

REPORT ON THE USE OF LEGAL POWERS TO CREATE A PUBLIC RIGHT OF WAY THROUGH SHEFFIELD STATION

1.0 SUMMARY

- 1.1 This report is to update Committee Members on the investigation of the use of legal powers to create a Public Right of Way through Sheffield Station following a request made by the Cabinet Member for Business, Transport and Skills.
- 1.2 It is recommended that the introduction of a voluntary Walkway Agreement through Sheffield Station is pursued in the short term, whilst lobbying for this to be included in future franchise or operational agreements for Sheffield Station from April 2015 is pursued in the longer term.
- 1.3 In addition it is recommended that the creation of a Public Right of Way and the potential renegotiation of the current franchise agreement with the Department for Transport is further investigated.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

- 2.1 Access through Sheffield Station provides an important, accessible, and well used link between the east side of the railway line, including local communities in Norfolk Park and the major Park Hill development plus the proposed Sheaf Valley Park serving city centre residents, and the west side, including city centre employment, retail and leisure opportunities.
- 2.2 Regeneration of the station and surrounding area has supported a well used and integrated transport system. The tram stop to the east is linked through the station via the footbridge to rail and bus services, at the interchange, and the city centre.
- 2.3 Securing public access through Sheffield Station would protect this high quality link which supports both the regeneration and local economy of Sheffield.
- 2.4 It would also contribute to the City of Opportunity priorities 'Creating the infrastructure for a modern, strong economy' protecting the links between the east and west of the railway line, and 'Reducing carbon footprint', 'Reducing congestion', and 'Public transport that is easier for people to use' supporting an integrated and high quality transport system.

3.0 OUTCOME AND SUSTAINABILITY

- 3.1 A key outcome would be the maintenance of public access through Sheffield Railway Station. Rail, tram and bus links will

be safeguarded. This would assist carbon reduction targets and local air quality improvements. It would also support the regeneration and local economy of Sheffield.

- 3.2 Future conditions and maintenance agreements would depend on the agreements reached. This would be reported to the City Centre, South and East Planning and Highways Committee.

4.0 REPORT

Background

- 4.1 In November 2009 a Listed Building Consent Application was made by Stagecoach South Western for the provision of automatic ticket gates at Sheffield Station. It was stated that this was to improve safety and security at the station and enable East Midlands Trains (EMT) to control ticket revenues. It was also advised that EMT had an obligation under their franchise agreement to provide automatic ticket gates. The application was refused by the City Centre South & East Planning and Highways Area Board.
- 4.2 In response to the Listed Building Consent Application for the provision of automatic ticket gates at Sheffield Station six representations were received in favour of the scheme and 1250 objections (including six additional since the Planning and Highways Area Board report was written). Although comments were in reference to the proposed scheme, concerns in relation to restricted access were raised. A petition was also received listing the names and addresses of 23 individuals (but no signatures) who considered that the footbridge should remain open to the public.
- 4.3 Extensive lobbying by residents, organisations, councillors and MPs was carried out opposed to the proposed gating of the station. Lord Adonis, the then Secretary of State for Transport, on a visit to Sheffield in April 2010 announced that East Midlands Trains was to be released from its obligation to install barriers as part of its franchise agreement until an alternative bridge had been constructed. South Yorkshire Passenger Transport Executive has not received formal confirmation of this change so it is being checked with the Department for Transport / East Midlands Trains.
- 4.4 Sheffield City Council and South Yorkshire Integrated Transport Authority / Passenger Transport Executive continue to oppose any proposed gating of the station. In a motion taken to Full Council on the 28th July 2010 it was moved that the Council believes that the existing bridge was built using taxpayers

money rather than private investment, then local people should have a right to use the bridge without the need for more taxpayers money being used to construct a second bridge.

- 4.5 East Midlands Trains are continuing to undertake staffed ticket checks which have had an adverse impact on pedestrian movement through the station and to / from the tram stop.
- 4.6 In order to address the issue of the continued access restrictions due to staffed ticket checks the Cabinet Member for Business, Transport and Skills has requested that the use of legal powers to create a Public Right of Way through Sheffield Station be investigated.
- 4.7 The station bridge currently forms part of the station assets owned by Network Rail and leased to East Midlands Trains as part of their franchise agreement with the Department for Transport, which is due to run up until April 1st 2015. No Public Right of Way can have been acquired by prescription. The bridge runs across railway land and the station is closed daily during the periods when no trains run.

Walkway Agreement

- 4.8 If it is possible to reach a compromise with the Department for Transport, East Midlands Trains and Network Rail then a Walkway Agreement, under Section 35 of the Highways Act, could be used to formalise public access across the station bridge.
- 4.9 A Walkway Agreement would be voluntary and would not create a legal public highway. It would however mean that the bridge could be kept open under the terms agreed. Although Walkway Agreements are not permanent it is possible that a fixed term agreement could be come to.
- 4.10 The conditions of the agreement would be subject to negotiation but would need to consider options by which ticket revenues could be controlled (for example on trains or on platform) and contributions to maintenance responsibilities amongst other issues. The terms of the agreement could allow access across the bridge to be closed at specified times for security or other reasons.
- 4.11 Due to the importance of the link through Sheffield Station if it is not possible to reach an agreement then the creation of a legal public path would need to be considered.

Creation of a Public Path

- 4.12 It is possible for Sheffield City Council, as the local highway authority, to create legal Public Rights of Way under sections 25 and 26 of the Highways Act 1980. Section 25 refers to creation of a public path by Agreement and section 26 by Order.
- 4.13 The creation of a public path by the local highway authority should only be carried out where there is a public need. The effect of the order on the land, landowner and any person with a right over the land (which would be likely to include Network Rail, Department for Transport and East Midlands Trains) must be considered and payment of compensation may be necessary in situations where there has been a loss of value or depreciation.
- 4.14 The Rights of Way Improvement Plan for Sheffield was published in November 2007, prior to the proposals for barriers at Sheffield Station, and identifies amongst other things the extent to which local rights of way meet the present and likely needs of the public. This must be considered when making creation orders. Although nothing specific to the station is included within it policies include those to:
- Develop safe and connected routes matched to travel plans and travel awareness to encourage walking to work and school.
 - Identify use patterns, problems, desire and need in relation to the path network and to consider the desirability and necessity of legal path orders to improve and enhance the network.
- 4.15 The physical creation of the path must also be considered to ensure that it meets both the current and future needs of the public and minimises the impact on the landowner¹. In order to demonstrate this consultation is crucial for both creation orders and agreements.
- 4.16 In addition to physical accessibility, safety and security issues must also be considered. Public Rights of Way require access to be kept open 24 hours a day whereas currently the station and access are closed when trains are not operating. Opening the station during these periods would have public order and security implications². Additional safety and security arrangements would be required which would be likely to be

¹ *There is a general requirement imposed by the Human Rights Act 1998 to ensure that interference with a landowner's human rights is no greater than is necessary in accordance with the interests of the general public* - Creation of new public rights of way: A code of practice for local highway authorities and landholders involved in negotiating compensation, Countryside Agency, 2005

² It should be noted that trains are kept overnight alongside the station platforms.

costly. If it were possible to separate the route from the rest of the station the works would be likely to require listed building consent which was refused for the proposed automatic ticket gating scheme.

- 4.17 Public Rights of Way if created under voluntary or compulsory creation powers are maintained by the local authority. The maintenance of the bridge surface, stairs, access and any associated infrastructure would therefore pass to Sheffield City Council. The Council would need to arrive at a satisfactory agreement to maintain the asset.
- 4.18 Claims for compensation which may be payable generally have three elements³:
- Compensation for land used
 - Disturbance (both the landowner and / or occupier (with a legal interest) should, financially, be in the same position as if the Public Right of Way did not exist)
 - Injurious affection and severance
- Advice would need to be taken in regard to appropriate compensation. Disputes relating to land valuation, which are not settled by arbitration, are referred to the Lands Tribunal, with appeals against its decisions going to the Court of Appeal.
- 4.19 For a compulsory public path creation order, where an agreement cannot be reached, statutory notices are required. Where an objection is made the order is referred to the Planning Inspectorate, and this will lead to a public inquiry. If the decision was adverse, the Council would face a possible claim for costs, as the process operates under the same rules as planning appeals. If the land over which the proposed path passes, in this case the station, were part of a statutory undertaking, which is thought to be likely, then the order would automatically become subject to special parliamentary procedure. In any event, any physical works which may be required would have to be carried out and the Council would also have a duty to pay appropriate compensation.
- 4.20 For the creation of a public path by agreement a formal agreement between the local authority and the landowner, which would be expected to be with Network Rail and also the Department for Transport / East Midlands Trains, would be required. Creation by agreement has several benefits over creation by order in addition to minimising disputes in that no statutory notices are required and there is no period for public objection. Where compensation is required advice as to the

³Creation of new public rights of way: A code of practice for local highway authorities and landholders involved in negotiating compensation, Countryside Agency, 2005.

appropriate amount would need to be taken. However unlike a Walkway Agreement access would be required 24 hours a day.

Financial Implications

- 4.21 There could be significant capital and revenue implications associated with the creation of a public path through Sheffield Station. This would be related to legal costs, compensation, any associated works, safety and security, and maintenance. No budget / funding for this is currently identified.
- 4.22 The introduction of a Walkway Agreement would also have revenue and capital implications, although they would be likely to be lower than creation by order as negotiated through agreement. Again no budget / funding is currently identified.
- 4.23 If either of these options were to be progressed funding would need to be identified and staff time would need to be allocated.
- 4.24 There would be no particular financial implications, other than staff time, to the Council related to lobbying for the introduction of an access agreement into future franchising or operational agreements at the station.
- 4.25 If changes to the current franchise agreement were to be pursued this would be subject to renegotiation with the Department for Transport, through South Yorkshire Passenger Transport Executive, and it would be expected to have cost implications.

Equal Opportunities Implications

- 4.26 A full Equality Impact Assessment has been conducted and concludes that the project has numerous positive benefits for different equality groups. There may be a negative impact related to the creation of a public path through Sheffield Station if the lifts could not be included, limiting disabled access. However it may be possible to justify in terms of the impact not securing access through the bridge would have on the wider public.
- 4.27 If a Walkway Agreement was reached and/or access was written into franchise or operational agreements this has the potential to benefit equal opportunities further in the future, protecting accessible and secure access through Sheffield Station.

5.0 ALTERNATIVE OPTIONS TO SECURE ACCESS

- 5.1 Continued lobbying efforts with the Department for Transport to ensure that any agreement reached is written into future

franchises or operational agreements⁴ would protect access through Sheffield Station in the future.

- 5.2 This would however not come into effect until the end of the current franchise agreement with East Midlands Trains on April 1st 2015. Changing the terms of the franchise any earlier than this would be subject to renegotiation with the Department for Transport and may include a compensatory payment.
- 5.3 On the basis that gating was introduced at the station the Department for Transport looked into alternative public access and in January 2010 provided the Council and Passenger Transport Executive with a copy of a report looking into the feasibility of alternatives. The report considered several options including strengthening / refurbishing the existing southern footbridge and providing a new link. However funding has not been secured.
- 5.4 All new build / refurbished bridge options are further from current desire lines. In addition, in a motion taken to Full Council on the 28th July 2010 it was moved that the Council believes that the existing bridge was built using taxpayers money rather than private investment, then local people should have a right to use the bridge without the need for more taxpayers money being used to construct a second bridge.
- 5.5 In parallel additional access improvements linking Park Hill, an area of major redevelopment, Norfolk Park area to the city centre would be expected to support the regeneration of the city.

6.0 REASONS FOR RECOMMENDATIONS

- 6.1 The Council is determined to ensure that free public access is maintained and protected through the station for the benefit of local residents, communities and the economy of Sheffield.
- 6.2 If it is possible to come to an agreement with the Department for Transport, East Midlands Trains and Network Rail the introduction of a Walkway Agreement would formalise access for the public across the bridge and would also allow the station to close at specified times subject to agreement.
- 6.3 In the longer term continued lobbying of the Department for Transport has the potential to result in the inclusion of the agreement within franchise or operational agreements from April 2015. Renegotiating the terms of the franchise any earlier than

⁴ Stations are generally owned by Network Rail and operation passed to train operating companies or Passenger Transport Executives. Network Rail also operates some large stations direct although none in South Yorkshire.

this would be subject to agreement and would be likely to include a compensatory payment.

- 6.4 The introduction of a legal Public Right of Way through Sheffield Station either by Agreement or Order could result in significant costs to the Council and may be difficult to achieve. However this may be the only way forward if a Walkway Agreement is not reached.

7.0 RECOMMENDATIONS

- 7.1 Pursue the introduction of a voluntary Walkway Agreement at Sheffield Station subject to conditions and identifying an appropriate budget.
- 7.2 Lobby for this to be included in future franchise or operational agreements at Sheffield Station from April 2015.
- 7.3 Investigate further the creation of a Public Right of Way and also the potential renegotiation of the current franchise agreement with the Department for Transport.

Simon Green
Executive Director, Place

27 August 2010