

Baroness Vere of Norbiton  
Minister for Roads, Buses and Places

17th June 2021

(By email)

Dear Baroness Vere

### **Historical Railways Estate**

In the context of Highways England's ongoing infilling and demolition of Historical Railways Estate (HRE) structures, the use of Permitted Development (PD) orders circumvents normal planning processes and has the undesirable effect of disenfranchising those with a vested interest in a structure. You cannot make representations about a proposed scheme of which you are unaware.

In your letter to the Transport Committee of 16 April 2021, you stated that:

*"Permitted Development Orders exist in order to prevent an emergency from occurring and it is within this principle that HE would use such powers... HE is undertaking works in accordance with The Town & Country Planning (General Permitted Development) (England) Order 2015, in order to keep the public safe."*

Highways England has generally been invoking Schedule 2 Part 19 Class Q (or its equivalent in Scotland) which facilitates temporary works in emergency situations presenting a serious threat of death or injury.

We would like to set out the circumstances around three bridge infilling schemes - one ongoing, one uncertain, one withdrawn - to which Highways England has applied Permitted Development orders. We would appreciate your help in understanding the nature of the emergencies that had to be prevented.

### **Great Musgrave bridge, Cumbria (EDE/25)**

This structure was assessed as having a 17-tonne capacity in 1998. The local road network effectively has an 18-tonne weight limit due to a restriction at nearby Kirkby Stephen which is signposted on all approaches to the bridge and prohibits a vehicle of more than 18 tonnes crossing it to make a through journey.

The most recent Detailed Examination and Visual Inspection reports record the structure as being in Fair condition, presenting 'No significant risk' to the public and low likelihood of occurrence. Repointing works were recommended to deep open joints in the arch barrel which, according to the assessment, would be "satisfactory for full 40 tonne assessment capacity".

In other words, cheap and simple works would have mitigated any concerns about the strength of the bridge - a reality that had been known for 23 years. Despite this, the decision was made to infill.

Highways England's initial notification of the scheme to Eden District Council (EDC) made no mention of PD powers; these were only cited after EDC challenged the work.

The infilling prejudices the planned reconnection of two heritage railways, neither of whom were consulted about infilling or the possibility of retaining access.

### **Brunel bridge, Saltash (SGZ/254m26ch)**

According to Highways England, the capacity of this bridge is unknown. It is in Fair condition, with damp patches and calcite deposits in the arch barrel. There are no defects indicative of overloading.

Engineered by I K Brunel, the structure is located on private property, 220 metres from the nearest public right of way and carries a grassed track between two fields (see appended photo). The wheel base indicates that the only vehicles capable of using the bridge would be a Land Rover, quad bike or similar. The track does not appear to be regularly used.

The former railway is safeguarded against adverse development under Policy 27/6 of Cornwall Council's local development plan.

On 10th September 2020, Jacobs - Highways England's agent - told Cornwall Council that "the structure represents an ongoing and increasing risk to public safety" and infilling would be undertaken under Permitted Development powers "to prevent an emergency arising".

However we note that Highways England now claims to have "no plans" to infill this bridge. If so, what has changed in the past nine months to relieve the threat of that emergency?

### **Horse-Batch bridge, Wells (CVB/15m33ch)**

According to Highways England, the capacity of this bridge is unknown. HE describes the structure as 'Fit for Purpose' and has given it a Scheme Priority rating of 4 (No works required). It is in Fair condition and has no defects indicative of overloading. It carries a lightly-used unclassified road which has 'Unsuitable for heavy goods vehicles' signs at both ends.

The former railway is safeguarded against adverse development under Policy DP18 of Mendip District Council's local development plan and the bridge spans the intended route of an extension to the Strawberry Line cycle path, part of the ambitious Somerset Circle project.

On 10th September 2020, Jacobs notified Mendip District Council (MDC) that “the structure represents an ongoing and increasing risk to public safety” and infilling would be undertaken under Permitted Development powers “to prevent an emergency arising”.

MDC stated that, under Class Q, “on or before 6 months beginning with the date on which the development began, the land must be restored to its condition before the development took place” and that “With the current lack of submitted details, the Local Planning Authority are not in a position to agree in writing any potential alterations to the site.”

£16K of repairs - mostly repointing to non-load-bearing elements - had been undertaken in November 2019. As a result, Highways England’s engineer determined that “condition-wise [there are] no particular issues” and MDC was notified that the scheme had been “put on hold”.

A bridge that required an emergency intervention on 10th September had “no particular issues” on 24th September as a result of minor repairs carried out ten months earlier.

Of the 19 Local Planning Authorities to receive Jacobs’ template letter regarding infilling schemes under PD powers, two consented, three were non-committal, six did not respond to the letters, one pointed out that the infill would have to be removed within six months, whilst seven stated that PD was inappropriate and planning permission must be obtained.

Contrary to Highways England’s claims, there is no evidence of an impending emergency at any of these three bridges by any recognised definition of the word. The decision to infill was not made on engineering or public safety grounds - it was a policy decision, partly driven by officials within the Department for Transport.

On this basis - and the intention for infilling to be permanent, not temporary - it is reasonable to assert that there is no legitimacy to the application of PD Class Q for these schemes.

We recognise that infilling is an entirely legitimate option for asset management purposes. Our study suggests that around 40 of the 134 structures earmarked for infilling or demolition have no realistic prospect of future repurposing and - subject to that evaluation being confirmed - we would not object to any planning application relating to those structures.

But Highways England’s abuse of Permitted Development orders prevents scrutiny and undermines democratic process. No Minister should sanction such an act. We understand your obligation to consider the advice given to you by Highways England’s “expert engineers”, but you also have an obligation to uphold the wider public interest.

The fundamental problem with this asset management programme - and the supporting Protocol Agreement between the DfT and Highways England - is that it reflects an outdated presumption that the Historical Railways Estate is a liability. The emerging reality - through the climate crisis and the public’s demonstrable enthusiasm for active travel when safe opportunities are available - is that the HRE is actually an asset of increasing value.

Your letter to the Transport Committee commended the work of Highways England in protecting some of the Estate's listed structures. There is no argument about that. But your unwillingness to acknowledge even the slightest negative impact from the infillings and demolitions is a cause of great concern. As the volunteers of the Eden Valley and Stainmore railways know better than anyone, the lack of engagement and scrutiny allows damaging schemes to progress without challenge or justification.

We would welcome your assurance that Highways England will seek planning permission for every infilling and demolition scheme unless a structure is exhibiting a serious and rapidly deteriorating defect which represents an immediate public safety risk.

We note also that Highways England is now asserting that only 69 bridges are threatened with infilling, not 115 as it originally stated. However HE is refusing to provide journalists or members of the public with an updated list of the affected structures.

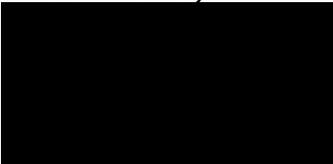
Firstly, if infilling was deemed necessary on the basis of risk assessment (as you stated in your letter to the Transport Committee) and sometimes an impending emergency, how can a structure be removed from the list without mitigation measures being put in place? Secondly, how are stakeholders expected to register their interest in a structure if the scope of the infilling programme is not made public?

As a reputable company - committed to openness and transparency - it is unsustainable for Highways England to reject legitimate enquiries about the work it is undertaking. Most workstreams have some fluidity to them; we all recognise that information can only be regarded as accurate at the time of release, but that doesn't justify secrecy.

We ask that you provide a list of the structures currently proposed for infilling and an explanation as to how 46 "unsafe" bridges have apparently been reprieved. We also propose that plans to infill the remaining 69 structures should be subject to an independent review.

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.