

Appeal Decision

Site visit made on 14 December 2020

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/D1590/W/20/3256510

Land to the rear of Baryta House, Victoria Avenue, Southend-on-Sea, Essex SS2 6AZ

- 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 Shaviram Southend Limited against the decision of Southend-on-Sea Borough Council.
 - The application Ref 20/00315/FUL, dated 19 February 2020, was refused by notice dated 3 July 2020.
 - The development proposed is the erection of ground floor plus three storey building to accommodate nine flats together with reconfigured car park layout to the rear of Baryta House.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of ground floor plus three storey building to accommodate nine flats together with reconfigured car park layout at Land to the rear of Baryta House, Victoria Avenue, Southend-on-Sea, Essex in accordance with the terms of the application, Ref 20/00315/FUL, dated 19 February 2020, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Shaviram Southend Limited against Southend-on-Sea Borough Council which is the subject of a separate decision.

Main Issues

3. The main issues are the effect on the living conditions of future residents with regard to the adequacy of the outdoor space; and the effect on highway safety and the free flow of the local highway network.

Procedural matters

4. The Council sought to change the description of development but as there is no evidence provided to demonstrate that this was agreed, the description on the application form has been retained.
 5. Two sets of plans have been provided. This decision is based on those listed in the officer report.
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6. The Council have introduced a further issue with regard to the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy. The information provided is relatively limited but the Council suggest that a payment has been made to satisfy their concerns. I have not considered the matter further.
7. The Council have confirmed that there is currently a deficit of housing land supply in the borough.

Reasons

8. The proposal would result in a free standing, four storey block of nine self-contained flats, fronting on to Baxter Avenue. The site is currently part of the carpark to the rear of Baryta House which was a twelve storey office block. It has now been converted to 113 flats. It is situated towards the centre of Southend, close to the railway station and the main commercial area.

Living conditions

9. The Council is concerned that the balconies proposed would be inadequate to provide high quality living environments.
10. The appellant advises that the six 2-bedroom and three 3-bedroom flats are all larger than the minimum floor areas set out in the Government's Technical Housing Standards. It is further noted that three of the units would benefit from a triple aspect, whilst six would have a dual aspect. All of the units would have their own private amenity space in the form of a balcony. The three bedroom units would have 9.5sqm balconies whilst the two bedroom flats would have either a similar 9.5sqm balcony or a 6.5sqm balcony. The smaller balconies are more private and being almost square in shape, they would give greater flexibility of use. All the balconies are set internally within the outer frame of the building which would ensure that they would have some level of shelter from the elements.
11. The plans considered by the Committee show the larger balconies on the south-eastern elevation which would ensure that they would have direct sunlight all morning and into the afternoon. The smaller balconies would be within the north-west corner of the building, predominantly facing west. They would receive direct sunlight from midday onwards. The daylight study demonstrates that the building overall would only be shaded, due to neighbouring structures, when the sun was low during winter afternoons.
12. The proposal does offer some outside shared amenity space which is made up of a forecourt area, just over 4.4 metres wide, which extends across the full length of the building. I agree with the Council that this offers visual benefits by the provision of landscaping rather than any significant leisure provision, particularly in relation to the concerns raised with regard to the lack of family amenity space. The wider area is not devoid of greenspace with Churchill Gardens to the north. However, the lack of an easily accessible play area does suggest that this town centre location would not be ideally suited to families with young children.
13. Six of the flats have two bedrooms and whilst they could be used by a small family, prospective future residents would be fully aware of the nature of the location and its shortcomings with regard to outdoor space and play provision.

The same would be the case with regard to the future residents of the three flats which would have three bedrooms, despite their size suggesting that they may be suitable for family accommodation. The potential to provide any significant additional outdoor space or provision for children's play is limited particularly as the second reason for refusal raises concerns with regard to the loss of parking spaces which would be greater if the proposed communal area was increased in size.

14. Given the nature of this area and the accommodation proposed, I consider that the balconies would be appropriate for the flats that they serve. Whilst it would be preferable if there was more outdoor space and play provision locally, this is not the case. The environmental health officer did not raise the quality of the living accommodation as an issue with regard to outdoor space and the Council's planning officer concluded that despite the lack of communal outside space, the private balcony's would be adequate to meet the requirements of future occupiers. I have no reason to disagree with these findings.
15. Overall, these flats would provide high quality living conditions due to the internal space they provide, the balconies, the cycle storage provision, the internal accessibility measures and the proximity of facilities and services within the adjacent town centre. The balconies proposed are relatively generous. The units would offer a good standard of amenity and I have found nothing in the Council's case to suggest otherwise. Policy DM8 (1.v) of the Development Management Document 2015 (DMD) requires the provision of usable private outdoor amenity space for the enjoyment of intended occupiers. It indicates that for flatted schemes this can be in the form of a balcony or easily accessible semi-private communal amenity space. I therefore find no conflict with this policy. The policy is in accordance with the *National Planning Policy Framework (Framework)* with regard to amenity and can therefore be afforded full weight.
16. The Council's Supplementary Planning Document: Design and Townscape Guide 2009 (SPD) advises that an attractive and useable garden area is an essential element of any new residential development. The required amount of amenity space will be determined on a site by site basis taking into account local parks and the constraints of the site. Developments that provide little or no private amenity space will only be acceptable in exceptional circumstances. It indicates that usable balconies and terraces can provide valuable additional private amenity areas particularly on flatted schemes but should normally be provided in addition to a larger area of amenity space usually provided at ground level. In exceptional circumstances, it advises that it may be acceptable for residential schemes to provide balconies as the only amenity provision if justified on a site by site basis. In these circumstances, balconies should benefit from sunshine and good microclimate, including good air quality; a pleasant outlook; be large enough to allow outdoor sitting, dining and clothes drying; be an integral and considered part of the overall architecture; be secure and relatively private; and be well related to the internal living accommodation.
17. This proposal does provide some communal outdoor space but it falls short of the high aspirations of the SPD. However, whilst the SPD strongly discourages schemes with only balcony provision, it does not rule them out. The efficient use of previously developed land in the centre of the urban area, closely

associated with transport links and the central commercial area, does in my view, represent such exceptional circumstances, particularly as making further provision would result in other issues, in this case with regard to parking given the Council's position. The balconies proposed have been well designed and would be of a scale and orientation that would offer good quality space. Whilst the proposal does not gain support from the overriding aspirations of the SPD, I am satisfied that it is also not in conflict with its specific requirements.

18. The reason for refusal also makes reference to Policies KP2 and CP4 of the Core Strategy 2007 (CS) and DMD Policies DM1 and DM3. The Council have not identified why there would be conflict with these policies. Given the lack of design concerns raised, I find that they offer support for the proposal particularly with regard to the efficient use of previously developed land in a sustainable location. Overall, I have not found that there would be harm with regard to the living conditions of future residents. I have also found no development plan conflict. The amenity space provision is not encouraged by the SPD and is not a positive feature of the proposal but it has to be considered with regard to the living conditions overall, which I have found would be acceptable.

Highway safety and the free flow of the local highway network

19. The Council are concerned that there would be insufficient parking which would result in concerns with regard to highway safety and the free flow of traffic on the local highway network. The loss of parking provision and the reduced ratio of properties that would benefit from a parking space, is also a concern raised by local residents, including concerns with regard to the already limited provision of disabled spaces.
20. The proposal would increase the provision of disabled parking which is a matter that weighs in favour of the development. It is however, self-evident, that any inconvenience that is already experienced by residents by the first come, first served, parking arrangements; and the greater number of units than parking spaces, would be exacerbated by increasing the number of units and decreasing the parking provision. It would appear from the correspondence that the contractual arrangements between the residents and the car park operator, does not include guaranteed parking provision. This is a private matter. Any contractual issues relating to a reduction in parking provision is similarly a private matter. I acknowledge however that residents will experience greater inconvenience if they are forced to access parking outside the site, particularly if this is some distance from their homes.
21. Whilst there would be greater inconvenience for residents, it is unclear why the Council consider that the displacement of vehicles, when parking reaches capacity, would impact on highway safety or the free flow of traffic. Baxter Avenue is a wide straight road with good access arrangements to the wider road network. The Council's own experts have raised no objection to the proposal on highway grounds. There is no evidence to suggest that the proposal would result in unacceptable highway concerns or conflict with the policies referred to in the refusal reason, specifically, CS Policy CP3 or DMD Policy DM15.

Other matters and conclusions

22. The Council have not raised other objections with regard to this development. Aside from it being preferable to have better outdoor space provision, the development would gain support from most of the Council's policies and those of the *Framework*. This is a highly sustainable location and the proposal would make an efficient use of the site. The living conditions of future residents would be of a good standard. The proposal would not result in unacceptable harm to the living conditions of other nearby residents, although for some, there would be a greater inconvenience due to the reduction in available parking provision. The provision of additional housing, in this location, is a matter that weighs heavily in favour of the proposal, particularly given that the Council is unable to demonstrate an adequate supply of housing land.
23. Whilst the suitability of this site for family sized housing is a matter that results in a small amount of weight against the proposal, the provision of good quality flats in a sustainable location provides considerable weight in its favour. Whilst I acknowledge that the reduced level of parking would result in inconvenience for some residents, I have not found the harm from this or any other matters to be sufficient to outweigh the substantial benefits of the proposal. Given the housing land supply position, the Council must demonstrate that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the *Framework* when taken as a whole. This has not been demonstrated. I therefore allow the appeal.

Conditions

24. The officer report to the Committee, which recommends approval, includes a number of conditions. The appellant has had the opportunity to comment on these but has not raised any objection to them.
25. I have imposed the time limit condition and the condition that makes reference to the approved plans in the interests of certainty. Conditions requiring details of all above ground materials, including privacy screens; lighting; and landscaping, are necessary to ensure that the building would have a satisfactory appearance and setting. It has been suggested that the street tree outside the site should be protected. The tree is set well away from the site access and at the front of the pavement rather than the back. Given its size and position, specific measures to protect are not necessary.
26. The proposal is for the provision of 59 parking spaces to serve the existing and proposed flats. It is appropriate to require this provision before first occupation of these units. This includes the additional provision of disabled spaces which is a benefit of the proposal. Although concerns have been raised with regard to parking during construction; the management of spaces; and the loss of parking overall, these are private contractual matters between the residents and the land owner/managers. Conditions to require the waste management and cycle storage provisions are however necessary to ensure that appropriate levels of provisions are made and maintained.
27. I have imposed the optional building regulation requirements M4(2) with regard to accessible and adaptable dwellings to ensure that the flats are accessible to a wide range of occupants including older people; those with

reduced mobility; and some wheelchair users. I have also imposed a requirement that the development meets some of its own energy requirements; and is water efficient. A condition also requires measures to ensure that the internal noise environment is satisfactory for future residents. These measures are necessary to satisfy CS Policy KP2 and DMD Policies DM2 and DM3.

28. Given the proximity to existing properties, I have required that construction hours be limited to protect the amenities of neighbouring residents. A condition relating to contamination is also included to protect future residents; and to safeguard controlled waters.

Peter Eggleton

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun not later than 3 years beginning with the date of this permission.
- 2) The development shall be carried out in accordance with the approved plans: 205 P04, 204 P04, 207, 202 P05, 200 P05, 203 P04, 0003 A02
- 3) Notwithstanding the details shown on the plans submitted and otherwise hereby approved, the development shall not commence, other than for groundworks and site preparation works, until details and appropriately sized samples of the materials to be used for all the external surfaces of the proposed building at the site including facing materials, roof detail, windows, doors and balustrades have been submitted to and approved in writing by the local planning authority. The works must then be carried out in full accordance with the approved materials, details and specifications before the residential units hereby approved are first occupied.
- 4) Notwithstanding the details shown on the plans hereby approved no development shall take place, other than ground and site preparation works, until there has been submitted to and approved by the local planning authority, a scheme of hard and soft landscaping for the site. This shall include details of the number, size and location of the trees and shrubs to be planted together with a planting specification; details of measures to enhance biodiversity within the site; details of the treatment of all hard and soft surfaces and all means of enclosing the site. All planting in the approved landscaping scheme shall be carried out in the first available planting season following occupation of the first of the residential units within the development. Any shrubs dying, removed, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed with the local planning authority. Hard landscaping and means of enclosure shall be carried out and completed in full accordance with the approved scheme prior to first occupation of any residential unit.

- 5) Details of the size, design and materials of all balcony privacy screens shall be submitted to the local planning authority and approved in writing. The approved details shall be implemented in full prior to the first occupation of the associated residential units and shall be permanently retained as such thereafter.
- 6) Details of all external illumination of the site including the luminance and spread of light and the design and specification of the light fittings shall be submitted to and approved in writing by the local planning authority. All illumination shall be designed in accordance with the Institute of Lighting Professionals "Guidance Note 01/20: Guidance notes for the reduction of obtrusive light". All illumination within the site shall be carried out in accordance with the approved details prior to the first occupation of any residential unit and shall be retained in accordance with the approved details thereafter. No other lighting of the external areas of the site shall be installed or used at any time.
- 7) The proposed residential units shall not be occupied until 59 on site car parking spaces have been provided and made available for use in full accordance with drawings 205 P04 and 202 P05. The parking spaces shall be permanently maintained thereafter solely for the parking requirements of occupiers or visitors of the existing and proposed residential units.
- 8) The residential units shall not be occupied until a minimum of nine secure, covered cycle parking spaces have been provided and have been made available for use in the location shown on the approved plans. The approved facility shall be maintained and shall remain available for the use of the residents of these units at all times thereafter.
- 9) Details of a waste management plan which shall include refuse and recycling storage facilities and waste servicing arrangements shall be submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until the details and requirements of the approved waste management plan have been fully carried out in accordance with the approved details.
- 10) The development shall be undertaken in strict accordance with the findings, recommendations and conclusions set out in section 4.2.2 of the approved Desktop Noise Survey by Nova Acoustics dated 11th May 2020 reference 4537CF Rev A. Notwithstanding the details shown on the plans submitted and otherwise hereby approved, no development above ground level shall be undertaken until full details of the acoustic properties of the development, including all glazing and ventilation, have been submitted to and approved in writing by the local planning authority. The development must be undertaken in accordance with the approved details prior to the first occupation of any residential unit and must be retained as such thereafter.
- 11) The residential units shall not be occupied until they fully comply with the building regulation M4(2) 'accessible and adaptable dwellings' standard.
- 12) A scheme detailing how at least 10% of the total energy needs of the development will be supplied using on site renewable sources shall be submitted to and agreed in writing by the local planning authority. The

scheme shall be implemented in full prior to the first occupation of any residential unit.

- 13) Prior to first occupation of the development hereby approved, water efficient design measures must be installed to limit internal water consumption to 105 litres per person per day (lpd) (110 lpd when including external water consumption), including water efficient fittings, appliances and water recycling systems such as grey water and rainwater harvesting. These measures shall be retained thereafter.
- 14) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, works must cease and the matter reported in writing to the local planning authority. An investigation and risk assessment must be undertaken; and where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme, a verification report must be submitted to and approved in writing by the local planning authority. This shall be conducted by a competent person and in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The approved accommodation shall not be occupied until the above requirements have been completed.
- 15) Demolition or construction works associated with this permission shall not take place outside 08:00 hours to 18:00 hours Mondays to Fridays; 08:00 hours to 13:00 hours on Saturdays; and at no time on Sundays or Bank Holidays.