
Appeal Decisions

Site visit made on 4 July 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 26th July 2017

Appeal A Ref: APP/D1590/W/17/3169790

The Shore, 22-23 The Leas, Westcliff-on-Sea SS0 8FF

- 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 Shore Limited against the decision of Southend-on-Sea Borough Council.
 - The application Ref 16/01246/FUL, dated 6 June 2016, was refused by notice dated 15 November 2016.
 - The development proposed is provision of 16 surface level car parking spaces to the rear, with replacement car park entrance gates.
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Appeal B Ref: APP/D1590/W/17/3174683

The Shore, 22-23 The Leas, Westcliff-on-Sea SS0 8FF

- 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 Shore Limited against the decision of Southend-on-Sea Borough Council.
 - The application Ref 17/00362/FUL, dated 28 February 2017, was refused by notice dated 12 April 2017.
 - The development proposed is provision of 16 surface level car parking spaces to the rear, with replacement car park entrance gates and acoustic fencing.
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Decision

1. Appeals A and B are dismissed.

Background and Main Issues

2. The development for appeals A and B would involve the provision of a sixteen space car park (the new car park), in substitution for an outdoor communal space for use by the occupiers of The Shore. The only difference between the schemes subject to appeals A and B is that for the latter the installation of some acoustic fencing would be included. The Shore is a recently constructed multi storey block of 46 flats. Given the similarity of the developments subject to the appeals I have considered them concurrently below.
3. The main issues are the effect of the development on: the living conditions of the occupiers of neighbouring properties, with particular regard to noise; highway safety; and the living conditions for the occupiers of The Shore, with regard to outdoor space provision.

Reasons

Living conditions for the occupiers of neighbouring properties

4. The new car park would be independent of the existing 53 space basement parking area¹ and it would be accessed via Grosvenor Mews. Grosvenor Mews is a no through road that currently serves 14 dwellings, leading from Grosvenor Road. The access to the new car park would be via a narrow access track (the track) that passes between 3 Grosvenor Mews (No 3), a semi-detached house, and Elm Cottage, a detached house. While the track already exists, it is only used to access an electricity sub-station.
5. The provision of the new car park would result in the track being used much more actively, with appellant's highway consultant predicting that this development would generate 54 vehicle movements per day, with a quite low hourly frequency². Given the very limited existing use of the track I consider that its more intensive use would have the potential to generate noise that would be disturbing for the occupiers of No 3 and Elm Cottage. That is because No 3 and Elm Cottage immediately adjoining the track, with Elm Cottage having a large ground floor window facing the track.
6. Given the track's existing low level usage I consider it likely that 54 intermittent car movements would be discernible, as distinct noise events, by the occupiers of No 3 and Elm Cottage, given Grosvenor Mews' comparatively quiet side street location. That situation might be different if the track was already subject to regular flows of traffic and the flow arising from the new car park's use was to be less intermittent. I therefore consider that for circumstances such as this, making a comparison between the existing background daytime and night-time L_{Aeq} and the predicted post development noise levels is of limited assistance. That is because the intermittent nature of the vehicular noise would have the potential to be more irritating, and thus intrusive, for the occupiers of No 3 and Elm Cottage as compared with noise generated on a more regular basis.
7. A worst case increase of two decibels over the existing background $L_{Aeq, 16 \text{ hour}}$ level is predicted for the occupiers of Elm Cottage. For all of the other nearby noise receptors the increase in noise is predicted to be less than two decibels. It is submitted that the additional noise arising from the development would fall within the category of being a 'lowest observed adverse effect level', capable of causing some limited behavioural changes, such as speaking more loudly and closing windows.
8. However, as I have indicated above, I consider comparing the post development and existing background noise levels is not a particularly meaningful way of assessing this development's impact on the occupiers of No 3 and Elm Cottage. I therefore cannot accept that the noise associated with the daily passage of 54 vehicles, along what is currently a lightly used narrow track, would be insignificant for the occupiers of No 3 and Elm Cottage.
9. The potentially noise disturbing nature of the development would be accentuated for the occupiers of Elm Cottage on occasions when that

¹ Based on the actual space numbering in the car park, as opposed to the number quoted in the various documents accompanying the planning applications and appeals

² Table 7.2 of the Noise Impact Assessment and Vehicular Access Study of June 2016 prepared by Mayer Brown

property's flank window was open, given that there would be no practical means of providing attenuation against the egress of noise into that house when the side window was open. The narrowness of the track at its southern end would mean that there could, on occasions, be potential for vehicles with idling engines to stand near Elm Cottage's open window while waiting for on-coming vehicles exiting the new car park.

10. The development subject to appeal B would involve the installation of acoustic fencing on the eastern side of the track, alongside No 3. There would be scope, through the imposition of a planning condition, for the development subject to appeal A to also include the installation of the same acoustic fencing. However, were such fencing to be installed it would provide no noise attenuation for the occupiers of Elm Cottage. The attenuating effect of the acoustic fencing has not been quantified as part of the appellant's case. While I recognise that the acoustic fencing's installation would have the potential to provide some noise attenuation for the occupiers of No 3, it has not been demonstrated how effective that fencing might be.
11. For the reasons given above I consider it has not been demonstrated that there would be no harmful noise effect for the occupiers of No 3 and Elm Cottage arising from the increased use of the track. I therefore conclude that the development would cause unacceptable harm to the living conditions of the occupiers of neighbouring properties. There would therefore be conflict with Policy CP4 of the Southend on Sea Core Strategy of 2007 (the Core Strategy) and Policies DM1 and DM15 of the Southend on Sea Development Management Document of 2015 (the DMD). That is because the development through the generation of noise would be harmful to the living conditions (amenity) of its immediate neighbours.

Highway Safety

12. Grosvenor Mews is a comparatively narrow street without footways, which is quite lightly trafficked. The physical layout of Grosvenor Mews is such that traffic speeds could be expected to be quite low, something that I observed during the course of my site visit.
13. While it is predicted that the development would generate 54 daily vehicle movements, those movements would be distributed throughout the day and I therefore consider that they would not be beyond Grosvenor Mews' capacity to accommodate them. While the increase in traffic using Grosvenor Mews would, in relative terms, be significant no evidence has been provided demonstrating that that increased activity would be harmful to pedestrian or other road users' safety. I am therefore not persuaded that there would be any particular conflict between the volume of pedestrians and vehicles already using Grosvenor Mews and the additional traffic generated by the development.
14. I therefore conclude that the development would not be harmful to highway safety. There would therefore be no conflict with Policy DM15 of the DMD because the traffic generated by the development would not be unsafe. Conflict with Policy CP3 of the Core Strategy has been cited, however, I consider that Policy CP3 is not relevant to the safety concern identified by the Council. That is because Policy CP3 addresses the making of improvements to transport infrastructure and services to achieve a modern integrated transport

system to unlock key development sites and to secure the sustainable jobs led regeneration and growth of Southend.

Outdoor Space

15. The creation of the new car park would result in the loss of The Shore's originally planned rear communal outdoor space, albeit this area is not currently being used in that way following the undertaking of some drainage repair works. Each flat in The Shore has a private external balcony.
16. The development would involve the removal of a significant part of the external space intended for use by The Shore's occupiers. However that loss would be compensated for by the availability of the roof terraces that have been created following the granting of planning permission 16/00328/FUL. Based on the appellant's analysis of the outdoor space provision for The Shore, this development, as originally granted planning permission, would have provided the equivalent of 18 square metres (sq.m) of communal outdoor space per flat.
17. However, the appellant has submitted that the introduction of the roof terraces and the loss of the rear communal area would result in each of the flats having the equivalent of 29 sq.m of communal outdoor space. The Council has not disputed the appellant's calculations relating to the communal outdoor space provision. On the evidence available to me I therefore consider that when regard is paid to the formation of the roof terraces, the net effect of the new car park's formation would be to leave the occupiers of The Shore with an adequate amount of communal outdoor space.
18. On this issue I therefore conclude that there would be no harm to the living conditions for the occupiers of The Shore. There would therefore be no conflict with Policies DM1 and DM8 of the DMD because The Shore's external layout would make provision for an adequate amount of communal outdoor space, which would be supplemented by the availability of private balconies.

Conclusions

19. I have found that the development would not have an adverse effect on highway safety or the living conditions for the occupiers of The Shore. However, I have found that the noise associated with the development would cause unacceptable harm to the living conditions of neighbouring residents. I therefore conclude that the appeals should be dismissed.

Grahame Gould

INSPECTOR