

Mr Iain Stewart MP
Chair, Transport Committee
House of Commons
London
SW1A 0AA

17 April 2023

Dear Mr Stewart

Historical Railways Estate

We are writing in response to the email received from [REDACTED] on 30 March 2023, seeking comments on the letter sent to your Committee by Nick Harris, Chief Executive of National Highways (NH), on 23 March 2023, partly addressing issues around the Historical Railways Estate (HRE). As it is almost two years since we last wrote to the Committee, we propose to incorporate our comments within a broader update on progress to secure a positive future for the Estate.

It is clear that changes in management and decision-making processes following the Government's pausing of National Highways' five-year infilling and demolition programme in July 2021 have reduced the level of immediate threat to more than 140 identified structures and others that would have been incorporated within subsequent programmes. This is, of course, very welcome. It must be recognised however that the legacies of at least 52 completed infill schemes and an unknown number of demolitions since 2013 will, for years to come, continue to be felt by those seeking to develop active travel routes or extend heritage railways.

That National Highways will no longer accept any Freedom of Information requests from our group about its infilling and demolition programme, or allow us to raise concerns through its Stakeholder Advisory Forum (SAF), suggests a continued unwillingness to accept legitimate scrutiny of its actions. Whilst NH does proactively release a limited amount of information via its website, we regard some of the content to be misleading and details of the HRE forward works programme have been removed. The latter suggests a lack of transparency and disenfranchises those with a vested interest in a particular structure.

Impacts of the infilling and demolition programme

In his letter, Mr Harris states that “No *existing* walking or cycling routes have been blocked by infilling or other works”. However, several infill schemes have resulted in blockages to *planned* active travel routes (e.g. ESB/10m4ch Ridge Road and SAD/70 Masbury Station), *planned* heritage railway extensions (e.g. EDE/25 Great Musgrave and SAD/52 Bakers Lane) and several other trackbeds with underlying potential for repurposing.

It should be noted that Sustrans’ *Initial Assessment of Historical Railways Estate Forward Programme* (January 2022) identified that 50 out of 75 structures (67%) intended for major works (mostly infilling or demolition) could potentially be useful for future active travel schemes. This finding indicates that National Highways was failing to consider the broader value of the HRE when making asset management decisions.

NH claims that infilling is “fully reversible”. In a *physical* sense, this should be tested over the next six months through the work at Great Musgrave bridge in Cumbria, which was infilled in 2021 for £124K but must be returned to its former state to comply with an enforcement notice from Eden District Council. However, the fact that NH felt the need to set aside £431K for removal of the material, repairs to the structure and strengthening suggests that infilling is unlikely to be reversible in a *financial* sense for charitable/voluntary organisations who deliver active travel schemes and heritage rail extensions on very modest budgets.

With the help of a mostly volunteer workforce, charity Greenways and Cyclerroutes opened the 2½-mile long Wye Valley Greenway in 2021. The project presented many engineering challenges, including removal of an existing railway track, design, laying of an asphalt surface, manufacture and installation of lighting through a 1,188-yard long tunnel, a new deck over a road bridge and earthworks.

Through creativity and resourcefulness, all this was delivered for less than the £272K price of National Highways’ 2019 infill scheme at Ridge Road bridge, now blocking the preferred alignment of the Strawberry Line greenway one mile west of Cannard’s Grave Road bridge in Shepton Mallet which, as Mr Harris highlighted, is now open for walking and cycling having previously been the subject of a planning application objection from NH.

Rural greenways offer high value for money, bringing social and economic benefits. In this context, it is clear that the £8M spent on infill schemes since 2013 could have had a positive and substantial impact, instead of being used to marginally reduce the liabilities of National Highways and the Department for Transport. The need to remove infill could render proposed active travel schemes unviable or force the adoption of suboptimal alignments.

As Baroness Vere identified in her letter to the Committee of 7 July 2021 following the Great Musgrave bridge controversy, National Highways “made a commitment to reverse the infilling at no cost” should it be required to reconnect the two affected heritage railways. We believe this commitment should be broadened to include any NH infill scheme where a need to pass beneath the structure can be reasonably demonstrated.

Emergency permitted development rights

Schedule 2 Part 19 Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 - hereafter known as 'Class Q' - allows development on Crown land to prevent an emergency or reduce/control/mitigate the impacts of an emergency. In the context of the Historical Railways Estate, it would - for example - enable National Highways to undertake immediate works without the need for prior engagement with the Local Planning Authority (LPA) if a bridge was found to be on the brink of failure or collapse. It is clear that if an effective asset management regime is in place, such emergency interventions would occur very rarely.

Of the 112 bridges threatened with infilling in January 2021, at least 35 (31%) had been the subject of Class Q notification letters to the relevant LPA, mostly stating that "Specifically, and for the avoidance of any ambiguity, the [infilling] works are being undertaken in order to prevent an emergency arising." However no evidence of emergencies was provided with these letters; at CFH1/12 Rudgate bridge near Tadcaster, the two most-recent annual inspections had been missed whilst the previous inspection had only recommended repairs to a fence.

At PMY2/76 Congham bridge near King's Lynn, there was a 17-month hiatus between the notification letter being sent and infill works starting. But in the vast majority of cases, no substantive works have yet taken place at the bridges earmarked for infilling under Class Q. The fact that 29 of the 35 letters were sent on the same day in September 2020 reinforces our belief that there were *no emergencies* and NH was attempting a systematic misapplication of Class Q, allowing planned infill works to take place without scrutiny or challenge.

Prior to infilling, National Highways' own engineering evidence demonstrated that EDE/25 Great Musgrave bridge in Cumbria was in fair condition, with only a small number of minor defects. If appropriate factors had been assigned when assessing the bridge's capacity in 1998, the modified axle load would have been found to be 15 tonnes, well in excess of the 11.5 tonnes needed for a 44-tonne vehicle.

However, on 28 May 2021, when a planning officer from Eden District Council asked National Highways' engineer not to start infilling works until an evaluation of the planning requirements had been completed, he refused on the basis that "they will prevent a future collapse and preserve public safety (under class Q)". This suggests a culture whereby Class Q was regarded as a convenient and ready solution to planning difficulties, irrespective of whether the emergency conditions associated with its correct use were actually met.

HQU/3D Queensbury Tunnel is arguably the most strategically valuable HRE structure, forming a 1.4-mile connection between the conurbations of Bradford and Calderdale, which cannot otherwise be realistically linked for active travel due to the local topography. In 2019, National Highways blocked the tunnel by infilling a ventilation shaft under Class Q despite the LPA issuing a Planning Contravention Notice to NH, the DfT and the contractor on site (see enclosures). The work was prompted by a longstanding bulge in the sidewall close to the shaft, a repair for which had been designed in 2012 but not implemented.

It should be noted that, by default, Class Q applies only to *temporary* works, remaining in situ for a maximum of 12 months; infilling is intended to be *permanent*. If there is a wish to retain any works beyond this period, written permission is required from the LPA. However, in the case of five infill schemes carried out under Class Q, NH did not seek any such consent and is now in breach of its obligations (see enclosures).

We have asked National Highways to confirm what action it proposes to take to regularise these breaches, but it would not discuss the matter. In at least two cases, the relevant LPA has asked NH for retrospective planning applications (see enclosures), but these have not yet been received.

We believe National Highways' clear misuse of Class Q undermines trust and confidence in public bodies, and the breaches must be put right if NH is to restore its reputation as an appropriate manager of the Historical Railways Estate. In accordance with its new policies around infilling, the five schemes should be the subject of retrospective planning applications to ensure proper engagement with democratic process, offering interested/affected parties the opportunity to make representations.

New management regime

In October 2021, National Highways' Stakeholder Advisory Forum was established with member organisations who were all closely allied with NH. As a result, we initially had low expectations that the forum would sufficiently challenge National Highways; however, the subsequent addition of Historic England, Historic Environment Scotland, Natural England, ADEPT and the Heritage Railway Association has brought a much broader range of voices and insight.

The new Head of Historical Railways Estate has had a very welcome and constructive impact since their appointment in 2021, engaging proactively with stakeholders and promoting the value of the HRE. They have developed and received Ministerial approval for a new process used to review proposed major works and we understand they are seeking to positively reframe National Highways' HRE obligations under the DfT/NH Protocol Agreement.

As Mr Harris highlighted, NH's engineer worked tenaciously to secure a licence from the Department for Transport for the Strawberry Line greenway to pass under Cannard's Grave Road bridge in Shepton Mallet, an important development which we hope will become the default mechanism by which many other HRE structures can be repurposed, replacing the DfT's detached and increasingly unrealistic insistence that such use must involve transfer to another statutory body, usually the local authority. The Department's negative attitude towards the HRE over many years should not be overlooked or its impacts underestimated. We note that property with value for active travel purposes is still being put into auctions despite the piecemeal selling-off of dismantled railways being one of the greatest barriers to effective route development (see later reference to BRP/8).

Whilst all this is generally encouraging, the extent to which others within NH/HRE have fully bought into the new regime is not yet clear due to the absence of confirmed outcomes for structures previously or currently identified as under threat of infilling or demolition.

To date, the SAF has reviewed works proposals for just eight structures, mostly of lower value. Of these, National Highways has indicated its inclination to infill four, subject to Ministerial approval and planning permission. A fifth structure has an infilling option - with an estimated cost of £260K - only for the purpose of addressing reported antisocial behaviour, in clear conflict with NH's stated position that infilling is only considered as a last resort, for engineering or safety reasons.

National Highways' widely-reported commitment of 16 June 2022 that it would "no longer consider the infilling of any structures unless there is *absolutely no alternative*" has been quietly replaced by much looser wording.

BRP/8 Barrowland Lane bridge near Bridport is one of two structures where demolition is an option, at a cost of £200K (see enclosures). However this bridge could help to fill a 400-yard gap between an existing section of 'trailway' and a permissive path, although the owner of the intervening trackbed is not currently supportive. If fully redeveloped, the former Bridport Railway could become an iconic active travel route through the Dorset Area of Outstanding Natural Beauty, connecting the town with its nearest railway station at Maiden Newton.

We remain concerned that National Highways does not seem to understand the responsibilities that come with spending public funds and the obligation to deliver the greatest value for money through the specification of proportionate works. It has estimated a cost of £300K for security fencing and repairs to concrete-encased girders at a structure which already has an assessed capacity of 40 tonnes; basic refurbishment work to two isolated abutments has been estimated at £150K. These figures seem unfathomably high.

It is still not clear that NH appreciates that the asserted long-term cost benefits of infilling and demolition are often outweighed by the ecological, environmental and heritage harm caused. Nor does it demonstrate an understanding, as Sustrans stated in its 2022 assessment of the HRE forward programme, that "An argument could be made for all the structures that, one day, they may be useful...". The value of the Estate is increasing as we tackle our climate change obligations and the cost of new infrastructure is driven upwards by inflation.

We recognise that National Highways is now saying the right things about the HRE's potential and has taken positive steps in a better direction regarding its management; however, real progress can only be judged on the basis of *appropriate outcomes* for the structures, of which none has yet been confirmed. It is a concern that NH remains reluctant to make clear its long-term intentions regarding the 140 structures that, prior to the Government's intervention, had been earmarked for infilling or demolition "to maintain the safety of communities", including 35 where emergencies had supposedly developed. Given the claimed circumstances, doing nothing with these structures is demonstrably not an option.

We look forward to hearing from you.

Yours sincerely

[REDACTED]

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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.

Enclosures:

Planning Contravention Notice and letters from Bradford Council re HQU/3D Shaft 2 (p1-6)

Paper on Class Q infills at CFH1/12 and PMY2/76 (p7-18)

Emails from Local Planning Authorities re infills at CFH1/12 and PMY2/76 (p19-20)

Paper on the value of BRP/8 (p21-34)

Copied to:

Mark Harper: Secretary of State for Transport

Lord Moylan: Chair, Built Environment Committee

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 MP: Chair, All-Party Parliamentary Group on Heritage Rail

Hélène Rossiter: Head of Historical Railways Estate, National Highways

Mark Mathews: Head of Estates, Department for Transport

[REDACTED]