



Report to: Communities Committee, 8th June 2022

Report of: Corporate Director, Operations, Homes & Communities

Subject: THE PROPOSED CLOSURE OF PEDESTRIAN FOOTPATHS AT BRICKFIELDS RAILWAY CROSSING AND KAYS RAILWAY CROSSING BY USE OF PUBLIC SPACE PROTECTION ORDERS (PSPO)

1. Recommendation

That the Committee:

- 1.1 Note the contents of this report, and in particular the outcome of the public consultation exercise undertaken in respect of the Draft Public Space Protection Orders attached at Appendix 5 and Appendix 6;**
- 1.2 Approve the implementation of the Public Spaces Protection Order at Appendix 5, that will close to pedestrians, Footpath Wr858 (Brickfields Crossing) for a maximum period of three years; and**
- 1.3 Approve the implementation of a Public Spaces Protection Order at Appendix 6, that will close to pedestrians, Footpath Wr678 (Kays Crossing) for a maximum period of three years.**

2. Background

- 2.1 Network Rail has made a request to Worcestershire County Council for the closure of two footpaths that include railway crossings in Worcester City. After considering all options the County Council has asked Worcester City Council to consider using its powers to create Public Space Protection Orders (PSPO) to prohibit the use of the two railway crossings in response to anti-social behaviour.
- 2.2 The two crossings are footpath WR858 linking Brickfields Park to Astwood Road (see **Appendix 1**) and WR-678 linking Bromyard Road to Laugherne Brook Nature Reserve, also known as the Kays crossing (see **Appendix 2**).
- 2.3 A local authority may make a PSPO if satisfied on reasonable grounds that two conditions are met.
- 2.4 The first condition is that:
 - a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
 - b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
- 2.5 The second condition is that the effect, or likely effect, of the activities:

- a) is, or is likely to be, of a persistent or continuing nature,
 - b) is, or is likely to be, such as to make the activities unreasonable, and
 - c) justifies the restrictions imposed by the notice.
- 2.6 A public spaces protection order is an order that can identify a public place where the conditions occur in a defined "restricted area" and:
- a) prohibits specified things being done in the restricted area,
 - b) requires specified things to be done by persons carrying on specified activities in that area, or
 - c) does both of those things.
- 2.7 The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order:
- a) to prevent the detrimental effect from continuing, occurring or recurring, or
 - b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.
- 2.8 The Anti-Social Behaviour Crime and Policing Act 2014 states that a local authority must carry out the necessary consultation and the necessary publicity and notification before making a public spaces protection order. The Council must consult with residents and/or the communities affected by the prohibitions detailed in the order.
- 2.9 The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate (Home Office guidance 2014). Prior to its expiry it may (subject to review and approval) be extended for a further period of not more than 3 years if the order-making authority is satisfied, on reasonable grounds, that doing so is necessary to prevent occurrence or reoccurrence of the activities identified in the Order. A PSPO may be extended more than once.
- 2.10 The Committee approved the creation of a PSPO to close footpath WR858 at Brickfields due to anti-social behaviour on 20th June 2017. At the time stones were being thrown at the trains. The Order ran from 7th July 2017 to 6th July 2020.
- 2.11 At its meeting of 3 November 2021, the Committee received a report summarising the results of a public consultation which ran from 19 July to 30 August 2021 and approved the undertaking of a four-week public consultation on the proposed Public Spaces Protection Order to prohibit the use of footpath WR858 (Brickfields Crossing) and WR678 (Kays Crossing).

3. Information

- 3.1 The Brickfields level crossing suffered from an extraordinarily high number of incidents before the previous PSPO was put in place and the footpath closed. Network Rail, Passenger Train Operators and the Freight Train Operators have all

welcomed this crossing having been taken out of use for the last four years. Network Rail urges the continuation of this PSPO in the strongest terms.

- 3.2 The Kay's level crossing is very popular with school children, during morning and evening peaks. There is concern that due to the layout of the crossing a user must make their own decision on whether it is safe to cross and there is poor visibility for both pedestrian and driver. Recently the number of 'near-miss' incidents, where persons narrowly avoid being struck by trains, has become very high and so a temporary closure is in place. The fencing put in place for this is being vandalised regularly. Cases of persons taking their own lives here have been higher than at comparable locations. Network Rail do not have any statutory powers to close level crossings.
- 3.3 The term 'unsafe' is also a subjective one. Network Rail must make sure that all level crossings are compliant with the industry standard. Using the industry-accepted risk modelling support tool, the All-Level Crossing Risk Model, Network Rail are able to compare network-wide level crossings and, based on risk, Kay's crossing is ranked 22nd 'most at risk' out of 341 footpath-type crossings on the Western Route.
- 3.4 Safety compliance is based on the fundamental parts of the crossing, not the amount of use it gets, or the behaviours of those using the crossing. Both Kay's and Brickfield's are compliant to standard but the issue with them both is that they cannot do anything further to make them safer in response to user behaviour. Frequent occurrences of near misses are due to people refusing to wait for the train to pass or playing on the crossing as the train approaches.
- 3.5 Between May 2019 and November 2019 (the six-month period), there were ten incidents reported at the Kay's crossing, the greatest number reported at a crossing on the Western Route. These included:
 - 1 fatality deemed a non-suspicious deliberate act.
 - 7 deliberate misuses, 6 of which involved children, groups of children, and young people.
 - 2 near misses, both times the emergency braking procedure was initiated by the train driver.
- 3.6 British Transport Police use trespass byelaws to deal with persons found on the railway under Section 55(1) of British Transport Commission Act 1949. This is applied to both adults and minors and they use this both to provide education and to summon for prosecution the repeat offenders and those with aggravating circumstances.
- 3.7 In terms of statutory offences, Kay's Crossing has seen incidents of:
 - Throwing objects on the railway (as per S.56(1) British Transport Commission Act 1949);
 - Trespass on the railway (S.55(1) British Transport Commission Act 1949);
 - Wilful trespass on the railway (S.16 Railway Regulation Act 1840);
 - Obstructing engines or carriages on railways (S.36 Malicious Damage Act 1861), and
 - various byelaw offences (as per S.219 Transport Act 2000).

- 3.8 Considering the incidents outlined above and those involved, it is considered that the most at-risk group are children and young persons. However the risk posed to train crew and passengers must also be taken into consideration.
- 3.9 The footpath has been closed by a temporary road traffic order since 12th February 2020, on the grounds that the crossing was unsafe for users on account of these problems.

4. Stakeholder feedback

- 4.1 The County Council has considered the use of Extinguishment Orders¹ under Sections 118, 118A and 118B of the Highways Act 1980 and is of the view that the legal tests are not justified as the issues at Brickfields and Kay's locations relate to Anti-Social Behaviour rather than structural safety concerns. The County confirm that there are established and well used footpath routes in the immediate area of both crossings, which provide a reasonably convenient alternative route. The footpaths are well maintained and provide a link to the rights of way network in the area. The County Council has imposed temporary closures on both footpaths whilst the City Council considers whether to pursue with an order.
- 4.2 West Mercia Local Policing teams do not routinely patrol these locations and do not get called to the locations when incidents occur as British Transport Police would be notified. West Mercia Police, West Midlands Ambulance and HW Fire and Rescue data record 5 incidents, all at Brickfields, between 2014 and 2020. Two incidents were attended by the ambulance service where a person had fallen or had an incident on the track.
- 4.3 Ward Councillors who were Council Members at the date of the consultation exercise were consulted. Brickfields Councillors (Cllrs Gregson (Lab) & Collins (Lab)) supported the closure of the Brickfields railway crossing pedestrian footpath closure. Cllr Collins queried if there was a more permanent solution. St Johns Councillors (Cllrs Cawthorne (Lab), Lamb (Lab) & Udall (Lab)) supported the closure of the Kays railway crossing pedestrian footpath closure, noting that this route was previously used for children to get to Christopher Whitehead High School.

5. Public Consultation

- 5.1 The consultation was hosted on the City Council 'Voiceit' webpage from 11th March to 8th April 2022. It was advertised on City Council social media, alongside a press release which featured in Worcester Observer and Worcester News on 16 March 2022 and a paid advert in the Worcester News in the notices section.
- 5.2 The consultation was advertised at each railway crossing location with notices and local residents near the crossings also received notices. Residents who left their contact details from the previous consultation were contacted directly.
- 5.3 Paid social media was used on Facebook, Instagram and Twitter. The Brickfields crossing reached 21,488 with 614 clicking the link, 32 reactions and 25 comments. Kays crossing reached 21,786 with 530 clicking the link, 34 reactions and 26 comments.

¹ an **order** extinguishing a public right of way **under** the **Highways Act 1980**, S118 the Council must be satisfied that there is a good reason for closing the path, and satisfied that it is not needed for public use and not likely to be used

6. Consultation Responses

Brickfields Walk (Footpath WR858)

- 6.1 There were 102 responses to the survey. Some questions receive more responses than others. The consultation summary can be seen at **Appendix 3**.
- 6.2 Of the 102 responses, 76 (75%) said they lived near either of the level crossings and 26 said they didn't.
- 6.3 When asked how often they used the railway crossing 10 responses were daily users, 13 were regular users, 30 sometimes used the path and 22 rarely used the route. 27 said they never used the path.
- 6.4 When asked if they support the closure of the footpath 54 said yes and 48 said no. When asked if the path should be closed for 3 years, 52 responses said yes and 50 said no.
- 6.5 For those that said no to both questions, the main themes in the comments were:
- a) It's a Public Right of Way'
 - b) It is a quicker route to the park instead of going around causing more congestion
 - c) Suggested installing a bridge instead
 - d) If there is still anti-social behaviour, more patrols are needed by the Police
- 6.6 When asked if they would support penalty notices being issued for non-compliance 70 (69%) respondents either strongly agreed or agreed.
- 6.7 When asked if they support persistent offenders being prosecuted, 80 (78%) either strongly agreed or agreed.

Kays Crossing (Footpath WR-678)

- 6.8 There were 161 responses to the survey. Some questions receive more responses than others. The consultation summary can be seen at **Appendix 4**.
- 6.9 Of the 161 responses, 121 (75%) said they lived near either of the level crossings and 40 said they didn't.
- 6.10 When asked how often they used the railway crossing 21 responses were daily users, 30 were regular users, 49 sometimes used the path and 25 rarely used the route. 36 said they never used the path.
- 6.11 When asked if they support the closure of the footpath 59 said yes and 102 said no. When asked if the path should be closed for 3 years, 66 responses said yes and 95 said no.
- 6.12 For those that said no to both questions, the main themes in the comments were:
- a) Closing it only means the behaviour goes elsewhere
 - b) It's a Public Right of Way
 - c) It saves a lot of time walking through Dines Green
 - d) It's a great access to the Nature reserve

- e) It's a useful cut through
- f) Asked for CCTV instead
- g) Suggested that the Council and Network Rail should fix the problem rather than cutting it off

6.13 When asked if they would support penalty notices being issued for non-compliance 100 (62%) respondents either strongly agreed or agreed.

6.14 When asked if they support persistent offenders being prosecuted, 113 (70%) either strongly agreed or agreed.

7. **Analysis and Insight**

7.1 75% of respondents lived near to either one of the railway level crossings.

7.2 In previous public consultations 70% of responses said the two footpaths and the crossings were appropriate identified locations. However, the responses to the more recent survey at Brickfields 53% agreed and to the Kays survey only 37% agreed.

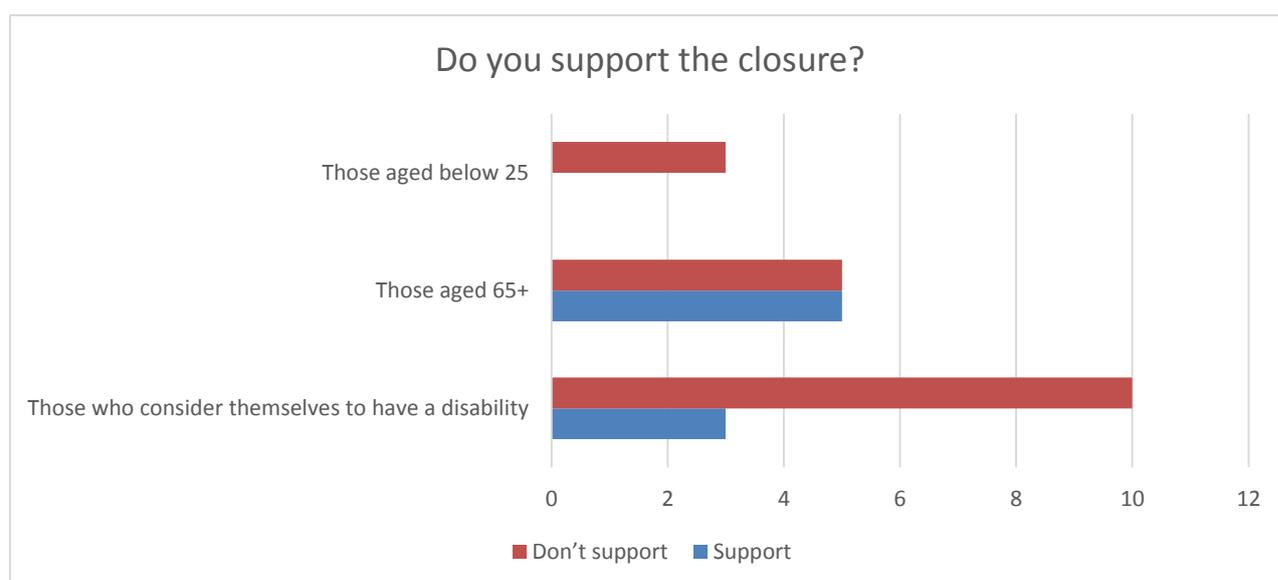
7.3 Responses regarding the issuing of penalty notices and further prosecution for persistent offenders were still popular.

7.4 An equality impact assessment (**Appendix 7**) highlighted the two characteristics of age and disability that would be affected by the footpath closure.

7.5 24 responses were from residents who identify themselves as being disabled and 23 lived nearby to either one of the two railway level crossings. 8 of those respondents at each location stated they had used the footpath either on a daily basis or a couple of times a week.

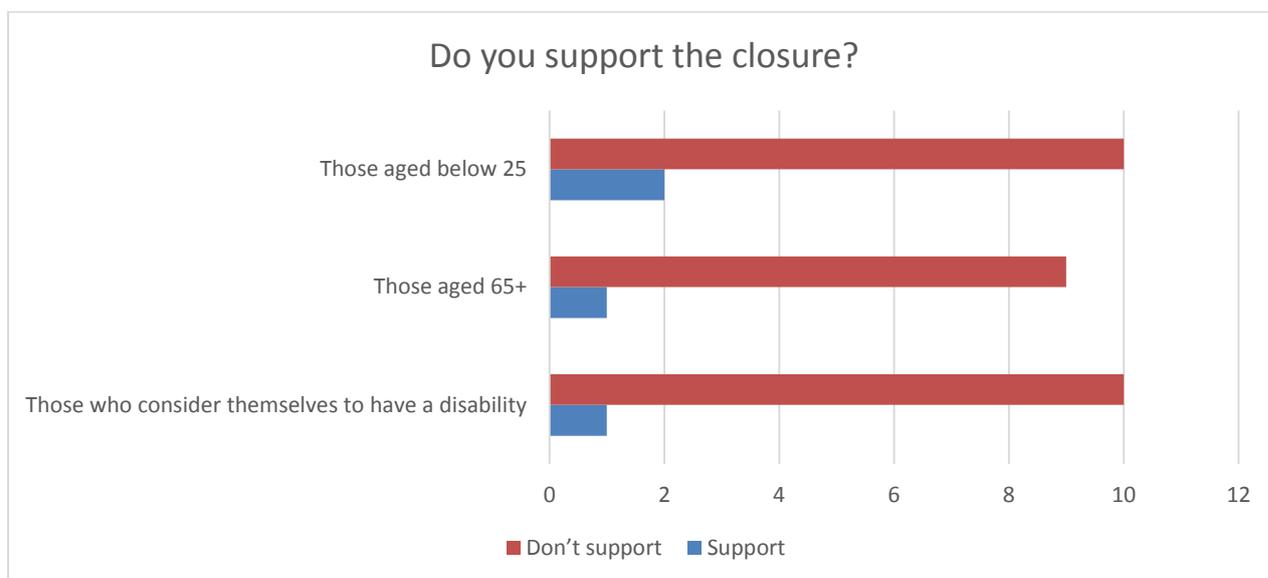
7.6 Figure 1 below shows that 10 of those respondents to the Brickfields consultation said they were opposed to the footpath closure.

Figure 1. Brickfields responses to closing the footpath WR-858.



7.7 Figure 2 below shows that 10 of those respondents to the Kays consultation said they were opposed to the footpath closure.

Figure 2. Keys responses to closing the footpath WR-678.



- 7.8 As previously reported to the May 2021 committee, Network Rail state that physical bridging and automated changes to both level crossings are not possible due to the proximity of private housing and the potential to trap people on the rail tracks. Network Rail state there has been CCTV surveillance at locations in support of enforcing the British Transport Commission Act 1949, however the cameras attract vandalism at these remote locations and cannot be relied upon to proactively detect and prevent incidents.
- 7.9 The British Transport Police have visited local schools and delivered education to raise awareness of the dangers and law in regard to use and crossing railway tracks. Their experience during the six months in 2019 was that this had little to no effect on the anti-social behaviour associated with the crossing points.
- 7.10 The negative impact of closing the two footpaths on residents is of concern, especially when it affects those with identified mobility issues. However, this must be balanced against the severity of the anti-social behaviour, the danger for young adults and the impact this has on Network Rail staff and its passengers.

8. Justification for PSPO

- 8.1 The anti-social behaviour identified and experienced by Network Rail meets the criteria for a PSPO as:
- It has a detrimental effect on the quality of people's lives.
 - The activity is carried out on public spaces.
 - The activity is likely to continue if the railway level crossings are re-opened.
 - The area of prohibition is defined.
- 8.2 The identified restrictions are measured, will stop the anti-social behaviour and will not be a significant detriment to other users.

9. Preferred Option

- 9.1 Approval to implement a Public Spaces Protection Order to Close Footpath Wr858 (Brickfields Crossing) for three years.
- 9.2 Approval to implement a Proposed Public Spaces Protection Order to Close Footpath Wr678 (Kays Crossing) for three years.

10. Alternative Options Considered

- 10.1 Physical bridging and automated changes to both level crossings are not possible due to the proximity of private housing and the potential to trap people on the rail tracks.
- 10.2 Additional automated information would provide users of the crossing with more visible and audible warnings that a train is coming, but this would not mitigate or stop the anti-social behaviour.
- 10.3 Education. The British Transport Police have visited local schools and delivered education to raise awareness of the dangers and law in regard to use and crossing railway tracks. British Transport Police report that during the six months in 2019 this had little to no effect on the anti-social behaviour.
- 10.4 CCTV surveillance. Network Rail state there has been CCTV surveillance at locations in support of enforcing the British Transport Commission Act 1949. However, the cameras attract vandalism at these remote locations and cannot be relied upon to proactively detect and prevent incidents.

11. Implications

11.1 Financial and Budgetary Implications

There are no financial and budgetary implications associated with this report. The cost of physical closure to the footpaths will be covered by Network Rail. The signage costs will be minimal and will be met within existing revenue budgets.

11.2 Legal and Governance Implications

The consultation process has been conducted in line with the Home Office Guidance of July 2014 and the Anti-Social Behaviour Act 2014 and regulations made thereunder. The Anti-Social Behaviour Act 2014 allows the Council to make a PSPO in these circumstances.

11.3 Risk Implications

A PSPO is adopted in response to anti-social behaviour and/ or environmental health on a community. Consulting the public on whether there is any positive or negative impact from individuals not being able to use the footpaths, will inform members to decide on a suitable course of mitigation or action.

11.4 Corporate/Policy Implications

The PSPO is intended to provide a regulatory framework which will help the Council address, in a proportionate way, a number of specific problematic behaviours in the City. It is therefore compatible with the City Plan objectives:

- *Stronger & Connected Communities* – people feeling safe and able to enjoy the city fully, and working with partners to reduce crime and anti-social behaviour in all communities and the city centre;

11.5 Equality Implications

Adverse and positive equality implications were identified as part of an Equality Impact Assessment which is included at **Appendix 6**. It is expected that the order will have both positive and negative impact for the protected groups age and disability.

11.6 Human Resources Implications

No implications as a result of this report.

11.7 Health and Safety Implications

Identified works will improve reduce the opportunity for anti-social behaviour and maintain the safety for train passengers.

11.8 Social, Environmental and Economic Implications

Subject to approval the implementation of the PSPO's at these locations aims to have positive social impacts from the reduced level of ASB associated with the crossing points and in turn the reduced risk of an accident occurring at this location.

The implementation of both PSPO's are unlikely to have any environmental or economic impact.

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Background Papers:

- **Communities Committee Report - 26th May 2021**
[PSPO Railway Crossings Report.pdf \(worchester.gov.uk\)](#)
- **Communities Committee Report - 3rd November 2021**
[4 - Railway crossing PSPO Report CAP.pdf \(worchester.gov.uk\)](#)

APPENDIX 1 Map of footpath WR-858 Brickfields

APPENDIX 2 Map of footpath WR-678 Kays crossing

APPENDIX 3 Consultation report Brickfields

APPENDIX 4 Consultation report Kays

APPENDIX 5 Public Spaces Protection Order, Footpath Wr858 (Brickfields Crossing)

APPENDIX 6 Public Spaces Protection Order, Footpath Wr678 (Kays Crossing)