

Cabinet – 9December 2020

Yorks Bridge Replacement Scheme – Replacement Common Land

Portfolio: Councillor Andrew - Regeneration

Related portfolios: N/A

Service: Highways and Transport

Wards: Pelsall

Key decision: No

Forward plan: No

1. Aim

This report updates Members on the recent planning application that sought approval for the construction of a new highway bridge at Norton Road, Pelsall. The report also seeks approval to progress the application to deregister parcels of common land at Pelsall North Common required to facilitate the scheme and offer in exchange part of the Council owned land at High Bridges Pelsall as replacement land.

2. Summary

- 2.1 In 2013a series of reports were considered by Cabinet in relation to the proposed replacement of York's Bridge, located on Norton Road, Pelsall, in order to address the structure's deteriorating condition and to improve road safety. Due to the delay in finding suitable replacement land for the areas of commonland, the time scale for implementing the planning application expired. The progression of a new planning application was subsequently approved on the 13 December 2017.
- 2.2 The legal process of deregistration of Common land requires an application to the Secretary of State, via the Planning Inspectorate who then considers the application and supporting documents, together with any representations and or objections which have been lodged. In May 2015 the Planning Inspector refused the application to deregister part of Pelsall North Common. Details of why are included in Section 3 of the report. This decision effectively suspended construction of the new bridge.
- 2.3 This report summarises the reasons why it is necessary to replace the bridge and details the recent consultation, which is a statutory requirement in any

application to de-register common land. Following planning approval on 17 September 2020, this report seeks to outline the steps which have been taken to address the Planning Inspectorate's reasons for refusing the first deregistration application and secure authorisation is sought to submit a new commonland deregistration application.

3. Recommendations

- 3.1 That Cabinet approve the progression of an application to deregister the areas of common land at Pelsall North Common detailed in this report and, delegate to the Director of Governance to prepare and submit applications under the relevant sections of the Commons Act 2006 to deregister, and if necessary, to undertake restricted works, on those parts of Pelsall North Common as detailed in **Appendix A** as necessary to facilitate construction of a new bridge.
- 3.2 That Cabinet approve the proposal to offer part of the Council owned land detailed in **Appendix B** as replacement land for the common land to be deregistered and delegate authority to the Head of Highways and Transport, in consultation with the Portfolio Holder for Regeneration to progress this exchange.

4. Report detail

- 4.1 There have been proposals by the Highway Authority to improve York's Bridge and its approaches since 1976 when West Midlands County Council, the previous Highway Authority, first imposed highway improvement lines on the approaches to the bridge.
- 4.2 The bridge was first approved for inclusion in Walsall Council's 1992/94 bridge strengthening programme at a meeting of the Highways and Public Works Committee on 12 November 1992.
- 4.3 More recently the bridge was identified in the Council approved Local Transport Plan 2 (LTP2) as part of a programme of bridge strengthening across the West Midlands, with funding provided by the Department for Transport through Local Transport Plan allocations.
- 4.4 The bridge was identified as a priority for action and needs to be addressed to maintain local/regional accessibility, improve road safety, and prevent the possible need to implement even lower weight restrictions or, ultimately, complete closure.
- 4.5 Importantly, the bridge is located on a district distributor road and the Council as Highway Authority is under a duty to ensure it maintains accessibility for local, commuter and commercial traffic to and from the northern edge of the borough's highway network.
- 4.6 As a result of previous structural assessments, the bridge had already been subject to a 10 tonne weight restriction. Further deterioration in the bridge's

condition has required that the weight limit be reduced to 7.5 tonnes following an assessment of its condition in 2015.

- 4.7 A more recent two stage bridge assessment was undertaken by consultants (Atkins) in October and November 2019. The inspection indicated that there were longitudinal cracks found on the arch soffit, bulging and displacement of the wing walls and parapets. There are areas of spalled brickwork with the mortar being in a generally poor condition. The report concluded that the structure was functioning adequately, but certain elements require remedial works to be undertaken in order for the bridge to remain safe for use and fit for purpose.
- 4.8 Due to poor horizontal and vertical alignment, combined with a narrowing of the carriageway, there have been a number of reported accidents. The current lack of footways over the existing bridge means that pedestrians and cyclists are at particular risk.
- 4.9 Funding from the LTP2 allocation has been used to undertake the detailed design of a replacement bridge that will address all of the above issues. Funding has been accumulated over preceding years to a level now sufficient to undertake the construction of a replacement bridge and associated highway alignment (see 7.1 for details).
- 4.10 Previous consultation exercises explored various options for the bridge replacement and or strengthening, eventually culminating in the proposed alignment shown in **Appendix A** which was approved by Cabinet on the 24 July 2013.
- 4.11 Planning Permission was originally granted subject to conditions in February 2014. The Planning Permission had a three year time limit for implementation, which subsequently expired. A further permission was secured on the 17 September 2020. A Bridging Order is also in place and the Council secured the transfer of a parcel of land of the Canal & River Trust in July 2014 which was necessary to facilitate the scheme.
- 4.12 The footprint of the proposed bridge requires the deregistration of a small part of Pelsall North Common. This equates to 4,925 m² which is less than 0.02% of the total common area.
- 4.13 In circumstances where the common land which is to be deregistered exceeds 200 sq. m, the deregistration process requires, where possible, land to be offered in exchange for that which is to be released as common land. At the time of the previous application Moat Farm Pool at the junction of Norton Road and Lichfield Road was identified and offered as replacement commonland as part of the application.
- 4.14 In May 2015 the Planning Inspectorate issued the decision not to support the deregistration of the common land for the following reasons:

- Although the Planning Inspector accepted the submissions made by Walsall Council of its intention to reregister land as common land, this was not sufficient. The Inspector took the view that she could not place any weight on the Council's intention to reregister those parts of the common in absence of any legal undertaking given by the Council.
- The Planning Inspector considered the loss of release land would mean changes to the way in which local people would use the common land, particularly in relation to access to the canal towpath on the eastern side of the bridge and she considered this would not be in the interests of the neighbourhood.
- The Inspector gave consideration to the offer of Moat Farm Pool and took the view that the provision of this land as replacement land is not in line with the Planning Inspectorate Guidance Notes which sets out "we would not expect to see the stock of public access land diminished by an offer of replacement land that is already subject to some form of public access".

4.15 In the absence of a decision by the Planning Inspectorate to approve deregistration of the areas of common land, the construction of the bridge could not proceed. Officers have been working to produce an alternative land replacement strategy in order to facilitate a new application to deregister the land required. This is set out below:

- The amount of common land requiring deregistration to enable the housing on a temporary basis of construction activities, such as compound and storage areas, has been significantly reduced to the minimum necessary. The area of land to be deregistered has therefore reduced to that of the footprint alone (4,925m²). After exploring many options, officers have identified an area of land that is potentially more suitable to meet the legal requirements for replacement common land than Moat Farm pool.
- The land at High Bridges, Pelsall is shown on the plan attached as **Appendix C**. The total area shown is 7,491 m² and is currently densely overgrown with trees and shrubs and fenced off from the adjacent highway. The land is in Council ownership and has been allocated in the Site Allocation Document (SAD) for Open Space. In addition, to meet the legal requirements for replacement land, High Bridges is not subject to any public rights of access. Improvement of this land as part of the scheme will include works to facilitate public access and use will also complement the adjacent newly declared Wyrley and Essington Canal Local Nature Reserve.

4.16 On the 17th September, Planning Committee resolved that:

1 The Habitats Regulation Assessment is endorsed by Planning Committee, as the competent authority and that the Council considers that the proposed development would not have a significant effect on a European site, subject to no new material considerations from Natural England, and

2. That planning application number 19/1042 be delegated to the Interim Head of Planning and Building Control to grant permission, subject to conditions and subject to:

- No new material considerations being received;
- The amendment and finalising of conditions;
- No further comments from a statutory consultee raising material planning considerations not previously addressed

As contained within the report and to include the following:

- To carry out a noise assessment three months following the construction and operating of the new bridge to consider acoustic mitigation for residents of Mallard Close;
- The brickwork of the new bridge to match in colour and texture of the original listed canal bridge;
- Explore the timings of traffic lights and a left turn filter lane at the Fingerpost junction;
- Prevention of a cut through for HGVs between Abbey Drive and Charles Crescent;
- Installation of ANPR speed cameras;
- An environment weight limit restriction for HGVs entering Pelsall unless delivering; and
- Interactive speed signs for HGVs.

4.17 Subject to the agreement of Planning Committee on 10th December, the following conditions will be recorded as notes and dealt with through existing highway legislation by the Highway Authority:

- To carry out a noise assessment three months following the construction and operating of the new bridge to consider acoustic mitigation for residents of Mallard Close;
- Explore the timings of traffic lights and a left turn filter lane at the Fingerpost junction;
- Prevention of a cut through for HGVs between Abbey Drive and Charles Crescent;
- Installation of ANPR speed cameras;
- An environment weight limit restriction for HGVs entering Pelsall unless delivering; and
- Interactive speed signs for HGVs.

4.18 In order to progress the scheme, it is necessary to secure the deregistration of the common land required to facilitate construction.

5 Council Corporate Plan priorities

5.1 ***Pursue Inclusive Economic Growth*** - Failure to address the current problems with the existing bridge could ultimately lead to further weight restrictions or possibly even closure. The B4154 is a district distributor and as such plays a key strategic transportation role. The efficient and safe movement of goods and services will assist the boroughs economic wellbeing.

- 5.2 ***Make a positive difference to the lives of Walsall people***- The improved attractiveness and access to the relevant areas of common land will encourage their use. Improved pedestrian and cycle safety across the new bridge encourages sustainable and active travel options.
- 5.3 ***Safe, resilient and prospering communities*** - The new bridge will address significant safety concerns associated with the existing layout, improving the safety of all road users. It will also free up transportation links to the North of the Borough assisting with the movement of goods and services and indeed people's access to jobs.

6 Risk management

- 6.1 Failure to adequately maintain the safe and efficient operation of the public highway could place the Council in breach of its statutory Traffic Management duties.
- 6.2 The Council is required to comply with the statutory provisions set out in Section 16 of the Commons Act and ensure that the consent of the Planning Inspectorate is obtained before the deregistration of common land and exchange of replacement land can take place.
- 6.3 Failure to secure permission to deregister the necessary common land for the proposal would again prevent delivery of the scheme.

7 Financial implications

- 7.1 The funding for this scheme has been secured from Local Transport Plan and Maintenance Block funding allocations for bridge maintenance. There is currently £1.9m allocated to the project and an additional £750k for 2021/22 and a further £750k for 2022/23 allocated from the Council's budget, which is sufficient to deliver the scheme.
- 7.2 The financial implications of the replacement common land are minimal as the replacement land is already in the ownership of the Council and costs are therefore limited to legal fees which will be covered within the scheme budget.

8 Legal implications

- 8.1 Pelsall North Common is registered as common land under the Commons Act 1967. Section 16 of the Commons Act 2006 enables the owner of the common land to apply to the Planning Inspectorate for the land or part of the land to be released or deregistered as common land. If the release land is more than 200 square metres in area, the application must include for replacement land. The replacement land cannot be land which is already registered as common land or a town or village green.

- 8.2 In deciding any application to deregister common land the Planning Inspectorate will give consideration to: The interests of persons having rights in relation to, or occupying the release land (and in particular, persons exercising rights of common over it), the interests of the neighbourhood, and the public interest which may include:
- The nature of conservation;
 - The conservation of the landscape;
 - The protection of the public rights of access to any area of land;
 - The protection of archaeological remains and features of historic interest; and
 - Any other matter that the Planning Inspectorate considers relevant.
- 8.4 Extensive consultation must be undertaken prior to submitting any application to the Planning Inspectorate which should include:
- All active commoners;
 - Persons with an interest in the land;
 - Local residents and amenity groups; and
 - The Open Space Society.
- 8.5 The above list is not exhaustive but merely gives an indication of who needs to be consulted.
- 8.6 Under Section 38 of the Commons Act 2006 the consent of the Planning Inspectorate will be required to carry out any restricted works on common land. Restricted works are any that prevent or impede access over common land and consideration will need to be given as to whether any works which are to be undertaken in connection with the reconstruction of York's Bridge fall within this category. An application under Section 38 of the Commons Act 2006 will be made to the Planning Inspectorate at the same time as the application under Section 16 of the Act 2006 to deregister the areas of common land required for the scheme.
- 8.6 Section 106 of the Highways Act 1980 requires that a Bridging Order be progressed for the replacement bridge. This was secured in February 2014 and remains in place.

9 Procurement Implications/Social Value

- 9.1 The construction of the new bridge will be procured via the Council's Highway Infrastructure Services Contract [HISC], the Midlands Highways Alliance Plus Medium Schemes Framework [MSF3] or the West Midlands Minor Works Framework. All three contracts have been awarded using EU/OJEU compliant routes to market and have contractor obligations with respect to social value.

10 Property implications

- 10.1 The proposed replacement land at High Bridges, Pelsall is Council owned. It was offered for sale as potential housing land in 2012 but no acceptable offers were forthcoming. The land is currently allocated in the pre-modification Site Allocation Document as open space and any development would be contrary to current planning policy. The proposals as set out above do not have any significant detrimental effect on Council asset values given the current site allocation and other site constraints.

11 Health and wellbeing implications

- 11.1 By providing better access to existing common land, safer travel over the new bridge and secured access to a currently inaccessible piece of land the scheme encourages active travel options and outdoor activities.
- 11.2 The safety of all users will be significantly improved.

12 Staffing implications

- 12.1 None

13 Reducing Inequalities

- 13.1 None

14 Consultation

- 14.1 Although full consultation took place leading up to the previous deregistration application in 2015, there is a legal requirement that consultation be undertaken in relation to any new application submitted to deregister common land.
- 14.2 Between 26 February and 5 April 2019, Walsall Council consulted local residents and other interested parties on detailed proposals relating to the replacement of York's Bridge, Norton Road, Pelsall, which spans the Wyrley and Essington Canal by the Fingerpost public house. The proposed scheme involves building a new bridge adjacent to the existing brick built bridge. Information and plans detailing the scheme were provided as part of the consultation and respondents were encouraged to review the information before responding.
- Information was published online at www.walsall.gov.uk/yorks-bridge together with the questionnaire which anyone could complete.
 - Special interest groups were contacted and invited to respond.
 - 10 drop in consultation events were held where attendees could speak to council officers about the scheme and have their say.
 - Consultation packs including a covering letter, fact sheet, visualisations, plus a paper questionnaire, were distributed to residents and businesses in the surrounding area. A pre-paid envelope was included.

- By the closing date, 1,051 responses had been received, made up of 910 paper questionnaires and 141 online responses. Based on the distribution of paper questionnaires alone this equates to a 6% response rate.

- 14.2 The consultation was promoted widely via the council's website and associated social media. The consultation was also covered by the local media and other community networks.
- 14.3 The Consultation report summarises the results from the questionnaire, which included a number of closed and open questions.
- 14.4 The conclusion reached from the response 1,051 people is sufficient to provide a high level of accuracy in terms of reliability of results for the population surveyed, which covered the immediate vicinity of the proposed bridge as well as further afield.

15 Consultation summary and top line findings:

- 15.1 Whilst there is widespread support for all aspects of the scheme, a small proportion of respondents strongly oppose the scheme.
- 15.2 Supporters felt that the scheme will bring great benefit in terms of safety and ease traffic flow along the route, and want to see the bridge built as soon as possible. The replacement of common land was seen as a viable compromise to provide a much-improved route along Norton Road.
- 15.3 Those who did not support the scheme were consistent in their comments. Most felt that the new bridge, which would be able to carry 44 tonne vehicles, would result in a significant increase in traffic, in particular HGV's, which is the greatest concern of all. There was a sense of needing to protect the village and retain its character, which many feel would be impacted by heavy traffic. There were calls for a strict weight limit to be imposed on the new bridge.
- 15.4 With regards to the common land specifically, the additional landscaping and registration of replacement land was welcomed and comments reflected a tone of excitement about this aspect. However, some said the location of the replacement land was disconnected from the rest of the common and therefore offers little value. Many wanted assurances that the newly created woodland area would be maintained, pointing out that other similar features in the locality require some attention.
- 15.8 The provision of car parking was generally welcomed however, some felt it will attract anti-social behaviour.
- 15.9 Incorporating visitor facilities, e.g.; benches, bird hides and dog poo bins was considered to bring additional benefits to the scheme.

16. Decide

- 16.1 Deregistration of 4,925 m² of Pelsall Common is pivotal to delivering the Yorks Bridge replacement scheme. In order to progress the application, alternative common land must be offered in order to replace the amenity lost as a consequence of the reregistration.

17. Respond

- 17.1 Subject to approval the Council will submit an Application to Deregister Common Land to the Secretary of State for Environment, Food and Rural Affairs under Section 16 of the Commons Act 2006. The Council will also apply to the Secretary of State for Consent to Carry out Works on Common Land under Section 38 of the Commons Act 2006.
- 17.2 The deregistration application process requires a number of processes to be carried out such as newspaper advertising, inclusion of specific documents and drawings, consultation information and statements of case.
- 17.3 The applications are submitted to the Planning Inspectorate who will decide the applications on behalf of the Secretary of State.

18. Review

- 18.1 Cabinet and local Members will be updated with regards to progress of the application to deregister the common land at Norton Lane. Subject to the application being successful, further informal briefings regarding the progression of the scheme will follow.

Background papers

- Report to Cabinet: 23 January 2013 – York's Bridge, Pelsall
- Report to Cabinet: 24 July 2013 – York's Bridge Replacement Scheme, Pelsall
- Report to Cabinet: 11 December 2013 – York's Bridge Replacement Scheme, Pelsall
- Report to Cabinet: 13 December 2017 – York's Bridge Replacement Scheme
- Yorks Bridge Consultation 2019 – Summary of Results (28 June 2019)
- Planning Committee Plans List: 17 September 2020 – Plan List Item Number 1

Author

Kathryn Moreton
Head of Highways and Transport
✉ Kathryn.Moreton@walsall.gov.uk





Simon Neilson
Executive Director

20 November 2020

Councillor Andrew
Portfolio holder

1 December 2020

Appendix A see accompanying .pdf file

Appendix B see accompanying .pdf file

Appendix C see accompanying .pdf file