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Our ref: ██████████ (PDT/SKB)  
Your ref: 22/00544/UNOPDE

12 June 2023

King's Lynn and West Norfolk Borough Council  
Planning Department  
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Dear Sirs

## Ref 23/00894/F: Infilling of St Andrew's Lane bridge, Congham

1. We are instructed by The HRE Group to write to you in relation to the retrospective planning application ("the Application") in respect of the infill at Congham Bridge ("the Bridge"). This letter is intended to supplement the submissions already made by The HRE Group on 7 June 2023.
2. This is an application for retrospective permission to infill the Bridge under s. 73(a) of Town and Country Planning Act 1990 ("Planning permission for development already carried out."). In all relevant respects it is treated as a conventional planning application and s. 38(6) of the Planning and Compulsory Purchase Act 2004 therefore applies:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

3. Having reviewed the Application, it is clear that it breaches local policy and the National Planning Policy Framework (NPPF) in a number of important respects. Furthermore the considerations relied upon to justify the infilling have not been demonstrated and are contested.

### The Reason for the Retrospective Application

4. The Planning Statement is unclear about the reasons for this application. For example at s. 3.2 and elsewhere, it says:

*"Ecological surveys at the bridge structure - PMY2/76 (hereinafter referred to as 'the structure') were undertaken between 2019 and 2021 and ahead of infill works, which were completed by 30 April 2021, on the understanding that the works were permitted development, due to 'no objection' from KLWN at the time.*

*Following reassessment of the planning status of the works by KLWN, Jacobs were commissioned by HRE to prepare a planning application associated with the infilling of the structure.” (emphasis added)*

5. This is a misunderstanding of Sch2 Part 19 Class Q Permitted Development rights. If the work is permitted under Sch2 Part 19 Class Q, there is no need to secure the agreement of the local planning authority. All that is required is that the planning authority is notified as soon as practicable after commencement of the works (consistent with the fact that these permitted rights relate to emergencies).

6. However, the wording of Class Q also states that:

*“On or before the expiry of the period of 12 months beginning with the date on which the development began—  
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*

*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.”*

7. The land has not been re-instated to its condition before the infilling took place or to such other state as agreed in writing with the local planning authority and so the infilling (on any basis) does not fall within the scope of Sch2 Part 19 Class Q Permitted Development rights. The Council considered that the retention of the infilling works was a breach of planning control and National Highways has been required to make this application.

#### **The “Emergency” nature of the works.**

8. It is also disputed that the condition of Congham Bridge was in such a state as to amount to an “emergency” and therefore that this was a lawful exercise of Permitted Development rights. National Highways has not produced the inspection reports, the most recent assessment of the capacity of the Bridge or the documents showing the consideration of alternative means of repairing the Bridge and so the Council will have limited information upon which to assess the assertion that the infilling was required as a matter of urgency, but the Council is asked to note that:

- a. Although notification of the work was given on 14 October 2019, the works did not take place until March and April 2021 (Planning Statement s. 1.5);
- b. The wording of Class Q (as set out above) makes it clear that the works are supposed to be temporary in nature. The works that were carried out are clearly intended to be permanent (a long term solution – Planning Statement s. 1.6.1)
- c. Although s. 1.5 of the Planning Statement refers to concerns about the Bridge’s ability to carry vehicles, there is no reference to the five girders supporting the carriageway which had previously been assessed as having a capacity of 40 tonnes (see representations from The HRE Group). As mentioned above, National Highways has not disclosed the capacity assessment of the Bridge carried out in 2019.
- d. There are no documents demonstrating an evaluation of the extent of the risk posed by the structure of the Bridge. There is nothing to show that the state of affairs constituted an emergency.

- e. There is very limited information about the supposed condition of the Bridge but according to The HRE Group, the description that has been provided in s. 1.5 of The Planning Statement is consistent with defects that are “typical of those recorded on legacy structures” and can be “managed through general housekeeping repairs”. Furthermore high quality photographs taken before the infilling suggest that the condition was not as bad as has been reported. Whilst there is insufficient information available for the Council to assess the Bridge’s condition prior to infilling, the point is that National Highways has not demonstrated that there was an emergency situation and thus that the works were carried out lawfully.
  - f. A similar point can be made about alternative means of addressing the condition of the Bridge. The Planning Statement at s. 1.6.2 makes it clear that there were alternative approaches that could have been taken but once again, the documentation setting out the alternatives has not been disclosed. The admission that there were alternative means of repairing/maintaining the Bridge also calls into question whether the infilling was a necessary response to an emergency situation and thus whether it was carried out lawfully. (This question of alternatives is also very important when considering the harm caused by the infilling.)
9. In summary, although it is asserted that the works were carried out using Sch2 Part 19 Class Q Permitted Development rights, there is insufficient evidence available to the Council to be satisfied that the original infilling work was in fact carried out lawfully. The fact that the work did not start for 17 months after the notification letter was sent instead indicates that there was no emergency.

### Heritage Harm

10. It is common ground that the Bridge is not a designated heritage asset. On the other hand it is a heritage asset. It is acknowledged by National Highways that the Bridge is of local heritage interest in relation to the Midland and Great Northern Joint Railway (M&GNJR), the railway engineer William Marriott, and the use of pre-cast reinforced concrete elements within its replacement span. Further information is provided in the submissions from The HRE Group which points out that the Bridge is one of only six known applications of William Marriott’s innovative bridge system and was one of only three that remained prior to infilling. It is said to be “the most elaborate and complete of the six bridges incorporating newel posts, curved wingwalls and some attractive architectural detailing”.
11. At s. 6.2.1 of The Heritage Statement, it is acknowledged by National Highways that harm has been caused by the infilling:
- “Aesthetically, the infilling has altered the ability to appreciate the bridge. For example, it is no longer possible to pass under the bridge and experience the former route of the M&GNJR at track level or examine its fabric. ....As a heritage asset of local interest, the infilling of Congham Bridge has reduced the ability to visually appreciate the bridge, including the modest engineering interest relating to the use of pre-cast reinforced concrete for its replacement span.”*
12. This conclusion underplays the harm that has been caused. Infilling has completely covered the superstructure and substructure so that only the parapets remain. Without access beneath the span, substantive aspects of the bridge’s form can no longer be

visually appreciated. Furthermore parts of the original structure ((top courses of the wingwalls and newels) appear to have been removed (contrary to the assertion that the structure has been preserved).

13. There are a number of policies in the Local Plan 2011 that relate to heritage (emphasis added):

- a. CS01 “Development priorities for the borough will be ...to protect and enhance the heritage, cultural and environmental assets...”
- b. CS06 “the strategy will be to protect the countryside for its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife...”
- c. CS08 “New development will be required to demonstrate its ability to ... protect and enhance the historic environment
- d. CS12 “proposals to protect and enhance our historic environment and landscape character, biodiversity and geodiversity 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.....Development should seek to avoid, mitigate or compensate for any adverse impacts on biodiversity, geodiversity and heritage ... Development proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance the special qualities and local distinctiveness of the area (including its historical, biodiversity and cultural character), gaps between settlements, landscape setting, distinctive settlement character, landscape features and ecological networks.”

14. These local policies reflect National Policy as set out in the NPPF at paragraph 197 which states that:

*“In determining applications, local planning authorities should take account of ... the desirability of sustaining and enhancing the significance of heritage assets” (emphasis added).*

15. The common theme from both local and national policy is on protecting/preserving/conserving and enhancing heritage assets and avoiding harm. Despite the assertion in the Planning and Heritage Statements that the infilling is “considered compliant with the requirements of the National Planning Policy Framework (NPPF) and local policy to conserve (protect) the significance of a heritage asset” this is clearly not the case:

- a. Harm has been caused to a heritage asset (it has not been avoided);
- b. The heritage asset has not been protected/preserved/conserved; and
- c. There were (and are) alternative means of protecting/preserving/conserving the heritage asset that avoid the harm.

16. There is therefore a conflict with local policies. As the Planning Statement acknowledges, “applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise”.

## **The Permanent Nature of the Infilling Work**

17. It is said at s4.4.6 that the Bridge “has not been ... permanently harmed, as the works conducted are considered reversible. .... the infill scheme could be removed.” This seems to be a factor being relied upon to reduce the assessment of the harm caused.
18. Although the Applicant asserts that the infilling works are reversible and that any harm is temporary, this is questionable for the following reasons:
  - a. Infilling is intended to be permanent and is designed accordingly.
  - b. There is no guarantee that the infilling will in fact be reversed – it seems to be conditional on reopening the railway or an active travel route underneath the Bridge. This may or may not happen and is made less likely by the additional costs associated with removal of the infill.
  - c. There is no timeframe for reversing the work.
19. In short, while the works may well be reversible, this does not mean that the harm should be considered temporary.

## **Balancing Heritage Harm**

20. Paragraph 203 of the NPPF states that:

*“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.”*

21. The benefits relied upon by National Highways are not clearly set out but are hinted at in s4.4.6 and 4.5 of the Planning Statement which refer to the wider public benefit of safeguarding the road bridge and state:

*“the bridge works were required as emergency works, to safeguard the bridge, thus having wider public benefits in maintaining the bridge and its long-term preservation, which would otherwise be liable to further damage at some point in the future. These wider public benefits of the proposals are therefore considered to significantly outweigh the overall less than substantial harm to the heritage asset.”*

22. The question of whether these were “emergency works” is addressed above.
23. It is acknowledged that there are “wider public benefits in maintaining the bridge and its long-term preservation” but it is also apparent from the Planning Statement that there were (and are) alternative strategies that could have been used which do not involve infilling. In order to assess whether the harm that has been caused is justified, National Highways should have considered whether there were alternative strategies that would have achieved this benefit while avoiding harm to the heritage asset and ensuring that it was preserved. National Highways has failed to establish that these same benefits – the long term preservation and maintenance of the Bridge - could not have been achieved without avoiding the harm.

24. It is important also to note the wording at s1.6.2 of the Planning Statement in reference to the “Justification for Infilling” .:

*“Given the cost and technical complexity of the works above, and because the Highway Authority specifically confirmed that infill would not affect their active travel route plans, and the fact that the bridge does not have any heritage status, infill was the most suitable way forward with lower overall Whole Life Cost.”*

25. It would appear from this statement that the heritage status of the Bridge was considered to be unimportant at the time that the infilling decision was taken. Infilling was not the only choice but the most “suitable” and in fact the decision was taken for financial reasons (“lower overall whole life cost”).
26. The financial advantage is not a relevant planning consideration (as the benefit is not a local financial benefit). In any event, no calculations have been provided to support the assertion that the infilling of the Bridge would represent a cost saving. Furthermore, if the infilling is indeed supposed to be temporary, it seems highly unlikely that the cost benefit argument could be sustained.

### **Active Transport**

27. There are various policies that seek to support footpaths and cycle paths including CS08, CS11, CS13 and DM13 which states:

*“Disused railway trackways and routes can be a valuable resource, such as, providing future routes for footpaths or cycleways. It is therefore important to protect them from adverse development which might otherwise compromise their future as alternative economic or recreational transport routes.”*

28. Whilst it is acknowledged that the route underneath the Bridge is not part of any current plans for footpaths, cycle paths or railways, the position may change and the choice of infilling (as opposed to other methods of repair and maintenance) certainly does not support the policies that promote forms of sustainable travel. Instead it has compromised the future use of the route beneath the Bridge as a transport route.

### **Landscape and Visual Impact**

29. There are other policies that seek to protect and enhance the landscape (especially CS06 and CS12 and DM15). CS12 in particular states:

*“Development proposals should demonstrate that their location, scale, design and materials will protect, conserve and, where possible, enhance the special qualities and local distinctiveness of the area (including .....landscape setting..... landscape features ....”*

30. This aspect is dealt with very superficially by National Highways at s. 4.4.5 of the Planning Statement. There has been no specialist assessment even though it is accepted that there will be some impact:

*“The works have an effect on the appearance of the bridge structure, though this is considered to be a very limited and localised effect on local landscape character as infilling barely alters local land levels or the perception and enjoyment of the bridge and footpath. In addition, there is barely a perceptible change in views from the nearby footpath due to the grass sward established*

*over the area of infill. In addition, it is not directly visible from the nearest residential properties in Roydon or the footpath, approximately 350m to the south.*

*In conclusion the works are not considered to unacceptably harm the character of the local landscape or appearance of the bridge structure or visual amenity as a whole and thus not conflict with [sic] Policies CS12 or DM 15.” (emphasis added)*

31. The submissions from The HRE Group point out that the Bridge is the only substantive built feature in the otherwise natural/agricultural landscape within a 300m radius and could be appreciated from particular vantage points.
32. The Council should consider requesting a proper assessment of the Landscape and Visual Impact but given that it is accepted that there is harm (and therefore a further breach with local policy) this is another reason for refusing the application.

### **Ecology**

33. The Council's Ecology Officer will need to consider whether the assessments carried out were satisfactory, whether sufficient steps have been taken to protect, conserve and enhance ecological networks (in accordance with CS12) bearing in mind the comments about the use of old railway infrastructure by wildlife in the submissions from the HRE Group.
34. The Council should also consider whether the apparent felling of at least five mature trees as part of the infill scheme was carried out lawfully.

### **Summary**

35. It has not been established that the infilling works carried out in April 2021 constituted an emergency and fell within the scope of Sch2 Part 19 Class Q Permitted Development rights but in any event there is no dispute that the Bridge has not been restored to its previous condition (as required by Sch2 Part 19 Class Q). A retrospective application is therefore required and, as set out at paragraph 2, the determination of the application must be made in accordance with the development plan unless material considerations indicate otherwise.
36. It is acknowledged that there is harm to a heritage asset and also harm to the landscape character. The infilling is also inconsistent with the development plan in that it compromises the potential for the use of the route beneath the Bridge as an active transport route or as part of an ecological network. There are therefore clear breaches of the development plan and the NPPF.
37. It is also apparent that there were (and presumably still are) alternative means of repairing and maintaining the Bridge without infilling and there is little doubt that this would not have resulted in the acknowledged harm. There are no clearly identified benefits of infilling to counter the heritage harm.
38. Since the development does not comply with the development plan and there are no material considerations that indicate otherwise, the application should be rejected.

39. We trust that these submissions are clear but if any further information is required, please do not hesitate to contact us.

Yours faithfully



**RICHARD BUXTON SOLICITORS**