



Appeal Decision

Site visit made on 14 June 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Appeal Ref: APP/D1590/W/22/3312036
1450 London Road, Leigh on Sea SS9 2UW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Remarkable (Leigh-on-Sea) Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref 22/01547/PIP, dated 1 August 2022, was refused by notice dated 2 September 2022.
 - The development proposed is described as 'Demolish building and erect a block of flats and change of use of workshop to a dwelling'.
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Decision

1. The appeal is allowed and permission in principle is granted for residential development comprising a minimum of 1 and a maximum of 8 dwellings at 1450 London Road, Leigh on Sea SS9 2UW in accordance with the terms of the application, Ref 22/01547/PIP, dated 1 August 2022.

Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
4. Given the limited scope of an application for permission in principle, I have treated those elements of the application drawings which provide a proposed site layout, proposed floor plans and proposed elevations as being for illustrative purposes only.
5. There are two existing flats on the site. Therefore, although the application proposes a maximum of eight dwellings, this equates to a maximum of six net additional dwellings. The Council considered the proposed development on that basis, as have I.

¹ PPG Paragraph: 012 Reference ID: 58-012-20180615

Main Issue

6. The single reason for refusal alleged harm relating to the proposed design and layout, living conditions for future occupiers and the loss of a commercial frontage and employment opportunity in a local centre.
7. The Council's Officer Report also identified that the appeal site falls within the Zone of Influence for Essex Coastal Habitats Sites, where mitigation of likely significant effects on Habitats Sites is required in relation to any new residential development. The Council's reason for refusal did not allege any harm to Habitats Sites, despite the absence of any proposed mitigation when the application was considered. Nevertheless, mitigation measures have been proposed during consideration of this appeal and both parties have been given the opportunity to comment further on this matter. I have had regard to their responses and advice received from Natural England in this regard, as set out below.
8. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development, having particular regard to its effect on:
 - the vitality of the local centre, including availability of employment opportunities,
 - the character and appearance of the area,
 - living conditions for future occupiers, and
 - the integrity of Essex Coastal Habitats Sites.

Reasons

Vitality of Local Centre

9. The appeal site is located in a parade of shops and commercial premises along London Road. It is within a local centre and secondary shopping frontage as defined in Policy DM13 of the 2015 Development Management Document (DMD)². The site currently provides a car repair garage with two flats above, corresponding with the surrounding pattern of ground floor commercial frontages with residential uses above.
10. There would be a reduction in employment opportunities on the site, which the Council describes as modest. Evidence from the appellant indicates that the jobs in question would relocate to a nearby showroom, within the same local centre. Therefore, there is no substantive evidence of a harmful reduction in employment within the local centre as a whole.
11. Policy DM13 allows for alternative uses within the secondary shopping frontage, but requires that an active frontage is maintained or provided, and that alternative uses should include a display function and provide services to the public. The proposed ground floor residential use would not provide any public service or display function. However, the Council acknowledges that the existing car repair garage also makes a limited contribution to the vitality of the local centre, having a relatively low level of footfall. It is also described in

² Southend-on-Sea Borough Council Development Management Document adopted July 2015

the Council's evidence as a non-conforming use, indicating that an alternative use could potentially be beneficial in some respects.

12. An undercroft access to the rear of the site would be required, which is likely to be similar in scale to one of the two existing workshop entrances. While the illustrative designs otherwise indicate a rather limited level of fenestration at ground floor level, an alternative design and layout could feasibly provide a suitable sense of connection with the street frontage.
13. The site is very conveniently located in relation to the shops and services along London Road, Therefore, future occupiers could reasonably be expected to make use of these surrounding businesses. This would be in line with the recognition in the National Planning Policy Framework (the Framework) of the role that residential uses can play in supporting the vitality of centres.
14. Taking all the above matters into consideration, I conclude that the proposed residential use would not in principle be harmful to the vitality of the local centre, including availability of employment opportunities.
15. The proposal would conflict with DMD Policy DM13 which requires amongst other things that all developments in the secondary shopping frontage should include a display function and a direct service to visiting members of the public. However, given the particular characteristics of the existing use on the site, this conflict with one aspect of Policy DM13 would not be harmful to the vitality of the local centre, subject to an appropriate design approach.
16. Given that the existing garage has been described by the Council as a non-conforming use, the proposal would not conflict with Core Strategy³ Policies CP1 and CP2, DMD Policy DM11 or relevant paragraphs in the Framework. These policies, amongst other things, require that the vitality of local centres is supported and allow for development involving the loss of existing employment land, where it would contribute to enhancement of the environment, amenity and condition of the local area.

Character and Appearance

17. In the local centre as a whole, buildings are predominantly two and three storeys in height. There are a few four storey buildings, but they are a small minority. The appeal site is positioned between a three storey flat roofed building to one side and a group of two storey premises with steep pitched roofs to the other. Although the proposed plans and elevations are illustrative, they demonstrate that a four storey building would be required to accommodate the maximum of eight dwellings for which permission in principle is sought.
18. I have noted the Council's concern that the design on the indicative drawings would contrast rather abruptly with the adjacent two and three storey buildings. However, these drawings are indicative in nature and due to the nature of the application for permission in principle, it is the principle of the amount of development which is under consideration, not the detailed design approach.
19. Elsewhere in the street scene, there are examples of contrasting storey heights on adjacent buildings which integrate successfully with their neighbours. There

³ Southend-on-Sea Core Strategy adopted December 2007

are also two substantial blocks of flats on the opposite side of London Road; Highlands Court, which is a fully expressed four storey building with flat roof and Fountain Court which is also on four storeys, including accommodation within a mansard roof. While these are set further back from the edge of the pavement, they are nevertheless prominent and well-established within the street scene and located within the immediate surroundings of the proposed development.

20. Within this context, a well-designed four storey building could feasibly be integrated with the relatively varied storey heights in the surrounding street scene. On that basis, the proposed amount of development would not be inherently harmful to the character and appearance of the area.
21. The existing building has two large openings at the ground floor, providing access to a workshop area. At the time of my site visit, cars for sale were parked on the forecourt. There are also on-street parking bays along both sides of London Road, serving the surrounding shops and businesses. On this basis, any parking spaces provided on the London Road frontage would be comparable to the existing situation, so the effect of the likely parking arrangements on the character and appearance of the area would be neutral.
22. Given the relatively intensively developed urban surroundings, the limited scope for soft landscaping would not be harmful to the character of the area. The proposed conversion of the existing outbuilding at the rear would also have little effect on the street scene, being located at the rear and only open to limited public views.
23. For the above reasons, I conclude that the proposal would not in principle be harmful to the character and appearance of the area, subject to an appropriate design at technical details stage. As such, the proposal would not conflict with Core Strategy Policies KP2 and CP4, DMD Policies DM1 and DM3 or relevant paragraphs in the Framework. These policies, amongst other things, are supportive of more efficient use of previously developed land while requiring that development should contribute to the overall design quality of the area and respect the character of the site, its local context and surroundings.
24. For similar reasons, I conclude that the proposal would be capable in principle of responding positively to guidance in the National Design Guide 2021 and the Southend on Sea Design and Townscape Guide Supplementary Planning Document 2009, which set out guidelines for the design of new development, including appropriate integration with its surroundings.

Living Conditions of Future Occupiers

25. While parking on the site frontage could provide screening between the ground floor flat and passing pedestrians, there is a risk that future ground floor occupiers would be overlooked or disturbed by other occupiers making use of any such parking area. Measures to protect the privacy of the ground floor occupiers would therefore need to be incorporated in the detailed design. However, the ground floor flat would also have access to a quieter and more private area to the rear. Subject to a well-designed internal layout, a ground floor flat in this location could be capable of providing an acceptable living environment for future occupiers.

26. While limited evidence is available regarding compliance with internal space standards within the converted chalet building, this could be clarified through the technical details. The Council concluded on balance that the limited amount of private amenity space indicated on the illustrative plans would be acceptable in principle within a High Street location. Based on the evidence before me I have no reason to reach a different view.
27. The Council's Officer Report identified that the rather cramped parking layout on the indicative plans could be inconvenient for future occupiers and prejudicial to provision of other facilities within the site. However, the Council also accepts that some flexibility could be applied to the provision of car and cycle parking, due to the site's accessibility to local services and public transport. On that basis, the evidence indicates that a satisfactory parking layout to support up to eight dwellings could be achieved in principle.
28. The proposal would not be classified as major development based on the definition in Annex 2 of the Framework. Therefore, the requirements in DMD Policy DM8 relating to wheelchair accessibility or adaptability are not applicable. Nevertheless, any design measures to ensure that the proposed dwellings are accessible and suitable for a range of potential occupiers could be demonstrated through the technical details.
29. For the above reasons, I conclude that the proposed development would be capable in principle of providing acceptable living conditions for future occupiers, subject to an appropriate design at technical details stage. As such, the proposal would not conflict with Core Strategy Policy CP3, DMD Policies DM8 and DM15 or relevant paragraphs in the Framework. These policies, amongst other things set out design standards for new dwellings and requirements for the provision and layout of car and cycle parking, including in locations which are well served by a range of transport modes.

Effect on Habitats Sites

30. The appeal site lies within a defined Zone of Influence for Essex Coastal Habitats Sites, as defined in the Conservation of Habitats and Species Regulations 2017. In particular, the site falls within the Zones of Influence of the Benfleet and Southend Marshes Special Protection Area (SPA) and Ramsar site, the Blackwater Estuary SPA and Ramsar site and the Foulness Estuary SPA and Ramsar site. These are among several sites along the Essex Coast, which are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species.
31. The Essex Coastal Habitats Sites have been identified by Natural England as being vulnerable to harm as a result of recreational disturbance. Such disturbance would be exacerbated by an increase in the local population resulting from new residential development, including through the cumulative effect of small-scale developments.
32. The appeal proposal would provide up to eight new dwellings, with an associated increase in local residents living within the Zone of Influence. This would be likely, in turn, to increase recreational pressure. It is therefore likely that the proposal, both alone and in combination with other development, would adversely affect the integrity of Essex Coastal Habitats Sites, notably those identified above. As such, it is necessary for me, as the competent

authority, to conduct an appropriate assessment in relation to the effect of granting permission on the integrity of European Sites.

33. The Essex Coastal European Sites are covered by the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). In partnership with other affected local planning authorities, the Council has adopted a RAMS SPD⁴, which sets out measures for the avoidance and mitigation of recreational disturbance. These comprise measures to enhance habitat and divert activity away from the most vulnerable locations, alongside education and communication with recreational users.
34. Pursuant to the RAMS, arrangements are in place for financial contributions to be sought in connection with new residential development, to fund avoidance and mitigation measures on a strategic basis. The appellant has provided evidence that the required financial contribution for the maximum proposed eight dwellings has been made during consideration of this appeal. The financial contribution has been made by means of a direct payment under Section 111 of the Local Government Act 1972.
35. The Council has confirmed receipt of the appropriate financial contribution, corresponding with the tariff applicable during the current financial year. The Council has further confirmed that direct payments made under Section 111 are regarded by them as an effective mechanism to secure the required mitigation. I am furthermore satisfied based on the evidence before me that appropriate arrangements are in place to secure ring-fencing of the funds for expenditure on mitigation as set out in the RAMS.
36. Natural England has been consulted as part of this appropriate assessment and has confirmed that the above financial contribution would be sufficient to avoid an adverse effect on the integrity of the Habitats Sites and their relevant features. Consequently, I am satisfied that, with the mitigation measures in place, the proposal would not adversely affect the integrity of Habitats Sites, either alone or in combination with other development.
37. The financial contribution is based on the maximum eight dwellings for which permission in principle is sought. In the event that technical details are approved for fewer than eight dwellings, that would be a matter for resolution between the parties at a later date.

Planning Balance

38. Evidence from both parties confirms that the Council cannot currently demonstrate a five year supply of housing land. As a result, the development plan policies which are most important for determining the application are deemed to be out of date. Therefore the proposal falls to be considered against Framework paragraph 11d, which articulates how the presumption in favour of sustainable development should be applied in these circumstances.
39. The proposed use would conflict to a limited extent with Policy DM13 of the DMP. However, for the reasons given, I have concluded that the proposal would not harm the vitality of the local centre or availability of local employment opportunities and would not conflict with other relevant development plan policies. Taking that into account, alongside the fact that Policy DM13 is

⁴ Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document adopted May 2020

deemed to be out of date by virtue of the housing land supply position, I have given the limited conflict with this single policy in the development plan very limited weight.

40. I have found that the proposal would not, in principle, be harmful to the character and appearance of the area and that satisfactory living conditions could be provided for future occupiers. In both cases, this is subject to a satisfactory design approach at technical details stage. Mitigation is in place to address any harm to Habitats Sites.
41. The proposed development would make a modest but positive contribution to the supply of land for housing, in a location with good access to public transport and all the facilities of the local centre. Core Strategy Policy CP8 aims to deliver 80% of new housing on previously developed land and the proposal would be consistent with that objective. The Council describes the proposed housing mix as being within reasonable parameters. Any alternative housing mix which arises due to the detailed proposed design, would be a matter for resolution at the technical details stage.
42. Having concluded that the proposal would not be harmful to the local centre, there is no conflict with the spatial strategy set out in Core Strategy Policy KP1. Amongst other things, this policy identifies the key strategic locations for development, while not precluding more intensive use of previously developed land within other parts of the urban area.
43. For the above reasons, I have given the benefits associated with additional housing, in what I have concluded to be a suitable location, significant weight. On that basis, the harm associated with the limited conflict with the development plan does not significantly and demonstrably outweigh the benefits of the proposal when considered against policies in the Framework taken as a whole.
44. I acknowledge that delivery of the maximum proposed eight dwellings could prove challenging in design terms. As set out above, there are several matters which require further clarification and resolution at the technical details stage and these would need to be addressed to the Council's satisfaction before planning permission could be granted. Nevertheless, subject to resolving the detailed design issues, a residential development of up to eight dwellings in this location would be acceptable in principle.
45. On that basis, I conclude that the site is suitable for residential development in principle, having regard to its location, the proposed land use and the amount of development.

Other Matters

46. The design submitted at technical details stage would need to demonstrate that living conditions within neighbouring flats and houses would be adequately safeguarded. However, given that there is a well-established pattern of flats above commercial premises in the vicinity of the site, there is no substantive evidence that additional flats on the site would in principle be harmful to living conditions for neighbouring occupiers. Any temporary disturbance to residential or business occupiers during construction works could be managed through imposition of suitable conditions at the technical details stage.

47. Given the site's good accessibility to local services and public transport, there is no clear evidence that the relatively constrained space for off-street parking would lead to any harmful shortfall in parking provision. Nor is there any evidence that safe access could not be achieved in principle, given that the site has a well-established use for vehicle repairs, with an associated flow of traffic in and out of the site. The exact quantity and layout of off-street parking and detailed access arrangements would be matters for the technical details stage.
48. Matters raised by technical consultees regarding sound insulation, potential contamination and tree protection would also be addressed at the technical details stage, as would the arrangements for refuse disposal, on-site renewable energy generation and compliance with other technical standards.
49. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property and therefore any effect on local property values is not a consideration for this appeal. The Council has confirmed that the required publicity was given to the application and the precise arrangements for doing so are not a matter for this appeal.

Conditions

50. National Planning Practice Guidance makes clear that it is not possible for conditions to be attached to a grant of permission in principle. However, an application for approval of technical details consent must be made within three years of the date at which permission in principle is granted.

Conclusion

51. For the reasons set out above, I conclude that the appeal should be allowed.

Jane Smith

INSPECTOR