



Appeal Decision

Site visit made on 20 February 2024

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2024

Appeal Ref: APP/L3815/W/23/3328904

Northside, The Parade, East Wittering, West Sussex, PO20 8BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Bablu Karthick against the decision of Chichester District Council.
 - The application Ref EWB/22/02995/FUL is dated 17 October 2022.
 - The development proposed is a redevelopment to provide 2 no. commercial units, 5 no. one bedroom flats and 2 no. two bedroom flats and 1 no. three bedroom flats above.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i. whether the proposal would give rise to likely significant effects on the integrity of the Chichester and Langstone Harbours Special Protection Area (the SPA).
 - ii. whether the proposed development would harm the character and appearance of the area,
 - iii. whether the proposal would provide adequate outdoor amenity space,
 - iv. whether the layout of the ground floor is likely to harm the viability of the proposed commercial units, and
 - v. whether the proposal would harm the safety and function of the local and strategic road network.

Reasons

Recreational disturbance

3. The appeal site is within the 5.6km Zone of Influence of the SPA where it has been identified that the net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance. The SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended.
4. The Council advises that adequate mitigation in the form of a financial contribution pursuant to Policy 50 of the Chichester Local Plan: Key Policies 2014-2029 (the LP) has not been received. Although I note agreement from the Appellant to make the necessary contribution and the submission of a draft s106 agreement, at the time of writing there is no completed deed before me.

5. In the absence of a suitable mechanism to secure the necessary financial contribution, the proposed development, considered alone and in combination with other plans and projects, would give rise to likely significant effects on the integrity of the SPA in terms of its recreational effects. This would bring the proposal into conflict with LP Policy 50.

Character and appearance

6. The appeal site is located in the heart of East Wittering town centre. With residential scale buildings set along a strong building line, the southern side of Cakeham Road exhibits a pleasing sense of uniformity. However, the northern side of the road has a more unplanned appearance and comprises buildings of differing age, materials, height and appearance. A number of buildings in the immediate vicinity including those on the appeal site appear to date from the 1970s and in my view, make a negative contribution to the town centre.
7. Both parties have referenced the three-storey building immediately west of the appeal site (hereafter I shall refer to this building as Tesco Express). The Council see this as a benchmark for the height of any new development within this part of the town centre whereas the Appellant argues the height of the appeal scheme would be broadly similar to it. To my mind, the Tesco Express building contributes positively to its surroundings and adds a new and distinct element to a street scene where several nearby buildings are beginning to show their age.
8. The proposed development would have a contemporary design with a preponderance of glazing to the façade. The use of contrasting materials and projecting/recessive elements would add articulation and help to break up the mass of the building. The result would be an exciting and bold addition to the street scene complementing Tesco Express and adding to the already eclectic mix of building styles in the area.
9. As I have already alluded to, there is a significant degree of variance in the style and height of buildings on the northern side of Cakeham Road. I do not therefore consider this to be a location where new development must adhere to the physical dimensions of other nearby buildings. I concur with the Council that the ridge height of the proposed development would sit above the neighbouring roof form and would be more widely visible and prominent from the surrounding area. The same would have been true of the Tesco Express building when it was approved and so this cannot be a reason to dismiss the scheme out of hand.
10. The increase in ridge height over Tesco Express would be fairly modest particularly when one considers the top floor would be recessed from the front edge of the building. In that regard, the heights shown on the elevational drawings need to be treated with caution as they do not represent what would be experienced by an ordinary passer-by at street level. As demonstrated by the Appellant's CGI¹ image, only a small proportion of the fourth storey would be visible at street level and even then, one would need to view the building from the opposite side of Cakeham Road.
11. I accept some longer distance views for example from Shore Road might reveal more of the top floor. Nonetheless, I have already found that the design of the

¹ Figure 1 to the Statement of Case

building would be appropriate to its surroundings so the fact that it might be visible in longer distance views is not something that weighs against the scheme.

12. Overall given the proposed building's design credentials, coupled with the negative contribution made by the existing building on the appeal site, I find the development would enhance the character and appearance of the area. It would thus accord with LP Policy 33 and Section 12 of the National Planning Policy Framework (NPPF).

Amenity space

13. The Officer's Report identifies that no amenity space is proposed something compounded by an absence of publicly accessible open space in the local area. The Appellant accepts that there would be no communal space for future residents of the flats but contends that the scheme would provide a total of 86m² of amenity space in the form of individual terraces.
14. The reason for refusal cites conflict with LP Policy 33 and NPPF paragraph 120 (paragraph 135 in the latest iteration). However, while these mention a high standard of amenity and design, neither refer specifically to outdoor amenity space. While I note the Council's references to existing amenity space, it is not clear to me where this is located. While I observed an open-fronted yard/parking area to the rear of the existing buildings, I would be hard pushed to describe this as outdoor amenity space.
15. It is also evident that the adjacent Tesco Express development did not provide any outdoor amenity space for a similar quantum of residential flats. According to the Appellant, this development did provide first-floor communal amenity space measuring approximately 83m².
16. There is no explanation from the Council as to why 83m² of communal indoor space was considered acceptable for Tesco Express whereas 86m² of private outdoor amenity space, albeit provided on balconies and terraces, was deemed unacceptable for the appeal scheme. In my view, private outdoor space would be more attractive to a prospective purchaser than indoor communal space.
17. Putting those matters to one side, the appeal site is only a short walk from East Wittering Beach and Booker Green. There also appears to be an area of publicly accessible open space on Marine Drive which is closer still. Accordingly, I am satisfied that future residents would have good access to local parks and publicly accessible outdoor space. The proposal would not therefore conflict with LP Policy 33 or NPPF paragraph 135.

Commercial floorspace

18. The second reason for refusal relates to the loss of the existing toilet and storage facilities which the Council says would be likely to risk the viability of the commercial space contrary to LP Policy 26. However, on a proper reading of Policy 26 it is apparent that the modernisation of existing units is supported subject to criterion 1 and 2 neither of which relate to the retention of storage or toilets facilities.
19. Despite that, I do not find the Council's concerns to be unreasonable and note that the Appellant has responded by confirming that such facilities would be provided on the ground floor units once end users have been identified. I am

therefore satisfied that these matters could be addressed by a suitably worded planning condition.

Highway Contributions

20. The third reason for refusal is predicated on the emerging Chichester Local Plan Review which sets out a strategy to provide long term mitigation of highway impacts up to 2039. Through Policy T1 this would require all new housing to contribute towards a programme of identified highway improvements.
21. While the Appellant has confirmed he has no objection in principle to the contribution sought by the Council, I have some concerns. Based on information from the Council, the emerging plan is only at the Regulation 19 stage. It therefore attracts limited weight for decision making purposes particularly given that I have no details of the level of objection to draft Policy T1. It is also apparent that the A27 Chichester Bypass Mitigation Supplementary Planning Document has not been formally adopted by the Council.
22. While I note National Highways' support for Policy T1, until such time as the Council's approach has been endorsed through the local plan process, I am not persuaded that the highway contribution would satisfy the relevant tests for planning conditions set out in paragraph 56 of the NPPF. Accordingly, the absence of a planning obligation securing the highway contribution is not a matter that weighs against the appeal.

Conclusion

23. While I have found that the appeal scheme to be acceptable in relation to reasons for refusal 1, 2, 3 and 5. These matters do not outweigh the harm I have identified to the SPA and the conflict with LP Policy 50 in that regard. For that reason, the appeal should be dismissed.

D. M. Young

INSPECTOR