



Appeal Decision

Site visit made on 3 December 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2025

Appeal Ref: APP/D1590/W/24/3350117

48 Alexandra Street, Southend on Sea SS1 1BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Glendale Developments Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 23/01166/OUTM.
 - The development proposed is a part 4 and part 5 storey building comprising of 20 residential dwellings (Class C3) and 2 commercial units (Class E), layout bike and bin stores and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application which is the subject of this appeal was made as an outline application with approval sought for access, appearance, layout and scale, with landscaping reserved for future consideration. As such I have considered the appeal on this basis.
3. A revised National Planning Policy Framework was published on 12 December 2024. Whilst I have had regard to the revised national policy as a material consideration in my decision-making, planning decisions must still be made in accordance with the development plan unless material considerations indicate otherwise. Comments have been sought from both parties in relation to the revised Framework and any comments received have been taken into consideration within my decision.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area, the significance of the non-designated heritage asset, the Alexandra Street Frontage of Townscape Merit, the setting of the grade II listed Clifftown Church, and the setting of the Clifftown Conservation Area;
 - the effect of the proposed development on the living conditions of the occupiers of the neighbouring dwellings with regard to light and outlook; and

- whether the proposed development would make an appropriate contribution to affordable housing, secondary education and transportation matters.

Reasons

Character and Appearance

5. The appeal site is an unoccupied area of land between Alexandra Street and the Clarence Road car park, within a town centre location. It was previously occupied by a three-storey building used as a snooker hall, which has since been demolished. The appeal site now appears as a gap in the street frontage along Alexandra Street, which is largely occupied by rows of terraces. Whilst the Southend Central Area has a range of buildings between 3 and 17 storeys, the buildings directly surrounding the appeal site are approximately 3 storeys in height with a traditional design and ornate detailing.
6. The proposed development would introduce a new building onto the appeal site, attached to the existing neighbouring terrace building. This would be occupied by 20 residential dwellings on the upper floors and two commercial units on the ground floor, fronting the road. Apart from an alley to the side and a small amenity space to the rear, the proposed building would occupy the majority of the appeal site, with 4 full storeys and an additional floor set within a mansard roof.
7. The proposed building would be significantly greater in height than the terrace in which it would adjoin, 44 and 46 Alexandra Street adjacent to the appeal site and the terrace on the opposite side of the road. Whilst the proposal would fill an uncharacteristic gap in the street frontage, it would protrude above these buildings, appearing overly dominant and incongruous within the streetscene and at odds with the character of the area, where buildings of this scale are not commonplace. The overall massing of the proposed building, with four storeys extending nearly the full width and depth of the site, would also add to this dominant appearance, dwarfing the surrounding historic buildings, to the detriment of the overall character and appearance of the area.
8. The proposed building would have asymmetrically shaped Dutch gables to the front and smaller similar features to the sides and rear, as well as some areas of brick patterning. This is intended to replicate the ornate detailing on the historic buildings in the surrounding area. There would also be recessed balconies on the front elevation, to provide amenity space, and recessed sections on the side elevation, highlighted by small gables.
9. Although somewhat pastiche, the Dutch gables would assimilate well with the ornate roof forms in the surrounding area. However, when combined with the recessed balconies on the front elevation and balconies on the rear elevation, which are more modern features, the overall design of the building would appear contrived and out of keeping with the prevailing character of the area. The recessed sections on the side elevations of the proposed building would add interest to these large flank walls but do little to break up the massing of the building. They are also unusual features, which due to the scale and positioning of the building, would be highly visible in the streetscene and would appear at odds with the surrounding form of development.

10. The Alexandra Street Frontage of Townscape Merit, in which the appeal site is located, is a non-designated heritage asset (NDHA), from which its significance appears to be derived from the ornate and historic buildings within it. Paragraph 216 of the Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application. For the reasons given above, the proposed development would result in significant harm to the Alexandra Street frontage and therefore the significance of the NDHA.
11. The appeal site is located outside of, but within close proximity to, the Clifftown Conservation Area. As it is outside of the boundaries of this Conservation Area, the statutory duty within Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended does not apply. However, the proposed development would still be located within the setting of this designated heritage asset. From my observations on site, it would appear that the significance of the Conservation Area relates, in part, to its historic nature and attractive appearance of the buildings within it. The buildings on Alexandra Street form part of the historic environment of the area and provide a positive contribution to the setting of the Conservation Area as a whole.
12. The appellant contends that the proposed development would have limited visibility from the Conservation Area at street level. However, due to its scale, it would still be a noticeable feature when viewed from within the designated heritage asset. It would also be a highly visible addition when looking towards the entrance to the Conservation Area from Alexandra Street and would therefore be viewed alongside the historic buildings within it. As detailed above, the proposed development would appear as a much larger and bulkier addition to the area when compared to the surrounding buildings, including those within the Conservation Area closest to the appeal site. It would therefore dominate the views of these buildings and detract from the overall historic setting of the Conservation Area when entering or exiting from Alexandra Street.
13. To the rear of the appeal site is the grade II listed building, the Clifftown Congregational Church and Memorial Hall. Limited information has been submitted in relation to this listed building, however, it appears that its significance is derived, at least in part, from the antiquity of its structure and from its status as a well preserved example of a vernacular building of its age and type. The historic nature of the surrounding area, and the buildings within it, contribute to how this asset is appreciated and this setting makes a positive contribution to the significance of this listed building.
14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for the development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest.
15. The listed building includes an original section fronting Nelson Street and a more modern section to the rear. The more modern section of the building would be located in closer proximity to the proposed development, albeit still well separated by a section of the Clarence Road car park. As such, views of the front section of the building, from where it largely derives its significance,

would not be impacted by the proposed development regardless of scale, massing or design. It is also sufficiently separated from the rear of the listed building to ensure that there is a neutral impact on its overall setting. Therefore, the proposed development would not harm the setting of the listed building, the Clifftown Congregational Church and Memorial Hall.

16. Nevertheless, for the reasons above, the proposed development would result in substantial levels of harm to the character and appearance of the surrounding area including the non-designated heritage asset, the Alexandra Street Frontage of Townscape Merit and the setting of the Clifftown Conservation Area. It would therefore conflict with Policies KP2 and CP4 of the Southend on Sea Core Strategy Development Plan Document 1 (the CS) 2007 and Policies DM1, DM3 and DM5 of the Southend on Sea Development Management Document (the DMD) 2015. These policies collectively seek to ensure that all new development is well designed, respects the character and scale of the existing site, neighbourhood and its local context and provides appropriate detailing that contributes to and enhances the distinctiveness of place, whilst safeguarding and enhancing the historic environment.
17. The proposal also conflicts with the Southend on Sea Design and Townscape Guide Supplementary Planning Document 1 (SPD) 2009. This states that when designing a new building, it is important that the development integrates with existing buildings and that new development should continue established street patterns where they are an integral part of local character.
18. The appellant makes reference to consent¹ for a roof and rear extension to the nearby grade II listed Royal Terrace. However, whilst this consent would increase the height of this terrace, it is some distance from the appeal site and relates to an extension, rather than an entirely new building. Therefore, it is not comparable to the appeal proposal before me.

Living Conditions

19. The proposed development would be located to the rear of existing residential development on Capel Terrace. The rear gardens for the properties on Capel Terrace have a limited depth, separated from the appeal site by only a narrow alleyway. Therefore, the proposed development would be in extremely close proximity to these neighbouring properties, particularly 1, 2 and 3 Capel Terrace.
20. The proposal may cover a similar footprint to the existing snooker hall building, however, this has now been demolished and, even though in an urban location, from the rear of these properties there is currently a relatively open outlook. Whilst the proposal includes approximately 4.4 metres of open space to the rear, the proposed building would still cover a large proportion of the appeal site and would be much larger in height than the pre-existing building. The scale of the proposed building, along with its proximity to the rear gardens and rear windows of the dwellings at 1, 2 and 3 Capel Terrace, would severely restrict the outlook from these neighbouring properties and would result in a significant sense of enclosure for its occupants.
21. A daylight and sunlight report was produced by the appellant, in relation to the impact on these neighbouring properties, as part of the original planning

¹ 17/01289/FUL

application. This concluded that all windows with a requirement for daylight pass the Vertical Sky Component (VSC) test, with the exception of windows 18,19,24 and 36 that are located at 1, 2 and 3 Capel Terrace, which fall marginally short of the BRE VSC recommendations. It also concluded that all gardens and open spaces tested meet the BRE recommendations, with the exception of the garden at 2 Capel Terrace.

22. Whilst the properties within Capel Terrace are within an urban location, where existing light availability may already be relatively low due to the existing buildings to the south, the report provided shows that the proposed development would still have a detrimental impact on the daylight received to the aforementioned windows and garden, resulting in a small degree of harm to the occupiers of 1,2 and 3 Capel Terrace. This impact would likely be exacerbated by the fact that these neighbouring properties already receive limited light to the rear. The combination of this loss of light and the sense of enclosure from the proposed development would result in substantial harm to the living conditions of the occupiers of the neighbouring dwellings on Capel Terrace.
23. Therefore, as the proposed development would result in substantial harm to the living conditions of the occupiers of the neighbouring dwellings, 1-3 Capel Terrace, with regard to light and outlook, it would conflict with Policy CP4 of the CS and Policies DM1 and DM3 of the DMD. These policies collectively seek to ensure that development proposals secure good relationships with existing development and protects the living conditions and amenity of immediate neighbouring residents, having regard to outlook and daylight.

Planning Obligations

24. The appellant has submitted a draft planning obligation, in the form of a Section 106 legal agreement, seeking to secure a financial contribution towards secondary education, the provision of a travel plan and a monitoring fee in relation to this, the provision of travel information packs to all residents and a Section 106 monitoring fee, as requested by the Council. The obligation also seeks to secure a financial contribution in relation to the protection of habitats identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), however, this will be covered later in my decision.
25. Policy KP3 of the CS states that, in order to help the delivery of the Plan's provisions, the Borough Council will enter into planning obligations with developers to ensure the provision of infrastructure and transportation measures required as a consequence of the development proposed, including provisions such as educational facilities. It also seeks to ensure that all developers have regard to and, in appropriate cases, contribute to the delivery of the Southend on Sea Local Transport Plan and its reviews where this relates to the development proposed. As such, the obligations outlined above would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations.
26. However, the Section 106 legal agreement provided by the appellant is a draft version only and without a final executed version the obligations are not secure. Consequently, the proposed development would not make the

appropriate contributions to secondary education and transportation matters which are required by Policy KP3 of the CS as outlined above.

27. Whilst an affordable housing provision of 20% for major residential proposals of 10-49 dwellings is required under Policy CP8 of the CS, a financial viability assessment submitted with the application concludes that a contribution to affordable housing is unviable in this case. This has been independently reviewed by the Council which verifies this finding and the Council have concluded that the absence of any affordable housing contribution in this case is justified.
28. However, they go on to recommend the imposition of a late stage viability review mechanism within a Section 106 legal agreement to allow the Council an appropriate method to seek to capture any planning gain beyond the forecasted levels. The appellant disputes that such a mechanism is warranted to justify the development but has submitted a draft Section 106 legal agreement incorporating a late stage viability mechanism in the event that I consider it to be necessary.
29. Planning Practice Guidance states that plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. There is no mention of the use of such a review mechanism within Policy CP8 of the CS, within the Interim Affordable Housing Policy (2016) or in the Planning Obligations SPD.
30. It is noted that the Council are seeking to ensure that if it would become viable to provide affordable housing at this site, the proposal would contribute to this need proportionately. However, on the evidence before me, the need for a late stage review mechanism for affordable housing has not been demonstrated. Accordingly, this section of the draft Section 106 legal agreement is not necessary to make the development acceptable in planning terms.

Planning Balance

31. The appellant has stated that the Council currently have a 3.48 year supply of deliverable housing, as published in April 2024. They go on to state that this is reduced to 2.9 years with the 20% buffer, as the housing delivery test indicates that the delivery of housing was below 85% of the housing requirement over the previous three years. Therefore, there is a significant shortfall. The Council also indicate within their report that the figures of the housing delivery test and the five-year housing land supply show that there is a significant need for housing in the City. As such, due to the provisions of footnote 8, paragraph 11(d)(ii) of the Framework should be applied.
32. In the context of the development, I have found that the proposal would be contrary to policies KP2, CP4 and KP3 of the CS and policies DM1, DM3 and DM5 of the DMD, resulting in substantial harm to the character and appearance of the surrounding area, the significance of a non-designated heritage asset, the setting of a conservation area and the living conditions of the occupiers of neighbouring dwellings. It would also not provide appropriate contributions to secondary education and transportation matters. The Framework supports the creation of high quality buildings and places which

are sympathetic to local character, including the surrounding built environment. It also support a high standard of amenity for existing users. Therefore, as these policies are generally consistent with the relevant aims of the Framework, I attach substantial weight to the conflict with them.

33. The development would add to the overall housing land supply and make a contribution to the Government's objectives of significantly boosting the supply of homes, with the addition of 20 dwellings in what the appellant considers is a sustainable and well connected location. These homes would be located on brownfield land within a settlement which should be given substantial weight in accordance with paragraph 125 of the Framework, for which proposals should be approved unless substantial harm would be caused. The proposal would also result in the clean-up of a derelict site and provide job creation and facilities for local businesses to operate in the form of the two commercial units on the ground floor. However, given the scale of the scheme, any such benefits would be relatively small.
34. Therefore, even though there is a significant shortfall in the five year housing land supply and dwellings on brownfield land should be given substantial weight, given the substantial harm that I have identified, the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits when considered against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply and does not weigh in favour of the proposed development.

Other Matters

35. The appellant has highlighted another appeal proposal in the North Hertfordshire District Council area, although I cannot see that a reference number or a copy of the decision has been provided. Nevertheless, they indicate that within this appeal the Inspector gave very substantial weight to the considerable housing benefits of the scheme, which they consider draws distinct parallels with the proposed development. However, I note, in the text provided, that this scheme included an affordable housing contribution of 40% of the dwellings. Therefore, it is not directly comparable to the appeal before me.
36. Natural England have confirmed that the appeal site lies within the Zone of Influence for the Dengie Special Area of Conservation (SAC) and Ramsar site, the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, the Foulness SPA and Ramsar site, the Benfleet and Southend Marshes SPA and Ramsar site, the Crouch and Roach Estuaries SPA and Ramsar site and the Essex Estuaries SAC. Given that the proposal is for additional housing, there is a reasonable likelihood that these European Sites would be accessed for recreational purposes by future occupiers of the development. Therefore, in combination with other developments, likely significant effects cannot be ruled out. A draft Section 106 legal agreement has been submitted to secure a financial contribution in relation to the protection of habitats.
37. The Conservation of Habitats and Species Regulations 2017 (as amended) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall

conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

38. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR