



Appeal Decision

Site visit made on 18 January 2023

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Appeal Ref: APP/D1590/W/21/3285446

Rear of no. 1 Alexandra Road, Leigh-on-Sea SS9 1QD

- 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 Capability Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref 21/01152/FUL, dated 28 May 2021, was refused by notice dated 6 August 2021.
 - The development proposed is demolition of disused cycle repair / storage building and erection of residential dwelling with amenity space.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined the appellant has made a financial contribution towards mitigating the effects of the proposal on European Protected Sites. This is a matter that I will return to later in my decision.

Main Issues

3. The main issues in this appeal are: -
 - The effect of the proposal on the character and appearance of the site and the area, with particular reference to the Leigh Cliff Conservation area (the CA);
 - Whether the proposed development would provide acceptable living conditions for future occupiers of the proposed development with regard to availability of natural light and outlook, and internal space; and: -
 - The effect of the proposal on European Designated Sites.

Reasons

Character and appearance

4. The appeal site lies behind The Broadway, a traditional parade of predominantly two-storey shops, with residential accommodation above and modern shop fronts at ground level. It lies on the edge of, but within, the CA. The site is noted within the CA Appraisal as having a negative effect on the CA, and that it would benefit from improvement.

5. The significance of the CA, in so far as it relates to this appeal, derives from its evidential, historic and aesthetic value representative of the Victorian expansion of the settlement away from its historic core.
6. To the north lies an area of two-storey terraced residential properties of traditional design. The appeal site lies adjacent to the rear garden of one of these, behind the end of terraced property.
7. The site contains a single storey flat roofed building of utilitarian appearance. To the front of the building lies a small open yard, facing onto a narrow accessway linking to Alexandra Road.
8. There are other buildings and projections to the rear of the Broadway, notably a two storey rendered building with a pitched roof, adjacent to the site. These, for the most part, exhibit simple utilitarian architecture and a subservience to the buildings fronting The Broadway. A line of outbuildings runs along the boundary to the rear of the terraced properties fronting Alexandra Road, in line with the existing building. These are modest single storey buildings.
9. In summary, this part of the CA is characterised by simple, unfussy architecture and a mix of commercial and residential uses where development reduces in scale towards the surrounding residential area.
10. The proposal would replace the existing building with a two-storey building in the same location, but with a slightly larger footprint. The design of the building incorporating a crown roof to limit its height. The upper storey and crown roof would be clad in standing-seam zinc-effect sheet material.
11. The proposal would introduce a block-like two-storey structure to the area between the residential terraces. Its shape and form, with the upper storey encased in metallic cladding, would be an incongruous, alien feature in the area between the residential terraces where development is otherwise low, extending development of a larger scale into the residential area and undermining the important characteristic features that I have identified above. Whilst this incongruity would not be appreciated by passers-by on Alexandra Road, because of limited views, it would be clearly visible to residents of the dwellings backing onto the area. This incongruity and alienness would, in this case, constitute material harm. The proposal would, therefore, fail to conserve or enhance the character or appearance of the CA.
12. Whilst the materials to be used in finishes to the building could be controlled by condition, this would have limited effect in mitigating the fundamental incongruity of the form and shape of the development.
13. I note the appellants view that the proposal has been erroneously included within the boundary of the CA. However, a review of the CA lies beyond the scope of this appeal and is not, therefore a matter before me.
14. The appellants have described the proposed development as a 1½ storey dwelling. However, this is at odds with the details shown on the plans. In any case my decision has been made on the basis of what is before me as opposed to the description provided by the appellants.
15. I conclude that the development would cause material harm to the character and appearance of the CA. The proposal would not comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act

1990. It would be contrary to Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007) -the Core Strategy- and Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (2015) – the DMD.

16. These policies jointly, amongst other things, require new development, including back land development, to be designed to a high quality and reinforce local distinctiveness or enhance the character and appearance of the area and conserve or enhance local character and distinctiveness of the historic environment.
17. Whilst predating the current National Planning Policy Framework (2021) – the Framework, these policies are in close conformity with the aims of Sections 12 and 16, with which the proposal would also be in conflict, and therefore carry significant weight.
18. For similar reasons the proposal would be contrary to the advice provided within the Southend-on-Sea Design and Townscape Guide (2009).
19. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence of its design the appeal scheme would have a harmful impact on the CA insofar as it would neither preserve nor enhance the character or appearance of the CA. The proposal would not lead to the loss of any buildings that make a positive contribution to the character or appearance of the CA. As such, whilst material, I find that the harm would be less than substantial. Paragraph 202 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal and I will return to this matter later.

Living conditions

20. The ground floor room within the proposed dwelling would have a single outlook to the east, towards the accessway and rear façade and fence of 1 Alexandra Road (No 1) a short distance away.
21. The main parties do not agree upon the quality of light reaching the ground floor room through the courtyard or the upper room. There is anomalous information on the plans regarding the width of the principal window.
22. I have no substantive evidence before me to justify either position, however the position and height of the buildings to the south and east would be likely to cast shadow over the window throughout significant periods of the day. It has not, therefore, been demonstrated to me that occupiers of the dwelling would experience adequate levels of sunlight on the ground floor.
23. Even considering the larger window size, the outlook from this room would be severely limited by the proximity of the fence and the height of the walls of No 1. This, combined with the height of the buildings to the south would provide a claustrophobic and gloomy outlook.
24. The principal source of light for the upper floor would be rooflights. Given the proposed height of the rooflights these would provide a limited outlook creating a sense of internal enclosure. However, the room is identified as a bedroom and, given the availability of other space within the dwelling, it is unlikely that occupiers would spend significant amounts of time there.

25. There is dispute between the parties as to the future occupancy levels of the proposed dwelling and, consequently, whether the proposal would comply with the Nationally Described Space Standards.
26. The Council have concluded, based on the size of the bed shown on the plans, that the development would constitute a one-bedroom, two person dwelling. It expressed concerns that the proposed dwelling would fall short of provision of internal space. The appellant, however, has drawn my attention to their Design and Access Statement, which puts forward a case for a one-bedroom, one-person dwelling.
27. The overall scale and location of the dwelling is such that it would be more likely to suit single occupancy. The illustrative use of a double bed does not preclude use by one person.
28. I have, therefore, considered the proposal before me as a one-bedroom one-person dwelling and, in so doing, I consider that the layout of the proposal would provide adequate and practicable living accommodation for a single occupant.
29. Whilst there is no practicable way to control such occupancy by condition, I consider that the constrained layout of the proposed dwelling would discourage occupancy by more than one person.
30. Concerns have been raised by the Council that the proposed development would not be adaptable and accessible in such a way that it would meet Part M4(2) of the Building Regulations. The appellant has subsequently provided a sketch plan to demonstrate compliance. No comment on this plan has been made by the Council to dispute the information shown on that plan and thus I consider that, on the evidence before me, the proposal would be able to comply with the requirements of Part M4(2).
31. I have found that the proposal would provide acceptable living conditions for future occupiers in regard to the provision of internal space and would not conflict with the aims of Policies KP2 and CP4 of the Core Strategy and Policies DM1, DM3 and DM8 of the DMD in so far as these jointly seek, amongst other things to provide convenient useable and effective room layouts, meet, if not exceed, residential space standards and provide dwellings that are adaptable and accessible.
32. However I conclude that the proposal would not provide acceptable living conditions for future residents with regard to availability of natural light and outlook. The proposal would therefore be contrary to Policies KP2 and CP4 of the Core Strategy and Policies DM1 and DM3 of the DMD in as much as jointly these policies seek, amongst other things, to ensure that development is of a high quality and that it contributes to physical welfare and avoids detrimental impact upon the living conditions of future residents.
33. For similar reasons the proposal would also be in conflict with the aims of Section 12 of the Framework, with which the above policies generally conform, in as much as this seeks to create places which promote health and well-being, with a high standard of amenity for future users.

European Designated Sites

34. The site is located within the zone of influence of one or more European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Policies KP1, KP2 and CP4 of the Core Strategy and Policy DM6 of the DMD seek to protect such sites from harm and, where necessary, seek mitigation against any adverse effect of development. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (2020) incorporates strategic mitigation measures to be delivered to avoid adverse impacts. The appellants have provided a financial contribution towards mitigating the effects of the proposal on the European Designated Sites.
35. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.
36. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other Matter

37. It has been brought to my attention that 65 Broadway has recently received benefit of a planning permission. However, I have few details before me of the development and its contextual relevance to the case before me. I have, in any case, determined the proposal on its own merits.

Heritage Balance

38. The development would provide public benefits in terms of provision of an additional dwelling. The Council acknowledge that they are currently unable to demonstrate a five-year supply of housing land. Nevertheless, given that I have found harm to a designated heritage asset, the tilted balance of Paragraph 11d) of the Framework is not engaged. The overall benefit from the provision of one additional dwelling, in a sustainable location, to the local housing market would be limited.
39. There would be likely minor benefits to the local economy in terms of short term employment in the construction industry and longer term support of a local business. However, benefits would be limited by the scale of the development.
40. The proposed development would redevelop a brownfield site, removing an unsightly building. However I have found that the proposed development, by

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

virtue of its design, would adversely affect the character and appearance of the area.

41. The benefits of the proposal would be of limited weight overall. The proposal would result in a substantial level of harm to the significance of a designated heritage asset. However, the harm must be considered in the context of the special attention I must pay to the desirability of preserving or enhancing the character or appearance of the CA. I afford considerable importance and weight to this statutory duty. This does not amount to a direction to refuse proposals that harm, and thus fail to preserve, designated heritage assets, but it provides a strong presumption in favour of preservation
42. Whilst the issue of the effect of the site on European Sites remains unresolved the effects could only be, at best, neutral in my considerations.
43. I note that the proposals would accord with some policies within the development plan, however accordance with other policies has a neutral effect on my considerations.
44. I note that the proposal is supported by a local resident. However, such support does not affect the balance in my deliberations.
45. Thus, I find that the material harm that would arise from the proposal would not be outweighed by its public benefits. Accordingly, there would be a conflict with Paragraph 200 of the Framework as harm to designated heritage assets would not have clear and convincing justification and the Framework states that great weight should be given to a designated heritage asset's conservation.

Conclusion

46. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal fails.

I A Dyer

INSPECTOR