



Appeal Decision

Site visit made on 16 May 2023

by S M Holden BSc(Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2023

Appeal Ref: APP/C3810/W/23/3318039

Birch Level Crossing, Barnham, PO22 0BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2 Part 18 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Network Rail Infrastructure Limited against the decision of Arun District Council.
 - The application Ref BN/102/22/RAI, dated 21 July 2022, was refused by notice dated 23 January 2023.
 - The development proposed is erection of a stepped footbridge.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 18, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2105 (as amended) for erection of a stepped footbridge at Birch Level Crossing, Barnham PO22 0BT in accordance with the terms of the application Ref: BN/102/22/RAI, dated 21 July 2022, and the detailed plans and specifications submitted with it, pursuant to Article 3(1) and Schedule 2, Part 18, Class A, paragraph A.2. and subject to the following condition:
 - 1) Prior to the first use of the stepped bridge, a bicycle channel shall be added to the side of the steps of the bridge.

Preliminary Matters

2. The application was determined in accordance with the requirements of Schedule 2, Part 18, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015). Condition A.1 of the Order does not allow for the construction of a bridge unless prior approval of the detailed plans and specifications has been obtained. As set out in condition A.2 of the Order, this should not be refused, nor should conditions be imposed unless the bridge could reasonably be erected elsewhere on the land; or the design or external appearance of the bridge would injure the amenity of the neighbourhood and is reasonably capable of being modified to avoid such injury.

Main Issue

3. The main issue is whether the proposed stepped footbridge would injure the amenity of the neighbourhood.

Reasons

4. The Birch level crossing enables users of Footpath 323, an unmade footpath across open fields, to cross the Barnham to Bognor Regis railway line. It is accessed by stiles on either side of the railway. The proposal seeks to replace this at grade level crossing with a stepped footbridge. The replacement crossing is a requirement of Condition 28 attached to an outline planning permission for a development of 200 houses on a site lying to the south of Barnham Station which was allowed on appeal¹.
5. The provision of a safe crossing of the railway was considered essential to provide the future residents of the development to the south with adequate connectivity to local services and facilities. The condition requires a suitable alternative to be in place prior to the occupation of any of the new dwellings. When considering the reasonableness of the condition at the inquiry, Network Rail indicated that a bridge could be delivered within railway operational land and that no third party land would be required. If such land had been required, the condition would not have been imposed, as there would have been insufficient certainty that its requirements could be met. Whilst it was considered that the most likely form of crossing would be an overbridge, the condition was worded to permit flexibility in respect of its design.
6. At present Footpath 323 is a lightly used leisure route, reflecting its seclusion and informal surface. A 9-day survey, straddling two weekends was undertaken by Network Rail. This showed that on average only 13 people/day used the crossing, and that weekday use was significantly lower than that at the weekend. Its current use therefore cannot be directly compared with its future role when the development has taken place. In its existing condition the crossing would be potentially dangerous for future occupants of the new homes to use to access local destinations, particularly local schools. Furthermore, there is a planned strategic allocation at BEW² immediately to the north of the railway. When these developments on either side of the railway take place, the path will become an important functional link between them and the surrounding area, rather than a recreational route. It therefore needs to serve that purpose effectively and safely.
7. An unmanned crossing so close to new homes would provide children or young people with a means of direct access to the rail tracks with the risk that they could explore and play on the railway. This would be prejudicial to their safety and the operation of railway. The proposal for a stepped footbridge would meet the requirement for the railway to be safe by preventing unauthorised access and reducing the risk of accidents and injury. It would make crossing the railway safe for most pedestrians. Network Rail have offered to include a bicycle channel within the design. This would make it easier for cyclists to use and could be secured by condition.
8. The route between many local destinations using Footpath 323 over the railway via a footbridge would be shorter, safer and quieter than alternatives which would involve walking alongside busy roads which, in places, have no footway. This would bring benefits to future residents and the amenity of the area by encouraging walking and cycling, helping to minimise additional traffic and improving air quality.

¹ APP/C3810/W/21/3273087

² Barnham, Eastergate and Westgate – Strategic allocation for 3,000 homes in the Arun Local Plan

9. However, with a significant number of steps to negotiate these opportunities would not be available to everyone. The stiles and unmade surface of the existing footpath effectively make it impossible for anyone using a wheelchair or with significant mobility impairments to navigate the path and crossing. Whilst a stepped footbridge would provide a route for most future residents of developments on either side of the railway, those with mobility problems, prams and pushchairs would not be able to use it.
10. In this context, 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 Council therefore contend that a ramped access serving the bridge is needed as this would enable people with mobility problems to have an equally safe and convenient way to cross the railway.
11. When the appeal for the development to the south of the railway was allowed, there was an expectation that the amended crossing could be delivered within operational railway land. The Inspector took that into account in his decision, which refers to the likelihood of the replacement crossing being an overbridge. He had been assured by the presence of an appreciable margin of land on either side of the railway within the boundary fence and other preliminary evidence provided by Network Rail. He was also satisfied that consent, design and construction could be achieved within, broadly, a two-year time frame. This was important given the acute housing shortage in Arun.
12. The appeal proposal shows that the bridge would be sited within operational land on the northern side of the railway but would require a small strip of additional land to the south. Barratt David Wilson Homes who own the site to the south of the railway support the proposal, which suggests that they will provide any land needed for the stepped footbridge that is not currently part of Network Rail's operational land. However, providing ramps would also require additional land on the northern side of the railway. In the interests of providing a more inclusive crossing, there is evidence that the Council was trying to facilitate this by approaching the landowners. However, this would inevitably cause delay to the delivery of much needed housing for which planning permission has already been granted.
13. The provision of a ramped bridge would provide a better long-term solution to serve development on both sides of the railway. However, under the terms of the GPDO I am required to limit my consideration to whether the proposal would injure the amenity of the neighbourhood. The word 'amenity' has a broad meaning and can refer to the agreeableness of a place or a desirable feature within it. The word 'injure' normally refers to significant harm that occurs through wounding or other trauma.
14. The provision of a stepped bridge over the railway would improve the desirability of the route and make it safer for most users. Ramped approaches would increase that desirability further and would make the scheme more inclusive to all sections of the community. It could therefore be said that this lack of ramps could be injurious to those who are unable to use steps. The regulations therefore require me to consider whether the scheme would be reasonably capable of modification to avoid such 'injury'.

15. I understand that the Council does not consider the acquisition of additional land would impact on any development parcels associated with development on either side of the railway. There may, therefore, be opportunities to identify and protect additional land that would be required upgrade the access to the bridge in the longer term. From the information provided about the BEW, provision of the footpath link at the Birch level crossing is also likely to be important to that development. Permitting a stepped footbridge now would not prevent the Council securing appropriate improvements to the bridge in the future in connection with the BEW, should it consider them necessary in the context of that scheme.
16. 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. From what I have read, there would be delays associated with land acquisition to enable ramped accesses to be provided. There would also be additional costs and I have no evidence as to how an alternative design would be funded. These factors increase the risk of further delays to the delivery of a significant number of much needed homes. In these circumstances, I consider amendments to the design to make it fully accessible would not be reasonable.
17. For all the above reasons I find that the appeal proposal would not result in injury to the amenity of the neighbourhood. There is therefore no reason why prior approval should be withheld.

Conclusion

18. I conclude that the appeal should be allowed, and prior approval should be granted subject to the imposition of a condition requiring the provision of a bicycle channel on the side of the steps of the bridge before the bridge is brought into first use.

Sheila Holden

INSPECTOR