

**West Area Planning Committee**

11th February 2014

**Application Number:** 13/03320/PA11

**Decision Due by:** 5th February 2014

**Proposal:** Application seeking prior approval for development comprising demolition of existing and erection of replacement footbridge under Part 11 Class A Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

**Site Address:** Footbridge at White House Road, **Appendix 1.**

**Ward:** Hinksey Park

**Agent:** N/A

**Applicant:** Network Rail

**Application Called in –** by Councillors – Price supported by Fry, Kennedy and Coulter for the following reasons: design not acceptable; development not disabled / cycle / buggy accessible

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**Recommendation:** Grant prior approval

**Main Local Plan Policies:**

**Oxford Local Plan 2001-2016**

CP1 - Development Proposals

CP8 - Design Development to Relate to its Context

CP9 - Creating Successful New Places

CP10 - Siting Development to Meet Functional Needs

CP11 - Landscape Design

CP13 - Accessibility

TR4 - Pedestrian & Cycle Facilities

TR8 - Guided Bus/Local Rail Service

NE15 - Loss of Trees and Hedgerows

SR9 - Footpaths & Bridleways

**Core Strategy**

CS4 - Green Belt

CS11 - Flooding

CS12 - Biodiversity

CS18 - Urban design, town character, historic env

### **Other Material Considerations:**

National Planning Policy Framework

### **Relevant Site History:**

None that relate to this site however there has been a recent application of a similar nature at Hinksey Lake Footbridge:

12/03282/PA11 - Application seeking prior approval for development comprising demolition of existing and erection of replacement footbridge under Part 11 Class A Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

This application was refused at West Area Planning Committee on 13<sup>th</sup> March 2013 and subsequently appealed. The appeal is still in progress and a decision has not yet been issued. A copy of the Council's statement is attached as **Appendix 2**.

### **Statutory Consultees:**

Natural England: no objection

Environment Agency: The application is deemed to have a low environmental risk

### **Other Representations Received:**

Oxgrow Community Action Group: Lack of information on how long the bridge will be closed for and what alternative arrangements will be made; to reach Oxgrow site from other than this footbridge can be a long detour that is not compatible with hard gardening work; if planting season is missed the whole garden would be set back and the Harvest Festival jeopardised; alternative provision for OxGrow volunteers needs to be made if construction takes more than a week; improved access over the bridge would be highly beneficial; cycle access would be highly beneficial too.

Co-Secretary of Oxgrow: Volunteers use the bridge for access and egress; hope every effort is made to minimise the time period during which neither bridge would be accessible to the public, particularly as the new bridge is being constructed offline; what alternative plans have been made for access to and egress from Oxgrow's community allotment?; public safety an issue; provision of lighting, non-slip steps, and wheel chair needed.

Hogacre Common Eco Park: Ramped access would be beneficial for wheeled users of Hogacre Common Eco Park and Pembroke College sports field; would the cycle channels on the drawings be implemented?; cycle racks on the roadward side of the bridge would be useful as would a gritting bin for winter application of grit to the bridge by the local community of users; would the steps/ramp have an anti-slip surface?; is lighting of the steps possible, to extend the daily hours of practical use of the bridge?

8 letters of comments were received from the following and are summarised below.

37 Newton Road, Magdalen College, 16 Kineton Road, 145 Marlborough Road, Flat 1 9A Parsons Place, 14 Abbey Road, 28 Marlborough Road, 22 Edith Road,

- Current bridge offers a chance for children and families to wave at the trains and watch the shunting and loading of trucks; bridge sides need to be kept open.
- A closed sided bridge will have a dramatic impact on the character of the site and enjoyment for local residents and families.
- Lack of access to the community garden during this important growing period would prove catastrophic to community project, and prevent the public enjoying the community resource that is Hogacre Common eco-park.
- The community would benefit from bridge which enables disabled and/or cycle access.
- The sides of the access steps or ramp and of the bridge need to be 'see-through' rather than solid for safety reasons in this remote location.
- Consideration should be given to providing ramps instead of steps for access by users of buggies, wheelchairs etc. At least the steps should be made as shallow in gradient and as easily accessible as possible.
- Pleased to see cycle troughs are included in the plans.
- Improved cycle parking would be helpful, as would lighting on the bridge.

#### **Determining Issues:**

- Siting
- Design
- Other

#### **Officers Assessment:**

##### **Site Description**

1. The application site (footbridge) lies at the end of the lane running off the corner of White House Road along the side of Grandpont Nursery and South Oxford Adventure Playground. The footbridge provides access to Pembroke College sports ground and Hogacre Common Eco Park to the west the railway line. **Appendix 1** refers.

##### **Proposal**

2. The proposal is for the demolition of the existing bridge and the erection of a replacement to the south of the existing bridge. The existing bridge would remain in place whilst the new bridge was constructed to and would be removed on its completion. As a result of the constraints of the location of the new bridge the steps would possess a dogleg as they do now in order to increase the height of the structure and maintain the links to the footpaths either side of the bridge. The steps would incorporate a wheel track along one side of each flight of steps which would enable cycles to be wheeled across footbridge.

3. The works are associated with the Great Western Mainline electrification programme which would see the electrification of train services between Oxford and London Paddington. The reconstruction of the bridge is required to allow sufficient height over the main line tracks to accommodate overhead line equipment associated with the electrification. The current bridge has a minimum clearance of 4.485m (at its lowest point) whilst the new bridge will have a clearance of 6.8m. Funding for the bridge is direct from the Department for Transport on the basis that it is a like for like replacement of the existing one.
4. The submission does not constitute a planning application, but rather an application for "*Prior Approval*" under the provisions of Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. An extract from the Order is attached as **Appendix 3** to this report.
5. Part 11 of the 1995 Order relates to works which are permitted by private Act of Parliament and which take them outside of normal planning control. In this case the relevant Act of Parliament which confers such powers is the Oxford and Rugby Railways Act 1845. Under the terms of Part 11 of the 1995 Order if the development in question is authorised by Act of Parliament, the principle of it cannot be challenged by local planning authorities. Rather local planning authorities can only object to the proposals and withhold "prior approval" on the grounds that the design and external appearance would injure the amenity of the neighbourhood, or that a better site is available. In this case the latter criterion clearly does not apply as there is no other more suitable location to link into existing footpaths.

### **Siting**

6. The existing bridge constitutes the only direct pedestrian link to Pembroke College sports ground and Hogacre Common Eco Park from the city. It is intended to remain in place whilst the new bridge is constructed so that disruption to users is kept to a minimum. The new bridge would retain its links to the footpaths either side of the railway. It is not therefore considered feasible that the footbridge could be located elsewhere. The principle of a new footbridge at this location is therefore supported.

### **Design**

7. The proposed bridge would be constructed in steel and would represent an updated version of the existing one. The bridge would have solid panels to a height of 1.5 with a 300mm high mesh panel above. It would also possess a wheeled track to the steps either side for cyclists to make more convenient use of the bridge. Currently there are no proposals for ramped access for disabled needs however as the bridge is intended only as a like for like replacement. The new bridge would permit disabled access to be added at a later date. The absence of disabled access is disappointing bearing in mind the limitations of the existing footbridge and the opportunity presented now to replace it with a structure which provides for all sections of the community.

8. In this context there has been much concern expressed over the fact that disabled access is not to be provided. In support of its position that it is not obliged to make such provision, Network Rail has again drawn officer's attention to what it considers to be a very similar case at South Holland District Council where a replacement footbridge was refused by the local planning authority and was appealed. The appeal decision letter is attached now as **Appendix 4** to this report. The main issue raised by the Council and third parties in that case was that access for all was not being provided. The Inspector in his decision pointed out however that planning permission was not required in the normal way and therefore the issue of concern to the local authority did not fall for him to consider under the Part 11 Prior Approval process. Nevertheless in the case of the Hinksey footbridge committee took the view that withholding prior approval could be justified as the design did not incorporate disabled access. The local planning authority's case to that appeal is attached as **Appendix 2**. The appeal was lodged soon after committee's decision to refuse prior approval in March 2013. It is particularly disappointing at that the time of writing it remains undetermined as the decision in that case would be of assistance as a material consideration to this latest proposal.
9. Notwithstanding committee's determination of the Hinksey case, legal advice remains to exercise caution in considering whether to withhold prior approval for the same or similar reasons as at Hinksey, as in terms of its design and appearance the new bridge could not of itself be said to be injurious to the amenity of the neighbourhood. If however it was considered to be injurious, then clearly the structure would be capable of modification. On balance officers have concluded, as previously, that the Council's case in withholding "prior approval" on these grounds would be weak. Withholding prior approval it is most likely to result in an appeal although there remains the possibility of a Judicial Review on the basis of taking account of an immaterial consideration.

### **Other Issues**

10. The application site is in close proximity to the Iffley Meadows and Magdalen Grove Sites of Special Scientific Interest (SSSIs). Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, would not damage or destroy the interest features for which these sites have been notified. In any event issues of biodiversity cannot be taken into account in committee's determination of the case as it falls outside the scope of Part 11 of the Town and Country Planning (General Permitted Development) Order 1995 under which provisions the case is submitted.

### **Conclusion:**

The construction of the new footbridge to facilitate electrification to London Paddington has brought with it an opportunity to provide a better quality footbridge to Pembroke College sports ground and Hogacre Common Eco Park, and provide disabled access. Whilst facilities for cyclists are improved over current arrangements, it is disappointing that the opportunity to provide disabled access which might

reasonably be expected has not been forthcoming. That said, officers would not recommend that prior approval be withheld in this case.

### **Human Rights Act 1998**

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant prior approval, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

### **Section 17 of the Crime and Disorder Act 1998**

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to grant prior approval, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

### **Background Papers:**

**Contact Officer:** Lisa Green

**Extension:** 2614

**Date:** 23rd January 2014