



Appeal Decision

Site visit made on 20 March 2025

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2025

Appeal Ref: APP/R4408/W/24/3356383

Land to the South of 52 Tower Street, Barnsley S70 1QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Chris and Sue Barton against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref is 2024/0112.
 - The development proposed is erection of one dwelling house, with 4 bedrooms, which is accessible and adaptable to the requirements of M4 Category 2, with single garage and associated driveways, landscaping, boundary walls and external steps.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr and Mrs Chris and Sue Barton. This is subject to a separate decision.

Preliminary Matters

3. Since the appeal was submitted, the National Planning Policy Framework has been revised. I have had regard to the revised version of the Framework in my assessment of this appeal.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the proposed highway access arrangement is appropriate; and,
 - the effect of the proposal upon existing trees.

Reasons

Character and appearance

5. Upon entry into Tower Street, there is an established line of terraced properties on both sides of the street which rise towards the appeal site. These properties host a traditional yet simple appearance and are constructed from stone with slate roofs. Towards the end of Tower Street, there is a change in this initial compact terraced character to that of detached dwellings where there is an increased sense of space. These detached dwellings vary in their form, with the most notable being several three-storey properties at the head of Tower Street. These buildings host a

traditional form, promote front facing elevations, have standard roof designs and utilise materials of a similar appearance to those found in the lower area of Tower Street.

6. The proposed dwelling is promoted as a 'Passivhaus'. This is a certified standard of housing which seeks to minimise heat losses and promote energy efficiency, amongst other things. It would host various roof forms, contrasting window expressions and diverse elevation features.
7. When viewed from Tower Street, the modern form of the proposed building would appear unusual and alien. This is due to its promotion of an unfamiliar roof design and overall shape. This form would be a significant departure from the traditional appearance found within the immediate locality. I am cognisant that the elevation which faces the street would have a similar roof appearance as the adjacent terraced properties. However, on approach to the proposed building, the unfamiliar roof design and alien architectural form of the whole building would be apparent due to the space afforded between the proposed building and the neighbouring property of No. 52.
8. The street facing elevation would be void of expression except for a small number of windows. As such, the building would turn away from the street scene, with no front door located in a visible position when viewed from Tower Street. This would contrast with the predominant character of active frontages of the properties found in the immediate locality where front access doors are visible from the street scene.
9. There would be a significantly high number of materials proposed on the external face of the building overall. Furthermore, some of the materials which would be used are unfamiliar to the street scene such as steel wall cladding. The appellants do suggest that the wall cladding could be changed to a hung slate. However, the proposed materials would fail to replicate and follow the simple material palette and their position on the building as found within Tower Street. The materials which make up the existing street scene present a low number of traditional materials through the use of stone elevations and slate roofs.
10. Taking all of these adverse elements of the proposed design into account, they would be further exacerbated by the elevated position of the proposed dwelling. This would subsequently increase the visibility of the building along Tower Street at various points and from positions within Columbia Street to the rear of the appeal site.
11. The appellants raise the importance of the design and form of the building, including its positioning and the design of the proposed windows. These considerations have been made to optimise energy performance through orientation and solar gain to help meet the 'Passivhaus' standard. These considerations have informed the design of the scheme, and I have had regard to these design considerations and the environmental benefits they would produce once completed in my assessment. The appellants suggest that these proposals represent a high level of energy efficiency which are innovative. It is suggested that the proposal was not sufficiently considered under Paragraph 139 (b) of the National Planning Policy Framework (the Framework).
12. I have assessed the scheme against this paragraph of the Framework. Paragraph 139 (b) notes that development that is not well designed should be refused. It

follows that this paragraph then suggests that outstanding or innovative designs, which promote high levels of sustainability should be given significant weight. However, I also note in Paragraph 139 (b), that this weight should only be given as long as an innovative design fits in with the overall form and layout of its surroundings. Taking into account my concerns of the proposal against the character and appearance of the area raised above, it would fail to meet this requirement.

13. The appellants have also drawn on Paragraphs 164 (b) (previously Paragraph 159) and 166 (b) (previously Paragraph 162) of the Framework. These paragraphs set out that the orientation of the building can help to reduce greenhouse gas emissions and energy consumption. Though, this would not overcome the harm I have found to the character and appearance of the street scene.
14. The appellants have had regard to the previous planning history of the site and have discussed how these previously approved dwellings would be less efficient than the proposed 'Passivhaus' dwelling. This permission was not implemented and has since lapsed. Nevertheless, this comparison does show that the dwellings which were previously approved on this site would have a greater heating demand than the proposal. The energy efficiency of the building is noted. Yet, this would not overcome or outweigh the harm I have found to character and appearance.
15. In addition, the appellants have highlighted the presence of recently approved and constructed neighbouring properties. It is asserted that these buildings do not necessarily reflect the traditional characteristics of the street scene. These include the detached dwelling at No. 52 next to the appeal site, the three-storey detached townhouses at the head of the street and a detached bungalow opposite the appeal site. Whilst they do contrast with the historical terraced form, these examples host similar roof designs and utilise materials of a similar appearance to those found in the lower area of Tower Street.
16. To conclude, the proposal would conflict with Policy D1 of the Barnsley Local Plan 2019 (LP). This policy notes that the development proposals should complement and enhance the character of an area, display architectural quality through its form, composition and use of materials. In addition, the proposal would contrast with the guidance found within the Barnsley Design of Housing Development Supplementary Planning Document 2023 (SPD). This SPD notes that dwellings should be orientated to have a frontage to the public highway, with architectural features and materials which reflect the positive elements found elsewhere in the street. The proposal would also work against the general provisions of the Framework.

Highway access

17. The proposal contains two off-street parking spaces which would be accessed from Tower Street. The southern end of Tower Street close to the appeal site is not formally adopted and therefore constitutes as a private drive as defined in the South Yorkshire Residential Design Guide (SYRDG). The condition of this private drive is deficient when compared with the formally adopted highway of Tower Street. It is narrow and incomplete. This creates an inefficiency of the private road in its current form. The SYRDG asserts that shared private drives may give access to a maximum of five dwellings. During my site visit, I noted that this private drive currently serves more than five dwellings. This is noted by the appellants.

18. Opposite the appeal site is a bungalow which was under construction during my site visit. The parties note that in granting planning permission for this development, a pre-occupation condition was imposed to construct a road to an adoptable standard. It is the appellants' contention that a similar condition or a pre-commencement alternative could be applied. The land which forms this private drive is owned by multiple parties. The appellants note that every effort would be made to reach an agreement with all parties to enable the road to be developed to an adoptable standard. Yet, no agreement from these parties has been provided.
19. In my consideration of this matter, if this condition was imposed, should any of the parties fail to agree to the proposed works taking place, the planning permission would not be able to be implemented. I must be mindful that any planning conditions must meet the six tests for imposing conditions which includes that they must be enforceable. As such, I do not consider that this condition would be enforceable due to the absence of an agreement from all of the relevant parties.
20. The appellants have questioned why there is a requirement for a maximum of five dwellings to be served from a private road and quotes the Manual for Streets guidance on this matter. As noted by the appellants and during my site visit, the private road in question already serves more than five dwellings, thus exceeding the guidance set out in the SYRDG. Whilst the appellants may question why the five houses at the top of Tower Heights and the bungalow opposite were granted permission in light of this situation, there is no officer report provided to attain the reasoning behind these decisions. Despite this situation, this would not overcome the matter of enforceability of a planning condition on this matter.
21. The appellants have argued that this matter is not about highway safety but is about the responsibility for the management and maintenance of the highway. In doing so, it is suggested that the Framework states at Paragraph 116 (previously Paragraph 115), that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety. However, Paragraph 116 of the Framework also states that where the residual cumulative impacts on the road network, following mitigation, would be severe, should be refused. As discussed above, I am not persuaded that an appropriate condition to provide the appropriate mitigation to bring the private road up to an adoptable standard can be achieved for reasons of enforceability.
22. This would have a subsequent impact on the road network. The private road is not in a good condition. A further dwelling provided in this location, in addition to those already served by this private road, would not provide an appropriate and convenient access arrangement. This would further add to problems of highway efficiency which could not be alleviated through the suggested planning condition.
23. The appellants also suggest that regardless of this matter, the adoption of the highway is dealt with under the Highways Act 1980 and the provisions of this act, the Private Street Works Code and the Advance Payments Code could be utilised. It is suggested that the Council could independently upgrade the private road to an adoptable standard if the multiple parties who own elements of the private road do not wish to reach an agreement. This legislation is beyond the remit of planning. There is no convincing evidence before me to suggest that this is a method which the Highway Authority are open to pursue.

24. To conclude, the proposed development would conflict with Policy T4 of the LP. This policy seeks for new development to be designed and built with convenient access and movement. It further notes that if a development is not suitably served by the existing highway, or would add to problems of efficiency of the highway, developers will be expected to take mitigating action to make the necessary improvements. However, in the circumstances of this appeal, I am not persuaded that a condition to provide this mitigation would be enforceable when having regard to the tests for imposing planning conditions.

Trees

25. In following the history of this appeal, the application was amended several times whilst under consideration by the Council. These changes included an amendment in the proposed driveway arrangement. As such, these design amendments resulted in changes to tree retention and removal within the site. An Arboricultural Impact Assessment (prepared by Woodsage Consulting) was provided in the initial submission of the application, however, this was not updated to reflect these changes. As such, the Council concluded that the full impact upon existing trees could not be assessed.
26. It follows that during the submission of this appeal, the Arboricultural Impact Assessment was updated and submitted for consideration. This assessment states that the trees to be removed are of low quality. Nevertheless, this is tantamount to the submission of new information. The Procedural Guide: Planning Appeals makes it clear at chapter 16 that the appeal process should not be used to evolve a scheme. Furthermore, it is important that what is considered by an Inspector at appeal is essentially the same scheme that was considered by the Council and interested parties at the application stage.
27. However, in consideration of the Wheatcroft Principles, I am satisfied that the provision of this amended Arboricultural Impact Assessment would not involve a substantial difference to the application, or procedural unfairness to anyone involved, including interested parties. Interested parties have been provided with an opportunity to comment on this information at appeal and I also note that the Council have sought further comments from the Forestry Officer on this new information.
28. In consideration of these comments, the Council note that they would have no objection to the removal of the trees which would be affected by the amendments, subject to a suitable condition. The Council consider that the updated Arboricultural Impact Assessment suitably demonstrates the works proposed in terms of trees and has no objection on this basis. I find no reason to disagree with the assessment made by the Council on this matter.
29. Therefore, the proposal would not conflict with Policy BIO1 of the LP and the guidance found within the Trees and Hedgerow Supplementary Planning Document 2019 (SPD2). Policy BIO1 states that development will be expected to conserve and enhance biodiversity by protecting veteran trees. The SPD2 also states that development should ensure that higher category trees are retained. As such, the development would not result in the loss of higher category trees.

Other Matters

30. The appeal is accompanied by a signed Unilateral Undertaking. However, I note that the appellants have questioned the fairness of a Green Space Enhancement Contribution, further suggesting that the five properties developed at the head of Tower Street were not subject to a contribution. As I have found harm and conflict with the LP on two of the main issues of this appeal, I have not formed a view on this matter.
31. Interested parties have commented in support of the appeal. The comments suggest that the proposal would tidy up the site and improve its drainage situation. Whilst this support is noted, it does not outweigh the conflict with the LP I have found in relation to the main issues.

Planning Balance and Conclusion

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework indicates that a decision should be taken in accordance with the development plan.
33. I acknowledge that the proposed development would provide an additional dwelling to the supply of housing. Indeed, the Framework also notes that small windfall sites such as this can make an important contribution to deliver new homes. The proposal would also provide local economic benefits during the construction period. The future occupiers would also provide economic benefits to the local area once the development would be complete through their use of local shops and services. These are limited, yet positive benefits of the proposal.
34. Throughout my deliberation of this appeal, I have also been cognisant that the evidence reiterates throughout that the building created would have a high level of efficiency. This would be achieved through its design, construction method and use of materials, amongst other things. The commitment to achieving a certified 'Passivhaus' standard and an M4 Category 2 accessibility standards are matters to which I ascribe moderate weight in my decision.
35. However, in my overall consideration of the scheme, these benefits are modest. They do not outweigh the harm I have found above in relation to character and appearance and in providing an appropriate highway access. There are no material considerations of such weight or significance before me as to justify a decision otherwise than in accordance with the development plan.
36. For the reasons given above, the appeal should be dismissed.

J Smith

INSPECTOR