
Appeal Decision

Site visit made on 27 February 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 11 April 2017

Appeal Ref: APP/H0928/W/16/3164864

Land off Scaur Lane, Lazonby

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam McNally of Story Homes against the decision of Eden District Council.
 - The application Ref 16/0685, dated 20 July 2016, was refused by notice dated 17 November 2016.
 - The development proposed is stated on the application form as “retrospective full planning permission for retention of steps leading up to the seating area adjacent to Scaur Lane footway and to some privately owned driveways.”
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Decision

1. The appeal is allowed and planning permission is granted for steps leading up to the seating area adjacent to Scaur Lane footway and to some privately owned driveways at Land off Scaur Lane, Lazonby in accordance with the terms of the application, Ref 16/0685, dated 20 July 2016, and the plans submitted with it.

Procedural Matter

2. At the time of my site visit, I saw that the development of the steps had commenced and was substantially complete, although the handrails indicated on the submitted plans were absent. I also note that the application has been submitted retrospectively. I have dealt with the appeal on that basis.

Main Issue

3. The main issue in this appeal is whether the development will provide a safe and accessible environment for all users.

Reasons

4. The steps are located on the northern edge of a housing estate which is accessed from Scaur Lane. Planning permission for the estate was granted on appeal in 2014¹ on the basis of plans which included a footpath along the northern boundary of the estate. The approved plans included the provision of a level access to this path from a seating area adjacent to Scaur Lane². As well as providing pedestrian access to/from dwellings on the estate, the path will

¹ Appeal ref: APP/H0928/A/13/2202978

² Figure 2.1 – Extract of drawing no. 5529/02-09/A, appellant’s Statement of Case.

also enable access to a further seating area and play trail which was under construction at the time of my site visit.

5. The appeal relates to the construction of steps leading from the seating area on Scaur Lane to the footpath on the northern boundary of the estate. The appellant states that the steps have been constructed due to an engineering oversight relating to the construction of a water attenuation tank located beneath the path, which has meant that a suitable gradient for the path was undeliverable.
6. I saw that the steps which are the subject of this appeal will be a barrier to users of wheelchairs, mobility scooters etc. as well as people pushing prams who wish to pass along the path to or from the estate, the seating area/play trail and Scaur Lane.
7. However, I also saw that there is an alternative route to the east which leads through the estate. This alternative route is of a level access and for the majority of its length has a separate designated footway, although this would require crossing over the roadway at some point for people wishing to continue into the estate. Part of the route leading to some of the dwellings and the seating area/play trail will also be via a shared surface. Although this route is also used by motor vehicles, I note that the estate has been designed to meet Manual for Streets objectives. Due to this, and the low traffic speeds in the estate, I consider that the route would not be detrimental to the safety of people diverted from the path to the north.
8. The path to the north passes through a landscaped area away from traffic. In comparison the alternative route would be adjacent to a highway or part of a shared surface and would therefore be less tranquil and would pass through a predominantly built environment. However, due to the quiet residential nature of much of the alternative route I consider that this would not be unduly detrimental to the amenity of people passing along this route. Furthermore, whilst this alternative route may be longer and more convoluted, particularly in relation to accessing the seating area/play trail, I consider that this would not be to a degree that would mean it is an unrealistic option for people with disabilities or other users.
9. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. The Act sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic I have had due regard to the three equality principles set out in Section 149 of the Act. The negative impacts of allowing this appeal will arise from the length and the nature of the route resulting from the need of people with disabilities as well as some other persons to avoid the steps. However, having due regard to this, and to the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of allowing the scheme on those with protected characteristics would be proportionate having regard to the engineering issues identified by the appellant and the existence of a suitable alternative route.

Other Matters

10. I have had regard to the objections raised in relation to the proposal. Reference has been made to the adoption (or otherwise) of the path and its

maintenance by a Management Company. However, these are private matters to be resolved by the parties and are therefore not relevant to my decision. I also note the suggestion in relation to the provision of handrails on other steps on the estate, however this is not a matter which is within the remit of this appeal.

11. I am also mindful of the suggested use of signage on the path. However whilst it may be possible to require this through a condition, I am not persuaded that such a condition is essential to make the development acceptable in planning terms.
12. Concerns have also been raised that the proposal represents a variation from the originally approved scheme, the process used for other variations elsewhere on the estate and about the retrospective nature of the application. However these matters are not relevant to my consideration of the development which has to be assessed on its planning merits.

Conclusion

13. I have had due regard to the PSED contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made relating to steps which would represent a barrier to people with disabilities, this will affect people who share a protected characteristic for the purposes of the PSED.
14. However, due to the existence of a suitable alternative access route I conclude that the proposal will not be unduly detrimental to the provision of a safe and accessible environment for all users. On this basis, the proposal would not conflict with Policies CS5 and CS18 of the Eden District Council Core Strategy 2010 in relation to the provision and promotion of safe access for all users, with particular consideration of those with a disability. The proposal would also not conflict with the provisions of the National Planning Policy Framework and in particular paragraphs 32 and 35 in respect of the provision of a safe and suitable access for all people, with consideration to the needs of people with disabilities.
15. For the reasons given above, and having regard to all other matters raised, it is concluded that the appeal should be allowed. The Council has not requested that any planning conditions be imposed as the proposal is retrospective, and I have therefore allowed the appeal on the basis of the submitted plans.

David Cross

INSPECTOR