



## Appeal Decision

Site visit made on 26 November 2015

by **Philip Willmer BSc Dip Arch RIBA**

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

Decision date: 2 February 2016

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**Appeal Ref: APP/D1590/W/15/3131882**  
**57 Elm Road, Leigh-on-Sea, Essex, SS9 1SP.**

- 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 Mr Malcolm Thornton (Stronghold Estates Ltd) against the decision of Southend-on-Sea Borough Council.
  - The application Ref 14/01913/FUL, dated 26 November 2014, was refused by notice dated 22 January 2015.
  - The development proposed is to construct 2 additional floors to provide 6 new self contained residential apartments and carry out minor internal alterations to the 1st floor offices.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Since determining the application, the Council has adopted its Development Management Document and therefore the policies contained in this document have replaced those policies referred to in the Southend-on-Sea Borough Local Plan-Towards 2001 (Adopted March 1994). I shall consider the appeal accordingly. Further, the Council has also adopted its Community Infrastructure Levy (CIL) Charging Schedule and the development if allowed would, I understand, be CIL liable.

### Main Issues

3. I consider the main issues to be:
  - a) the effect of the proposed development, by reason of its design, on the character and appearance of the area; and
  - b) the effect of the potential for noise and disturbance from existing commercial uses on the living conditions of future residential occupiers.

### Reasons

#### *Character and appearance*

4. The property the subject of this appeal, 57 Elm Road, is a two-storey building comprising a public house on the ground floor with offices over. The building is a utilitarian structure with an expressed concrete frame and a mostly rendered/brick
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frontage. Due to its flat roof form and fenestration pattern, it visually contrasts with the vernacular form and detail of the surrounding buildings including the police station, sited to the north, that is locally listed.

5. While retaining the existing public house and offices, the appellant proposes the construction of two additional storeys to provide six new self-contained flats. As identified by the Council there are several three, four and five storey buildings nearby. Accordingly, I agree that there is scope to increase the height of this building without harming the townscape character of the surrounding area.
6. The proposed extension would be set back from the front façade of the building at second floor level and again on the third floor thereby reducing the extension's visual impact on the streetscene and the neighbouring buildings to either side. In addition, the lift shaft and staircase tower would be set well in from the street elevation further reducing the visual mass of the building and adding to its modulation as extended. The stepping back of the main façade above first floor level and, although limited, the introduction of windows and two balcony projections to the north elevation, would also serve to better articulate what is currently the somewhat bland and utilitarian appearance of that elevation. The appellant proposes a limited palette of materials that would not only respect the architectural integrity of the host building but also, as illustrated on the application drawings, further add to the visual interest of the building as extended.
7. While the proposed additional floors would screen to some extent the telephone exchange to the rear, the building as extended would be visible above the neighbouring buildings in longer views from Elm Road, Rectory Grove and from the public car park, making it a prominent feature. Nevertheless, in my judgement, the proposed development would, on balance, overall serve to enhance the street scene as well as the character and appearance of the area while not causing demonstrable harm to the setting of the neighbouring heritage asset, being the police station.
8. I therefore conclude, in respect of the first main issue, that the proposed development, by reason of its design, would not cause harm to the character and appearance of the area or the setting of the neighbouring heritage asset. It would therefore accord with the objectives of the National Planning Policy Framework (the Framework), the Southend-on-Sea Borough Council Local Development Framework-*Development Plan Document One-Southend-on-Sea Core Strategy* (Adopted December 2007) (CS) Policies KP2 and CP4, Policies DM1 and DM8 of the Southend-on-Sea Borough Council Local Development Framework-*Development Management Document* (Adopted July 2015) and the SPD1 - Design and Townscape Guide (Adopted 2009) as they relate to the quality of design, safeguarding and enhancing the historic environment, respecting the local context and contributing to and enhancing the distinctiveness of place.

#### *Living conditions for future residents*

9. The property is located in a high density urban location alongside a busy road close to its junction with Rectory Grove and North Street. The property is near to a public car park and next door to the police station. The area around the appeal site is characterised by a concentrated mix of commercial, residential, retail and religious premises. The ground floor is currently occupied as a public house.
10. The Council is concerned that the commercial use of surrounding properties, in particular the public house, may cause noise and disturbance to the detriment of the living conditions of future occupiers. In addition, it is concerned that the

proposed development should not pose an additional constraint on the operations of the public house and its ability to continue to contribute to the evening economy of Leigh. According to the Council's evidence, which is not disputed by the appellant, the public house use here has given rise to justifiable complaints of noise and disturbance arising from the playing of amplified music in the past.

11. Subsequent to the determination of the planning application, the appellant commissioned and submitted a Noise Assessment. The survey, upon which the assessment is based, was carried out over a continuous twenty-four hour period from 15.15 on Thursday 21 May 2015 until 15.15 on Friday 22 May 2015. The author of the report has identified that the recommended sound level for sleeping in BS 8233:2014 is 30dB LAeq,8hr (between 23.00 and 07.00 hours). In terms of the findings of the survey the appellant contends that based on a night-time average noise level of 49dB, correctly specified double glazing would provide the necessary 19dB of mitigation.
12. The Council accepts that 30dB LAeq,8hr is the standard to be achieved. However, it contends that the background noise levels would be likely to be higher than those recorded if the survey had been undertaken on a Friday or Saturday night. Indeed it also identifies that maximum noise events over the period of the survey were, in any case, higher than the 49dB average used by the appellant in his calculations. Accordingly, therefore, the 19dB of mitigation afforded by the proposed double glazing would not be sufficient, albeit over a short period of time, to achieve the 30dB standard.
13. I agree that it would be reasonable to expect background noise levels to be higher over a Friday or Saturday night. While this is an urban location, where future occupants might expect some disturbance as a result of the night-time economy, I do not disagree that it is reasonable to require the new development to achieve sound levels within the flats that meet the objectives of the current British Standard so as to provide acceptable living conditions.
14. I therefore conclude, in respect of the second main issue, that on balance, due to the limited survey undertaken, the evidence submitted by the appellant has not demonstrated that the commercial uses at the site could be carried on without resulting in undue noise and disturbance to the living conditions of future occupiers of the proposed flats. The proposal would therefore fail to accord with the aims of CS Policy KP2 and guidance contained within the Framework, in so far as each relates to the protection of the living conditions of residential occupiers and the need to safeguard and promote the vitality and viability of existing town and local centres.

## **Conclusions**

15. I have concluded that the proposed development would not adversely affect the character and appearance of the area. However, I consider that this factor is outweighed by the unacceptable harm that would ensue to the living conditions of future residential occupiers as a result of the potential for undue noise and disturbance from the existing commercial uses at the site. To my mind, this is a compelling objection. I have considered all the other matters raised, but none change my overall conclusion, reached on the planning merits of the proposal, that the appeal should not succeed.

*Philip Willmer* INSPECTOR