The Planning Inspectorate

Appeal Decision

Hearing Held on 4 October 2017

Site visits made on 3 October 2017 and 4 October 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 25 October 2017

Appeal Ref: APP/R4408/W/17/3172968
A and E White Bakers Ltd. Charles Street, Worsbrough Bridge, Barnsley S70 5AF

- 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 David White (A and E White Bakers Limited) against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2014/1570, dated 16 December 2014, was refused by notice dated 4 October 2016.
- The development proposed is demolition of the existing bakery and residential development for 23 dwellings.

Decision

1. The appeal is dismissed.

Procedural Matters

2. At the hearing the Council supplied me with a copy of the Supplementary Planning Document Open Space Provision on New Housing Development (adopted March 2012) (the Open Space SPD). As one of the Council's reasons for refusal sites this SPD, and as a copy was also supplied to the appellant at the hearing, and the appellant had the opportunity to respond to this, I consider that no prejudice would occur to any party in my taking it into account in my consideration of the planning merits of the appeal.

3. The Council supplied me with a copy of the Barnsley Five Year 'Deliverable' Housing Land Supply Report April 2017- March 2022 (adopted August 2017) (the Report). As the appellant drew my attention to the housing supply situation in their submissions, and that a discussion of this matter formed part of the proceedings of the hearing, I considered it reasonable to accept this and that no prejudice would occur to any party in my taking its contents into account.

4. At the hearing the appellant enlarged upon the topic of extant planning permissions relating to the site, which expanded on previous points raised in the appeal statement. I requested details of these to be supplied to me, by the Council after the hearing. Again I consider, as both appellant and Council were fully aware of these matters and that the extant planning permission was discussed at the hearing that no prejudice would occur as a result of me considering these documents.

Main Issues

5. I consider the main issues in this appeal to be firstly, whether the proposed development would make an acceptable contribution towards the provision of affordable housing; secondly, whether the proposed development would make an acceptable contribution towards the provision of public open space; thirdly, whether the proposed development would be likely to increase the risk of flooding in the area including whether it would provide adequate drainage measures; fourthly, whether the proposed development would provide amenity space sufficient to meet the day-to-day needs of its future occupants; fifthly, the effects of the proposed development on the living conditions of the occupants of dwellings on Charles Street in terms of privacy and outlook; and finally the effects of the design of the proposed development on the character and appearance of its surroundings.

Reasons

Site, surroundings and proposed development

6. The appeal site comprises a large building of an industrial character, its access, related structures, and hard-standing, which facilitate storage, car-parking and servicing. Snape Sike, a watercourse partially in culvert runs through the site along one of its boundaries. Soft landscaping and trees are around the periphery of the appeal site.

7. With the exception of the Working Men's Club adjacent to the entrance to the appeal site, its surroundings are principally residential, though of differing characters and densities. The immediate context comprises the two-storey short terraces of Charles Street and Hardwick Close situated at an elevated level to one side, and at a slightly lower level across Snape Sike Harvest Close which comprises detached and semi-detached dwellings. Further semi-detached houses of a regular pattern address Westfields in the environs of the bakery building. Roof styles and coverings vary in the immediate environs of the appeal site, with gable ends, half-hipped and hipped roofs all present.

8. The proposed development would see demolition of the industrial buildings on the site to facilitate its residential redevelopment, with access taken from Park Road, and the dwellings arranged in a cul-de-sac arrangement. In the main parking would be located to the front of the dwellings.

9. The dwellings would be principally semi-detached with one short terrace of three, and of three principal types. A row of eight semi-detached houses, annotated as 'House type A' on the submitted details would be two and a half-storey with habitable space in the roof and would back onto the appeal site's boundary with the properties facing Charles Street. These houses would have asymmetric eaves heights, resulting at the back in a taller elevation topped with flat-roofed dormers, the front of which would continue the building line of the rear wall. To the front, a single dormer with a pitched roof, set back from the eaves line would be employed in each dwelling. These dwellings would include integral garages. Nine dwellings annotated as 'House type B' would be provided, these, whilst including living accommodation in the roof space would nevertheless be of a more traditional design that House type A, employing pitched dormers in their fronts and rooflights in their rear. 6 of the units would be of House type C, of two storeys, gable-ended with a gable projection at eaves level employed in each front elevation.

Affordable Housing

10. Policy CSP15 of the Barnsley Core Strategy (Adopted September 2011) (the Core Strategy) requires housing developments of 15 or more dwellings to provide affordable housing. The appeal site is located in part of the Borough with a 15% requirement for affordable housing.

11. The proposed development would not make a contribution towards affordable housing provision. However, I note that Policy CSP15 sets out that affordable housing contributions may not be sought where a viability assessment establishes that such provision would render a scheme unviable.

12. In this regard I am mindful of the viability evidence supplied by the appellant[1]. Whilst this emphasises the scale of the abnormal costs that would be involved in the scheme including culverting, construction of retaining walls and demolition, the detailed build up and costing of these elements has not been placed before me.

13. Moreover, whilst mindful of comments at the hearing regarding house prices in a recently completed development in the local area, the extent of comparable information used to derive the house prices for the proposed dwellings has not been supplied which impairs an informed assessment of the reasonableness of these assumptions. Furthermore, I note that the 'List of all housing types, tenures and sizes' differs to some extent from the plans as proposed, including describing the units as 'terraced houses' when the majority of them are semi-detached, and describing the larger houses as three bedroom whilst the plans show four bedroom, albeit one is annotated as 'Bed 3/Study'. Whilst cognisant of the appellant's point that the houses were valued on a price per SqM basis, I consider that these variations in description could nevertheless have an effect on the resultant house prices. Consequently, taking these matters together I consider that the submitted viability evidence does not conclusively establish that affordable contributions would be unviable. In arriving at this view, I am mindful of the Council's requirement for viability evidence to be verified by the District Valuer at an applicant's expense, and that such a process has not been carried out in this case.

14. In assessing whether a planning obligation would be justified in this case I am mindful of the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the Regulations), and paragraph 204 of the National Planning Policy Framework (the Framework).

15. The Framework sets out where there is an identified affordable housing need that Councils should include policies for meeting this need. As Policy CSP15 gives effect to this, I consider that a contribution would be necessary to make the development acceptable in planning terms and thus meets the first test. The percentage figures derived in Policy CSP15 were informed by viability evidence and the Council's Strategic Housing Market Assessment. Moreover, the Council's policy sets out explicitly that site specific viability matters may justify reduced affordable housing contributions. As a consequence, I consider that an affordable housing contribution in this case would be directly related to the development and fairly and reasonably related in scale and kind, and thus the second and third tests would be met.

[1] Viability Assessment of Whites Bakery, Worsborough, produced by Max Design Consultancy Limited

16. Consequently, taking these considerations together, I conclude that the proposed development would not make an acceptable contribution towards the provision of affordable housing. As a result, the proposed development would conflict with Policy CSP15 of the Core Strategy insofar as it seeks to ensure that new residential developments provide an element of affordable housing.

Public Open Space

17. The Open Space SPD requires open space of a type appropriate to the character of a site to comprise 15% of its gross area. Where this cannot be achieved contributions would be sought for offsite provision. The types of provision listed in the Open Space SPD include equipped children's play areas, informal play space and informal landscaped areas, and formal recreation.

18. I have been supplied with no mechanism to secure off-site provision of public open space. I note that the site layout includes a relatively narrow strip of land close to the proposed access to the site, a roughly wedge-shaped element around the de-culverted area of Snape Sike, and irregular and marginal spaces elsewhere and these were suggested by the appellant as areas of public open space. However, these areas, due to their awkward shape, road-side siting and topography would be of limited value as informal recreation or other space. Moreover, their shape and peripheral placement would put them at odds with the design principles set out within the Open Space SPD including, amongst other things the necessity for the open spaces to be an integral part of development and usually a central feature, and that awkwardly shaped and leftover areas of land should be avoided in terms of open space provision.

19. I am mindful that the appellant considers the provision of off-site open space to be unviable, however, given my conclusions on the submitted viability evidence this argument does not weigh in the appeal scheme's favour to any significant degree on this issue. I note that the appellant considers that the provision of private gardens would lead to an overall reduction in the hard landscaping currently present at the site. However, beyond visual improvements that could result from this, it has not been demonstrated that the proposed private gardens would be of a scale to reduce the requirement for public open space in relation to the appeal scheme to any material degree, and in any event would not meet the Open Space SPD requirements.

20. In considering this aspect of the appeal I am mindful once more of the Regulations and the Framework tests in relation to planning obligations. I consider that as provision of public open space is supported by the adopted Open Space SPD, and that the Framework[2] sets out the requirement for local planning policies to optimise the potential of sites to accommodate development including incorporation of green and other public space, I consider that a contribution is necessary to make the development acceptable in planning terms. Moreover, given the scale of the development proposal, and the types of houses that are proposed, capable as they are of accommodating families, I consider that a contribution would be directly related to the development, and fairly and reasonably related in scale and kind.

21. Consequently, taking these matters together, I conclude that the proposed development would not make an acceptable contribution to the provision of public open space, and as a result would conflict with the Open Space SPD, and

[2] At paragraph 58, bullet 3

the objectives set out in the supporting text of Policy CSP35[3] of the Core Strategy insofar as they seek to ensure that developments provide and maintain appropriate green space.

Flood Risk and Drainage

22. Surface water at the appeal site is currently drained into Snape Sike, and the proposed development would be drained in a similar manner albeit with storage provided underneath the parking area in the south east corner of the site proposed to manage the rate of discharge. The proposed development would include additional culverting of Snape Sike, and the culvert would run under the private gardens of plots 18 to 23 meaning that the future occupants of those properties would be the riparian owners with the responsibilities attendant on them in this capacity.

23. Policy CSP4 of the Local Plan seeks to reduce the extent and impact of flood risk, and restricts the culverting or building over of watercourses. As a consequence, the proposal to introduce culverting to a considerable stretch of the watercourse in this case would be a clear conflict with this aspect of the development plan. Moreover, due to the fragmented nature of the riparian ownership of the culverted section of watercourse, its ongoing maintenance and clearance could prove to be difficult to co-ordinate. This taken together with the topography of the site, with Harvest Close situated at a lower level could lead to increased flood risk as a result of water overtopping the un-culverted part of Snape Sike, close to houses to its rear. Consequently, I consider that the drainage measures, as presented would be inadequate and likely to increase flood risk.

24. Whilst I am mindful of the appellant's view that a management company could be instituted to maintain the culvert, I have been supplied with no legal mechanism that would give effect to this aim, and as a consequence, this is a matter to which I attach only minimal weight in the overall planning balance. Moreover, although I note references to management companies and arrangements forming parts of landscaping conditions, as the drainage and flood risk elements are fundamental to a consideration of the planning merits of the proposed development at this stage, I consider that their maintenance arrangements could not be adequately controlled via the attachment of conditions.

25. I note the physical aspects of Snape Sike drawn to my attention by the appellant, and its consequent limited ecological value in the vicinity of the appeal site. However, this matter does not weigh in favour of the proposed development. I am conscious that the appeal site is within Flood Zone 1; however, this does not alter my view in respect of the adequacy of its proposed drainage arrangements.

26. Consequently, for the reasons given above, I conclude on this issue, that the proposed development would make inadequate arrangements for drainage and would be likely to increase flood risk in the area. As a consequence it would conflict with Policy CSP4 of the Core Strategy and the Framework. Taken together, and amongst other matters, these policies seek to ensure that new development does not give rise to increased flood risk elsewhere.

[3] At paragraph 9.248

Amenity Space

27. The proposed rear gardens of plots 1 to 10 would undershoot the minimum requirement of 60 SqM set in Barnsley's Designing New Housing Development Supplementary Planning Document (adopted March 2012) (the Design SPD), and plot 17 does so to a significant degree. Moreover, in the case of plots 1 to 8 the rear gardens would be sandwiched between the tall rear elevations of the Type A properties, and the tall proposed retaining wall to the rear topped by the boundary wall to the rear of Charles Street. As the gardens would be broadly north facing, there would be considerable parts of the day when they would be overshadowed. This coupled with the enclosing effect of the tall wall to the rear would create a gloomy environment. These considerations, taken together, with the relatively small-scale of the garden in connection with houses capable of accommodating four bedrooms, lead me to the view that the rear amenity space in connection with plots 1 to 8 would not meet the day-to-day needs of their future occupants. In arriving at this view I am cognisant that the appellant is pursuing a green wall option for the rear wall of these gardens; however, this would not serve to mitigate the effects I have described to any material degree.

28. Due to the design of house type B the overshadowing effects arising on the gardens of Plots 9 to 10 would be unlikely to be as severe as those at plots 1 to 8. However, the amenity space of plot 9, due to its limited size serving a three bedroom property would be unlikely to meet the functional needs of its future occupants. In contrast given the more generous scale of plot 10's amenity space, and disposition of the house in relationship to the plot, I consider that, whilst this undershoots the Design SPD minimum requirement, this would not be to so significant as to impair the living conditions of its future occupants to any material degree.

29. Whilst I note the appellant's remarks that landscaping details could be agreed which could give more of the green space adjacent to Plot 17 to form its private garden, the shape and disposition of any additional space secured in this regard would be unlikely to meet the objectives of the SPD in terms of quality, or the space requirements more generally.

30. I readily accept that constraints of the site, including the necessity to accommodate an estate road in the design have created challenges in accommodating the various items associated with a development of this scale. However, this does not justify a departure from the requirements of the Design SPD in this instance, or the relatively low level of amenity that would be enjoyed by the proposed development's future occupants.

31. Accordingly, I conclude on this main issue that plots 1 to 9 and 17 would not provide amenity space sufficient to meet the day-today needs of their future occupants. In this regard the proposed development would therefore conflict with Policy CSP29 and the Design SPD insofar as they require new development to contribute towards creating attractive, sustainable and successful neighbourhoods, and provide adequate amenity space.

Living Conditions

32. The separation distances between 6 to 12 Charles Street and the plots of the proposed development to their rear would fall short of the 21m separation distance set out in the Design SPD by a substantial degree. I saw onsite that the site levels of plots 1 to 10 of the proposed development are considerably lower than those of Charles Street, and that a brick boundary wall would screen the rear of the proposed development to some extent from Charles Street. Nevertheless the upper rear windows of Plots 1 to 8, which would serve bedrooms would be at a level above that boundary wall, and in the case of Plots 5 to 8 due to their proximity to gardens and habitable room windows of the dwellings they would face this would allow a high degree of mutual overlooking between the proposed development and the Charles Street properties. As a consequence, this would cause harmful privacy effects to the occupants of these dwellings. I am mindful that a condition was suggested by the Council requiring employment of obscure glazing in these upper windows. However, I consider that the lack of outlook provided by obscure glazing for the future occupants of the proposed development would reduce their residential amenity to an unacceptable degree, and it would therefore be unreasonable to attach a condition to this effect.

33. Whilst I have found clearly harmful effects in terms of privacy, I consider that, due to the lower site level of the proposed development, the limited amount of the dwellings on plots 1 to 10 that would be visible over the boundary wall to the rear of Charles Street would constitute neither an enclosing nor an overbearing presence that would materially deplete the outlook available to the occupants of 6 to 12 Charles Street. I note Council comments to the effect that the proposed development would change the character of the outlook across the appeal site from its current relatively open and leafy appearance to one with more built development thereon. This may be the case, nevertheless for the reasons described this change would not result in any undue enclosure to the outlook available from Charles Street, and as a result, does not weigh against the development.

34. Although I have found no material harm would occur to the outlook of the occupants of 6 to 12 Charles Street as a result of the proposed development I have found that it would erode their privacy. Consequently, for the reasons given above, the proposed development would cause considerable harm to the living conditions of the occupants of dwellings on Charles Street in terms of privacy. In these regards it would conflict with Policy H8a of the Barnsley Unitary Development Plan (adopted December 2000); Policy CSP29 of the Core Strategy; and the Design SPD. Taken together, and amongst other matters, the policies and guidance seek to ensure that the layout and design of all new dwellings must ensure that living conditions and overall standards of residential amenity are provided or maintained to an acceptable level both for new residents and those existing.

Character and Appearance

35. I saw that the character of dwellings in the immediate environs of the appeal site varied considerably, with a generally dense and highways dominated layout around John Street, George Street and Ashover Close, and a leafier, but nevertheless highway and parking orientated layout pertaining on Harvest Close. Whilst I note that the parking arrangements proposed would in the

main fall short of the Design SPD requirements regarding on-plot parking being located to the side of dwellings, I nevertheless consider that within the immediate context this aspect of the development would not appear significantly out-of-kilter. As a consequence, I consider this aspect of the proposed development's design would not cause any material harm to the character and appearance of the site or its surroundings.

36. Moreover, whilst the proposed development would introduce housing types that are somewhat novel in the context of its immediate environs it would do so on a site, which due to its levels, and access arrangements would be visually discrete from its surroundings, which in any event have no prevailing style of house, density, plot ratio or roof. Due to these matters, the proposed development's employment of taller elements and inclusion of dormer windows would not read as visually jarring or discordant elements in an otherwise harmonious streetscene.

37. I note the Council considers that the proposed layout has not been informed by the submitted tree surveys. Nevertheless, this did not form part of the reasons for refusal of the scheme, and I am mindful that landscaping conditions could make arrangements for some compensatory planting.

38. Taking these matters together I consider that the design of the proposed development would not cause harm to the character and appearance of its surroundings. Consequently, the proposed development would not conflict with Policy CSP29 of the Core Strategy insofar as it requires development to respect, take advantage of and enhance the distinctive features of Barnsley.

Other Matters

39. The Council cannot demonstrate a five year supply of deliverable housing land. The Barnsley Five Year 'Deliverable' Housing Land Supply Report April 2017-March 2022 (published August 2017) identifies a 4.01 year supply, with a current shortfall of 1994 dwellings. I am mindful that the undersupply situation could be addressed by the adoption of the Local Plan, which has reached an advanced stage; however, due to the current supply situation I am cognisant of paragraph 49 of the Framework. This states that "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

40. Consequently, paragraph 14 of the Framework is engaged which establishes that where relevant development plan policies are out-of-date that permission should be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Policies in this Framework taken as a whole". The Framework establishes that there are three dimensions to sustainable development, the economic, the social and the environmental, and I have assessed the appeal scheme on this basis.

41. The delivery of additional housing against an identified undersupply, and the proposed development's contribution to the Framework objective of boosting significantly the supply of housing would weigh in the appeal scheme's favour to some degree, and constitute a clear social benefit. Moreover, economic benefits would accrue from the proposed development during its construction phase, and to local shops and services from its future occupants. The appeal

site is in an accessible location, with good public transport links, and this weighs in its favour to a moderate degree.

42. In terms of economic benefit the proposed development could allow the bakery business to relocate onto a site that would enable more efficient processes and logistical operations, and allow physical expansion, increased turnover, and additional employment opportunities. These would be clear benefits, however, as I have been supplied with no substantive evidence on specific alternative locations that have been identified, or whether such a move is anything other than a theoretical possibility at this point, it is an aspect of the proposed development that attracts only modest weight in the overall planning balance.

43. The proposed development in removing an unrestricted industrial operation, and its associated round the clock vehicle movements and operational activities from a largely residential area would lead to some improvement in residential amenity for the occupants of the adjacent dwellings. It would relieve pressures to expand on the current site, and implement aspects of a planning permission[4] relating to it. These matters would weigh in favour of the proposed development to a moderate degree from a social point of view.

44. Movement to a more modern building could also facilitate greater thermal efficiency in comparison to the existing location, which would attract some supporting weight in the appeal scheme's favour. However, a lack of substantive detail in these regards, and the absence of more concrete proposals on alternative locations for the operation lead me to attach only modest weight to this matter in the overall planning balance. The proposed development itself would be thermally efficient in line with Building Regulations; however, as these requirements are a statutory minimum level, this is a matter which has only a neutral effect on the overall planning balance.

Conclusion

45. The proposed development would supply houses against an identified undersupply, and this would carry considerable weight in its favour in the overall planning balance. The appeal site's accessible location, its economic benefits and potential to facilitate a move to a more environmentally sustainable building all add supporting weight in its favour. Improvements to the amenity of the occupants of adjacent dwellings could be secured by the removal of the current use at the site.

46. However, the proposed development's arrangements for private and public amenity space, its lack of an affordable housing contribution, and its adverse privacy effects would all be social harms of the appeal scheme. These harmful effects compounded with the potential environmental, social and economic harms of increased flood risk caused as a result of the proposed drainage arrangements would, taken together, amount to adverse impacts of a gravity sufficient to significantly and demonstrably outweigh the appeal scheme's benefits, and the lack of harm it would cause to the character and appearance of the area. As a result, the appeal scheme would not comprise sustainable development for the purposes of the Framework.

47. Neither would the benefits advanced in favour of the scheme justify a departure from the development plan in this instance, with which, for the

[4] Council reference: 2014/0460

reasons set out above, the proposed development clearly conflicts. Accordingly, for these reasons, and taking into account all other matters raised, the appeal should be dismissed.

G J Fort

INSPECTOR

Appearances

FOR THE APPELLANT

Max Jones	Max Design Consultancy
Mike Longden	Longden Design
David White	White's Bakery Limited.

FOR THE LOCAL PLANNING AUTHORITY

Wayne Atkins	Barnsley Metropolitan Borough Council
Elaine Ward BSc(Hons) DipURP MRTPI	Barnsley Metropolitan Borough Council

DOCUMENTS submitted at the Hearing

1. Barnsley Metropolitan Borough Council Open Space Provision On New Housing Development Supplementary Planning Document (adopted March 2012)
2. Barnsley Five Year 'Deliverable' Housing Land Supply Report April 2017-March 2022, Prepared by Barnsley Metropolitan Borough Council August 2017

DOCUMENTS received by agreement following the Hearing

1. Decision Notice and approved plan in respect of Barnsley Metropolitan Borough Council application reference 2014/0460