

## Section D, Question 21

### Statement of Case

#### Section 16 Commons Act 2006

##### 1. INTRODUCTION

This Section 16 application relates to the deregistration of an area of common land at Pelsall North Common (the “Common”) in order to facilitate the construction of a new bridge (‘the New Bridge’) alongside the existing York’s Bridge (‘the Existing Bridge’). The proposal comprising of highway works is known as the York’s Bridge Replacement Scheme (‘the Scheme’).

**The Section 16 application should be read in conjunction with a separate application submitted by the Council under Section 38 of the Commons Act 2006** which seeks approval for restricted works required to improve the Common at its points nearest to residential houses, to improve and encourage access to the Common, to safeguard and boost biodiversity and create an attractive and useable common.

##### 2. BACKGROUND

The Common was registered as common land under the Commons Act 1967 and covers an area of approximately 63 hectares. It lies to the north of the conurbation of Pelsall, which is north-west of Walsall. The full extent of the Common is shown coloured green on Plan SECTION J-602/B (**Appendix 1**).

The Common generally forms a buffer between the developed land to the south and the more rural farmland to the north, with the majority of the Common lying to the north of the Wyrley and Essington Canal, although there is a not insignificant area to the south of the canal. The B4154 Norton Road / Lime Lane runs north from Pelsall, crossing the canal by means of the Existing Bridge. Most of the Common lies to the west of Norton Road. The majority of the common land which is affected by this application is to the east.

The land to the south-east of the Existing Bridge is developed and known as the Moat Farm Estate, with the residential properties on Mallard Close being closest to the proposed New Bridge. The canal forms the north-eastern boundary to the Moat Farm Estate, with the A4124 Lichfield Road linking Wolverhampton to the south-west with Brownhills to the north-east, forming the south-eastern boundary.

The appearance of the Common differs south and north of the canal, with the land to the south, adjoining houses on the northern edge of Pelsall, being managed amenity grassland. To the north of the canal, the Common has a wilder, unkempt appearance. The area to the north-east of the Existing Bridge, which is affected by the application, comprises of larger trees, scrub and areas of wetland, due to overgrown drainage ditches.

The Existing Bridge was originally built in the mid-19th Century (the date 1866 can be seen on the bridge) and as such it was never designed with modern traffic in mind. Despite repairs and modifications over the years the layout of the Existing Bridge is much the same as when it was first built.

The Existing Bridge carries the B4154 Norton Road over the Wyrley and Essington Canal, approximately 190 metres north of the junction of the B4154 and Moat Farm Way in Pelsall, Walsall. As a key distributor road, Norton Road is expected to carry a reasonable number of heavy goods vehicles. The Council as the Local 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.

The potential need to replace or strengthen the Existing Bridge was recognised in the mid-1970s when the Council imposed highway improvement lines to protect the approaches to the bridge prior to the development of the adjacent Moat Farm Estate in the mid to late 1980's.

In or around 1976, the West Midlands County Council, (the predecessor to Walsall Council as the Local Highway Authority), imposed highway improvement lines on the approaches to the Existing Bridge since then, there have been a number of proposals by the Council to improve the bridge and its approaches.

On the 12 November 1992 a meeting of the Council's Highways and Public Works Committee approved the Existing Bridge for inclusion in Walsall Council's 1992/94 bridge strengthening programme.

The Existing Bridge was subsequently identified in the Council's 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.

The Existing Bridge was also identified as a priority for action and needs to be addressed in order maintain local/regional accessibility, improve road safety, and prevent the possible need to implement even lower weight restrictions or, ultimately, complete closure.

The limitations connected with the design and construction of the Existing Bridge has given rise to the following highway safety issues:

- (a) As a result of previous structural assessments, the Existing Bridge was subject to a 10-tonne weight restriction. Further deterioration occurred in the bridge's condition due to age, weather and vehicle damage. Following an assessment of its condition in 2015 the weight limit was reduced to 7.5 tonnes. The Norton Road is classified as a district distributor road and as such is expected to carry vehicles up to the national weight limit of 44 tonnes, which is well above the weight limit intended for the Existing Bridge when it was originally constructed.
- (b) The Existing Bridge suffers from poor horizontal and vertical alignments. Substandard gradients on the approaches together with a carriageway that is not fully aligned with the approach roads results in poor forward visibility.
- (c) In October 2019, Atkins, consultants appointed by the undertook a two-stage bridge assessment. The inspection revealed 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.
- (d) The Existing Bridge has no footways or verges and narrows to approximately 5.15 m between parapets. The current lack of footways over the existing bridge means that pedestrians and cyclists are at particular risk.

The combination of the conditions set out in paragraphs (a) - (d) means highway safety is unfavourably compromised due to the condition of the Existing Bridge.

### **3. THE DIFFERENT CONSTRUCTION OPTIONS CONSIDERED BY THE COUNCIL**

In 2013, the Council considered a number of designs and construction options to address the highway safety issues, together with the poor and deteriorating condition of the Existing Bridge detailed above and to improve road safety.

The Council considered a number of options which would not have required the deregistration of common and these are set out in paragraph (a)- (b) below:

a) Strengthening of the Existing Bridge

The Council gave early consideration to the feasibility of strengthening the Existing Bridge. The strengthening of the Existing Bridge would not have required the deregistration of common land. This option was rejected following reasons:

- there was no certainty that the required weight limit could be achieved.
- the strengthening works would have had a detrimental impact on the canal environment and would have exacerbated the poor vertical alignment of the approach roads.
- it would not address the other safety issues such as inadequate carriageway width and the lack of footways on the bridge itself.

b) The replacement of the Existing Bridge

The Council considered the option of demolition of the Existing Bridge and its reconstruction on approximately the same alignment. This option did not involve the deregistration of common land.

This option was rejected by the Council because it would not have met the headroom requirements of the Canal & River Trust without increasing the level of the approach roads to the bridge. The Fingerpost public house is situated adjacent to the west side of the highway structure and the required increase in height would result in the highway being on a level with the first-floor windows. The Council concluded that the bridge should not be rebuilt on the same alignment.

c) The construction of a new bridge

The preferred construction method adopted by the Council for the Scheme is to build a new bridge enabling the existing historic bridge to be retained. This option requires planning permission, a Bridging Order and deregistration of a small part of Pelsall North Common shown coloured pink on Plan MP/YB/S16/602-B (**Appendix 2**) to facilitate construction of the New Bridge as part of the Scheme. To mitigate the impacts of the Scheme on the Common, there are proposed improvements and enhancements works to the common which is the subject matter of the corresponding s38 Application as well as the provision of replacement land for that which is the subject of deregistration.

The area of the Common required for deregistration is immediately to the east of the Existing Bridge and has sufficient space to construct the New Bridge and realign the approaches. Plan SECTION J-601/B (**Appendix 4**) shows the location of the common land to be deregistered in relation to the rest of the Common.

The method for constructing the bridge includes brick cladding of the majority of the visible structure, which meets the preference of the Canal & River Trust due to its low maintenance, high quality durable finish and the fact that it will be in keeping with the Existing Bridge.

In arriving at this preferred option, the Council has considered several issues, including minimising the impact of the highway needs on the common land, meeting the wider public interest by addressing the weight limit of the bridge, improving safety for all road users and improving and enhancing the common close to the Scheme and increasing its accessibility.

#### **4. THE 2014 DEREGISTRATION APPLICATION**

Public Consultation in relation to the overall Scheme and the alternative construction options outlined above originally commenced between March and April 2013 and comprised of information on the Council's website, the circulation of approximately 1,500 brochures containing scheme information and a series of drop-in events, held in the Pelsall area.

The drop-in events were particularly successful in engaging with the residents living closest to the proposed scheme with approximately 120 to 130 visitors. At these events the public were able to question officers face-to-face and were able to articulate their views and concerns in a way that might not have been possible in writing.

The following organisations or individuals were also consulted:

- Canal & River Trust
- Environment Agency
- English Heritage
- Inland Waterways Association
- Natural England
- Open Space Society
- Ramblers Association
- British Horse Society
- Church Commissioners
- Walsall Cycling Forum
- Local residents and associations
- Friends of Pelsall Common
- Commons Registration Authority

There was a consensus amongst the public and statutory consultees that there was a need for a new bridge, although less agreement as to its positioning between the public

house to the west and the housing estate to the east. Concerns were expressed by local residents and in response to these, the Council prepared a revised design for the scheme to move the New Bridge closer to the Existing Bridge structure. Feedback from the events showed that the public expressed very little concern about the loss of common land, although minimising any loss was of importance to the Council. A summary of the 2014 consultation responses is attached (**Appendix 11**).

The various construction options for the New Bridge were presented to the Council's Cabinet in July 2013. The option to amend the design of the Existing Bridge prepared following the public consultation was rejected by the Council's Cabinet as it provided very limited additional benefits for residents and would have required the closure of Norton Road during construction. The disruption to businesses and the wider public in closing the road for up to 18 months would be significant. A major diversion route (approximately 6.3 miles) would be necessary adding to business costs for transport and severing connectivity for local residents. The volume of traffic that would need to be diverted would create additional pressures along the dedicated diversion routes adding to the existing levels of traffic congestion experienced during the morning and afternoon peak travel periods.

Cabinet approved that the Existing Bridge be kept in place but that a new bridge be constructed alongside (**Appendix 12**).

In September 2013 a planning application was submitted to the Council Planning Committee for "*Construction of a new road bridge over the canal next to York's bridge and re-alignment of Norton Road plus new parking bays for Pelsall North Common and wetland area*". Planning Committee resolved to grant planning permission subject to conditions.

Planning Application 13/1256/FL was approved by the Council's Planning committee and planning permission subject to conditions was granted on 7th February 2014. A Bridging Order was then confirmed by the Secretary of State. The Bridging Order is dated 4<sup>th</sup> July 2014 (**Appendix 13**).

Following the granting of planning permission for the Scheme, an application under Section 16 of the Commons Act 2006 dated 29<sup>th</sup> September 2014 was submitted to the Planning Inspectorate on 2<sup>nd</sup> October 2014 to deregister those parts of Pelsall Common required for the Scheme.

The release land identified in the 2014 application comprised 9,725 m<sup>2</sup> of land lying to the north-east, south-east and south-west of York's bridge on the B4154, Norton Road. (It was intended at the time that part of the land be later reinstated as common.)

An area of exchange land also had to be provided to mitigate this loss of registered common and the replacement land identified comprised of 2,750 m<sup>2</sup> of land in two

parcels lying generally south-west of canal at Moat Farm pool, together with a strip of land to the east of Norton Road. (This area was commensurate with the area which was to be permanently deregistered, not including that which was proposed to be later reinstated.)

In May 2015 the Planning Inspector refused the application to deregister part of Pelsall North Common.

The principal issues which form the basis of the Inspector's decision to refuse were:

- The Inspector considered the replacement land offered by the Council at Moat Farm to be inappropriate because it was already subject to public rights of access. The Inspector took the view that the provision of this land as replacement land was 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."
- The Council in its submissions had indicated that 2,465 m<sup>2</sup> of the common land would be subject to permanent deregistration. The remaining 7,260 m<sup>2</sup> would only be required for the period of the works, as working and construction areas, after which time it would be re-registered as common land. The Planning Inspector was of the view this would result in an overall increase of 285 m<sup>2</sup>. If the Council was unable to re-register the areas of land which were subject to temporary deregistration for whatever reason, the area of release land would be greater than that offered for replacement. The Inspector referred to the Defra Guidance on Common Land which sets out the policy is not to allow the stock of common land and greens to diminish. The Planning Inspector considered the Council's expression of its intention to re-register the land subject to temporary deregistration as not sufficient, since in the absence of a legal undertaking there is no way that the Council could legally guarantee that the land in question would be replaced.

The original Planning Permission had a three-year time limit for implementation which expired in 2017.

## **5. THE CURRENT 2021 S16 APPLICATION – THE PROPOSALS FOR THE SCHEME**

Following the Planning Inspectorate's decision to refuse the 2014 Application, the Council reviewed the alternative design and construction options and it now seeks to put forward a fresh Section 16 Application (and Section 38 Application) to enable the Scheme to progress which addresses the Planning Inspector's reasons for refusing the previous application.

The current Section 16 application comprises of:

- Modifications and reduction in the extent of common land to be deregistered (the “Release Land”); and
- new proposal of exchange land (which is in excess of that previously offered under the 2014 Section 16 Application) to compensate the loss of common land (the “Replacement Land”)

The Section 38 Application seeks consent for works to other parts of the Common as part of the Scheme and has been submitted alongside this Section 16 Application and should be read in conjunction with it in order to provide a full picture of the proposed Scheme.

In addition, a new application for planning permission (Planning Application Number 19/1042) was submitted in respect of the current Scheme. The proposal is for the construction of a new road bridge over the Wyrley and Essington Canal next to York’s Bridge and realignment of Norton Road, plus new parking bays for Pelsall North Common (adjacent to Public Footpath ALD0.149).

The application included the provision of an area of Replacement Land to the east of the A4124 Lichfield Road, to be served by a new vehicle access and parking area.

The planning permission for the Scheme has been approved by the Council’s Planning Committee and the decision notice was issued 15 December 2020 (**Appendix 14**).

The Council has obtained confirmation from the Planning Inspectorate dated 18 November 2019 (**Appendix 15**) that the Bridging Order dated 7<sup>th</sup> February 2014 (**Appendix 13**) is still valid.

The current Scheme was approved by Council’s Cabinet 13<sup>th</sup> December 2017 (**Appendix 16**). The Scheme requires deregistration of 4,925 m<sup>2</sup> of common land as follows:

- The footprint of the New Bridge (2,140 m<sup>2</sup>)
- Area of land to be used as Site compound during the construction of the New Bridge (1,940 m<sup>2</sup> )
- Material storage during the construction of the New Bridge (845 m<sup>2</sup>). Upon completion of the Scheme this land will be used to create a new car-park area for the benefit of users of the Common.

The Scheme requires the deregistration of a small part of Pelsall North Common. This equates to 4,925 m<sup>2</sup>, which is less than 0.02% of the total common land area of approximately 63 hectares. This will comprise of the footprint of the New Bridge together with the site compound, material storage areas required to facilitate the construction



phase of the Scheme shown on coloured orange on Plan MP/YB/S16/602-B (**Appendix 2**).

As the common land proposed for deregistration exceeds 200 m<sup>2</sup>, the deregistration process requires land to be offered in exchange for that which is to be released as common land. The Council has identified land known as High Bridges, Pelsall, the total area of this land is 7,491 m<sup>2</sup> shown coloured green on Plan MP/YB/S16/603-B (**Appendix 3**)

a) Description of the Release Land

The Release Land is situated on the extreme east edge of the Pelsall North Common alongside the B4154 Norton Road. The Release Land to the north of the Wyrley and Essington Canal is currently difficult to access and is of limited recreational use as a result. A large proportion of this area of the Release Land is covered by dense undergrowth with self-seeded shrubs and trees making walking in the area very difficult. The Release Land to the south of the canal comprises a few areas of scattered shrubs with an area of grassland. The area of Release Land located to the west of Norton Road is mown grassland which forms part of the public open area of Pelsall North Common, which is designated a Site of Importance for Nature Conservation (SINC) and Local Nature Reserve (LNR). The Common is also within the Green Belt.

The Scheme requires the deregistration of part of the Common for the provision of a site compound and storage of materials during the construction works. Upon completion of the scheme the land used for the site compound will be cleared, trees will be planted and the area will be landscaped. This landscaped area, although deregistered common land will be made accessible by the Council to the public for use in conjunction with the common land.

There is currently no parking facility available on the eastern side of the Canal. Upon completion of the Scheme the land which is to be used for material storage located to the south-west of the canal crossing will be converted into a new car-park providing six parking spaces which will serve the common. The lack of parking facilities was highlighted during the consultation process and the Council consider that it will encourage public access in this area and increase the use of the common. The provision of car-parking has been supported by the Council and provision of visitor facilities such as bird hides, dog waste bins and litter bins will bring additional benefits to the scheme.

The wider carriageway and provision of footway facilities across the New Bridge will make the area safer for all road users and will encourage greater access to the Site of Interest for Nature Conservation and the Local Nature Reserve situated to the north-west of the New Bridge.

The Proposed Scheme generally accords with the provisions of national and local planning policy, with no material considerations identified which indicate that a decision should be other than in accordance with the provisions of the Development Plan for Walsall Metropolitan Borough Council.

b) Description of Section 38 Improvements and Enhancement of the Common Land

In addition to the Release Land, consent is sought to carry out works of improvement and enhancement to other nearby sections of the common. The proposed s38 works to the Common are needed in order to enhance and improve the Common at its points nearest to residential houses, to improve and encourage access to the Common, to safeguard and boost biodiversity and create attractive and useable areas of common. The improvement and enhancement works to the Common Land are set out below:

- a) Mitigation Pond
- b) Reed-beds
- c) Drainage headwalls and manholes
- d) Crib Walling
- e) The construction of a new access track to the canal towpath. This will connect the towpath to the Common.

The above works will have the effect of improving and enhancing the Common. The Section 38 application outlines in detail these S38 Works and the benefits, enhancements and improvements the Council considers that they will have on the use of the Common. Location of the s38 works is shown on Plan MP/YB/S16/604 (**Appendix 5**).

c) Description of the Replacement Land

The proposed Replacement Land (“the Replacement Land”) is contained in an area of Council owned land known as High Bridges, which is approximately 0.83 hectares in size with housing adjoining the south-eastern boundary. The site is narrow and elongated, tapering from a depth of about 58 metres at its widest point in the south-eastern boundary to a point towards the north-east. The Replacement Land is 7,491 m<sup>2</sup> in area and bounded by the A4124 Lichfield Road to the north-west. The Wyrley and Essington Canal (SLINC) adjoins the site along its south-eastern boundary and the canal goes underneath the A4124 to the north of the site. The Replacement Land extends for a length of 280 metres and is 58 metres wide at its southern boundary. The proposed Land is within a 1000 metre radius of the Release Land. The Replacement land is shown coloured green on Plan MP/YB/S16/603-B (**Appendix 3**).

The Replacement Land is densely vegetated with mixed deciduous trees and large bushes between 3m and 6m in height. Typical tree species comprise Hawthorn in a hedgerow type plantation, particularly along the highway frontage, with occasional larger Ash trees located on the embankment profile. Low-lying bramble type undergrowth is present across the whole site. The north-eastern section of the Replacement Land lies at a lower level than the road, otherwise the site is generally level and at grade.

The Wyrley and Essington Canal has a local nature conservation designation SLINC assigned and has a 50 m bat buffer along its length. There is a 400 sqm area of land at High bridges which has not been included in the Replacement. A new car-park will be constructed on this area to facilitate the use of the Replacement Land as common land.

There are no recorded public rights of way across the area of the Replacement Land. Walsall Council has not received any claims in relation to the presence of unrecorded public rights of way at the location. There is no evidence of stiles or gates on the perimeter or immediately adjoining the land.

The planning history of the Replacement Land shows the existence of previous building development on part of the site. A row of terraced houses and a hotel once stood on the site but following demolition in 1976, the site could still contain some historic remains beneath the surface. The site was affected by shallow abandoned mine workings which were investigated and stabilised in 1983. A title investigation has not revealed any leases or licences other than a licence granted by Walsall Council to Shand Limited in January 1985 for a compound in connection with the reconstruction of the canal bridge. The licence ended in late 1985 (**Appendix 8**).

No public access is available from the eastern boundary alongside the Wyrley and Essington Canal. The towpath is on the far side of the canal away from the site boundary so there is no existing connection across the land. The A4124 Lichfield Road runs alongside the south-western boundary, which has sections of wooden fencing and very dense vegetation. This renders the Replacement Land as currently inaccessible to the public.

#### d) Improvements to the Replacement Land to facilitate its use as common land

The Replacement Land will be cleared of a number of existing trees, dense vegetation and shrubs and will become mainly scrub habitat and grassland to enable public access.

An Arbocultural Impact Assessment was commissioned by the Council in August 2019 to undertake a tree survey in accordance with the British Standard BS 5837:2012 for the area of Replacement Land. Trees were recorded and were assessed in line with the Visual Tree Assessment (VTA) method.

The Replacement Land has not been managed by the Council in recent times, apart from the *ad-hoc* cutting back of trees from the road. The Replacement Land comprises of dense self-set trees, almost all of which are of a similar age – not yet mature. This is consistent with the trees having grown up following the clearance of the buildings at the site in the latter part of the 20th century, although occasional straight lines among the hawthorn at the site suggest that some former planted hedges may have survived the clearance.

Hawthorn and goat willow are the most widespread species here, including some prominent specimens of the latter. Along with goat willow, another pioneer species, birch, is represented in the form of a handful of promising young trees. There are also a very small number of young oak trees with potential. A pocket of elm is growing near the canal bridge at the north-east end of the area.

The tallest trees at the site are the crack willows, these are mostly multi-stemmed trees growing on uneven ground with rather sparse crowns; some stems are leaning towards the road. Although no basal decay was observed, the recommendation has been made that those stems with a more pronounced lean towards the road be cut down to ground level as a safety precaution.

Existing sections of wooden fencing will be removed to make the Replacement Land publicly accessible from the highway. At the southern boundary of the Replacement Land there is an existing wooden fence along its length which delineates the boundary with the property at No 138 Lichfield Road.

The planning conditions require that habitats which are suitable for use by protected species, known or potentially likely to use the site and the adjacent canal, are retained, including birds, bats and water voles. The proposal is to provide a pathway on the Replacement Land and to provide good public access between the Replacement Land and the existing Common. A number of benches will be installed near to the canal to provide areas of seating.

A new car-park will be constructed on the land at High Bridges (shown coloured grey on Plan MP/YB/S16/603-B **Appendix 3**) for use by visitors to the proposed Replacement Land. The area allocated at High Bridges for the new car-park will be 400 m<sup>2</sup> and this area of land has been excluded from the current Section 16 and will not form part of the Replacement Land to allow for ease of maintenance as it will not be subject to the S38 consent regime. The new car-park area will remain in Council ownership.

The car-park will consist of seven parking bays including a disabled bay. The new car-parking area will be accessed from a single vehicular junction with the A4124 Lichfield Road. Visibility splays of 2.4 metres by 90 metres will be required and the sight lines should be kept clear of any landscaping above 600 mm in height.

## 6. Advertisement and Consultation 2019

The Council has complied with the guidance on consultation set out in A Common Purpose “A guide to Community Engagement for those contemplating management on Common Land” (2012) and Defra Common Land Consents Policy (November 2015).

Consultation on the current proposals took place between February and April 2019. Consultation packs including a covering letter, a fact sheet, visualisations, plus a paper questionnaire were distributed to over 16,000 residents in the surrounding area. A pre-paid envelope was included for residents and stakeholders to return completed questionnaires to the council.

A series of ten drop-in events were held in the Pelsall area from late February 2019 to April 2019, which engaged with residents living closest to the proposed scheme. Over 250 visitors attended during this period and were able to question officers to articulate their views and discuss their concerns face-to-face.

By the closing date, 1,051 responses had been received, comprising of 910 paper questionnaires and 141 online responses. This was 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.

## 7. Summary of the Consultation Responses (Appendix 17)

As with the previous consultation, there was found to be a mixture of responses. The vast majority of respondents (84%) support the proposals for the York's Bridge replacement scheme, stating that the scheme will bring great benefit in terms of safety and ease traffic flow along the route. Many mentioned the scheme is '*much needed*' and that the bridge '*should have been built years ago*' and want to see the bridge built as soon as possible. The additional landscaping and registration of Replacement Land is also welcomed and comments reflect a tone of excitement about this aspect. The provision of additional car-parking is also generally welcomed.

Those who do not support the scheme are consistent in their comments. Most feel that the new bridge, which would be able to carry 44 tonne vehicles, would result in a significant increase in traffic, in particular HGVs, which is the greatest concern of all. Many of those who do not support the scheme would prefer to see the existing York's bridge repaired and strengthened, whilst others say it needs to be demolished and a new bridge built in its location.

The Church Commissioners have also been consulted as the legal title to the Common reveals that they have right of the Lord Deanery of Wolverhampton. The Church Commissioners did not object to the Application (**Appendix 7**).

## **8. Other Issues**

Both the Ecological Impact Assessment carried out and the conditions attached to the planning permission recognise the importance of protecting the nearby Cannock Extension Canal which is designated as a SSSI.

As part of the planning application process for the Scheme, an Environmental Impact Assessment was undertaken in November 2018, the Council engaged Atkins as consultants to undertake the ecological surveys. The scope of the ecological surveys included an extended Phase 1 habitat survey, otter and water vole surveys, great crested newt surveys and bat transect, emergence and static surveys. In addition, the ecological surveys gave full consideration to the impacts on European Protected Species

The ecological surveys identified a number of protected species. These are the common lizard and grass snake, great crested-newts and breeding birds.

The ecological surveys undertaken on the Release Land also identified various flora and fauna some of which requires translocation or replacement.

There are therefore opportunities to maximise, incorporate and enhance biodiversity within the Common and this is set out in the related S38 Application. The overall conclusion of the Environmental Impact Assessment was that the works required under the Scheme are not predicted to result in any significant negative residual effects on designated sites, undesignated habitats or protected and notable species.

## **9. Policy and Guidance - Commons Act 2006 Guidance**

Guidance for Section 16 of the Commons Act 2006 can be found on the GOV.UK website at <https://www.gov.uk/government/publications/application-form-to-deregister-common-land-or-village-greens>.

Part 1 of the Commons Act provides Guidance to commons registration authorities and the Planning Inspectorate. There are also a number of Common land guidance sheets available at the following address: <https://www.gov.uk/government/publications/common-land-guidance-sheet>

### **The Assessment of the Application**

Section 16 (6) sets out the criteria to which the Secretary of State must have regard when assessing an application under these provisions.

### **Can the Objectives of the Scheme be achieved within a predictable time frame?**

As stated above Planning Application 19/1042 has been granted for the scheme and a Bridging Order dated 7<sup>th</sup> February 2014 has been obtained from the Secretary of State.

### **What are the Alternatives?**

The alternatives to the deregistration of common land for the purposes of the footprint of the new bridge, site compound, material storage area and a new car-park has been assessed in paragraph 3 above.

### Common land and village greens

The Secretary of State's decision will be based on the merits of the proposal, and will balance all the interests in the common, taking account of all views expressed. The criteria that the Secretary of State will have regard to be set out in section 16(6) of the Act.

These are: Notes to CLP 1 (11/2019)

- (a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it).
- (b) the interests of the neighbourhood.
- (c) the public interest, which includes the public interest in:
  - nature conservation
  - the conservation of the landscape
  - the protection of public rights of access to any area of land, and
  - the protection of archaeological remains and features of historic interest.
- (d) any other matter considered to be relevant.

Together with those matters set out in DEFRA Common Land Consents Policy 2015. The Council considers that the above tests have been met based on the detailed information set out in this Statement of case and the Section 16 Application to deregister the common land.

The Council considers that the requirements as set out in the Commons Land Consents Policy has been met as set out above and in the summary of the proposals below:

### **Summary of Proposals**

The amount of common land which is required for deregistration under the current application is significantly less than that required by the 2014 application. The previous application required deregistration of 9,725 m<sup>2</sup> of common land whereas the proposed

2021 application will require deregistration of 4,925 m<sup>2</sup> of common land, almost half the size.

The Replacement Land is owned by the Council and is currently not subject to any public rights of access. The location of the Replacement Land means it will connect well with the existing Common as well as the canal corridor.

Plan SECTION J-601/B (**Appendix 4**), provides an overview of the Release Land, Replacement Land and the Common together with their proximity.

- The Council conducted extensive consultation in 2013 and 2019 on deregistration of common land, the majority of those consulted have been in support of the Scheme and the proposals for deregistration and the Replacement Land.
- There are proposals for enhancement and improvement of the Common Land impacted by the proposals and the provision of new, Replacement Land to extend the Common.