



Walsall Council

PLANNING COMMITTEE

10th December 2020

REPORT OF HEAD OF PLANNING & BUILDING CONTROL

Yorks Bridge, Norton Road, Pelsall Update

1. PURPOSE OF REPORT

To update members on the status of the conditions proposed as part of the planning committee's resolution on the York's Bridge application, reference 19/1042, and to seek a delegation to amend the conditions in line with the recommendations presented in this report.

2. RECOMMENDATIONS

That Committee delegates authority to the Head of Planning & Building Control as follows:

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 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 conditions:-

- The brickwork of the new bridge to match in colour and texture of the original listed canal bridge

3. FINANCIAL IMPLICATIONS

None arising directly from this report however the implementation of the measures included within the conditions will have a cost implication to the council.

4. POLICY IMPLICATIONS

Within Council policy. All planning applications and enforcement proceedings relate to local and national planning policy and guidance.

5. LEGAL IMPLICATIONS

The proposed changes ensure that the decision would be defensible in the event of a legal challenge as conditions would be applied that meet the 6 tests outlined by circular 11/95.

6. EQUAL OPPORTUNITY IMPLICATIONS

None arising from the report.

7. ENVIRONMENTAL IMPACT

None arising from the report. All planning applications are required to consider environmental issues where material to the proposed development.

8. WARD(S) AFFECTED

Pelsall

9. CONSULTEES

Local Highway Authority, Pollution Control and Legal Services have been consulted in the preparation of this report.

10. CONTACT OFFICER

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11. BACKGROUND PAPERS

All published.

Alison Ives

Head of Planning and Building Control

BACKGROUND AND REPORT DETAIL

12.1 At the planning committee meeting of 17th September 2020, the committee resolved the following in respect of planning application number 19/1042:

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*
- Interactive speed signs for HGVs*

12.2 At that time the Planning Committee resolved to include the additional conditions to address issues raised during the debate at the meeting.

12.3 Paragraph 55 of the NPPF makes it clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

12.4 Detailed advice on the imposition of conditions is given in Circular 11/95 “the use of conditions in planning permissions” and requires that conditions applied to planning decisions meet the 6 tests referred to above. Considering the application of these tests conditions must be in relation to land within the ‘red-line’ boundary of the application, and should not be required by any other legislation. Following consultation on the conditions recommended by committee in the resolution made during the meeting on 17th September 2020 part of the resolution would not pass the 6 tests, and therefore would not stand up to legal challenge. Whilst the requirement for matching materials to be utilised can be included as a condition, it would not be possible to include the other points as these are outside the application site boundary and are covered by other legislation.

12.5 Consultations with the Local Highway Authority and Pollution Control reveal that the measures are for the most part being implemented or can be undertaken separately from planning. Their responses are as follows:

1. 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

In terms of noise assessment the bridge design elements have not changed since the previous approval. There is no issue in the Council carrying out a Noise Assessment through a site survey, which can be checked against the criteria originally used.

2. The brickwork of the new bridge to match in colour and texture of the original listed canal bridge

This can be conditioned and similar colour and texture can be used. The visualisation used as part of the submission was computer generated design software and was for effect only. The detail can be agreed with the Planning Officer and Highway Authority.

3. Explore the timings of traffic lights and a left turn filter lane at the Fingerpost junction

A junction design had been developed with this in mind. As for signal timings it would make sense as part of any upgrade which will optimise the timings on a cycle by cycle basis reacting to prevailing traffic flows.

The left turn filter lane will be assisted with the proposal to introduce a 7.5t environmental weight limit under the Road Traffic Regulation Act 1984.

4. Prevention of a cut through for HGVs between Abbey Drive and Charles Crescent

At this time it is only a perceived problem. It would not be appropriate to introduce restrictions that could impact on residents of those streets until there is evidence that there is a problem. This can be investigated by the Councils Traffic Management Team.

5. Installation of ANPR speed cameras

Assuming this means Average Speed Enforcement ASE cameras as opposed to ANPR. The council is currently trialling this system and will consider further roll out as part of the Black Country speed management partnership.

6. An environment weight limit restriction for HGVs entering Pelsall unless delivering

Addressed with a proposal to introduce a 7.5t environmental weight limit under the Road Traffic Regulation Act 1984 with associated directional signing improvements at The Fingerpost Junction and Rushall Square.

7. Interactive speed signs for HGVs

Interactive signs will detect all vehicles and can be purchased and installed through this scheme or through any other suitable funding stream

12.6 To summarise, measure 2 listed above can be secured a condition as it meets the 6 tests but measures 1, and 3-7 rely on works outside the application site and are covered by separate legislation (Highways Act, Land Compensation Act) so cannot be imposed on any planning permission. Although a requirement for noise survey could be included as a condition, in order to meet the 6 tests the condition need to be to update the survey already carried out. The measure required the investigation of impacts and mitigation after construction, which is covered by separate legislation. Members should be reassured by the responses of the Highways officers that all of the measures will be reviewed by the Highway Authority.

12.7 It is therefore recommended that the resolution relating to application 19/1042 be amended as follows:

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 Head of Planning and Building Control to grant permission, subject to conditions and subject to:-

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