

Officer's Assessment Sheet

Application Number NOT/2025/0708
Type Prior approval - Network Rail (Part 18)
Location Cradle Bridge Level Crossing Conningbrook Park,
Kennington Road, Willesborough
Proposal Prior approval of the design and siting of a stepped 'Flow
Bridge' footbridge at Cradle Bridge Level Crossing pursuant
to Part 18 (Class A) of Schedule 2 of the Town and Country
Planning (General Permitted Development) Order 2015.
Case Officer Matthew Durling
Registration Date 07/04/2025 **Consultation Ends** 15/05/2025
Valid Date 07/04/2025 **Deadline Date** 10/07/2025
Applicant Nicola Perry
Agent

Environmental Impact Assessment ---

Is EIA Required: No Reason:

RECOMMENDATION

Prior Approval Is Given

Proposal

1. The application seeks the prior approval of the local planning authority (LPA) to the detailed plans and specifications of a proposed railway footbridge (FLOW bridge) at the site known as Cradle Bridge Level Crossing.
2. The FLOW bridge would link the Conningbrook Lakes Country Park and existing Phase 1 and proposed Phase 2 Conningbrook Lakes development (comprising up to 470 homes) on the eastern side of the railway with the major mixed use residential-led development (comprising up to 725 homes) under construction on land to the west of the railway (reference 19/00025/AS). This includes a primary school and local centre with retail space.
3. The bridge would be a standardised FLOW bridge design. The applicant states that the modular design offers benefits in terms of construction and maintenance and allows for smaller components to be transported to site and installed or replaced as necessary. The project is expected to start in March 2026.
4. The application is submitted by Network Rail as the statutory undertaker for maintaining and operating railway infrastructure in England. Network Rail are engaged in discussions with the landowners on both sides of the railway to gain permission to construct and land the bridge.

Site and Surroundings

5. The site is located at the existing Cradle Bridge pedestrian crossing which forms an at-grade crossing over the Ashford to Ramsgate railway line. The existing crossing comprises a timber boarded surface accessed via stiles at both sides of the railway boundary. The eastern side of the railway comprises the Conningbrook Lakes Country Park. This land is owned by Brett's with a long lease to Ashford Borough Council. The western side of the railway benefits from planning permission for a major mixed use residential-led development (reference 19/00025/AS) which is currently under construction and referred to here as Conningbrook Park. Part of this land is owned by Redrow and part by Quinn Estates Limited. To the south-east is the Great Stour River beyond which are wetlands and agricultural land.
6. The existing at-grade crossing is a Public Right of Way (PROW) and forms part of footpath AU22 which runs east-west from the site of the recently approved Conningbrook Park development and crosses the railway via existing gates and continues into the country park.
7. The site is not subject to any statutory or non-statutory nature conservation designations. The closest statutory designation is the Ashford Green Corridors Local Nature Reserve (LNR) which is located 1.4km to the southwest of the site. The closest non-statutory designation is the Great Stour, Ashford and Fordwich Local Wildlife Site (which includes the Great Stour River corridor) to the east. The part of the site located to the east of the railway is within the Ashford Biodiversity Opportunity Area.
8. The site comprises relatively flat land within Flood Zone 1. It is not subject to any statutory or non-statutory landscape designations. The Kent Downs National Landscape is approximately 1km to the north.

Background

9. The approved development ref. 19/00025/AS includes full planning permission for 288 homes and a serviced plot for a primary school plus outline planning permission for up to 437 homes on land forming part of Local Plan site allocation S2. It is subject to a s106 legal agreement which includes obligations relating to the delivery of a footbridge (subject to costs as explained below) which is required to be open for use no later than the occupation of more than 288 dwellings within Conningbrook Park or the expiry of four years from occupation of the first dwelling. The requirement for the bridge stems from site allocation policy S2(d).
10. The delivery of the bridge is subject to a maximum cost cap and in the event that delivery of the bridge would exceed the cap of £4,000,000, index-linked, the s106 requires a payment to instead be made to the Council to deliver alternative highway measures relating to the improvement and/or provision of public rights of way footpaths cycle paths bridge/bridges or highway capacity improvements serving the development.
11. Planning permission was granted for a footbridge in 2023 (ref. 22/01041/AS); however it has been demonstrated that it would exceed the cost cap and cannot be delivered in accordance with the terms of the s106 legal agreement. The developer is seeking a variation to the legal agreement to facilitate the delivery of an alternative bridge, subject of this prior approval application, by Network Rail.

12. The proposed bridge would replace the existing at-grade pedestrian crossing known as the Cradle Bridge level crossing which forms part of adopted PROW AU22. The crossing is one of two that crosses this section of the Ashford to Ramsgate railway. The other is approximately 300 metres to the north and forms part of adopted PROW AU17 and is known as the Bolleaux crossing. When operational, the footbridge will connect footpath AU21 from the west to AU22 within the country park.

13. In addition to the requirement to deliver the bridge subject of this application, the s106 pursuant to planning permission 19/00025/AS also identifies the need to either divert or stop up PROW AU17 (which lies outside of the Conningbrook Park boundary) to ensure the at-grade crossing to the north of the Conningbrook Park site is closed or to ensure the connection from that development to PROW AU17 is stopped up.

14. It is important to note that public rights of way can only be created, extinguished or diverted by Orders that are separate to the planning application process and therefore it cannot be assumed they will be made. For this reason the s106 legal agreement refers to the use of 'reasonable endeavours' in relation to changes to the public right of way network. It is however envisaged the provision of the footbridge will also result in the diversion of PROW AU21 and AU22 and diversion or extinguishment of AU17 where it crosses the railway (known as the Bolleaux crossing) which, again, cannot be assumed due to the separate process.

15. Once the bridge has been built it is envisaged that AU17 is diverted to AU21/22, both at-grade footpath crossings over the railway line are closed and stopped up and the bridge forms the single crossing over the railway line.

16. The closures, and the requirement for temporary signage to divert users to the rail crossing at AU17 for the duration of the closure will necessitate separate applications to KCC and this is outside the remit of this prior approval application. The KCC PROW Officer has confirmed that arrangements are progressing. If the proposals are unopposed once KCC provide the notice of the Order being made for 28 days, then the Order may be confirmed by KCC. If there are objections which cannot be negotiated, then the Secretary of State will deal with the matter by way of a hearing or inquiry.

Relevant History

17. The following is relevant to this prior approval application;-

Conningbrook Park (19/00025/AS): Hybrid planning application seeking:

- i) Outline planning permission (all matters reserved except for points of access) for up to 437 dwellings; formal and informal open space incorporating SuDS; and associated services, infrastructure and groundworks; and
- ii) Full planning permission for the erection of 288 dwellings; the creation of serviced plot of land to facilitate the delivery by Kent County Council of a two form entry primary school with associated outdoor space and vehicle parking; a new Bowls Centre including a clubhouse of 292 sq.m, ancillary building and a bowling green; a local centre to provide 280 sq.m of A1 (retail), 180 sq.m of A1 (retail food store), 100 sq.m A3 (café), 75

sq.m A5 (takeaway), 190 sq.m D2 (gym/fitness studio space) open space incorporating SuDS; vehicle parking; and associated services, structural landscaping, infrastructure and groundworks. GRANTED 2022

Cradle Bridge Level Crossing (22/01041/AS): Full planning application for the construction of a footbridge crossing over the railway line and associated works. GRANTED 25/09/2023

Consultations

18. PPG states that “Statutory undertakers carrying out development under permitted development rights are not subject to the same publicity requirements as a full planning application. However, public consultation may be beneficial if development is expected to have a particularly significant impact. In such instances consultation could be initiated by either the local planning authority or the statutory undertaker. Any consultation will need to allow adequate time to consider representations and, if necessary, amend proposals.”

19. The application has been subject to formal statutory and non-statutory consultation comprising the display of site and press notices and notification letters sent to occupiers of buildings in the vicinity of the application site. A summary of the consultation responses received is below:

Kennington Community Council: object as summarised below:

- Providing proper pedestrian access between amenities on both sides of the railway and to the wider area from Kennington to Willesborough, is essential.
- Lack of step free or ramped access unsatisfactory and discriminatory and will disadvantage large section of community.
- Disability Impact Assessment is wrong and should take account of future circumstances.
- To be compliant with the Public Sector Equality Duty the Assessment must take into account the future circumstances as documented in the approved planning applications on both sides of the railway.

Neighbours – 21 neighbours consulted; 5 objections received as summarised below:

- Bridge is ugly.
- No need for it as there is an existing level crossing and new footpath using the road bridge to the west.
- Lack of step free or ramped access unsatisfactory and discriminatory and will disadvantage large section of community.
- Ramped access would allow parents with younger children in pushchairs to walk to primary school.
- Disability Impact Assessment is wrong and should take account of future circumstances;
- Direct onward access to Wye required to mitigate for closure of the Bolleaux Crossing.

Planning Policy

20. Applications for prior approval are not assessed against the Development Plan and therefore the following are relevant:

- GPDO
- National Planning Policy Framework (NPPF) Revised 2024
- Planning Practice Guidance (PPG)

Assessment

21. This application has been submitted under the provisions of Class A of Part 18 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). The GPDO provides that certain classes of development are “permitted development” meaning that no express permission is required. A number of classes of permitted development require an application to be made to the local planning authority for “prior approval”. Prior approval means that a developer has to seek approval from the LPA that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in the GPDO.

22. Part 18 relates to ‘Miscellaneous development’ and Class A states that, subject to conditions, the following works are ‘permitted development’:

A. 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 (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.

23. Network Rail have advised that the proposed development comprises operational railway development and is authorised by a combination of the South Eastern Railway (Ashford, Canterbury, Ramsgate & Margate) Act 1844 and the South-eastern Railway Act 1836.

24. Based upon the background information provided by Network Rail I am satisfied that the proposed works fall within Class A of Part 18 of the GPDO. In effect, the principle of the provision of this bridge is established under the above Acts, and the GPDO states that it is ‘permitted development’ subject to conditions. These conditions are explained below.

Conditions

25. The proposals constitute operational railway development for which permission is granted under Part 18 of the GPDO subject to a condition A.1 which states that the erection of any bridge (in addition to other specified structures) is not permitted “unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained”.

26. Permission is also granted under Part 18 of the GPDO subject to a condition A.2 which sets out the extent of matters which may be considered as part of this prior approval process. It states:

“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”.

27. An application for prior approval is not an application for planning permission but an application for the authority’s determination as to whether prior approval of siting and appearance is required and these are considered in turn below. The PPG states that prior approval is a light-touch process which applies where the principle of the development has already been established (Paragraph: 028 Reference ID: 13-028-20140306) and an LPA cannot consider any other matters when determining a prior approval application (Paragraph: 026 Reference ID: 13-026-20140306).

Whether 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 [A.2(a)]

28. Network Rail confirm that a Passive Level Crossing Risk Assessment undertaken in 2022 recommended replacement of the Cradle Bridge Level Crossing with a bridge. The need for the bridge is therefore established. The proposed FLOW bridge is proposed to be sited in the location of the existing at grade crossing and to connect with the existing alignment of the PROW on both sides of the railway.

29. The proposed site has been established as an appropriate location for a footbridge by the consented masterplan (ref. 19/00025/AS) which makes provision for a bridge in accordance with Policy S2 (Land North-East of Willesborough Road, Kennington) of the Local Plan and by the planning permission for a footbridge granted in 2023 (ref. 22/01041/AS). The FLOW bridge would remove the existing high-level risk of conflict between members of the public and moving trains and provide an efficient and safe walking route between the consented major mixed use development, including homes and a primary school to the west of the railway and the country park and adjacent housing to the east of the railway.

30. There would be a need to formally divert a small section of the PROW so that it aligns with the span of the bridge and provides suitable onward connections within the country park and this is being progressed by Network Rail under the Highways Act as a separate process. The proposed diversions appear to be the minimum necessary to maintain footpath connectivity; were the footbridge to be located elsewhere then this would necessarily involve longer and potentially less direct diversions.

31. In summary the bridge represents a significant public safety benefit for existing and future users of the PROW network. I am satisfied that the proposed siting is

appropriate and that there is no justification for requiring the work to be carried out elsewhere.

Whether the design or external appearance of the bridge would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury [A.2(b)]

32. The FLOW bridge would have a C-shaped alignment which would connect to the existing PROW on both sides of the railway. It would also have a limited footprint to minimise land take on both sides of the railway and thereby have least impact on existing trees. The FLOW bridge would be structurally supported by a striking arch-like central spine with the 20m wide deck featuring a curved layout, which the applicant states improves deck visibility and pedestrian flow. The upper part of the parapet would comprise translucent toughened glass laminate which the applicant states would provide enhanced visibility, safety and user experience over the alternative of a solid parapet.

33. The height of the FLOW bridge (5.5m from the railway to the underside of the deck and an overall height of 8.47m) is determined by the requirement for it to span the railway and in order to comply with the minimum height clearance dictated by Network Rail.

34. The bridge would be stepped-only on both sides; each staircase would be 2.99m wide and 16.86m long with two landings. I note that the stepped design would preclude the use of the bridge by everyone, including wheelchair users or those with reduced mobility or with young children in pushchairs.

35. I'm aware that the unmade access paths, gates and stiles on both sides of the railway crossing effectively preclude existing access for wheelchair users or those with reduced mobility or with young children in pushchairs. In this context and notwithstanding Network Rail's own Diversity Impact Assessment, I am mindful of the requirement under the Public Sector Equality Duty (PSED) to have regard to the need to eliminate discrimination and promote equality and good relations between persons sharing relevant protected characteristics and those who do not. The GPDO however limits consideration of the proposal to whether it would injure the amenity of the neighbourhood. The word 'injure' normally refers to significant harm.

36. The stepped bridge subject of this application would improve the desirability of the crossing and make it safe for most users, whereas a ramped bridge would enable people with reduced mobility to have an equally safe and convenient way to cross the railway and would provide a better long-term solution to serve the development on both sides. On this basis the lack of ramped access could be injurious to those who are unable to use steps and the GPDO requires me to consider whether the scheme would be reasonably capable of modification to avoid such 'injury'.

37. In considering the current proposal I need to take a proportionate approach to my application of the duty in respect of the PSED in the light of the tests set out in the GPDO. In this respect Network Rail do not currently have sufficient land to enable ramped accesses to be provided and they state that the costs for ramped access would be significantly higher than the funding allocated to the project. I note that the modular design of the bridge makes it capable of providing an accessible crossing through the potential

future addition of lifts. I am also mindful that the bridge represents an upgrade to the existing crossing, that alternative fully accessible walking and cycling routes exist on Willesborough Road to the south and improvement to all-movement routes between the two sides of the railway line remain part of the wider strategy for this area as both areas develop.

38. I note that in some circumstances, wheeling ramps have been installed to the steps to facilitate easier access for bicycles and scooters. Network Rail have advised that substantial design changes to the footbridge would be required to accommodate the additional width needed to meet standards, which would incur further costs to the project. In the absence of further information or evidence and in light of the significance of the bridge for future users I recommend that a condition be imposed requiring a scheme for the installation of ramps, or alternatively evidence to demonstrate it is neither technically or financially feasible in this case. In these circumstances, I consider amendments to the design to make it fully accessible would not be reasonable.

39. There is no requirement for prior approval applications to be supported by a Landscape and Visual Assessment (LVA) and none has been submitted with this application. Having regard to the LVA submitted pursuant to the planning application for the previous bridge (ref. 22/01041/AS), the development would be highly visible from localised viewpoints, including the adjacent PRoW network with little or no visibility from more distant views, including from within the National Landscape to the north.

40. The FLOW bridge would be manufactured from a fibre-reinforced polymer (FRP) composite that the applicant states is a lightweight, strong, durable and cost-effective low maintenance solution. No lighting is proposed. The finishes would comprise:

- Outer deck: RAL 7035 Light grey
- Spine: RAL 8011 Nut brown
- Upper Fascia: 2008 Bright red orange
- Internal Fascia: RAL 7035 Light grey

41. As noted above the LPA is required to limit consideration of this application to whether the design or external appearance of the bridge would be injurious to the amenity of the area. From a number of viewpoints, views of the bridge would be filtered by existing trees. Good design is a subjective matter and I acknowledge the objections received in relation to the proposed appearance. Although the bridge would have an inevitable impact on the character of the site I am mindful that it will in time be viewed in the context of surrounding development, including a primary school. In this context I am satisfied that the distinctive and modern design of the flow bridge would not injure the amenity of the area.

42. Previous applications for development in this location have had regard to potential impacts on the setting of the National Landscape. Section 85(A1) of the Countryside and Rights of Way Act (2000) places a statutory duty upon the decision maker to have regard to the purpose of conserving and enhancing the natural beauty of the NL. By reason of the scale of the development and the separation distance from the National Landscape I am satisfied the proposal would not have an adverse impact on its setting and in so doing it would conserve its scenic beauty.

43. For all the above reasons I find that the proposal would not result in injury to the amenity of the neighbourhood and there is no reason why prior approval should be withheld.

Other

44. The application is not supported by a landscape strategy; however given the small footprint and the fact that the land to the west is subject to landscaping conditions and the land to the east is within the Council's control I am satisfied that an appropriate soft landscaping scheme is capable of being delivered post construction. The applicant states that they will comply with all relevant ecological and wildlife legislation and obtain any necessary consents.

Human Rights Issues

45. I have also taken into account the human rights issues relevant to this application. In my view, the "Assessment" section above and the Recommendation below represent an appropriate balance between the interests and rights of the applicant (to enjoy their land subject only to reasonable and proportionate controls by a public authority) and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties).

Working with the applicant

46. In accordance with paragraph 39 of the NPPF, Ashford Borough Council (ABC) takes a positive and creative approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and creative manner as explained in the note to the applicant included in the recommendation below.

Conclusion

47. The proposed development comprises a critical piece of walking infrastructure. The prior approval process requires that the detailed plans and specifications of the bridge are acceptable before work can proceed. Although the development would not be fully accessible, the FLOW bridge represents a significant public safety benefit and an upgrade to the existing crossing. The modular design allows for future accessibility improvements and further details relating to the feasibility of installing a wheeling ramp are to be sought by condition. I have found that the distinctive and modern design of the bridge would not injure the amenity of the area, and the proposal would not impact the setting of the National Landscape. I recommend that prior approval is granted.

Conditions:

- 1 Prior to the commencement of above ground works a scheme for the installation of a wheeling ramp to the hereby approved bridge shall be submitted to and approved in writing by the Local Planning Authority, unless evidence is submitted to demonstrate to the satisfaction of the Local Planning Authority, and the Local Planning Authority confirm their agreement in writing, that the provision of a wheeling ramp would not be technically or financially feasible for this

development. The development shall be implemented in accordance with the details so approved.