



Appeal Decision

Site visit made on 23 October 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/M1520/W/23/3315549

Hobson and Sons Ltd, Kenneth Road, Thundersley, Benfleet, Essex SS7 3AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Savannah Property Investments Ltd against the decision of Castle Point Borough Council.
 - The application Ref 22/0633/FUL, dated 5 August 2022, was refused by notice dated 12 January 2023.
 - The development proposed is to demolish an existing building and the erection of No. 32 residential apartments, landscaping and associated access and parking arrangements.
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Decision

1. The appeal is allowed and planning permission is granted to demolish an existing building and erect 32 residential apartments, along with landscaping and associated access and parking arrangements, at Hobson and Sons Ltd, Kenneth Road, Thundersley, Benfleet, Essex SS7 3AF in accordance with the terms of the application, Ref 22/0633/FUL, dated 5 August 2022, subject to the conditions listed at the end of this decision.

Applications for costs

2. An application for costs was made by Savannah Property Investments Ltd against Castle Point Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. A Planning Obligation by Deed of Variation under Section 106 of the Act (the legal agreement) is before me, dated 12 January 2024. Copies of counterparts signed by the appellant, the mortgagee, the Council, and the County Council have been provided. The legal agreement secures variations to the Principal Agreement¹ that entail: the on-site provision of four First Homes (increased from three); a revised contribution towards mitigating recreational disturbance; a revised Healthcare Contribution; and the deletion of Library and Education Contributions. Whilst signed versions of an alternative Unilateral Undertaking (UU) are also before me, it is apparent that a Deed of Variation has represented the preferred mechanism for all parties. I thus attach no material weight to the terms of any submitted UU. I shall return to the legal agreement later in this decision.

¹ associated to planning permission 21/0813/FUL

4. As was apparent upon inspection, demolition of the former building has taken place and subsequent construction works are well underway. I shall thus consider the proposal that is before me on a part-retrospective basis.
5. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. The main parties have had the opportunity to provide observations with respect to any relevance of this to the determination of this appeal and I have considered representations received.

Main Issue

6. Whether or not the development would be detrimental to the free-flow of traffic and/or the amenities of local residents, having particular regard to the intended parking arrangements.

Reasons

7. An important material consideration in this case is the existence of a May 2022 planning permission² for similar development at the same site. This involved the erection of 30 residential apartments upon a near identical footprint of built development to that now under consideration. The revised scheme now before me, when compared to the existing permission, adds three flats within the roof space, removes a ground floor flat for the purposes of accommodating re-sited bin and cycle stores, and adds two on-site car parking spaces to total 32 spaces (one per apartment). It is noted that four additional two-bedroom apartments and two less one-bedroom apartments are now proposed.
8. The Essex County Council Parking Standards - Design and Good Practice (2009) (the Parking Standards) sets out expected minimum vehicle parking standards for new dwellings. Where one-bedroomed, the expectation is one on-site space per dwelling. Where containing two or more bedrooms, the standard is two spaces per dwelling. The provision of visitor parking at a minimum ratio of 0.25 spaces per dwelling is also endorsed by the Parking Standards. The overall number of parking spaces proposed evidently falls shy of these expectations.
9. However, the Parking Standards offer flexibility in main urban areas whereby reductions to the minimum standards may be considered, particularly for residential development. Main urban areas are defined as those that have frequent and extensive public transport and cycling and walking links, accessing education, healthcare, food shopping and employment. The site has an especially close relationship to bus stops offering access to a range of bus services and different destinations. When also factoring in the general characteristics of the locality, the site can clearly be fairly thought of as occupying a main urban area.
10. It is also relevant that an identical ratio of parking spaces to units is proposed when compared to the 30-apartment permission. Indeed, notwithstanding the increase in two-bedroom units that is proposed, there would be limited potential for the proposal to generate additional demand for off-site parking when compared to any such demand that would have realistically been generated by the previously consented scheme.

² Ref: 21/0813/FUL

11. The Highway Authority (the HA), having had regard to such factors as the location of the site and its proximity to public transport services, has indicated the intended level of off-street parking provision to be appropriate. This is a matter of importance, because the HA are responsible for the safety of local highway network users.
12. Having considered all available evidence before me, including census data related to car ownership, there is no clear reason for me to consider the proposal likely to generate any significant off-site parking demand. Moreover, it is clear from the submitted evidence that a one-to-one ratio has been accepted in recent times by the Council at sites elsewhere where well-served by public transport. Whilst it is my understanding that complaints have been received by the Council with respect to one such scheme at Catherine Road, differences in specific case and site circumstances avail meaning it does not set a precedent for decision-making at the appeal site.
13. I have noted concerns raised by an interested party that future occupiers may look to utilise the forecourt of an opposite church for parking. However, in the context of my above findings, this would be unlikely to occur. In any event, there would exist potential mechanisms outside of the planning process to enforce against any unauthorised use of private land. Furthermore, having undertaken a thorough inspection of local streets and factored in the parking restrictions that apply, I am satisfied that any overspill parking to potentially be generated by the proposal, which would realistically be limited even though no allotted visitor parking is intended on-site, could be safely accommodated without causing any undue loss of amenity or convenience for local residents. These findings are especially applicable when considered in the context of 30 apartments having already been consented.
14. For the above reasons, I find that the proposed development, having particular regard to the intended parking arrangements, would not have a detrimental effect upon either the free-flow of traffic or the amenities of local residents. Thus, the scheme accords with the Framework in so far as it promotes the creation of places with a high standard of amenity for existing and future users, and sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
15. I have noted reference to saved Policy T8 of the Castle Point Borough Council Local Plan (November 1998) within the Council's reason for refusing planning permission. This requires standards for car parking, as published by the County Council, to be applied. However, these far pre-date the Framework and, as confirmed by the Council, have been superseded by the 2009 publication of the Parking Standards – also produced by the County Council in its role as Highway Authority. I therefore find saved Policy T8 to be of limited relevance to my considerations.

Other Matters

The SPA

16. The appeal site lies within the Zones of Influence for The Essex Estuaries Special Area of Conservation, the Blackwater Estuary Special Protection Area and Ramsar site, and the Southend and Benfleet Marshes Special Protection Area and Ramsar site. I must therefore have regard to The Conservation of

Habitats and Species Regulations 2017 (as amended). These regulations require that, where the project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the implications of the project in view of the relevant site's conservation objectives. For the purposes of this appeal, I am the competent authority.

17. The qualifying features of the Habitats Sites on the Essex Coast principally relate to internationally important assemblages of breeding and non-breeding birds and conservation objectives that include maintaining the structure and function of coastal habitats. The impact upon the protected coastline is considered through the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (the RAMS) Supplementary Planning Document (May 2020). A threat to integrity is public access and recreational activities associated to additional development. The new residential development that is proposed would be likely to have a significant effect.
18. The RAMS sets out detailed mitigation measures on a strategic basis across the Essex Coast, including methods such as access management and communication, in the interests of reducing recreational pressures. These are to be funded by developer contributions at a specified tariff per dwelling. The legal agreement secures, on commencement of the revised development under consideration, the payment of a RAMS Contribution in accordance with this tariff-based approach.
19. The statutory nature conservation body (Natural England) has been consulted at appeal stage as regards the likely impact of the proposal upon European sites and the suitability of associated mitigation measures. It has indicated that, provided an up-to-date RAMS tariff is secured via legal agreement and paid upon commencement of development, the delivery of acceptable mitigation measures would be adequately secured.
20. Moreover, given the adopted and comprehensive nature of the mitigation strategies under implementation and the immediate nature of the timing by which the legal agreement secures payment, I am sufficiently satisfied that proportionate mitigation shall be delivered in an expedient manner. Thus, I find that the scheme would not adversely affect the integrity of any European site³ situated on the Essex Coast.

Further Other Matters

21. I have noted references to the busy nature of the junction where Kenneth Road meets the A13. However, the HA has not raised highway/junction capacity concerns and there is no persuasive evidence before me to demonstrate that the safety of road users would be compromised as a result of the proposal. It is also relevant to considerations in this context that planning permission has already been granted for 30 units on the site.
22. Having considered in detail the plans previously granted approval and compared them to those now before me for determination, I cannot accept any suggestion made that this latest proposal would have material adverse effects upon either access to daylight or the wellbeing of neighbouring occupiers.

³ as defined at regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended)

23. Moreover, in the absence of any identified harm(s) or associated policy conflict(s), I find that the proposal accords with the development plan when read as a whole. There are no material considerations to lead me to a decision otherwise than in accordance with the development plan.

The Legal Agreement

24. The legal agreement contains provisions in addition to those related to the RAMS contribution as discussed above. In accordance with the Framework, it secures that in excess of 10% of the total number of homes shall be available for affordable home ownership. Indeed, four First Homes are secured under appropriate terms (including associated plans) through the legal agreement.

The legal agreement secures a healthcare contribution to be put towards improving local health care capacity and local GP services. This is in direct response to a calculated scheme-specific request from the Mid and South Essex Integrated Care System. The main parties agree that a contribution towards upgrading existing facilities at local libraries, as requested at application stage, is no longer required on the basis that such a contribution is covered by the Community Infrastructure Levy that applies. Furthermore, the County Council's Infrastructure Planning Officer, in correspondence dated 20 June 2023, has confirmed that education contributions are not requested at this time.

25. I am satisfied that the variations/contributions secured through the legal agreement are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind. I am also content that the legal agreement is fit for purpose.

Conditions

26. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. I have also considered observations made by the parties with respect to the timing element of specified conditions. As a result, I have made omissions (with respect to conditions governing finished levels and vibration control) and some minor amendments to other conditions. This is for consistency and clarity purposes and in recognition that development is already well underway. I have also taken into account the site's planning history, whereby a very similar schedule of conditions was imposed in May 2022.
27. In the interests of certainty, conditions specifying the approved plans and that the decision is to be read in conjunction with the legal agreement are necessary and reasonable to impose.
28. In the interests of highway safety and protecting the amenities of local residents, compliance with the previously approved Construction Management Plan is necessary to secure. Also, in the interests of protecting the amenities of local residents, conditions are reasonable and necessary to secure a scheme of acoustic insulation, a scheme of noise mitigation to external areas, the specification of external lighting, and the provision of refuse storage. Furthermore, in the interests of preventing overlooking, conditions to secure obscure-glazed and non-opening windows to the northern and eastern flanks of

the building, opaque treatment to balconies, and a scheme to reduce overlooking from and between balconies are reasonable and necessary.

29. In the interests of highway safety, a condition ensuring the construction of site access to suitable standards, the laying out of properly constructed vehicle parking spaces and the reinstatement of kerbs/verge where required is reasonable and necessary to impose. I note here that I am suitably satisfied that the intended sizing of the parking spaces is fit-for-purpose.
30. In the interests of visual amenity and ensuring an appropriate standard of development, conditions are reasonable and necessary to secure details of landscaping, external facing materials/surfaces where not yet erected/lain, and boundary treatments. The boundary treatment condition is also in the interests of promoting site security. For the avoidance of doubt, I see no clear reason to condition that gated access to the rear of the site be specifically provided. This is in-part due to the natural surveillance that would avail from the new building.
31. In the interests of promoting sustainable travel choices, conditions are reasonable and necessary to secure the provision of electric vehicle charging facilities, cycle storage facilities, and the issuing of Residential Travel Information Packs.
32. In the interests of preventing an increase in the risk of surface water flooding and of protecting water sources and biodiversity, a surface water drainage scheme is reasonable and necessary to secure. I have noted preliminary details contained within a Surface Water and SuDS Assessment (Rev 2, dated 24 September 2021), whereby a clear reduction in hardstanding areas (when compared to pre-demolition circumstances) is calculated. It also sets out a commitment to managing surface water runoff through a rain garden with underdrain and attenuation storage with a controlled outlet into the public sewer system. In this context, noting the clear potential for sizeable attenuation storage to be installed beneath the relatively expansive on-site car parking area to be created, I am satisfied that this matter can be appropriately dealt with by way of planning condition. This is a view shared by the Council.

Conclusion

33. The appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun on or before the expiration of three years from the date of this decision.
- 2) This decision shall be read in conjunction with the Deed of Variation entered into under Section 106 of the Town and Country Planning Act 1990, dated 12 January 2024.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 001.00; 370.00; 371.01; 372.01; 373.00; 374.00; 375.01.
- 4) The development hereby permitted shall be constructed in full accordance with the Construction Management Plan (February 2022) approved by the Council when discharging Condition 4 of planning permission Ref 21/0813/FUL on 5 December 2022
- 5) Prior to the first occupation of the development, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include planting plans, written specifications, including cultivation and other operations associated with plant and grass establishment, schedules of plants, noting species, plant sizes and proposed numbers/densities, and details of existing trees to be retained together with measures for their protection during construction. Any proposed planting shall be set sufficiently back from the highway so as to ensure that the future outward growth of the planting does not encroach upon the highway. All landscaping works forming part of the approved scheme shall be carried out in accordance with the approved scheme prior to the first occupation of the development. Any tree or shrub contained within the approved landscaping scheme dying or becoming damaged, diseased or uprooted within 5 years of the development being occupied shall be replaced by a tree or shrub of a similar size and species, or such other species as may be agreed in writing with the Local Planning Authority.
- 6) Prior to the first occupation of the development, a scheme of acoustic insulation shall be submitted to and approved in writing by the Local Planning Authority. All habitable rooms exposed to external road traffic noise in excess of 55dBA Leq 16 hour (free field) during the day (0700 to 2300 hours) or 45dBA Leq 8 hour (free field) at night (2300 to 0700 hours) shall be subject to sound insulation measures to ensure that all such rooms achieve an internal noise level of 35dBA Leq 16 hour during the day and 30dBA Leq 8 hour at night. The submitted scheme shall ensure that habitable rooms subject to sound insulation measures are able to be effectively ventilated without opening windows. No dwelling shall be occupied until the approved sound insulation and ventilation measures have been installed to that property in accordance with the approved details. The approved measures shall be retained thereafter in perpetuity.
- 7) Prior to the first occupation of the development, a scheme to ensure that the maximum day time noise level in outdoor living areas exposed to external road traffic noise does not exceed 50dBA Leq 16 hour (free field) shall be submitted to and approved in writing by the Local Planning Authority. The scheme of noise mitigation as approved shall be

- constructed in its entirety prior to the first occupation of any dwelling and shall be retained thereafter in perpetuity.
- 8) Prior to the roof covering or any windows or doors being installed, and to any hardstanding being laid, details of the materials to be used in the external construction of those parts of the development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 9) The north facing windows to apartments 17, 18, 28 and 29 and the east facing windows to apartments 8 and 19 (as annotated upon approved plan 371.01) shall be: 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); 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.
 - 10) Prior to the first occupation of the development, a scheme to: reduce overlooking of adjacent residential properties from the approved balconies, and reduce overlooking between balconies within the development, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of the development and thereafter retained at all times that the development is occupied.
 - 11) The balconies hereby permitted shall be enclosed with opaque material prior to first occupation of the dwelling they serve, details of which shall first be submitted to and approved in writing by the Local Planning Authority. Any subsequent change to the approved material shall only take place with the written agreement of the Local Planning Authority.
 - 12) Prior to the laying of any hard standing for the car park, a scheme for the provision of electric vehicle charging facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in its entirety prior to the first occupation of the development and thereafter retained.
 - 13) Prior to the first occupation of the development, the approved vehicle parking spaces shall be provided, hard surfaced and drained, together with properly constructed vehicular access to the highway, all in accordance with the approved plans and details. Following their provision, all parking spaces shall be retained for the parking of vehicles and not used for any other purpose. Also prior to the first occupation of the development, the vehicular access shall be reconstructed to a width of 5.5 metres straight for at least the first 6.0 metres within the site and the redundant vehicle access points on Kenneth Road shall be closed and the footway, kerbing and verge reinstated.
 - 14) Prior to the first occupation of the development, the approved bin storage area, as depicted upon approved plan 375.01, shall be provided and made available for use. Thereafter, this facility shall be retained for its approved purpose.
 - 15) Prior to the first occupation of the development, the approved bike storage facility, as depicted upon approved plan 375.01, shall be

provided and made available for use. Thereafter, this facility shall be retained for its approved purpose.

- 16) Prior to the first occupation of the development, the developer shall provide, implement and distribute Residential Travel Information Packs 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) shall be provided to each dwelling free of charge prior to occupation.
- 17) External artificial lighting at the development shall not exceed lux levels of vertical illumination at neighbouring premises that are recommended by the Institution of Lighting Professionals in the 'Guidance Notes for the Reduction of Obtrusive Light'. Lighting shall be minimised, and glare and sky glow prevented, by correctly using, locating, aiming, and shielding luminaires in accordance with the guidance notes.
- 18) Prior to the first occupation of the development, details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority, with reference to accurately scaled plans. The approved boundary treatments shall be erected prior to the first occupation of the development and retained thereafter.
- 19) Prior to the laying of any hard standing for the car park or vehicular access, full details of surface water drainage, including the treatment of surface water, shall be submitted to and approved in writing by the Local Planning Authority, with reference to accurately scaled plans. The development shall thereafter be drained in accordance with the approved details, which shall be installed in full prior to the first occupation of the development.

-----END OF SCHEDULE-----