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Council acts as rights expire on emergency bridge infill

National Highways has been told to apply for retrospective planning permission after failing to fulfil its statutory obligations under powers used to infill a historic railway structure.

Contractors buried Yorkshire's 175-year-old Rudgate bridge within hundreds of tonnes of aggregate and concrete during March and April 2021, using permitted development rights intended for temporary works in urgent situations. On 6 October 2020, consultants acting for the state-owned roads company had told Selby District Council that "for the avoidance of any ambiguity, the works are being undertaken in order to prevent an emergency arising".

National Highways looks after 3,100 Historical Railways Estate structures on the Department for Transport's behalf. Under the terms of its management agreement, it is required to carry out annual inspections, but failed to do so at Rudgate bridge - between Tadcaster and Wetherby - in 2019 and 2020, resulting in engineers having no up-to-date insight into its condition. The 2018 inspection recorded some minor defects - typical of structures of this type and age - but the examiner's only recommendation was to spend £1K repairing approach fencing. Infilling cost £133K.

The structure - carrying a narrow lane which is prohibited to vehicles of more than 3 tonnes unladen - had been assessed as having a capacity of 32 tonnes. Despite this, National Highways claimed the bridge presented "an ongoing and increasing risk to public safety" and infilled it over a five-week period.

"National Highways have relied on permitted development rights which authorise certain types of work to be carried out without an application for planning permission", says Paul Taylor, a solicitor at Richard Buxton Solicitors, a firm specialising in environmental, planning and public law.

"With Rudgate bridge, National Highways claimed that it was entitled to rely upon permitted development rights that apply when there is an emergency. Whether or not the situation was in fact an emergency, these rights are not intended for permanent works and so where infilling has been carried out, the land must be restored to its previous condition within 12 months of work starting unless the local planning authority has given written permission for it to stay or an application for has been made and permission is granted."

Last month, National Highways claimed that there is "no requirement for a separate consent for retention", but Selby District Council has now told the company that it must seek planning permission if it proposes to keep the infill. A deadline of 27 January 2023 has been set for receipt of the application.

Graeme Bickerdike, a member of The HRE Group which has been campaigning against National Highways' programme of infilling legacy bridges, said: "At Rudgate, in pursuit of its liability reduction policy, National Highways has exploited permitted development rights which neither fitted the prevailing circumstances nor required the usual level of public scrutiny. We approached the local planning authority - challenging the validity of the company's actions - and welcome the requirement to submit a planning application.

"The value of legacy infrastructure is increasing as we develop more safe active travel routes - encouraging people onto foot and bike both for exercise and connectivity - and tackle the implications of soaring inflation whereby new structures are becoming less affordable. We need to care for what we already have, not inflict the kind of damage that inevitably comes with transporting huge amounts of quarried material and dumping it in often sensitive landscapes."

Rudgate bridge is located 340m from the current end of a cycle path occupying the former Wetherby-Newton Kyme railway. Plans for an extension to Tadcaster are longstanding and could involve the structure, but no preferred route has yet been developed.

In its various guises, National Highways infilled 51 historic railway bridges between September 2013 and July 2021 at a cost of £8.01M. The Government then intervened to pause the programme after concerns were raised about ecological, environmental and heritage impacts, the burden on the taxpayer and the loss of sustainable transport opportunities. The pause has now been lifted following development of a process to review any proposed schemes.

Earlier this month, Maldon District Council appointed an enforcement officer to investigate the emergency infilling of another bridge near South Woodham Ferrers, Essex, in 2020.

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Attachments

RudgateBridgeBefore©TheHREGroup: Rudgate bridge was built in the 1840s and spanned a railway which has been partly converted into a cycle path. (Credit: Robert Matley)

RudgateSign©TheHREGroup: The structure carried a narrow lane which is prohibited to vehicles of more than 3 tonnes unladen. (Credit: The HRE Group)

RudgateBridgeAfter©TheHREGroup: Hundreds of tonnes of aggregate and concrete were used to bury Rudgate bridge in March and April 2021. (Credit: The HRE Group)

RudgateAerial©TheHREGroup: A view looking down the old railway towards Tadcaster. (Credit: The HRE Group)

RudgateArchive©TheTransportTreasuryLtd: An archive photograph showing a train passing beneath Rudgate bridge in 1957. (Credit: The Transport Treasury Ltd (MM292))

(Higher resolution versions of the above photographs are available on request)

Supporting Documents (PDF): Email from Selby District Council (SDC) confirming that National Highways (NH) has been asked to apply for planning permission for retention of the Rudgate bridge infill; the NH/DfT Protocol Agreement; Jacobs' letter to SDC on 6 October 2020; NH's 2018 inspection report; Class Q emergency development powers.

The assessment recording Rudgate bridge's capacity at 32 tonnes is available via this link.

https://hre.s3.eu-west-2.amazonaws.com/cfh1_12_Rudgate+Road_32+tonnes.pdf

A map showing the 51 structures infilled by National Highways is available via this link. The cost of each scheme and the planning requirements can be found by clicking on the icons.

<https://www.google.com/maps/d/u/1/edit?mid=1owQSnow1Yj5taYxkzBybTFvnHyxIwWc>

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Notes for editors

The Historical Railways Estate (HRE) is owned by the Department for Transport (DfT) and managed on its behalf by National Highways (NH). NH is responsible for inspecting, maintaining and limiting the liability associated with around 3,100 disused railway bridges, abutments, tunnels, culverts and viaducts.

Although transport policy is largely a matter for the devolved administrations, around 19% of the HRE structures are in Scotland and 11% in Wales. These remain under NH's management.

National Highways operates under a Protocol Agreement with the Department for Transport which sets out its obligations in relation to the safety, inspection, maintenance, disposal of the structures, the maximisation of rental income and reduction of risk. Its remit was formerly fulfilled by BRB (Residuary) until its abolition on 30 September 2013.

Since assuming responsibility for the HRE, NH has infilled 51 bridges at a cost of £8.01M. The programme was paused by the government in July 2021. A map showing the infilled structures, together with the cost of each scheme, is available via this link...

<https://www.google.com/maps/d/u/1/edit?mid=1owQSnow1Yj5taYxkzBybTFvnHyxIwWc>

In 2020, National Highways awarded framework contracts to six companies for works on HRE structures with a headline value of £254M over seven years. It also agreed a professional services contract with Jacobs, worth £31.9M over ten years, and two contracts for inspections/examinations with a value of £18M over ten years.

In January 2021, it was revealed that 134 structures were at risk of demolition or infilling. These were located in East Anglia (12), East Midlands (4), London and the Home Counties (8), Northern England (16), Northern Scotland (8), North-West England (3), South-East England (11), Central/Southern Scotland (19), South-West England (24), Wales (5), West Midlands (16) and Yorkshire & Lincolnshire (8).

National Highways now claims that the threat of infill or demolition has been lifted from all these structures and any future major works will be the subject of review and consultation with its Stakeholder Advisory Forum, established in October 2021.

A map showing the broader threat to HRE structures - including those that have failed assessments - is available via this link...

https://www.google.com/maps/d/u/0/edit?mid=1LVvKXUS_a66LGzG8mPNLZaRpz2hw3ioe

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

The following local authorities have told National Highways that planning permission is required for bridge infilling schemes: Aberdeenshire, Angus, Cheshire West & Chester, Essex, Glasgow, Gloucestershire, Herefordshire, Hertfordshire, Leicestershire, North Ayrshire, North Yorkshire, Northumberland, Perth & Kinross, Powys, Shropshire and Stratford-upon-Avon. Others have raised objections or imposed specific constraints.