proposed development and the setting of the listed buildings. As such it is not considered that the development conflicts with that part of Policy SP18 of the Core Strategy that relates to heritage nor section 16 of the NPPF.

## **Biodiversity**

- 4.11** The application is accompanied by a preliminary ecological appraisal. This concludes that there are no statutory designated sites within 2km of the site and therefore the proposed works will have no negative impact on any designated sites. Natural England has not raised any objection to the proposed development. It is also considered that the nearest locally designated site is a sufficient distance to prevent the development impacting on it. The report acknowledges that there is a potential impact bat foraging habitat due to the woodland edges present on the site. The proposed works will have no negative impact on foraging bats as long as the existing foraging habitat is not fragmented by the works. Now that the level of work proposed has been reduced, it is not proposed that trees will be removed however a landscaping condition will address any loss of trees and shrubs that may occur during the works. This will ensure the retention habitat for foraging bats and nesting birds.
- 4.12** The dense vegetation within the survey area provides an abundance of nesting habitat for birds during the nesting season, which extends from March to September each year. Significant removal of vegetation during the nesting season will potentially have a High Negative Impact on any nesting birds present. Therefore any clearance of vegetation should take place outside the bird nesting season.

## **Flood Risk and Drainage**

- 4.13** The majority of the site lies within flood zone 1, with an area in the centre of the access track lying in flood zone 2. The track will be constructed from a porous surface and due to its location at a lower level than the railway will not increase flood risk in the area. Essential infrastructure is identified as being acceptable in flood zone 2. The planning statement advises that the proposed development will drain to existing surface water drainage ditches and does not require any additional work. Because the track itself is porous it is not considered likely to increase surface water runoff, with only a limited impermeable area to form the turning area and bellmouth to the access track. The report identifies that Peak flood depths on site have the potential to increase by 30–50% under the stated peak flow increases for climate change in the Humber River Basin District. However the proposed access track is not required to be operational in times of flood it is considered that this risk is acceptable. There are no residual risks from the watercourses adjacent to the Site. There is a potential residual risk of failure of the land drainage network due to blockages. Regular inspection and maintenance of these drains should be carried out to ensure that this risk is mitigated as far as possible. There is a residual risk of flooding as a result of the breach of a reservoir structure. However, the risk is considered very low due to the frequent inspections and the highly regulated nature of the structures Whilst SP15 does state that development in areas of flood risk should be avoided; it is considered that the location for the track is dictated by the need to access the surrounding land.

Furthermore it is considered that it can be made safe without increasing flood risk elsewhere. It is therefore considered that the Sequential Test has been passed. The benefits of the improvements to safety by prohibiting vehicle movements across the railway line provide wider public benefits, and therefore the Exception Test has been passed. In terms of drainage, the Lead Local Flood Authority has not objected to the development from a flood risk or drainage point of view. Therefore it is considered that the development accords with policy SP15 d and section 14 of the NPPF.

### **Contamination**

- 4.14** ENV2 B states that if there is a suspicion that the site might be contaminated, planning permission may be granted subject to conditions to require a site investigation and assessment. The application was accompanied by a phase 1 contamination which concludes that there is a low risk of contamination. This has been considered by The Council's Land Contamination consultant who concludes that the report provides a good overview of the site's history, its setting and its potential to be affected by contamination. It is further agreed that the potential risk to the human health and controlled waters is low and that chemical analysis will help assess any potential contamination at the site. However, potential sources of contamination at the site include the railway embankment, track bed, drainage and services and use of the site as a railway and road intersection. The potential contaminants of concern identified at the site include PAHs, asbestos, metals, sulphate, diesel and lubricating oils. No significant risks have been identified to potential receptors following the development of the site due to the proposed use of hardstanding as part of the development of the footpath. Potential risks have been identified to construction workers during the development works but these are thought to be reduced to insignificant if the workers comply with normal health and safety precautions. The report recommends that ground investigation including sampling and chemical analysis is carried out to determine the nature and extent of contamination.
- 4.15** The Environment Agency hasn't provided detailed site-specific land contamination advice for this site, due to prioritising more sensitive sites. They have however recommended that development of the site is carried out in accordance with the Environment Agency guidance on land contamination. The Environment Agency's comments do however indicate that the risks to controlled waters from the proposed development at the site are low. It is considered that in completing the recommended site investigation, the potential risk to controlled waters will also be assessed. Therefore it is considered that the development accords with Policy ENV2 B subject to conditions requiring an investigation and risk assessment, followed by remediation and verification of remedial works where required.

### **Neighbour impact**

- 4.16** The NPPF in chapter 12 requires that planning policies and decisions should provide a high standard of amenity for existing and future users. Policy ENV1 of the Selby District Local Plan requires that development takes account of the amenity of adjoining occupiers. An objection was received from the nearest neighbour to the site due to potential overlooking from the pedestrian bridge due to its height and proximity. However the bridge has been removed from the proposal and therefore addresses this concern. It is not considered that the closure of the level crossing will have a significant adverse impact on neighbouring amenity, and any impact as a result of the turning area opposite their property is

likely to be offset by the reduction in vehicular movements along Cow Lane. In terms of the new access, there may be some increase in vehicular movements to the other level crossing by farm vehicles to reach the new access, however it is not considered that this will have a significant adverse impact due to the relatively low number of movements. As such it is not considered that the development will have a significant adverse impact on neighbouring amenity.

- 4.17** Accordingly it is considered that the development will accord with that part of the NPPF that relates to amenity and Policy ENV 1 (1) of the Selby District Local Plan.

#### **Other material considerations**

- 4.18** The HSE has been consulted on the application and has not advised against the development. However they have identified that the proposed development is within the Consultation Distance of a major hazard pipeline and therefore British Gas Networks have been consulted on the application. They have confirmed that they have no objection to the application. There is also an unidentified pipeline and therefore it is recommended that an informative is imposed advising that the applicant consults any pipeline operator.

In relation to safety, security and fly tipping concerns it is recommended that a gate be provided across the access to prevent general use of the track.

#### **Very Special Circumstances**

- 4.19** It has been concluded that because the development will have some impact on openness, the development is inappropriate by definition. Paragraph 144 of the NPPF provides that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations. The applicant has provided the following information to demonstrate such 'Very Special Circumstances':

- Level crossings have been identified as the single biggest risk on Network Rail's infrastructure. As such a programme of closing crossings has been put in place. Where this cannot be carried out options to make the crossing safer are looked at.
- By closing Post Office Lane level crossing, risk for road users and train passengers will be significantly reduced as the probability of a train striking a vehicle or pedestrian reduces to zero.
- Network Rail will be able to invest the money that would normally be spent on renewals, maintenance and operations in other areas of the network which will enhance the journeys for thousands of passengers each year.
- The provision of inclusive alternative access across the railway line.
- The reduction in agricultural vehicle movements through the village in particular at the junction of Main Street and Cow Lane and reduction in vehicle movements along Cow Lane.

- The provision of turning facilities for vehicles along Cow Lane.
- Landscape mitigation and enhancement works.

**4.20** Since the application was submitted, the proposal was varied to delete the pedestrian bridge. As such the crossing will be kept open but vehicular access prevented. It is therefore necessary to consider whether the improvements to rail safety are sufficient to outweigh the harm to the green belt and any other harm. It is considered that harm to landscape; flood risk, contamination drainage, biodiversity and neighbour impact are minor in effect. It also concluded that the safety benefits by reducing the risk of trains striking cars, and the site specific location of the development outweighs any harm to the openness of the green belt and the limited other harm identified. It is of importance however that the improvements to safety will only be achieved if the stopping up order, (which requires decision by a Magistrate), is agreed. Without the stopping up of the highway there is no need for a turning area and access. It is therefore recommended. In view of this it is considered that a condition be imposed requiring that the access and turning area do not commence on site until the stopping up order is in place. Subject to the imposition of such a condition it is not considered that the development will conflict with the purposes of including the land within the Green Belt. As such it is considered that this constitutes the very special circumstances, and therefore the development accords with paragraph 144 of the NPPF and policy SP3 of the Core Strategy

## **5.0 CONCLUSION**

**5.1** The site is located in the Green Belt and substantial weight has been given to the harm to the Green Belt by reason of inappropriateness. Minor harm to neighbour amenity, and flood risk have been identified. It is considered however that harm to landscape character and biodiversity can be mitigated by appropriate conditions. It is considered that the development must be located within the Green Belt because of the nature of the proposal which is directly located to the railway and the agricultural land and the limited harm to openness of the Green Belt and therefore harm by definition is outweighed by the safety benefits of the works. It is also considered that the revised plans which omit the pedestrian bridge address the main objections that have been raised. Furthermore, the development will retain pedestrian and wheelchair access over the crossing. As such the development accords with the relevant policies in the Development plan and the NPPF, and there are no other material considerations identified that would warrant refusing the application.

**Recommendation: Approval subject to no adverse comments being received from the Highway Authority, and subject to the following conditions;**

1 The development for which permission is hereby granted shall be begun within a period of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:  
60543757-AEC-STR-DR-1700-152 REV 1 A PO3 Proposed track/road general arrangement.



60543757-AEC-STR-DR-1700-155 Rev 1 A PO3 Proposed Turning head  
60543757-AEC-STR-DR-1700-147 PO3 Rev 1 A New track/road site location  
block plan  
0543757-AEC-STR-DR-1700-148 Rev 1A PO3 New track/road block plan - north

Reason: For the avoidance of doubt.

- 3 Prior to the closure of the level crossing to vehicular traffic, precise details of the turning head, provision for pedestrian and wheelchair access together with the barrier to vehicles shall be submitted to, and approved in writing by the Local Planning Authority.

Reason: In the interests of highway and pedestrian safety, appropriate access for pedestrians and wheelchair users and the visual amenity of the area.

- 4 Prior to development commencing on site, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings shall include:

- (i) a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
- (ii) an assessment of the potential risks to:  
human health property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s)

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 5 Prior to development, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can

be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 6 The development shall be carried out in accordance with the approved remediation scheme and a verification report that demonstrates the effectiveness of the remediation carried out must be produced submitted to and approved in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

- 7 In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 8 A landscaping scheme that has first been submitted to and approved in writing by the Local Planning Authority shall be implemented on site within the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the Local Planning Authority. The submitted scheme shall include replacement trees and shrubs for those required to be removed to create the turning area and access track. The submitted details shall include a plan of the site indicating inter alia the number, species, heights on planting and positions of all trees, shrubs and bushes. All trees, shrubs and bushes shall be maintained for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To safeguard the rights of control by the Local Planning Authority in the interests of amenity having had regard to Policy ENV1 of the Selby District Local Plan.

- 9 The development of the site shall be carried out in accordance with the recommendations contained within the submitted preliminary ecological appraisal.

Reason: In the interests of ensuring that the scheme avoids potential impacts on nesting birds and bat foraging habitat and to ensure the enhancement of the site for wildlife purposes.

- 10 Prior to the access being first brought into use, details of a security gate to the access from Highfield Lane shall be submitted to, and approved in writing by the LPA. Thereafter the development shall be carried out in accordance with the submitted details.

Reason: To increase security and reduce the risk from vandalism and fly tipping.

- 11 The access and turning area shall not be commenced until a stopping up order (under Section 116 of the Highway Act) has been confirmed, or agreement has been made under Section 247 of the Town and Country Planning Act to prevent vehicular access over the level crossing.

Reason: The site lies within the Green Belt, and 'very special circumstances' to outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm will not exist unless the safety benefits associated with closing the level crossing to vehicular traffic are delivered.

## **6 Legal Issues**

### **6.1 Planning Acts**

This application has been determined in accordance with the relevant planning acts.

### **6.2 Human Rights Act 1998**

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

### **6.3 Equality Act 2010 and the Public Sector Equality Duty (PSED)**

Section 149(1) of the Equality Act 2010 provides that a public authority must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant characteristic and those who do not share it. Subsection (3) of s.149 specifies in further detail what "having due regard to the need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it" involves.

This includes having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The "relevant protected characteristics" are listed in s.149 (7) and include age, disability and race. The possible impact of the development on non-ambulant members of the public has been highlighted as a potential issue. However as noted above, access for wheelchair users will be retained over the crossing. A condition has been imposed requiring specific details to be submitted to, and agreed in writing in the circumstances and paying due regard to the PSED, it is

not considered that the proposals would give rise to any adverse impacts on those sharing a protected characteristic.

## **7. Financial Issues**

7.1 Financial issues are not material to the determination of this application.

## **8. Background Documents**

**Contact Officer:** Rachel Smith, Principal Planning Officer

**Appendices:** None