



Appeal Decision

Site visit made on 25 January 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/R4408/W/21/3284433

49 Woodstock Road, Barnsley S75 1DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of outline planning permission subject to conditions.
- The appeal is made by Mr S Clayburn against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2021/1024, dated 21 July 2021, was approved on 24 September 2021 and outline planning permission was granted subject to conditions.
- The development permitted is 'Demolition of 49 Woodstock Road and residential development of 3 no. dwellings (Outline with all matters reserved apart from means of access)'.
- The conditions in dispute are Nos 9 and 22 which state that:
"9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no enlargement, improvement or other alteration of the dwellings which would otherwise be permitted by Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority, and no garages or other outbuildings shall be erected."
"22. The development hereby approved shall not exceed a maximum of 3 units, of which plot 1 shall not exceed a maximum of 1 storey in height and plots 2 and 3 shall not exceed 2 storeys in height, the details of which shall be submitted as part of the application for approval of reserved matters."
- The reasons given for the conditions are: *"To safeguard residential and visual amenity in accordance with Local Plan Policy D1 'Design' and GD1 'General Development'" and "To maintain residential amenity levels, in accordance with Local Plan Policy GD1 'General Development' and Supplementary Planning Document 'Design of Housing Development.'"*

Decision

1. The appeal is allowed and the outline planning permission Ref 2021/1024 for Demolition of 49 Woodstock Road and residential development of 3 no. dwellings (Outline with all matters reserved apart from means of access) at 49 Woodstock Road, Barnsley S75 1DX granted on 24 September 2021 by Barnsley Metropolitan Borough Council, is varied by deleting condition 9, and deleting condition 22 and substituting it for the following condition:

1) The number of dwellings hereby approved shall not exceed 3.

Background and Main Issues

2. Outline planning permission has been granted for the demolition of 49 Woodstock Road and a residential development comprising 3 dwellings with matters of layout, scale, appearance, and landscaping reserved for future approval. It is confirmed in the planning officer report and in both main parties' statements of case that the drawings that formed a part of this application

were indicative. I have therefore considered them to be an illustration of how the proposal might be developed.

3. The appeal seeks permission to carry out the development without complying with conditions 9 and 22. These conditions removed permitted development rights for all extensions and alterations, and restrict the height and the number of the dwellings on the site respectively.
4. The main issues are therefore whether the conditions are necessary and reasonable, in the interests of the character and appearance of the area and the living conditions of the residents of neighbouring properties, with particular regard to outlook, light and privacy.

Reasons

5. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
6. More specifically, paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG)¹ also advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
7. The submitted plans are indicative, and the current outline permission relates to access only with matters such as scale, appearance and layout to be reserved for future consideration. As such, there are no fixed parameters or details before me in these respects.
8. Given the lack of detail at this stage I am unable to be certain that the removal of permitted development rights is necessary. Furthermore, little justification for imposing this condition, as required by the policy set out in the Framework, has been provided by the Council in its statement of case.
9. As matters associated with scale, appearance and layout have yet to be determined, a condition restricting permitted development rights at outline stage is therefore premature. As such, condition 9 is not reasonable or necessary in the interests of the character and appearance of the area and the living conditions of neighbouring residents, with particular regard to outlook, light and privacy. I shall therefore delete this condition.
10. Restricting the number of dwellings to a maximum of 3, as per condition 22, is necessary to define the extent of the permission to be granted pursuant to the description of development. However, and as previously noted, layout, scale and appearance are matters that have been reserved for future approval.
11. Whilst the Council has referred me to the recommended external spacing standards set out in its Supplementary Planning Document: Designing New Housing Development 2012 (SPD), it is unknown whether the plots and the positions and orientation of the proposed dwellings will remain as shown in the indicative plans, when the details of future reserved matters applications are submitted. The heights of the dwellings and the positions of any window

¹ Paragraph: 017 Reference ID: 21a-017-20190723

openings and the subsequent effect that these may have on the residents of neighbouring properties' levels of privacy, light and outlook should therefore be considered and controlled by the Council at the relevant reserved matters stage/s.

12. In light of the above, condition 22 in its current form, is also not reasonable or necessary at this stage. As such it is required to be removed and replaced by a condition that solely refers to the numbers of dwellings approved.
13. Therefore, deleting condition 9 and removing and replacing condition 22 would not, in my view, conflict with Policies D1 and GD1 of the Barnsley Local Plan 2019, or advice contained in the SPD. Amongst other matters, these seek to ensure high quality design and to safeguard the living conditions and residential amenity of existing and future residents.

Other Matters

14. The Council has drawn my attention to a planning application for 5 dwellings on the site (Ref: 2021/1472) that they have determined since the submission of this appeal. Whilst I am aware of their reasons for refusing this application, it has had no bearing on the outcome of this appeal as I have determined it on its own merits and on the basis of the evidence before me.
15. In reaching my findings I have also had regard to a previous appeal on this site (Ref: APP/R4408/W/20/3253900) and the Inspector's views on the local character of the area. Nonetheless, there is not anything within that appeal case which would lead me to reach a different decision.

Conclusion

16. I therefore find that the disputed conditions are not reasonable or necessary in the interests of the character and appearance of the area and the living conditions of the residents of neighbouring properties. I shall therefore allow the appeal and vary the original permission by deleting condition 9 and deleting and replacing condition 22 with one that refers to the number of dwellings approved only.

Mark Caine

INSPECTOR