



Appeal Decision

Site visit made on 16 February 2021

by Martin H Seddon BSc MPhil DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Appeal Ref: APP/D1590/W/20/3259028

97-99 & 100 Shaftesbury Avenue, Southend-on-Sea SS1 3AN

- 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 A Patel against the decision of Southend-on-Sea Borough Council.
 - The application Ref: 20/00378/FUL, dated 28 February 2020, was refused by notice dated 4 May 2020.
 - The development proposed is tea and coffee shop ancillary to existing convenience store and construction of new crate storage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have determined this appeal on the basis of the Council's description of development as "Erect single storey building and part change of use of domestic garden at 101 Shaftesbury Avenue for use as tea/coffee shop (Class A3) and ancillary refuse and cycle storage, and external seating area with boundary treatments" as it is a more accurate specification for the proposal.

Main Issues

3. The main issues are:
 - the effect of the proposal on the vitality and viability of existing designated shopping centres;
 - the effect on flood risk, and
 - the effect on the character and appearance of the site and surrounding area.

Reasons

4. The appeal site includes part of a parking and cage/bin store area for a corner shop. It also includes the end part of the rear garden of No.101 Shaftesbury Avenue. There is a Victorian warehouse building next to the site which is in a poor condition. The site is located opposite the recreational area of Southchurch Park, but outside the Seafront Area for Southend-on-Sea.

Effect on the vitality and viability of shopping centres

Policy CP2 of the Southend-on-Sea Core Strategy (2015) sets out the hierarchy of centres where town centre and retail development should be located to contribute to their vitality and viability. Proposals elsewhere are required to demonstrate that there will be no unacceptable impacts and that a sequential approach and test has been rigorously followed.

5. The National Planning Policy Framework (the Framework) indicates that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. The appellant contends that the application is below the threshold for the sequential test and no reference is made in Core Strategy policy CP2 to small scale cafes. However, policy CP2 refers to services and facilities, which would encompass cafes. No sequential test has been undertaken to clearly demonstrate that the proposed café would have no adverse impact on the vitality and viability of existing designated shopping centres, contrary to Core Strategy policies CP2 and KP2.

Flood risk

6. The Framework advises that inappropriate development in areas at risk of flooding should be avoided by guiding development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The aim of the sequential test is to steer new development to the areas with the lowest risk of flooding.
7. The site is located within Flood Zone 3 where there is a high probability of flooding from the Thames Estuary, which is located just over 200 m south of the site. No flood risk assessment or sequential test was submitted with the application. Consequently, the Environment Agency raised a holding objection. A flood risk assessment dated July 2020 has been submitted with the appeal, but the Environment Agency would not have been consulted on the assessment prior to determination of the application by the Council.
8. The flood risk assessment concluded that the proposed development would be suitable assuming appropriate mitigation (including adequate warning procedures) can be maintained for the lifetime of the development. However, in the absence of application of the sequential test, and observations from the Environment Agency, there is insufficient information to conclude that the development would be safe or would not increase flooding elsewhere. The proposal would therefore fail to comply with Core Strategy policies KP1 and KP2 which, amongst other things, seek to avoid or appropriately mitigate flood risk. It would also conflict with the objectives of the Framework regarding flood risk.

Character and appearance

9. No.101 Shaftesbury Avenue is a semi-detached house. It is part of a small group of 2 semi-detached houses which have reasonably long narrow rear gardens. The position of the proposed café building at the end of its garden would be contrary to the general pattern of development. However, around 20 m of rear garden would still be retained at No.101 and outbuildings exist at the end of two of the nearby gardens. The building would be single storey with a

flat roof and a reasonably low profile. The proposed modern style front elevation would be seen in the context of the commercial appearance of the existing shop premises and would cause no significant harm to the character and appearance of the streetscene.

10. There would be a long timber clad rear elevation around 13 m in length, and over 3 m in height, which would be seen from neighbouring residential properties. The Council considers that the use of sympathetic materials could mitigate the resultant visual harm to some extent. Tree planting within the rear garden of No.101 as indicated on the submitted plans could also soften the appearance of the flank elevation of the building. Conditions could be imposed to ensure that the rear elevation of the building would have a less stark appearance through design and the use of materials, and to require screen planting in the rear garden of No.101.
11. I find that subject to conditions, the proposed building would have no significant harmful effect on the character and appearance of the site and surrounding area. It would therefore not conflict with the design objectives within policies KP2 and CP4 of the Core Strategy and DMD policies DM1 and DM3. It would also comply with objectives for good design contained within the *Design and Townscape Guide (2009)* and the Framework.

Other Matters

12. The appellant considers that the proposed café would be a positive addition to local facilities, in particular serving as an amenity for visitors to Southchurch Park or for people en-route to the seafront. I note that there is a car park within Southchurch Park. The proposal would create jobs in a new business. Such social and economic benefits from the proposal are matters to be weighed in the planning balance. However, it has not been demonstrated that the proposal would have no adverse impact on the vitality and viability of shopping centres in the surrounding area or that it is in an acceptable location in respect of flood risk. For these reasons, the proposal would not constitute sustainable development and the claimed benefits would not outweigh the potential harm.

Conclusion

13. I have taken all other matters raised into account. However, for the reasons given above I conclude that the appeal should be dismissed.

Martin H Seddon

INSPECTOR