
Appeal Decision

Hearing held on 20 and 21 October 2015

Site visit made on 20 October 2015

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 November 2015

Appeal Ref: APP/D1590/W/15/3030441

823-837 London Road, Westcliff-on-Sea, Essex SS0 9SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Laindon Holdings Limited against the decision of Southend-on-Sea Borough Council.
 - The application Ref 14/01052/FULM, dated 1 July 2014, was refused by notice dated 11 December 2014.
 - The development proposed is demolition of vacant car showroom and workshops, followed by the erection of a four storey building with local convenience store at ground floor level and 31 retirement apartments above, parking, access and landscape deck.
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Decision

1. For the reasons given below, the appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Laindon Holdings Limited against Southend-on-Sea Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. It was confirmed at the Hearing that the list of plans on the Council's decision notice was not complete or accurate and that the correct list was in Section 9 of the Statement of Common Ground. A number of additional drawings were submitted with the appeal. However it was clarified at the Hearing that these did not change the submitted scheme. Rather they were intended to supplement the application drawings and provide context, including a comparison with nearby developments that had been permitted. There were also some visual impressions.
4. It was confirmed at the Hearing that those policies in the Southend-on-Sea Borough Local Plan that were referred to in the reasons for refusal had not been saved following the adoption of the *Development Management Development Plan Document* (DMD) in July 2015.
5. On 8 July 2015 the Council determined that it would not be pursuing the third reason for refusal, which related to parking issues.

Preliminary Matters

6. The Council has not objected to the loss of the existing employment use or to the principle of the proposed uses. The development plan makes clear that there is a growing need in the Borough for accommodation for the elderly. I note the point made by one objector that a main road location is not the right place for older people to live. However the Council's Environmental Health Officer did not raise objections to the proposal on the grounds that the vicinity was either excessively noisy or suffered from damaging levels of air pollution. Conversely it is of importance that this is a sustainable location where new occupiers would have shops and facilities close at hand.
7. The supermarket is proposed to be occupied by Morrisons. On the Policy Map to the DMD, the appeal site is shown to lie between two secondary shopping frontages. The DMD only defines Town and District Centres and although it refers to Local Centres it is not altogether clear where they are. Whether or not these secondary frontages could properly be classified as a Local Centre, the retail assessment undertaken in 2012 concluded that there were no suitable or available alternative sites in a sequentially preferable location. The Council is satisfied that this remains the case and from what I heard at the Hearing I have no reason to reach a different conclusion.
8. A retail impact assessment would not be required in this case because the proposed retail floorspace would be well below the 2,500 m² threshold in Paragraph 26 of the Framework. There is no locally applicable lower threshold in the development plan. The evidence indicates that the predicted turnover would be too small to have a material effect on the vitality or viability of either Leigh or Westcliff District Centres or Southend Town Centre. I appreciate that some local shopkeepers are concerned about the effect on their businesses. However it is not the purpose of the planning system to inhibit competition between one retail outlet and another. In any event the new store may well increase footfall and provide benefits for local businesses in the adjacent secondary frontages. Whilst I saw a number of other supermarkets along London Road, the Framework does not require an assessment of need to be undertaken for retail proposals. For all these reasons the proposal would comply with the Framework and Policy CP2 in the Core Strategy.
9. The Council's Annual Monitoring Report indicates that there is a 5.3 year supply of deliverable housing sites going forward from 2013. The Appellant contended that this did not include a 5% buffer as required by Paragraph 47 of the Framework and if this were to be applied the supply would fall to around 5.1 years. Unfortunately there is no more recent housing update but no party had any evidence to demonstrate that the situation had worsened or that sufficient deliverable sites will not come forward to maintain the supply. There is thus insufficient information to conclude other than that the policies for the supply of housing in the development plan are up-to-date.
10. There was no allegation that other policies relevant to the appeal were other than compliant with the Framework. In such circumstances the presumption in favour of sustainable development in Paragraph 14 of the Framework means that the appeal development should be determined in accordance with the development plan, unless material considerations indicate otherwise.

Reasons

The effect of the proposed development on the character of the area and the street scene

11. The appeal site is on the northern side of London Road within a built-up frontage opposite Chalkwell Park. At this point there is a mix of commercial and residential uses and a variety of built form. Some of the traditional two storey properties have high rooflines into which third floors have been inserted. There are also several more recent utilitarian buildings of two or three storeys in height. The appeal site and its neighbour to the east are not in keeping with the relatively tight grain of development that otherwise typifies the vicinity. On the appeal site is a large vacant building, which was previously used as a car showroom and workshop with car parking on its eastern side. This is adjoined by an L-shaped property used as a carpet showroom and warehouse. Overall this part of London Road does not have a cohesive or easily discernable character. Buildings are generally two and three storey in height and in places there is a somewhat rundown appearance.
12. However this is an area that is in the process of change. To the west of the appeal site a number of larger scale developments have either been permitted or built. At 853 London Road and 3-5 Leigh Road four storey apartment blocks have recently been constructed. At 845 London Road outline planning permission and reserved matters approval have been granted for a four storey block comprising 22 flats and 2 commercial units. I observed that the site has been cleared but this development has not yet been built. On the adjoining site, No 843, outline planning permission has been granted for a four storey building with 9 flats and offices on the ground floor. It is within this evolving context that the appeal scheme should be considered.
13. Policy KP2 in the Core Strategy addresses development principles, including making best use of previously developed land and securing quality design in the urban environment. Policy CP4 seeks to achieve a high quality, sustainable urban environment. Policy DM1 in the DMD requires that development should add to the overall quality of an area, respecting its context and surroundings in terms of height, scale and massing, amongst other things. It also includes specific reference to the guidance in the *Design and Townscape Guide* supplementary planning document (SPD) where applicable. Policy DM3 encourages the efficient and effective use of land provided it is well designed and responds positively to local context.
14. The building, excluding the small roof structure, would be about 13.6 m in height and therefore materially higher than the development permitted at No 845, which would be about 11.4 m to the top of the fourth storey. The illustrative drawings for No 843 show a comparative height of around 11.9 m, although matters of appearance, layout and scale have not yet been approved as far as I am aware. The proposed fourth storey of the appeal building would be constructed as a mansard style roof. This would be set in from either end of the building by a small amount but there would be minimal setback from the main front wall. Even if the projecting front bays are taken into account, the set back would be little more than one metre. Although some of the dormer windows would be recessed others would project out beyond the main roofslope, which would slope back at a fairly steep angle. This would be in contrast to Nos 843 and 845 where the fourth storey is shown on the

illustrative and approved drawings respectively to stand well back from the main front wall. Such a set back would reduce the visual prominence of the fourth storey and hence the overall scale of the building. It is noted that the SPD refers to the introduction of set backs at upper levels as a means by which the scale of larger buildings can be reduced.

15. It is appreciated that No 845 would have a 1.8 m high privacy screen above its fourth storey that would enclose a roof top amenity space. However this would also be set back from the lower parts of the building façade. Although a condition on the reserved matters approval requires the screen to be obscure glazed it would be a lightweight structure with a very different visual appearance to the solid mansard roof of the appeal scheme, even taking account of its pale grey colour and standing seam construction. The plans for No 843 also show a rooftop terrace with a privacy screen. However the Inspector commented in his appeal decision on the outline application that this would have implications for the appearance of the development and that the facility could be reduced in area or re-sited due to its illustrative nature. In the circumstances the appearance of the upper part of No 843 may well significantly change when reserved matters are submitted.
16. The width of the proposed development would be about 53 m. This would be considerably greater than the new apartment blocks permitted to the west. Nos 843 and 845 would be separate developments even though I was told that in both cases the developer and architect are the same. Although the two buildings would be close together and the Appellant's street scene drawings show two similarly designed developments, it is important to remember that the permission for No 843 is only in outline form. Even from the street elevation provided with the appeal, which is based on the illustrative drawings for No 843, it can be seen that there are differences at fourth floor level and that this upper storey would not read as a single continuous feature. By contrast the appeal building would have an unbroken four storey roofline across the whole site save for indents of about one and two metres at the eastern and western ends respectively.
17. Even allowing for the curve in the road, the main bulk of the proposed building would be further forward than either the existing or proposed buildings on adjoining sites to the west. Furthermore, there would be a large and rather heavy looking projecting element incorporating a small entrance lobby and a larger open area supported by piers with an entrance deck at first floor level. This would be well forward of the main building line of existing buildings immediately to the east. To my mind the positioning of the built development would further emphasise its prominence.
18. Although someone standing on the pavement immediately outside the building would not be aware of the full height of the building, it would be evident from the far side of London Road and in longer views, including from Chalkwell Park. Furthermore when approaching from either side, especially from an easterly direction, the bulk of the building would be readily apparent, including the single storey projecting entrance canopy. I appreciate that the palette of materials would provide visual interest to the flank walls. I also acknowledge that at some time the site to the east may be redeveloped, although I was made aware of no proposal in the pipeline at the moment. Nevertheless in my opinion from this viewpoint the scale of the building would be fully appreciated. This would be an overly dominant and assertive development that would fail to

successfully integrate with its surroundings and unacceptably detract from the existing and evolving street scene of which it would form a part.

19. The Appellant's evidence at the Hearing was that the floor heights indicated on the approved drawings for Nos 843 and 845 would be unlikely to be feasible taking account of the Building Regulations and servicing requirements. However it is relevant to note that the outline permission for No 845 included a condition that the building should not exceed 11.4 m in height. If the approved elevations are not capable of implementation then the development would not be able to be built in accordance with the planning permission. Reference was made to 3-5 Leigh Road as being an approved development of over 12.5 m in height. However this is a corner site and adjacent to Chalkwell Hall Junior School, which itself is a substantial building with a steeply pitched roof. The situation here is sufficiently different that it is not a good comparator to the appeal proposal.
20. 853 London Road is also over 12.5 m in height, albeit that it appears to have been built considerably higher than approved. The Appellant has made the point that taking account of the higher land level, the difference in roof lines between it and the appeal building would only be about 0.3 m. Whilst this may be the case, No 853 is a much narrower building and is separated from the site of No 845 by the two storey building housing the Westcliff and Chalkwell Synagogue. The visual impact of No 853, which also stands well back from the road frontage, would not be comparable to the appeal scheme.
21. It is appreciated that the Appellant has revised the design and materials to add visual interest and articulation in order to address the Council's concerns on a previous scheme. Nevertheless the height and width of the building remains the same and for the reasons given the proposed building would be unduly dominant and would fail to respect its surroundings. This is not a landmark site but rather one part of a streetscape that is currently undergoing change. The SPD envisages situations where increases in building height can be acceptable, such as to provide variety in the roofline for example. However in this case the concern relates to the height combined with the width and forward projection of the building. This would result in a scale of development that would be unacceptable.
22. The Framework makes clear that good design is a key aspect of sustainable development. For the reasons given I do not consider that the present proposal would be good design and I conclude that it would unduly harm the character of the area and the street scene.

The effect of the proposed development on residential amenity

23. At the site visit I was invited to view the appeal site from several residential properties in Wellington Avenue to the rear. These are two storey houses in short terraces. In some cases rear and roof level extensions have been built. There is no doubt that the appeal proposal would result in a considerable change in outlook. In place of the low rise commercial buildings and open car park would be a four storey building across the whole of the site. Current views of the trees or open spaces of Chalkwell Park or the sea beyond it, would be lost. I can appreciate that this would be most unwelcome but it is the case that there is no right to a view across someone else's land. The relevant matters are whether the new development would be unduly overbearing or unacceptably reduce the light or privacy that is currently enjoyed.

24. The landscaped deck would be some 4.3-4.6 metres from the rear site boundary and enclosed by a wall about 5.6 m in height above ground level. To the north of this would be a roof enclosing the rear parking spaces and a further wall along the back boundary of around 2.3 m in height. Although the main part of the building would stand behind the landscaped deck, there would be a single storey flat at first floor level extending out towards the rear boundary. Whilst this would be higher than the existing commercial building it would be narrower and would be inset sufficiently to ensure that it would not appear intrusive. The higher of the two brick walls would be far enough away from residential properties to ensure that an unreasonable degree of enclosure would not ensue.
25. The main part of the new building would be about 14 m from the northern site boundary and about 28-30 m from the rear of the houses in Wellington Avenue. In my judgement the distances would be sufficient to ensure that it would not appear unduly overbearing or result in a sense of enclosure to houses or gardens to the north. There would be a small building housing a stairway and communal space at fifth floor level. However this would be well set back from the rear elevation and I do not consider that it would be an intrusive feature.
26. The new building would be to the south of the houses in Wellington Avenue. The Appellant has prepared a study which shows the shadows cast at the Spring equinox. This indicates that the development would only affect the southernmost ends of the rear gardens. However the study takes no account of existing conditions. At my site visit, which was on a sunny afternoon a month after the Autumn equinox, I observed that the sunlight to many of the gardens was already restricted. Clearly in the summer months the situation would be improved. Taking account of advice in the British Research Establishment's document *Planning for Daylight and Sunlight* I consider that the enjoyment and amenity value of the gardens, and the sunlight they presently receive, would be unlikely to significantly change.
27. When considering the issue of privacy it is relevant to bear in mind that this is an urban location where a degree of mutual overlooking is not unusual. It is appreciated that the new development would result in a large number of windows in the rear elevation where none currently exist. On the other hand these would be about 28-30 m from the rear of the existing houses and about 14 m from the bottom of their gardens. Although there would be full length windows and glazed screens to the first and second floor living areas these would not be provided with external balconies for sitting out. There would be a window to Flat 1 close to the boundary and also to the roof top communal structure. However these could be obscure glazed or removed altogether by means of a planning condition.
28. The main amenity deck would be at first floor level and there would be a conservatory at the eastern end. The deck would be screened by a wall and landscaping to prevent those using the deck or conservatory from being able to look out towards the existing rear gardens. The main view from the roof terrace would be towards Chalkwell Park and the proposed screens and planted perimeters would prevent overlooking to the rear. The landscaping and enclosures could be controlled through a planning condition.

29. Servicing to the retail store would be from London Road but some objectors were concerned about the noise from delivery cages. It is proposed that deliveries would not take place during the night or very early morning when the noise environment along this busy road would be expected to be quieter. In the circumstances it seems unlikely that there would be any unacceptable disturbance to those living nearby. The rear car park would be enclosed and separated from the residential boundaries by the boundary wall and alleyway. There would be grilles within the rear boundary wall but it was explained at the Hearing that these were solely for ventilation purposes with no mechanical operation. The wall would act as an acoustic barrier and it seems likely that vehicular movements would be limited due to the nature of the occupation. In the circumstances I am satisfied that residents to the rear would not be unduly disturbed by vehicular activity in the parking area.
30. For all of the above reasons it is concluded that the living conditions of nearby residential occupiers would not be adversely affected by the appeal proposal.

Other Matters

31. There is no dispute that the Borough has a need for affordable housing and consequently Policy CP8 in the Core Strategy seeks 20% of housing to be affordable for a development of this size or, exceptionally, for a commuted contribution. A viability exercise was undertaken which showed that an open market scheme would not generate sufficient profit to allow any contribution to be made. This has been independently scrutinised by the District Valuer.
32. Although the viability work was not assessed in this way, it is the intention of the Appellant to undertake the development on a not-for-profit philanthropic basis. This would be similar to the Brimsdown Apartments in Laindon which is also operated by the Appellant. I have no doubt that it is a popular and successful concept where elderly residents purchase a 60 year lease and then are guaranteed the lease to be bought back at the same price net of the service charges. These cover nearly all expenses, including everyday bills, so there are very few additional outgoings. However any planning permission would run with the land and a personal restriction would be inappropriate for a development of this nature. In the circumstances there is no guarantee that the development would go ahead on this basis and so little weight can be given to it as a material consideration.
33. On the other hand considerable weight can be attached to the provision of housing for elderly people for which the Strategic Housing Market Assessment has made clear there is a growing need. This could be controlled through a planning condition requiring occupants to be over the age of 65 years. Not only would the proposal provide independent living within a caring environment but it would also have the potential to release larger houses more suitable for family occupation.
34. The Council withdrew its objection on parking but it is still of concern to local people. The parking standard for retirement developments is 1 space per dwelling. However Policy DM15 in the DMD indicates that this may be applied flexibly in sustainable locations such as the appeal site. The Appellant has considered local car ownership levels and has estimated that the development would require 23 spaces. This would leave 6 spaces for visitors. At the Appellant's Laindon retirement development the evidence is that only about 30% of residents have a car. The Council's parking requirement for

commercial uses is a maximum standard. 14 spaces would be provided on the site for those using the foodstore. This would be a small local facility for day to day purchases rather than somewhere that people would drive to in order to carry out a main food shop.

35. The Appellant undertook a parking survey of the surrounding area. Whilst I have no doubt that streets such as Wellington Avenue have few available kerbside spaces, the survey showed that there is available on-street parking in the vicinity. The Highway Officer has not raised objections to the appeal proposal on parking grounds. This is a matter of some weight as it is the Council as Highway Authority who is responsible for the safe function of the local road network. In the circumstances I consider that the parking provision would be sufficient to meet the needs of the development in accordance with Policy DM15.

Planning balance and conclusions on sustainable development

36. The appeal development would have a number of advantages. It would help meet the increasing need for residential accommodation for the elderly. It would also make efficient and effective use of a rundown brownfield site that has been vacant since about 2009. Furthermore, the retail unit would have the potential to increase footfall with beneficial effects for the overall vitality and viability of the secondary shopping frontages on either side of the site. There would be new jobs created both at construction stage and once the development had been completed. The new population would also generate income through local spending and therefore give rise to economic benefits.
37. However against these advantages would be the substantial harm to the local environment. A redevelopment could considerably improve the appearance of the site and contribute positively to the changing character of this part of London Road. However this particular proposal would be overly dominant and intrusive in the street scene and thus unacceptably harmful. It would be contrary to Policies KP2 and CP4 in the Core Strategy, Policy DM1 in the DPD, the Framework and the guidance in the SPD. The Framework makes clear that sustainable development comprises three interrelated dimensions and in this case the environmental role would not be satisfied. The proposal would not be a sustainable form of development and the appeal does not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Mr C Green BA(Hons) DipTP MRTPI | Director of Town Planning Services Ltd |
| Mr R Weedon BA DipArch ARB | Saunders Partnership |
| Mr J Brook | Director of Laindon Homes Limited |
| Mr R Phillips QC | Francis Taylor Building |

FOR THE LOCAL PLANNING AUTHORITY:

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| Ms J Rowley MA MRTPI | Senior Planning Officer with Southend-on-Sea Borough Council |
| Ms A Greenwood BSc(Hons) PGDip MRTPI | Senior Planning Officer in Design and Conservation with Southend-on-Sea Borough Council |
| Mr P McIntosh BRTP | Team Leader of Planning, Enforcement and Appeals with Southend-on-Sea Borough Council |

INTERESTED PERSONS:

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|----------------|-----------------------------------|
| Mr I McLernon | Local resident |
| Ms J Raphael | Local resident |
| Mr M Caplan | Westcliff and Chalkwell Synagogue |
| Mr G Mitchell | Local resident |
| Mrs K Allen | Local resident |
| Mr M Patel | Local resident |
| Mr N Fox | Local resident |
| Ms J Childs | Local resident |
| Mr M Pinkney | Local resident |
| Mr J Redburn | Local resident |
| Mrs J Sherlock | Local resident |

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground between the Appellant and Council
- 2 Extracts from the *Development Management Development Plan Document* (July 2015)
- 3 Policies Map from the *Development Management Development Plan Document*
- 4 Extracts from the *Design and Townscape Guide* Supplementary Planning Document (2009)
- 5 Annual Monitoring Report (December 2013)
- 6 Local newspaper articles, including a plan showing supermarkets in London Road (submitted by Ms Raphael)
- 7 Copies of planning permissions for 845-849 London Road
- 8 Appeal and cost decisions relating to the reserved matters application at 845 London Road (20 May 2015)
- 9 Appeal decision relating to 51 retirement apartments at Brentwood (22 July 2013)
- 10 Copy of covering letter that accompanied the appeal (5 May 2015)
- 11 Report to the Council's Development Control Committee concerning the third reason for refusal on parking
- 12 Application for costs made by Mr Phillips on behalf of the Appellant, along with associated correspondence
- 13 Response to the costs application by the Council
- 14 Further correspondence concerning the costs application following the close of the Hearing

PLANS

- A/1-A/13 Application plans
- B/1-B/12 Plans submitted with the appeal

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