



Appeal Decision

Site visit made on 19 October 2021

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/D1590/W/20/3260415

425 Sutton Road, Southend-on-sea, SS2 5PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission.
 - The appeal is made by Trafalgar Traditional Homes against the decision of Southend-on-sea Borough Council.
 - The application Ref 20/00020/FULM, dated 7 January 2020, was refused by notice dated 2 April 2020.
 - The development proposed is the erection of 18 self-contained flats in two blocks of three storeys facing Sutton Road and one block of two storeys at the rear, layout of 12 car parking spaces and cycle storage to the rear, bin storage stores to the front and installation of vehicular access onto Sutton Road following the demolition of existing buildings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application description of the proposal has not been used above in the header. It referred to a previous approved scheme for housing but whilst this is background, this does not describe the proposal before me. Using parts of the remaining part of the application description would appear disjointed and therefore, for the sake of clarity, the Council's description of the proposal has been used in the header above instead. Nevertheless, the previous history of the site will be commented upon in the reasoning of this decision.
3. A Unilateral Undertaking dated 21 March 2021 concerning affordable housing and an undated payment concerning a Special Protection Area (SPA) mitigation, have been submitted. These matters will be commented upon later in my decision.

Main Issues

4. The main issues are the effects of the proposal on (a) the character and appearance of the area, (b) the living conditions of the occupiers of the new flats, having regard to sightliness and odour of refuse storage facilities, and access for people with disabilities, (c) affordable housing, and (d) the safety of highway users and free flow of traffic, having regard to vehicular parking.

Reasons

Character and appearance

5. The appeal site comprises a large two-storey commercial building which is situated close to the back of a footway on Sutton Road. The building occupies the majority of the site. It lies between a small commercial building and a church, and a recently completed development of three storey flats. Behind the site, there are the rear gardens of semi-detached houses at Glenhurst Road. As a result, there is a mixed character and appearance to the area with many different buildings of varied design.
6. The proposal would result in two flatted blocks close to the Sutton Road footway which would be separated by a vehicular access leading to a car parking layout and further smaller block to the rear. On the frontages of the roadside blocks, there would be waste bin stores for refuse and recycling that occupy a significant part of the frontage. The frontages would have single entrances serving individual flats and shared entrances serving three flats. For the latter, there would be particularly large refuse stores containing 110 litre communal bin serving all the occupants. All the bins would be enclosed with a timber structure to screen them but even with this screening, the stores would be overly prominent, dominant and visually intrusive by virtue of their size and frontage coverage.
7. To the rear of the roadside blocks, there would be hard surfaced courtyard areas used for vehicular parking, turning and access, landscaping and the rear gardens serving the flats. The gardens would be likely to be fenced in around boundaries for the purposes of privacy. The hard surfaced area would be extensive and oppressive, and twelve parking spaces alongside the back of the site would appear repetitive and monotonous. The strip shown for the tree planting behind the spaces would be narrow and restricted, even with a depth of approximately a metre. As a result, this landscaping would appear as an inferior part of the rear courtyard and would fail to ameliorate the harshness of the hard surfacing.
8. The hard surfacing area would not be visible from public vantage points, but it would be visible by residents of the development and residents behind the site. Under the Framework, the creation of a successful place is not solely determined by its public visibility because good design is about creating better places in which people can live and work. Therefore, lack of public visibility would not justify the poor design of this part of the development.
9. For all these reasons, the proposal would harm the character and appearance of the area and the proposal would be contrary to Policies KP2 and CP4 of the Southend-on-sea Core Strategy (CS) 2007 and Policies DM1 and DM3 of the Southend-on-sea Development Management Document (DMD) (2015).

Living Conditions of the Flat Occupiers

10. Occupants of the flats either have sole use of their bins or have to share them with the occupants of two other flats. For the former, occupants could ensure unneighbourly smells and odours are avoided so close to their frontage bedroom because they would have control over bin contents. However, such control would not exist where bins are shared by the occupants of three flats.

11. For the communal bins, a condition is proposed to ensure that the occupants of the flats use them correctly and safely. However, any controls would be difficult to enforce because the identification of occupants at fault could be difficult to check. Checking could be overly time consuming over a large part of the day and for numerous days, and therefore, such a condition would be unreasonably onerous and practically impossible to monitor. As such, the communal bin arrangement would be likely to lead to waste storage and collection problems, and neighbour conflict. In this regard, there could be significant tension between the ground floor occupants with the communal bin near them and those in upper floors, located further away from any smells and odours. This would be harmful for the amenities of future occupiers and for surrounding existing occupiers.
12. The bin stores would be sited close to the ground floor windows serving bedrooms of the roadside flats. However, they would not be located immediately in front of the windows and the opening elements of the stores would be fronting the short pedestrian paths leading to the entrances to the flats. Therefore, the loss of outlook would not be significant for the occupants of the flats, even taking into account the larger communal bin stores.
13. Turning to occupant's accessibility of the flats, DMD Policy DM1 requires that development should provide an internal and external layout that takes account of all potential users. Furthermore, DMD Policy DM8 requires all new dwellings to meet Lifetime Homes Standards and at least 10% of new dwellings on major developments to be wheelchair accessible, or easily adaptable for residents who are wheelchair users.
14. A national system of housing standards commenced in 2015, following the Written Ministerial Statement (WMS) Planning Update March 2015. This set out the Government's policy on the setting of technical standards for new dwellings, that included the optional access standards comprising Building Regulations Requirements M4(2) (accessible and adaptable dwellings) and M4(3) (wheelchair user dwellings).
15. The WMS indicates that where a local planning authority adopt a policy to provide enhanced accessibility or adaptability, they should do so only by reference to the building regulation requirements. DMD Policies DM1 and DM8 make no explicit reference to these specific requirements. DMD Policy DM8's reference to the Lifetimes Homes standards (which mainly relates to accessibility to and within a dwelling) are not included in the new system.
16. The Southend Borough Council Technical Housing Standards Policy Transition Statement (PTS) 2015 optional application of Building Regulations details that DMD Policy DM1 reference to Lifetime Homes Standards should be interpreted as meeting building regulation M4(2). It also indicates the percent quota requirement should be interpreted as requiring ten per cent of new dwellings on major development sites to meet building regulation M4(3) 'wheelchair user dwellings'. However, the PTS is not a development plan policy and therefore, the accessibility requirements, building regulations M4(2) and M4(3), cannot be read into the DMD policies.
17. Nevertheless, DMD Policy DM1 still has a general accessibility requirement for all users, that would include people with disability, and DMD Policy DM8's still places requirements for a percentage proportion of new residential developments to have some form of accessibility for those disabled. In this

respect, the development's floor plans provide details and annotation which indicates the development would comply with building regulation M4(2) and further detail could be required to be submitted for approval and implementation. No detailed evidence has been submitted to refute this.

18. The rear car parking and lack of lifts would hinder accessibility provision. Nevertheless, satisfying such requirements is not possible on all developments and even if the upper floor flats could not accommodate wheelchairs, the ground floor flats could, based on the evidence before me, meet the percentage proportion required to be easily adaptable for residents who are wheelchair users under DMD Policy DM8. Furthermore, there is no policy text or explanation that supports proximity of parking to flats as a necessity, however desirable that might be. Therefore, the proposal would comply with the DMD accessibility policies.
19. Nevertheless, the development would create unacceptable living conditions for the occupiers of the flats, having regard to smell and odour, and resulting unneighbourly conflict, and would conflict with Policies KP2 and CP4 of the CS and Policies DM1, DM3 and DM8 of DMD.

Affordable Housing

20. CS Policy KP3 requires planning obligations to ensure the provision of infrastructure measures as a consequence of development. In this instance, affordable housing is of relevance and CS Policy CP8 requires all residential proposals of the type proposed to make an affordable housing or key worker provision of not less than 20% of the total number of units on the site. DMD Policy DM7 requires development to provide a dwelling mix, incorporating a range of dwelling types and bedroom sizes, to reflect the Borough's housing need and housing demand.
21. The UU details four affordable residential units in accordance with CS Policy CP8 and in a form meeting the requirements of the Council's Strategic Housing Team. The obligation further provides an implementation clause which requires the affordable housing units to be constructed, available for occupation and for contracts to be exchanged with a Registered Landlord for transfer.
22. For all these reasons, the obligation would meet the statutory tests of the Community Infrastructure Regulations 2012 (as amended) and paragraph 57 of the Framework. In particular, the contributions are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to it. Accordingly, the proposal would comply with Policies KP2, KP3 and CP8 of the CS and Policy DM7 of the DMD.

Highway safety and free flow of traffic

23. Outside of the site, Sutton Road has waiting restrictions that continue along the nearest side street, Oakhurst Road. There are parking bays on the opposite side of the road where the houses and flats do have off street parking.
24. CS Policy CP3 seeks to improve highway safety and accessibility. DMD Policy DM15 states all development should meet the parking and cycle standards set out in the plan's Appendix 6. The policy states that residential vehicle parking standards may be applied flexibly where it can be demonstrated that the

development is proposed in a sustainable location with frequent and extensive links to public transport. Under the parking standards, at least one space should be provided per dwelling and therefore, the scheme would result in a shortfall of 6 car parking spaces. Cycle storage would be provided in accordance with the standards for each flat.

25. The appellant's Transport Statement (TS)¹ indicates that car ownership in the ward is low for 1 and 2 bedroom flats. The existence of four tower blocks in and around the city would statistically skew this average but the TS indicates that residents would have good access to services, facilities and public transport. It indicates a number of supermarkets, restaurants/takeaways, schools and other retail facilities within 20 minute walk and 6 minute cycle times. There are also bus stops on both sides of Sutton Road and a railway station within acceptable walking distance of the site. On this basis, the residents would be well-served by facilities and services that can be accessed by sustainable transportation means.
26. For these reasons, the location of the development would comply with national policy at paragraph 105 of the Framework where it states significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
27. The TS additionally details a parking beat survey, based on an industry accepted Lambeth Methodology, which was undertaken on streets within the vicinity on two days in December 2019. Notwithstanding the lack of need for further parking on the site, the survey shows a significant availability of nearby street parking. The survey is restricted to two nights and does not take into account demographic variations in parking needs in relation to new developments coming forward. However, the proposal provides twelve parking spaces and even if another six parking spaces were required, to fully accord with the policy standard, there would still be street parking available.
28. The Council's highway engineer has raised objection to the proposal but there has been no detailed evidence brought forward on parking stress. Opportunistic parking could take place on the Sutton Road pavement and within the rear courtyard outside of designated parking spaces or parking within the development. However, this likelihood is low given the transport sustainability of the site and even if further off-site parking needs arose, sufficient street parking in surrounding streets exists. Parking on the opposite side of Sutton Road already takes place and whilst this road is busy, people cross this road at the moment, and no specific highway evidence is before me to identify it as unacceptable here from a safety point of view.
29. For all these reasons, the development would not be unacceptable in highway safety terms nor would the residual cumulative impacts on the road network be severe. Accordingly, the proposal would comply with Policies KP1, KP2, CP3 and CP4 of the CS, and Policies DM3 and DM15 of the DMD.

Other matters

30. Having found parking provision acceptable for the site, there would be no harm to the living conditions of existing residents in finding convenient parking

¹ Transport Statement, Motion, 23 December 2019.

spaces near to their homes. The TS beat survey evidence indicates no parking stress in the streets surrounding the development and no comparable detailed evidence is before me to counter this.

31. Planning permission has been granted for nine dwellings on the site, nine parking spaces, cycle store, bin stores and vehicular access. The appeal scheme differs in increased density, greater frontage bin stores extent, including large communal waste storage stores, and reduced scope for landscaping, especially to the rear. For these reasons, there are material differences between the two schemes and in any case, every proposal must be considered on its particular planning merits.

Planning Balance

32. The new homes would make a modest contribution to housing supply in a location with good access to services, facilities, public transport and opportunities for employment. It would provide much needed four affordable housing units. The proposal would redevelop a previously developed site. Such considerations weigh significantly in favour of the proposal.
33. However, there would be considerable harm arising from the development due to the adverse impacts on the character and appearance of the area, and the living conditions of residents of the new flats. Both local and national policy place a strong emphasis on achieving well-designed places. The development would not be visually attractive as a result of good architecture and layout, and would not create a place that promotes health and well-being. Under paragraph 126 of the Framework, it would not create a high quality and beautiful building and place which is fundamental to what planning and development process should achieve. For all these reasons, the proposal's considerable harm would outweigh its benefits.
34. Consequently, the conflicts with the identified design and amenity CS and DMD policies would be overriding and there would be a conflict with the development plan taken as a whole. Even if I were to apply the tilted test under paragraph 11 d) ii of the Framework, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal. There are no material considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan and therefore, planning permission should be refused.
35. The development falls within a SPA Zone of Influence under the Essex Coastal Recreational Disturbance Avoidance and Mitigation Strategy. A payment towards mitigation of the effects of the development on the SPA has been made. If there had not been substantive reasons to dismiss this appeal, Natural England would have been consulted to assess whether this ecological issue can be satisfactorily resolved.

Conclusion

36. For the reasons given above and having regard to all other matters raised, including support, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR