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# Appeal Decision

Inquiry Held on 21 May 2024

Site visits made on 19 May and 6 June 2024

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 July 2024**

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## **Appeal Ref: APP/V2635/C/24/3336603**

### **Land at Saint Andrew's Lane, Congham, Norfolk**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by National Highways against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
- The enforcement notice, ref. 22/00544/UNOPDE, was issued on 29 November 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised operational development involving structural infilling of former railway bridge using engineering fill and foam concrete with embankments formed on either side.*
- The requirements of the notice are to (i) permanently remove the structural infilling from the railway bridge and the embankments formed on either side; and (ii) restore the land and bridge to its original condition.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').

**Summary Decision: the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### **Preliminary Matters**

1. The Council's notice (where applicable referred to as 'the first notice', although that in itself was a replacement of an earlier one; CD12), although alleging unauthorised operational development, stated in its reasons that the development was considered to be in breach of condition Q.1(b) of the permission conferred by article 3 of and Schedule 2, Part 19, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'). A second, separate, notice ('the second notice') was issued after the start of the appeal, on 13 February 2024.
2. The facts giving rise to the issue of the second notice appeared the same as the first. Its allegation differed, in that it identified the breach of planning control to be the failure to comply with condition Q.1(b)(i) and (ii) of the 2015 Order. Its reasons differed insofar as harm to the countryside was not alleged. Its requirements differed insofar as they required the land and the bridge to be restored to their 'condition before development took place', unlike the first notice which requires the restoration of the land and bridge to their 'original condition'.
3. No appeal had been made against the first notice on the ground that the allegation was wrong. The second notice appeared to me potentially an

unnecessary duplicate of the first, and it was not possible to run any appeal against it on the same timetable. I suggested to the parties in pre-inquiry correspondence that the correctness of the allegation in the first notice was potentially a matter for consideration in that appeal, given my duty to put the notice in order where possible and having regard to my general powers of correction and variation found in section 176(1) of the 1990 Act. As to the requirements, the parties were referred to section 173(4) of the 1990 Act and invited to consider whether the requirement to restore the land and bridge to their 'original' (rather than former) condition required amendment.

4. The second notice was then withdrawn, with the allegation of unauthorised operational development found in the first notice uncontested. The parties were also agreed that the first notice's requirements were aimed at restoring the land and bridge to their former condition, with no correction or variation required.
5. The parties also came to agreement in respect of the ground (g) appeal, agreeing that the notice should be varied so as to allow two years for compliance with its requirements if the ground (a) appeal fails and the notice is upheld.
6. The bridge itself carries a public highway and I visited the site and its environs in advance of the opening of the Inquiry. A further visit accompanied by representatives of all main parties was held on 6 June, at which another bridge at East Rudham was also inspected.

### **Main Issues**

7. The main issue in the case is whether the infilling of Congham bridge accords with the policies of the development plan for the area; particularly for the conservation of heritage assets. The question also arises whether other material considerations indicate a decision be taken that is not in accordance with the development plan.

### **Reasons**

#### *The Development Plan*

8. Although additional policies were cited in the notice, the parties appeared agreed that the main policies of the development plan for consideration are policies CS08 and CS12 of the King's Lynn & West Norfolk Borough Council Core Strategy, adopted in July 2011, and policy DM15 of the same Council's Site Allocations and Development Management Policies Plan, adopted in 2016. Policy DM13, seeking to safeguard existing and former railway trackways and routes from development prejudicing any future travel potential, does not apply to the former railway line here.
9. Policy CS08 is a general sustainable development policy that requires new development to demonstrate, inter alia, its ability to protect and enhance the historic environment. Policy CS12 is specifically concerned with environmental assets. Proposals to protect and enhance our historic environment will be encouraged and supported. The historic and built environment play a crucial role in delivering environmental quality and well-being. Therefore the Council will preserve and where appropriate enhance its qualities and characteristics.

10. Undesignated heritage assets do not receive specific mention. However, the Council will protect and enhance designated sites of historical value from development which damages their interest or significance unless the need for and public benefits of the development outweigh the loss of interest or significance. Development should seek to avoid, mitigate or compensate for any adverse impacts on heritage. Development proposals should protect, conserve and, where possible, enhance the special qualities of the area including historic character.
11. The policy pre-dates the (original) National Planning Policy Framework ('the Framework') of 2012, and the appellants enjoin me to find the policy to be out of date in certain respects. The policy gives particular consideration to when developments damaging to designated heritage assets (described as 'designated sites of historical value') might nonetheless be permissible: where the loss to interest or significance is outweighed by need and public benefits (and subject to seeking to avoid, mitigate or compensate for any adverse impacts). It is silent as to the particular approach to be taken to undesignated heritage assets, other than that adverse impacts are to be avoided, mitigated or compensated for, and nor are these mentioned in the supporting text.
12. The Council's committee report (CD9) explains that the Council do not maintain a local list and nor until recently have they been cognisant of any process for updating the local Historic Environment Record ('HER') maintained by the County Council. I cannot consider it a reasonable reading of the policy to say that, if it deals with such assets at all, then any loss or harm to such assets is not contemplated by it. Otherwise the effect is to give greater protection to undesignated assets than to designated ones.
13. The supporting text to the policy states that the Council will work to the provisions of the PPSs to ensure the protection of historic sites and buildings. This is a reference to Planning Policy Statement 5 (and 9, as it referred to biodiversity and geological conservation) which pre-dated the Framework; and was national policy concerning the historic environment at the time the Core Strategy was adopted.
14. As the Council say in closing, the starting point is to consider the ordinary meaning of the words of a policy, read as a whole in their full context. That context now includes the Framework. The appellants contend that, because the policy uses the terminology of 'protect and enhance' it should be considered superseded by the Framework (Mullins 2.3.3) which instead requires that heritage assets should be 'conserved' in a manner appropriate to their significance.
15. Conservation is then defined to mean the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance. In reality, 'protect' and 'conserve' appear to me synonymous, and the appellant's Heritage Statement (CD21) appears to have considered so too. To sustain the significance of an asset is to protect it.
16. This conclusion attracts some support from the fact that policy DM15, also using the terminology of 'protect and enhance', although in relation to a number of general amenity matters including heritage and as a complementary policy to CS08 rather than the more specific CS12, was adopted following the promulgation of the Framework (whose present iteration does not differ from the original 2012 version in any material respect here).

17. As to what CS12 requires, in the case of development affecting undesignated heritage assets, adverse impacts are to be avoided, mitigated or compensated for. The policy is silent as to the particular form of mitigation or compensation that might arise, and whether this should be heritage-related. In the context of the policy's own contemplation of need and non-heritage benefits potentially outweighing harm to the interest or significance of designated assets, and in the context of the Framework's present requirement for a "balanced judgement" to be reached in relation to undesignated assets, I see no reason why this requirement for mitigation or compensation should not be read consistently with the Framework. This is to say that harm to an undesignated asset may be compensated for (or potentially outweighed, to put it another way) in some other way, resulting in the need for a "balanced judgement".
18. Thus I do not find the relevant provisions of CS12, or the development plan generally, to be substantively at variance with the Framework insofar as they relate to the approach to the conservation of undesignated heritage assets. The Council suggest that the "balanced judgment" that is specified by paragraph 208 of the Framework is not in itself inconsistent with a development plan policy to conserve and enhance all categories of heritage asset. What is required, they say, is that a decision maker applying such a policy must, in attributing weight, take account of the scale of any harm and the significance of the asset. That approach is not precluded by the words of CS08, CS12 or DM15. Therefore, they say, the policies are up-to-date and carry full weight.
19. This is somewhat contradictory of the position agreed in the Statement of Common Ground, by which it was agreed that the policies for the assessment of non-designated heritage assets were out of date (although it was also agreed that the emerging policies were similarly out of date, p5). I accept that the terminology used is not reflective of the Framework's provisions, and that the policy lacks the detail of the emerging policy LP20 on this issue. Nonetheless I find that there is broad consistency and that the development plan, specifically CS12, essentially allows for the same judgement on the balancing of harms and benefits as is envisaged by paragraph 208 of the Framework.

#### *Emerging policy*

20. Emerging Local Plan policy LP20, concerning the historic environment, is both consistent with the Framework and material to my decision. In respect of non-designated assets it provides a number of assessment criteria and that, as per the Framework, a balanced judgement will be required where loss to significance would result from a development proposal.
21. Also potentially relevant is the emerging Grimston, Pott Row, Roydon and Congham Neighbourhood Plan 2017–2036, with the submission version dated March 2023 and the subject of an independent examiner's report recommending that it proceed to a referendum, published the day before the opening of the inquiry. The parties agree that it therefore ranks as a statutory material consideration under s.70(2)(a) of the Town and Country Planning Act 1990.
22. The emerging neighbourhood plan was not mentioned as a relevant matter in the Council's committee report of October 2023 or in the Council's case. Nor was it mentioned by the Parish Council when making representations on the previous application or in their submissions to the inquiry.

23. The bridge itself is not recognised as an asset or sought to be safeguarded by the neighbourhood plan, although attention is given to a number of undesignated heritage assets. The route of the former Midland and Great Northern Joint Railway ('M&GNJR'), crossing underneath St Andrew's Lane at the point of the bridge, is recognised as such an undesignated asset (as it is by the County's Historic Environment Record) and Policy 14 of the neighbourhood plan seeks to conserve and wherever possible enhance such assets.
24. The neighbourhood plan also contains aspirations in the form of repurposing the Lynn to Fakenham rail route for sustainable travel modes, and 'Community Action 1' is supportive of what is called the 'Greenways project' to create a new long-distance cycle trail to King's Lynn. This does not go so far as to seek to safeguard the route. Policy 2 relates to infrastructure and sustainable growth. The appellants seek to characterise this as only applying to housing developments: this does not appear to me to be the case, but it requires consideration, when dealing with development proposals, of the potential for promoting the use of the Lynn to Fakenham cycle route only once it is developed, so has no application here.
25. Thus the neighbourhood plan has some relevance to the consideration of the effects on the bridge, as an aspect of the former M&GNJR, as an undesignated heritage asset, where its policy requirements are consistent with those of the Framework, but it has no present application to safeguard or otherwise encourage the (former) bridge railway underpass as an active travel route.

#### *The Framework*

26. Sets out that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. Local planning authorities should maintain or have access to a historic environment record. This should contain up-to-date evidence about the historic environment in their area and be used to assess the significance of heritage assets and the contribution they make to their environment.
27. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
28. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. (In this decision I use the terms 'non-designated' and 'undesignated' interchangeably.)

*The effects of the development on the significance of the heritage asset(s)*

29. The bridge is identified as a heritage asset in two ways; both in itself and as a component part of the former M&GNJR. The latter appears on the local HER but the former does not. Nonetheless, despite the lack of any formal identification as such or local clarity of process to do so, there is no dispute that the bridge possesses a degree of significance warranting consideration in planning decisions, thus amounting to a non-designated heritage asset. The parties dispute how significant it is. No party contends that it meets any criterion for designation ('listing').
30. Historic England's 'Conservation Principles' document (CD72) discusses the significance of heritage assets arising from their evidential, historical, aesthetic and communal values. The PPG introduces the broadly synonymous terms of archaeological, architectural and artistic, and historic interest.
31. The bridge is a re-build, dating from around 1926, of an original built around 1880 on the former King's Lynn to Fakenham railway line. The line itself was closed in 1959 and the land of the former railway cutting backfilled to its former levels thereafter.
32. It is the latest of five known bridges to be constructed using a system known as 'Marriott Reinforced Concrete' ('MRC'). William Marriott, born in 1857, was a prominent local railway engineer, becoming the locomotive superintendent for the Eastern & Midlands Railway in around 1885 and eventually the Traffic Manager of the M&GNJR in 1919, his last position of employment before retiring in 1924. Three of the Marriott bridges, including this one, remain, with the others having been demolished including the one at Hemsby that was acquired by the County Council in 2012.
33. Congham bridge appears to have been constructed to a Marriott design, or at least to a particular system of construction, but to have shortly post-dated his retirement. No personal involvement of his with the design or construction of the bridge is known and some elements of the bridge such as the curved nature of the wingwalls are somewhat anachronistic. However the system of construction involved the use of MRC, a form of ferro-concrete patented by Marriott, allowing the prefabrication of components at the Melton Constable works and thus the replacement of bridges in as little as a day. It appears that bridges constructed using MRC were a relative rarity; but the MRC mass production system received extensive use throughout the local, and regional, railway network in a number of applications such as fence posts, station signage and signal posts: some 135 different uses of it across the network were recorded by 1918.
34. Although containing interesting historic use of smooth concrete brick facings in the wingwalls and parapets, the particular engineering interest in this bridge lies in the deck construction. This comprises 7 MRC concrete-encased longitudinal steel girders interspersed with six pre-cast MRC jack arches. It is a small bridge, formerly with a span of around eight metres, carrying an unclassified road of a single carriageway with passing places along St Andrew's Lane.
35. It is not recorded why the MRC system appears to have had such relatively little application in the case of bridges, although Marriott himself recorded a contemporaneous criticism that, as a result of the system of construction, the

girders themselves were unable to be examined. The high point of MRC achievement appears to have lain in the concrete signal posts, although the masonry elements of the MRC bridges have been described as 'exemplary' by Nigel J L Digby, evidently the authority on the subject (CD74A). Congham appears to have been the last completed re-build. The post-war availability of sand and gravel rather than other materials appears to have prompted the development of MRC as a means of saving money, as well as its durability and maintenance-free life.

36. Prior to the infilling works, the bridge was not in an optimal condition. The land levels of the former railway cutting on either side of the bridge had been infilled many years previously, meaning that the lower brick courses to the abutments were obscured. Defects in the bridge were observed since the 1980s or early 1990s resulting, in around 2010, in remediation works that were unsuccessful. These involved replacing a number of the bricks in the eastern abutment with those of a different colour and in some parts of a different size. These bricks themselves then began cracking, with movement of up to 25mm recorded by the time of a 2019 inspection (CD16). At the time of the infill works the underside of the deck was in an unattractive state, with some of the concrete having come away with exposed steelwork and spalling visible. The abutments of the bridge were largely covered in graffiti, as were part of the wingwalls, there was much overgrowing vegetation, and the land underneath the bridge was periodically covered in fly-tipped detritus. Soot staining of the deck underside resulting from fires underneath had been noted.
37. The parties having agreed the outcome of the notice, if it is upheld, this is thus the condition to which the bridge must be restored if the notice is upheld. Although the Framework is clear that any deliberate neglect of a heritage asset should not be 'rewarded' in planning decisions, there is no suggestion that the bridge's prior state was the result of any deliberate neglect by its present custodian, and in any case the outcome of any enforcement notice cannot be to achieve betterment but only the restoration of the land's condition prior to any breach of planning control arising.
38. Nonetheless the bridge retained some significance, as agreed by all parties. It is a clear relic of the M&GNJR, itself a recognised, although non-designated, heritage asset. Although probably lacking his personal involvement, the association with the engineer William Marriott is also clear.
39. As a bridge, it is a relatively rare form of the use of MRC. The Council acknowledge that its rarity in itself does not add to its heritage value, but the Rule 6 party point out that it is one of perhaps only 11 'steel & concrete' overbridges in the whole HRE estate of over 3,000 structures. It constitutes a visible reminder of the past railway development in the area, a source of local identity reflected in the road name and village sign at Roydon. Some architectural interest was contained in the curved wingwalls and parapets; the bridge being described by Digby as 'more elaborate in plan' than the other Marriott bridges.
40. Marriott inventions throughout the M&GNJR were relatively ubiquitous. The network contained some 350 bridges, many others of which had an association with Marriott but not with the use of MRC. The use of MRC in bridges ceased after the reconstruction of Congham bridge. Marriott evidently obtained a pecuniary interest in the use of his inventions and the use of MRC in bridges

appears to have ceased shortly after he retired. The simple engineering of the MRC system was an expedient solution to the availability of materials and benefitting from fast construction. It was a utilitarian system of construction that resulted in a bridge of accordingly utilitarian appearance. The curved wingwalls and the chamfered concrete on the edges added some aesthetic interest, but in the round the bridge's form did no more than reflect its function. The bridge had been unsympathetically and unsuccessfully repaired in around 2010, with the use of different bricks in the eastern abutment spoiling its appearance and reducing its aesthetic value. No record of the bridge was found on the HER, with the HER officer stating that the bridge would have been too recently constructed to have warranted consideration when the HER was updated to include railway elements (CD98) notwithstanding the reference to other elements of the M&GNJR in the form of stations, signal boxes, goods sheds and concrete mileposts and, in the background papers, to several other bridges.

41. Appreciating the bridge in its setting, the approach to it from either side on St Andrew's Lane is over the road where the underside of the bridge is not visible save for a limited view from the junction with Station Road. From the north, approaching the bridge along the right of way it is visible from a distance and the bridge assists in recognising the former railway line's existence. From the south the bridge is visible from the public footpath (as well as briefly from Station Road). Because the line itself has been ploughed over to the south, recognising the original purpose of the bridge from there is more difficult.
42. All of these factors result in a bridge that at the time of the infilling was a non-designated heritage asset of relatively low local significance. Although a bridge on a regional railway line, and with other MRC bridges within the region, I do not find the bridge itself to be an asset of regional significance (and the appellant's witness Mr Mullis did not appear to concede this to be the position). Other MRC bridges in the region survive in better condition and are more authentically related to Marriott himself, having been constructed during his period of employment.
43. Turning to the impacts of the development on the significance of the asset, the works are briefly described in the enforcement notice. The underside of the bridge has been filled in with concrete. Then, sloping grassed embankments have been formed on either side. This has entailed the removal of newel posts and part of the wingwalls (where they would otherwise protrude above the embankments). The embankments rise approximately to the road level, meaning that the parapets remain visible but the remainder of the bridge has been obscured on what is intended to be a permanent basis, although the works are described as potentially reversible.
44. Thus the particular feature of interest, namely the underside of the bridge deck consisting of MRC, has been obscured by the works and is no longer available to view. The Council make the point that what now exists is no longer a bridge, citing the appellant's own literature in support (CD91), but is now an embankment. Technically I agree, although that terminology of itself does not describe the effects on the significance of the heritage asset.
45. There was some discussion at the Inquiry about how well the bridge deck will be preserved by its encasement in concrete. On balance it appears that the works will arrest the deterioration of the deck. That is of somewhat limited

- value, given the extent of the works that would be required to reveal the deck again. Whilst the archaeological value of the bridge, namely it being evidence of past human activity worthy of expert investigation at some point, is therefore not altogether lost, the archaeological value is obviously compromised by the present inaccessibility of the bridge deck. The loss is far from as great as would have arisen from demolition, but is a loss nonetheless.
46. I am invited by the appellants to consider that the loss is mitigated by the existence of other remaining Marriott bridges, and I visited the Green Lane bridge accompanied by the parties. This is an altogether larger structure than Congham Bridge, constituting a double span skewed bridge whose girders and jack arches, and the structure generally, appear to remain in very good condition. The Council say that a decision here to allow the infilling to remain would create a real risk that the same approach would be taken in other cases. However, the Green Lane bridge carries little if any vehicular traffic and does not carry the road network. The loading and safety considerations would be very different, and there is no prospect before me of that bridge being infilled.
  47. The use of MRC and its means of construction is well-recorded, as evidenced by the documents before me. Thus the archaeological, or evidential, loss carries somewhat less weight than it otherwise might. It is difficult to know what might be gained, evidentially, from uncovering the structure to study it that cannot already be gleaned from other existing information. In the round I find the archaeological harm to be slight, principally because the structure, although presently inaccessible, is nonetheless preserved.
  48. Aesthetically there is some moderate harm to the asset and its setting. Prior to the works the bridge appeared to be at a low height over the land around it, with the cutting having been infilled in previous years with some loss of prominence. Nonetheless, and despite the distraction of the graffiti, fly tipping materials and some vegetation on either side of the bridge, it was possible to glimpse through the bridge to the land on the other side. From the north, although the public right of way there mainly aligns with an historic road that ran alongside the railway, rather than along the route of the railway line itself, the infill has detracted a little from the ability to appreciate the asset in its setting and, as the Council say, adversely affects the legibility of the asset and the historic landscape. Nonetheless I consider it is still recognisable as a former railway bridge and so this historic appreciation is reduced but not obliterated.
  49. Evidence of the communal value of the bridge gives something of a mixed picture. It appears that no complaints were made about the infilling works until some 18 months after they were undertaken. At any rate that is the timescale in which the appellant was informed of an enforcement investigation. Insofar as the bridge carries the road, its communal value is not lost. There were formerly no formal public access rights to the underside of the bridge, although that of course could change. The parish council wish to see the infill removed, but a local resident expressed satisfaction with the works as having improved the safety of the bridge and reduced anti-social behaviour. Evidently the carrying out of the works without prior consultation has caused some local (and wider) consternation, but that is not in itself relevant to the effects on the significance of the asset. The loss to the communal value of the bridge is slight.
  50. Overall I conclude that the works have had a negligible effect on the significance of the M&GNJR, itself an undesignated heritage asset of no more

than medium value, and a moderate effect on the low local value of the bridge itself.

*Benefits of the works*

51. As I understand the application of policy CS12, that and the Framework require a balanced judgement to be reached having regard to the significance of the asset and the scale of any harm or loss. Into that balance must go, in my view as a question of policy, but in any event as a material consideration, any public benefits arising from the proposal.
52. The principal benefit prayed in aid of the works is the advantage to the carrying capacity of the highway, St Andrew's Lane, passing over the bridge. This is a local road for which the appellant is not the responsible highway authority. The local highway authority ('LHA'), Norfolk County Council, did not attend the inquiry and have not commented on the appeal (save for some correspondence I have seen, *de bene esse*, but which has not been submitted and which I consequently take no notice of). At the application stage (and in response to the earlier 'Class Q' notification) the LHA raised no objection to the works.
53. The legal position is that in the absence of a Traffic Regulation Order any road must be capable of a 40/44t carrying capacity. It was common ground here that the edge girders of the bridge, already bearing the weight of the parapets, did not have such a capacity although they now do. I further understand the legal position to be that the appellant, as the owner of the structure, is responsible for ensuring its carriageway is capable of carrying loads of 24 tonnes, but that the responsibility to ensure it, including its verges, is capable of carrying 40 tonnes would then be in the domain of the LHA.
54. Earlier inspection documents of December 2003 (CD43, page 92) found the bridge satisfactory for 40 tonne loading on the basis of a qualitative assessment. This was because the jack arches are of reinforced concrete and therefore have a 'moment capacity' and thus will exert less horizontal thrust on the beams. The beams, being encased in concrete, will resist the tendency to bow out laterally within the span. The weight of the deck and the great weight of the parapets will tend to anchor the edge beams, preventing them from being pushed out. Nonetheless a 7.5 tonne loading restriction was recommended because the capacity of the external girders with limited bending capacity was unable to carry the combined effects of permanent loads and the 40 tonnes accidental wheel load vehicles. Suggestions to increase the bending capacity and the reduction of dead loads were made, including the possible replacement of girders and of the parapets.
55. None of this was carried out and inspection reports continued to find deficiencies in the bridge both before and after the 2010 repair works. There was some dispute at the Inquiry as to how bad these were. A BD21 Assessment and Inspection Report carried out in August 2018 gave an overall 'fair' condition of the structure, although recommending a 7.5t restriction. This was not a full inspection. It described the beams and jack arches as being in fair condition, with fractures and spalling evident. The east abutment was however found to be in a poor condition, with sections of brickwork exhibiting outward movement and areas of spalled brickwork. The road surface was also found to be poor, showing signs of superficial cracking. All other elements were in fair condition. There is however a distinction to be drawn between 'condition' and 'serviceability'. Neither the brick facing to the abutments nor the concrete

encasing the beams, neither of which were in good condition, are thought to be load bearing.

56. The works were not carried out principally (if at all) for reasons of safety, although the improved carrying capacity of the bridge happens to be an outcome of the works. In the absence of any appearance by the LHA, it has not been an easy task to decide what weight to place on this. It is reasonably clear that the capacity of the bridge could be addressed in other ways, such as by the imposition of a weight limit or by the 'propping' suggested by the Council's witness Mr Morton. If the infill is removed, then ultimately a solution to the structural movement of the eastern abutment would also be required, and the underlying cause of the fracturing there remains unknown. Such solutions might themselves engage a requirement for planning permission, or other legal process involving consultation, with no guaranteed outcome. In the round it appears to me plain that some form of physical change to the bridge (whether permanent propping, infilling, girders, kerbing, demolition or other solution) would be required if it is to achieve a 40 tonne carrying capacity. Having witnessed agricultural vehicles with laden trailers using the bridge, and seeing it to be in a rural area where large agricultural plant is used, a 7.5 tonne capacity is likely to be inadequate for some local working traffic. No party had approached the LHA to discuss the acceptability of a TRO to that effect. It is clear from the documents before me that the bridge has been used on at least one occasion as part of a diversion route in the event of a road closure elsewhere. Significant movement was then observed in the bridge in 2010 as a result of wagons and HGVs crossing it at speed. A 7.5 tonne limit would also be inadequate for refuse lorries or some emergency services vehicles.
57. A local resident, Mr Lilley, spoke at the Inquiry to express his satisfaction with the works as having improved the safety of the bridge and also getting rid of the problems of drug use and fly tipping. His view was that the bridge had deteriorated considerably over the previous 30 or so years and that it was demonstrably unsafe by the time of the infilling. The works have renewed confidence in the bridge's highway function.
58. Having regard to the various inspection reports and the parties' evidence, I accept that the works have resulted in a safe carrying capacity of the (former) bridge and that this constitutes a considerable benefit of the scheme. The weight to be given to this benefit is tempered, because it could conceivably have been carried out in some other way that would not have resulted in the moderate harm to the low heritage significance of the asset that has occurred. In the absence of any concrete alternative proposal or any view from the local highway authority, however, I am unable to conclude with any certainty that any alternative proposal would avoid resulting in some harm, whether that is to the heritage significance of the bridge or to its availability to heavy traffic. Accordingly I attribute moderate weight to this benefit.
59. I also attribute some weight to the benefits of removing the fly-tipping and other anti-social behaviour about which Mr Lilley spoke and which are recorded in historic documents. Again, this could potentially have been achieved in some other way, such as fencing off the underside of the bridge, but again there is no alternative proposal for consideration. Thus I accord these benefits a little weight.

*Whether 'intentional unauthorised development'*

60. A Written Ministerial Statement of 2015 provides that intentional unauthorised development is a material consideration in planning decisions. Owing to the strength and nature of some of the representations received, I consider whether it was so in this case.
61. The works were ostensibly carried out pursuant to Class Q of Schedule 2, Part 19 of the Town & Country Planning (General Permitted Development) (England) Order 2015, with prior notice having been given to the Council of the proposal "to (undertake repairs/demolish/infill)" with the letter also making clear that the proposal was that the bridge was to be subject to structural infill.
62. The Council was not required to respond, but it did. Its response was to raise no objection to the works. Subsequently an enforcement complaint was opened and in November 2022 the appellant was informed that the failure to remove the works after 12 months (or as agreed in writing by the planning authority) was under investigation. The notice itself, although alleging development without planning permission, gave the reason that the development was in breach of condition Q1(b) of the 2015 Order, which is to say that the infill had not been removed rather than that it had been placed at all.
63. Crown development is permitted by Class Q to prevent an emergency. It is now agreed by all parties to the Inquiry that to describe the works at the bridge as being for that purpose would be too liberal a reading of what the 2015 Order permits. The allegation of development having been carried out without planning permission is not contested.
64. Since the particular works were carried out, the appellant has reviewed its approach to dealing with infilling and demolition proposals, into which the Rule 6 party appears to have had a significant positive input. The views of stakeholders are now sought and the default approach is to apply for planning permission (or a lawful development certificate, in demolition cases). Nonetheless, whether permission is actually required can only be decided on a case by case basis depending on the particular characteristics of the proposal and the bridge in question.
65. Although the approach of relying on Class Q emergency development rights to carry out permanent structural infilling to the bridge here now appears to have been rather misguided, I am not satisfied that the appellant, apparently acting on professional advice from Jacobs, deliberately set out to break the law. It sought the prior input of the local planning authority, in correspondence which on any sensible reading describes works intended to be permanent, and received a positive response. From the reasons given for issuing the first notice, the contents of the second notice, and the contemporaneous correspondence with the appellant, it is clear that the planning authority was itself in two minds about whether the infilling (rather than the later failure to remove it) was the appropriate allegation to make of a breach of planning control. Therefore I do not find that the works were intentionally unauthorised, and thus this carries no weight either way.

*Repurposing potential*

66. The Rule 6 party and others making representations seek to restore the bridge in order that the former line passing under it may be used as part of a travel

route. As noted above, no existing policy support exists in respect of this former railway line, unlike some others in the borough which are safeguarded by policy DM13. The neighbourhood plan expresses general aspirations in this regard. When seeking to negotiate the position on enforcement, the appellant undertook to remove the infill if and when the underside of the bridge was to be required for any such route. This offer was not expressly repeated at the Inquiry, and is not offered by way of any legally binding commitment such as a planning obligation, but neither has it been withdrawn and the Council's witness was prepared to attribute some weight to it.

67. As noted by the appellant when notifying the Council of the proposed works, the Norfolk Walking and Cycling Strategy aspires to recycle disused railways and to incorporate them into active travel routes. The line here is shown as a possible future route. Nonetheless the County Council expressly confirmed, on considering that strategy, that they did not object to the proposal.
68. The land to the south of the bridge has been restored to an agricultural field. An existing public footpath running east to west between minor roads at Congham and at Roydon crosses the southern boundary of that field, thus crossing the route of the former railway line. At the western end, the path meets Station Road after crossing a culvert and joining with the driveways to some properties. South of the field, as the former railway line crosses towards Station Road and the location of the former station on the other side of it, the line has been partially built over by residential properties.
69. These factors of a productive agricultural field, the culvert and the residential properties suggest it is unlikely that any future active travel route would take the route of the former railway line south of the bridge between it and the former station. In the absence of any applicable safeguarding policy and any objection from the County Council in this regard, the infilling of the bridge does not realistically prejudice any future active travel scheme. Therefore I give this matter no weight. It follows that nor do I attribute any weight to the appellant's offer to remove the infill if such a scheme were to come forward.

#### *Effects on landscape character*

70. Harm to the landscape (as distinct from the setting of the bridge) was ultimately not a feature of the Council's case. The works involved the clearance of vegetation, removal of fly tipping and then the infilling of the bridge arch and creating the grassed slopes on either side of it. The bridge is set in undulating countryside, its parapets forming the high point of St Andrew's Lane between Roydon and Congham. The road is heavily lined with vegetation on each side, save for at the point of the bridge where the parapets are visible in distant views on each side, although some new vegetation is beginning to take root around the grassed slopes especially to the north.
71. From the north the absence of a bridge span is apparent only on the closer approaches (at least in the summer months) because of the extensive vegetation in the location of the former railway cutting on the approach. Photographs do show more extensive viewpoints than the ones available to me. From the south, the new embankment is visible for much of the footpath, although from there the prior purpose of the bridge is also less recognisable because of the loss of the cutting to what is now a ploughed field. Although the former route of the line is discernible on a LiDAR image, it is not readily so to

the naked eye. Occasional views of the bridge are also available on Station Road including from some residential properties.

72. From close quarters, the removal of the fly tipping, and of the effects of vandalism, graffiti and visibly deteriorated bridge have had some beneficial effects, but overall the infilling of the bridge gives rise to slightly adverse landscape and visual consequences. Although previously rather overgrown with only limited views through the arch of the bridge, those views are now obscured entirely by a structure of evident artifice. However the harm is slight because the bridge (or, therefore, the infill) is not prominent in its surroundings, save for a small section on the northern approach, but that is the location at which the benefits of removing the flytipping and graffiti are also realised. In the round, the works give rise to a slightly adverse effect on the landscape to which I attach commensurately limited weight. I find no overall conflict with policies CS06 or CS12 of the Core Strategy, which are strategic policies seeking generally to protect the countryside and local distinctiveness. There is some small conflict with policy DM15's requirement for the assessment of the visual impact of development proposals in the interests of protecting and enhancing the amenity of the wider environment.

#### *Effects on ecological interests*

73. A detailed Ecology Survey Report was produced by the appellant in 2023 to support its retrospective planning application, but that report itself referred to a number of ecological studies carried out from 2019, in advance of the infill works being undertaken. The report also documents the mitigation measures undertaken as part of the infill works. Particular surveys were carried out in respect of badgers and roosting or hibernating bats. Although suitable habitats for these and other species were found within 50m of the structure, no protected or other mammalian species were found to be present. No protected or notable species were found during the works.
74. There is no contesting expert evidence in relation to these matters, and no objections were raised by Natural England or by the Council's ecologist. The Parish Council and the Rule 6 Party make a rather generalised assertion that the infilling of the bridge has been undesirable for wildlife because it has resulted in the removal of a wildlife corridor. The appellant is criticised for not seeking evidence from camera traps on this issue. As the appellant points out, crossing St Andrew's Lane, an unlit and lightly trafficked road, by wildlife, whether aerially or on the ground, remains possible.
75. Policy CS06 seeks to protect the countryside for the diversity of its wildlife; policy CS08 to provide green space to safeguard wildlife; and policy CS12 to seek to avoid, mitigate or compensate for any adverse impacts on biodiversity. An ecological impact study and assessment proportionate to the degree of the impact and importance of the species affected will be required. Such an assessment was provided in this case. I detect no conflict with the policies of the development plan seeking to ensure wildlife protection.

#### *Other matters*

76. The parties' legal submissions, where made, differed from some of their witnesses' evidence on some matters. Reflecting the agreed legal position of the parties, the relative cost to the public purse of carrying out the infilling scheme compared with ongoing inspections, repairs and maintenance is not a

relevant consideration. Nor is the cost of removing the infill. There is also no suggestion that the requirements of the notice are excessive: that is, removing the infill and restoring the bridge is not said to be unfeasible or impossible. Potential costs were discussed at the Inquiry but ultimately these are not relevant either.

### **Planning Balance**

77. My conclusion in this case rests on whether the identified moderate harm to the low heritage significance of the bridge including its setting, and the slight adverse landscape and visual impact, is outweighed by other factors. The harm to the asset's setting and the visual impact overlap to some degree and I should avoid double-counting, although it is not a mathematical exercise.
78. It is a finely balanced case but I have come to the conclusion that the identified harm is outweighed or, in the terms of the relevant policy, compensated for, by those other factors. It is an unfortunate sequence of events that has resulted in this appeal seeking retrospective planning permission, but I have explained why I have not found the appellant's breach of planning control to have been an intentional one thus attracting weight against it. Nor, on the other hand, does the fact that the development already exists assist the appellant, as I give no weight to that fact, or to any of the costs that would be involved in reversing the works and otherwise repairing and maintaining the bridge, which are not material to my decision.
79. The harm to the value of the heritage asset is regrettable but needs to be balanced against the asset's overall low significance, the fact that the bridge is preserved, albeit buried, and the other factors in the case. Those include the considerable benefit of delivering a loading capacity of the bridge that will safely accommodate all forms of traffic including the agricultural vehicles that work the local land, engendering public confidence in the highway, and removing what had become a local focus of anti-social behaviour. Overall I find these matters adequate to compensate for the loss to the heritage and landscape values of the bridge. Accordingly I find that the development complies with the development plan for the area. No material considerations, including that of the emerging Neighbourhood Plan, are sufficient to dictate a decision otherwise than in accordance with it, and it follows that permission will be granted.

### *Conditions*

80. No party suggests that any planning conditions should be applied if permission is granted. The Heritage Statement submitted with the earlier planning application did suggest installing an information board near the bridge, and offered to share the existing documentary and photographic record of the bridge held by the appellant with the Norfolk HER in order that the public has access to this information. On the latter point, it appears that such information has now come into the public domain as a result of this Inquiry. On the former, whilst an information board might be desirable I do not find that it would be necessary in order to make the development acceptable. Nor do I have sufficient information as to the relevant land interests as to know quite where any information board could be placed. Therefore the permission will be granted free of conditions.

## **Conclusion**

81. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

## **Formal Decision**

82. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the structural infilling of the former railway bridge using engineering fill and foam concrete with embankments formed on either side on land at St Andrew's Lane, Congham, Norfolk referred to in the notice.

*Laura Renaudon*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT: Martin Carter, Counsel

He called:

- David Barker BA (Hons) Grad Dip MA CMLI (Landscape)
- Dr Neil Price BSc MSc PhD MCIEEM (Ecology)
- Matthew Irwin Meng BEng CEng MICE (Engineering)
- Jonathan Mullis MA BA (Hons) IHBC MCifA (Heritage)
- Ashley Stratford BSc (Hons) Dip TP MRTPI (Planning)

FOR THE LOCAL PLANNING AUTHORITY: Timothy Leader, Counsel

He called:

- Edward Morton, BEng(Hons) CEng FICE IHBC Conservation Accredited Engineer (Engineering)
- Lynette Fawkes BA(Hons) PGDip ConsHistEnv IHBC (Heritage)
- Polly Harris Gorf BSc (Hons) PGDip MRTPI (Planning)

RULE 6 PARTY: Graeme Bickerdike, The HRE Group

INTERESTED PERSONS:

Ophelia Donovan, Clerk to Congham Parish Council

John Lilley, local resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Appearances for the Appellant
- 2 Opening Statement of the Appellant
- 3 Opening Statement on behalf of the Local Planning Authority
- 4 Opening Statement of the Rule 6 Party

- 5 Congham Parish Council Statement
- 6 Anticipated Costs Ed Morton
- 7 Independent Examiner's Report into the Grimston, Pott Row, Roydon and Congham Neighbourhood Plan 2017-2036, 20 May 2024, Ann Skippers MRTPI FHEA FRSA AoU
- 8 March 2023 Submission Version of Neighbourhood Plan
- 9 National Highways HRE Major Works process map
- 10 Background documents to the Norfolk HER entry 13581: Midland and Great Northern Joint Railway (East-West Line)
- 11 Design Manual for Roads and Bridges Volume 11, Section 3, Part 2 HA 208/07, Chapter 5: Screening, Scoping, Simple and Detailed Assessments and Chapter 6: Reporting, August 2007