



Appeal Decision Notice

Decision by Sinéad Lynch, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-320-2169
- Site address: land east of Lochend Road, Gartcosh G69 8DJ
- Appeal by Bellway Homes & Deuchny Properties against the decision by North Lanarkshire Council
- Application for planning permission 21/01460/MSC dated 14 September 2021 refused by notice dated 2 February 2023
- The development proposed: erection of 75 homes with associated works (Phase 3)
- Date of site visit by Reporter: n/a

Date of appeal decision: 12 September 2023

Decision

I dismiss the appeal and refuse planning permission.

Preliminary matters

When this appeal was submitted, it was requested by the appellant that it be conjoined with appeal PPA-329-2170. Appeal PPA- 329-2170 relates to the same site area as this appeal but is a Section 42 appeal against the refusal by North Lanarkshire Council to remove condition 16 from the original consent 13/01958/PPP.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. A material consideration in this appeal is whether or not the appeal would conflict with a specific requirement of the Planning in Principle consent, as set out in condition 16 of consent 13/01958/PPP.
3. The Town and Country Planning (development Management Procedure) (Scotland) Regulations 2013 sets out at Regulation 12 that all applications for approval of matters specified in conditions (AMSC) attached to planning permissions in principle must be made in accordance with the regulation. AMSC is an application to a planning authority for approval, consent or agreement required by a condition imposed on a grant of planning permission in principle.
4. In this instance, the appeal is made against the refusal of an AMSC application, relating to a Planning in Principle consent granted by North Lanarkshire Council, reference 13/01958/PPP (the original consent). The proposed development is for 75 houses and associated works at land east of Lochend Road, Gartcosh.

5. The planning permission in principle was subject to a number of conditions. Condition 1 required ASMC submissions providing details of how the development would proceed. Other conditions sought to guide the nature of such ASMC submissions. Condition 2 confirmed that a masterplan drawing that was submitted with the planning permission in principle was indicative only. Condition 3 required ASMA submissions to be in accordance with the design, access and landscape documents. Condition 16 imposed a specific prohibition on the development of housing on certain parts of the land.

6. When considering whether this appeal falls within the scope of, and is consistent with, the original planning permission in principle, I have had regard to the above conditions of consent.

7. Conditions 1 and 2 could be interpreted as permitting the approval of an altered site layout through an MSC application / appeal, as the masterplan is acknowledged as being indicative only. However, I find that condition 2 is explicit in that an altered site layout must take into account the requirements of all conditions in the consent (my emphasis).

8. Condition 16 of the original consent states:

'16. That for the avoidance of doubt, this permission does not allow for any housing development on Site 2 (i.e., the site to the east of the M73) or the western portion of Site 1 (as outlined within the indicative masterplan and as shown on page 63 of the Glenboig/Gartcosh Community Strategic Development Framework document).

Reason: To define the permission.'

I conclude that the prohibition on housing development on identified and defined parts of the site, being the appeal site, is a fixed requirement of condition 16.

9. Condition 1 when read alone may permit a variation of the site layout. However, conditions 2 and 16 of the consent then prevent any such variation which includes housing on Site 2. I am satisfied that an AMSC application which seeks a change to the layout and design of the development to include housing on Site 2 is not capable of being approved, as it is contrary to a specific condition of consent. I am also satisfied that this appeal against the refusal of an AMSC application is not capable of being approved, for the same reason. Overall, I conclude that this AMSC appeal cannot succeed as it is in direct conflict with condition 16 of the original consent, which prohibits housing development on the appeal site.

10. In addition to this appeal, a S42 appeal has also been submitted for the same site which seeks to remove condition 16 from the original consent and permit the development of housing on Site 2. I find that should the S42 appeal succeed, then a new planning consent would be created. The AMSC appeal relates to the original consent, and therefore another application would be required, relating to the new consent that would be created, following a successful S42 appeal. I am satisfied that the current AMSC appeal would not succeed, as the original planning permission in principle would still contain condition 16, which prohibits housing development on the appeal site.

11. I had asked the parties, via further written submissions, their opinions on the question of how the AMSC appeal could be approved. Both replied agreeing that the AMSC appeal cannot be approved without the removal of condition 16. Both parties also agreed that should the S42 appeal succeed, and condition 16 be removed, then a further application for matters specified in conditions would be required, as a new consent would be created.

12. As I have concluded that this AMSC appeal cannot succeed, I have not considered the compliance or otherwise of the proposal with the relevant provisions of the development plan.

13. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Sinéad Lynch

Reporter

Richborough