



Report to the Secretary of State for Communities and Local Government

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

Date 30 July 2007

TOWN AND COUNTRY PLANNING ACT 1990
SOUTHEND-ON-SEA BOROUGH COUNCIL
APPEAL BY SOUTHEND PROPERTIES (GUERNSEY) LTD

Inquiry opened on 19 April 2007

Heath House and Carby House, Victoria Avenue, Southend-on-Sea, SS2 6AR

File Ref APP/D1590/A/06/2027683

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Heath House and Carby House, Victoria Avenue, Southend-on-Sea, SS2 6AR

- 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 Southend Properties (Guernsey) Ltd against the decision of Southend-on-Sea Borough Council
- The application Ref SOS/06/00598/FUL, dated 16 May 2006, was refused by notice dated 2 August 2006
- The development proposed is the redevelopment of the site with part 4, 8, 10, 11 and 12 storey buildings comprising 280 flats with commercial uses at ground floor level, the provision of 166 car parking spaces, cycle storage for 288 cycles, amenity space, refuse storage and accesses onto Harcourt Avenue and Baxter Avenue

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

- 1 The Inquiry sat for 3 days. It opened on 19 April 2007 but, because there had been a delay in providing the Council with the appellants' proofs, was adjourned. It resumed on 26 April and closed on 15 June. The site visit took place on 19 April.
- 2 The principal parties reached agreement before the opening of the inquiry on the drawings which were relevant. These include some which were not listed on the Council's decision notice together with further drawings including minor amendments or providing additional illustrative detail. These drawings are listed at Annex B and I have taken them into account in reaching my recommendation. I am satisfied that no party to the inquiry has been prejudiced by my having done so.
- 3 At the inquiry an application for costs was made by Southend Properties (Guernsey) Ltd against Southend-on-Sea Borough Council. This application is the subject of a separate Report.
- 4 By letter of 17 November 2006, the Secretary of State directed that she should determine the appeal instead of an appointed person. The reason for this direction was that the appeal raises policy issues relating to a residential development of more than 150 dwellings which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 5 The Council refused the application for the following reasons:
 - 1) The proposed development would lead to a permanent loss of the employment generating potential of this prime town centre employment site within the Borough which has only a limited supply of such land to meet the employment requirements of the workforce in a sustainable manner and where there is a surfeit of supply of housing land. This would be contrary to Borough Local Plan Policy E4, Policies CS1, CS3, CS4, BIW2 and BIW4 of the Essex and Southend Replacement Structure Plan, and RSS14 and related panel report.
 - 2) The proposed development fails to meet the requirements of the Planning Brief in that it does not include provision of adequate numbers of key worker dwellings and this

together with design and detail of the proposals means that it would fail to act as a suitable catalyst for the economic regeneration of Victoria Avenue and the town centre and would therefore be contrary to the underlying thrust of planning policy for the area.

- 3) The applicant has failed to demonstrate that the development would be properly and adequately serviced and that servicing would not take place from the highway. The lack of adequate servicing would result in vehicles parking and manoeuvring on the highway, to the detriment of the free flow of traffic, highway safety and the amenities of adjacent residents and would be contrary to Policies T8, T12 and H5 of the Borough Local Plan and T3 and BE1 of the Essex and Southend Replacement Structure Plan

The Site and Surroundings

6. Heath House and Carby House are office blocks constructed in the 1960s and are of 11 and 8 floors respectively, each with service structures visible above the topmost floors. The main part of Heath House is parallel with but set well back from Victoria Avenue and has a rear wing projecting towards Baxter Avenue from which it has a secondary vehicular access. Carby House is on the corner of Victoria Avenue and Harcourt Avenue and projects further forward, close to the apex of the junction. The remainder of the site is largely hard surfaced parking area although there is a modest amount of landscaping between the parking area and the narrow service road which runs parallel with Victoria Avenue along the site's principal frontage. Both buildings are vacant and have been stripped of their interior fixtures and fittings, including most of the partition walls. The exterior cladding remained in place at the time of the inquiry.
7. The site is at the northern end of a group of 1960s and 1970s office buildings of similar scale which line the west side of Victoria Avenue, facing a group of public buildings along the east side ranging from the Council offices opposite the appeal site to Southend Victoria station at the southern end. On the west side of the site are a number of smaller office buildings facing Baxter Avenue, on the opposite side of which is an area of largely two-storey housing. There is similar development to the north of the site beyond Harcourt Avenue.

Planning Policy

8. RPG9 sets out the regional planning guidance for the South East Region including requirements for economy in the use of land and Policy Q1 states that 60% of all new development should be on previously developed land. The replacement regional guidance will be in RSS14 – the Regional Spatial Strategy for the East of England. This is approaching completion and can be accorded significant weight. Policy TC/SE2 which deals with employment generating development in the Thames Gateway area seeks to provide 13,000 jobs in the Borough in the period 2001 to 2021.
9. The development plan includes the Essex and Southend-on-Sea Replacement Structure Plan 1996-2011 (SP), adopted in 2001, and the Southend-on-Sea Borough Local Plan, adopted in 1994 (LP).
10. SP Policy CS1 states that development and economic growth will be accommodated in a sustainable manner which counters trends towards more dispersed patterns of residence by a number of means. A balance between housing and employment provision within local areas will be sought. Economic success will be encouraged by Policy CS3 and sustainable new development is promoted by Policy CS4, including the achievement of a sustainable balance between local jobs and workers. Policy BIW1 sets a target of 30ha as a net increase

in employment land for the Borough over the period 1996 to 2011 and Policy BE2 provides for mixed use developments in appropriate locations, particularly within town centres. An adequate range of sites and premises is to be provided to meet the needs of business, industry and warehousing under Policy BIW2. Existing employment sites currently in use or identified for future business, industry or warehousing use will be safeguarded by Policy BIW4 from redevelopment or change of use, particularly in designated 'Priority Areas for Economic Regeneration'. Policy T3 promotes accessibility through appropriate design of access arrangements for all forms of transport.

11. LP Policy H2 seeks to provide low cost accommodation suitable for small households and an element of affordable housing in new residential proposals. The loss of existing major office floorspace is precluded by Policy E2 unless alternative development is proposed which would bring clear benefits to the town in terms of facilities provided and jobs created. Policy E4, referred to in the Council's decision notice, makes similar stipulations in respect of the loss of land identified for industrial, warehousing or other business use on the proposals map, but the site is not so identified. The Policy adds that elsewhere permission for such proposals will only be granted where specified criteria can be met, including sites where it can clearly be demonstrated that the premises are no longer suitable for industrial or warehouse use. Policies T8 and T12 deal with vehicular access and servicing respectively. Additional land for industrial development at Fossetts Farm was added in the Second Alteration to the LP, adopted in 1999.
12. The Council is proceeding with the preparation of a Local Development Framework (LDF) and my attention has been drawn to a number of documents published in this connection, including a Core Strategy Document as submitted to the Secretary of State in August 2006 and on which an examination in public (EiP) commenced in early 2007. It includes objectives SO5 and SO6 to provide for not less than 13,000 net additional jobs and 6,000 net additional dwellings respectively in the period 2001 to 2021. Policy CP1 seeks to provide 3,000 net additional jobs in the town centre and central area between 2001 and 2011, 1,500 jobs between 2011 and 2016 and 2,000 in the period 2016 to 2021. It also resists the loss of existing employment land unless the proposals would contribute to job-led regeneration in other ways. Net additional dwelling totals of 650, 750 and 250 are sought for the same three periods by Policy CP3. The results of the examination in public of the Core Strategy are not yet available, limiting the weight that can be attached to the emerging policies.
13. In addition, Hearing Papers on Housing and Employment have been submitted to the EiP. I have also had regard to an Issues and Options report prepared in connection with the Town Centre Area Action Plan, and to the Southend Annual Monitoring Reports for 2005 and 2006 (SAMRs). The weight that can be accorded to these documents at this stage is, however, limited.
14. In January 2004 the Council published the 'Redevelopment of Heath House and Carby House Project Management Brief' which identified the site as having potential for a development of 60% office space, 20% associated commercial space and 20% residential as a contribution to the regeneration of the area. There was no formal public consultation on this document, however, and it can therefore be accorded little weight.

Planning History

15. In 2004 an application was submitted for a development of 446 flats on the appeal site in a building of 9, 11 and 12 storeys achieved through partial demolition of the existing

buildings, together with 252 parking spaces. The Council resolved to grant permission subject to a S106 agreement with a range of requirements including the provision of 240 shared ownership dwellings for key workers, a provision for which central government funding was potentially available at the time. The funding arrangements subsequently changed and no S106 agreement has been completed.

16. Permission was granted in 2004 for the removal of cladding, fixtures and fitting, the retention of the building's frame and floors and works to make good at Heath House in association with the concurrent demolition of Carby House.

The Proposals

17. The ground floors of the two blocks would be adapted to commercial uses with provision being made for a small convenience store, a restaurant/bar, local medical facilities and a day nursery. There would be 166 car parking spaces and 288 secure cycle storage places. The remainder of the buildings would be adapted and remodelled to accommodate 280 flats, 84 of which would be affordable housing units. The principal additions would be a three floor wing coming forward from the central part of Heath House up to the frontage with Victoria Avenue and a range of projections from the existing facades to provide balconies. The adapted buildings would be completely re-clad. The area between the new three storey wing and Carby House would be screened from Victoria Avenue and would provide part of the parking area. To the south of the new wing, however, a public square would be created.

The Case for Southend Properties (Guernsey) Ltd

18. The Council has agreed that the servicing issue, reason for refusal 3, is resolved. It has also formally withdrawn reason for refusal 2¹. As part of that concession, the Council expressly accepted that the design of the proposals would be acceptable and would assist the regeneration of the area, and that the 'Planning Brief' was a matter to which no weight should be applied.
19. The only outstanding issue relates to the amount of employment generating floorspace within the proposal. The Council argues that the site should be redeveloped for a mixed use with an unspecified amount of employment generating floorspace whereas the appellant argues that it is unnecessary in policy or any other terms to require more employment generating uses on the site than are present in the proposals.
20. The way the Council put its case at the inquiry is not the same as reason for refusal 1. It has understandably changed its ground, because it recognises that it is untenable to seek to prevent housing on the site. Its case appears to be that the site would be better used with more employment generating development on it, because otherwise harm would arise first because there would be a 'lost opportunity' and secondly because there is no need for housing, and a jobs target needs to be met.

The housing credentials of the site

21. The site is agreed to be in a highly sustainable location, and to comprise previously-developed land. Its reuse for housing would comply with PPS3, particularly as it would bring significant regeneration benefits to Victoria Avenue and is agreed to be an example of good design. No objection is taken to the mix or type of units proposed. The regeneration benefits are not confined to the huge improvement the building will make to the physical

¹ Document 20

environment of Victoria Avenue. The housing units will provide regenerative economic benefits in terms of money spent in the town centre. The affordable housing units (which might be key worker housing, which the Council accepts would be regenerative) would themselves aid regeneration because those with lower paid jobs are necessary to the economy of the area too.

- 22 Mr Pilkington from Renaissance Southend Ltd appeared at the inquiry, although he did not do so with authority from the constituent members of that organisation (most of which do not object to the scheme). His point of view is completely at odds with, and undermined by, the formal letter of consultation submitted by the organisation's Chief Executive on 16 June 2006² which stated that "my instinct is to go with a residential scheme with a more standard affordable mix and to use the policy issue to secure the best possible design. ". Very diminished weight should be given to Mr Pilkington's evidence as a result.
- 23 The Council does not allege that the number of housing units proposed would in itself cause harm. That does not form part of reason for refusal 1. The appellants similarly do not rely on housing figures to justify their proposals. The position is that the provision of 280 flats in a well designed, mixed use scheme would accord with policy. The housing figures in the adopted Local Plan of 1994 are well out of date. The figures in the emerging RSS are likely to be exceeded in Southend, but the Secretary of State has made it plain that the housing targets are not ceilings but minimum targets. This explains why there is no moratorium on housing permissions in Southend and why the Council has continued to grant residential planning permissions on windfall sites.
- 24 Affordable housing policy in Southend would be met. The proposals would provide 84 affordable units, 30% of the total. That would accord with the emerging policy. The need for affordable housing in Southend is large and pressing, and substantial weight should be attached to the provision of such an amount of deliverable affordable housing units in this sustainable location.
- 25 The Council previously considered that the appeal site would contribute to the economic regeneration of Southend by providing key worker housing. It now says that 84 affordable units and the market units would have no benefits to the economy of Southend. That is inconsistent with policy and emerging policy at all levels. The Council's draft Core Strategy does not suggest that regeneration is uniquely linked to key worker housing, indeed the draft policy CS8 is aimed at providing a mix of housing comprising market, affordable housing and key worker housing in order to meet housing need and secure economic regeneration. That accords with the Thames Gateway Regional Planning Bodies' guidance, '*Growth and Regeneration in the Thames Gateway*', which expressly states that affordable housing (not just key worker housing) will be important to ensure a workforce with a range of skills can be accommodated in the area. That also accords with PPS3 and '*Delivering Affordable Housing*', neither of which state that it is only key worker housing that has a beneficial regenerative effect.
- 26 The site is accepted by the Council to be suitable as a mixed use site. Their case is not that it should provide 100% job-creating uses, but that it should be a mix with a greater proportion of employment. As for the housing element, however, there would be no harm from the provision of the 280 units, and there would be obvious benefits from the housing, both affordable and market housing, in terms of meeting needs and assisting economic regeneration. The flats would be in one of the most sustainable locations in the Borough.

² Document 22

The relationship between housing and employment

27. Reason for refusal 1 does not allege that the proposals would cause harm because they would lead to an unsustainable imbalance between homes and jobs. That argument has no force if there is no harm in policy terms in exceeding the RSS minimum target figures in sustainable urban locations and there is adequate job creation and/or employment land to meet the targets set in adopted and emerging policy
28. The employment objectives, be they land or jobs, have been arrived at on the basis of an assessment of overall development needs and sustainability. That is why if adequate jobs/land exist then no argument can be supported that further housing will cause harm in sustainability terms. In this connection, weight should be attached to the Government Office for the East of England's view that calculations of the alignment of jobs and housing are very difficult at the sub-regional level, and even more so at the local level³
29. It follows that the issue of 'balance' or alignment is only capable of being looked at roughly, and the best way to do that here is to note that there is no RSS cap on housing deliveries, and that the jobs targets should be met. It is also central to the question of sustainability that the site is in a highly sustainable location. There is no reason why residential units here should exacerbate out-commuting by car. Out-commuting by public transport is not a sin in policy terms

Employment

30. First, this is not a case where the land is treated as safeguarded for pure employment use by the Council applying adopted policy. The Council accepts that a mixed use is appropriate. In that context, the main part of Local Plan Policy E4 (referred to in the reason for refusal) does not apply because the site is not identified for B uses in the Local Plan Proposals Map. The policy is also permissive of loss of business use where the premises are no longer suitable for industrial or warehouse use and there is no dispute that is the case here. E4 is a restraint policy which would be breached on its face by a mixed use development. Since the Council accepts a mixed use, reliance on E4 is illogical.
31. Policy E2 of the LP, which the Council regard as the 'relevant policy', is well out of date. Paragraphs 4.12 to 4.14 illustrate the market context in which it was written. The site is no longer 'existing major office floorspace' nor does the Council suggest that it should be kept for that purpose. It says that some small office users could be housed in a mixed use scheme. It follows that there is no breach of E2. In addition, there is no harm from the 'loss' in E2 terms. There would be physical benefits since affordable housing would be a benefit for the town, as would the 15,000 sq ft of commercial floorspace which forms part of the scheme.
32. In the 2001 Structure Plan, Policy BIW4 obviously does not apply here. The site is not 'in use or identified in adopted local plans for future business, industry or warehousing use'. Of course, the lawful use is for B class use, but it can be clearly shown how obsolete the buildings themselves are and how unrealistic it is to imagine a future business use for the site⁴.
33. Second, there is no breach of emerging RSS Policy E3 because there is evidence before the inquiry of sufficient land being available to ensure that the Region's economic strategy

³ Document 10, para 6.20

⁴ Document 7, Sections 5 and 7

objectives are met. The Council accepts that the RSS, which very shortly will replace the SP, focuses on the provision of jobs rather than the finding of new net employment land. The RSS does not seek the provision only of B class jobs, but makes no distinction between any type of job. In terms of jobs the RSS seeks 13,000 new jobs to 2021, at an average of 650 a year. The Southend Annual Monitoring Report (SAMR) 2006⁵, which represents the latest figures, indicates that the job creation in the Borough is running at 880 on average a year. 4400 have been created between 2001 and 2006 and the Council acknowledges that progress is good.

- 34 The Council rather inexplicably submitted at the inquiry that for essentially methodological reasons (lag in recording deletions over additions) the Inter Departmental Business Register (IDBR) may be suspect. This point is addressed squarely by the Council in its Hearing Paper 5 on Employment⁶, submitted to the EiP in March 2007. On the third page of the document, a number of factors are set out. One is the simple observation that "the IDBR count was lower than the 2001 Census, suggesting that more jobs have been created in the Borough over this time period". Indeed, the Council's own overall conclusion is that "all these indicators suggest that the economy of Southend, whilst still behind the national and regional averages, has shown greater improvements since 2001 which is consistent with an increase in jobs provision as illustrated by the IDBR data." The Council's position is inconsistent with this and the conclusion that one cannot assume growth in jobs in line with the IDBR work.
- 35 The document produced by the Council's Policy Section says that "the IDBR increase (2001/2006) may be slightly over-estimated". That hardly shows that the Council's Policy Section thinks that there is a major problem with the IDBR data. The document also then goes on to show that 8 firms (including 3 supermarket firms) have between them alone created 3000 jobs in the period. The Policy Section's note for Mr Collins⁷ does not suggest that there is a problem with the IDBR data as an indication of trends. Although it was speculated that the latest figures might be unrepresentative, it is necessary to proceed on the basis of the figures we have which are the best available. Furthermore, there is no actual evidence that the figures are suspect because of 'one offs' or 'blips'. Evidence such as that produced on Marine Plaza demonstrates how and why job creation in Southend is and will remain healthy. There have been and will continue to be redevelopments, projects and changes which will bring the jobs into the town.
- 36 The residual argument about land for employment is consequently of only secondary importance. SP Policy BIW1 requires 30 ha net additional of B class land to be provided between 1996 and 2011. It is very difficult securely to equate land and jobs, which is why the RSS uses the new method of focusing on jobs. The Council argued that there is a shortfall against that B class land requirement of some 18.7 ha, although it concedes that at least 4.6ha further land is available at Shoebury. The evidence in fact indicates that there is considerably greater potential for land (including land already with the benefit of planning permission) to come forward with 12.3 ha of consented land at Fossets Farm available and 4.75 ha at Shoebury. If the Priory site is included, the additional 9.8 ha brings the total to 26.85 ha. There is a Joint Area Action Plan in existence between the Council and Rochford Borough Council, evidently with the potential for further B class land to come forward in that area within the SP period.

⁵ Document 14, tab 4

⁶ Document 19

⁷ Document 25

- 37 These figures disclose that, even if one looks at land requirements under SP Policy BIW1, there is little evidence that the appeal site is needed to take up the slack. It is accepted that in terms of allocating sites, the Council would be applying a test of certainty. That has little to do with the present exercise, which is to see what in the real world would be available by 2011 and deliverable for employment generating purposes. There is a significant amount. In any event, the appeal site is not 'net new employment land' and would not count (or indeed have counted) as a potential contributor to Policy BIW1's 30 ha.
- 38 There are formidable practical problems with the appeal site and the premises for employment re-use. There is no market for the buildings either as large space buildings or even if one divided them up, partly because the only identified demand in the evidence before the inquiry is for small space users to buy freehold⁸. There is little prospect of such purchases because office owners do not want their building sitting under floors of housing. That is why the viability testing was undertaken on a two storey office development without accommodation above. It has been shown that such a development would be unviable.
- 39 Nor is there any practical prospect of the refurbishment or redevelopment working, as has been shown, for the same reasons. The prospect of a hypothetical mixed use scheme on the site was considered but the question is in the end the same one: why should the developer look at that option? It is not required in order to keep housing numbers down, nor is it required in order to ensure job creation or employment land availability. There is no policy 'hook' or justification for such a scheme to be required on the site.
- 40 Turning then to the suggestion that permission should be withheld because an 'opportunity' would be 'lost', that is true in a sense of every development that is permitted. The question is whether any harm in planning terms would flow from the implementation of permission. The Council has not refused permission on the basis of a prematurity argument. It cannot allege that many similar opportunities would not still be available, even in Victoria Avenue. There would still be a treasure trove of sites and vacant buildings to bring forward whatever schemes may be acceptable at that particular time.
- 41 It can therefore be concluded that
- (1) the site is sustainable urban previously developed land which is available and deliverable and would bring forward a significant amount of affordable housing where there is severe need for that type of housing,
 - (2) the scheme would not cause harm to housing policy because, as the RSS makes clear, the housing figures are not ceilings,
 - (3) the scheme would not cause harm to the achievement of a net jobs increase in Southend, that is going well, and there is little indication that it will change in the future. There is plenty of employment land available within the SP's BIW1 category,
 - (4) there is therefore no tenable argument that the proposal would overheat housing, or lead to harmful travel patterns, or a harmful imbalance between housing and employment
 - (5) Instead, the scheme will be highly beneficial in physical terms, will regenerate the area in addition through the introduction of a variety of different types of occupier, make significant contributions through the S106 undertaking, and have a beneficial

⁸ Document 7, Section 8

effect to some degree on the blockage in the market caused by the huge oversupply of vacant office space. Instead of sclerosis, there will be enhancement and regeneration.

The Case for Southend-on-Sea Borough Council

- 42 The key policies to be considered are LP Policies E2 and E4. The site clearly benefits from protection under those policies which state that the loss of employment land will only be acceptable where other clear benefits can be shown. Policy BIW1 of the SP sets out the 30ha target and BIW4 points to the vital and continuing need to retain prime employment sites. This policy base is built upon and developed in the Core Strategy document which seeks to provide 13,000 jobs and 6,500 homes in the Borough in the period to 2021, of which 6,500 jobs and 2,000 homes are to be in the town centre.
- 43 The appellants allege that there would be three clear benefits. First there would be the provision of 'much needed housing', but the figures produced by the Council, and not challenged at the inquiry, show that, in the first quarter of the 6,500 target period, there had been 2,137 completions which is the equivalent of 426 units per year, against a requirement that equates to 325 units annually. Completions have since continued to exceed the target rate - there were 610 completions in 2005/6 - and the Council is confident that progress will be maintained. It is accepted that the figures are not intended to be maxima, but the monitoring figures indicate that there will be no difficulty in achieving the targets. The provision of 280 flats cannot therefore be regarded as contributing to 'much needed' housing.
44. The second benefit claimed is the provision of 84 affordable housing units and it is accepted that this would be a positive factor, but not one of such significance or substance as to justify granting permission for the proposal. The number of units would be relatively small and only 40% of these would be social rented housing. Such provision could feature in alternative, mixed-use schemes on the site. The appellants were unable to say what the demand for affordable housing would be so they cannot establish whether it would be significant and in any event it would only be part of an overall package.
- 45 The third area of benefit claimed is the regeneration effect on the north end of the town centre, but what is proposed is not in line with the aims and aspirations of either Council or Renaissance Southend Ltd (RSL) for the area. The evidence given at the inquiry by a director of RSL must be taken as the company's view. Overall, then, these benefits are simply not enough. They are mis-founded or unfounded and do not justify a departure from protectionist employment policies. It is not for the Council to demonstrate the harm but in any event that harm is not the loss of employment land as such, but the loss of employment land when housing land is not required and the position in respect of employment is less certain.
- 46 The appellants' assessment of the available employment land is flawed for several reasons. Land is becoming less important in itself than jobs, which is how policy is evolving. No maximum provision is implied but the focus has to be on the town centre and none of the sites identified by the appellants are there. The difference between the parties' assessment of the provision is that the Council has dealt in certainties, basing their evidence on the monitoring of allocations and permissions, whereas the appellants' figures are speculative. In neither case, however, has the target been shown to have been reached and the appellants' assessment that the target would be reached is over-optimistic. RSL's standpoint that the Council should 'be wise with what it has got' is the correct one.

- 47 It is accepted that in recent years the number of additional jobs created has been satisfactory but there are concerns about whether that trajectory would continue. There are also doubts about the IDBR data used for assessing progress since there is a tendency for it to include an element of double counting because deletions do not appear to be taken into account as speedily as additions. Wiping out a key employment site for housing purposes is a risk that does not need to be taken in the current housing climate and would significantly reduce the options open to the Council.
- 48 The appellants argue that one way of reducing the present overcapacity in the office market is by reducing the supply, but it could also be argued that the present stock could be improved. Increasing housing provision out of synch with jobs is likely to lead to increased out-commuting, act as a disincentive to companies considering relocating to Southend and would be contrary to the policy of securing jobs-led regeneration. Whilst the appellants argue that the office market is not good at present, positive changes may arise from the Area Action Plans, the expansion of university facilities and the activities of RSL. It is too negative a stance to accept the loss of this site to residential development.
- 49 The alternative scheme investigated by the appellants would have provided two storey office development for freehold disposals and no residential development and the Council notes that this would not be realistic. No other possible mixed use schemes have been investigated or costed so it cannot be argued that the appeal scheme is the only viable form of development. The potential out-of-town office sites to which the appellants referred would clearly tend to siphon off such development to peripheral locations, contrary to the general thrust of national policy. The ground floor commercial floorspace in the appeal scheme would be of limited benefit, serving principally the occupiers of the flats.
- 50 If permitted, the scheme would also make it more difficult to formulate financially realistic refurbishment schemes for the other older office blocks in Victoria Avenue since the appeal scheme would have absorbed the whole of the acceptable residential development potential for the area. It is not disputed that an element of residential development would be acceptable on the appeal site but a mixed use scheme would be more appropriate. In the end the judgement to be made is whether what is proposed is sufficiently mixed.
- 51 It is difficult to balance housing and employment but the Council is entitled to proceed on a 'plan, monitor and manage' basis. The housing data has not been challenged and the Council's views on the matter of future job provision have been clearly set out. In essence the Council argues that it is appropriate to exercise caution in the use of the IDBR data which is likely to exaggerate provision because of the time lag in including deletions. A significant proportion of the extra jobs created between 2001 and 2006, 3,000 out of 4,400, can be tracked back to one-off schemes or relocations. In essence, housing provision is satisfactory in the area, but employment prospects are more questionable and on that basis the loss of employment land to housing cannot be justified.

The Case for Renaissance Southend Ltd

- 52 Renaissance Southend Ltd (RSL) is producing a regeneration framework including a Central Area Masterplan based on evidence gathered by consultants Roger Tym and Partners. It is recognised that the town centre's principal office offer, along Victoria Avenue, incorporates a number of outdated buildings.
- 53 RSL proposes to identify, through the Masterplan, a range of alternative locations where employment uses would be appropriate and aligned with investor and occupier

requirements. The Masterplan will advocate a site by site approach to employment policy, incorporating where appropriate a mix of uses. It is intended that these alternative locations should supplement the existing employment land supply, and establish new and improved parameters to encourage office redevelopment in existing locations. Given the employment challenges facing the sector, judicious use of the existing employment land supply in the central area is a crucial driver in delivering sustained economic regeneration. Pending completion of the Masterplan and the adoption of the Area Action Plans (AAPs), RSL advocates that the existing supply of employment land in the central area should not be overwhelmed by other uses.

- 54 In the interim, RSL advocates that the investment obstacles to new office redevelopment in Victoria Avenue could be overcome by contemplating redevelopment proposals containing a proportion of mixed uses, to the extent that this could improve economic viability to encourage new scheme implementation, and that the overriding test would be the extent to which such proposals are deemed to address and contribute towards the realization of sustainable economic regeneration objectives. The appeal scheme does not present an appropriate mix with inadequate employment/regeneration floorspace included. In the interim, RSL proposes that all planning applications on existing employment land in the central area should be considered in the context of a more comprehensive brief having regard to the emerging Masterplan and AAPs.
- 55 The appeal proposal is premature pending completion of the Masterplan and formal adoption of the AAPs. Furthermore, the granting of a consent at an important gateway to the town, in the absence of an up to date and comprehensive plan for the west side of Victoria Avenue, would be likely to prejudice the ability of RSL or the Council to meet the objectives for the regeneration of the town centre that secures an appropriate balance between housing, employment and an enhancement to the quality of the built environment and public realm.
- 56 Previous discussions between RSL and the appellants have considered the possibility of replacing the affordable housing element of the scheme with residential accommodation for 300 students (for the University of Essex) and converting the east wing of Heath House (circa 1,000m² on 3 floors) for student ancillary use. Further discussions between RSL and its partners have included the possibility of using the north wing of Heath House for employment use to promote and facilitate innovation/research and development/enterprise initiatives in conjunction with Southend's private corporate sector. This is one of a number of options that could deliver jobs and regeneration. Such a mixed use solution would contribute directly towards the regeneration agenda, and represent a preferred option for future development in anticipation of emerging proposals through the Masterplan and AAPs.

The Case for Mr & Mrs Murrell

- 57 The additional traffic volumes need to be considered. There would be fewer parking spaces than flats in the scheme which would have an adverse impact on the availability of on-street parking in the area. One parking space per flat should be the absolute minimum provision. Also, the scheme would result in a substantial increase in traffic on the residential roads around the site which will adversely affect the quality of life for local residents because of additional noise and fumes. The proposal would negate the Council's previous attempts to regulate traffic in the area and improve the local environment.

The Case for Cllr Norman

- 58 There is a clear conflict between the interests of the developer and the Council, and the Council is entitled to take a long term view. There is high unemployment in the area and the relevant ward, together with the adjacent ward, are amongst the 10% most deprived in England. The key worker housing in the previous scheme would have served a specific social purpose and aided regeneration but the present proposals seek to backtrack on this.
- 59 There is a young workforce and the present buildings could be adapted to form a call centre or a similar enterprise. There is also the possibility of expansion of the Essex University which has already acquired separate sites. Carby House was previously used for teacher training, demonstrating its suitability. Although it is accepted that there are other under-used buildings nearby, Victoria Avenue provides a different type of site to those available at Shoebury or around the airport.
60. In addition, the proposed large, high density scheme would lead to a loss of employment land as well as being in danger of becoming a gated community. Without a car reduction scheme there would be an increase in traffic locally.

Written Representations

- 61 The written representations made on the appeal reflected the cases made by Mr & Mrs Murrell and by Cllr Norman. In addition, some concern was expressed about the potential for residents of the proposed flats to overlook adjoining and nearby property.

Conditions and Obligations

- 62 The Statement of Common Ground⁹ (SCG) included a schedule of draft conditions to be imposed in the event of permission being granted. I deal with the suggested conditions below, taking account of advice in Circular 11/95 - *The Use of Conditions in Planning Permissions*. A list of conditions, incorporating my amendments, is set out as Annex 1 to this Report and I suggest that these be imposed if the Secretary of State decides to allow the appeal.

Matters affecting the appearance of the buildings

- 63 To secure an appropriate appearance for the buildings it is necessary to require further details of external materials, including those balconies which the submitted drawings indicate are subject to revision, and of the ground floor retail and community accommodation. For similar reasons the means of enclosure require prior approval, together with landscaping and external lighting and I agree that, given the prominence of the buildings, restrictions on permitted development rights for telecommunications equipment is also justified. The potential for visual impact of installed plant above roof level would be safeguarded against by the condition suggested at paragraph 65 below.

Parking and Servicing

- 64 Appropriate parking and servicing arrangements are needed in the interests of highway safety and to that end conditions controlling the provision of car and cycle parking and the dimensions of the servicing access are required.

⁹ Document 26

Noise from Installed Plant

65. In the absence of information on mechanical plant and its potential effect on the living conditions of occupiers of the flats, a condition requiring prior approval of any equipment to be installed is necessary

Archaeology and Notice of Works

- 66 No evidence was provided to justify the Council's suggested condition requiring archaeological supervision of works and, given that the site would have been heavily disturbed by the building of the existing structures, such a condition is not necessary. None of the matters requiring prior approval seem to me to be sufficiently time critical as to justify a condition requiring 48 hours notice of the commencement of works

Unilateral Undertaking

- 67 Under the terms of a unilateral undertaking dated 22 June 2007¹⁰ the appellants would
- (a) provide, lay out and maintain a publicly accessible area which would effectively be a small square alongside Victoria Avenue,
 - (b) make a financial contribution to the refurbishment of the Victoria Avenue underpass and to other works of improvement to the Victoria Avenue frontage of the site;
 - (c) install a lighting scheme as a public art project;
 - (d) provide and maintain a CCTV system on site and contribute to the Council's costs for its own CCTV system,
 - (e) provide and retain a community room for the use of residents of the development,
 - (f) institute and revise from time to time a travel plan including restrictions of the ability of residents of the development to obtain on-street parking permits,
 - (g) provide 84 of the units as affordable housing in such a way as to enable an affordable housing provider acting reasonably to provide 40% of these units for social rented housing and 60% as intermediate housing
- 68 These obligations appear to me to be fairly related to the scale and nature of the development and to accord with the Council's policies. The terms of the undertakings concur with the advice in Circular 05/2005 – *Planning Obligations*. Although some of the matters covered by the undertakings were included as matters suggested to be covered by conditions in the SCG, I consider that they would be more appropriately secured through the undertaking because they involve financial contributions

¹⁰ Document 28

Inspector's Conclusions

[Numbers in square brackets refer to paragraphs elsewhere in this Report]

Main Considerations

69 The issue of highway safety arising from the possible inadequacy of the parking and servicing arrangements was dealt with to the Council's satisfaction in discussions before the opening of the inquiry [18], subject to the imposition of an appropriate condition. On the resumption of the inquiry on 26 April the parties agreed that, with additional information provided by the appellants, the design of the scheme was no longer a matter of dispute and that the Planning Brief to which the Council had referred in the second reason for refusal was not a document to which significant weight could be accorded. I agree that this effectively deals with reasons for refusal 2 and 3, so that the main considerations are

- (a) whether the proposal would unacceptably reduce the potential supply of employment creating development in the Borough to a harmful extent, and
- (b) whether the benefits of the proposal would be sufficient to clearly outweigh any harm identified

The Supply of Employment Creating Development

70. Heath House and Carby House were constructed as office blocks and served that function until about 2002, although in recent years the amount of floorspace occupied has been limited. Evidence produced by the appellants showed that the contribution the site could make to the supply of useable office space is now limited, even if the buildings were to be refurbished, given their dated configuration and, in particular, the limited headroom between floors [38]
- 71 Elsewhere in Victoria Avenue there are office buildings that are currently vacant and being marketed and it is clear that much of this floorspace has been available for some time. One former office building, Skyline Plaza, has now largely been converted to flats. The appellants produced convincing evidence to show that the type of office floorspace which refurbishment of Heath House and Carby House could result in would not satisfy the present demand in the Borough which is principally for freehold, low rise office buildings. There is also evidence to suggest that office development sites closer to the town centre, such as at Marine Plaza, are more likely to make such provision [35]
- 72 Redevelopment of the appeal site for office purposes with a retail element in a low rise form was investigated by the appellants and an outline, costed scheme produced. This showed that such a scheme would not be likely to be viable. The Council did not dispute this conclusion. It suggested that an alternative, mixed-use scheme would be more appropriate on the site but did not produce a costed scheme. I judge that the prospects for a successful redevelopment of the site for employment purposes are limited. I do not consider that it makes a significant contribution to the range of sites and premises which Structure Plan Policy BIW2 requires to be provided [10]
- 73 The parties differed on the matter of the availability of land for employment purposes elsewhere in the area. I accept the Council's standpoint that at present it cannot firmly identify land to meet the 30ha target for employment land provision in the Policy BIW1 of the Structure Plan but there is clear evidence that a significant proportion of that land has come forward in the earlier parts of the Structure Plan period. The appellants noted that

there were a number of locations in the Borough where the prospects for employment generating development were good. There is also a joint initiative by the Council and Rochford Borough Council to provide further land for such development around Southend Airport [36]

- 74 The focus of emerging planning policy is now on the number of jobs to be provided rather than the area of land to be allocated and monitoring of this factor in recent years has indicated that progress towards meeting these aspirations is good [33]. Whilst I acknowledge the Council's reservations about the principal source of data [47] I am conscious that all such information is subject to a considerable margin of error, especially in respect of relatively small areas, such as an individual council area. I do not consider that the information available to date indicates that a material shortfall of employment creating development is likely and in my opinion the harm arising from the use of the appeal site for a development largely comprising residential units would be limited.
- 75 I conclude that the proposal would not unacceptably reduce the potential supply of employment creating development in the Borough to a harmful extent and I find no conflict with the relevant development plan policies.

Benefits of the Proposal

76. Local Plan Policy E2 precludes the loss of existing major office floorspace unless alternative development is proposed which would bring clear benefits to the town in terms of facilities and provided and jobs created. I agree with the Council's analysis that the appellants argued, in essence, for three positive factors to be taken into consideration.
- 77 The first of these was the provision of 280 flats which would make a contribution to meeting overall housing requirements in the town centre, in the Borough as a whole and in the wider area. The Council was able to demonstrate that progress towards meeting the housing targets in the Structure Plan was good and I accept its argument that there is no need in quantitative or qualitative terms for additional housing in the short to medium term [43]. However, as the Council itself acknowledges, these targets are not intended to be maxima and it is clear that the site, on the periphery of the town centre and close to well serviced rail and bus routes, would be a sustainable location for residential development on previously developed land.
78. Of the 280 flats, 84 would be provided as affordable housing with 40% of these being for social rented housing and the remainder as intermediate affordable housing. I am satisfied that the appellants' unilateral undertaking [67] would secure this provision. Whilst the statistical information before the inquiry on the need for affordable housing was limited, the Council did not dispute the appellants' assertion that there is an unmet demand which considerably outstrips the present supply. To the extent that there is encouragement in national and development plan policies for widening housing choice for the less well off, the proposal must be considered beneficial.
- 79 The third positive factor advanced by the appellants was the contribution the scheme would make to the regeneration of this area of Southend. That the implementation of the scheme would enable the redevelopment of what is at present a vacant and to some extent derelict site is not in doubt and that would achieve a visual improvement. The employment generating potential of the proposal itself is, however, limited, since only the ground floor would include any commercial development and that would be limited to retail uses. Whilst additional housing for those wishing to work in the town centre would be provided, I judge that the impact of this availability on the regeneration of the area would be modest. The

evidence of Renaissance Southend Ltd on this matter was not wholly conclusive [22; 45] However, I do not consider that the redevelopment of the appeal site, even given its size and prominent position, would unduly prejudice the emerging Masterplan [55] In addition, I judge that neither the evidence produced by RSL nor by Cllr Norman with regard to potential occupants for the existing buildings on the site if they were to be refurbished, was sufficiently clear cut to be given significant weight

- 80 I conclude that the benefits of the proposal would be sufficient to clearly outweigh any harm identified and that there is therefore no conflict with Local Plan Policy E2 I also conclude that the housing element of the proposal would contribute towards the Government's objectives of creating high quality, sustainable, mixed and inclusive communities

Other Matters

81. I have no doubt that the proposal would result in a significant increase in the number of traffic movements around the site, both for servicing purposes and by residents accessing the parking spaces. This has to be set against the potential traffic arising from the authorised use of the buildings, although I acknowledge that local residents have experienced quite a long period when the buildings have generated few vehicle visits Given the satisfactorily amended servicing arrangements, the restriction in the unilateral undertaking on occupiers' qualification for residents' parking permits and the overall restriction in the number of on-site parking spaces, I consider that the proposal would not be harmful either in terms of highway safety or additional fumes, noise or disturbance.
82. I accept that many of the proposed flats would have a view over nearby gardens and towards existing houses The distances from which those views would be obtained, however, taken together with the context of the densely developed urban area in which the site is located where there is already an element of mutual overlooking, leads me to the conclusion that no material harm would arise to the living conditions of existing residents.

Recommendation

File Ref: APP/D1590/A/06/2027683

- 83 I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Annex 1

B J Juniper

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY.

Katy Skerrett of Counsel

She called

John Collins BA, MBA, MRTPI Planning Director DHA Planning

FOR THE APPELLANT

Rupert Warren of Counsel

He called.

Paul Knight FRICS

Director Dedman Professional Ltd

Steve Wilson BA(Hons), BTP, Director CgMs Ltd

MRTPI

INTERESTED PERSONS.

David Pilkington MRICS

Director of Development. Renaissance Southend Ltd.

Mr C and Mrs A Murrell

107 Boston Ave, Southend-on-Sea, SS2 6JF

Paul Drinkwater

99A Baxter Ave, Southend-on-Sea, SS2 6HX

Cllr David A Norman

Council member Victoria Ward

DOCUMENTS

1 [not used]

2 Council's letter of notification and list of addresses to which it was sent

3 Folder of Supporting Documents submitted with the application

Council Proofs and associated documents

4 Proof of Evidence of John Collins

5 Folder of Appendices to Document 4

6 Proof of Evidence of Anthony Handfield [not called]

Appellants' Proofs and Associated Documents

7 Proof of Evidence of Paul Knight

8 Supplementary Appendices to Document 6

9 Proof of Evidence of David Parker [not called]

10 Proof of Evidence of Steve Wilson

11 Summary of Proof of Evidence of Steve Wilson

12 Appendices 1 to 8 to Proof of Evidence of Steve Wilson

13 Folder of Development Plan Policies appended to Proof of Evidence of Steve Wilson

14 Folder of additional policy documents appended to Proof of Evidence of Steve Wilson

15 Bundle 3 'History of Negotiations' appended to Proof of Evidence of Steve Wilson

Third Party Proof

16 Proof of evidence of David Pilkington

Documents submitted at the Inquiry

- 17 Joint statement by the parties on highway matters
- 18 Core Strategy Hearing Paper 4 - Housing
- 19 Core Strategy Hearing Paper 5 – Employment
- 20 Council's letter of 25 April 2007 withdrawing reason for refusal No 2
- 21 Economic Scrutiny Committee Report on Economic Growth Aspirations for Southend – January 2006
- 22 Letter from Renaissance Southend Ltd dated 16 June 2006
- 23 Extract from the Southend-on-Sea Core Strategy Development Plan Document 1 – Delivering Regeneration and Growth
- 24 Extract from Southend-on-Sea Borough Local Plan Second Alteration – March 1999
- 25 Council's Policy Section note on employment data sources
- 26 Statement of Common Ground – final version
- 27 Outline closing submissions on behalf of the appellants [amended as delivered]
- 28 Unilateral Undertaking dated 22 June 2007 [submitted in draft – with text finalised but without signatures or date - at the inquiry and subsequently provided in completed form]

PLANS

- A Indexed folder of submitted and amended plans

ANNEX 1

Conditions Schedule

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted, including the location of and materials for any balconies but excluding shopfronts, have been submitted to and approved in writing by the local planning authority. Details of any shopfronts shall be submitted to and approved in writing by the local planning authority before being installed in the building. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials, minor artefacts and structures (eg Street furniture, refuse or other storage units, signs, lighting etc). All hard and soft landscape works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with any programme agreed with the local planning authority.
- 4) No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no telecommunications equipment shall be installed above the highest part of the roof of either of the buildings.
- 6) No dust or fume extraction or filtration equipment or air conditioning, ventilation or refrigeration equipment shall be installed until details of its design, siting, discharge points and predicted acoustic performance have been submitted to and approved in writing by the local planning authority. The equipment shall be installed in accordance with the approved details and thereafter retained as such.
- 7) Before occupation of any parts of the buildings the related servicing manoeuvring, car parking spaces and cycle storage facilities shall have been completed in accordance with the approved drawings. These facilities shall thereafter be kept available at all times for their designed purpose.

ANNEX 2**Drawings**

The following drawings comprise the scheme as considered at the inquiry

A-02-PL-001 REV A	Location Plan
A-02-PL-002 REV A	Site Plan
A-PL-03P-000 REV C	Ground Floor Plan
A-PL-03P-001 REV A	1 st Floor Plan
A-PL-03P-002 REV A to -010 REV A (inclusive)	2 nd Floor Plan to 10 th Floor Plan (inclusive)
A-PL-70P-002 REV A	Typical Floor Plan
A-PL-05E-02 REV 02	Elevations 1 & 3
A-PL-05E-01 REV A	Elevations 2 & 4
A-PL-05E-03 REV A	Elevations 5 & 6
A-SK-05E-04	Link Fence Detail Study
A-PL-SK-01	Supporting Illustrations – Colour – Elevations 1 & 3
A-PL-SK-02	Supporting Illustrations – Colour – Elevations 2 & 4
A-SK-05E-03	Inset balconies
A-PL-SK-05	Supporting Illustrations – Perspective 3
A-PL-SK-06	Supporting Illustrations – Perspective 4
A-PL-SK-07	Supporting Illustrations – Perspective 5
L-PL-90-00 REV A	Landscape Strategy – Ground Floor and Public Realm
L-PL-90-01 REV A	Landscape Strategy – Roof Gardens
A-SK-05E-01	Active Frontage
A-SK-05E-02	Materials and Signage
A-UU-003	Public Accessible Square

3 October 2007

Mr Steve Wilson
White Young Green
Academy House
36 Poland Street
London W1F 7LU

Our Ref APP/D1590/A/06/2027683
Your Ref

Dear Sir

**TOWN AND COUNTRY PLANNING ACT: SECTION 78
APPEAL BY SOUTHEND PROPERTIES (GUERNSEY) LTD - HEATH HOUSE
AND CARBY HOUSE, VICTORIA AVENUE, SOUTHEND, SS2 6AR
APPLICATION REF: SOS/06/00598/FUL**

- 1 I am directed by the Secretary of State for Communities and Local Government to say that consideration has been given to the report of the Inspector, B J Juniper, BSc DipTP MRTPI, who held an inquiry between 19 April and 15 June 2007 into your client's appeal against the decision of Southend-on-Sea Borough Council ('the Council') to refuse an application for redevelopment with part 4, 8, 10, 11 and 12 storey buildings, comprising 280 flats, with commercial uses at ground floor level, the provision of 166 car parking spaces, cycle storage for 288 cycles, amenity space, refuse storage, and accesses onto Harcourt Avenue and Baxter Avenue, on land at Heath House and Carby House, Victoria Avenue, Southend-on-Sea, SS2 6AR (Application Ref: SOS/06/00598/FUL, dated 16 May 2006)
- 2 On 17 November 2006, the appeal was recovered for the Secretary of State's own determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990

Inspector's conclusion and recommendations

- 3 The Inspector, whose report is attached to this letter, recommended that the appeal be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and has decided to allow the appeal and to grant planning permission. All references to paragraph numbers in this letter, unless otherwise stated, are to the Inspector's report (IR)

Procedural matters

- 4 The Secretary of State, like the Inspector, has determined this appeal on the basis of the drawings listed at Annex 2 to the Inspector's report. She agrees with the Inspector that no party to the inquiry was prejudiced by the consideration of the drawings and additional illustrative material referred to in IR2

- 5 Following the Inquiry, the Secretary of State sought minor clarifications from the appellant on the affordable housing provisions of the Section 106 Unilateral Undertaking. She does not consider that the subsequent changes to the Undertaking by the appellant are so material so as to constitute a need to refer back to parties before she proceeds to a decision.
- 6 At the inquiry, an application for costs was made by Southend Properties (Guernsey) Ltd against the Council. This application is the subject of a separate decision letter.

Policy Considerations

- 7 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the South East (RSS9), published in March 2001, the Essex and Southend-on-Sea Replacement Structure Plan 1996-2011 (SP), adopted in 2001, and the Southend-on-Sea Borough Local Plan, adopted in 1994 (LP). The Secretary of State considers that the relevant development plan policies in this particular case are set out in IR10-11.
- 8 The Secretary of State has had regard to emerging policy, which includes the replacement regional guidance which will be in the Regional Spatial Strategy for the East of England (RSS14). As this is at an advanced stage in its process towards adoption, the Secretary of State considers that it can be accorded significant weight. She considers that a key policy relevant to this particular case is Policy TG/SE2 (IR8).
- 9 The Council is also proceeding with the preparation of a Local Development Framework, and has published a number of documents in this connection (IR12). The Secretary of State has had particular regard to the Core Strategy Document, on which the examination in public closed on 7 September 2007. The Secretary of State understands that the Inspector's report is not yet published, although she is aware that the Inspector considers the Core Strategy Document to be sound, subject to certain identified changes. The Secretary of State is therefore not in a position to take into account the detailed considerations of the Inspector. Whilst the close of the examination in public would, in normal circumstances, result in the Core Strategy document being given significant weight, as the Inspector's report is not yet available and details of the issues which remain outstanding are not known to her, the Secretary of State can only afford it limited weight in this particular case.
- 10 The Secretary of State agrees with the Inspector that the additional documents submitted to the examination in public, i.e. the Issues and Options report prepared in connection with the Town Centre Area Action Plan, and the Southend Annual Monitoring Reports for 2005 and 2006, should all be accorded limited weight (IR13). She also agrees that little weight can be accorded to the "Redevelopment of Heath House and Carby House Project Management Brief", published in January 2004 (IR14), as it was not subject to formal consultation.
- 11 Material considerations taken into account by the Secretary of State include Planning Policy Statement 1 *Creating Sustainable Communities* (PPS1),

Planning Policy Statement 3 *Housing* (PPS3), Planning Policy Guidance note 4 *Industrial, commercial development and small firms* (PPG4), Planning Policy Statement 6 *Planning for Town Centres* (PPS6), and Planning Policy Guidance note 13 *Transport* (PPG13)

Main Issues

- 12 The Secretary of State agrees with the Inspector that, for the reasons set out in IR69, the main considerations in this case are
- (a) whether the proposal would unacceptably reduce the potential supply of employment creating development in the Borough to a harmful extent, and
 - (b) whether the benefits of the proposal would be sufficient to clearly outweigh any harm identified

Supply of employment creating development

- 13 For the reasons in IR70-74, the Secretary of State agrees with the Inspector's conclusion that the proposal would not unacceptably reduce the potential supply of employment creating development in the Borough to a harmful extent (IR75) Like the Inspector, she also finds no conflict with the relevant development plan policies (IR75)

Benefits of the proposal

- 14 The Secretary of State agrees with the Inspector that, for the reasons in IR76-79, the benefits of the proposal would be sufficient to clearly outweigh any harm identified, and that there is therefore no conflict with Local Plan Policy E2 (IR80) She also agrees with the Inspector that the housing element of the proposal would contribute towards the Government's objectives of creating high quality, sustainable, mixed and inclusive communities (IR80)

Other matters

- 15 For the reasons set out in IR81, the Secretary of State agrees with the Inspector that the proposal would not be harmful, either in terms of highway safety, or from additional fumes, noise or disturbance (IR81) She also agrees with the Inspector that, for the reasons in IR82, no material harm would arise to the living conditions of existing residents (IR82)

Conditions and Unilateral Undertaking

- 16 The Secretary of State considers that the list of conditions in Annex 1 to the Inspector's report are both necessary and reasonable, and that they take account of the advice in Circular 11/95 *Use of Conditions in Planning Permissions* (IR62-66)
- 17 The Secretary of State agrees with the Inspector that, with the minor changes made by the appellant as referred to in paragraph 5 above, the terms of the unilateral undertaking are fairly related to the scale and nature of the development proposed, and concur with the advice in Circular 5/2005 – *Planning Obligations* (IR67-68)

Conclusion

18 For the reasons set out above, the Secretary of State concludes that the proposal would comply with the development plan. She considers that the proposal would not reduce the potential supply of employment creating development in the Borough to a harmful extent, and that the housing element would contribute towards the Government's objectives of creating high quality, sustainable, mixed and inclusive communities. She concludes that the benefits of the proposal would be sufficient to clearly outweigh any harm identified. The Secretary of State concludes that there are no material considerations of sufficient weight to suggest that she should determine the appeal other than in accordance with the development plan.

Formal decision

19 Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows your client's appeal, and grants planning permission for the redevelopment of the site with part 4, 8, 10, 11 and 12 storey buildings, comprising 280 flats, with commercial uses at ground floor level, the provision of 166 car parking spaces, cycle storage for 288 cycles, amenity space, refuse storage and accesses onto Harcourt Avenue and Baxter Avenue, at Heath House and Carby House, Victoria Avenue, Southend-on-Sea, SS2 6AR, in accordance with Application Ref SOS/06/00598/FUL dated 16 May 2006, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted, including the location of and materials for any balconies but excluding shopfronts, have been submitted to and approved in writing by the local planning authority. Details of any shopfronts shall be submitted to and approved in writing by the local planning authority before being installed in the building. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, hard surfacing materials, minor artefacts and structures (eg Street furniture, refuse or other storage units, signs, lighting etc). All hard and soft landscape works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with any programme agreed with the local planning authority.
- 4) No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or

without modification), no telecommunications equipment shall be installed above the highest part of the roof of either of the buildings

- 6) No dust or fume extraction or filtration equipment or air conditioning, ventilation or refrigeration equipment shall be installed until details of its design, siting, discharge points and predicted acoustic performance have been submitted to and approved in writing by the local planning authority. The equipment shall be installed in accordance with the approved details and thereafter retained as such
 - 7) Before occupation of any parts of the buildings the related servicing, manoeuvring, car parking spaces and cycle storage facilities shall have been completed in accordance with the approved drawings. These facilities shall thereafter be kept available at all times for their designed purpose
- 20 An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period
- 21 This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990

Right to challenge the decision

- 22 A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decisions may be challenged by making an application to the High Court within six weeks from the date of this letter
- 23 Copies of this letter are being sent to Southend-on-Sea Borough Council and those other Parties who appeared at the Inquiry

Yours faithfully,



Mark Plummer

Authorised by the Secretary of State
to sign in that behalf