



Appeal Decision

Site visit made on 5 December 2024

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025

Appeal Ref: APP/D1590/W/24/3340358

37 Broadway, LEIGH-ON-SEA, SS9 1PA

- 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 Star Amusements Ltd against the decision of Southend-on-Sea Borough Council.
 - The application Ref is 23/01667/FUL.
 - The development proposed is "to demolish existing building and rebuild in line with 21/00930/FUL approval to form 3 self-contained dwellings and commercial unit, veranda to side first-floor level, rooflights to side elevations, separate commercial/residential bin store areas, cycle and parking to rear."
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Decision

1. The appeal is allowed and planning permission is granted "to demolish existing building and rebuild in line with 21/00930/FUL approval to form 3 self-contained dwellings and commercial unit, veranda to side first-floor level, rooflights to side elevations, separate commercial/residential bin store areas, cycle and parking to rear" at 37 Broadway, LEIGH-ON-SEA, SS9 1PA in accordance with the terms of the application, Ref 23/01667/FUL, subject to the conditions in the attached schedule A.

Preliminary Matters

2. A revised Unilateral Undertaking dated 13 December 2024 relates to the provision of a mitigation contribution of Essex Coast habitat sites and followed comments from Council and Natural England.

Main Issues

3. The main issues are whether (a) the proposal would preserve or enhance the character or appearance of the Leigh Cliff Conservation Area and (b) the provision of accessible and adaptable dwellings (Building Regulations M4(2)), having regard to local and national policy.

Reasons

Character and appearance

4. The appeal site comprises a two storey end of terrace building. To the side and rear, there is a first floor balcony above an flat roofed extension and beyond this, there is a courtyard area used for storage. It lies at the corner of Broadway and West Street within the Leigh Cliff Conservation Area.
5. The original building is of traditional Victorian design and constructed of light coloured stock brick with slate roof. It also features curved lintels, saw tooth

dentil coarse to the eaves and a chimney on the common boundary with its neighbour. The ground floor has a timber shopfront with canvas awning. Under the Leigh Cliff Conservation Area Appraisal, the building is not locally listed but is categorised as having a positive effect subject to the reinstatement of timber sash windows.

6. The end of terrace is similar in scale, form and traditional design to adjacent terraced buildings along Broadway within the Conservation Area. Within the wider Conservation Area, building design varies reflecting different builders, time periods and uses, for instance banks. Some shops on Broadway identify as neo-classical and Arts and Craft styles, with typically narrow facias set at slight angle between curved console ends. Towards the seafront, there are residential streets with ornate features, such as verandas. The high quality design reflects the prosperity of the area during the 19th century from fishing and tourism, with the advent of the railways.
7. Within the Conservation Area, traditional high quality design with a significant architectural decoration, features and use of materials, such as the use of stone around doors and windows, timber sash windows, and eaves detailing, along with the historic development of the area, are important qualities. Such historical and architectural qualities contribute to the significance and special interest of the Conservation Area.
8. The appeal site building exhibits attractive eaves detailing and frontage form, and usage in keeping with the vitality of this commercial area of the Conservation Area. However, the building has been unsympathetically extended and altered, with the flat roofed extension and balcony to the rear, and a modern fascia, wrapping around the frontage and flank of the building. The first floor windows have also been replaced with incongruous modern uPVC windows. To the rear, the bins, plant and hard surfaced area for parking results in an untidy and disjointed appearance. Overall, the site provides a negative contribution to the character and appearance of the Conservation Area taken as a whole.
9. The existing building would be demolished, and the new building would be of similar design to that permitted previously¹, for extensions and conversion. The new building would be attached to its terraced neighbour and would be slightly higher than the existing building. There would be a slightly larger commercial unit at the ground floor.
10. The frontage of the new building on Broadway would largely replicate the original frontage. On West Street, the new building would be two storey with accommodation with the roof above. The first floor would be stepped back from the ground floor below behind balustraded balconies/walkway with veranda type enclosures around external entrance openings. The second floor would consist of a slate roof punctuated by two dormers and two smaller windows on the gable to the side of the building. The building would be constructed with yellow stock bricks, white rendered lintels, timber casement windows to the side, sash windows to the front and a timber framed shopfront.
11. The replacement building could not replace the historical integrity of the original building and the proposal would result in the loss of the eaves

¹ Local authority reference 21/00930/FUL.

detailing on the frontage. The hipped roof would be lost with the replacement roof comprising a higher roof with flank gable.

12. However, the original building has been altered detrimentally and taking into account both the Broadway and West Street elevations, the development would be a significant improvement on an incoherent, untidy and poorly designed building and site. The West Street building elevation would replace the extended part of the building and servicing area, and would be physically articulated and designed to a high quality to give an interesting appearance and character to the building. The uPVC windows will be replaced with traditional windows more in keeping with the character and appearance of the original building and Conservation Area. Through the imposition of planning conditions, the Council would also have control over the quality of materials.
13. For all these reasons, the new building would enhance the character and appearance of the Conservation Area, as whole. Accordingly, the proposal would comply with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (CS) 2007 and Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (DMP) 2015, which collectively and amongst other matters, require high quality and innovative design, conservation and enhancement, and where necessary adequate mitigation of the effects on the historic environment and optimal use of land.

Accessible and adaptable dwellings

14. DMP Policy DM8 requires new dwellings to be of a high standard of design and layout, and flexible to meet the changing needs of residents. To achieve this, the policy states, amongst other matters, all new dwellings should provide convenient, useable and effective layouts, meet, if not exceed residential and amenity space standards, and meet the Lifetimes Homes Standards.
15. The policy predated the deletion of the Lifetime Homes Standards and the introduction of optional accessibility Building Regulation requirements. The Council's Policy Transition Statement (PTS) updated Policy DM8 replacing Lifetime Home Standards with the purported closest equivalent standard, being the Building Regulation M4(2) requirement for accessible and adaptable homes.
16. The National Planning Policy Framework (the Framework) indicates that Councils should plan to create safe, accessible environments and promote inclusion and community cohesion. This includes buildings and their surrounding spaces. Furthermore, Councils should have a clear understanding of housing needs, including those with specific housing needs.
17. The Council applies its PTS policy consistently with new developments as opposed to conversions. However, the PTS cannot replace development policy and Written Ministerial Statement (WMS)² indicates that the optional Building Regulation requirements should only be applied through new local plan policies if they address a clear evidenced need and where the impact on viability has been considered. Planning Practice Guidance (PPG)³ indicates that Councils should consider the impact of using these standards as part of their Local Plan viability assessment. The PPG⁴ further indicates that Councils should gather

² WMS Planning Update 25 March 2015.

³ Planning Practice Guidance: Paragraph: 002 Reference ID: 56-002-20160519 Revision date: 19 05 2016

⁴ Planning Practice Guidance: Paragraph: 003 Reference ID: 56-003-20150327 Revision date: 27 03 2015

evidence to determine whether there is a need for additional standards in their area, and justify setting appropriate policies in their Local Plans. This has not been demonstrated in this case.

18. There are allowed appeal decisions where a planning condition requiring the provision of the accessible and adaptable building regulation requirement has been imposed. However, the issue of whether or not the provision of accessible and adaptable housing standards was justified, was not at issue between parties in these appeals and therefore, it has not been scrutinised in the way undertaken here. Indeed, from my reading of the appeal decisions, Inspectors have not considered in detail whether the requirement is necessary in terms of national policy.
19. Furthermore, every proposal has to be considered on its particular merits and in this case, no justification has been submitted as set out in PPG⁵. For these reasons, the requirement for the optional Building Regulation M4(2) requirement has not been justified in this instance and there would be no conflict with DMP Policy DM8.

Other Matters

20. St Clements Church, a Grade II* listed building lies within the vicinity of the appeal building. It's significance and special interest derives from its age, dating back to around 1500 and its evolution, including alterations during the 19th and 20th century, prominent position and ecclesiastical architecture. It has an attached graveyard with local connections. Given its size and use, serving the community, it has a wide setting from which it is seen. However, its setting has clearly changed over time, especially with the urbanisation of Leigh-on-the-Sea. The proposal would be for a replacement building and given the existing built-up context, there would be no harm to appreciating the significance and special interest of this building. There would be no conflict with s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
21. The appeal site lies within a defined Zone of Influence, for Essex Coastal Habitats Sites, having regard to the Conservation of Habitats and Species Regulations 2017. In particular, the Benfleet and Southend Marshes Special Protection Area (SPA), Blackwater Estuary SPA and the Foulness Estuary SPA. These are among several sites along the Essex Coast, which are recognised for their value as coastal habitats and are home to internationally important numbers of breeding and non-breeding birds and their coastal habitats.
22. The new development would result in new residents and increased recreation and disturbance, which would have a significantly effect on the internationally important interest features of the site, alone or in combination with other plans and projects. Such an effect would be harmful to these site's conservation objectives.
23. Under the Essex Coast Recreation Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) 2020, the UU would provide a mitigation contribution to offset the significant effect of this proposal, singly or in combination with other developments coming forward. Such a contribution would be for rangers, signage and physical

⁵ Planning Practice Guidance: Paragraph: 007 Reference ID: 56-007-20150327 Revision date: 27 03 2015

works to deter visitors, especially dog walkers from disturbing birds, and affecting habitats. Natural England (NE) were consulted in the preparation of this SPD. For this appeal proposal, it has raised no objection subject to the correction of the contribution figure within the original UU, which has been addressed in the revised UU. Significant weight is attached to the SPD due to its evidence-based nature and the comments of NE, as a statutory consultee on ecological matters. Therefore, with this mitigation, it can be ascertained that the integrity of these habitat sites would not be adversely affected.

24. The car parking provision would be acceptable given occupants would have good access to a range of services and facilities, including buses, by non-private car means. Conditions can require obscure glazing of windows where they face neighbouring properties. Inevitably, residents would use living spaces and vehicles where light would be emitted, and the commercial ground floor operators would also result in light emission. However, there is no evidence that this would be significant given the built-up context of the area, which is dominated by commercial units.

Planning Balance

25. The proposal would preserve the character and appearance of the Conservation Area in compliance with s72(1) of the Act and there is no justification to require the residential units to comply with Building Regulation (4)(2). There are no material considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan and therefore, planning permission should be granted.

Conditions

26. Suggested conditions have been considered in light of the advice contained in PPG. Some have been amended, shortened and amalgamated in the interests of clarity and precision taking into account the guidance. A condition requiring the development to be carried out in accordance with the details shown on the plans is necessary in the interests of proper planning and for the avoidance of doubt.
27. In the interests of the character and appearance of the area, conditions are necessary to control materials and details, and approval of the timing of the development to ensure demolition and construction is temporary given the Conservation Area status of the area. To ensure acceptable living space for the new residents, noise measures need to be implemented. In accordance with DMP Policy DM2, a condition is necessary limiting water usage. Conditions on parking and cycle provision are necessary for highway and sustainable transport reasons. To ensure proper provision, approved refuse arrangements and facilities are necessary. To promote sustainable energy, a condition requiring the implementation of such details is necessary in accordance with specific policy. Conditions on the implementation of an approved construction statement and restrictions on construction hours are necessary in the interests of the living conditions of neighbours.

Conclusion

28. For all the reasons given above and having regard to all other matters raised, the appeal is allowed.

Jonathon Parsons

INSPECTOR

Schedule A

- 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 drawing nos: Location Plan, 2176-01, 2176-02, 2176-03, 2176-04, 2176-05.
- 3) No development above ground floor slab level, other than demolition, shall take place until samples and details of the materials to be used in the construction of the external surfaces of the new building, including bricks and mortar, roof including ridge tile and roof party wall junction, doors and windows, cills, soffits, fascia, cornices, guttering, balustrades/railings and chimney, have been submitted and agreed in writing by the local planning authority. The materials to be used, where appropriate, shall match the external appearance of materials to be used on the original building. Prior to its first use, the development shall be carried out in accordance with the approved details and samples. These materials shall include the reclamation and reuse of key materials including bricks and lintels unless otherwise agreed in writing by the local planning authority.
- 4) Notwithstanding the details shown on the plans submitted and otherwise permitted, no development above ground floor, other than demolition, shall take place until detailed design drawings of the shopfront, including stallriser, framing and fascia, moulded cornice, balustrade including to fixings, lintels, part wall roof division and eaves have been submitted and approved in writing by the local planning authority. The development shall be carried out in full accordance with the approved details before it is brought into use. The detailing of the windows, including reveals, the dividing screen, and dormer details shall be as set out in approved plan 2176-005.
- 5) No demolition shall take place until arrangements have been put in place to secure the redevelopment of the site permitted under planning permission reference 23/01667/FUL and details of these arrangements have been submitted to and approved in writing by the local planning authority. The arrangements shall include details of the timescale for carrying out the redevelopment approved under 23/01667/FUL. The development shall be carried out in accordance with these details unless agreed beforehand in writing by the local planning authority.
- 6) No development shall take place, other than demolition and site preparation works, until details of vibration and noise mitigation measures, to ensure that all habitable rooms achieve the requirements of British Standard BS 8233:2014 (or equivalent document, if superseded), have been submitted to and approved in writing by the local planning authority. The measures shall be fully implemented in accordance with the approved details prior to the first residential occupation of any part of the development.
- 7) The building hereby permitted shall not be occupied until the north and east facing first floor windows of the building have been fitted with obscure glass and fixed shut, except for any top hung fan light, which shall

be a minimum of 1.7 metres above internal finished floor level. Details of the type of obscure glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed shall be retained thereafter.

- 8) Prior to the first occupation of the development, details of water efficient design measures, including water efficient fittings, appliances and water recycling facilities, such as grey water and rainwater harvesting, shall be submitted and approved in writing by the local planning authority. Such measures shall demonstrate internal water consumption being limited to 105 litres per person per day. The measures shall be fully implemented in accordance with the approved details prior to the occupation of the relevant residential or commercial unit and shall be retained for the lifetime of the development.
- 9) The car parking spaces for the dwelling shown on approved plan 2176-03 shall be provided and made available for use at the site prior to the first occupation of the dwellings. The car parking spaces shall thereafter be permanently retained only for the parking of vehicles of the occupiers and visitors to the new dwellings.
- 10) The development shall not be brought into first use unless and until the five secure, covered cycle parking spaces to serve the development shown on the approved plan 2176-03 have been provided on the site and made available for use in line with the approved plans. The approved cycle parking spaces shall thereafter be permanently maintained solely for use by users of the development.
- 11) Prior to the first occupation of the development, the refuse and recycle stores to serve the development shall be provided as shown on the approved plan 2176-03 and made available for use by users of the development in accordance with the approved plans. The approved refuse and recycling facilities shall be permanently retained thereafter.
- 12) Prior to the first occupation of the development, details of energy efficiency and other sustainability measures to be included in the scheme, including the provision of at least 10% of the energy needs of the development being provided from onsite renewable sources, shall be submitted to and approved in writing by the local planning authority. Such measures shall be implemented in accordance with the agreed details.
- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding (including contact details for out of working hours that are displayed on the hoarding);
 - v. a management plan to control noise, dust and dirt;
 - vi. a scheme for recycling/disposing of waste resulting from demolition and construction. No waste materials should be burnt on the site, instead removed by licensed waste constructors; and

vii. Measures to mitigate noise disturbance.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) Demolition or construction works shall take place only between 0800 and 1800 hours Monday to Friday, 0800 and 1300 hours Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.