

Mr Huw Merriman MP  
Chair, Transport Committee  
House of Commons  
London  
SW1A 0AA

27th January 2021

Dear Mr Merriman

### **Historical Railways Estate**

Our Group has been advised to write to you by Ruth Cadbury MP with whom we held a virtual meeting on 15th January 2021 in her capacity as Joint Chair of the All Party Parliamentary Group for Cycling & Walking.

We are seeking the Transport Committee's examination of current stewardship arrangements for the Historical Railways Estate (HRE), a collection of around 3,200 disused railway bridges, viaducts and tunnels located in England (70%), Scotland (19%) and Wales (11%).

### ***BRB (Residuary)***

Prior to September 2013, responsibility for the HRE structures rested with BRB (Residuary) who collaborated proactively with local authorities, community groups and other stakeholders to return many of them to beneficial use. Most of the routes forming part of our National Cycle Network pass under, over or through structures to which BRB(R) granted access through leases or licences. Such arrangements generally involved the lessee/licensee looking after the structure's deck, parapets and waterproofing, whilst the piers, arch and spandrels continued to be maintained by BRB(R). Thus, costs and liabilities were shared.

This approach has resulted in hundreds of 19th Century railway structures being rehabilitated in the 21st - helping to improve our health, connecting us with green space, bringing communities closer together, boosting local economies and delivering value from the associated investment in asset management.

The HRE Group is an alliance of walking, cycling and heritage campaigners, engineers and greenway developers who regard the Historical Railways Estate as strategically valuable in the context of future rail and active travel provision, both of which are stated Government priorities in relation to its 'levelling up' agenda, and meeting health and environmental commitments.

### ***Highways England***

Since the abolition of BRB (Residuary), the Estate has been under the Department for Transport's ownership, with management responsibilities transferring to the Highways Agency (now Highways England). The arrangements and obligations are set out in a Protocol Agreement between the two parties (appended), which was developed without open, inclusive consultation and is focussed exclusively on risk reduction.

Based on its interpretation of the Agreement, Highways England states that it is "not allowed" to open structures for walking and cycling use. It has objected to planning applications for new active travel routes passing beneath HRE structures and has fenced-off many to which the public had previously enjoyed decades of free access for leisure purposes.

Highways England's budget for managing the Estate has typically ranged from £7-10 million per annum since 2013. However, last year, it awarded framework contracts with a total value of £254 million over seven years to six contractors, an average of £36.3 million per annum. New Professional Services and Inspection contracts - respectively worth £31.9 million and £18 million over ten years - were also agreed.

In 2016, Highways England's Strategic Plan for future management of the Historical Railways Estate made clear the company's preference to move from reactive maintenance to proactive interventions. Subject to securing funds estimated at £370-560 million, the stated intention is to demolish 10-15% of the Estate, or 320-480 structures.

In response to a recent letter, the Department for Transport indicated that the HRE budget for 2021/22 has been set at £13 million, but no decisions have yet been taken about the level of funding thereafter. However the DfT did not deny that a significant programme of demolitions is planned or that contracts worth £303.9 million have been awarded for asset management activities on the Estate up to 2027/2030.

### ***Infilling scheme***

Over the past few weeks, it has emerged that Highways England is currently developing a five-year programme of bridge infilling works, involving the installation of a stone/foamed concrete plug beneath the spans of 115 bridges with, in most cases, embankments then formed to both sides. This would effectively render the bridges beyond use.

Our initial appraisal of their value for future transport purposes has found that:

- 18 are currently earmarked for reuse as part of new active travel routes, heritage lines and reopened railways
- 23 have the potential for similar reuse in the future, e.g. they are located close to the end of an existing heritage line or active travel route, or are on a route identified for development in a Local Cycling Strategy
- 54 have no physical obstructions to reuse
- 39 have no realistic value.

One of the bridges in Scotland is protected by a Grade C listing.

A map showing the structures' locations and appraisal ratings is available via this link:

[www.google.com/maps/d/viewer?mid=1\\_9GtFIDW-QuYPvp8vBcSUD4gH9cOMdZt](http://www.google.com/maps/d/viewer?mid=1_9GtFIDW-QuYPvp8vBcSUD4gH9cOMdZt)

According to Highways England, it has asked the relevant local authorities if they have use for the structures, but our contacts suggest the LAs have simply been approached with a view to taking over their ownership. Without a guarantee of funds to bring the structures into beneficial use, such a move would be untenable given the prevailing financial constraints facing local authorities. Crucially, there was no dialogue with the many 'third sector' organisations that play key roles in the development of cycle networks or with heritage railways.

Highways England's own figures indicate that no cost savings will be accrued through the infilling programme for 50 years, compared with routine repair and maintenance of the structures. A typical infilling project was expected to cost around £120,000 in 2016.

We understand the infilling programme is being driven by the failure of around 200 HRE bridges to pass an assessment - commonly known as BD21 - to carry 44-tonne lorries. It should be noted that railway bridges built prior to 1922 are only required to have a capacity of 24 tonnes, as defined in an old loading standard, BE4. If a higher capacity is needed, the local authority has to fund the necessary strengthening.

Highways England asserts that Local Highway Authorities have not implemented weight restrictions at any of these bridges and therefore action is needed on "urgent safety grounds" to "maintain the safety of communities living near to Historic Railway Estate [sic] structures, and the drivers who use the roads that cross them".

Whilst 11 of the 115 bridges identified for infilling carry A-roads, a substantial majority are crossed by unclassified country lanes and farm tracks along which long/heavy vehicles could not pass. At least seven of them do have weight restrictions (see appended photos).

Notwithstanding this, Highways England's implication is that dozens of Local Highway Authorities have, for many years, allowed traffic to pass without restriction across under-strength bridges, exposing themselves to significant liabilities and motorists to the threat of death in the event of a collapse. We regard this as implausible.

### ***Assessment shortcomings***

Structural assessments involve a certain degree of subjective judgement in the development of loading models. In 2003, a report into the failed assessments of 294 bridges on the Highways Agency's strategic road network found that:

- 25% failed due to conservative or inappropriate analysis
- 21% failed due to updates in Standards
- 11% failed due to a lack of design records leading to conservative assumptions
- 3% failed due to misinterpretation or inappropriate application of the assessment code.

These bridges were relatively modern (post-1950) and generally built from steel and concrete. In many cases, design records for HRE structures (mostly pre-1900) no longer exist, making the issue of design assumptions particularly relevant. Assessments associated with masonry arches - of which there are dozens within the 115 at-risk bridges - are notoriously unreliable.

It must be recognised therefore that a failed assessment does not necessarily mean that a bridge is under-strength or unsafe. The most important requirement is to inspect/monitor each structure effectively for any increased rate of deterioration and meaningful signs of distress.

In our view, the absence of weight restrictions simply reflects the Local Highway Authorities fulfilling their obligations in an appropriate and proportionate manner. If a bridge's capacity is sufficient for its anticipated traffic loading, there is no reason to impose a weight restriction.

### ***Use of Permitted Development powers***

Bridge infilling projects should be regarded as routine asset management activities. Several have been undertaken by Highways England since it assumed responsibility for the Historical Railways Estate in 2013. Until recently, they have involved the submission of a planning application to the local authority.

However, in September 2020, Highways England's agent, Jacobs, sent out Permitted Development letters (sample appended) to notify local authorities of their intention to undertake infilling or demolition projects at 124 structures "in order to prevent an emergency arising". In 11 cases, the affected structure only comprises abutments located at the roadside, the bridge span having already been removed.

Jacobs cited powers set out in the Town & Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 19, Class Q (appended) which are only applicable in an emergency whereby the event or situation "threatens serious damage to human welfare [or] the environment", involving, causing or possibly causing "loss of human life, human illness or injury [or] damage to property".

It is a requirement of these powers that, within six months of work starting, the Crown Land (or 'structure' in this context) is "restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer".

So, in relation to a bridge infilling scheme, the default position is that the infill would soon have to be removed unless the local authority formally consented to it remaining.

We have so far reviewed Local Plans from districts within which 63 of the at-risk bridges are located. In 33 cases (52%), the former railways spanned by the bridges are safeguarded from development to allow possible future use for rail or active travel. The use of Permitted Development powers circumvents this safeguarding.

To the best of our knowledge, no substantive works have yet been undertaken at any of the 124 sites, four months after the notification letters alluded to potential emergencies. Some of the schemes are not intended to start until 2025. This is not the definition of an emergency most people would recognise.

In reality, there is no threat of an emergency at any of the bridges; if there was, traffic would not be using them. Highways England's illegitimate exploitation of Permitted Development powers is a disreputable attempt to overcome the possible challenges presented by democratic process and is contrary to the public interest.

If it wishes to pursue these schemes, Highways England should apply for planning permission as it has done previously. If the schemes are appropriate, permission will be granted; if they're not, it won't. That's how democracy works. Government-owned companies should not seek to undermine it.

### ***Future impacts***

The Protocol Agreement between the Department for Transport and Highways England frames the Historical Railways Estate as a liability, the risks from which have to be minimised. In contrast, those with a positive outlook view it as a dormant infrastructure asset, with Highways England and the DfT acting as custodians pending its reawakening for public benefit.

We accept that many of the 3,200 structures have no realistic value and, in that context, both demolition and infilling are legitimate asset management options. Nobody is suggesting they should all be saved and subject to maintenance in perpetuity.

But the Estate presents transformational opportunities to 'build back better' following the Covid-19 pandemic as evidenced by the ongoing opening of new active travel routes, the development of which would have been significantly impaired if Highways England's

infilling/demolition plans were already underway. These opportunities must not be lost through a failure to understand the value of the Estate and an unwillingness to manage the associated risks in a proportionate manner.

In December, we wrote to Chris Heaton-Harris MP, the Minister of State for Transport, outlining our concerns. However we received only a disappointing, inaccurate and unsigned response from a DfT official (appended) which failed to address any of the substantive issues.

If £254 million is really to be invested in the HRE over the next seven years, it cannot be spent on destruction. That's unsustainable, unforgivable and taxpayers would pass a damning judgement on those who sanctioned it. And even if the budget is much more modest, targeted investments and a collaborative approach have the potential to deliver constructive new roles for many of these structures, helping to promote the Government's aspirations for an active travel revolution.

The emerging consensus amongst stakeholders is that a cultural blockage within the DfT is conspiring with Highways England's risk aversion to consign the Historical Railways Estate to a continued and unproductive decline. More than 7,300 people have so far expressed their opposition to this by signing our petition challenging the planned infilling programme.

We seek the scrutiny of the Transport Committee to ensure the HRE can realise its full potential, contributing to a better, greener and more inspiring future.

We look forward to hearing from you.

Yours sincerely



on behalf of The HRE Group

The HRE Group is an alliance of walking, cycling and heritage campaigners, engineers and greenway developers who regard the Historical Railways Estate's 3,000+ structures to be strategically valuable in the context of future rail and active travel provision.

Copied to:

Ruth Cadbury MP: Co-Chair, All Party Parliamentary Group for Cycling & Walking

Selaine Saxby MP: Co-Chair, All Party Parliamentary Group for Cycling & Walking

Liz Saville Roberts: Chair, All Party Parliamentary Group on Heritage Rail

The Rt Hon, the Baroness Morgan of Cotes: All Party Parliamentary Group on Heritage Rail

Nick Thomas-Symonds MP: Chair, All-Party Parliamentary Group on Industrial Heritage

# 5. Historical Railways Estate

## High level description

- 5.1** To manage the Historical Railways Estate (HRE), as defined by the Public Bodies (Abolition of BRB (Residuary) Limited) Order 2013, on behalf of the Secretary of State, including the inspection and safe maintenance of disused former railways structures, managing parcels of former railway land and property, managing the letting of properties and seeking transfer of the HRE to local authorities or other bodies.
- 5.2** The HRE includes structures, property and land within Scotland and Wales, as well as England.
- 5.3** Highways England shall discharge the functions with the same due care and diligence as if they were the owner of the HRE and were subject to the same statutory responsibilities and common law liabilities.
- 5.4** Subject to 5.8 below, Highways England's management of the HRE on behalf of the Secretary of State will include meeting from existing funding all costs associated with the property, including all claims, charges and damages arising directly or indirectly from damage to property and/ or persons (including death) subject to paragraph 8.5 of this Framework Document.

## Financial summary

- 5.5** Funding for this service is included in the current Highways England RDEL budget and will be part of the SR15 RDEL bid for the rest of the RIS period.
- 5.6** The relevant assets are held by the Secretary of State and do not appear on the Highways England Statement of Financial Position.
- 5.7** Any income obtained from exploiting any part of the HRE estate must be used to maintain other parts of the HRE.
- 5.8** Where, in connection with structures sold or transferred to non-statutory bodies, a claim is proven in accordance with the contingent liabilities agreement as laid before Parliament on 25 January 2001, the Department will provide the funding to meet these liabilities.

## Details of service to be provided

- 5.9** In carrying out these services, Highways England must engage and cooperate with, and provide information to, any agent the Department may appoint to advise on the performance of the management of the HRE. To this end Highways England will work with the Department's agent to develop a reporting methodology, meeting with the agent each

quarter to report on the progress made on delivery of the agreed services. The agent might be a person or Company as decided by the Secretary of State from time to time.

**5.10** The service that Highways England shall provide is:

- To seek to reduce the liabilities for the Secretary of State in terms of individual structure safety.
- To seek to maximise the level of rental income, manage tenancies appropriately, recover possession of properties and seek to minimise holding costs, consistent with the objective of keeping the properties safe, legally compliant and secure.
- To actively cooperate with the Department in their endeavours to transfer the Heritage Estate (in whole or in part) to local authorities and other third parties. In doing this Highways England will produce and maintain a plan of engagement, targeting those with high numbers of structures or large liabilities. Highways England will support the Department in its administration of any transfers of the HRE to third parties.
- To seek to identify opportunities for the disposal of land and property assets, obtaining market value.
- To undertake an annual programme of inspections of the railway structures.
- Depending on the inspections outcomes, to establish appropriate maintenance programme based on safety, priority ranking and affordability.
- Where Highways England seeks any professional advice in relation to the HRE it shall ensure that any such adviser is made aware that it owes a duty of care to the client in relation to professional advice provided by it to Highways England.
- To undertake Engineer's site audit and site safety audits for all major works schemes.
- To manage and inspect land and property to ensure they remain secure, not illegally occupied and not a danger to the public.
- To continually review the land and property portfolio to ensure regulation of occupation, and that the portfolio is safe and free of any potential hazards;
- To manage existing and future residual liabilities for structures sold or transferred to non-statutory bodies, including the maintenance of these structures in the event the purchaser defaults.

## Records

**5.11** Highways England must ensure the available existing records are stored according to records management best practice including recording on e-PIMS (including electronic boundaries). All future records shall be also kept to these standards.

- 5.12** Highways England shall keep and provide full and comprehensive records of all available past, current and proposed actions, contracts, rental income and costs relating to the HRE and provide any reasonable additional information as the Department or any statutory authority shall require.
- 5.13** Highways England shall record income collected, income due, rental arrears and provide this information to the agent each quarter.
- 5.14** Highways England must allow the Department and its agent access to its records and must work with the Department's agent to develop appropriate access arrangements.

## Sub-contracting

- 5.15** Highways England may contract out all or part of this service to a third party.

## Service Levels

- 5.16** Highways England shall use personnel who possess the skills and experience which are appropriate to managing this class of property on behalf of the Secretary of State who is the freehold / leasehold owner of these properties.
- 5.17** All structures are subject to one visual inspection per year and at least one detailed inspection every six years or when reasonably required for the condition of the structure
- 5.18** Engineer's site audit on 5% of all railway structures annually.
- 5.19** At least one Engineer's site safety audit for all major works schemes annually.
- 5.20** All inspections to be reviewed by accredited Engineers within 30 calendar days of receipt.
- 5.21** All unlet property to be inspected every 14 days, or every 28 days, where agreed this is appropriate.
- 5.22** All unlet land to be inspected every six months.
- 5.23** All let property or land to be inspected annually.
- 5.24** The reporting methodology and a set of service level agreements will be agreed with the agent.
- 5.25** The existing records shall be stored according to records management best practice by October 2015. Once this has been achieved Highways England shall notify the Department.
- 5.26** Commission valuations for 20% of the rentable property so they are completed by 1 February each year (all rentable property to be valued in the first Road Period).

## Annual Audit

**A.1** The Annual Audit will include:

- The standards adopted by Highways England when undertaking examinations, structural assessments and scour, and the standards used to repair or demolish structures;
- A review of the projects completed, comparing the plan with the actuality;
- A look ahead to the projects proposed for the rest of the Road Period and the budget provision required to deliver the programme;
- Maintenance work completed and a review of whether this provides value for money compared to other options;
- Methods of procurement;
- Qualifications and experience of the staff.

## Quarterly Activity Reports

**A.2** The Quarterly Activity Reports will provide information on the following service levels:

### **Safety**

- Accidents, reportable and non-reportable including actions taken;
- Examinations – progress against programme of planned work;
- Assessments, particularly public road structures, and actions proposed;
- Scour – phase 1 and 2 assessments and actions taken;
- Structural collapse, in date for examinations otherwise; and
- Structure Ranking Changes.

### **Project**

- Major works projects undertaken against the programme;
- Minor works – number of repairs undertaken and expenditure;
- Review of emerging trends (if any);
- Consultant instructions issued and delivered; and
- Overall expenditure against budget.

### **Incident**

- The number of reported incidents of:
- Vandalism;
- Legal challenges; and
- Bridge strikes.

Eight photos of HRE bridges threatened with infilling under Permitted Development powers



10th September 2020

Northumberland County Council  
County Hall  
Morpeth  
NE61 2EF

Project Name: HRE Works Framework  
Project Number: B28280JA

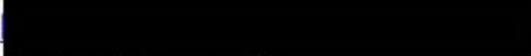
**Subject: Disused Railway Bridge HEA/30 "Staward Station" – Infilling works**

Dear Sir/Madam

I am writing to you on behalf of our Client, Highways England, Historical Railways Estate (HRE), formerly BRB (Residuary) Ltd to inform you of planned support works to the structure HEA/30 via structural infill. HRE is responsible for the Historical Railways Estate following the abolishment of BRB (Residuary) Ltd. This responsibility is undertaken on behalf of the Department for Transport, who own the structure. Therefore, the structure is crown property.

HEA/30, Staward Station, a single span masonry arch bridge constructed circa 1869. A BD21 assessment undertaken in 2009 found the structure suitable only for 18 tonnes GVW. It carries an unclassified road over the trackbed of the former Hexham to Allendale railway line. The nearest postcode is NE47 5NR. It is located at approximate OS grid reference NY 806 596. A location plan is enclosed for your information.

As the structure represents an ongoing and increasing risk to public safety and is owned by the Secretary of State for Transport, so is deemed 'Crown Property', Highways England HRE propose to undertake the support works as permitted development in line with the 'Town & Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 19 Class Q'. Specifically, and for the avoidance of any ambiguity, the works are being undertaken in order to prevent an emergency arising.

Can you please confirm receipt of this letter by return email:   
Please do not hesitate to contact me should you require any further information.

Yours faithfully



Civil Engineer

*Class Q – development by the Crown relating to an emergency*

**Permitted development**

**Q. Development by or on behalf of the Crown on Crown land for the purposes of—**

- (a) preventing an emergency;*
- (b) reducing, controlling or mitigating the effects of an emergency; or*
- (c) taking other action in connection with an emergency.*

**Conditions**

**Q.1** Development is permitted by Class Q subject to the following conditions—

- (a) the developer must, as soon as practicable after commencing development, notify the local planning authority of that development; and
- (b) on or before the expiry of the period of 6 months beginning with the date on which the development began—
  - (i) any use of that land for a purpose of Class Q ceases and any buildings, plant, machinery, structures and erections permitted by Class Q is removed; and
  - (ii) the land is restored to its condition before the development took place, or to such other state as may be agreed in writing between the local planning authority and the developer.

**Interpretation of Class Q**

**Q.2—(1)** For the purposes of Class Q, “emergency” means an event or situation which threatens serious damage to—

- (a) human welfare in a place in the United Kingdom;
- (b) the environment of a place in the United Kingdom; or
- (c) the security of the United Kingdom.

(2) For the purposes of sub-paragraph (1)(a), an event or situation threatens damage to human welfare only if it involves, causes or may cause—

- (a) loss of human life;
- (b) human illness or injury;
- (c) homelessness;
- (d) damage to property;
- (e) disruption of a supply of money, food, water, energy or fuel;
- (f) disruption of a system of communication;
- (g) disruption of facilities for transport; or
- (h) disruption of services relating to health.

(3) For the purposes of sub-paragraph (1)(b), an event or situation threatens damage to the environment only if it involves, causes or may cause—

- (a) contamination of land, water or air with biological, chemical or radioactive matter; or
- (b) disruption or destruction of plant life or animal life.



Department  
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Our Ref: 323450

11 January 2021

 The HRE Group

Dear ,

Thank you for your letter of 17 December 2020, addressed to the Minister of State, about the Historical Railways Estate (HRE). Your enquiry has been passed to the Correspondence Team, Strategic Roads division for a response.

In consideration of the concerns raised in your correspondence, let us begin by clarifying the arrangement of funding for the HRE. Highways England is funded for the management of the HRE outside of the second Road Investment Strategy (RIS2) settlement announced at the recent Spending Review (SR20). Funding of the HRE forms part of the Department's Resource Departmental Expenditure Limit (RDEL), and SR20 confirmed RDEL for 2021-22. However, no decisions have yet been made as to the level of HRE funding within the RDEL settlement, and this is being considered alongside other priorities. Funding for the HRE beyond 2021-22 will need to be considered in SR21.

You have also raised Highways England's management of HRE structures. In order to maintain the safety of both communities living close to them and the drivers who use the roads that cross them, Highways England is planning to infill 115 bridges and remove 15 structures over the next five years. Most of the bridges earmarked for infilling are over 100 years old and were never designed to carry the weight of modern traffic.

Local highway authorities have responsibility for applying weight restrictions, closing the roads, or restricting traffic. Approximately 200 of the public road bridges managed by Highways England have failed their most recent structural assessment, but have not had any restrictions implemented. Therefore, Highways England's planned infilling is the safest and most appropriate option and will maintain access across the structure.

Highways England also contacted all local authorities affected to advise them of its plans, and to see if they have any use for the structures. In addition, it has arranged for seven structures to be transferred to local authorities which aspire to use them for cycle routes.

Thank you for taking the time to write in with your concerns.

Yours sincerely,

**Correspondence Team, Strategic Roads, Economics and Statistics**