



Appeal Decision

Site visit made on 17 August 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023.

Appeal Ref: APP/M1520/W/23/3315680

Rear of 103-105 High Road, Benfleet, SS7 5LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Hadleigh Financial Developments Ltd against the decision of Castle Point Borough Council.
 - The application Ref 22/0544/OUT, dated 4 July 2022, was refused by notice dated 17 August 2022.
 - The development proposed is to change the use of existing 3-storey office building and alterations and extensions to convert into 4-storey building consisting of 8 No. residential units with some matters reserved (landscaping).
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Decision

1. The appeal is allowed and planning permission is granted for change the use of existing 3-storey office building and alterations and extensions to convert into 4-storey building consisting of 8 No. residential units with some matters reserved (landscaping) at Rear of 103-105 High Road, Benfleet, SS7 5LN in accordance with the terms of the application, Ref 22/0544/OUT, dated 4 July 2022, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. The application described the development as change of use from an existing 3-storey office building into 8 self-contained residential units comprising of 7x2 bedrooms and 1x1 bedroom. Remove the existing second floor/mansard and build 2 new floors in timber framed construction and building smaller extensions/additions to the north, south and west sides of the existing building, whilst retaining most of the existing building structure. The council changed this description, which was then used on the appeal form, to that given in the banner heading above. I have adopted this description since it more aptly describes the development proposed.
3. The application was in outline, but only landscaping is left for later approval.

Main Issues

4. The main issues in this case are: i) the effect of the proposed development on the character and living conditions of the area and its residents; ii) the adequacy of the parking and manoeuvring space for the safety and convenience of users; iii) the effect on the privacy and living conditions of the occupiers of Unit 1; and iv) the adequacy of access by the fire and rescue services to all floors of the proposed development.

Reasons

5. The site is located on the western side of High Road and lies behind the commercial development comprising Nos.101–107. The site is currently occupied by a three storey commercial building, formerly used for office purposes, with parking. It is served by an undercroft access from the High Road, which also serves the adjoining commercial property to the south. To the west are semi-detached dwellings fronting Hall Farm Road, with a line of tall trees on the boundary. To the east, on the other side of High Road is a new development of three storey flats designed in a modern architectural style. The existing building is highly utilitarian in appearance with disjointed fenestration and large dormers occupying the greater part of both sides of the gabled roof.

The effect of the proposed development on the character and living conditions of the area and its residents

6. The proposed building has a shallow pitched roofed at a height of some 12.4m with vertical timber cladding and render to the walls, dark grey aluminium framed double glazed windows and doors and a standing seam metal roof. the height of the roof is consistent with the frontage development to the north, but somewhat higher than the more historic buildings immediately to the east.
7. Nevertheless, a drawing showing the section through the east-west axis demonstrates that it would not be seen from normal height of eye on the High Road. At the rear of the High Road frontage, the buildings and their open areas at the rear are in close proximity to the existing building. Whilst the proposed building would be a little higher than the existing, the extra height should not mean that the proposed building would be materially any more dominant, and the principle open areas to the rear of the commercial neighbours are to the south, so that over-shadowing should not be an issue.
8. To the north, the frontage buildings are of similar height, with upper floors occupied by flats, and the land at their rear primarily used for car parking. There would only be oblique views of the appeal development from the rear windows. As a result, the proposal would not be overbearing or oppressive. The residential development to the west, on Hall Farm Road, has back gardens of some 26m in length; given that length of garden and the tree screen, there would be no undue loss of amenity by way of dominance.
9. Taking the above factors into account, I am satisfied that there would be no harmful effect from the proposed development on the character and living conditions of the area and its residents.

The adequacy of the parking and manoeuvring space for the safety and convenience of users

10. The first point to note is that Essex County Council (ECC) as the highway authority had no objections to the appeal proposal, but noted that a reduced car parking standard has been applied to the proposal in accordance with Castle Point Borough Council's adopted parking standards. These state that "for main urban areas a reduction to the vehicle parking standard may be considered, particularly for residential development." ECC also stated "In transport terms the site is considered to be in a sustainable location with good access to frequent and extensive public transport, as well as Benfleet's facilities". I consider that this is a sound evaluation

11. I have noted the detailed comments in the officer's report on the application, largely regarding matters of convenience of use of the parking provision. These do not justify a refusal of permission.

The effect on the privacy and living conditions of the occupiers of Unit 1

12. The concern here is the relationship between the ground floor living accommodation and the retained access to ground floor premises immediately south-east of the site. Utilisation of this access by occupiers of the adjoining development would result in persons passing close to the primary window of the living room of Flat 1, with potential detriment to the privacy and amenity of the occupiers.
13. However, the appellant proposes adjusting the window design and providing a 1.8m timber fence to ensure privacy from the separate flat access to the neighbouring first floor property, which is in the ownership of the appellant: a plan inset into the appellant's appeal statement illustrates this. This plan shows that part of the primary window of Flat 1 would be glazed with obscure glass panels preventing the loss of privacy from a fenced off walk way, leaving clear glass on the remaining window area. I regard this as unsatisfactory, appearing as an arbitrary arrangement from within the room, and reducing its outlook.
14. Traditionally it has been common for primary windows of living accommodation to be sited at the back edge of the public footway, and this is sometimes used in modern layouts. In the appeal situation, my expectation is that there would be less foot traffic using the rear entrance to No.101 High Road than in a normal residential street. The proposal in respect of Unit 1 as shown on the application plans of the development is therefore acceptable.

The adequacy of access by the fire and rescue services to all floors of the proposed development

15. The appellant confirms that the proposal has been designed with consideration given to Building Regulations Approved Document B. Each flat has an individual protected entrance lobby/hall, with a travel distance not exceeding 7.5m from the dwelling entrance to the protected stair lobby. The design proposals for fire safety have been set out in detail within the submitted Fire Safety Statement. Further, the appellant asserts that access by the fire and rescue services to all floors is a common issue that can usually be dealt with by the scheme's design, and can be dealt with by condition. In this case it is proposed that a dry riser (with coiled fire hose) would be provided within the protected stair core to facilitate the Fire Service fire-fighting requirement for the upper floors. It is also pointed out that the travel distance from the High Road adjacent to the vehicular/pedestrian entrance to the actual protected stair core is approximately 25m (within the maximum 45m requirement).
16. I accept that this deals with the concerns raised and that a condition could ensure that the dry riser is provided in the development.

Other matters

17. The site is within close proximity to a number of European designated sites. Under the Habitats Regulations, a development which is likely to have a significant effect or an adverse effect (alone or in combination) on a European designated site must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'.

There is no precedent for a residential development meeting those tests, which means that all residential development must provide mitigation.

18. The application scheme proposes 8 new dwellings on a site that lies within the Zone of Influence (ZoI) associated with the Essex Estuaries. New housing development within the ZoI would be likely to increase the number of recreational visitors and, in combination with other developments, it is likely that the proposal would have significant effects on the designated sites. As such it is necessary to carry out an Appropriate Assessment of the development: The proposal seeks to provide fewer than 100 homes and is not directly adjacent to one of the identified European designated sites, consequently it is considered that the impact of the proposal may be adequately mitigated by a proportionate financial contribution in accordance with the provisions of the Essex Coast RAMS.
19. The appellant has made the required contribution to support mitigation of the impact of the proposal, and I have been provided with a receipt for this from the council. Consequently, I can be satisfied that this proposal would not have an adverse effect on the integrity of the designated sites from recreational disturbance, when considered 'in combination' with other development, in accordance with policies EC13 and EC14 of the adopted Local Plan, Policy NE5 of the submitted Local Plan and Regulation 63 of the Conservation of Habitat and Species Regulations 2017.
20. A further matter that I should mention is that during the course of the council's consideration of the appeal application, and during the course of this appeal, there was some confusion about a drawing No.PP209 (which in fact related to an earlier scheme). This was apparently a misunderstanding, the intended information being on the submitted drawing No.PP201

Conclusions

21. The appeal site is in a sustainable location, within a secondary shopping area, on bus routes and close to a main line station to London. It is desirable to make best use of existing infrastructure, increase the density of development and boost the housing supply. These desirable factors stand in favour of the appeal proposal. In addition, I have found that there would be no harmful effect from the proposed development on the character and living conditions of the area and its residents; the parking and manoeuvring space would reasonably meet the required safety and convenience of users; that the privacy and living conditions of the occupiers of Unit 1 would be satisfactory; and that the concerns of the Essex County Fire and Rescue Service can be met by the provision of a dry riser in the protected stair core, which can be the subject of a condition. For these reasons I will allow the appeal.

Conditions

22. The conditions providing time limits on the submission of the reserved matter and the start of development must be imposed. In addition, the council has suggested a number of conditions in the event that the appeal is upheld, which include conditions suggested by the highway authority. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the text. I consider that the conditions I am imposing are necessary for the following reasons: condition 4 is required for certainty and avoidance of doubt as to the development permitted;

conditions 5 and 6 are explained below; condition 7 is to ensure adequate parking provision to safeguard highway safety and convenience; condition 8 is the interests of reducing the need to travel by car and promoting sustainable development and transport; condition 9 is to encourage the use of bicycles in the interests of public health and sustainable travel; condition 10 is to ensure adequate refuse and recycling facilities are provided; condition 11 is to ensure adequate enclosure and boundary treatment in the interests of screening the development; condition 12 is to ensure energy and water efficiency and renewable energy measures in the interests of minimising environmental impact; conditions 13 and 14 are to protect the privacy of the occupiers of the adjoining properties; condition 15 is to ensure that habitat creation is provided in the interests of improving the biodiversity on site; and condition 16 is to prevent unreasonable restrictions being placed on nearby businesses as a result of the development.

23. In addition to the conditions suggested by the council I am imposing condition 17 for the reasons set out in paragraphs 15 and 16 above.
24. The appellant suggested that condition 15 is unnecessary because it refers to site habitat measures which are not applicable as the existing site is fully developed: hard paved/hard standing with no green landscape element and no trees or shrubs within the site boundary. However, the condition is aimed at the provision of bird and bat boxes and insect hotels which would likely be integrated into the building.
25. I do not consider that the councils proposed condition regarding surfacing in accordance with the approved drawing number PP205 Rev A dated 01/12/2021 is necessary because it is already covered by condition 4 which requires the development to be completed in accordance with the approved drawings.
26. Conditions 5 and 6 are pre-commencement conditions. I consider that such conditions are necessary in this case because it is important that these matters are considered carefully before the development commences to ensure that (condition 5) on-street parking of construction related vehicles in the adjoining streets does not occur and to ensure that loose materials and spoil are not brought out onto the highway, in the interests of highway safety; and (condition 6) that environmental impact occurring by reason of the demolition and construction of the proposal is minimised in the interests of adjacent occupiers and the health and longevity of adjacent trees.
27. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on the appellant's behalf that the conditions are acceptable.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) Details of, landscaping, hereinafter called "the reserved matters" shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawings:
 - PP200 Rev A – Proposed Block Plan – dated 12/10/2021
 - PP201 Rev A – Proposed Ground Floor – dated 01/12/2021
 - PP202 Rev A – Proposed First Floor – dated 01/12/2021
 - PP203 Rev A – Proposed Second – dated 01/12/2021
 - PP204 Rev A – Proposed Third – dated 01/12/2021
 - PP205 Rev A – Proposed Elevations – dated 01/12/2021
- 5) No development shall take place, including any ground works, until a demolition and Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period and shall provide for:
 - a) Banksmen to assist with all construction vehicle movements to and from the site access.
 - b) the parking of vehicles of site operatives and visitors
 - c) loading and unloading of plant and materials
 - d) storage of plant and materials used in constructing the development and
 - e) wheel and underbody washing facilities
- 6) A Construction Environmental Management Plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority prior to the commencement of development hereby permitted. The CEMP shall include the following:
 - a) Identify the steps and procedures that will be implemented to minimise the creation and impact of noise, air quality, vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy Goods Vehicle (HGV) access to the site. Measures to minimise the impact on air quality should include HGV routes avoiding Air Quality Management Areas and avoid vehicle idling; and
 - b) Measures to minimise the impact on adjacent trees.The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.
- 7) Prior to first occupation of the development hereby permitted the vehicle parking area shall be hard surfaced and marked out in parking bays.

Once provided, the parking spaces and associated passing and turning areas shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the local planning authority.

- 8) Prior to first occupation of the development, the developer shall be responsible for the provision, implementation and distribution of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the developer to each dwelling free of charge.
- 9) Prior to the first occupation of the development permitted the cycle parking as shown on the approved drawing number PP205 Rev A dated 1/12/2021 and PP201 Rev A dated 01/12/2021 shall be provided in its entirety and retained for the parking of cycles only.
- 10) The bin store shown on approved drawing number PP201 Rev A dated 01/12/2021 shall be made available for the storage of refuse and recycling prior to the first occupation of the development. Once provided this bin store shall be retained for the storage of refuse and recycling only unless agreed in writing by the local planning authority.
- 11) Prior to the first occupation of the development hereby approved details of the means of enclosure and boundary treatments shall be submitted to and approved by the local planning authority. These details shall include screening between adjoining sensitive uses and the movement of vehicles within the development. Once approved these details shall be implemented in their entirety prior to first occupation.
- 12) Prior to the first occupation of the development hereby approved details of a scheme of energy and water efficiency and renewable energy shall be submitted to and approved by the local planning authority. Once approved these details shall be implemented in their entirety prior to first occupation.
- 13) Prior to first beneficial use, all first, second and third floor windows on the western elevation shall be:
 - a) obscure-glazed to at least level 3 on the Pilkington Scale (or such equivalent as may be agreed in writing with the local planning authority) unless high level windows only, as shown on approved drawings PP202 Rev A dated 01/12/2021, PP203 Rev A 01/12/2021, PP204 Rev A dated 01/12/2021 and PP205 Rev A dated 01/12/2021; and
 - b) non-opening, unless the parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is installed and retained as such thereafter.
- 14) Prior to the first use, an obscure glazed screen to at least Level 3 on the Pilkington Scale and a minimum of 1.8m in height measured from the finished floor surface of the balcony shall be erected to the western side of:
 - a) southern balcony to flat 5 serving the living room shown on drawing number PP203 Rev A dated 01/12/2021, and
 - b) southern balcony to flat 7 serving the living room shown on drawing number PP204 Rev A dated 01/12/2021 and permanently retained as such thereafter.

- 15) Prior to the first occupation of the development hereby permitted details of on-site habitat measures shall be submitted to and approved by the Local Planning Authority. These measures shall include habitat incorporated into the fabric of the development such as the provision of bird and bat boxes and insect hotels. Once approved these details shall be implemented in their entirety prior to first occupation and retained thereafter.
- 16) Prior to first occupation of the development hereby permitted a noise assessment shall be submitted to and agreed in writing by the local planning authority to protect future occupiers of the development from external noise. Once approved all measures shall be implemented in their entirety prior to the occupation of the development.
- 17) No development shall take place, other than works of demolition, until details of the installation of a dry riser (with coiled fire hose) within the protected stair core, to facilitate the Fire Service fire-fighting requirement for the upper floors, have been submitted to the local planning authority and agreed in writing. The dry riser shall be complete and operational prior to any occupation of any of the dwellings in the scheme.

End of Schedule