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20 June 2014

Dear Sir / Madam

**Application for Prior Approval: Proposed Works to Footbridge over Railway at Churchill Road/Ingestre Road NGR 528918 185898**

Please find attached plans detailing proposed works to the footbridge at the above site. The works are necessary due to the condition of the structure and comprise various brickwork repairs and the replacement of the bridge deck.

Planning Permission for these works has been granted by virtue of Part 11 to Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 (as amended), development under local or private acts or orders, subject to the Council giving its prior approval to the plans and specifications therein.

I would draw your attention to the provisions of Part 11 which states that permitted development applies when it is "*authorised by (a) a local or private Act of Parliament (i.e. the Act of Parliament that allowed the construction of the railway).....which designates specifically the nature of the development and the land upon which it may be carried out.*" Development is not permitted ..."*unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained*". However the prior approval is..."*not to be refused...nor are conditions to be imposed unless they are reasonably satisfied that - (a) the development....ought to be and could reasonably be carried out elsewhere on the land; or (b) the design or external*



*appearance of any.....bridge....would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury.”*

The original Act specifying this stretch of railway states that the railway undertaker can, from time to time, alter, repair, or discontinue the before mentioned works or any of them and substitute others in their stead, and do all other acts necessary for making, maintaining altering, repairing or using the railway. This “general power” is provided for in Section 16 of the 1845 Railway Clauses Consolidation Act (RCCA), and it is this Act which is incorporated in all railway Acts since 1845.

The decision of the Court Of Appeal in Emsley v North Eastern Railway Company (1896) 1 Ch 418 confirmed that these powers are not restricted to the period of construction but can be invoked from “time to time”. The use of the original Act of Parliament as a means of using permitted development rights has also been upheld in an English Ministerial appeal decision, the reference number being APP/X/98/X5210/003059.

Accordingly Network Rail hereby **seeks the “Prior Approval”** of the local planning authority for the proposed works to the above bridge in accordance with the plans attached. For the purposes of Part 11 the enabling Act in this instance is the Midland Railway Additional Power Act 1880 incorporating the Railway Clauses Consolidation Act 1845. I have attached a copy of the Act and relevant contemporary map extract for your reference.

I look forward to receiving the Prior Approval of the Council for the underpass at your earliest convenience. Please note that **this request for Prior Approval is a statutory formal process and not an informal inquiry**; we would expect the decision to be made within 8 weeks of the receipt and acknowledgement of the application. The right of appeal against non determination can be made if no consent is forthcoming before the end of the 8-week period. However we accept that the use of Part 11 prior approvals is a somewhat rare piece of planning legislation

for most local authorities and we would be happy to discuss its application to the proposed works further if you think fit.

Yours Sincerely

**Jeremy Wayman**  
**Town Planner LNE**  
**Network Rail**