

Appeal Decision

Site visit made on 27 September 2016

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 October 2016

Appeal Ref: APP/D1590/W/16/3150066

**Land adjacent to New Garrison Road, Shoeburyness, Southend-on-Sea
SS3 9BF**

- 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 The Garrison LLP against the decision of Southend-on-Sea Borough Council.
 - The application Ref 15/01997/FUL, dated 2 December 2015, was refused by notice dated 9 March 2016.
 - The development proposed is the construction of two pairs of semi-detached 4 bedroom houses with associated car parking and amenity area.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of two pairs of semi-detached 4 bedroom houses with associated car parking and amenity area at land adjacent to New Garrison Road, Shoeburyness, Southend-on-Sea SS3 9BF in accordance with the terms of the application, Ref 15/01997/FUL, dated 2 December 2015, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is the effect of the proposal on the economic regeneration of the Borough.

Reasons

3. Policy CP1 of the Council's Core Strategy 2007 (CS) sets out employment generation targets for the Borough in the period 2001-21. These include 1500 net additional jobs in Shoeburyness. The policy presumes against proposals that result in the loss of employment land unless it can be demonstrated that the proposal would contribute to the regeneration of the local economy in other ways.
 4. The appeal site is allocated as part of an Employment Growth Area in the Council's Development Management Policies 2015 (DM). Policy DM11 seeks to promote modern employment floorspace (Use Class B) in these areas and sets out criteria for the consideration of proposals which do not fall within Class B. These include that there is no long term or reasonable prospect of the site being used for Class B, that the proposed use is compatible with other employment uses and that the alternative use cannot be reasonably located elsewhere within the area it serves. The notes to the policy advise that the site should have been actively marketed for a minimum of two years and that no reasonable offers have been refused. Exceptionally, where the vacancy period has been less than two years, a robust
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market demand analysis may be considered acceptable. DM Appendix 4 sets out the requirements for marketing and market demand evidence.

5. The appeal site is vacant and contains no built development. The adjoining land, which forms part of the Employment Growth Area, has been developed with three blocks of business units. The block closest to the appeal site is occupied by a business use. However, another is in retail use and the appellants advise that the third block has been vacant since it was constructed some 10 years ago.
6. The appellant submitted a Viability and Marketing Report (Ayers and Cruiks, dated 8 September 2015) with the application and a letter updating that report (dated 27 April 2016) with the appeal. These submissions identify the size and price or rents of the available employment property in the area. They provide commentary on the demand for employment floorspace in the Shoeburyness area. The Report also seeks to establish the viability developing Class B office and light industrial units at the site by comparing construction costs with the values achievable. Whilst the latter exercise is acknowledged to be simplistic in approach, it finds significant shortfalls in the viability of both forms of development.
7. Although the Council considers that it has not been adequately demonstrated that there is no long term or reasonable prospect of employment use of the appeal site, no substantive evidence has been provided to dispute the appellant's submissions. In my view, the submissions broadly meet the requirements for market demand analysis set out in Part B of DM Appendix 4.
8. There is nothing to suggest that the nearby block has any shortcomings which would make it unattractive to potential occupiers or that it has been offered at unrealistic sale or rental prices. As such, I consider the fact that the property has remained vacant for around 10 years to be significant.
9. I also note that, at the same meeting which refused the appeal proposal, the Council resolved to grant permission for development of the nearby Garrison Phase 2 site. That development would result in the loss of some 6.6ha of employment land. The committee report for that application found that the 3ha of employment land proposed would be broadly in line with the indicative forecast demand recommended in the Council's 2010 Employment Land Review. Although each case must be considered on its merits, the analysis which led the Council to conclude that the amount employment land required in the Shoeburyness area had reduced since the CS and DM were prepared is also material to the appeal proposal. Nor has the Council produced evidence to show that the proposal would harm the prospects of meeting the employment generation target set out in CS Policy CP1.
10. I am also mindful that paragraph 22 of the National Planning Policy Framework (the Framework) advises that land allocations should be regularly reviewed and that, where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses should be treated on their merits.
11. Taken together, I find that the particular considerations applicable to the appeal proposal amount to the exceptional circumstances set out in DM Policy DM11 as being necessary to justify non-employment development of land allocated as an Employment Growth Area.

12. There is no firm evidence to suggest that the four dwellings proposed would be incompatible with the adjoining employment use. The construction of the development would bring minor, short term, economic benefits and future occupiers could be expected to make a limited contribution to the viability of local facilities and services. The development would also make active use of a vacant site which does not currently contribute to the local economy or to the character and appearance of the area.
13. Moreover, the creation of four detached dwellings would make a modest positive contribution to the supply of housing in the Borough, irrespective of the housing land supply situation. Therefore, it merits a measure of weight in support of the proposal in accordance with Framework paragraph 47. The Council has acknowledged that there are no other reasonable sites available within Shoebury to accommodate the development as proposed and in light of this the proposed development is considered a windfall site. As such, I consider that the proposal would not be detrimental to the economic regeneration of the area and would not conflict with CS Policy CP1 or DM Policy DM11.

Other Matters

14. There is nothing to suggest that the proposal would lead to other harms, including the settings of the Grade II listed Garrison Church or the Shoebury Garrison Conservation Area.
15. Having regard to these considerations, I find that the proposal would amount to sustainable development as set out in Framework paragraphs 7 and 8 and so is supported by the presumption in favour of sustainable development set out in Framework paragraph 14.

Conditions

16. The Council has suggested a list of seven conditions. Suggested condition 5 would withdraw permitted development rights for extensions of the proposed dwellings and the erection of outbuildings with the curtilages. However, paragraph reference ID: 21a-017-20140306 of the Planning Practice Guidance (PPG) advises that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances. It has not been adequately demonstrated that those circumstances exist in this case. I find that the remaining conditions do meet the tests set out in the PPG.
17. A condition specifying the approved drawings is necessary in the interests of certainty. Conditions requiring further details of external materials and hard and soft landscaping are required to safeguard the character and appearance of the area. A condition to secure the provision and retention of the car parking spaces and garages is required in the interests of highway safety. A condition requiring the approval and implementation of the flood risk mitigation scheme and urban drainage measures is necessary to minimise flood risk.

Conclusion

18. For the reasons set out above, the appeal should be allowed.

Simon Warder

INSPECTOR

Schedule of conditions attached to

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- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2200/01; 2200/04; 2200/05; 2200/06 and 2200/07.
- 3) No development shall take place until details of the external materials to be used have been submitted to and approved in writing by the local planning authority. The works must then be carried out in accordance with the approved details unless otherwise agreed in writing by the local planning authority.
- 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The approved hard landscaping works shall be carried out prior to first occupation of the development and the soft landscaping works within the first planting season following first occupation of the development, unless otherwise agreed in writing by the local planning authority.
- 5) Prior to the occupation of the dwellings hereby approved the car parking spaces and garages shall be provided in accordance with the approved plans. The car parking spaces and garages provided shall be kept available for the parking of motor vehicles at all times and permanently retained.
- 6) Prior to the commencement of the development hereby approved, a detailed scheme of floor risk mitigation measures and sustainable urban drainage measures (broadly in line with the indicative details set out within the Flood Risk Assessment submitted with the application dated August 2015) shall be submitted to and approved in writing by the local planning authority. The development shall only be undertaken fully in accordance with the approved details.