

Site at Lake Street, Oxford, OX1 4RD

APPEAL BY MR IAN WHEATON AGAINST THE REFUSAL OF
PRIOR APPROVAL FOR THE DEMOLITION OF THE
EXISTING FOOTBRIDGE AND ERECTION OF A
REPLACEMENT FOOTBRIDGE

WRITTEN STATEMENT BY THE LOCAL
PLANNING AUTHORITY

Local Planning Authority Reference:
12/03282/PA11

Planning Inspectorate Reference:
APP/G3110/A/13/2196202



1. Appeal Site and Locality

- 1.1 The appeal site (footbridge) lies to the south of Oxford railway station, immediately west of Hinksey Lake, off Lake Street. It links South Hinksey Village to Oxford City which can only otherwise be accessed from the city via the A34 section of the Oxford Ring Road. The footbridge forms an extension to a further footbridge which crosses the lake itself. **Appendix A** refers.

2. Relevant Planning History

- 2.1 There is no relevant planning history.

3. Appeal Proposal

- 3.1 An application was received on 19th December 2012 seeking prior approval under the provisions of Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 for the demolition of the existing bridge and the erection of a replacement bridge immediately adjacent to it which would incorporate the flights of steps to its eastern and western ends and was given the reference 12/03182/PA11.
- 3.2 Receipt of the application was advertised in the City Council's weekly list of planning applications received and the Local Planning Authority consulted the owners/occupiers of the surrounding area by the erection of site notices in the immediate vicinity of the bridge inviting comments by 31st January 2013.
- 3.3 Amended plans were received to show a wheeled track along one side of each of the flight of steps which would enable cycles to be wheeled up and over the footbridge.
- 3.3 Representation, including an online petition which at the time of receipt had 434 signatures, were received all of which have previously been submitted with the Questionnaire.
- 3.4 Statutory consultee representations were received from the Environment Agency Thames Region and South Hinksey Parish Council. These have previously been submitted with the Questionnaire.
- 3.5 The application was originally scheduled to be determined by officers using delegated powers. However, on this occasion elected members decided to determine the application themselves at the West Area Planning Committee due to concerns that the design of the new bridge would injure the amenity of the local neighbourhoods by failing to be constructed in a way that would be disabled/cycle/buggy accessible when an alternative design would appear to be possible that avoided injury to local amenity in this way and would not be substantially more expensive. The Council subsequently determined not to grant prior approval for the reason set out in the decision notice dated 26th March 2013 which can be found at **Appendix B** and which is amplified below.

4. Relevant Planning Policy

- 4.1 National Policy Guidance

- 4.1.1 With regards to national policy guidance, the National Planning Policy Framework (NPPF) is relevant to the determination of the appeal.
- 4.1.2 As of 27th March 2012 the NPPF replaced various Planning Policy Statements (PPS's) and Planning Policy Guidance Notes (PPG's) which are now withdrawn.
- 4.1.3 The NPPF makes clear that for the purposes of decision taking, the policies of the development plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework (paragraph 211).
- 4.1.4 It recognises that development plan policies may need to be revised to take into account the policies within the Framework (paragraph 212), but for 12 months from the date of publication, decision-takers may continue to give full weight to the relevant development plan policies adopted since 2004 even if there is a limited degree of conflict with the Framework (paragraph 214). The NPPF sets out a presumption in favour of sustainable development, which means approving applications in accordance with the development plan.

4.2 The Development Plan

- 4.2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that planning applications and appeals should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.2.2 The Development Plan for the City of Oxford comprises the Oxfordshire County Structure Plan 2016 (adopted 21st October 2005); Oxford Core Strategy 2026 (adopted 14th March 2011), the Oxford Local Plan 2001-2016 (adopted 11th November 2005), and Sites and Housing Plan 2011-2026 (adopted February 2013).

Oxfordshire Structure Plan 2016 (adopted 21st October 2005)

- 4.2.3 The Oxfordshire Structure Plan was adopted on the 21st October 2005, but was superseded by the South East Plan. However, three policies in the Oxfordshire Structure Plan 2016 have been saved beyond the publication and subsequent revocation of the Regional Strategy for the South East (except for policy NRM6) of the South East Plan, although these are not of relevance to this appeal.

Oxford Core Strategy 2026

- 4.2.4 The Oxford Core Strategy 2026 was adopted in March 2011 and provides the overarching document for the Local Development Framework. As a result of its adoption, the policies contained within this document replaced a number of the saved policies within the Oxford Local Plan 2001-2016.
- 4.2.5 The following policies are considered relevant to this appeal

- **CS4** - Green Belt
- **CS11** - Flooding

- **CS12** - Biodiversity
- **CS18** - Urban design, town character, historic environment

4.2.6 Copies of these policies and the supporting text were included with the appeal questionnaire.

Oxford Local Plan 2001-2016 (adopted 11th November 2005)

4.2.7 The following policies of the Oxford Local Plan 2001-2016 are considered relevant to this appeal.

- **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
- **NE15** - Loss of Trees and Hedgerows
- **NE20** - Wildlife Corridors
- **SR9** - Footpaths & Bridleways

4.2.8 These policies were saved in accordance with the Planning and Compulsory Purchase Act 2004 on the 4th June 2008. Copies of all the policies and their supporting text were sent with the appeal questionnaire.

Sites and Housing Plan 2011-2026 (adopted February 2013)

4.2.9 The Sites and Housing Plan was adopted on the 18th February 2013 following an examination in public. The policies within this document have now superseded a number of the saved policies of the Oxford Local Plan 2001-2016. However there are no policies contained within the Sites and Housing Plan 2011-2026 that are relevant to this appeal.

4.3 Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

4.3.1 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 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. An extract from the Order is attached as **Appendix C**.

5. Amplification of Reason for Refusal

5.1 The proposal was refused for the following reason:

- *The design of the proposed development would injure the amenity of the neighbourhood and of residents wishing to utilise the footbridge by failing to provide fair and equal access for people with disabilities, contrary to policy CP.13 of the adopted Oxford Local Plan 2001 to 2016.*

5.2 The Council was clear that the scope of what should be considered to include the amenities of the neighbourhoods on either side of the proposed development clearly encompasses the ability of the public (including those with disabilities) to make use of those neighbourhoods and any current or future routes between them, and that granting prior approval for any development which failed to provide the required access for those with ambulant disabilities would damage that amenity. Whilst the Council carefully noted and had regard to the Spalding appeal decision (copy attached at **Appendix D**) it specifically considered that decision letter and concluded that it did not support the position adopted by the Appellant. In particular it may be noted that the decision does not support the proposition that matters such as access for the disabled are not pertinent to an appeal such as this. At para 4 the Inspector noted the argument that the Order should bear a wide interpretation. He proceeded to decide, on the merits of that particular set of circumstances, that even the widest interpretation did not result in dismissal of that appeal. He did not decide that the Order did not bear the wide interpretation contended for. Indeed, had he decided that the Order bore a more restricted meaning he would not have considered the impact of the development against that wide interpretation. It must therefore follow that, far from supporting the Appellant's position, the Spalding decision supports the Local Planning Authority (LPA). It establishes that access for the disabled is a matter that must be considered in the context of such a prior approval application/appeal.

5.3 The Council would also draw attention to section 149 of the Equality Act 2010 which postdates much of the material that the Appellant relies upon and, regrettably, much of the Appellant's apparent thought processes. The Technical Guidance issued by the Equality and Human Rights Commission is issued under s13 of the 2006 Equality Act. The Courts have held that compliance with that guidance is relevant in demonstrating compliance with the s149 duty and that a body subject to that duty will need to justify its departure from that guidance ([2008]EWHC2062 (Admin) para 22 per Moses LJ. As para 1.6 of that guidance makes clear the s149 duty applies to all public authorities and those discharging public functions subject to exceptions. It seemed clear to the Council that this applied both to the Council itself and to the Secretary of State (and anyone exercising the functions of the Secretary of State) as regards Part III T&CPA 90 functions.

5.4 The core of the s149 duty is the need to have due regard to the need to:

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;

- (b) Advance equality of opportunity between persons who share a relevant protected characteristic (which includes disability) and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.5 In order to comply with that statutory duty in accord with the Technical Guidance the LPA is strongly of the view that this appeal should be dismissed. The Appeal proposal necessitates an abdication of all three elements.

6. Conclusion

6.1 On the basis of a careful consideration by elected members of the application, relevant local and national planning policies, the advice of their planning and law officers, the representations made by the Appellant and members of local communities on both sides of the railway line the Council decided to refuse to grant prior approval for this application to construct a bridge which would injure the amenity of the neighbourhood because it would be inaccessible to users with ambulant disabilities and not in compliance with the Equality Act 2010. The Inspector is, therefore, respectfully requested to dismiss this appeal for the reasons given.

Appendix B

12/03282/PA11 Decision Notice

City Development
Planning Control and Conservation

E: planning@oxford.gov.uk F: 01865 252144

St Aldate's Chambers
109 – 113 St Aldate's
Oxford OX1 1DS

Central Number 01865 249811

www.oxford.gov.uk



To: Network Rail
Mr Ian Wheaton
Wales And Western Town Planning
Temple Point
Redcliffe Way
Bristol
BS1 6NL

APPLICATION FOR PLANNING PERMISSION
Town and Country Planning Act 1990

DECISION DATE: 26th March, 2013

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 (Amended plans) (PLEASE NOTE THIS IS NOT A PLANNING APPLICATION BUT A NOTIFICATION SUBMITTED BY NETWORK RAIL FOR PRIOR APPROVAL BY OXFORD CITY COUNCIL)

AI: Hinksey Lake Footbridge Lake Street Oxford

NOTICE OF REFUSAL OF PLANNING PERMISSION

12/03282/PA11

Following consideration of the application in respect of the proposal outlined above it was resolved to **REFUSE PLANNING PERMISSION** for the following reasons:-

REASONS :

- 1 The design of the proposed development would injure the amenity of the neighbourhood and of residents wishing to utilise the footbridge by failing to provide fair and equal access for people with disabilities, contrary to policy CP.13 of the adopted Oxford Local Plan 2001 to 2016

INFORMATIVES :

- 1 Environment Agency has the following comments to make.



www.oxford.gov.uk

From a review of the existing and proposed General Arrangements, reference Qg112501/H/101 rev A (existing) and 102 rev B (proposed), it seems that the works will be largely confined to the track area and there is no suggestion that there will be any ground remodelling. We wish the applicant to confirm that this is the case.

Additionally, we have a regulatory role in considering any works within 8m of Main River watercourses. From our discussions it seems there will not be a need to cross or affect local watercourses, however if this is proposed then there may be a need to apply for what is known as a Flood Defence Consent. Main river maps can be viewed on our website for screening purposes or we can supply a higher resolution plan if required. There may also be a need to consider Flood Defence Consent for the compound, depending on its location. We will expect the applicant to carry out all relevant ecological surveys and provide mitigation as necessary

PLEASE NOTE All local plan policies and proposals which are relevant to this decision are specified in the list below which forms part of this decision notice. However, in circumstances whereby this notice relates to a refusal of planning permission, the particular policies and proposals in each local plan which form the basis for the Council's refusal to grant planning permission are referred to in the reasons for refusal set out above.

CP1 - Oxford Local Plan 2001-2016

Development Proposals - Sets out key criteria expected from new development.

CP8 - Oxford Local Plan 2001-2016

Designing Development to Relate to its Context - Sets out criteria required from development to demonstrate that it will respect the local context.

CP9 - Oxford Local Plan 2001-2016

Creating Successful New Places - Sets out criteria required from development to create a successful public realm.

CP10 - Oxford Local Plan 2001-2016

Siting of Development to Meet its Functional Needs - Sets out criteria required from development to ensure functional needs are met.

CP11 - Oxford Local Plan 2001-2016

Landscape Design - Requires development to incorporate appropriate hard and soft landscaping.

CP13 - Oxford Local Plan 2001-2016

Accessibility - Requires development to make reasonable provision for access by all members of the community.

TR4 - Oxford Local Plan 2001-2016

Pedestrian and Cycle Facilities - Seeks to secure pedestrian and cycle facilities as part of development proposals. Sets cycle parking standards.

NE15 - Oxford Local Plan 2001-2016

Loss of Trees and Hedgerows - Protects trees and hedgerows if their loss would have a significant impact on public amenity or ecological interest.

NE20 - Oxford Local Plan 2001-2016

Wildlife Corridors - Sets out policy approach to designated Wildlife Corridors.

SR9 - Oxford Local Plan 2001-2016

Footpaths & Bridleways - Seeks to safeguard, improve or add to the Public Rights of Way network.

CS4_ - Core Strategy

Green Belt - Sets out the approach to development in the Green Belt and outlines the criteria to be met for land to be released from the Green Belt.

CS11_ - Core Strategy

Flooding - Sets out approach to development in the flood plain and other flood zones, and to reducing flood risk from all development.

CS12_ - Core Strategy

Biodiversity - Requires development to maintain and where appropriate enhance biodiversity.

CS18_ - Core Strategy

Urban design, townscape character and the historic environment - Sets out urban design principles and requires development to respect Oxford's unique townscape and historic environment.

MICHAEL CROFTON - BRIGGS
Head of City Development

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES ACCOMPANYING THIS NOTICE

GUIDANCE NOTES FOR APPLICANTS WHERE AN APPLICATION HAS BEEN REFUSED

You are reminded that you can submit another similar application for development without needing to pay a fee provided it is submitted by the same applicant on the same site and within 12 months of the date of registration of the original application.

The Council offers pre-application advice that is free for householder applications but a fee is required for all other types of application. You can see further information on pre-application advice and download the necessary form to apply for this at www.oxford.gov.uk/PageRender/decP/Pre-Application_Advice_ooow.htm

1. PLANNING APPLICATIONS AND APPLICATIONS FOR LISTED BUILDING CONSENT AND CONSERVATION AREA CONSENT.

1. If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission, he or she may appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990 (or Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 8 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings in conservation areas), within six months of the date of this notice. **If the refusal is against a Householder application, received after 5th April 2009, the appeal must be lodged within 12 weeks of this notice.** (Appeals must be made on a form which is obtainable from the The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 8372) www.planning-inspectorate.gov.uk). The Secretary of State has power to allow a longer period for the giving of notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears that permission for the proposed development could not have been granted by the Local Planning Authority having regard to the statutory requirements, to the provision of the development order, and to any directions given under the order. The Secretary of State does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by her or him.
2. If permission is refused by the Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he or she may serve on the Oxford City Council a purchase notice requiring the Council to purchase her or his interest in the land under Section 137 of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings and buildings in conservation areas.
3. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to her or him. The circumstances in which such compensation is payable are set out in Section 114 and Part II of Schedule 3 of the Town and Country Planning Act 1990 (or Section 27 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Regulation 9 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of listed buildings).

2. APPLICATION FOR CONSENT TO DISPLAY ADVERTISEMENTS

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse consent, he or she may appeal to the Secretary of State for the Environment in accordance with Regulation 17 and Part 3 of Schedule 4 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 within eight weeks of the receipt of this notice. (Appeals must be made of a form which obtainable from The Planning Inspectorate, Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel. 0117 372 8372) www.planning-inspectorate.gov.uk)

Appendix C

PART 11 DEVELOPMENT UNDER LOCAL OR PRIVATE ACTS OR ORDERS *Class A*

A. Permitted development

Development authorised by—

- (a) a local or private Act of Parliament,
- (b) an order approved by both Houses of Parliament, or
- (c) an order under section 14 or 16 of the Harbours Act 1964⁽²⁾ (orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc. of harbours)

which designates specifically the nature of the development authorised and the land upon which it may be carried out.

A.1 Condition

Development is not permitted by Class A if it consists of or includes—

- (a) the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam, or
- (b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic,

unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.

A.2 Prior approvals

The prior approval referred to in paragraph A.1 is not to be refused by the appropriate authority nor are conditions to be imposed unless they are satisfied that—

- (a) the development (other than the provision of or works carried out to a dam) ought to be and could reasonably be carried out elsewhere on the land; or
- (b) the design or external appearance of any building, bridge, aqueduct, pier or dam would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury.

A.3 Interpretation of Class A

In Class A, “appropriate authority” means—

- (a) in Greater London or a metropolitan county, the local planning authority,
- (b) in a National Park, outside a metropolitan county, the county planning authority,
- (c) in any other case, the district planning authority⁽³⁾.

Appendix D



Appeal Decision

Site visit made on 22 September 2009

by **Peter Eggleton MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.qsi.gov.uk

Decision date:
14 October 2009

Appeal Ref: APP/A2525/A/09/2105440

Steppingstone Footbridge, Spalding, Lincolnshire PE11 1EY.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Network Rail against the decision of the South Holland District Council.
- The application Ref H16/1149/08, dated 31 October 2008, was refused by notice dated 24 December 2008.
- The development proposed is a replacement bridge.

Decision

1. I allow the appeal and grant approval under the provisions of Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 for the design and external appearance of the bridge at Steppingstone Footbridge, Spalding, Lincolnshire in accordance with the terms of the application Ref H16/1149/08, dated 31 October 2008, and the plans submitted therewith, subject to the following condition:
 - 1) No development shall take place until details of the paint to be used on the external surfaces of the bridge have been submitted to and approved in writing by the local planning authority. The bridge shall be painted in accordance with the approved details prior to the first public use of the bridge.

Main Issue

2. The main issue is the effect of the proposal on the amenity of the neighbourhood.

Reasons

3. The Council determined this application in accordance with the requirements of Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. I have considered the appeal on this basis. In the circumstances of this case, the Order does not allow for the construction of a bridge unless prior approval of the detailed plans and specifications has been obtained. This should not be refused nor should conditions be imposed unless the bridge could reasonably be erected elsewhere on the land; or the design or external appearance would injure the amenity of the neighbourhood and could be modified to avoid such injury.

4. The existing bridge forms part of a footpath network and therefore there is no dispute with regard to its location. The only matter for consideration therefore is whether the proposal would be harmful to the amenity of the neighbourhood. The proposed bridge would be considerably shorter than the existing and this would reduce its prominence. Although the station is nearby, I did not find it to be closely related visually. The bridge would stand in isolation from buildings and structures that retain the historic form and character associated with the bridge to be removed. Although the bridge would have a very simple, functional design, I do not consider that this would be out of keeping with its surroundings. I am satisfied that it would sit comfortably within its setting and would not detract from the character or appearance of the area. Although the Order refers to the amenity of the neighbourhood and it has been suggested that this could be widely interpreted, the increased width and more functional design, in comparison to the existing structure, would improve access and safety. I am not satisfied that even the widest interpretation of the Order would result in the conclusion that the proposed bridge would cause injury to the amenity of the neighbourhood. It therefore satisfies the conditions of the Order.
5. I have considered all the concerns raised by the Council and third parties. I accept that an alternative design and the use of different materials could potentially enhance the character and appearance of this area. I also agree that a railway crossing in this location should provide access for all. However, given my main findings, the proposal meets the requirements of the Order and does not require planning permission. As such, these are not matters that fall for me to consider. The appellant has agreed that provision could be made to allow ease of use by cyclists and has advised that a condition to require this would be acceptable. Although I would encourage such provision, the Order is clear that conditions should address concerns with regard to any injury to the amenity of the neighbourhood and as this proposal would provide enhanced access, I am not satisfied that such a condition would fall within the scope of the Order. I agree however that anti-vandalism paint should be used and this is a matter that I can control by condition, as is the final colour of the bridge. I have therefore included a condition which requires that the finish of the bridge be agreed with the Council.
6. As this proposal is not an application for planning permission, I am limited as to the matters that I can take into account in terms of both the concerns expressed and the matters put forward by the appellant. On the basis of the application before me, I conclude that subject to the condition described above regarding the finish of the structure, as the proposal would not result in injury to the amenity of the neighbourhood, prior approval should not be withheld. I therefore allow the appeal.

Peter Eggleton

INSPECTOR

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