

From: [REDACTED]@highwaysengland.co.uk]

Sent: 24 June 2021 18:23

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: EDE/25 - Great Musgrave. Enforcement case 21/5064.

Dear [REDACTED]

Thank you for your email of 23 June 2021 which relates to the advice Eden District Council (EDC) has sought in relation to the original confirmation provided by the EDC's Planning Services Team on 24 April 2020 that the works at EDE/25-Great Musgrave constitute permitted works to maintain the highway.

In response to your recent email, we draw the following to your attention. In 1993 by virtue of the Public Bodies (Abolition of BRB (Residuary) Limited) Order 2013, the Historical Railways Estate (HRE) was transferred back to the Secretary of State. Under the provisions of Part 5 of Annex C of the Highways England Framework Agreement 2015. Highways England, a government owned company (not forming part of the Crown), were instructed to safely manage the assets within the HRE. The ownership of HRE remains with the Secretary of State.

In this context Highways England is essentially acting as agent for the Secretary of State and therefore the Crown. Under the provisions of S117 of the Transport Act 1968 the Secretary of State is under a duty to maintain the bridges within the HRE and Highways England is their agent in relation to the maintenance of this asset.

We note EDC asserts that the works do not constitute permitted development under Schedule 2, Part 19 Class Q; on the basis insufficient evidence has been provided of the asserted emergency. We would note that the permitted development right not only allows works to be undertaken to deal with an emergency but to also prevent an emergency. It is our view that the latter situation applies here. The emergency we were seeking to "prevent" falls squarely in the definition within Class Q.

"Emergency" is defined in class Q as an event or situation which threatens serious damage to human welfare which is clarified as only where it involves, causes or may cause (amongst other criteria) -

- (a) loss of human life;
- (b) human illness or injury;
- (d) damage to property;
- (g) disruption of facilities for transport.

We submit we were entitled to undertake these works under Schedule 2 Part 19 Class Q on behalf of the Secretary of State.

Reference has been made to the assessment carried out by the Cumbria County Council (CCC) in 1998. That assessment concluded that the bridge's capacity was 17 tonnes, not 40 tonnes which the road is subject to, and that the capacity could be increased by repointing. As a result CCC as the local highway authority should have carried out the recommended works or restricted the route to vehicles the bridge could carry in safety and without causing long term damage to the structure. The local highway authority however did not act on that information and the structure continued to be utilised and damaged by vehicles in excess of 17 tonnes.

We would have agreed with the opinion of EDC, as whether the condition constituted an impending emergency, if the only evidence of the structural state of the bridge was the 1998 CCC assessment report. However, as we outline below, there is additional information that is highly relevant.

In 2012 HRE's predecessors (BRB Residuary) repointed the arch. The last detailed examination of the bridge on 29 August 2017 (copy attached) noted that the joints between the masonry in the arch had again opened up (up to 40mm with an average of 25mm) and that the crown of the arch had dropped; at that time it was recorded as a drop of 4mm. These areas of concern were specifically checked as part of the examination of 8 February 2020 (copy attached). The downward movement of the arch had increased to 15mm and the joints between masonry opened up to 170mm in depth in the period (under 3 years) between the two examinations.

These figures may appear small but in the context of an arch barrel that was measured as 450mm thick (by CCC) **a measured loss of 38% of the mortar in the joints** compared with a loss of less than 10% in such a short period is significant. This combination of defects indicates a structure that is suffering from being continually overloaded.

Without intervention those defects would continue to develop and disruption to the network through the closure of the road over the bridge would be the "best case" scenario.

The structural analysis (carried out by CCC) concluded that the load bearing capacity of the bridge was not commensurate with the type of vehicles able to use the road. Our examination process and the recorded failure by 2017 of repairs carried out in 2012 **confirmed that the bridge was being overloaded and that works were required to prevent the failure of the bridge and avert a collapse.**

The last visual examination on 22 January 2021 confirmed the extent of the distress to the arch though no measurements were recorded on that occasion (copy attached). However, this reaffirmed that the mitigation works were required as a priority to "prevent" a collapse and thereby an emergency as defined within Class Q. Based solely on the visible defects to the bridge during the

examination our examiner considered the arch defects Priority 1 (*An item of work that should be completed within one year from the date of the Examination*) and indicated a significant cost for remedial works; that cost estimate makes no allowance for access, scaffolding, road closures etc. These remedial works, similar but more intensive because the damage is now significantly worse, would still only last a short period as the root cause remains unmitigated.

Safety is our principle concern and we have adopted mitigation which we consider is the most reliable and does not require an ongoing programme of interventions. Schedule 2 Part 19 Class Q is not prescriptive as to the nature of the mitigation works that can be undertaken merely that they should “prevent” an emergency. There is no requirement that any preventative work should take a prescribed form or be the absolute minimum required. Therefore, the works planned were the result of the professional judgement and significant experience of our engineers of managing the HRE.

As previously stated, repointing the arch provided only a short period of respite whilst the loads crossing the bridge remained unrestricted and would have to be repeated cyclically to maintain the arch’s integrity. As the damage to the structure developed the load capacity of the bridge reduced in parallel; the acceleration of the damage evident by the difference in the figures recorded in the 2017 and 2020 examinations.

Infilling the arch to form an embankment is, in these circumstances, the most reliable form of mitigating the risk to road users, our employees and our contractors who would have to continue examining the bridge. It stabilises the structure in the long term and avoids the disruption of closing the road to carry out repairs to the structure beneath. Additionally infilling represents a better use of public funds compared with frequently having to repair the arch when the root cause, the traffic loading, remains unchecked.

It is our intention to submit an application to retain the works within 12 months from the date we commenced works as required by schedule 2 Part 19 Class Q of the Town and Country (General Permitted Development) Order 2015. We are aware that we have a right of appeal to the Secretary of State under S78 of the Town and Country Planning Act 1990 in the event the local authority fails to determine our application or it is refused.

Throughout this process we have acted in good faith and maintained a clear dialogue with EDC and the Planning Services Team since before the works commenced. The Planning Services Team confirmed on 24 April 2020 our understanding of the availability of permitted development rights for these works. We reserve the right to refer to this in the event any decision is made to pursue enforcement action against Highways England.

The works are now substantially complete. The infilling operation is complete and the resulting embankments are being trimmed, top soiled and seeded. Failure to finish these works would leave

