



Appeal Decisions

Hearing Held on 26 May 2021

Site Visit made on 28 May 2021

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal A Ref: APP/R4408/W/20/3263535

Land South of New Smithy Avenue, Thurlstone, Sheffield, S36 9QZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Newett Homes Limited against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2019/0690, dated 26 June 2019, sought approval of details pursuant to conditions No 1 of planning permission Ref 2017/0088, granted on 4 July 2018.
 - The application was refused by notice dated 20 May 2020.
 - The development proposed is 21 dwellings.
 - The details for which approval is sought are: Appearance, Landscaping, Layout and Scale.
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Appeal B Ref: APP/R4408/W/20/3263538

Land South of New Smithy Avenue, Sheffield, 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 Newett Homes Limited against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2019/0689, dated 26 June 2019, was refused by notice dated 20 May 2020.
 - The development proposed is the erection of 9 dwellings and associated access, landscaping and infrastructure.
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Decision

1. In respect of appeal A: The appeal is dismissed.
2. In respect of appeal B: The appeal is dismissed.

Preliminary Matters

3. Two appeals relate to this site. Appeal A seeks the approval of reserved matters relating to an earlier outline planning permission for 21 dwellings and Appeal B seeks full planning permission for 9 dwellings. Each appeal proposes built development on a separate part of the site, land South of New Smithy Avenue.
4. The outline planning permission¹ covers the whole of the appeal site with the number of dwellings being controlled by condition. As a result of the outline

¹ APP/R4408/W/17/3188501 dated 4 July 2018

planning permission and with consideration of the Council's reasons for refusal, I am satisfied that the principle of residential development on this site is not at dispute between the main parties.

5. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
6. Since the hearing a new National Planning Policy Framework (the Framework) has been published. The parties have had the opportunity to make comments in this regard. There are a number of changes in the Framework that are of relevance to these appeals, in particular with regards paragraph 130, now 134, though the essential direction of the Framework remains.

Main Issues

7. The main issues are:
 - I. The effect of the proposed development on the character and appearance of the area, with particular regards to paragraph 134 of the Framework.
 - II. Whether or not Appeal A is consistent with the outline planning permission

Reasons

Character and Appearance

8. Policies GD1 and D1 of the Barnsley Local Plan, amongst other matters, seek a high-quality design and setting for buildings, incorporating comprehensive landscaping and adequate access and internal roads to allow the complete development of the entire site. The Supplementary Planning Document Design of Housing Development seeks development that makes a positive contribution to achieving qualities of a successful place, including high quality landscape schemes and development. Paragraph 134 of the Framework clearly details that development that is not well designed should be refused planning permission.
9. The appeals propose 9 and 21 residential dwellings respectively, resulting in a total of 30 dwellings across the site. The dwellings include detached and smaller semi-detached house types set in modest plots with small front gardens often partially given over to car parking.
10. It is the Council's case that, considered separately, each appeal scheme would leave significant elements of the appeal site undeveloped, this is confirmed by the submitted plans that show substantial areas of undeveloped space.
11. Taken together, the two appeal schemes would result in the entirety of the site being developed. However, there is no proposed condition or legal obligation before me that would ensure that this is the case. While it is clear that, on the basis of the evidence before me and from discussions at the Hearing, this is the Appellants intention, nonetheless there remains some risk that either one of the appeal schemes does not come forwards as expected and a significant element of the appeal site would remain undeveloped.

12. I saw at the site visit that the surrounding area is characterised by typically suburban housing, incorporating defined elements of open space. The Design and Access Statement submitted by the appellant details that the site is currently largely grass and gently sloping, creating a largely unincumbered site for development. Despite this, the submitted plans appear largely devoid of open space and landscaping. In respect of Appeal B an area of existing tree and hedgerow would be removed, contrary to guidance set out in paragraph 15.1 of the Design of Housing Development Supplementary Planning Document.
13. At the hearing, the appellant has referred to the areas of landscaping at the entrance to the site and around the turning head. These areas, as shown on the submitted plans, appear small and therefore of limited landscaping value.
14. Paragraph 131 of the Framework recognises that "Trees make an important contribution to the character and quality of urban environments" and that new streets should be tree lined. While reference is made to a landscaping scheme, very little detail is provided and the submitted plans show little open space within the development. Therefore, there are few opportunities within the proposed schemes for significant planting or open space in general.
15. I have considered the use of suitably worded conditions to ensure the appropriate provision of open space and landscaping, however I am not satisfied that there is sufficient space to accommodate such landscaping and tree planning within the proposed development as shown on the submitted plans.
16. On the basis of the evidence before me I find that the proposed development, as shown on the submitted plans both separately and together, represents poor design, in particular the lack of landscaping, and as a result would harm the character and appearance of the area contrary to Policies GD1 and D1 of the Local Plan, the Supplementary Planning Document Design of Housing Development and the provisions of the National Planning Policy Framework.

Whether consistent with the outline planning permission

17. Planning permission for residential development on the site was granted in outline² subject to a number of conditions, including condition 12 that states "the site shall be developed for a maximum of 21 dwellings" in the interests of highways safety³.
18. I am not aware of any application being made to vary or remove condition 12 of the outline planning permission or otherwise change the terms of the outline permission.
19. The submitted plans show an access road running the length of the appeal site and part of the site developed for 21 residential dwellings, with a substantial strip of land to the north/north west boundary with no development and an annotation stating, "Land not developed as part of this application".
20. On the basis of the evidence before me, it does not appear that there is any other purpose to leaving this part of the site undeveloped other than to allow

² APP/R4408/W/17/3188501 dated 4 July 2018

³ Paragraph 61; APP/R4408/W/17/3188501 dated 4 July 2018

the development of this part of the site for additional residential dwellings, as proposed by Appeal B.

21. Both main parties have submitted evidence, in particular references to various court cases, to support their respective arguments. It is clear from the evidence before me that subsequent (to an outline planning permission) reserved matters applications must accord with the ambit of the outline planning permission, must be in accordance with the conditions attached to the outline planning permission and if the applicant/appellant desires to depart in any significant respect from the outline permission or the conditions attached to it, a new planning permission should be sought.
22. Leaving part of the site undeveloped for later additional development, and separately the additional dwellings sought by Appeal B, would ultimately result in a significant increase in the number of dwellings to be accommodated on the site, beyond that allowed by the terms of the outline planning permission or alternatively part of the site being undeveloped and unplanned.
23. Consequently, the appeal schemes represent a convoluted effort to circumvent the conditions placed upon the outline planning permission and to in effect seek to depart significantly from the outline planning permission granted in respect of the site.
24. Therefore, on the basis of the evidence before me it is my planning judgement that Appeal A is not consistent with the outline planning permission. Even if I found otherwise, I have found harm to the character and appearance of the area and conflict with the Development Plan.

Other Matters

25. The appellant makes reference to the Council's 5-year housing land supply and the impact of the Covid-19 pandemic on housing supply. However, in the absence of detailed and substantive evidence I find that it has not been demonstrated that the Council cannot demonstrate a 5-year housing land supply.
26. Nonetheless the appeal scheme would yield 30 additional dwellings and while this is a material consideration that weighs in favour of the appeal schemes it does not outweigh the harm I have previously identified.

Conclusion

27. For the reasons given above I conclude that appeals A and B should be dismissed.

Mr M Brooker

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/R4408/W/20/3263535	Newett Homes Limited
Appeal B	APP/R4408/W/20/3263538	Newett Homes Limited

APPEARANCES

FOR THE APPELLANT:

Ms Emma Lancaster
William Newett

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Smith
Bob Power
Hannah Andrew

INTERESTED PARTIES:

Cllr Hannah Kitching
Sarah Barnett
Cllr Joseph Unsworth
Anita Kimberley