



SHEFFIELD CITY COUNCIL Planning & Highways Committee

Report of: The Head of Planning

Date: 12 September 2023

Subject: RECORD OF PLANNING APPEALS
SUBMISSIONS & DECISIONS

Author of Report: Abby Hartley

Summary:

List of all newly submitted planning appeals and decisions received, together with a brief summary of the Inspector's reason for the decision

Reasons for Recommendations

Recommendations:

To Note

Background Papers:

Category of Report: OPEN

1.0 RECORD OF PLANNING APPEALS SUBMISSIONS AND DECISIONS

This report provides a schedule of all newly submitted planning appeals and decisions received, together with a brief summary of the Secretary of State's reasons for the decisions.

2.0 NEW APPEALS RECEIVED

(i) An appeal has been submitted to the Secretary of State against the delegated decision of the City Council to refuse a prior notification for the erection of 20m monopole with associated cabinets and equipment (Application to determine if approval required for siting and appearance) at land opposite Staniforth Works, Main Street, Hackenthorpe, Sheffield, S12 4LA (Case No: 22/02975/TEL).

(ii) An appeal has been submitted to the Secretary of State against the delegated decision of the City Council to refuse a prior notification for the erection of Apollo Medium Duty 20m High VF ARV2 Pole, including 6No. VF Antennas, 1no. GPS Module, and 1no. Lancaster Cabinet and 1no. SFMC Meter Cabinet and associated equipment (Application to determine if prior approval required for siting and appearance) at land opposite Ranmoor Gardens, Ranmoor Road, Sheffield, S10 3FR (Case No: 22/02855/TEL).

3.0 APPEALS DECISIONS – DISMISSED

(i) To report that an appeal against the delegated decision of the Council to refuse planning permission for the erection of two-storey side and rear extension and a single-storey front extension to dwellinghouse at 42 Westfield Crescent, Sheffield, S20 5AQ (Case No: 22/03323/FUL) has been dismissed.

Officer Comment:-

The Inspector identified the main issue as the effect of the two-storey side extension on the character and appearance of the area.

She noted the consistent building lines and presence of garden space at the side of dwellings on corner plots which contribute positively to the character of the area, and that a side garden exists at the appeal property and it's neighbour on the opposite side of the road junction.

She noted the proposal was a reduced version of a previously refused scheme, and that it did read as subservient to the main dwelling, but that it

would still erode the garden space and sense of open character at the junction, which would be detrimental to its appearance.

She agreed with officers that the impact of this was greatest when the site was viewed on approach from the south on Ash Street.

The appellant provided an example of a similar extension in the near vicinity, however the Inspector felt this did not the overall character of the area or provide context and gave limited weight to its presence.

Equally she gave little weight to a potential fall-back position advanced by the appellant, in the form of a two storey rear extension and hip to gable conversion that they felt could be constructed as Permitted Development as a) there was no Lawful Development Certificate confirming this, and b) it would have less impact on the side garden than the appeal proposal in any event.

She therefore concluded the proposal was in conflict with UDP policy H14, associated Supplementary Planning Guidance and paragraph 130 d) of the NPPF.

(ii) To report that an appeal against the delegated decision of the Council to refuse planning permission for the erection of a 3 x storey extension at roof top level to existing building to form 6 x 2 bedroomed apartments and 18 x 1 bed apartments at site of former Eon Works, Earl Street, Sheffield, S1 4PY (Case No: 21/04888/FUL) has been dismissed.

Officer Comment:-

The Inspector considered the main issues to be whether the proposal would preserve or enhance the character or appearance of the Cultural Industries Quarter Conservation Area and, if there is harm, whether that harm is outweighed by the public benefits of the proposal.

The appeal site is a recent predominantly brick-built, five storey block of apartments (with ground floor commercial use), known as the Lightbox. The site is within the CIQ conservation area where the significance is derived from small brick-built industrial buildings associated with the metals trades, which are small plots amidst a grid layout of narrow streets and wider roads.

The Inspector noted that the site is set back from Eyre Street where the street grid layout remains intact and the hierarchy of buildings largely reflects the layout, with taller buildings found around and in proximity to the main routes of Eyre Street, Furnival Square, Matilda Street and St Mary's Road. The site is not on a main route, rather it is on the smaller lanes of Eyre Lane, Earl Street and Hallam Lane. In this context the Inspector felt that the proposal to increase the height to 8 storeys would be inappropriate, marked and unsubtle in these surroundings because of the difference in scale and massing compared to the more modest buildings in the vicinity. It would also be higher than the rear of the fire station which fronts Eyre Street.

The Inspector concluded that the proposal would damage the hierarchy and would not be commensurate with its location next to narrow lanes, overshadowing these routes. There was no justification for additional height in a location which is not on a key route, gateway or vista. The proposed materials would also be out of keeping, with metal cladding becoming more dominant rather than brickwork, further detracting from the significance of the conservation area. The proposal was found to be contrary to the Development Plan and the NPPF in design and heritage terms. The harm was concluded to be less than substantial and whilst there would be a small contribution to the housing stock at a time when there is not a 5 year supply of housing, and some employment generation, as well as the site being in a highly accessible location, the Inspector concluded that the harm to the designated heritage asset would not be outweighed by those public benefits.

(iii) To report that an appeal against the delegated decision of the Council to refuse planning permission for the erection of 2no. dwellinghouses with parking provision and alterations to existing parking provision and amenity space serving No's 2 and 4 at land adjacent No.2 Osmaston Road, Sheffield, S8 0GT (Case No: 21/03397/FUL) has been dismissed.

Officer Comment:-

The Inspector identified the main issues as:-

- a) whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to internal space standards and private outdoor amenity space,
- b) the effect of the proposal on the living conditions of occupiers of existing neighbouring properties, with particular regard to the resultant private outdoor space provided for, and outlook from, number 2 Osmaston Road,
- c) whether the proposal would result in an unacceptable impact on highway safety,
- d) whether the proposal would create an unacceptable flood risk, and
- e) the effect of the proposal on the character and appearance of the area, including the extent of proposed development on the site.

For a) and b) the Inspector agreed with officers that the internal and external spaces associated with the dwellings would fall significantly short of space standards set out in national guidance and the South Yorkshire Residential Design Guide and would provide irregular shaped spaces that would not function well, whilst reducing the existing external space to no.2 Osmaston Road to a similarly unsatisfactory level. In addition there would be poorly site bin storage for dwelling 1a adjacent to living room windows of No.2 Osmaston Road, adversely affecting its outlook. As such the proposals represented unsatisfactory living accommodation for existing and future residents in conflict with policy H14, CS74 and paragraph 130 f) of the NPPF.

For c) the Inspector noted the road was an unadopted public highway with a

high demand for on street parking, including on pavements and in the head of the cul de sac, which can make for difficulties in manoeuvring. They concluded that the proposals would displace existing off street parking on the appeal site to on street, severely limit turning within the street and manoeuvrability for spaces at no's 4 and 6 Osmaston Road and the Medical Centre, and would force pedestrians into the highway, and therefore agreed with officer it would conflict with policy H14, and paragraphs 110 b) and 111 of the NPPF.

In terms of flood risk (d) they agreed with officers that insufficient information had been provided to confirm this was acceptable and did not conflict with policy CS67.

For e) whilst the Inspector did not agree with officers that the dwellings were poorly positioned in relation to no.2 Osmaston Road, they did agree that owing to the scale of development, very limited external areas and poor parking arrangements with consequential highway safety issues, that it would represent a too intensive development of the site, detrimental to the area's character and in conflict with policy BE5, H14, CS74 and paragraphs 130 a) and c) of the NPPF.

In applying the titled balance owing to the absence of a 5 year housing supply within the city, the Inspector gave moderate weight to the provision of 2 dwellings, and limited weight to the economic benefits associated with that, but felt that the adverse impacts identified would significantly and demonstrably outweigh those benefits, and dismissed the appeal.

4.0 APPEALS DECISIONS – ALLOWED

(i) To report that an appeal against the delegated decision of the Council to refuse a prior notification for the erection of 15m streetpole and associated equipment cabinets (Application for determination if approval required for siting and appearance) at land at Shirland Lane, Sheffield, S9 3SQ (Case No: 22/03434/TEL) has been allowed.

Officer Comment:-

The Inspector considered the main issue to be the effect of the siting and appearance of the proposed installation on the character and appearance of the area.

The site relates to an area of footpath on Shirland Lane, adjacent to an area of open greenspace, comprising a large grass mound planted with trees and shrubs. There is a large utility station directly opposite the site and the nearest residential properties are behind the area of open space and further up the street.

The Inspector identified that the pole will be highly visible, however they

considered that given the presence of other vertical features, the proposed siting, between the open space and industrial area, avoids any direct conflict with nearby residential properties. They further considered that the siting of the mast adjacent to the existing group of trees and vegetation will reduce its visual impact.

The Inspector concluded that the siting and appearance of the proposal would not result in harm to the character and appearance of the area. The proposal would accord with relevant local and national planning policies and consequently the appeal was allowed.

(ii) To report that an appeal against the delegated decision of the Council to refuse planning permission for an application to remove reference to affordable housing on the floor plans (Application under Section 73 to vary condition 2. (approved plans) imposed by application 21/05354/FUL - Application for alterations to elevations and layout (Application under Section 73 to vary condition 2. (approved plans) and remove condition 21. (Dutch Ramp)), imposed by application 20/04572/FUL - Application to revise the housing mix and change of window material (in places) to UPVC (Application under Section 73 to vary condition 2. (approved plans), 12. (energy needs) & 34. (UPVC windows) (Amended Plans) imposed by planning permission 19/03779/FUL - Demolition of existing buildings and erection of mixed use building up to 12/17/38 storeys to form residential units with ancillary amenities including gymnasium, cinema, common rooms and raised external deck, associated cycle and bin storage and ground floor retail unit (Use Class A1) (Development Accompanied by an Environmental Statement as amended 19th December 2019) at land bounded by Rockingham Street, Wellington Street and Trafalgar Street, Sheffield, S1 4ED (Case No: 22/02430/FUL) has been allowed.

Officer Comment:-

This was an appeal held by Public Inquiry concerned with a refused planning application submitted under Section 73 of the Act (S73 application) to remove reference to affordable housing on the plans for an approved 38 storey residential development scheme on a vacant site at the corner of Rockingham Street and Wellington Street in Sheffield City Centre (diagonally opposite from the new Pounds Park – just below Kangaroo Works).

Planning permission was granted in July 2020 for a development scheme on the site which was essentially in a student accommodation format (primarily small self-contained studio rooms) but which the applicant described as a 'Co-living' scheme, with the concept being that the rental units would be let to both students and non-students (targeting graduates and young professionals). However, this planning permission was subject to a S106 legal agreement requiring the delivery of 10% of the residential floorspace as affordable housing (with the delivery of affordable housing through the development scheme a key part of the applicant's planning case that the development was acceptable).

Enabling works commenced on site in 2021 following the discharge of relevant conditions precedent. The works had the effect of implementing the planning consent. However activities halted following the completion of these preparatory works in 2022 and the applicant submitted the S73 application to remove the reference to affordable housing on the approved plans in June 2022, arguing that a worsening of economic conditions meant that the development scheme could not longer viably support the delivery of affordable housing.

The S73 application was refused in September 2022, following an independent review of the applicant's financial viability assessment by CP viability. Although CP viability disagreed with the applicant's viability argument the refusal was primarily based upon concerns that the removal of affordable housing from the scheme was not a 'minor material amendment' and therefore couldn't be considered under a S73 application based upon the National Planning Practice Guidance in place at that time.

The refusal of the S73 application opened up a right of appeal for the applicant under S78 of the Act and an opportunity for them to argue their viability case to a Planning Inspector. The applicants approach effectively sidestepped the protection embedded in S106A of the Act - which would normally mean that a developer could not make an application (with a right of appeal) to discharge a S106 Planning Obligation until the 'relevant period' (5 years from the completion of the S106 agreement) has elapsed.

The applicant duly appealed the refusal of the S73 application and requested that the appeal was determined by Public Inquiry.

The key issues in contention in the appeal were essentially:

- 1) Whether the removal of affordable housing from a development scheme went beyond the legal scope of what could be considered under a Section 73 application;
- 2) Whether the provision of affordable housing made the development scheme financially unviable;
- 3) Whether the removal of affordable housing from the development scheme made the development scheme unacceptable in terms of planning balance, sustainable development and housing mix.

On issue 1 the Council's case was significantly weakened by the 'Armstrong' high court decision (handed down well after the S73 application was determined) which effectively quashed the Government's Planning Practice Guidance that S73 could only encompass 'minor material amendments'. This Planning Practice Guidance has now been updated to remove this advice and instead state that 'There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.'

Legal arguments were presented by the barristers representing both sides, viability evidence was considered via a round table discussion and planning

arguments were tested through cross examination.

After hearing the evidence the Planning Inspector essentially sided with appellant on all 3 key issues, concluding that:

- 1) 'whether or not the appeal proposal forms a fundamental variation, is not relevant to the consideration of whether the change is within the scope of a section 73 application. What is relevant is whether the change relates to the operative part of the permission. In this case, the description of development in the original permission, does not refer to affordable housing. The removal of affordable housing from the plans as proposed does not alter the description of development, a position agreed by both parties. Accordingly, it creates no conflict with the operative part of the permission. It is my view therefore, that there is no restriction in law as to whether the appeal proposal can be considered under section 73 of the Act.'
- 2) 'Based on my conclusions, that rental levels are likely to be just below that figure [£197.96 per week] and that a reasonable developer profit would be 15%, it is highly likely that the scheme would be unviable and unable to deliver 10% affordable housing.'
- 3) 'I accept that the lack of affordable housing degrades the accommodation mix in the scheme. However, the proposal would provide a mix of accommodation types not just for students but also for young professionals through a co living product ... I conclude that whilst there is conflict with Policy CS41, it is very limited. With the exception of the provision of affordable housing, the appeal proposal continues to provide the social, economic and environmental benefits of the consented scheme ... Given the very limited weight attributed to Policy CS41, I find that the scheme complies with the development plan taken as a whole.'

The appeal decision was subject to a Unilateral Undertaking which effectively requires viability to be reassessed (to establish if an affordable housing commuted sum payment can viably be made) should the scheme remain below ground level at the end of 12 months or below eaves height within 3 years.

No costs application was made by either side.

The appeal decision currently has no practical effect – with the Planning Inspector having no power to require that the existing S106 agreement requiring the delivery of affordable housing (which also binds any subsequent S73 consent including the appeal consent) is modified or discharged. However, the courts have previously held that it is not reasonable for a Council to refuse to amend a S106 agreement if such a decision would effectively frustrate a planning permission granted upon appeal. Therefore the Council will have to reasonably consider any request by the applicant to modify or discharge the existing S106 agreement.

Some of the key learning points from the appeal are:

- A. Where the provision of affordable housing is considered to be pivotal in a planning decision to approve a development scheme, i.e. a planning benefit which is crucial to counterbalancing disbenefits/ policy conflicts, this should be made clear in the Committee Report;
- B. Planners should be very cautious in terms of the way in which affordable housing is secured in planning decisions and aware that developers may seek to use S73 to bypass the 5-year S106 renegotiation moratorium if reference to affordable housing is included on the approved plans or otherwise referenced in planning conditions;
- C. The scope of Section 73 is now very broad in the eyes of PINS and the Courts and the key/ only issue in terms of the legitimacy of a S73 application now seems to be whether a change proposed under S73 would conflict with the development description or not (the operative part of the planning permission). This increases the importance of ensuring that development descriptions accurately and precisely describe all fundamental aspects of a development scheme.
- D. In the eyes of PINS the weight to be given to CS41 is 'very limited', this means that at the current moment in time, without a 5 year housing land supply and before any appreciable weight can be attached to the new housing mix policies set out within The Sheffield Plan (NC5), it is likely to be difficult to sustain refusals on the grounds of specific housing mix conflicts with the requirements of CS41.'

5.0 CIL APPEALS DECISIONS

Nothing to report.

6.0 NEW ENFORCEMENT APPEALS

(i) An appeal has been submitted to the Secretary of State against the Enforcement Notice served in respect of the breach of planning control as alleged in the Notice which is the unauthorised erection of two front dormer extensions, the provision of a vehicular gate and the increase in height of the wall between the front amenity area and the driveway at 264 Darnall Road, Sheffield, S9 5AN (Our ref: 20/00141/ENUHD, Inspectorate ref: APP/J4423/C/23/3325258).

7.0 ENFORCEMENT APPEALS DISMISSED

(i) To report that an appeal against the Enforcement Notice issued by the Council for the unauthorised execution of operational development consisting of the erection of an enclosed canopy structure on concrete and brick base at 411-415 Staniforth Road, Sheffield, S9 3FQ (Our ref: 21/00346/ENUD, Inspectorate ref: APP/J4423/C/22/3312962) has been dismissed.

Officer Comment:-

The appellant appealed against the service of the notice on grounds (b) that the matters alleged in the notice have occurred. The appellant also raised concerns about the structure (canopy and base) were not being permanent therefore planning permission was not required. The Inspector decided that the appeal under ground (c) should also be considered.

On the ground (b) appeal, the inspector concluded that the appellant acknowledged that the structure was in place at the time the notice was served and therefore the appeal under ground (b) failed.

On the ground (c) appeal the Inspector stated that there are three primary tests for whether a structure is a building, and these are its size, permanence and physical attachment and none of these factors are necessarily decisive on its own.

The canopy structure and base were of a substantial size and the post were cemented into the concrete and brick base. The metal canopy roof was physically fixed by bolts to the support posts, and this was directly attached to the shop frontage. Guttering was also affixed to the roof and support posts that connects to the premises, under the canopy roof was also wiring and fixed lighting, requiring a point of service. Furthermore, a mesh fence/grill was fixed to one side of the canopy posts and roof. The Inspector's view was that it was a building within the meaning of s336 of the Act. Given the physical and permanent characteristics of the canopy structure at the front of the premises and the physical constraints of the site, and the length of time the canopy structure has been and was likely to remain in place.

No evidence was provided by the appellant that the development constitutes permitted development and could be considered a temporary building or moveable structure for the purposes of Class A of Part 4 of the GPDO.

The Inspector concluded that the appeal under ground (c) also failed and upheld the enforcement notice.

8.0 ENFORCEMENT APPEALS ALLOWED

Nothing to report.

9.0 RECOMMENDATIONS

That the report be noted.

Michael Johnson
Head of Planning

12 September 2023