

**Date of Committee:** 16 June 2022

**Planning Application No:** 22/0254      **Date Received:** 01.04.22

**OS Grid Ref:** 376476 513601      **Expiry Date:** 27.05.22

**Parish:** Musgrave      **Ward:** Brough

**Application Type:** Full

**Proposal:** Infilling of a road (B6259) bridge over the former Eden Valley Railway with structural fill and foamed concrete

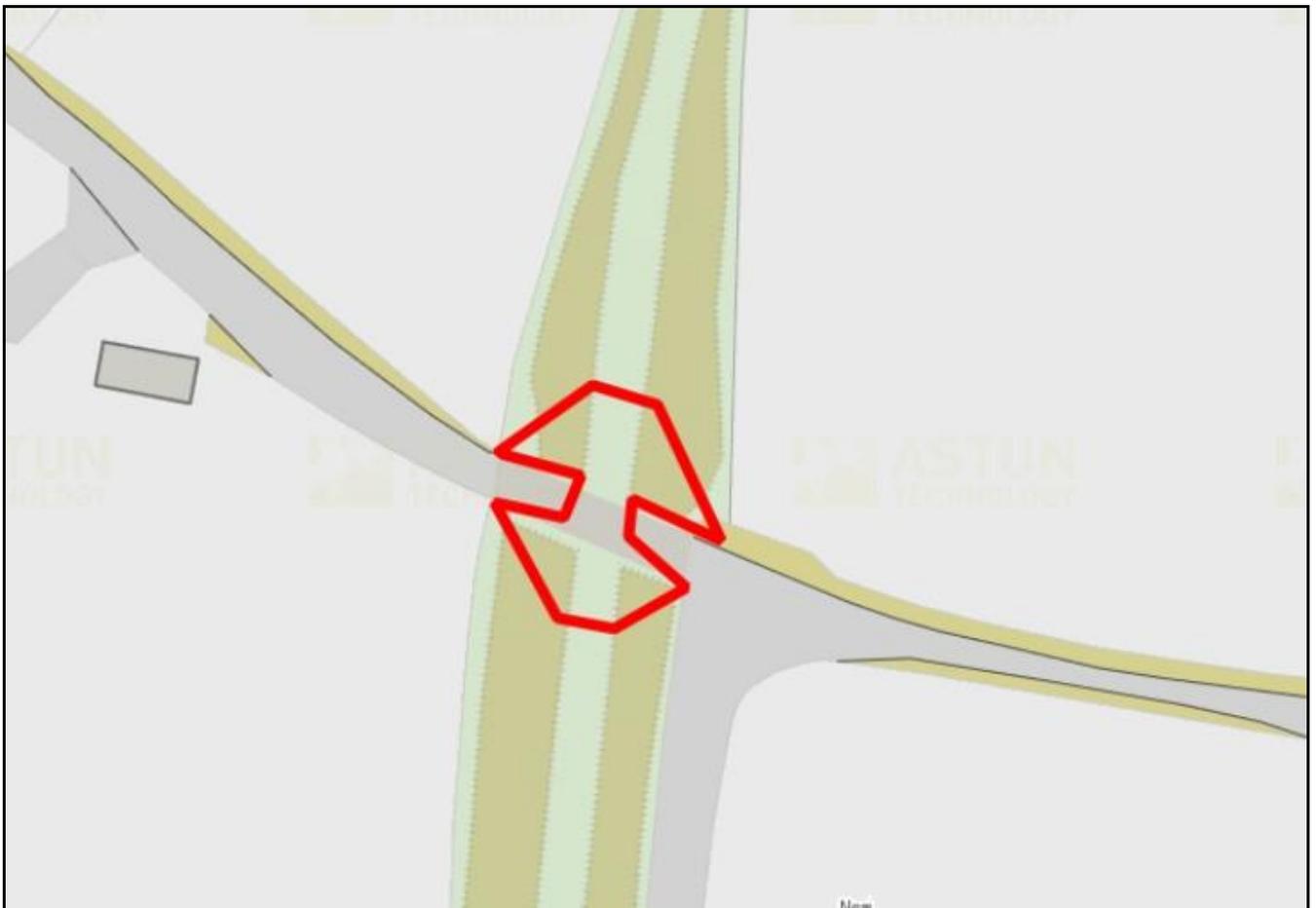
**Location:** Great Musgrave Road Bridge, Musgrave

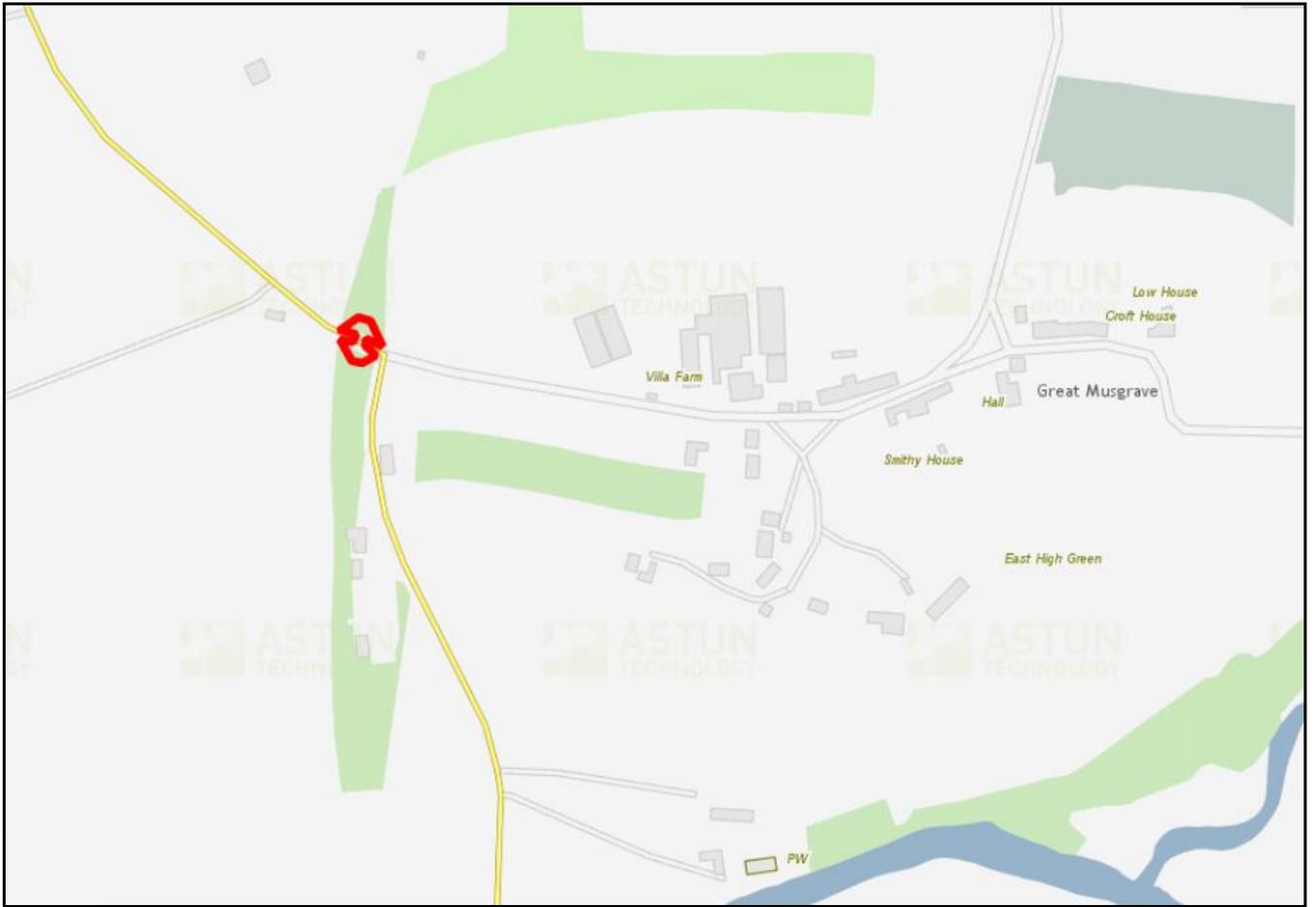
**Applicant:** Historical Railways Estate (on behalf of Department for Transport)

**Agent:** Mr Ashley Stratford- Jacobs UK Ltd

**Case Officer:** Mrs Jill Shingler

**Reason for Referral:** The application is of significant interest





## **1. Recommendation**

1.1 It is recommended that planning permission be refused for the following reason:

The proposal results in considerable harm to the visual appearance of the bridge as a single span arch structure and fails to complement or enhance the area or protect features or characteristics of local importance, as such the works cause less than substantial harm to a non designated heritage asset. The stated public benefit, in terms of reduced cost to the public purse in the long term, compared to more sympathetic repair and reinforcement, is not considered sufficient to outweigh this harm. The development is therefore contrary to policies DEV10 and ENV5 of the adopted Local Plan.

## **2. Proposal and Site Description**

### **2.1 Proposal**

2.1.1 This application is a retrospective application to retain works that were initially carried out as emergency works.

2.1.2 The development comprises the infilling of the area beneath the road bridge over the disused railway cutting with foamed concrete together with the subsequent landscaping of the infilled area.

2.1.3 The works involved the clearance of vegetation around the site in order to access the site, followed by the installation of free draining granular material and extensions to the existing plastic pipes, on the ground surface beneath the bridge, to extend the drainage layer sufficiently to form the full base of the infilling embankments. The infilling of the remaining void beneath the bridge with Class 6N granular structural fill (crushed stone) and the last 1.5 metres, directly beneath the arch, was filled with low density foamed concrete. The material was formed into embankments, with a slope no steeper than 1:1.5. Approximately 1,540 tonnes of stone and 104 tonnes of concrete fill material was used. The works were completed by placing a 150mm depth of topsoil and grass seed to all new and worked surfaces.

2.1.4 Two bat boxes were erected in trees in the track bed to the south of the bridge.

### **2.2 Site Description**

2.2.1 The red lined application site encompasses just the area of works, that is, the bridge and a small area either side of it.

2.2.2 The stone built, single span bridge structure dates from around 1862 and is located to the west of the village of Great Musgrave, north of Kirkby Stephen. It carries the B6259 over the disused former railway track bed of the Eden Valley Railway line, a branch line of the former North Eastern Railway. The bridge lies at the junction of the B6259 and Musgrave Lane.

2.2.3 The sides of the railway cutting at this location are quite heavily vegetated and there is substantial tree cover. The New Inn public house lies to the south of the bridge and there are no residential properties immediately adjacent.

2.2.4 The site is not within a Conservation Area and the structure is not listed; the area is not within any special designation in terms of landscape.

### 3. Consultees

#### 3.1 Statutory Consultees

Consultee	Response
CCC Highway Authority and Lead Local Flood Authority	I can confirm that Cumbria County Council as both the Local Highway Authority and Lead Local Flood Authority has no objection to the works which have been carried out on Great Musgrave Bridge as it is considered that the proposal will not have a material effect on existing highway conditions and will improve the structural integrity of the bridge structure and as such reducing the risk of structural failure, based on evaluation of the site it is noted that surface water ponds along the old line in the cutting the proposed works have consider the extension of the existing drainage pipes to assist with the passage of surface water however it is noted that there is little fall on the land to allow for the release of the surface water in this area.
Historic England	No comment. Does not fall within statutory remit.
Conservation Officer	<p>Heritage significance Great Musgrave Road Bridge is an 8.45m single span, sandstone masonry arch bridge constructed in 1862 to carry traffic (the B6259) over the former Eden Valley Railway (EVR) line. It is located to the west of the rural settlement of Great Musgrave, approximately 3 miles to the north of Kirkby Stephen within an area of arable and grazing farmland. The original line has been removed and the track bed is now overgrown with vegetation.</p> <p>The railway bridge retains evidential value for the use of red-sandstone from a local quarry near Cliburn and techniques of Victorian stone bridge building. It is also one of the remaining structures on the line which survives relatively intact.</p> <p>The EVR and the Great Musgrave Bridge dates from the third phase of railway development, from the 1850s to the 1870s. This third phase was the mid-Victorian era when railways were the key development in land communication, taking over from carts, carriages, gigs, and canals.</p> <p>The railway ran from the SD&amp;LU Railway at Kirkby Stephen (East), to Brough, Appleby and Penrith (Clifton Junction) where it connected to the L&amp;C Railway. The EVR railway aimed to provide a link for additional villages such as Kirkby Thore, Temple Sowerby and Warcop, including the important Westmorland and Cumberland fairs. In 1952, Great Musgrave was the first station on the line to be completely closed, followed by Kirby Thore and then Temple Sowerby. By 1957 only three stations remained fully operational: Clifton, Appleby and</p>

Consultee	Response
	<p>Warcop. In 1963 the Eden Valley Railway line was finally closed to passengers.</p> <p>The promotion and financing of the EVR was heavily reliant on a group of wealthy local patrons (the Appleby group), led by Admiral Russell Elliot – a notable local. Thomas Bouch, who was born in Cumbria and was already an eminent railway engineer, was appointed as the Engineer to the line and Lawton Brothers of Newcastle were appointed as the main contractors. The bridge therefore has associative value.</p> <p>The bridge is built of well-coursed, rusticated ashlar sandstone and limestone blocks with rusticated faces forming a flat or basket arch. The central arch is formed from a single row of stone blocks which diminish in size from the impost towards the crown. Above the arch is a string course marking the base of the parapet walls which are also built in or rusticated-faced sandstone. Both east and west abutments are constructed from large rectangular, course, rusticated sandstone masonry blocks following a good uniform alignment.</p> <p>The bridge design is a relatively standard mid-19th century railway design, using machine sawn, and stone ashlar blocks. Photographic evidence shows that the bridge was also similar in design to the former railway overbridge over the A66 at Kirkby Thore. The bridge is a natural extension of the landscape and contributes to its picturesque setting.</p> <p>The bridge has a local landmark status as a recognisable feature in the landscape and on the B6259. The bridge also has communal value as part of the proposed the Eden Valley Railway Society/Trust's plans to restore the EVR line as a heritage railway. The road bridge is not a designated listed building and is not recorded within the Historic Environment Record (HER) for Cumbria. However it is considered to be a non-designated heritage asset for its significance relating to the development of the local area and the railway line.</p> <p><b>Proposals</b></p> <p>The application seeks retrospective planning permission for the works to infill the road bridge that were completed in June 2021. The works were considered necessary to prevent further deterioration of the bridge and to support the bridge from possible structural collapse. Also to ensure its continued use as a road traffic bridge with unrestricted weight limit.</p> <p>The works are considered to be reversible and involved:</p> <ul style="list-style-type: none"> <li>• clearance of vegetation around the site.</li> </ul>

Consultee	Response
	<ul style="list-style-type: none"> <li>• installation of additional Class 6C type free draining granular material and extensions to the existing plastic pipes, on the ground surface beneath the bridge.</li> <li>• Addition of approx.1540 tonnes of Class 6N granular structural fill (crushed stone) and approx. 104 tonnes of low density foamed concrete fill into the arch void. The material was formed into embankments tying into the existing embankments.</li> <li>• Addition of 150mm depth of topsoil and grass seed to all new and worked surfaces.</li> <li>• Securing the area with fencing.</li> </ul> <p><b>Policies</b></p> <p>Paragraph 203 of the NPPF 2021 states ‘The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application.</p> <p>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.’</p> <p>Policy ENV10 of Eden Local Plan states:  ‘The Council will attach great weight to the conservation and enhancement of the historic environment, heritage assets and their setting, which help to make Eden a distinctive place.’</p> <p>‘The Council will require all proposals for development to conserve and where appropriate, enhance the significance of Eden’s heritage assets and their setting.’</p> <p>‘The Council will require proposals to protect and where appropriate, enhance the significance and setting of Eden’s non-designated heritage assets, including buildings, archaeological sites, parks, landscapes and gardens. Where the harm is outweighed by the public benefits of the proposals, the Council will require an appropriate level of survey and recording, the results of which should be deposited with the Cumbria Historic Environment Record.’</p> <p><b>Impact Assessment</b></p> <p>The infill scheme has aimed to tie in with the surrounding environment but has resulted in considerable harm to the visual appearance of the bridge as a single span arch structure. No part of the structure has been removed and the bridge remains legible to a large extent as a road bridge associated to the former railway. However the infill scheme has seriously compromised its reuse as a railway bridge as part of a new railway scheme. Thus resulting in</p>

Consultee	Response
	<p>substantial harm to the significance of the non-designated heritage asset.</p> <p>The works are said to have been carried out as an emergency measure to safeguard the bridge ensuring its long term structural preservation and continued use as a road bridge carrying traffic. The applicant has provided a justification for the works based on 3 elements:</p> <ol style="list-style-type: none"> <li>1) urgency of works to prevent collapse,</li> <li>2) alternative options are of a higher cost, and</li> <li>3) to avoid a 17 tonnes weight limit being imposed.</li> </ol> <p>However no structural report has been submitted as part of the application to justify the urgency of the works and it is indicated that repair and strengthening was an alternative to achieve the same safety aims. A press statement from the HRE Group in June 2021 states that a condition report dated February 2020 indicated that the condition of the bridge remained fair with no signs of overloading.</p> <p>The applicant considers the work to be temporary and reversible and have committed to remove the infill if and when a scheme for the re-opening of the former railway route is formally adopted. If this is the case, it seems it would ultimately have been more cost effective to directly repair and strengthen the bridge, compared to the costs of infilling, removing the infill, then repair and strengthen. Furthermore there are signs on all approaches to the bridge indicating there is a weight limit of 18 tonnes on the local road network which prevents through access via the bridge to any vehicle over 18 tonnes. This then questions the argument that the infill is necessary to avoid a weight restriction as one already appears to be in place.</p> <p>In conclusion, repairing and strengthening the structure would therefore have achieved the same safety aims, but yield more public benefits than the infill, as it would have retained the same conditions for a new railway line to be installed. Therefore, it is not considered that the submitted justification is clear nor convincing. Overall the works are not considered to be supported by conservation policies outlined above in the NPPF 2021 and Eden Local Plan ENV10.</p>

#### 4. Parish Council/Meeting Response

	Please Tick as Appropriate			
Parish Council/Meeting	Object	Support	No Response	No View Expressed
Musgrave Parish Council	✓			

4.1 The Parish Council objected to the application and made the following comments:

*Musgrave Parish Council would like to object to the filling in of the bridge, there was nothing wrong with the bridge, it is built of a red sandstone, having a hard cement up against it will erode the stone, the sandstone is a very porous stone the hard cement will not let the water out of the stone, therefore when it freezes in the winter the stone will start to erode, surely this is common sense, the mortar around the stone has to be softer than the stone. All the bridge needed was to be repointed with a hot mixed lime mortar, it would then have lasted for years. We as a Parish Council were not consulted before the bridge was filled in, the longer the cement is there the more damage will be done, the concrete needs to be removed as quickly as possible. The underpass of the bridge will most probably never be used for a cycle path or a footpath as it is now privately owned but the road which runs over the bridge is an important route out of the village and for local commuters, the bridge will need major work doing or possibly replacing due to the barbaric work which has taken place. Highways England need to stop ruining these bridges they have been here along time, with their stupidity they won't be here for much longer.*

## 5. Representations

5.1 Letters of consultation were sent to nearby neighbours and a site notice was posted on site.

<b>No of Neighbours Consulted</b>	1	<b>No of letters of support</b>	2
<b>No of Representations Received</b>	913	<b>No of neutral representations</b>	
<b>No of objection letters</b>	911		

5.2 The following points outline the basis of the objections received:

- The bridge is structurally sound and there is no benefit to infilling it;
- The surveys of the bridge structure fail to demonstrate a valid case for the infilling works;
- The total infill of the bridge is an extreme and unjustifiable approach to manage a historic structure by a public organisation who is entrusted with being custodians of the nation's Historic Railways Estate.
- National Highways have been dishonest in over stating the issues to indicate an emergency existed, and the powers of permitted development in such an emergency situation has been used to circumvent the planning process;
- Loss of a local industrial heritage structure/asset which demonstrates unique railway architecture specific to the area;
- The development affects the two preserved heritage railways (Eden Valley and Stainmore) preventing them reuniting, which will lead to a negative impact on local tourism and the local economy;
- The infill prevents the future use of the bridge for sustainable travel means ie footpaths, cycle routes;
- Loss of wildlife corridor;
- The infill is not in-keeping with the area and therefore, appears as an incongruous addition adversely affecting the visual aesthetics of the area;

- The materials used for the infilling are disproportionate and entirely inappropriate and has resulted in an eyesore which does not enhance the significance of a non-designated heritage Victorian bridge or its setting;
- The works are considered as an act of vandalism;
- To allow the infill to stay would set a dangerous precedent for future similar developments;
- The proposal is contrary to National and Local Policies.
- The cost of maintaining the bridge is trivial compared to the cost of reopening it once it has been infilled.

To support:

- The infilling has created a sheltered enclave which has become an established wildlife area;
- The difficulty and expense to remove the infill is too much and illogical and would be a poor use of public money;
- It is unlikely that the track bed would be used for walking, cycling or heritage rail in the foreseeable future.

## **6. Relevant Planning History**

6.1 None.

## **7. Policy Context**

### **7.1 Development Plan**

#### **Eden Local Plan (2014-2032):**

- Policy DEV1 – General; Approach to New Development
- Policy DEV2 – Water Management and Flood Risk
- Policy DEV3 – Transport, Accessibility and Rights of Way
- Policy DEV5 – Design of New Development
- Policy ENV1 – Protection and Enhancement of the Natural Environment, Biodiversity and Geodiversity
- Policy ENV2 – Protection and Enhancements of Landscapes and Trees
- Policy ENV4 – Green Infrastructure Networks
- Policy ENV10 – The Historic Environment

## **8. Planning Assessment**

### **8.1 Key/Main Planning Issues**

- Principle of development
- Landscape and Visual Impacts
- Impact on Non Designated heritage Asset
- Ecology and Green Infrastructure
- Future railway reopening
- Other Issues

### **8.2 Principle**

8.2.1 The intention of the proposal is to ensure the ongoing structural integrity of the road bridge in the interests of public safety and to avoid traffic disruption and inconvenience,

there is clearly no in principle objection to such works subject to compliance with the policies of the Local Plan.

### **8.3 Landscape and visual Impacts**

- 8.3.1 Policy ENV.2 of the Local plan seeks to ensure that new development conserves and enhances distinctive elements of the landscape and its function. The wider landscape character of the area is a mix of open fields, hedgerows and trees. The bridge is not a particularly significant feature of the road as there is no obvious brow to the bridge. The cutting is not very noticeable and when travelling by car, vegetation is a dominant feature of the immediate surroundings. The attractive stone parapet of the bridge is retained and this is the feature which is most visible from the public domain.
- 8.3.2 Due to the height of the parapet and the surrounding vegetation there are not clear open views of the bridge span in the vicinity of the bridge. There is no public access to the track bed here as the land is privately owned, and there are no adjacent public rights of way. Whilst the grassed over mound that now infills the bridge is clearly an unnatural landform, it is not visually prominent.
- 8.3.3 It is considered that the works have minimal impact on the wider landscape.

### **8.4 Design**

- 8.4.1 Whilst, as discussed above, the infilling of the bridge is not visually prominent, policy DEV5 of the Local Plan states that new development will be required to demonstrate that it meets each of a number of design criteria, these include:
- Shows a clear understanding of the form and character of the district's built and natural environment, complementing and enhancing the existing area.
  - Uses quality materials which complement or enhance local surroundings.
  - Protects features and characteristics of local importance.
- 8.4.2 The works that have been undertaken are not considered to accord with the high standards of design that are required by policy. The introduction of the infilling material has adversely impacted on the character of the bridge structure, obscuring completely the attractive stone arch and fails to complement or enhance the area or protect features or characteristics of local importance. The loss of attractive local stone arch and the introduction of the steep, unnatural slope are considered at odds with these policy requirements.

### **8.5 Non Designated Heritage Asset**

- 8.5.1 The history, construction and design of the bridge is discussed in detail in the comments from the Conservation Officer in Section 3 above. The road bridge is not a designated listed building and is not recorded within the Historic Environment Record (HER) for Cumbria. However it is considered to be a non-designated heritage asset for its significance relating to the development of the local area and the railway line.
- 8.5.2 The impact of the infilling on the non designated heritage asset therefore needs to be assessed in accordance with Policy ENV10 of the Local Plan.
- 8.5.3 ENV10 states inter alia;
- “The Council will require proposals to protect and where appropriate, enhance the significance and setting of Eden’s non-designated heritage assets, including buildings, archaeological sites, parks, landscapes and gardens. Where the harm is outweighed by the public benefits of the proposals, the Council will require an appropriate level of survey and recording, the results of which should be deposited with the Cumbria Historic Environment Record...

...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.”

- 8.5.4 It is very clear that the proposed infilling works neither protect nor enhance the significance and setting of the non designated heritage asset. The works result in the masking of the attractive arch and stonework and the blocking of the route of the railway line, negating the reason for the bridge and making the historic railway landscape more difficult to interpret. The Council’s Conservation Officer has concluded that the works cause “ significant” harm and whilst the bridge itself is retained in situ, and is not therefore lost, for the application to be considered acceptable the harm from the development needs to be balanced against any public benefit from the proposal.
- 8.5.5 Whilst the applicant has argued that the works to the bridge are reversible and that overall the harm to the heritage asset is less than substantial; even less than substantial harm has to be justified in terms of whether the public benefit from the works outweigh such harm. The Heritage report concludes : “ In this case the emergency support to the bridge have wider public benefits in maintaining the bridge and its long-term preservation which would otherwise be liable to damage at some point in the future. The wider public benefits of the works are therefore considered to balance the overall less than substantial harm to the undesignated heritage asset.”
- 8.5.6 However it is clear that whilst the infilling that has been undertaken is one method of securing the safety and continued use of the road bridge, which is of course of public benefit, there are other ways to maintain the structure that would not result in any harm to the heritage asset.
- 8.5.7 The applicant maintains that it has been estimated that infilling offers significantly better value for money, by being between 50% - 60% less expensive over the longer term (60 years) than strengthening and repairs. Objectors have queried the amount of work required to make the structure sound and the costs involved.
- 8.5.8 The applicant in response to the Conservation Officer’s comments agrees that repairing and strengthening the bridge would yield the same bridge safeguarding benefits, but argues that given the low environmental impacts identified, the development is not contrary to the policies of the NPPF and ENV10.
- 8.5.9 Both the NPPF and the Local Plan policy make it clear that “great weight” should be attached to the conservation and enhancement of the historic environment, heritage assets and their setting. In the absence of any evidence that more traditional methods of continued long term maintenance are not viable here, officers do not consider that the potential for reduced ongoing maintenance costs to the public purse is sufficient to outweigh the acknowledged harm to the non designated asset and its setting. As such the proposals are contrary to Policy ENV10 of the Local Plan.

## **8.6 Ecology and Green Infrastructure**

- 8.6.1 An ecology report was submitted with the application and this indicates that a preliminary ecological appraisal was undertaken in June 2020 which indicated the potential for the presence of species such as bats, red squirrel, badger and nesting birds within the vicinity of the site and on this basis additional surveys were undertaken as well as a Habitat Regulations Assessment (HRA) screening report with regard to the possibility of impact on Statutory sites.

- 8.6.2 The surveys found 3 bat roosts within the structure of the bridge, but no evidence of hibernating bats, no evidence of squirrel or badger close to the structure and no adverse impacts on statutory designated sites or non statutory sites.
- 8.6.3 Prior to any works being carried out on site the recommendations within the relevant survey documents were followed and a bat license was granted. Bat boxes were erected near the site to compensate for the loss of the roosts within the bridge.
- 8.6.4 Natural England were consulted with regard to the application but confirmed that this is not statutorily required and therefore provide no comment.
- 8.6.5 On the basis of the information provided it is considered that the development has not resulted in any net loss of biodiversity, or any harm to designated sites or protected species and as such the development accords with policy ENV1 of the Local Plan.

## **8.7 Future Railway Reopening**

- 8.7.1 Significant concern has been raised by objectors, and the Conservation Officer, that the blocking of the former rail line by the proposed development would significantly hinder the possibility of reopening the line in the future, and the subsequent ability of the heritage lines from boosting the local economy through tourism.
- 8.7.2 There is no specific policy safeguarding former railway lines, or seeking their reuse for leisure purposes per se, but Policy DEV3 of the Local Plan relating to Transport Accessibility and Rights of way includes;

Development will not be supported where it meets any of the following criteria, individually or cumulatively in combination with other development proposals:

- It would prevent the future opening of any road or rail schemes under consideration.

- 8.7.3 The Historic Railways Estate Group (HRE) and the Stainmore Railway Company Ltd in their objection to the proposal state that the reopening of the Warcop to Kirkby Stephen Line has been under consideration since 1995 and that both the Eden Valley and Stainmore railways are pursuing this objective, both in terms of progress on the ground and to overcome the various physical obstacles.
- 8.7.4 Whilst it is accepted that these groups have the reopening of the line as one of their objectives, there are considered to be significant obstacles already in place which make such a prospect unlikely to be achievable in the short to medium term. The track no longer exists and the track bed route (including the area of the application site) has been sold off in places to private landowners. The bridge over the river Eden over which the route ran, was demolished many years ago, so a new bridge would need to be constructed and there are other physical obstructions. Whilst the wording of policy is perhaps open to interpretation and there is no application for development of the heritage line currently under consideration by the Council, it could be argued that that the development makes the potential reopening of the line less likely.
- 8.7.5 The applicant has in response stated a willingness to pay for the removal of the infill, in the event that the infill is the remaining obstacle to the reopening of the track. It is considered that in the event that the application were to be approved, this could be required via a legal agreement under Section 106, requiring the applicant or their successor, to fund the unblocking of the arch and the making good of the bridge, should the heritage line become otherwise viable.
- 8.7.6 As such, it is not considered that the proposal is contrary to policy DEV3 of the Local Plan as mitigation can be put in place that means that that the works would not prevent the future opening of the proposed heritage line.

## **8.8 Other Matters**

- 8.8.1 Concern has been raised that the development prevents the potential for the disused railway line to be utilised as a footpath/cycleway/bridleway recreational route. Policy ENV4 of the Local Plan states that the creation of multifunctional networks of green infrastructure will be identified, managed and enhanced and that development that leads to direct loss, fragmentation or degradation of Green Infrastructure will be resisted. The current track bed is not identified as part of the green infrastructure network and due to the issues already mentioned with regard to ownership it is not considered that such proposals are likely to be brought forward. As such, it is not considered that this would be grounds to refuse the application.
- 8.8.2 Concern has been raised with regard to flood risk and drainage as a result of the works that have taken place. It appears that the railway cutting has suffered from water pooling in the past, and at the time of the officer site visit there was standing water adjacent to the infill within the cutting. This is not in itself considered problematic. The owner of the land has commented that the infilling has enabled a pond to develop to the benefit of biodiversity. The Lead Local Flood Authority were consulted and have raised no objection to the scheme and it is not considered that the development results in any increased risk of flooding off site. The development is considered to accord with policy DEV2 of the Local Plan.
- 8.8.3 Concern has been raised that approval of this development would set a precedent that would be repeated elsewhere, and this has perhaps contributed to the very significant number of objections that the Council has received. It is clear that this method of maintaining road bridges over disused railway lines has been used elsewhere in the Country and indeed has been allowed on appeal elsewhere. In planning terms, however each application must be considered on its own merits, taking into account the specific site circumstances, and fear of precedent cannot be a determining factor.

## **9. Implications**

### **9.1 Legal Implications**

- 9.1.1 The following matters have been considered but no issues are judged to arise.

### **9.2 Equality and Diversity**

- 9.2.1 The Council must have regard to the elimination of unlawful discrimination and harassment, and the promotion of equality under the Equality Act 2010.

### **9.3 Environment**

- 9.3.1 The Council must have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.

### **9.4 Crime and Disorder**

- 9.4.1 Under the Crime and Disorder Act 1998, the Council must have regard to the need to reduce crime and disorder in exercising any of its functions.

### **9.5 Children**

- 9.5.1 Under the Children Act 2004, the Council has a duty to safeguard and promote the welfare of children in the exercise of any of its functions.

### **9.6 Human Rights**

- 9.6.1 In determining applications, the Council must ensure that all parties get a fair hearing in compliance with the provisions of Article 6 under the European Convention on Human Rights, as now embodied in UK law in the Human Rights Act 1998.

## 10. Conclusion

- 10.1 It is acknowledged that the proposal would likely impact on the possibility of the heritage line being reopened at some point in the future, but it is considered that this can be appropriately mitigated by a legal agreement requiring the removal of the infill and the making good of the bridge at the cost of the applicant or their successor in the event that this is the final issue preventing opening of the line. The applicant has offered to provide such funding and on this basis the proposal would not be contrary to Policy DEV3.
- 10.2 However, the proposal fails to complement or enhance the area or protect features or characteristics of local importance, in addition, the works cause harm to a non designated heritage asset. The stated public benefit, in terms of reduced cost to the public purse, in the long term is not considered sufficient to outweigh this harm. As such, the development is contrary to policies DEV10 and ENV5 of the adopted Local Plan and the application is accordingly recommended for refusal.

Fergus McMorrow  
Assistant Director Development

Checked by or on behalf of the Monitoring Officer	26.05.22
---	----------

**Background Papers:** Planning File 22/0254