



Appeal Decision

Site visit made on 17 December 2024

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 February 2025

Appeal Ref: APP/R4408/W/24/3349442

52 Kensington Road, Old Town, Barnsley S75 2SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jack Lycett against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref is 2024/0428.
 - The development proposed is described as a “residential development”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (‘the Framework’) has been published. I must determine the appeal against the most up-to-date information and therefore, I have determined the appeal on this basis. Both parties have been provided with an opportunity to comment upon the revised Framework and therefore, have not been prejudiced. I have also referenced the revised paragraph numbers, where necessary.
3. Outline planning permission is sought with all matters reserved for subsequent approval except “access” and “layout” which are considered at this stage. A drawing has been submitted that includes details of landscaping and scale, matters that are reserved for future consideration. I have therefore treated the drawing as illustrative in this regard and determined the appeal on this basis.
4. The present appeal scheme follows a previous appeal¹ at the site for a detached dwelling. While I have had regard to the previous appeal decision, I have determined the current development on its own merits.
5. The appellant submitted a revised layout plan for the proposal with their appeal that repositioned the proposed parking spaces and included pedestrian visibility splays and an access from the rear garden to the pavement. The proposed amendments do not involve a substantial difference or a fundamental change to the planning application. The Council and interested parties have had an opportunity to comment upon the proposed amendments. Accordingly, accepting the revised drawing would not cause any unlawful procedural unfairness to anyone involved in the appeal. For these reasons, I have accepted the revised drawing and determined the appeal on this basis.

¹ Appeal Ref APP/R4408/W/17/3182271

Main Issues

6. The main issues are the effect of the proposal on:
- a) the living conditions of the occupiers of 54 Kensington Road, with particular reference to privacy;
 - b) highway safety; and
 - c) the character and appearance of the surrounding area.

Reasons

Living Conditions

7. The appeal site comprises an almost rectangular-shaped parcel of land that forms part of the side/rear garden to 52 Kensington Road. It is narrower along its front boundary than its rear. It is proposed to construct a detached dwelling. Although “scale” is reserved for subsequent approval, the indicative information suggests the dwelling would be two-storeys in height.
8. Section 4 of the Council’s Supplementary Planning Document: Design of Housing Development, adopted 2023 (“SPD”) refers to external space standards. It states that proposed habitable room windows at first floor level and above should be a minimum of 10 metres from the boundary of any private garden which they would face. However, it also states that distances between new buildings and existing dwellings may be relaxed depending on various factors and that each case will be judged on its merits, but detailed information must be submitted to demonstrate that adequate levels of amenity would be retained for existing residents.
9. It is not known at this stage whether any habitable windows would be positioned at first floor or above within the rear elevation of the proposed dwelling as “appearance” is reserved for subsequent approval. However, if they were, they would be less than 10m from the boundary shared with 54 Kensington Road.
10. No 54 is set centrally within a substantial plot with its front elevation facing west. It is accessed via a driveway from Kensington Road that follows the western boundary of the appeal site. Immediately to the rear of the appeal site is an area of hardstanding for the parking and turning of vehicles associated with No 54 which also provides access to a garage. Consequently, any habitable windows within the rear elevation of the proposed dwelling at first floor or above would overlook the existing parking and turning area rather than a part of the garden that would be used by the occupiers of No 54 for private enjoyment.
11. As such, in reference to the first main issue, the proposed development would not harm the living conditions of the occupiers of 54 Kensington Road, with particular reference to privacy. It would comply with Policy GD1 of the Barnsley Local Plan, adopted 2019 (“LP”) which, amongst other things, states that development will be approved if there will be no significant adverse effect on the living conditions and residential amenity of existing residents. It would also comply with Section 4 of the SPD.
12. The Council’s second reason for refusal also references LP Policy POLL1 regarding pollution control and protection. Overlooking, although could be

described as a nuisance, is not a type of pollution and therefore the policy is not directly applicable to this reason for refusal.

Highway Safety

13. The revised drawing indicates that two off-street parking spaces would be provided to the front of the dwelling that would comply with the Council's dimensions. Pedestrian visibility splays would be achieved to either side of the parking spaces if amendments were made to the front boundary wall, and an access would be created from the pavement to the rear garden to allow for the manoeuvring of refuse bins. Consequently, the Council's Highways Development Control Officer has conceded their objection to the proposal in this regard.
14. Notwithstanding this, the Council raise concern that the proposed pedestrian visibility splay to the northeast would extend over land outside the appeal site and would require alterations to be made to the front boundary wall of 52 Kensington Road which is not included within the description of development. However, the land is within the appellant's control and therefore, the visibility splay and the associated works could be conditioned. Furthermore, the works do not need to be explicitly included within the description of development.
15. In reference to the second main issue, the proposal would not harm highway safety. It would comply with LP Policy T4 which, amongst other things, requires new development to be designed and built to provide all transport users within and surrounding the development with safe, secure, and convenient access and movement.

Character and Appearance

16. The appeal site is within a predominantly residential area. To the east of the site, dwellings are two or three storeys in height and comprise a mix of detached and semi-detached dwellings, and blocks of apartments. Building plots vary in size and shape but are generally quite sizeable. The buildings all follow a similar building line and are set back from Kensington Road by a small front garden bounded by a brick wall. The buildings on the southern side of the road have generous gaps between them, and where off-street parking is provided, it is predominantly positioned to the side of the building.
17. The character and appearance of the road to the west of the appeal site is significantly different, with the rear elevations and garages of the terrace of dwellings fronting Westville Road and a public house positioned along the back edge of the pavement with a large surface car park. The appeal site is seen in the context of the development to the east due to its proximity to 52 Kensington Road and its position lower down the hill.
18. Both the appeal site and the proposed dwelling would be significantly narrower than other plots and dwellings in the surrounding area. Furthermore, the space between the proposed dwelling and No 52 would be much smaller than existing gaps between the buildings along the southern side of the road. Consequently, the proposed dwelling would appear cramped within a constrained site that would appear alien to the existing spacious character.
19. The proposed dwelling would be sited behind No 52's front elevation and therefore, it would not reflect the established building line along the southern side

of the road. Two off-street parking spaces would be provided in front of the dwelling which would necessitate the removal of the front boundary wall. This would be incongruous with the enclosed front gardens in the surrounding area.

20. For these reasons, the proposal would be incompatible within the surrounding area and would harm the prevailing character along this part of the road.
21. "Appearance" and "scale" are matters for subsequent approval. However, I accept the proposed dwelling could be constructed of external materials and include architectural features to reflect the existing buildings in the surrounding area and complement the appearance of No 52. Furthermore, the indicative drawing demonstrates that the height of the proposed dwelling could reflect No 52 and I do not share the Council's concern that the indicative dwelling has a "top-heavy" appearance and an abnormally steep roof. Also, the dwelling's rear elevation and garden would receive good levels of natural light, and the rear garden's size would exceed the Council's guideline. However, these matters do not outweigh the harm I have identified.
22. I have been directed to various photographs to demonstrate the varied appearance and scale of the existing housing stock within the locality. However, the appellant has not provided an address for each property and therefore, I am unable to determine whether they are directly comparable to the appeal proposal. The Council suggest that one photograph shows a dwelling that is not on the same road as the appeal site, and another that is a significant distance from the appeal site. In any event, I must determine each case on its own merits.
23. In reference to the third main issue, the proposal would harm the character and appearance of the surrounding area. It would conflict with LP Policy D1 which, amongst other things, requires developments to be of a high-quality design that respect, take advantage of, and reinforce the distinctive, local character and features of Barnsley. It would also conflict with Section 24 of the SPD regarding infill housing development. I afford this harm significant weight.

Planning Balance and Conclusion

24. The Council has confirmed that it cannot currently demonstrate a five-year housing land supply of deliverable sites. Paragraph 11(d) of the Framework states that where the policies most important for determining the application are out-of-date, permission should be granted unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
 - (ii) 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
25. The appeal site is not within an area or an asset of particular importance listed within Footnote 7 of the Framework. Consequently, part (i) of paragraph 11(d) is not applicable to the appeal proposal.

26. The provision of one additional dwelling weighs in favour of the proposal as it would contribute to the Government's objective of significantly boosting the supply of new homes and the Council's housing targets. The Council has not disclosed the scale of the shortfall in housing supply. However, one dwelling would only make a small contribution and therefore this benefit carries moderate weight in favour of the scheme.
27. The appeal site is within a built-up area that is close to shops, services and public transport links and would accord with the Council's spatial strategy. However, all housing developments should comply with the Council's spatial strategy that focuses new development to areas that are accessible to shops and services and promote alternative means of transport other than the private car. I therefore afford these benefits limited weight.
28. The proposal would support the development of a windfall site, however, paragraph 73(d) of the Framework states that great weight should only be given to this benefit if the windfall site uses a "suitable site". The proposal would also make efficient use of land, however, in doing so, paragraph 129(d) of the Framework requires me to take account of the desirability of maintaining an area's prevailing character and setting. As I have found the proposal would harm the character and appearance of the surrounding area, I afford these matters limited weight.
29. The appellant asserts that the proposal would supply much sought after family accommodation. However, evidence has not been provided to substantiate this matter. Furthermore, "appearance" and "scale" are matters reserved for future consideration and therefore it is not known whether the proposal could accommodate a family. I therefore afford this matter limited weight.
30. Against these benefits is the harm that would be caused to the character and appearance of the area, contrary to the design and local distinctiveness objectives of the Framework, a matter which I have given substantial weight.
31. Consequently, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole. The proposal would not therefore represent a sustainable form of development.

Conclusion

32. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR