City Development

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 ERECTIONOF 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 A**



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12/03282/PA11 – Hinksey Lake Footbridge



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Ordnance Survey 100019348

**Appendix B**

12/03282/PA11 Decision Notice



**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**](http://www.legislation.gov.uk/uksi/1995/418/schedule/2/made#f00030#f00030)**)(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**](http://www.legislation.gov.uk/uksi/1995/418/schedule/2/made#f00031#f00031)).

**Appendix D**



