



North Yorkshire Council: Planning

(by email: [REDACTED])

29 July 2024

Dear Sir/Madam

**Ref ZG2024/0183/FUL: Infilling of Rudgate bridge, nr Newton Kyme**

We are writing with regards to *National Highways (NH) response to Representations from Statutory Consultees and Third Parties*, provided by the applicant on 23 July 2024. Our comments herein supplement - not supersede - those submitted in our original representation of 2 April 2024.

We have adopted the same numbering references used in NH's document.

### **3.1 Response to the Council's Principal Archaeologist**

*In relation to the potential for listing, NH points out that Historic England's Infrastructure: Transport: Listing Selection Guide, states that: "Where [bridges] have been subsequently altered or modified they may still merit serious consideration where the modifications reflect the evolution and development of a particular route, but the extent of alteration and intrinsic interest will require careful analysis."*

We are unaware of any evidence suggesting that Rudgate bridge had been "altered or modified" prior to NH's unauthorised development in 2021. The previous backfilling of the approach cutting **obscured** the bridge's north-west elevation and parts of the abutment faces, but - in the same way that NH's concrete infill is "fully reversible" - the loose material used to backfill the cutting could - from a practical perspective - also be removed, fully revealing the bridge. As NH states in §3.4 of its Planning Statement, "The evidential value of the bridge can...be considered to be intact, as it is preserved in-situ within the infilling."

We support the view of the Principal Archaeologist that Rudgate bridge must meet "at least some of the criteria for listing", reflecting the fact that four other masonry arch bridges on the same dismantled railway - within five miles of Rudgate - are Grade II listed, including Barleyfield Road bridge (List Entry Number 1313465) and Quarry Hill bridge (List Entry Number 1183477) which are almost identical in design to Rudgate bridge, being single-span structures with highly skewed spans.

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(Left) Barleyfield Road bridge and (right) Quarry Hill bridge, both Grade II listed and located in Wetherby.

NH states that *"In relation to the stated impacts of the infilling of the arch, it should be noted that [the unauthorised development] did not 'prevent access to the underside of the arch' as the arch was already partially filled with material and therefore the structure was already partially concealed by infill material."*

This statement is incorrect. The previous backfilling of the approach cutting - which included a slope extending beneath the span - did **not** prevent access under the arch as is demonstrated by Jacobs' inspection report from 10 October 2017, which includes several photographs of the abutments and arch soffit taken by an engineer standing on the slope (samples appended). Access under the arch has only been prevented by NH's unauthorised development of 2021.

NH states that *"In relation to the recent decision on the Congham bridge, (Appeal Ref: APP/V2635/C/24/3336603) (Decision date: 10 July 2024), in which the local authority's enforcement notice to remove the concrete infill was quashed following a Public Inquiry, with the Planning Inspector referencing the considerable benefit from infilling of delivering a loading capacity of the bridge that will safely accommodate all forms of traffic including the agricultural vehicles, outweighing other heritage and landscape considerations."*

NH fails to make clear that the engineering and historical circumstances at Congham bridge were very different to Rudgate bridge.

The Inspector described the Congham case as "finely balanced" and, with respect to "delivering a loading capacity...that will safely accommodate all forms of traffic", she made clear that "The weight to be given to this benefit is tempered, because it could conceivably have been carried out in some other way that would not have resulted in the moderate harm to the low heritage significance of the asset that has occurred." She also stated that "The harm to the value of the heritage asset is regrettable."

The Inspector also asserted that "whether [planning] permission is actually required [for infill schemes] can only be decided on a **case by case basis** depending on the **particular characteristics of the proposal and the bridge** in question." Thus, the fact that the Congham bridge appeal was upheld - and retrospective planning permission granted - is not relevant to decision-making about Rudgate bridge.

Quoting the Inspector's report, it should be noted that Congham bridge...

- was "a re-build, dating from around 1926"
- was built using "a utilitarian system of construction that resulted in a bridge of accordingly utilitarian appearance"
- had "a 7.5 tonne capacity [that] is likely to be inadequate for some local working traffic"
- "was not in an optimal condition", exhibiting "cracking, with movement of up to 25mm recorded" and "some of the concrete [girder encasement] having come away with exposed steelwork and spalling visible"
- "had become a local focus of anti-social behaviour", with the abutments being "largely covered in graffiti, as were part of the wingwalls...and the land underneath the bridge was periodically covered in fly-tipped detritus"
- would require "some form of physical change to the bridge (whether permanent propping, infilling, girders, kerbing, demolition or other solution)...if it is to achieve a 40 tonne carrying capacity."

In contrast, Rudgate bridge...

- dates from 1846, 80 years earlier, a period when Historic England's listing selection guide suggests it would be "a serious candidate for listing"
- was built using traditional methods involving brick and rusticated masonry blockwork
- had an attractive appearance
- had an assessed capacity of 32 tonnes on a road restricted to vehicles of more than 3 tons unladen, with no evidence that vehicles of a greater weight did or could use the bridge given the prevailing constraints
- was in Fair condition, with only minor brick and stonework spalling/weathering
- was not subject to anti-social behaviour
- could likely have achieved a 40-tonne capacity through reassessment using more appropriate methodology or, if necessary, routine brick/stonework repairs/repointing.

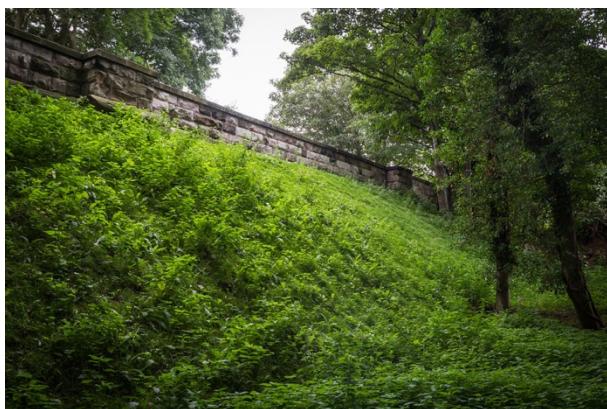
### **3.2 Response to the Council's Policy and Conservation Officer**

*NH observes that "The Conservation officer's broadly supportive comments regarding the infilling of the Rudgate bridge (CFH1/12) are welcomed in noting that the bridge is not listed, and not worthy of listing and not recorded on the North Yorkshire HER and was previously partly backfilled."*

NH neglects to point out that the Conservation Officer also stated that "the next phase should be that the bridge is restored to a more appropriate condition" and "National Highways should take into account the significance of the bridge as they have to other bridges across the country where improvements have been made to safeguard the structure of bridges without compromising on their local heritage value."

NH asserts that "The decision-maker process must therefore take a balanced view, taking into consideration both the value of the heritage asset (in this case low) and the scale of any harm to it (in this case slight harm)."

In relation to the Congham bridge, the Inspector found that infilling resulted in "**moderate** harm", not "slight". We regard this conclusion to be transferable to Rudgate bridge as the impact of infilling (the complete encapsulation of the asset's structural elements within a stone and concrete embankment) is the same.



(Left) Rudgate bridge and (right) Congham bridge, both now buried within stone and concrete embankments.

We support the view of the Conservation Officer that the bridge has "local heritage value" and that of the Principal Archaeologist in challenging NH's suggestion that the absence of an HER record is indicative of the bridge having "low" value. A combination of other factors resulted in its omission.

### 3.3 Response to The HRE Group

NH states that "there is no evidence of Birkinshaw's involvement in designing or constructing the Rudgate bridge", only agreeing that "John Cass Birkinshaw was responsible for the main engineering structures on **part of later extension** of the Harrogate to Church Fenton line between Spofforth and Harrogate."

In our representation of 2 April 2024, The HRE Group stated that "The Church Fenton-Harrogate line, passing beneath the bridge...was built by John Cass Birkinshaw...". We made no comment as to who specifically designed/constructed Rudgate bridge, but note that NH has provided no evidence as to who - if not Birkinshaw - was responsible.

We reject NH's implication that Birkinshaw only engineered the Spofforth-Harrogate extension. On 2 October 1845, as evidenced on page 12 of our original representation, the York & North Midland Railway invited "Tenders for the Execution of the Works between **Church Fenton** and Harrogate", noting that "Drawings and Specifications may be seen...on Application to Mr J C Birkinshaw, Engineer...".

NH states that “the HRE Group’s comments seem to suggest that the whole railway line was also engineered by Robert Stephenson...”.

We did not suggest this. Rather, we observed that the Parliamentary Archives “identify Robert Stephenson as the railway’s engineer, with Birkinshaw as his assistant”. This is a statement of fact which NH did not reflect in its Heritage Assessment.

## 6.1 Use of GDPO – Class Q powers

NH asserts that the “retrospective planning application seeks to regularise the planning situation at the bridge and therefore whether Class Q permitted development powers were relevant or not, is not considered relevant to the determination of the planning application, which should be treated on its own merits.”

In relation to Congham bridge, the Inspector states that “A Written Ministerial Statement of 2015 provides that intentional unauthorised development is a material consideration in planning decisions”. She found that “I am not satisfied that the appellant, apparently acting on professional advice from Jacobs, deliberately set out to break the law”, but made clear that “relying on Class Q emergency development rights to carry out permanent structural infilling to the bridge here now appears to have been rather misguided”, noting that “The works were not carried out principally (if at all) for reasons of safety”, contrary to multiple claims by NH.

The letter notifying the Borough Council of King’s Lynn & West Norfolk (the relevant Local Planning Authority (LPA)) of the Congham bridge works - which specified that they would be undertaken “in line” with Class Q PD rights - was sent on 14 October 2019. To the best of our knowledge, this was only NH’s second application of Class Q; the first related to an infill scheme near Bradford, preparations for which were ongoing concurrently. There were two other applications at around the same time, but only one more in the ten months thereafter. We therefore regard the Inspector’s conclusion that there was no intentional unauthorised development **at Congham** to be reasonable in the specific circumstances.

However, on 10 September 2020, acting on NH’s behalf, Jacobs sent out 29 letters to LPAs, notifying them of the intention to carry out permanent infill schemes under Class Q PD rights at structures where there was no emergency or any prospect of one. These letters did not request written consent for retention beyond the maximum permitted 12-month period.

We invite North Yorkshire Council to consider whether it is plausible that NH unintentionally misapplied Class Q 29 times on the same day, despite the clarity and relative simplicity of the legislation. We then invite the Council to consider whether the same conclusion is also likely in relation to the use of Class Q at Rudgate bridge, the notification letter for which was sent shortly after on 6 October 2020. This was less than six months after Jacobs’ original infill notification letter of 23 April 2020 which made no reference to Class Q. There is no evidence of any change in the bridge’s condition in the intervening period.

The unauthorised development at Rudgate was part of a new and substantial nationwide programme of **planned** works which, in our view, involved a systematic misapplication of Class Q and is therefore a material consideration in this case.

## 6.2 The bridge's load bearing capacity

*NH suggests that "The HRE Group has queried whether an appropriate assessment of the capacity of the bridge was undertaken..."*

This statement is incorrect. We have simply pointed out that, under CS454 - the standard that replaced BD21 - the methodology used to assess Rudgate bridge "is no longer permitted in relation to masonry arch bridges with a skew of more than 35 degrees. Rudgate bridge has a skew of 50 degrees." We did not imply that Jacobs' 2018 assessment was inappropriate.

However, we do reassert our view that "a more precise method of assessment would likely have shown greater capacity." We also believe that further investigations should have been undertaken to confirm the factors used in the assessment before infilling started.

## 6.3 Traffic restrictions

*NH concluded that "there were the **possibly** [sic] of heavy goods vehicles using the road such as large agricultural vehicles that **can** exceed 32 tonnes"*

NH has provided no evidence (e.g. in the form of a traffic survey) to indicate that vehicles exceeding 32 tonnes do or could use Rudgate bridge. The structure was showing no signs of overloading from 175 years of use, allegedly by HGVs and machinery serving "several properties including farms". NH should have properly evaluated the **likelihood** of overloading before carrying out the works, so as not to burden the taxpayer with unnecessary expense and inflict harm on a heritage asset. Given the prevailing constraints, that likelihood was extremely low.

It is worth noting NH's closing statement to the Congham bridge public inquiry, in which it accepted that "loading capacity and safety was not the impetus for the scheme", rather it was predominantly "maintenance/durability". We believe the same was true at Rudgate bridge.

## 6.4 The bridge's condition

*In comments relating to Jacobs' inspection of October 2017, NH asserts that "The inspection for assessment is therefore considered more thorough than any other form of inspection".*

This statement is extraordinary and contradicts NH's evidence to the Congham bridge public inquiry, at which it specifically pointed out that "The description of condition [in assessment inspections] does not represent a principal inspection; nor should it be relied on for the development of maintenance works. Close inspection of [structural elements] was limited by the constraints of safe access possible within a single site visit." These words were a direct quote from text included in Jacobs' assessments.

The Inspector described the Congham bridge assessment inspection as "not a full inspection".

To suggest that assessment inspections are "more thorough than any other form of inspection" is ludicrous. The gold standard for condition evidence is the formal six-yearly Principal Inspection, carried out as part of the regular inspection/examination regime which is the basis upon which the client Engineer makes asset management decisions.

Notwithstanding the above, the observations in Jacobs' assessment inspection of Rudgate bridge are typical of those relating to many brick/masonry arch bridges. The recorded defects/issues are commonplace and easily remedied at modest cost. The bridge was in Fair condition and certainly not a cause for concern.

## 6.5 Alternatives to infilling

NH states that "*The HRE Group claimed that the infill solution was due to liability reduction and cost savings rather than safety considerations.*"

We note that NH does not claim that the above statement is wrong.

NH also asserts that "*NH, as responsible public body, need to consider cost implications and liability reduction, but safety is always of paramount importance.*"

In relation to Congham bridge, the Inspector made clear that "the relative cost to the public purse of carrying out the infilling scheme compared with ongoing inspections, repairs and maintenance is not a relevant consideration. Nor is the cost of removing the infill."

There were no "very special circumstances" at Rudgate that warranted the infilling of a historic bridge within the green belt, whilst felling protected trees without authority. There is no evidence that safety was in any way a driver for the scheme despite it being undertaken unlawfully under emergency PD rights.

Infilling was an asset management choice, as is demonstrated by the note appended by NH's engineer to the Scoring Matrix for the 2018 visual inspection: "infilling **preferable** to repairs" (see page 25 of our original representation). No other issues were considered.

We reassert our view that the prevailing circumstances and relevant local/national planning policies provide clear grounds to reject the planning application. We trust the Council will do so.

Yours faithfully



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.

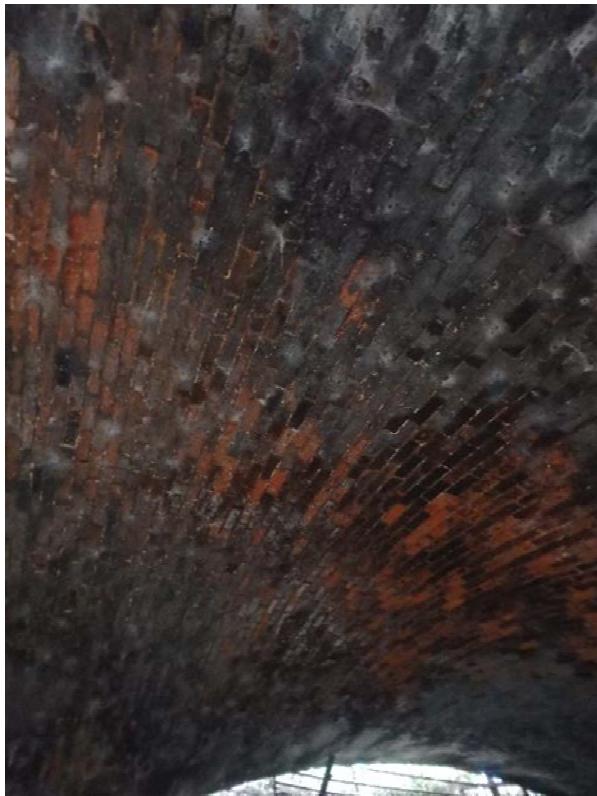
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5) Arch soffit at southwest haunch



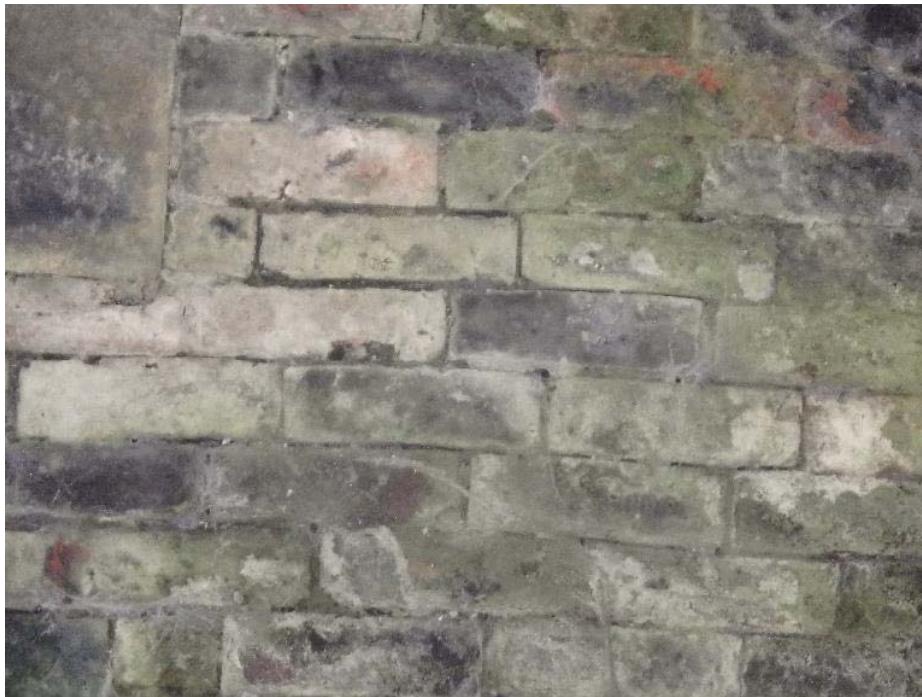
6) Arch soffit at south east haunch



7) Arch soffit at east haunch



8) North haunch & abutment



9) Movement to brickwork in southeast haunch



10) West arch face – partially buried



11) South abutment



12) North abutment