



Appeal Decision

Site visit made on 20 June 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/R4408/W/22/3292820

Land south of New Smithy Avenue, Thurlstone, Penistone S36 9QZ

- 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 Will Newett of Newett Homes Ltd against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2020/1221, dated 3 August 2020, was refused by notice dated 22 December 2021.
 - The development proposed is residential development, with associated access, landscaping and infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for residential development, with associated access, landscaping and infrastructure at land south of New Smithy Avenue, Thurlstone, Penistone S36 9QZ in accordance with the terms of the application, Ref 2020/1221, dated 3 August 2020, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the proposed development on the safe and efficient operation of the highway.

Reasons

3. The appeal site is an area of land that lies in between New Smithy Drive and High Bank. The proposed development would comprise 28 dwellings, reduced from 36 during the application process. Access to the site would be from New Smithy Avenue.
4. Outline planning permission was granted on appeal¹ in 2018 for 21 dwellings at the site (the 2018 appeal). Subsequently, two applications were submitted: a reserved matters application for 21 dwellings, pursuant to the outline permission granted on appeal but only utilising part of the site, and a full application for nine dwellings. These applications were dismissed on appeal in 2021² (the 2021 appeals). A reserved matters application for 21 dwellings³ was approved by the Council in December 2021.
5. The Inspector for the 2018 appeal considered the constraints on the highway network in the vicinity of the site. These mainly related to the geometry of the junction of Manchester Road with Towngate and its operation; existing on-

¹ Appeal reference APP/R4408/W/17/3188501

² Appeal references APP/R4408/W/20/3263535 and APP/R4408/W/20/3263538

³ Application reference 2021/0939

street parking on New Smithy Avenue; and the effect of on-street parking and the vertical and horizontal alignment of Towngate just to the north of its junction with Manchester Road on the efficient flow of traffic.

6. The Inspector for the 2018 appeal scheme concluded that, while there would be occasions where there is a reliance on the courtesy of other drivers, the need for a somewhat awkward manoeuvre, or the need for drivers to exercise care along certain stretches of highway, given the low traffic speeds, highways conditions on Towngate and at its junction with Manchester Road were not unsafe. The Inspector noted that on-street parking on New Smithy Avenue restricted the width of the carriageway to a single lane and forward visibility around the bend, thus impacting on the efficient flow of traffic. Overall, the Inspector concluded that the additional traffic generated by the proposed development would not have a harmful effect on highway safety and the efficient operation of the highway network, subject to mitigation in the form of a layby on New Smithy Avenue.
7. From the evidence before me and my own site visit observations, it appears that there has been no material change in the highways baseline as described in the 2018 appeal decision.
8. The appellant has submitted a number of highways documents in support of this current appeal scheme. This includes accident data for the period 2015 – 2021. No accidents were recorded in the vicinity of the site. Two accidents, both of slight injury, were recorded on Manchester Road, but not in the vicinity of its junction with Towngate.
9. A Transport Statement (TS) and update, two Highways Technical Notes and a highways appeal statement have also been submitted by the appellant. Using data from the national TRICS database, the TS calculated that the proposed development would be anticipated to generate around 16 trips during the morning peak (08:00 to 09:00) and 18 trips during the evening peak hours (17:00 to 18:00). That is, an additional four two-way trips in the morning peak and an additional five two-way trips in the evening peak compared to the consented scheme.
10. The Council does not appear to dispute the conclusions of the appellant's highways information, including the anticipated trip figures. I have no reason to question the findings. The proposed development would lead to only a modest increase in traffic generation compared to the consented scheme.
11. The appellant proposes the provision of a parking layby on the bend of New Smithy Avenue as mitigation for the additional traffic that would be generated by the proposed development. This is the same mitigation as that proposed for the 2018 appeal scheme. I accept that no additional mitigation is proposed even though the proposal would generate additional traffic compared to the consented scheme. However, given the highways baseline and the modest increase in traffic generation that would occur compared to the consented scheme, I am satisfied that the layby would provide suitable mitigation for the proposed development during construction and for existing and future residents, as it would improve visibility and reduce the occurrence of vehicles having to undertake reversing manoeuvres.
12. Given the baseline highways conditions and the evidence before me, I am satisfied that the modest number of additional trips that would be generated by

the proposed development compared to the consented scheme would not lead to an unacceptable impact on highway safety, nor would the residual cumulative impacts on the road network be severe.

13. Policy T4 of the adopted 2019 Barnsley Local Plan (the Local Plan) states that new development will be expected to be designed and built to provide all transport users within and surrounding the development with safe, secure and convenient access and movement. It further states that if a development is not suitably served by the existing highway or would create or add to problems of safety or the efficiency of the highway or any adjoining rail infrastructure for users, developers will be expected to take mitigating action or to make a financial contribution to make sure the necessary improvements go ahead.
14. With the mitigation proposed, I am satisfied that the proposed development would provide all transport users within and surrounding the development with safe, secure and convenient access and movement.
15. The 2018 appeal scheme was permitted subject to a number of conditions including condition 12 which states that the site shall be developed for a maximum of 21 dwellings. The number of dwellings for the 2018 appeal scheme was not defined in the description of development. It is not uncommon to impose a condition to control the number of dwellings so that the outline permission is clearly defined and to avoid a reserved matter application for a larger number of dwellings, the acceptability of which may not have been assessed.
16. I note that the reason given for this condition is in the interests of highway safety. The assessment of the 2018 appeal scheme was based on a development of up to 21 dwellings. There is no clear evidence from the previous planning history to suggest that the Inspector considered that a development of more than 21 dwellings would be unacceptable on highway safety grounds.
17. The Council also highlights that the Inspector for the dismissed 2021 appeals considered the cumulative effects from the two schemes which totalled 30 dwellings, and that the condition limiting development to 21 dwellings was upheld. However, it would not have been possible to have revisited the principle of the outline permission as part of these appeals. Furthermore, the 2021 appeals were dismissed due to the harm to the character and appearance of the area and that the proposed layout would not be consistent with the outline planning permission. The reference in this decision to the condition attached to the outline permission limiting the development to 21 dwellings was made in the context of addressing the issue of consistency with the outline permission⁴. Highway safety matters do not appear to have been considered in any detail.
18. I appreciate that roads in the vicinity are subject to on-street parking pressures given their location near to the school and a play area. However, the proposed development would make appropriate provision for parking within the site. Furthermore, as noted above, the proposed layby would provide appropriate mitigation for the proposal in terms of addressing the road conditions arising from on-street parking on the bend on New Smithy Avenue.

⁴ Paragraphs 17 and 18 of appeal decision APP/R4408/W/20/3263535 and APP/R4408/W/20/3263538

19. I therefore conclude that the effect of the proposed development on the safe and efficient operation of the highway would not be unacceptable. It would accord with the requirements of Policy T4 of the Local Plan which have been summarised above.

Other Matters

20. The site lies adjacent to the Thurlstone Conservation Area (the CA). The significance of the CA lies in part from the vernacular architecture and the relationship of the buildings with the roads and public spaces. Due to the proposed layout and design of the dwellings and the landscaping, the proposed development would not harm the significance of the CA.
21. Given the separation distances and orientation of the nearby existing dwellings and the proposed dwellings, together with the proposed boundary treatment, I am satisfied that there would be no unacceptable loss of privacy, outlook or light for neighbouring residents.
22. The proposed development would not be out of keeping with the character and appearance of the area due to the materials proposed, the layout of the site including the relationship of the proposed dwellings with the access road, and the areas of native planting.
23. There is no substantive evidence to suggest that the proposed drainage arrangements would give rise to flood risk to nearby properties. The appellant's Drainage and SUDS Statement states that the soakaways would typically be designed for 1 in 100 year storm event with allowance for climate change, with the final design being subject to approval. I note that Yorkshire Water and the Council's Drainage Officer have not raised any concerns about the proposal subject to the imposition of conditions.
24. Significantly boosting the supply of housing is an objective of the government. In addition, I note that the number of net additional homes sought in the Local Plan is not set as a maximum figure.
25. I note that these issues did not form part of the Council's case at appeal. Therefore, while I acknowledge those points, they are nevertheless insufficient to outweigh or alter my reasoning regarding the overall acceptability of the scheme.
26. I have received a copy of an agreement under Section 106 of the Town and Country Planning Act 1990 (the S106 Agreement). This was completed following the Council's decision on the application. It includes a number of obligations to come into effect if planning permission is granted. I have considered these in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations), which are restated in paragraph 57 of the National Planning Policy Framework (the Framework).
27. Policy H7 of the Local Plan expects developments of 15 or more dwellings to provide affordable housing. Policy H1 of the 2019 Penistone Neighbourhood Development Plan 2018 – 2033 requires affordable housing provision for developments of more than 10 dwellings. The Council's 2019 Supplementary Planning Document: Affordable Housing sets out that the requirement within the Penistone, Dodworth and Rural West is 30%. The S106 Agreement makes provision for eight affordable units onsite which equates to around 30%.

28. Policy I1 of the Local Plan requires development to contribute as necessary to meet all on and off site infrastructure requirements to enable development to take place satisfactorily. The Council's evidence indicates that there is a shortfall in secondary school places within the area. The S106 Agreement would provide a contribution of £64,000 towards the provision of four secondary school places at relevant schools. This contribution would be in line with the requirements and calculation method in the Council's 2019 Supplementary Planning Document: Financial Contributions to Schools.
29. Local Plan Policy T3 states that where levels of accessibility through public transport, cycling and walking are unacceptable, developers will be expected to take action or make financial contributions in accordance with Policy I1 of the Local Plan. In accordance with the Council's 2019 Supplementary Planning Document: Sustainable Travel (the Sustainable Travel SPD), which identifies that there is a significant transport infrastructure gap, the S106 Agreement would provide a financial contribution of £28,000 to be used by the Council for purposes identified in the Sustainable Travel SPD.
30. Local Plan Policy GS1 states that in order to improve the quantity, quality and value of green space provision, qualifying new residential developments will be required to provide or contribute towards green space. The proposed development would not afford an opportunity to accommodate publicly accessible open space of sufficient size within the site. The S106 Agreement would provide a financial contribution of £53,669.60 towards the provision of or improvements to, public open space within 5km of the boundary of the site, in accordance with the calculation methodology set out in Appendix 2 of the Council's 2019 Supplementary Planning Document: Open Space Provision on New Housing Development.
31. Policy BIO1 of the Local Plan expects development to conserve and enhance biodiversity and geological features. The application is supported by a Biodiversity Net Gain Assessment. This calculated that the proposed development would result in a net loss of habitat. To compensate for this, the S106 Agreement includes a contribution of £49,250 towards biodiversity net gain outside the site.
32. In these circumstances these obligations would be necessary to make the development acceptable; would be directly related to the development proposed; and would be fairly and reasonably related in scale and kind. They would therefore pass the statutory tests.

Conditions

33. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
34. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans.
35. A number of conditions are required prior to commencement of development to ensure that the relevant details are acceptable at an appropriate stage. These are summarised in the following paragraph.

36. A condition to secure details of finished floor levels of all buildings and structures, road levels and existing and finished ground levels is necessary to enable the impact arising from a need for any changes in level to be assessed. To ensure that trees are protected, details of mitigation measures including protective barriers are necessary. In the interests of highway safety, a scheme for the detailed design of the streets for highway adoption, the submission of a Construction Method Statement and a requirement to carry out a highway condition survey are necessary. To ensure that any archaeological remains present are investigated and a proper understanding of them is gained and disseminated, a condition requiring a Written Scheme of Investigation that sets out a strategy for archaeological investigation is necessary. A scheme for the provision and implementation of biodiversity enhancement measures to secure the ecological mitigation in the Biodiversity Net Gain Assessment is necessary to maintain and enhance biodiversity.
37. A condition requiring details of bicycle parking is required to encourage sustainable travel.
38. In the interests of highway safety, conditions are necessary to require the provision of a parking layby on New Smithy Avenue, to require the roads and footways to be constructed to binder course level, to control the gradient of the access road, and to provide on-site parking, manoeuvring and visibility splays.
39. In line with Local Plan Policy I1, a condition is necessary to secure details of measures to facilitate the provision of high-speed full fibre broadband.
40. In the interests of the character and appearance of the area it is necessary to require details of the external materials to be used on the development. For the same reason, conditions requiring the implementation of the landscape masterplan are necessary.
41. Conditions requiring details of surface water drainage and separate systems of drainage for foul and surface water are necessary to ensure satisfactory drainage.
42. During the construction phase, it is necessary to restrict the time period during which heavy goods vehicles can enter and leave the site, and to restrict hours of operation, in the interests of the living conditions of neighbouring occupiers. For the same reason and to safeguard the character and appearance of the CA, it is necessary to remove rights for works permitted to take place without the need for express planning permission on a selective basis for plots 2-16, 18 and 20, referring to classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) concerned with the enlargement, improvement or other alteration to a dwellinghouse and the erection of garages or other outbuildings.
43. The Council has suggested a condition requiring details of electric vehicle charge points. Amendments to the Building Regulations have recently been introduced relating to requirements for installing electric vehicle charge points in new homes. The Planning Practice Guidance sets out that conditions requiring compliance with other regulatory requirements such as Building Regulations will not meet the test of necessity and may not be relevant to planning. I have not therefore imposed this condition.

Conclusion

44. For the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - S101 Rev P Planning Layout
 - P001 Rev A Location Plan
 - DR-4006-01.04 Rev A Landscape Masterplan
 - P006 Rev B Boundary Treatment Plan
 - P007 Rev B Surface Materials Plan
 - TS-A2-01 Plans and Elevations
 - TS-A3-01 Plans and Elevations
 - TS-N302-01 Plans and Elevations
 - TS-N302-02 Plans and Elevations
 - TS-N305.01 Plans and Elevations
 - TS-N307-01 Plans and Elevations
 - TS-N307-02 Plans and Elevations
 - TS-N401-01 Plans and Elevations
 - TS-N401-02 Plans and Elevations
 - TS-N402-01 Plans and Elevations
 - TS-N403A-01 Plans and Elevations
 - TS-N403B-01 Plans and Elevations
 - TS-N403B-02 Plans and Elevations
 - TS-N404-01 Plans and Elevations
 - TS-N404-02 Plans and Elevations
 - TS-DG.01 Garages
 - Biodiversity Net Gain Assessment (ER-4006-02B) Biodiversity Metric-4006-01A
 - Drainage and Suds Statement (Eastwood and Partners)
 - Desktop Geotechnical and Geo-Environmental Site Investigation (Eastwood and Partners, Issue 3)
 - Phase 2 Geotechnical and Geo-Environmental Site Investigation Report (Eastwood and Partners, 40630-003)
- 3) Prior to the commencement of development, plans to show the following levels shall be submitted to and approved in writing by the Local Planning Authority: finished floor levels of all buildings and structures; road levels; existing and finished ground levels. Thereafter the development shall proceed in accordance with the approved details.
- 4) Prior to the commencement of development, the following, in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations, shall be submitted to and approved in writing by the Local Planning Authority:
 - Tree protective barrier details;
 - Tree protection plan;
 - Arboricultural Method Statement;
 - Arboricultural Impact Statement.

Thereafter the development shall proceed in accordance with the approved details.

- 5) Prior to the commencement of development, full construction, engineering, drainage and street lighting details of the streets proposed for highway adoption shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed and maintained in accordance with the approved details.
- 6) Prior to the commencement of development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period for the development.
- 7) Prior to the commencement of development, a survey of the condition of the adopted highway to be used by construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The extent of the area to be surveyed shall be approved by the Local Planning Authority prior to the survey being undertaken. The survey must consist of:
 - i. a plan to a scale of 1:1250 showing the location of all defects identified; and
 - ii. a written and photographic record of all defects with the corresponding location references accompanied by a description of the extent of the assessed area and a record of the date, time and weather conditions at the time of survey.

Upon completion of the development hereby permitted, a second condition survey of the same adopted highway shall be carried out to identify defects attributable to the construction traffic associated with the development. The findings of the condition survey, which shall also include any required remedial works and a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority as a 'scheme' within 1 month of completion of the development. Any necessary remedial works in the aforementioned 'scheme' shall be completed at the developer's expense and in accordance with the approved timetable for implementation.

- 8) Prior to the commencement of development, including any demolition and groundworks, a Written Scheme of Investigation (WSI) that sets out a strategy for archaeological investigation shall be submitted to approved in writing by the Local Planning Authority. The WSI shall include:
 - the programme and method of site investigation and recording;
 - the requirement to seek preservation in situ of identified features of importance;
 - the programme for post-investigation assessment;
 - the provision to be made for analysis and reporting;
 - the provision to be made for publication and dissemination of the results;
 - the provision to be made for deposition of the archive created;
 - nomination of a competent person/persons or organisation to undertake the works;
 - the timetable for completion of all site investigation and post-investigation works.

Thereafter the development shall only take place in accordance with the approved WSI and the development shall not be first occupied until the Local

Planning Authority has confirmed in writing that the requirements of the WSI have been fulfilled or alternative timescales agreed.

- 9) Prior to the commencement of development, a Biodiversity Enhancement Management Plan detailing the long-term management of the ecological mitigation in the Biodiversity Net Gain Assessment (ER-4006-02B) and accompanying Biodiversity Metric-4006-01A shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.
- 10) Upon commencement of development, details of measures to facilitate the provision of high-speed full fibre broadband for the development hereby permitted, including a timescale for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 11) Upon commencement of development, details of the proposed external materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 12) Upon commencement of development, details of bicycle parking shall be submitted to and approved in writing by the Local Planning Authority. The bicycle parking shall be provided in accordance with the approved details prior to first occupation of the development hereby permitted and shall thereafter be retained for this purpose.
- 13) Upon commencement of development, a timetable for the out of curtilage planting, seeding or turfing comprised in the approved details of landscaping (DR-4006-01.04 Rev A Landscape Masterplan) shall be submitted to and approved in writing by the Local Planning Authority. All out of curtilage planting, seeding or turfing comprised in the approved details of landscaping (DR-4006-01.04 Rev A Landscape Masterplan) shall thereafter be carried out in accordance with the approved timetable.
- 14) All in curtilage planting, seeding or turfing comprised in the approved details of landscaping (DR-4006-01.04 Rev A Landscape Masterplan) shall be carried out on each plot no later than the first planting and seeding season following the occupation of the individual dwellinghouse/s; and any trees or plants which die within a period of five years from first being planted, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 15) No development shall commence on the construction of the dwellings until a scheme for a parking layby accommodating three parking spaces on New Smithy Avenue has been carried out in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the details shown on the Proposed Layby plan Ref: AMA/20366/SK001.
- 16) Prior to first occupation of the development hereby permitted, the roads and footways shall be constructed to binder course level from the dwelling to the adjoining public highway in accordance with the details that shall have

previously been submitted to and approved in writing by the Local Planning Authority.

- 17) Prior to first occupation of the development hereby permitted, the parking/manoeuvring facilities shown on the approved plans shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles, and shall thereafter be retained for this purpose.
- 18) No piped discharge of surface water from the site shall take place until works to provide an outfall, other than the existing local public sewerage, for surface water have been completed in accordance with the details that shall have previously been submitted to and approved in writing by the Local Planning Authority.
- 19) Except in case of emergency, operations in connection with the construction of the development shall not take place on site other than between the hours of 08:00 to 18:00 Monday to Friday and between 09:00 to 13:00 on Saturdays. There shall be no working on Sundays or Public Holidays. At times when operations in connection with the construction of the development are not permitted, work shall be limited to maintenance and servicing of plant or other work of an essential or emergency nature. The Local Planning Authority shall be notified within 48 hours of the occurrence of any such emergency and a schedule of essential work shall be provided.
- 20) During the construction phase, heavy goods vehicles shall only enter or leave the site between the hours of 08:00 to 18:00 Monday to Friday and 09:00 to 13:00 Saturdays and no such movements shall take place on or off the site on Sundays or Public Holidays (this excludes the movement of private vehicles for personal transport).
- 21) The gradient of the vehicular access shall not exceed 1 in 12 as measured from the edge of the adjacent carriageway.
- 22) Pedestrian visibility splays, having dimensions of 2 metres x 2 metres, shall be safeguarded at the drive entrance/exit. Nothing shall be erected, retained, planted and / or allowed to grow at or above a height of 0.6 metres to the rear of the footway/ verge which would obstruct the visibility splays. The visibility splays shall be maintained free of obstruction at all times thereafter.
- 23) The development hereby permitted shall be developed with separate systems of drainage for foul and surface water on and off site.
- 24) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order with or without modification), no enlargement, improvement or other alteration of plots 2-16, 18 and 20 as shown on plan S101 Rev P which would otherwise be permitted by Class A of Part 1 of Schedule 2 to that Order shall be carried out, and no garages or other outbuildings shall be erected other than those expressly authorised by this permission.