

Appeal Decision

Site visit made on 30 October 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2024

Appeal Ref: APP/A1530/W/24/3341229

Unit 3 Stane Leisure Park, Stanway, Colchester, Essex CO3 8DD

- 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 Ropemaker Properties Ltd against the decision of Colchester City Council.
 - The application Ref is 230737.
 - The development proposed is the redevelopment of Unit 3 to provide a drive thru restaurant/café unit (which will also facilitate the consumption of food and drink on the premises), revised parking layout and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of Unit 3 to provide a drive thru restaurant/café unit (which will also facilitate the consumption of food and drink on the premises), revised parking layout and landscaping at Unit 3, Stane Leisure Park, Stanway, Colchester, Essex CO3 8DD in accordance with the terms of the application, Ref 230737, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant's submissions include a number of revised plans¹. The amendments involve some limited changes to the proposed building's fenestration detailing and to the roofscape's appearance. Overall, the changes proposed are modest, and I am satisfied that the changes submitted do not substantially or fundamentally alter the proposed development. Given their nature, and the ramifications which they would have, I am satisfied that it is procedurally fair to accept the amended plans as part of the appeal process. Therefore, in my decision, I have had regard to the amended plans.

Main Issues

3. The main issues are:
 - The effects of the proposed development upon the character and appearance of the area;
 - The effects of the proposed development upon travel patterns, means of transport in the area and the safety of highway users; and
 - Whether the proposed development would be appropriate having regard to its use of resources and energy.

¹ Plan references 16963-121 B, 16963-122 B, 16963-123 B, 16963-124 B, 16963-125 B and 16963-126 B

Reasons

Character and appearance

4. The appeal site forms a part of a collection of commercial premises identified as Stane Leisure Park. There are housing areas near to Stane Leisure Park, but there are also other retail and leisure park developments. Collectively these form a significant concentration of commercial units within this part of Colchester. A wide variety of building designs are exhibited across these various developments and, amongst other locations, this is apparent next to the appeal site on Western Approach where there is a Sainsbury's petrol station and supermarket beyond on the opposite side of the road.
5. Within Stane Leisure Park itself The Princess Charlotte exhibits a design quite unlike the other units. It is a pub and, given this, it adopts an appearance which evokes traditional buildings in such use. Elsewhere within Stane Leisure Park, owing to the incorporation of some similar and consistent design elements, there is a design cohesion exhibited by the commercial units. The units are not identical, and some have more in common than they do with others. However, overall, the frequent occurrence of certain design traits like similar brickwork, render or cladding means that the host unit, Vets4Pets, Nando's, KFC and Starbucks all complement one another. That most units are occupied, and that several of them house food and drink uses, contributes to Stane Leisure Park having a generally vibrant character.
6. Significant proportions of the proposed building's walls would comprise of brick, render and either iridescent or timber cladding panels. All or some of which would be reflective of the existing unit 3 building, Starbucks, Nando's, KFC and Vets4Pets. Like the unit it would replace and those beside it, much of the proposed building's roof would either be flat or mono-pitched. The south-east of the proposed building would incorporate a pronounced curve. This would be unlike the existing unit 3, but a similar curve is exhibited by the Starbucks building.
7. The inclusion of some projecting elements to its outside walls, and as a part of its roofscape, coupled with the varied application of materials would ensure that the mass of the proposed unit would be suitably broken down and well-articulated. The proposed building would be positioned farther from Western Approach than the existing one. However, upon completion of the development, the positions of the proposed building, Nando's, Vets4Pets and Starbucks would, altogether, be quite consistent and, in comparison to the existing situation, there would be no harmful disruption to the manner in which the collection of units within the leisure park address this road.
8. I accept that it cannot be guaranteed that the building proposed would be occupied, but I have no substantive reasons to dispute the prospective occupiers' interest in the development, the marketing evidence presented to me nor reason to think that efforts have not been made to occupy the unit since its construction approximately 6 years ago. On the basis of all that is before me, it seems more likely that the proposed building would be occupied. This would be likely to bring with it a level of activity and custom which the existing building does not and address the exiting unit's failure to reflect the vibrancy of other units within Stane Leisure Park.

9. Therefore, I find that upon completion of the proposal a building would be erected of a design which would deviate from that it would replace but, nevertheless, would be sympathetic and complementary to neighbouring commercial units. As at present, Stane Leisure Park would be a collection of commercial buildings which largely, and appropriately, exhibit design cohesion.
10. The provision of the loading bay and the drive-through access and egress would interrupt parts of the promenade and two raised planters with integral seating would be lost to the development. However, other raised planters along the promenade would be retained whilst a soft and hard landscaping scheme is proposed as mitigation. The precise details of this scheme and its implementation can be ensured through the imposition of conditions. Despite the interventions to the promenade that would result, upon completion of the development and utilising such conditions, the design of the hard and soft landscaping surroundings to the proposed building would be well-considered, would maintain a sense of place and would be befitting to landscaping elsewhere within Stane Leisure Park. Furthermore, the children's play area would be retained.
11. For the above reasons the effects of the proposed development upon the character and appearance of the area would be acceptable. Therefore, I find that the proposal accords with Policy SP7 of the Colchester City Local Plan 2013-2033: North Essex Authorities' Shared Strategic Section 1 Plan (the Section 1 Plan) and policies DM15 and DM21 of the Colchester Borough Council Section 2 Local Plan 2017-2033 (the Section 2 Plan). In summary, and amongst other matters, these policies require new developments to meet high standards of design, to provide buildings of quality within well-considered public and private realms and attractive layouts, and promote and sustain an appropriate mix and density of uses. The proposal also accords with those policies within the National Planning Policy Framework (the Framework) which seek to ensure good design, the creation of high quality and beautiful buildings and places, and which encourage developments to reflect local design policies and government guidance on design contained within the National Design Guide and National Model Design Code.

Travel, transport and safety

12. As a consequence of the number of retail and leisure parks within the surroundings of the appeal site, and some nearby roads being important thoroughfares through this part of Colchester, the local area is heavily trafficked with cars. However, Stane Leisure Park has good accessibility and sustainable transport credentials owing principally to the ease of access to bus services, the pedestrian and cycle routes in the area and the proximity of it to housing areas. This means that should visitors to Stane Leisure Park wish to travel by sustainable transport modes it is a realistic option for many.
13. A transport statement² has been submitted in support of the proposal. It includes details of the predicted vehicle trip generation of the proposed development. Key submissions, including its Officer Report³, make it clear to me that the Council do not object to the impact of the scheme's trip generation upon the local road network. Despite the heavily trafficked nature of the area, given the evidence before me and the likely contribution that the single drive-

² Transport Statement 23 March 2023 Version 3.0

³ Delegated Report for Application Ref: 230737

through restaurant/café unit would make to trips on the network, I have no substantive reasons to disagree.

14. Although Policy WC5 of the Section 2 Plan expects developments in West Colchester to contribute to a package of sustainable transport measures and the promotion of sustainable travel, it also details particular improvement schemes and mitigation projects where contributions shall be sought should the relevant development impact on the highway network. Read as a whole, the policy requires such improvements and mitigation in instances where the likely effects of a development proposal would demand them. In this case, as the proposal's effect upon the road network would be limited, and the site already has good accessibility and sustainable transport credentials, improvement and mitigation measures are not necessary. Consequently, the proposal does not conflict with this policy.
15. Given that the site is within a leisure park and given the concentration of retail and leisure parks in the area, inclusive of a number of other food and drink outlets, the surroundings of the appeal site will already draw much custom including those who travel by car. The close proximity of such an array of commercial units will mean that whilst some trips undertaken in the area will be to a specific premises or park in the area, I fully expect others to entail visits to more premises and a combination of shops and food and drink outlets.
16. As a result, and even though the customer surveys undertaken at KFC and Nando's as a part of the appellant's Transport Statement may not definitively demonstrate how many customers travelled by sustainable modes of transport, I find that a considerable number of linked and transferred customer trips to the proposed development would be likely to take place. This means that the number of vehicular trips in the area taking place as a direct result of the proposed development would be moderated.
17. Pedestrian promenade routes run throughout Stane Leisure Park, but they vary in width, landscaping approach and the extent to which they are interrupted by the leisure park's roads and associated crossing points. Upon completion of the proposed development the section of promenade within the appeal site would, I accept, be interrupted by the drive-through access and egress, and it would be narrowed principally by the loading bay. Even so, the section of it in front of the proposed building would still be of quite considerable width and akin to other sections of promenade within the leisure park. It would adequately cater for the footfall which would be likely upon it. The drive-through access and egress point would be served by dedicated pedestrian crossings of a design very similar to those which already serve Starbucks and KFC and interrupt sections of promenade there. The pedestrian crossings would be served by bollards to prevent vehicles crossing onto the promenade. I have no substantive evidence that the crossings would be unsafe nor do I expect that pedestrians crossing them would be the subject of any considerable wait times.
18. Between the play area and the drive-through, sections of wall, railings and landscaping are proposed. Close-by there would also be the aforementioned bollards. A serving booth would be opposite the drive-through lane and the play area providing some surveillance of the part of the development. Given this combination of factors, I am satisfied that the drive-through vehicles and the play area would be safely separated and that the safety of the children would not be prejudiced. As a particular age group, I have had regard to the Public

Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, applying to children. As I have found that the play area would be retained and kept safe for them, in allowing the appeal, there is no conflict with the PSED.

19. Inclusive of the proposal, there would be 3 drive-through facilities in close proximity within Stane Leisure Park. I have no substantive reasons to conclude that the reconfigured design of the leisure park's car park and lanes would not function properly nor that it would lead to any unacceptable queues or other hindrances to vehicle passage. I also have no substantive evidence that existing pedestrian routes and crossing points which permit connections from Stane Leisure Park to other developments in the area are unsafe.
20. To summarise my findings above, the proposed development is located within an area with good accessibility and sustainable transport credentials, and its customers would have a choice of transport options in order to visit the site. Coupled with the likely proportions of linked and transferred trips to the site, this means that the number of vehicular trips generated as a direct result of the proposal, and which would not otherwise already be on the local road network, would be moderated. These trips would also be catered for without the need for local transport improvements or mitigation. The public realm and the layout of the leisure park would, as a result of the proposal, still function well and would be safe for its various users.
21. Therefore, the effects of the proposed development upon travel patterns, means of transport in the area and the safety of highway users would all be acceptable. As well as the aforementioned Policy WC5, the proposal therefore complies with policies SG1, DM15, DM20, DM21 of the Section 2 Plan and Policy SP7 of the Section 1 Plan. Altogether, and amongst other matters, these policies seek to focus development in accessible locations to reduce the need to travel. They also seek to ensure that developments are supported by public transport, safeguard routes for walkers and cyclists, and provide well connected and legible streets and spaces which minimise conflicts between different highway users.

Resources and energy

22. As well as applying to the likes of specific renewable energy schemes, Policy DM25 of the Section 2 Plan seeks to ensure the efficient use of energy and resources and minimise waste and recycling.
23. Land itself is a resource. There are other development plan policies submitted to me which, amongst other matters, advocate growth in accessible and sustainable locations (Policy SG1 of the Section 2 Plan and Policy SP3 of the Section 1 Plan), stress the importance of the re-use of brownfield land (SP3 again) and promote a flexible approach to economic sectors in order to achieve a strong, sustainable and diverse economy (Policy SP5 of the Section 1 Plan). I am also mindful of those policies within the Framework which advise that decisions should help create the conditions in which businesses can invest, expand and adapt and which set out that significant weight should be placed on the need to support economic growth. Policies within the Framework also promote and support the development of under-utilised land and buildings and state that decisions need to reflect changes in the demand for land.
24. The appeal site is brownfield land within an accessible location, and the proposal would redevelop and re-purpose it. I have already cited the commercial interest in the development proposed and that, despite marketing endeavours, the

existing unit has not been occupied since its construction around 6 years ago. I have no substantive evidence before me which indicates that the fortunes of the existing development are likely to change any time soon and that the building would be occupied. In its present form and given its history, the existing development on the site is not making a contribution to the local economy, nor is it serving local residents. The existing development is not an effective use of land.

25. I accept that the demolition of a relatively new building has its inefficient attributes: it will generate waste material and, given it has never been occupied, energy and resources will have been used for essentially futile results. However, in the round, because the proposal would re-use underutilised land in an accessible location, I still find it would be an efficient development and would be appropriate having regard to its use of resources and energy.
26. Furthermore, the Council has given prior approval for the demolition of the existing unit 3 building⁴ earlier this year. In order to comply with that approval, it would be necessary to implement a post-demolition landscaping scheme. This interim measure would place an additional development burden upon the appellant that would not be a requirement of the scheme the subject of my decision. However, I have been provided with no substantive evidence that undertaking the landscaping scheme and then erecting a new building would not be a feasible, practical or viable option. As such, I find that demolishing the existing building through the implementation of the prior approval that has been given is a realistic prospect. It means that, regardless of the debate surrounding the merits of unit 3's demolition as a part of the appeal scheme, there would be another means by which the appellant could demolish the building. This is a matter of moderate weight in my decision, and it is a further contributory reason as to why I find the demolition of the existing building to be acceptable.
27. For the above reasons, the proposal complies with Policy DM25 of the Section 2 Plan, the content of which I have identified above. I have also referred to a number of other policies within the development plan and within the Framework which are relevant to this main issue and, for the reasons given, the proposal also accords with.

Other Matters

28. As a food and drink development, the proposal would, I accept, result in some noise and litter. However, I have no substantive evidence that this would be likely to be excessive. I also have no substantive evidence that incidences of anti-social behaviour would be especially frequent and would not, on the whole, be acceptably managed.
29. The evidence before me that the type of food and drink likely to be served within the development proposed would, in this particular location, be unacceptable is not compelling, and I find that withholding planning permission on such grounds would not be justified in this case.

Conditions

30. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the tests for the imposition of conditions set out within the Framework and the content of the Planning Practice

⁴ Application reference 240247

Guidance (PPG). Having regard to the Framework and the PPG, and in the interests of clarity or precision, I have made some amendments to the Council's suggestions.

31. Condition 1 sets out the standard time limitation. Condition 2 is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty.
32. Policy ENV1 of the Section 2 Plan seeks measurable biodiversity net gains. To define and ensure the delivery of these enhancements, and to ensure the delivery of a landscaping scheme in the interests of the character and appearance of the area, I have imposed conditions 3 and 4. Condition 3 is a pre-commencement condition. This is necessary as establishing the biodiversity enhancements which can be achieved, and the landscaping provisions and retentions necessary to do so, must be undertaken at the outset of the development.
33. I have imposed further conditions in relation to the use of external materials and some remaining design details which require clarification also in the interests of the character and appearance of the area (conditions 5, 6 and 12). To preserve the living conditions of local residents, and in particular to manage and mitigate noise arising from both the demolition, construction and operational phases of the development, I have imposed a series of conditions (nos. 7, 8, 13, 15, 16 and 17). In determining the precise content of these conditions, and with consistency in mind, I have had regard to an earlier grant of planning permission at Stane Leisure Park⁵.
34. Conditions 9 and 10 are to ensure that the premises would not result in harmful pollution, nor drainage blockages. So that the loading bay is installed in the interests of the proper servicing of the proposed development and the consequential amendments necessary to the carpark, I have imposed condition 11. Finally, the purpose of condition 14 is to prevent internal alterations taking place within the premises which would create additional floorspace without the grant of a further planning permission so that the local planning authority retains control over the implications of such works including in respect of parking, highway safety and the living conditions of nearby occupiers.

Conclusion

35. The development accords with the development plan, and there are no material considerations which indicate a decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

H Jones

INSPECTOR

⁵ Planning permission reference 162005

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:
 - 16963-110 Site Location Plan
 - 16963-111 Existing Block Plan
 - 16963-112 Existing Site Plan
 - 16963-113 Existing General Arrangement Plan
 - 16963-114 Existing Roof Plan
 - 16963-115 Existing Elevations (1 of 2)
 - 16963-116 Existing Elevations (2 of 2)
 - 16963-121 B Proposed Block Plan
 - 16963-122 B Proposed Site Plan
 - 16963-123 B Proposed General Arrangement Plan
 - 16963-124 B Proposed Roof Plan
 - 16963-125 B Proposed Elevations (1 of 2)
 - 16963-126 B Proposed Elevations (2 of 2)
- 3) No development nor any vegetation clearance or removal shall take place until a scheme of landscaping and ecological enhancement measures, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include:
 - i) details of all tree retention, relocation and tree planting including details of the quantity, size, species, and positions or density of all trees to be planted;
 - ii) details of all other soft landscaping, planting and habitat creation proposed including details of the quantity, size, species, and positions or density;
 - iii) details of all planting establishment and cultivation measures;
 - iv) details of all means of enclosure, boundary treatments and retaining structures including details of materials;
 - v) details of proposed hard surfacing materials;
 - vi) details of existing and proposed finished levels or contours;
 - vii) details of minor artefacts and structures (eg bins, furniture and signs)
 - viii) a timetable for the implementation of the scheme of landscaping and ecological enhancement measures

Thereafter, the development shall be carried out in accordance with the approved details.
- 4) The premises hereby approved shall not be opened to customers until a landscape and ecological measures maintenance and management plan, detailing the short and long-term management responsibilities and maintenance schedules of the landscaping scheme and ecological enhancement measures, has been submitted to and approved in writing by the local planning authority. Thereafter, the landscaping scheme and ecological enhancement measures implemented shall be managed and maintained in accordance with the approved details.
- 5) No construction works above ground level shall take place until details of the external facing and roofing materials to be used in the construction of the development hereby permitted have been submitted to and approved in

writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details.

- 6) No construction works above ground level shall take place until details of the design, material and colour finish of all windows, doors and rainwater goods to be utilised within the development have been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details.
- 7) The premises hereby permitted shall not be opened to customers until an outdoor space management scheme has been submitted to and approved in writing by the local planning authority. Amongst its content, the scheme shall include:
 - i) details of the layout and extent of outdoor seating areas to serve the premises;
 - ii) confirmation that the premises' outdoor space shall only be used and occupied by customers between 08:00-23:30 on weekdays, 08:00-23:30 on Saturdays and 08:00-23:00 on Sundays.

Thereafter, the development shall be carried out, maintained and managed in accordance with the approved details.

- 8) The level of noise emitted from all plant, equipment and machinery to be installed shall not exceed 5dB(A) above the background noise level as measured on the site's western boundary. The premises hereby approved shall not be opened to customers until a noise assessment demonstrating this to be the case, and undertaken in accordance with British Standard 4142, has been submitted to and approved in writing by the local planning authority. Thereafter, all plant, equipment and machinery shall be installed and maintained in accordance with the approved details.
- 9) The premises hereby approved shall not be opened to customers until details of all measures to control the emission of fumes, smells and odours arising from the operation of the premises have been submitted to and approved in writing by the local planning authority. Thereafter, the premises shall only be operated in accordance with the approved details.
- 10) The premises hereby approved shall not be opened to customers until all foul water drains serving the premises' kitchen have been fitted with grease traps. Thereafter, the drain grease traps shall be maintained (and replaced as necessary) so as to remain effective.
- 11) The premises hereby approved shall not be opened to customers until the carpark reconfigurations and the provision of the loading bay, as detailed on drawing 16963-121 B, have been carried out in accordance with the details shown on that plan.
- 12) No external lighting shall be installed unless details of it have first been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out and maintained in accordance with the approved details.
- 13) All doors to be installed that permit access and egress into the premises hereby permitted shall be either automatic or self-closing utilising soft-close mechanisms.

- 14) Notwithstanding the provisions of Section 55(2)(a) of the Town and Country Planning Act 1990 (or any revocation and re-enacting of it with or without modification) no provision of additional floors, including mezzanine floors, nor the creation of additional floorspace, including within any void, within the building hereby permitted shall be undertaken.
- 15) Demolition or construction works shall take place only between 08:00-18:00 on weekdays, 08:00-13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 16) Deliveries shall be taken at or despatched from the site only between 07:00-23:00.
- 17) The premises hereby permitted shall only be open to customers between the following hours:
Weekdays: 08:00-23:30
Saturdays: 08:00-23:30
Sundays: 08:00-23:00

End of Schedule