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## Appeal Decision

Site visit made on 10 December 2019

**by F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 January 2020**

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**Appeal Ref: APP/R4408/W/19/3236269**

**210 Carlton Road, Athersley South, Barnsley S71 2AP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr and Mrs Austin against the decision of Barnsley Metropolitan Borough Council.
  - The application Ref 2019/0230, dated 17 February 2019, was refused by notice dated 24 May 2019.
  - The development proposed is residential development for up to 14 dwellings with detailed access.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Mr and Mrs Austin against Barnsley Metropolitan Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The name of the applicant as stated on the application for outline planning permission is C/O Northern Town Planning Ltd, whereas the names of the appellants as stated on the appeal form are Mr and Mrs Christopher/Julie Austin. It has been confirmed by the agent that he made the application for planning permission on behalf of Mr and Mrs Austin and so, although the applicant was C/O Northern Town Planning Ltd, the appeal is in the names of Mr and Mrs Austin.
4. The Council changed the description of the proposal to 'Residential development of 14no dwellings (Outline with all matters reserved apart from means of access).' However, the appellants were not consulted on this and did not agree to the change. I have therefore determined the appeal on the basis of the description of the proposal as stated on the application form.
5. The planning application was submitted in outline with approval sought for access only, with matters of appearance, landscaping, layout and scale reserved for future consideration. An indicative layout<sup>1</sup> and visibility splay and junction access drawing<sup>2</sup> accompanied the application. I have regarded all elements of these drawings as indicative apart from the details of the access.

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<sup>1</sup> Drawing number GN01.

<sup>2</sup> Ref 18013-133-LE-ZZ-00-DR-D-0001.

6. As part of the appeal the appellants have submitted a revised visibility splay drawing<sup>3</sup> with associated TPS Transport Consultants Ltd Technical Note including a Speed Survey<sup>4</sup>, a Preliminary Ecological Appraisal<sup>5</sup> and a Tree Survey<sup>6</sup> which were not submitted to the Council as part of the outline planning application.
7. I am mindful that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority, and on which interested people's views were sought.
8. The access drawing shows a reduced carriageway width from 6m to 5.5m and, utilising the information obtained from a speed survey, provides a revised visibility splay in an attempt to address some of the highway issues raised by the Council and interested people. I consider that the revised drawing and associated note to, in part, evolve the scheme. As there has been no opportunity for all interested people to comment on them, it would be prejudicial if I took them into account as part of the appeal. Therefore, I have determined the appeal on the basis of the visibility splay and junction access drawing and TPS Transport Consultants Ltd Technical Note that were submitted with the application.
9. The Preliminary Ecology Appraisal and the Tree Survey provide additional information in relation to the fourth reason for refusal, and do not evolve or change the proposed development in any way. On this basis, I am willing to accept them for information purposes only. I am satisfied that no interested party has been prejudiced by this approach.
10. Within their statement of case the appellants declare that although the original intention in the application was to facilitate access through the site to the adjacent housing allocation land, they consider that the site should be developed solely independently and that the Council can secure this through the detailed reserved matters stage. Nevertheless, as there has been no opportunity for all interested people to comment on this amendment to the proposed development, it would be prejudicial if I took it into account as part of the appeal. Therefore, I have determined the appeal on the basis of the proposed development as stated within the application.

## **Main Issues**

11. The main issues are:

- Whether the proposed development would or would not prejudice the future use and compromise the comprehensive development of the remaining HS12 housing allocation land and meet the required infrastructure contributions;
- The effect of the proposed development on highway safety, having regard to the visibility splay at the junction with Carlton Road and the standard of the access road;

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<sup>3</sup> Drawing – Proposed Access - Revised Visibility Splay / 5.5m carriageway P1243\_SK001 Rev A.

<sup>4</sup> TPS Transport Consultants Ltd Technical Note. Ref P1243. Dated August 2019.

<sup>5</sup> Preliminary Ecological Appraisal. Middleton Bell Ecology. Dated 17 July 2019.

<sup>6</sup> Tree Survey in accordance with BS5837:2012 at Carlton Road Barnsley. James Royston. Ref 190704 Dated 23 July 2019.

- Whether the proposed development would provide suitable living conditions for existing and future occupiers, having regard to separation distances and the provision of private outdoor amenity space; and
- The effect of the proposed development on any ecology and arboriculture within the site.

## Reasons

12. The appeal site encompasses No 210 Carlton Road (No 210), a detached bungalow, and an area of paddock and grazing land located to the rear and north west of No 210 and behind adjacent properties to the south west of No 210 which front onto Carlton Road. There is an existing driveway access from Carlton Road at the side of No 210 which leads to a large outbuilding. On the western boundary of the site there is a block of stables.
13. The proposed development comprises residential development of up to 14 dwellings. The indicative layout shows No 210 retained and the site developed with 6 pairs of semi-detached dwellings and 2 detached dwellings, each with 2 off-road parking spaces. Access to the dwellings is proposed to be via the existing driveway.
14. I acknowledge that the development proposed is 'up to' 14 dwellings with all matters apart from access reserved for future consideration. However, in order to consider and determine any implications and effects of the proposal, the assessment has to be undertaken on the basis of the potential maximum number of dwellings on the appeal site. I have, therefore, proceeded on the basis that the maximum number of dwellings on the appeal site would be 14, albeit that the actual number could be less.

### *Future use and comprehensive development of HS12 and required infrastructure contributions*

15. The appeal site is located in the south east corner of Barnsley Local Plan (LP) (adopted January 2019) housing allocation HS12 (HS12). The remaining section of HS12 is bordered by properties to all sides and is currently laid to grass with public access. As a whole, HS12 has an indicative number of 86 dwellings.
16. Policy GD1 of the LP, amongst other things, requires development to be compatible with neighbouring land and not significantly prejudice the current or future use of the neighbouring land. In addition, it states that development will not adversely affect the potential of a wider area of land which could otherwise be available for development. Policy D1 of the LP requires that, in terms of placemaking, development should make a positive contribution to achieving qualities of a successful place such as character, legibility, permeability and vitality. While Policy I1 of the LP seeks to ensure that developments are supported by appropriate infrastructure and secure appropriate planning obligations.
17. The Council asserts that HS12 needs to be considered as a whole and designed comprehensively in order to ensure that the required densities are achieved, that the layout works across the entire site and that it meets the required contributions. No evidence has been submitted by the Council as part of the appeal which confirms that there is any current intention or desire to develop the remaining part of HS12.

18. I recognise that the maximum number of dwellings proposed in this part of HS12 would not achieve the density of 40 dwellings per hectare net as required within Urban Barnsley under Policy H6 of the LP. However, from the evidence submitted, it would achieve the same density of development of 28 dwellings per hectare which is stated for the rest of HS12 to meet the indicative number of 86 dwellings.
19. Moreover, although it would only develop one part of HS12, the appeal site is located in the south east corner of the allocation and uses a separate access which is within the ownership of the appellants and which is not part of HS12. Therefore, the future use or development of the remaining part of HS12 would still be able to come forward using the identified access within the housing allocation land.
20. In addition, as layout, scale and appearance are matters for future consideration, I see no reason why the appeal site could not be developed in accordance with the Council's design parameters and the same approach taken in the development of the remaining part of HS12.
21. With regard to infrastructure contributions, I am aware that if the site was considered to be a separate entity and developed separately to the rest of the HS12 allocation, as suggested by the appellants, the maximum number of dwellings would mean that it would come under the undisputed threshold for the requirement of any off-site contributions, i.e. 15 dwellings. However, as stated above, even though it is apparent that the site could potentially be developed independently, as all parties have not had an opportunity to comment on this change to the proposed development, it would be prejudicial to assess the appeal on this basis. Therefore, as it is not an independent site, it would be required to meet any off-site contributions.
22. The only contribution referred to by the Council in its delegated report is in relation to Green Space. I have not been provided with any detailed information as to the policy basis for this contribution nor given any information as to what the required contribution would be. In addition, the appellants have provided no commitment to meeting any off-site contribution nor any mechanism with which it would be achieved. As such, I am unable to conclude that the proposed development would meet the required infrastructure contributions.
23. To conclude on this issue, from the evidence before me, I consider that the proposed development would not significantly prejudice the future use or compromise the comprehensive development of the remaining HS12 housing allocation land, but there is no information to show that it would meet the required infrastructure contributions. As such, it would comply with Policies GD1 and D1 of the LP, but it would conflict with Policy I1 of the LP, as referred to above.

#### *Highway safety*

24. Policy T4 of the LP states that new development will be expected to be designed and built to provide all transport users within and surrounding the development with safe, secure and convenient access and movement. It also states that developers will be expected to take mitigating action or to make a financial contribution to make sure necessary improvements go ahead if a

development would create or add to problems of safety or the efficiency of the highway.

25. The access to the appeal site would utilise the existing driveway access off Carlton Road. This stretch of Carlton Road has footpaths either side and has no parking restrictions. The junction of the access onto Carlton Road is located on the inside of a slight bend in the road and within a 30mph speed limit zone, although, it is in close proximity to the start of a 20mph speed limit zone to the north. When on site at around mid-day I noted that the road was busy with traffic and that this section had only two cars parked along it which straddled the pavement and the road.
26. The visibility splay and junction access ref 18013-133-LE-ZZ-00-DR-D-0001 and the associated TPS Transport Consultants Ltd Technical Note submitted with the application illustrate a 2.4m x 43m visibility splay in line with the 30mph speed limit. The drawing also shows a widened 6m wide carriageway into the site with a 2m wide footway on the southern side of the carriageway. Tactile paving and dropped kerbs are proposed across the site access.
27. I acknowledge that the appropriate visibility splay could be achieved to the north and that amendments to the front boundary wall of No 210, which is within the appellants' control, would enable the majority of the visibility splay to the south to be achieved. I also recognise that, given the junction's proximity to the 20mph speed limit zone, vehicle speeds along this part of the road are likely to be less than 30mph. However, there is a far part of the visibility splay to the south which marginally encroaches over a neighbouring property, which is outside the appellants' control, that would restrict visibility in this direction. This, combined with comments submitted by local residents during the determination of the application that highlight the traffic issue of congestion within the area at certain times of the day, give rise to significant highway safety concerns.
28. The Council also raises the issue that, given the access would serve up to 14 dwellings it would need to be built up to adoptable standards. This would require the carriageway to be a minimum of 5.5m wide with 700mm wide margins to both sides. Highways would also need 2m wide footways to both the north and south sides of the carriageway. In addition, a turning head would be required within the site for the turning of larger vehicles.
29. I note that the appellants state that this is a section 278 consideration rather than a matter for consideration at the planning stage, and would depend on the number of dwellings proposed. However, given that access is a detailed matter and that, as already stated, the proposed development needs to be assessed on the basis of the potential maximum number of dwellings on the appeal site, I consider this to be a relevant and determinative planning matter. As proposed, the access would not meet the required standard. Moreover, even if I was to accept that there may be fewer dwellings on the appeal site and that the access road would not be required to be built up to adoptable standards, it would still be required to be independently maintained in perpetuity and there is no mechanism before me to confirm how this would be achieved.
30. Accordingly, I conclude that the proposed development would have a significantly harmful effect on highway safety, having regard to the visibility splay at the junction with Carlton Road and the standard of the access road. As such it would be contrary to Policy T4 of the LP referred to above. It would also

conflict with Paragraph 109 of the National Planning Policy Framework (Framework) which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

*Living conditions for existing and future occupiers*

31. Policy GD1 of the LP, amongst other things, requires that development will have no significant adverse effect on the living conditions and residential amenity of existing and future residents.
32. On the basis of the indicative layout submitted as part of the application, the Council contends that the proposed development would not meet the requirements for separation distances and provision of private outdoor amenity space as stated within the Council's Design of Housing Development Supplementary Planning Document (SPD) (adopted May 2019). The appellants do not dispute the fact that the proposed development, as shown on the layout, does not meet the required standards in relation to the Council's SPD. However, they stress that the layout is indicative and that this is a detailed matter reserved for future consideration.
33. I recognise that the Council needs to be assured that the proposed development is capable of being advanced at the reserved matters stage. However, whilst these are valid concerns, as the layout of the proposed development is reserved for future approval, it is difficult to substantiate the Council's position on these points. I am satisfied that an appropriate scheme could be evolved at the reserved matters stage, albeit potentially for fewer dwellings, when considering the layout and scale of the proposed development and, if necessary, dealt with by planning conditions.
34. Although not included in its reasons for refusal, in its delegated report the Council considers that the close proximity of the proposed access to the side elevation of No 210 and the increased vehicular movement into and out of the appeal site, would reduce the residential amenity of the occupiers of No 210 to an unreasonable degree. No additional information has been submitted to support this claim and, given the relatively low number of dwellings proposed on the site, I do not consider this to be a determinative issue.
35. Therefore, I conclude that a scheme could be achieved that would provide suitable living conditions for existing and future occupiers, having regard to separation distances and the provision of private outdoor amenity space. In this regard, I consider that it would be capable of according with Policy GD1 of the LP referred to above and design guidance provided within the SPD.

*Ecology and arboriculture*

36. Policy BIO1 of the LP states that development will be expected to conserve and enhance the biodiversity and geological features of the borough.
37. The appeal site is an area of paddock and grazing land which is bordered by a combination of high hawthorn hedges, privet hedges, trees, timber fences and metal fences. The site itself is not located within a designated sensitive area. However, the Carlton Main Brickworks Site of Special Scientific Interest is located approximately 3km to the east of the appeal site, and Old Mill Lane and Barnsley Canal Local Wildlife Sites are located within 2km of the appeal site.



38. The proposal would result in the loss of an area of paddock and grazing land. The Council states that insufficient information has been submitted to enable an adequate assessment of the effect of the proposed development on any ecology and arboriculture within the site. A Preliminary Ecology Appraisal and a Tree Survey have been submitted as part of the appeal.
39. The Preliminary Ecology Appraisal states that the proposed development would not result in any foreseeable impacts upon designated sites because of the nature of the development and the distance from the appeal site. It goes on to state that the appeal site is of no more than site level importance to any habitat or species group. The appraisal identifies ecological constraints and associated recommendations to avoid, mitigate and/or compensate for any potential impacts and makes recommendations for enhancement.
40. The Tree Survey, which is preliminary in nature, comprises a survey of six trees and/or groups of trees which are located within the appeal site. It concludes that they are all of low value and are allocated as being category C which is defined as 'trees that are of low quality and value, are in poor condition, and are expected to contribute for at least 10 years.' In addition, it states that they are of a sub-category which is of 'mainly arboricultural value'.
41. Taking into account the additional information submitted with the appeal, it is apparent that the appeal site is of limited ecological and arboricultural merit, and that any recommendations to avoid, mitigate and/or compensate for any potential impacts or any recommendations for enhancement could be dealt with by conditions.
42. Accordingly, I conclude that the proposed development would not have a harmful effect on any ecology and arboriculture within the site. As such it would not conflict with Policy BIO1 of the LP as stated above.

### **Planning Balance**

43. I have concluded that there is no information to show that the proposed development would meet any required infrastructure contributions and found that it would have a significantly harmful effect on highway safety, having regard to the visibility splay at the junction with Carlton Road and the standard of the access road. In this regard it conflicts with Policies I1 and T4 of the LP. Taking into account that access is a detailed matter for consideration, I give this conflict with the development plan, and the harm that arises from it, substantial weight.
44. However, I have concluded that there is no substantive evidence before me to confirm that the proposed development would prejudice the future use and compromise the comprehensive development of the remaining HS12 housing allocation land; that the proposed development could be capable of according with relevant policy in the LP relating to the living conditions of existing and future occupiers, having regard to separation distances and the provision of private outdoor amenity space; and found no unacceptable harm in relation to any ecology and arboriculture within the site. Notwithstanding this, the absence of harm in these respects weighs neutrally and does not amount to a consideration in support of the appeal.
45. The proposed development would provide up to 14 new dwellings in an accessible location within an established residential area. There would be some

economic and social benefits derived from their construction and occupation. There would also be some benefits in terms of any occupiers supporting local services and facilities. Therefore, these carry moderate weight in its favour. However, in my view, the adverse effect of the proposed development in relation to required contributions and highway safety would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Other Matters**

46. The appellants have drawn my attention to planning applications for residential development which have been granted permission by the Council and a proposal which was allowed at appeal within the borough. One outline application was where the description included reference to the proposed number of dwellings being 'up to'<sup>7</sup> and one was where the scheme did not fully accord with the Council's design guidance<sup>8</sup>. While the appeal decision relates to whether development of one part of a site would prejudice the development of adjoining safeguarded land<sup>9</sup>. I note the comparisons of these proposals to the appeal before me. Nevertheless, I do not know the full details or particular circumstances of these cases. In any event, I have determined the appeal before me on its own planning merits with the specific context of the appeal proposal.
47. I note that the Archaeological Scoping Report concluded that there is no indication that the potential development area has any archaeological potential, and that the Phase 1 Environmental Site Assessment Report concluded that the site can be classified as low risk in terms of contamination and that the risks to the identified receptors (such as human health, controlled waters, buildings) following redevelopment, is considered to be low. Furthermore, I am aware that there were no other technical objections, subject to conditions, or comments, in addition to those raised above. However, these are neutral considerations in the balance and do not outweigh the harm that I have found.

### **Conclusion**

48. For the reasons given above, I conclude that the appeal should be dismissed.

*F Cullen*

INSPECTOR

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<sup>7</sup> Ref 2017/1451 Land West of Wakefield Road, Barnsley.

<sup>8</sup> Ref 2019/0209 Land adjacent 7 Kenworthy Road Worsbrough Common, Barnsley S70 4LW.

<sup>9</sup> APP/R4408/W/17/3188501 Land South of New Smithy Avenue, Thurlstone, Sheffield S36 9QZ.