

Application to divert part of Public Footpaths AU22 and AU17 from the foot crossings known as Cradle Bridge (AU22) and Bolleaux (AU17), at Kennington in the Borough of Ashford

A report by the Head of Public Rights of Way and Access Service to Kent County Council's Regulation Committee Member Panel on 6 October 2025.

Recommendation: The applicant to be informed that an Order to divert part of Public Footpaths AU22 and AU17 from the foot crossings known as Cradle Bridge (AU22) and Bolleaux (AU17), at Kennington in the Borough of Ashford, will be made.

Local Member: Brian Collins

Unrestricted item

Introduction and background

1. The County Council has received two applications to divert parts of Public Footpaths AU22 and AU17 where they pass over the at grade rail crossings known as Cradle Bridge (AU22) and Bolleaux (AU17) at Kennington. The applications to remove the at grade foot crossings from the railway line have been made by Network Rail, in the interests of safety of members of the public.
2. Both footpaths currently have stiles at either side of the railway line (see images of the stiles at AU22 below). In addition, there are 2 steps on the north side of the crossing and 2 gates on the south approach to the crossing over which Public Footpath AU22 runs.



3. A number of risk assessments on these crossings have been undertaken by Network Rail, the most recent in June 2022, in which both crossings were deemed to have a high to medium level of risk according to their risk model (see paragraph 24 below for more detail). The crossing over which Public Footpath AU22 passes is currently ranked 35th highest in Kent in terms of risk, and the crossing over which Public Footpath AU17 passes is currently ranked 45th highest in terms of risk. This is out of the 166 footpath/bridleway crossings in Kent. However, the proposed residential developments (up to 750 dwellings to the west of the railway, including a new school and recreational facilities, and 300 dwellings to the east, including Conningbrook Lakes Country Park and the Julie Rose Stadium), will drive demand from each side of the railway for access. This is expected to lead to a significant increase in use, which will, in turn, significantly increase the risk at the crossings.
4. The length of Public Footpath AU22 to be diverted is shown by a solid black line between the points A-B on the plan at **Appendix A**. The proposal is to divert the path over a stepped Flow bridge (for which prior approval has been granted by Ashford Borough Council) where it passes over the railway, and then to a more direct alignment on the south-eastern side of the railway, as shown by a bold broken line between the points A-C-B.
5. The length of Public Footpath AU17 to be diverted is shown by a solid black line between the points D-E. The proposal is to divert the path along the east side of the railway, as shown by a bold broken line between points E-C.
6. An extract from the network copy of the Definitive Map can be found at **Appendix B** to show the paths in context with the rest of the public rights of way network.

Policy

7. The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date. The main priorities in respect of Public Path Change Orders are:

Public Path Change Orders will normally be processed in the order in which applications are received, except in any of the following circumstances where an Order may be processed sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document,
- Where an application has been made to the County Council in its capacity as Planning Authority
- Where the processing of an Order could save significant costs incurred in other Rights of Way functions
- Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.

7. The County Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory tests (as set out within the Legal Tests section) for changing public rights of way must apply.
- I. The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
 - II. The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use.
 - III. The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
 - IV. The definitive line should, where it is considered by the County Council to be reasonably practicable, be open clear and safe to use.
8. However, nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.

Legal Tests – Rail Crossing Diversion or Extinguishment Order

9. Legislation relating to the extinguishment or diversion of a public path which crosses a railway, otherwise than by tunnel or bridge, is contained within Sections 118A (extinguishments) and 119A (diversions) of the Highways Act 1980: The Procedure is in Schedule 6 of the same Act.
- (i) The Council may make an Order to extinguish or divert a public path if it is satisfied that it is in the interests of the safety of users or likely users of at-grade crossings.
 - (ii) Particular consideration has to be given to whether or not it is reasonably practicable to make the existing crossing safe for the public and what arrangements will be made to erect and maintain barriers and signs at the closed crossing.

Government Guidance

10. Rights of way circular (1/09) Guidance for local Authorities states:

“Rail crossing diversion orders (section 119A of the 1980 Act) Para 5.51. While other criteria are not specified in section 119A, the new way should be reasonably convenient to the public and authorities should have regard to the effect that the proposal will have on the land served by the existing path or way and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way will have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway.”

Consultations:

11. Consultations have been carried out as required by the Act.

County Member and Borough Councillors

12. County Member Brian Collins and Ashford Borough Councillors Katy Pauley and Nathan Iliffe were consulted but no responses were received.

Ashford Borough Council

13. Ashford Borough Council did not object to the proposals.

Kennington Community Council

14. Kennington Community Council agreed that the proposed diversions were in the interest of public safety, but considered that the diversions would be substantially less convenient to the public. They stated that Network Rail's Disability Impact Assessment was only based on the accessibility of the existing crossing, whereas it should take into consideration future use based on the planned development. Wheelchair users and those with pushchairs would not be able to use the bridge and would need to make a long detour to reach some of the local amenities.

User Groups

15. The Open Spaces Society, the Ramblers and the British Horse Society were consulted but no responses were received.

East Kent Area Public Rights of Way Team

16. The East Kent Area Public Rights Officer did not object to the proposals.

Kent Highways

17. Kent County Council's Highways Improvements Team did not object to the proposals but asked if there would be some sort of sign at the beginning of the footpath to inform users that the bridge is not accessible to all.

Statutory Undertakers

18. No objections were received from any Statutory Undertakers who responded to the consultation.

Other interested parties

19. A member of the public, who is a wheelchair user and regular user of public rights of way, had seen Ashford Borough Council's report to approve the stepped bridge and contacted the Public Rights of Way and Access Service independent of the consultation process. They expressed frustration that a ramped bridge had originally been planned and approved but then rejected due to rising costs. They object to the proposal on grounds of accessibility and stated that they considered that the County Council would be in breach of its public sector equality duty if it approved the proposal. They urged the County Council to resist any application that seeks to divert public rights of way over a stepped bridge, stating: *"Should the Council decide to not object to the diversion of the path over an inaccessible footbridge, I shall immediately institute the pre-action protocol with the intent of judicial review of the Council's decision."*
20. A local resident contacted the County Member with concerns that, although they understood that a footbridge would be needed on safety grounds, a stepped bridge would not allow wheelchair users to cross at that point, requiring them to make a substantial detour, and which would disadvantage a large section of the community.
21. Comments on consultees' responses are set out in relevant paragraphs below.

The Case - the proposed diversion of part of Public Footpaths AU22 and AU17 at Kennington where they pass over the at grade rail crossings

22. In dealing with the application to divert a public right of way, consideration must be given to the following criteria of Section 119A of the Highways Act 1980:
 - a) Whether it is in the interests of the safety of users or likely users of at grade crossings.
 - b) Whether it is reasonably practicable to make the crossing safe for use by the public, and what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.
 - c) Whether the diversion order alters a point of termination of the path or way, if that point is not on a highway over which there subsists a like right of way or, otherwise than to another point which is on the same highway, or another such highway connected with it.
 - d) Whether the order should make provision requiring the operator of the railway to maintain all or part of the right of way created by the order.

23. To be taken into account but not listed as criteria under Section 119A of the Act but in Rights of Way Circular (1/09):

- i) Whether the right of way will be reasonably convenient to the public.
- ii) The effect the proposal will have on the land served by the existing path or way and on land over which the new path or way is to be created.
- iii) The effect that the diverted way will have on the rights of way network as a whole.
- iv) The safety of the diversion, particularly where it passes along or across a vehicular highway.

24. Those criteria are considered individually, and conclusions drawn below:

- a) *Whether it is expedient in the interests of the safety of users or likely users of the crossing.*
 - i) It is Network Rail's position that Level Crossings are risk assessed on a regular basis or when risk is known to have changed, such as if a new housing development is being built or if the train timetable changes. The risk assessment process includes quantitative as well as qualitative risk assessment. In quantifying risk, Network Rail uses a risk model called the All Level Crossings Risk Model ("ALCRM") which was developed collaboratively by the Rail Safety & Standards Board, Network Rail and others. This model provides a consistent method for assessing risk to crossing users, train passengers and rail staff. The model incorporates over 200 inputs relating to types of trains, number of trains, train speed, public usage, the crossing environment (location etc.), environmental factors (prone to fog, sun glare, etc.), layout, sighting distance for approaching trains, incident history, user behaviour and the effectiveness of mitigations in place. The ALCRM reports two measures of risk: collective risk and individual risk of fatality. Collective risk includes total harm in terms of Fatalities and Weighted Injuries (FWI), and the individual risk to a single typical user. Coupled with this, Network Rail incorporates qualitative assessment based on the structured expert judgement of the Level Crossing Manager.
 - ii) The rail crossing diversion applications have been made due to the proposed residential developments, comprising up to 725 dwellings to the west of the railway, including a new primary school and recreational facilities, and 300 dwellings to the east, including Conningbrook Lakes Country Park and the Julie Rose Stadium, which will encourage people from each side of the railway to want to access the other side. Although each crossing is currently only ranked 35th (Public Footpath AU22) and 45th (Public Footpath AU17) highest in terms of risk in Kent, the expected increase in use of the crossings would be significant, leading to a substantial rise in the risk profile of the crossings.

- iii) All respondents to the informal consultation agreed that the crossings would be unsafe for the public to use in light of the proposed development which would likely increase use. For the reasons given above, the Public Rights of Way and Access Service considers that it is expedient to divert the footpaths in the interests of the safety of the users or likely users of the crossing.
- b) Whether it is reasonably practicable to make the crossing safe for use by the public, and what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.*
- i) The risks associated with each crossing are the same, and the same options have been considered by Network Rail as to whether the crossings can be made safe for use by the public. Total closure of the crossings by way of an extinguishment was not an option that could be pursued. Both footpaths provide connectivity between Ashford and Wye, leading to the Kent Downs National Landscape (formerly Area of Outstanding Natural Beauty). An extinguishment would break that connectivity and have a detrimental effect on the public rights of way network. In addition, the likely increase in use reflects the greater importance of the crossings in light of the development.
- ii) Train warning systems such as Miniature Stop Lights (“MSLs”) have been considered as a possible alternative to diversion but discounted for both feasibility and effectiveness reasons. MSLs are lights that display red or green as crossing signals depending on whether a train is approaching. However, due to the cost of implementation against the overall risk reduction and future risk profile, Network Rail state this is not a cost-effective option when measured against the cost-risk reduction ratio through the provision of a footbridge.
- iii) The construction of a footbridge across the railway to replace the at grade crossing on Public Footpath AU22 is considered to be the best option. The bridge completely removes the risk of users coming into contact with trains.
- iv) It is not considered necessary to construct another bridge where Public Footpath AU17 crosses the railway. As well as cost, there would be a negative environmental impact. Therefore, it is considered that the best option for Public Footpath AU17 is a diversion that will link up to the new bridge approach on Public Footpath AU22 along the eastern side of the railway.
- v) Network Rail has not identified any other works that could be undertaken to improve safety of the crossings.
- vi) If an Order is made and confirmed, the existing level crossings will be securely and permanently fenced off in order to prevent unauthorised access to the railway. Any signage required by the Council at the crossing (and any other points) will also be provided.
- c) Whether the diversion order alters a point of termination of the path or way, if that point is not on a highway over which there subsists a like right of way or, otherwise than to another point which is on the same highway, or another such highway connected with it.*

- i) The termination points for Public Footpath AU22 are not altered.
 - ii) The termination point for Public Footpath AU17 that currently connects with footpath AU21 on the west side of the railway will be altered to connect to the bridge approach on footpath AU22 on the east side of the railway, which then connects to footpath AU21, i.e., “another such highway connected to it.” This ensures that connectivity is maintained.
- d) Whether the order should make provision requiring the operator of the railway to maintain all or part of the right of way created by the order.*
- i) The Public Rights of Way and Access Service will be responsible for the on-going maintenance of the surfaces of the footpaths where they do not form part of the bridge. The Order will specify that Network Rail will maintain the bridge and bridge approaches.

Tests to be considered under Circular (1/09)

25. Although not part of the legislation, consideration should also be given to the following:

- a) Whether the right of way will be reasonably convenient to the public.*
- i) Permission was initially granted in September 2023 by Ashford Borough Council (as Local Planning Authority) for a ramped and stepped bridge under application reference 22/01041/AS. The requirement to provide a bridge to enable the replacement of the two at grade rail crossings was identified and supported by local plan policies. Through the planning process a developer contribution was secured to meet the costs of providing a footbridge. The contribution was capped at a level (£4 million) considered to be sufficient to meet the delivery of a bridge, whilst affordable when considering the viability of the development proposals. Following a review of the funding allocated to the project, it was established that the approved footbridge was not deliverable due to the increase in costs which had risen significantly. As a result, Network Rail undertook a feasibility study for the provision of a stepped-only bridge.
- ii) A Disability Impact Assessment (“DIA”), was completed in October 2024 and can be found at **Appendix C**. This was used to inform the bridge feasibility report, dated November 2024 (see **Appendix D**). Network Rail’s DIA is the method used by Network Rail to clearly demonstrate that they have paid due regard to their duties within the Equality Act 2010 (“the 2010 Act”). The DIA concluded that a stepped-only footbridge, of a flow bridge design would be suitable for this site based on a number of factors:
 - a. the existing crossings are not currently accessible to all, as they include stiles and steps;
 - b. the paths leading to the crossings can get overgrown and have uneven surfaces, which can be challenging for some people to use;
 - c. the bridge would provide a significant level of safety improvement for users.

- iii) However, Network Rail also noted that, taking into consideration the new school that is part of the planned development, the user requirements and frequency are likely to change, making an accessible bridge desirable and more appropriate for the future. Not having an accessible crossing significantly lengthens the journey between the southern housing estate and the new northern school, placing those who cannot use the bridge at a disadvantage.
- iv) Three objections have been received to the provision of a stepped-only bridge, directly through the informal consultation process, and indirectly to the Public Rights of Way and Access East Kent Area Team and to the County Member. It is further noted that the Ashford Borough Council Bridge Prior Approval Report records additional negative comments from residents at page 4 (see **Appendix E**). The main issue, which is covered in paragraphs 19 and 20 above, relates to the provision of the stepped bridge which, it is argued, will disadvantage a section of the community who would be unable to use it and therefore, has a detrimental impact on convenience for them.
- v) For those currently able to negotiate the stiles and stepped approach to the crossings, the proposed footbridge would provide a reasonably convenient alternative, albeit that there may be an increase in both journey time and distance as a result of negotiating the bridge. This would be minimal for those using Public Footpath AU22, but could be much greater for those using Public Footpath AU17 depending on the location of the onward journey.
- vi) The County Council is subject to the public sector equality duty regarding socio-economic inequalities set out in section 1 of the 2010 Act, which states: *“An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.”* Section 149 of the 2010 Act further adds: *“(1) A public authority must, in the exercise of its functions, have due regard to the need to—*
(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
(b) advance equality of opportunity between persons who share a relevant protected characteristic 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.”
- vii) One of the objectors stated that they considered that the County Council would be in breach of its public sector equality duty if it approved the proposal. The Public Rights of Way and Access Service has given due regard to the matters in the 2010 Act. As well as taking account of Network Rail's DIA, the Public Rights of Way and Access Service has undertaken its own Equality Impact Assessment (“EqIA”) to fully consider the matters stipulated in the 2010 Act. The EqIAs relating to both footpaths can be found at **Appendix F**.

viii) The EqlAs recognise that the provision of a stepped bridge could have an impact upon those sharing the protected characteristics of age, disability, pregnancy or maternity, and potentially those who have carers responsibility. It also notes that the existing approaches to the crossings are likely to pose challenges for these groups currently. However, where change is taking place on the public rights of way network, the aim is to try and improve accessibility where possible.

ix) As noted in the conclusion of the EqlA, the stepped bridge is likely to result in a reduction of access to the public rights of way network for a limited number of users, and this needs to be balanced against the safety of the public. A bridge is required to remove the danger to the public of crossing the railway line at grade. Ideally, a ramped bridge would provide the best solution. However, a ramped bridge is not feasible, due to the cost.

b) The effect the proposal will have on the land served by the existing path or way and on land over which the new path or way is to be created.

i) The effect the proposals will have on land served by the existing paths will be to enable Network Rail to remove the rail crossings and thereby the risk of danger to the public.

ii) The effect of the new public rights of way is to preclude the use of the land by the landowners for any purpose which is incompatible with the public's rights. This impact is acceptable to the landowners.

c) The effect that the diverted way will have on the rights of way network as a whole.

i) The diverted ways will have the effect of providing continuous connections with the public rights of way network as a whole, despite a greater distance to be walked in the case of Public Footpath AU17.

d) The safety of the diversion, particularly where it passes along or across a vehicular highway.

i) The proposed diversions are considered to be safe for the public, and in particular safer for the public than the level crossings. Public Footpath AU17 will be diverted onto a route that the public are currently using with permission and which has no safety concerns. The proposed new route for Public Footpath AU22 is to run over a stepped bridge. A stepped bridge brings with it potential safety issues around users climbing up and down the steps. To reduce the risk, there will be 2 landing stages and handrails on both sets of steps. In addition, the flow bridge design eliminates other safety factors that might be associated with traditional rail bridges such as visibility constraints with regard to corners of the bridge and views from the bridge. The staircases measure 16.86m long, broken with 2 landings and the width of the walkway is 2.99m wide between the centre of the stairs (as specified in the Bridge Prior Approval Report at **Appendix E**).

Further considerations

26. In addition to the tests set out in section 119A of the Highways Act 1980, the County Council must also have regard to the following issues when considering an application to divert a public right of way:
27. There is a relevant provision within the County Council's Rights of Way Improvement Plan at EN03 SAFE TRAVEL at 2.12 "Look to improve safety of railway and road crossings where possible".
28. Under section 29 of the Highways Act 1980, the County Council has a duty to have regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving flora, fauna and geological and physiographical features. In this case, there is no adverse effect caused by the diversions of the paths.
29. Section 40 of the Natural Environment and Rural Communities Act 2006 requires that every public authority must have regard "*so far as is consistent with the proper exercise of [its] functions, to the purpose of conserving biodiversity*". The diversion of these paths has been considered in respect of the planned development at Conningbrook, and any mitigation implemented when constructing the stepped bridge, and it has been concluded that there is no adverse effect.
30. Where the affected land forms part of a National Landscape (formerly an Area of Outstanding Natural Beauty), section 85 of the Countryside and Rights of Way Act 2000 requires that the County Council must "seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape" and shall have regard to "the purpose of conserving and enhancing the natural beauty" of the National Landscape. In this case the land does not form part of the Kent Downs National Landscape, falling a little outside its boundary.
31. Under section 17 of the Crime and Disorder Act 1998, the County Council has a duty to exercise its functions "*with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area*". In this case, there is no adverse effect caused by the diversions of the paths.
32. The County Council is subject to the public sector equality duty regarding socio-economic inequalities set out in section 1 of the Equality Act 2010. Network Rail has undertaken a DIA (see **Appendix C**). The Public Rights of Way and Access Service has also undertaken its own EqlAs which are discussed fully at paragraph 25a above.
33. Finally, in signing the application form the applicant has agreed to defray any compensation which may become payable following a successful claim made under section 28 of the Highways Act 1980.

Conclusion

34. The County Council must primarily consider the legal test required to be met under section 119A of the 1980 Act. In this case, the Public Rights of Way and Access Service considers that Network Rail has put forward an acceptable safety case with regard to the expected increase in use of both crossings as a result of the planned development, which in turn will increase the risk of danger to the public at the crossings. The provision of a footbridge and the diversion of Public Footpath AU22 over that footbridge, and the diversion of Public Footpath AU17, will provide the public with a means of crossing the railway which does not expose them to unacceptable risk and danger.
35. The Public Rights of Way and Access Service is therefore satisfied that the legal test of safety is met.
36. Although not a test within the legislation, guidance within Defra's Circular 1/09 suggests the County Council must also consider the convenience of the new route. This is discussed fully in paragraph 25a above and concludes, that although there is a preference for a ramped bridge, it is not possible in this particular case. A stepped bridge will inconvenience some people and will mean that some will not be able to use the route at all, potentially taking instead a much longer route to reach a given destination.
37. If a bridge was not to be constructed, it is likely that the crossings would, at some point, be deemed to be too unsafe by Network Rail to remain open due to the increased use, and they would apply for a temporary Traffic Regulation Order closing the crossings – this has occurred in other parts of the county. If this happened, it would result in significant inconvenience for everyone and would still need to be resolved by means of the making and confirmation of an Order (and the provision of a bridge in all likelihood).
38. One of the objectors indicated they may seek judicial review of the County Council's decision if it did not object to the diversion (see paragraph 19 above). Judicial review is a "remedy of last resort" and should only be used where no adequate alternative remedy is available, such as a public authority's internal complaints procedure or a statutory right of appeal. This is also reflected in paragraph 4.1(2) of the Court's judicial review practice direction 54A, which requires a claimant to refer to any alternative appeal mechanism that exists or that could have been used:
- "A claimant should refer to any statutory provision which excludes the jurisdiction of the court to entertain the application, or to grant the relief sought, and **should also refer to any alternative appeal mechanism that exists, or could have been used prior to seeking judicial review.**"

39. In diverting a public right of way under the 1980 Act, if the decision is to make an Order, that Order is made and advertised for not less than 28 days, during which time objections to the Order can be made in writing to the County Council. If objections are received and not withdrawn, the County Council is unable to confirm the Order itself, and may submit the Order, objections, and all other relevant documents to the Secretary of State, who will appoint an Inspector from the Planning Inspectorate to determine the matter. This would be the alternative and correct means in which to challenge the County Council's decision.

Recommendation

40. Therefore, taking everything above into account, it is recommended that the applicant be informed that an Order to divert part of Public Footpaths AU22 and AU17 from the foot crossings, known as Cradle Bridge (AU22) and Bolleaux (AU17), at Kennington in the Borough of Ashford, as shown on the plan at **Appendix A** to this report, will be made on the grounds that it is expedient to divert the path on the grounds of safety of the public.

Accountable Officer:

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The documents on the case file are available for viewing on request at the PROW & Access Service, Sessions House, County Hall, Maidstone, Kent, ME14 1XQ. Please contact the Case Officer for further details.

List of appendices

Appendix A - Plan of proposals

Appendix B - Extract from the network copy of the Definitive Map, sheet 127 (TR04SW)

Appendix C - Network Rail's Disability Impact Assessment

Appendix D - Flow Bridge Feasibility Report

Appendix E - Bridge Prior Approval Report

Appendix F - Kent County Council's Equality Impact Assessments

**Case file references - PROW/AU22/14/NR
 PROW/AU17/15/NR**