



Appeal Decision

Site visit made on 1 June 2021

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Appeal Ref: APP/D1590/W/20/3262700
1099 London Road, Leigh-on-Sea, SS9 3JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ben Davis against the decision of Southend-on-Sea Borough Council.
 - The application Ref 20/00956/AMDT, dated 16 June 2020, was refused by notice dated 28 August 2020.
 - The application sought planning permission for change of use of ground floor from car showroom (Class Sui Generis) to self-contained flat (Class C3), alter front and rear elevation, bin store and cycle store without complying with a condition attached to planning permission Ref 17/00841/Ful, dated 28 July 2017.
 - The condition in dispute is No.4 which states that: The development shall not be occupied until space has been laid out within the site in accordance with drawing No. 1099LR/01/03/A for 2 cars to be parked. The parking spaces shall be permanently retained thereafter.
 - The reason given for the condition is: To ensure that adequate car parking is provided and retained to serve the development in accordance with Policies CO3 of the Core Strategy DPD1 and Policy DM15 of the Development Management 2015.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from car showroom (Class Sui Generis) to self-contained flat (Class C3), alter front and rear elevation, bin store and cycle store at 1099, London Road, Leigh-on-Sea, SS9 3JJ in accordance with the application Ref 20/00956/AMDT made on the 16 June 2020 without complying with condition No.4 set out in planning permission Ref 17/00841/FUL granted on 28 July 2017 by Southend-on-Sea Borough Council, but otherwise subject to the following conditions:
 - 01 The development hereby permitted shall be carried out in accordance with the following approved plans- 1099LR/01/01, 1099LR/01/02, 1099LR/01/03/A; 1099LR/01/05; 1099LR/01/06 & 1099LR/MMA/01/01.
 - 02 Prior to commencement of the development, details of the materials to be used in the construction of the fenestration of front elevation of the development hereby permitted, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved details before it is occupied.

- 03 Prior to the occupation of the development hereby approved, the refuse and cycle storage and external amenity space shall be implemented at the site in accordance with the following approved plans, 1099LR/01/01, 1099LR/01/02, 1099LR/01/03/A, 1099LR/01/05, 1099LR/01/06; 10/05/17A The development shall be retained as such in perpetuity thereafter.
- 04 No obscure glazing shall be implemented or any application of vinyl or similar window covering applied to the glazing of the front elevation of the development hereby permitted, unless it has previously been approved in writing by the local planning authority.

Main Issue

2. There is a single issue in this case: whether the condition is necessary having regard to highway safety in an area of parking stress.

Reasons

3. The application site is located on the north side of London Road and is occupied by a two-storey building, with a flat on the ground floor. It appears that there is another flat on the first floor, but that has no connection, as far as I am aware, with the appellant or the appeal part of the building. To the rear are existing outbuildings accessed from an alleyway that at one time connected Cheltenham Drive with Cricketfield Grove. To the immediate east of the site is a three-storey mixed use development including flats to the upper floors and commercial premises to the ground floor. To the west and south are ground floor commercial units with flats above. The side streets running north from London road are very largely residential in character.
4. The appeal site is in a sustainable location. London Road, in this locality, is fronted mainly by commercial premises. It is a main highway into Southend from the west, leading to the town centre. The site is well served by buses, with a bus stop within 45m of the appeal site and numerous routes running along London Road. Chalkwell station is some 10 minutes' walk away. There is a supermarket on the opposite side of the road, and other shops and general facilities serving many everyday needs in the vicinity. The site is also in an area that suffers from parking stress, as referred to in the highways consultation response. I am not given any details of the extent of this stress, but the number of commercial premises along this stretch of London Road is probably significant in this respect.
5. The relevant development plan policy is Policy DM15 of the Development Management Document. This states: "*Development will be allowed where there is, or it can be demonstrated that there will be, physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner*". The policy also requires that adequate parking should be provided for all development in accordance with the adopted vehicle parking standards. The parking standards, outside of the central area, set out minimum parking requirements for flats as one parking space per unit.
6. The principal argument in the appellant's case is that the location of the parking intended to be provided is difficult if not impossible to access due to the nature of the alley providing access. At my site visit I saw that the alley is about 2.5m wide for most of its length and comes to an abrupt end immediately at the eastern boundary of the curtilage of No. 1099, where a fence has been erected. From this I accept that gaining access to the parking

spaces along this alley is a difficult and potentially hazardous undertaking, since it is likely that reversing for a substantial distance would be required for either access or egress. I do not find the council's suggestion that a car could be parked in the alley itself particularly helpful, since apart from any ownership issues, this would require the reversing manoeuvres that I have referred to.

7. A number of other matters are referred to by both parties, such as other planning permissions granted elsewhere. Whilst I have taken these matters into account, they do not materially affect my decision since the precise circumstances are not known to me. I therefore conclude that, since the appeal site is in a highly sustainable location, in view of the difficult and potentially hazardous manoeuvres that I have referred to, which could harm pedestrian safety and the free flow of traffic on Cheltenham Drive, the appeal should be allowed.
8. Since allowing the appeal grants a fresh planning permission, it is necessary to restate the other conditions that were imposed on the previous permission, subject to them continuing to have effect. Since the development has been carried out, I will not be re-imposing condition 1 with the time limit for commencement. I will impose condition 2 for certainty as to the development permitted. However, I note from the officer's report that there was a subsequent permission on an application to vary condition 02 (Approved Plans) by replacing plan number 10/05/17A with plan number 1099LR/MMA/01/01. I am also told that this was a retrospective application. I therefore consider it necessary to amend the original condition 2, as provided for in permission 18/00094/AMDT. Condition 5, which required the provision of refuse and cycle storage, and condition 6 that required that no obscure glazing be implemented to the front elevation, are both necessary to protect the character and appearance of the area. I will renumber these conditions from 1 to 4.

Terrence Kemmann-Lane

INSPECTOR