

Appeal Decisions

Site visit made on 21 February 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 15th March 2017

Appeal A: APP/D1590/W/16/3163502

274 Elmsleigh Drive, Leigh-on-Sea, Essex SS9 4JR

- 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 Mr Neville Hyams against the decision of Southend-on-sea Borough Council.
 - The application Ref 16/00432/FUL, dated 9 March 2016, was refused by notice dated 26 May 2016.
 - The development proposed is to demolish existing bungalow and erect two new build semi-detached houses.
-

Appeal B: APP/D1590/W/16/3163570

274 Elmsleigh Drive, Leigh-on-Sea, Essex SS9 4JR

- 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 Mr Neville Hyams against the decision of Southend-on-sea Borough Council.
 - The application Ref 16/01237/FUL, dated 5 July 2016, was refused by notice dated 16 September 2016.
 - The development proposed is to demolish existing bungalow and erect two new build semi-detached houses.
-

Decisions

Appeal A: APP/D1590/W/16/3163502

1. The appeal is dismissed.

Appeal B: APP/D1590/W/16/3163570

2. The appeal is allowed and planning permission is granted to demolish existing bungalow and erect two new build semi-detached houses at 274 Elmsleigh Drive, Leigh-on-Sea, Essex SS9 4JR in accordance with the terms of the application, Ref 16/01237/FUL, dated 5 July 2016, subject to the conditions set out in the attached schedule.

Procedural Matters

3. As set out above there are two appeals on this site. The main differences between the two schemes relate to the loss of an existing street tree, the effects on public transport infrastructure and highway safety. Whilst I have considered each proposal on its own merits, in order to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
-

Main Issues

4. In relation to Appeal A, the Council objects on the grounds of the proposal having an unacceptable impact on the appearance of the streetscene due to the loss of a mature tree within the highway verge. In both appeals the Council object that the proposed access arrangements would affect public transport infrastructure, although in slightly different ways, with Appeal A resulting in the loss of a bus stop and in Appeal B, the extended crossover would be unacceptably close to the existing bus stop, restricting opportunities to improve sustainable transport infrastructure. In Appeal B only the Council also object to the proposal on the grounds that the parking provision would be detrimental to highway safety.
5. There is no dispute between the parties in relation to the acceptability of the proposal in terms of the principle of development, the effect on the character and appearance of the area and the living conditions of future or neighbouring occupiers. I have no reasons to disagree with this assessment and accordingly, the main issues are:

For Appeal A only:

- The effect of the proposal on the appearance of the streetscene.

For Appeals A and B only:

- The effect of the proposal on public transport infrastructure.

For Appeal B only:

- The effect on highway safety.

Reasons

Appearance of streetscene

6. Elmsleigh Road has a semi-avenue character with mature trees planted at both regular and irregular distances within the highway verge. Although some sections of the verges did not contain any trees, I found that the presence of a number of mature trees within the verges surrounding the appeal site positively contribute to the appearance of the streetscene on what is part of a long residential road, with buildings sited close together and punctuated by a number of hard elements such as vehicle crossovers, boundary walls and driveways.
7. The tree in question has grown to be a mature specimen and in combination with other trees assists in softening the appearance of the streetscene. The loss of the tree, with no space for it to be replanted or replaced within the verge would cause harm to the appearance of the streetscene.
8. For these reasons, the proposal would harm the appearance of the streetscene and in this respect would conflict with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007 ('CS'), Policy DM1 of the Development Management Document 2015 ('DMD') and the Design and Townscape Guide 2009 ('DTG'). Amongst other things, these require development to result in high quality sustainable design that adds to the overall quality of an area, enhance and complement the natural and built assets of Southend and respect, conserve

and enhance the townscape and the natural environment, with adequate mitigation where necessary.

Public transport infrastructure

9. The proposal under Appeal A would result in the loss of the existing bus stop due to the widening of the existing vehicle crossover onto Elmsleigh Road. Whilst there would be alternative bus stops within the surrounding area and technically within walking distance of the appeal site, the loss of this bus stop would impact upon public transport provision. Residents who live in close proximity of the existing stop, in particular the elderly and those with a disability would no longer have the benefit of its convenience, especially in inclement weather.
10. To my mind it is of little relevance that the bus stop is not on a protected route or that the appellant contends it does not provide a frequent service, it still provides a useful service to local residents and I have not been notified of any plans to change it. To allow its removal would conflict with the aims and objectives of Policies KP2 and CP3 of the CS insofar as these require development proposals to secure improvements to transport networks, infrastructure and facilities and promote improved and sustainable modes of travel. It would also conflict with the National Planning Policy Framework ('the Framework') insofar as it has similar aims and objectives.
11. The appellant suggest that its relocation could be secured by a planning obligation or condition. Whatever the case may be in relation to whether such works could physically take place, no such obligation is before me. Furthermore, the use of a Grampian style planning condition should only be considered where there is a clear prospect that the action in question will be performed within the time limit imposed by the permission. No such condition is before me and moreover, I cannot be certain that there is a clear prospect that the highway authority would agree to the relocation and that the requirements of such a condition could be achieved. In reaching this view I am also mindful that any changes to the bus stop would be likely to require public consultation and the highway authority have not raised it as an option in their consultation response. Such a condition would not therefore be appropriate and would fail the test of reasonableness and enforceability as set out in paragraph 206 of the Framework.
12. Turning to appeal B, although the existing bus stop would be very close to the extended crossover, nevertheless it would be retained. The Council consider that it may have an impact on the ability to provide future infrastructure improvements but there is nothing substantive before me that demonstrate whether there are any anticipated or planned upgrades to the service, the bus stop, what such improvements would entail and the timescales for implementation. It would also appear that there would still be space for some localised improvements to take place, were I to allow the appeal. The fact that there is an existing bus stop at The Fairway, cited by the Council as an example of such an upgrade does little to persuade me otherwise.
13. For these reasons, the proposal under Appeal B would not have a harmful effect on public transport infrastructure and would not conflict with Policy CP3 of the CS and Policies DM3 and DM15 of the DMD which require development to demonstrate that there will be physical and environmental capacity, including

transport capacity, to accommodate the type and amount of traffic generated in a safe and sustainable manner.

Highway safety

14. The proposal in Appeal B details the provision of one off street parking space per dwelling and consequently, there would be a shortfall of 2 spaces compared with the Council's minimum standards. However, I saw that there are no on-street parking restrictions in place, apart from around the junction with Danecroft Drive opposite and there is no evidence before me of any particular highway safety issues associated with on-street parking in this locality. From my observations, albeit during the morning, a number of safe spaces to park on the road were available and there is nothing substantive to persuade me that that any modest increase in potential on-street parking as a result of the proposal would cause harm to highway safety. Furthermore, the appeal site would benefit from a bus stop directly outside and any journeys by private car to access services and facilities further afield would be relatively short.
15. Taking everything together and notwithstanding the submission of a Green Travel Plan, I find that there is sufficient justification to apply the standards flexibly. The proposed parking provision would be acceptable and the proposal would not result in harm to highway safety. It would not conflict with Policy CP3 of the CS or Policies DM3 and DM15 of the DMD, the aims and objectives of which are set out above. In this regard, it would also not conflict with the highway safety objectives of the Framework.

Other Matters

16. In Appeal A the appellant contends that the proposal would be sustainable development in terms of paragraph 14 of the Framework and that the DTG is out of date. However, the DTG is not part of the development plan and moreover, the proposal would conflict with an up to date development plan and would fail to fulfil the environmental dimension of sustainable development. As such it would not be the sustainable development for which the Framework indicates a presumption in favour. In the unweighted balancing exercise required the minimal benefits of one additional dwelling do not outweigh the harm that I have identified to the appearance of the streetscene and the effect on public transport.

Conditions

17. For Appeal B I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition is required to ensure compliance with the approved plans as this provides certainty. A condition requiring details of the external materials to be submitted is necessary in order to protect the character and appearance of the area although it is more appropriate that the approval should occur before the development rises above ground level, rather than before any commences. To ensure the proposed parking and turning facilities are satisfactorily provided and thereafter permanently retained, a condition is required for these to be provided and laid out prior to occupation of the dwellings as per the approved plan.
18. A condition to control the water consumption by future occupiers of the dwellings is necessary in the interests of efficient water use in accordance with

Policy DM2 of the DMD. Suggested condition 6 requires compliance with Building Regulation M4(2) but the Planning Practice Guidance¹ requires local planning authorities to demonstrate a need for compliance with this Regulation. The development plan policy cited in the reason for the condition does not refer to Regulation M4(2) and I therefore consider that the need for compliance has not been adequately demonstrated. In the interests of sustainability it is reasonable and necessary to include a condition relating to the energy efficiency of the proposed dwellings.

19. Conditions requiring details of the soft and hard landscaping of the site are necessary to protect and enhance the character and appearance of the area and that such works are retained and replaced, where necessary. The Council has requested a condition removing permitted development rights under Classes A, B, D and E². Such rights should be removed only in instances of specific and precise justification and I find no exceptional circumstances in this case such as to warrant the removal of these rights. I have therefore not included such a condition as I do not consider it to be necessary.
20. Conditions 3, 6 and 7 are conditions precedent and I am satisfied that such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interest of a combination of the effects on the character and appearance of the area and sustainability.

Conclusion

21. For the reasons set out above, I find that in Appeal A the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that a decision should be made other than in accordance with the development plan and having considered all other matters raised, I therefore conclude that Appeal A should be dismissed.
22. For the reasons set out above, I find that in Appeal B the proposal would accord with the development plan, when read as a whole and would be the sustainable development for which the Framework indicates a presumption in favour. Having considered all other matters raised, I therefore conclude that Appeal B should be allowed.

Richard Aston

INSPECTOR

¹ Paragraph ID: 56-007-20150327

² The Town and Country Planning (General Permitted Development) (England) Order 2015.

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: 15-001, 2-300, 1-300, 1-001, 1-201, 0-300, 0-001, 0-002 and 0-005.
- 3) No development shall commence above ground level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The dwellings hereby permitted shall not be occupied until the area shown on approved plan 0-300 for the parking and turning of vehicles have been provided, surfaced and drained in accordance with details that have been previously submitted and approved in writing by the local planning authority. Subsequently, the parking and turning areas shall not be used for any purpose other than the parking and turning of vehicles.
- 5) Prior to occupation of the development details of the water efficient design measures set out in Policy DM2 (iv) of the Development Management Document to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), including measures of water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter retained in operation.
- 6) No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and thereafter retained in operation.
- 7) No development shall take place until details of the soft and hard landscaping of the site and the provision of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) All planting, seeding, turfing and other details comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.