



Appeal Decision

Site visit made on 6 December 2022

by **H Miles BA(hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/B1550/W/22/3302227

Grange Service Station, London Road, Rayleigh SS6 9DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by NewPlace against Rochford District Council.
 - The application Ref 21/00180/FUL, is dated 16 February 2021.
 - The development proposed is demolition of existing buildings and structures and construction of 26 residential units and associated basement car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and structures and construction of 26 residential units and associated basement car parking and landscaping at Grange Service Station, London Road, Rayleigh SS6 9DW in accordance with the terms of the application, Ref 21/00180/FUL, dated 16 February 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. A Unilateral Undertaking (UU) has been submitted which includes a mechanism to contribute towards mitigation of the effects of the proposed development on the Crouch and Roach Estuaries Special Protection Area and Ramsar site (SPA). I will return to this matter later in this decision.

Main Issues

3. The main issues are the effect of the proposed development on:
 - The character and appearance of the area
 - The living conditions of neighbouring occupiers with particular regard to overlooking and overbearing effect on Little Wheatley Chase
 - Highway safety and the free flow of traffic with particular regard to on street parking

Reasons

Character and Appearance

4. The appeal site has a single storey garage building with a large forecourt which is partly covered and used for car parking. The covered canopy faces London Road and extends to the front boundary of the site. It is a functional design

with limited detailing, and together with the extensive hardstanding and car parking which extend close to the boundaries, the site does not enhance the character and appearance of the surrounding area.

5. The appeal site is located within an area of residential housing to the south and east, characterised by single and two storey, mainly semi detached properties, with pitched tiled roofs and the use of brick being prominent features. In the immediate vicinity Louis Drive West is mainly bungalows and Little Wheatley Chase has two storey housing and chalet bungalows. Beyond Little Wheatley Chase to the west is open land. London Road is mainly characterised by two storey housing set behind soft landscaped verges but also includes the community buildings of Pope John Paul Hall and the Rayleigh Town Sport and Social Club, which is behind a petrol station.
6. The proposed development would result in an L shaped residential block which extends along the London Road and Louis Road West elevations. The proposed elevation to London Road would be in brick which would complement the surrounding buildings, with varied shades and detailing. It would also include set backs and balconies which provide articulation and break up the massing. There would be a curved corner detail with balconies which adds interest. The elevation to Louis Road West is similar in appearance and materials, and steps down to a two storey height, which provides an appropriate transition to the bungalow at 133 Louis Drive West.
7. Some design features of the proposed building, including its flat roof, differ from the residential development nearby. However, design features including its overall height and the materials proposed ensure that although it does not replicate the design of the nearby buildings it is nevertheless appropriate to this context. The proposed development would therefore replace the existing garage with a building in a design compatible with the surroundings and would result in an improvement to the character and appearance of the area.
8. The developed character of the appeal site at present extends to its boundaries and the proposed building would replicate this. It would have greater massing close to the boundaries, forward of other houses in London Road and Louis Drive West, which would result in a prominent building. However, given my findings that the building would improve the townscape I do not find this prominence to be harmful.
9. Consequently, the proposed development would have an acceptable effect on the character and appearance of the area. Therefore, it would be in accordance with Policies CP1 of the Core Strategy Adopted Version (2011) (CS) and DM1 of the Development Management Plan (2014) (DMP). Together these seek high quality design that has regard to local flavour and positively contributes to the surrounding environment. As well as the advice in Supplementary Planning Document 2 Housing Design (2007) (SPD2) which provides further detail regarding design of housing including that purpose built flats should adequately reflect the character and appearance of their surroundings.

Living Conditions

10. Windows to 3 flats are annotated to show that they would be located around 30m from the rear elevations of the existing houses at 3-5 Little Wheatley Chase. The proposed windows serve bedrooms and living rooms and a terrace is also proposed at first floor. This would not meet the advice in the Essex

Design Guide (2018) of providing a 35m separation between upper floor living rooms and the rear of any other dwelling. Nevertheless, these separation distances are large and similar to the back to back distances found further along Louis Drive West/Little Wheatley Chase. The arboricultural report also identifies that hedge planting could occur to the rear of no 5 which could provide additional screening and this could be secured by condition.

11. To the rear of 1 Little Wheatley Chase a total of three bedroom windows are proposed at first and second floor around 20-23m away. This separation is also less than the guidance in the Essex Design Guide (2018). The boundary treatment in this location is dense planting and the proposed windows are nevertheless located some distance from the closest existing windows. Furthermore, they would not provide the main or only outlook from the proposed dwellings.
12. Taking into account the separation distances, existing and proposed boundary treatments, and location and uses of the proposed rooms, in this case I do not find that the proposed development would result in a harmful loss of privacy. For the same reasons there would not be an unacceptable overbearing effect on the nearby dwellings. Therefore, whilst the development would not wholly accord with the guidance in the Essex Design Guide (2018), I nevertheless find that it would not result in harmful overlooking or loss of privacy and would result in good design in this regard as sought by Policies DM1 of the DMP and CP1 of the CS and SPD2.
13. A daylight study has been provided which undertakes a technical analysis and concludes that all but two windows would achieve acceptable levels of daylight and sunlight. These two windows are to the side elevation of 131 Louis Drive West. One of these windows is set on a corner and the rear facing element would receive acceptable levels of light. It is put to me that the other is also a secondary window. As such there would not be an unacceptable effect on daylight. There may be some disruption during construction, however this would be temporary. Furthermore, a construction management plan could be secured by condition which could mitigate adverse effects.
14. In conclusion, the proposed development would have an acceptable effect on the living conditions of neighbouring occupiers with particular regard to overlooking and overbearing effect on Little Wheatley Chase. As such, in this regard, it would be in accordance with Policies DM1 of the DMP and CP1 of the CS, the aims of which are set out above.

On street parking

15. Policy DM1 of the DMP requires that, amongst other things, proposed development must address accessibility, particularly with regard to promoting alternatives to the private car and sufficient car parking. Policy DM30 of the DMP applies the parking standards for the borough which the LPA states would result in a requirement for a minimum of 46 car parking spaces for the proposed development. Reductions may be considered if the development is within an urban area that has good links to sustainable transport.
16. The development proposes a total of 37 car parking spaces. It is located around a 30min walk from Rayleigh Town Centre and 1.6km from Rayleigh Train Station, with a regular bus service that takes 7mins to access the town centre operating from Little Wheatley Chase. There are nursery school and

primary schools, day to day food shops and other facilities in easy walking distance of the site. As such the site is in a reasonably accessible location. Use of these alternative modes of transport would also be supported by a Travel Plan. Consequently, car parking demand is likely to be lower than locations in the borough that do not have good links to sustainable transport.

17. Whilst roads nearby including Louis Drive West are narrow, they are currently used for parking without obstructing the highway. Even if there was some overspill parking, the likely limited number of vehicles that may need to park on the highway would be unlikely to cause harm to highway safety or the free flow of traffic.
18. The proposed parking would provide acceptable visibility splays and therefore the access to the car park would be appropriate. Suitable visibility splays would also be retained at junctions and therefore the proposed development would not be contrary to SPD2 in this regard. The proposed development is likely to create 20-21 vehicle trips during peak hours, given the relatively low number of movements these could be accommodated at the nearby junctions.
19. Therefore the proposed development would not be harmful to highway safety and the free flow of traffic with particular regard to on street parking. Consequently, in this regard it would not be contrary to Policies DM1 and DM30 of the DMP, the aims of which are set out above.

Other Matters

Air Quality

20. An air quality assessment has been submitted with this appeal. The Council have sought expert opinion and have confirmed that air quality is not a cause for contention. Taking into account the detailed professional evidence from both sides I have no reason to disagree with these conclusions.

Trees

21. Louis Drive West is characterised by mainly bungalows set behind grass verges and front gardens of which many are hard landscaping. There are 7 trees outside the appeal site, and these provide some softening. However, trees do not form a notable part of the character and appearance of this road.
22. I have detailed evidence before me that these trees are either moderate or low quality. Their growth could lead to damage to the adjacent pavement and highway, and therefore are likely to have a limited life span. Consequently, there is no need to retain these particular trees. Furthermore, replacement planting is proposed with a species and size better suited to the restricted space available for growth. As such, the proposed development would retain trees in this location in the long term and therefore there would be an acceptable effect on character and biodiversity in this regard.

Affordable Housing

23. The submitted affordable housing viability statement concludes that the development would be unable to viably provide any affordable housing. The LPA has undertaken an independent assessment and concurs with this position. Taking into account these detailed professional analyses, I agree with these conclusions.

Infrastructure

24. The LPA reports that Anglian Water have confirmed that there is capacity in the network to accept foul water flows from the development. A condition is recommended which would secure detail of the surface water drainage to ensure that there would not be an increased risk of flooding in the surrounding areas. I have no detailed evidence that other existing infrastructure could not accommodate this development.

SPA

25. The Crouch and Roach Estuaries Special Protection Area and Ramsar supports important populations of bird species for a large proportion of the year. The proposed development would result in disturbance to the SPA due to increased recreational pressure. Therefore in combination with other plans and projects there would be likely to be a significant effect on the interest features of the site.
26. The Conservation of Habitats and Species Regulations 2017 require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. I am therefore required to undertake an appropriate assessment.
27. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) recommends that these pressures from recreational activities can be appropriately mitigated via approaches which include education, communication and habitat based measures. The RAMS has been endorsed Natural England and as such I am satisfied that the mitigation measures proposed within it would be effective in this case. Natural England has also been consulted on this specific application and indicated that the RAMS will provide appropriate mitigation. I have taken these comments into account.
28. I am presented with a planning obligation (UU) which, in the event that planning permission were to be granted, would secure a payment of around £3,600 to secure this mitigation. I have been provided with evidence which sets out a justified methodology for calculating this amount, and the LPA agrees that the figure in the UU is in line with this. I am also satisfied that the proposed mitigation does not constitute infrastructure for the purpose of the CIL regulations. Therefore, I am satisfied that the UU provides adequate mitigation for the effect on the SPA and consequently I can be certain that there would be no adverse effect on the integrity of the SPA.

Other

29. I am aware that extensions of time were agreed during the determination of the application. However, these do not effect the planning merits of this case.

Conditions

30. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the National Planning Policy Framework (2021) and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents,

including ensuring that the conditions would not unnecessarily delay the delivery of development.

31. I have attached the standard implementation condition and in the interests of certainty a condition to define the plans with which the scheme should accord. Conditions requiring details of materials, hard and soft landscaping and external lighting are required in the interests of the character and appearance of the area. The submission of landscaping details are required in order to account for planting along the boundary with the properties on Little Wheatley Chase, in the interests of living conditions as set out above. The Council's suggested conditions 5 and 17 both refer to the implementation of hard landscaping so I have combined these for brevity. However, I have altered the trigger point for this condition so as not to delay the delivery of development.
32. A construction management plan is required in the interests of nearby living conditions and highway safety. This includes details of loading, storage and collection and therefore there is no need to duplicate this in the Council's suggested condition 7, so I have combined these conditions. However, positively worded conditions requiring payment of money should not be used. As such, although I have retained the need for before and after construction condition surveys of the highway, I have removed the wording for commitment to fund the repair of any damage. This condition is pre commencement as the measures are required for the full duration of the works. Hours for construction, deliveries and collections would be limited in the interests of living conditions.
33. The implementation of the parking areas, details and provision of cycle and motorcycle storage, no use of unbound material close to the highway, implementation of the vehicle access and closure of the redundant accesses are required in the interests of highway safety. Parking space dimensions are shown on the approved basement plan and therefore a condition requiring these is not necessary. The Council's conditions 8 and 26 both require the implementation of the parking provision. These conditions are combined for brevity.
34. A travel plan including details of a residential travel pack and provision of electric vehicle charging points are required in order to encourage the use of sustainable transport modes. Suggested conditions 18 and 21 contain very similar requirements for a travel plan and residential travel pack. I have therefore combined these conditions for conciseness. A condition requiring footway improvements is also required for the reasons set out above. This has been suggested by the Local Highway Authority. Therefore there is a reasonable prospect of the action being performed within the time limit imposed by the permission. Details of low carbon energy are required in order to reduce carbon emissions.
35. Provision and details of maintenance of SUDs are required in order to reduce the risk of flooding on and off site for the lifetime of the development, and in the interests of the local water environment. I have included the requirement for maintenance logs within the condition requiring a maintenance plan for succinctness. The provision Of SUDs is a pre commencement condition as the measures are needed for the full duration of the works.
36. Given the previous use of this site a condition including actions to take if unidentified contaminated land is found would be reasonable. As such this is

necessary in the interest that risks to humans and ecology are minimised. A condition requiring a compliance certificate for material to be brought on to the site is also required for the same reason.

37. The proposed development is for self contained flats, and therefore these properties do not benefit from the permitted development rights in Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015. As such, a condition removing these rights is unnecessary and it is not included here.

Conclusion

38. For the reasons given above I conclude that the appeal should be allowed.

H Miles

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development shall be undertaken in strict accordance with the following approved plans: Proposed Basement Plan 19.177/10 E, Proposed Ground Floor Plan 19.177/11 G, Proposed First Floor 19.177/12 E, Proposed Second Floor 19.177/13 E, Proposed Roof Plan 19.177/14 E, Proposed Elevations (1 of 2) 19.177/15 G, Proposed Elevations (2 of 2) 19.177/16 G, Proposed Sections 19.177/17 G, Existing and Proposed Site Plans 19.177/18 E, Proposed Landscaping Layout 19.177/19 G, 3D Imagery + Schedule of Accommodation) 19.177/20 G, 3D Imagery 19.177/21 G, Proposed Sections 19.177/22 G, Schedule of Accommodation, Proposed Highway Works 21210-MA-XX-XX-DR-C- P01
- 3) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i) vehicle routing,
 - ii) the parking of vehicles of site operatives and visitors,
 - iii) loading and unloading of plant and materials,
 - iv) storage of plant and materials used in constructing the development,
 - v) wheel and underbody washing facilities.
 - vi) Before and after condition survey to identify defects to highway in the vicinity of the access to the site
- 4) No development shall take place, including any ground works, until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods 2 found in chapter 25.3 of The CIRIA SuDS Manual C753. If infiltration is found viable then the scheme should be updated accordingly.
 - If infiltration is not found to be viable then the site should be limiting discharge rates to as close as feasibly possible to the 1 in 1 year greenfield runoff rate or 12.9l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change. It should be shown that the discharge rate being used is as close as possible to the 1 in 1-year greenfield rate. All relevant permissions to discharge from the site into any outfall should be demonstrated.
 - Details on how surface water will be managed and treated if entering the underground parking area.
 - Final detailed modelling and calculations for all areas of the drainage system.

- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The development shall be implemented in accordance with the approved details and permanently retained as such thereafter.

- 5) Prior to the commencement of any above ground works, details of the specification and finish of all external materials to be incorporated into the development shall be submitted to and approved in writing by the Local Planning Authority. These details shall include details of all wall elevation treatment and finishes including brickwork, render, external cladding (including its colour, finish, and texture), details of all roofing materials, details of all windows and frame casing, doors, fascia, bargeboards, soffits, and all rainwater goods. The development shall be implemented in accordance with the approved details and permanently retained as such thereafter.
- 6) Prior to the commencement of any above ground works, full details of the soft and hard landscaping provision shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in its entirety in accordance with the approved details within the first planting season (soft landscaping), prior to the first occupation (boundary treatments, surfacing of shared access drives, and all pedestrian footways) respectively from the date of occupation of the development. Any tree, shrub, hedge or plant (including replacement plants) removed, uprooted, destroyed, or caused to die, or become seriously damaged or defective, within five years of planting, shall be replaced by the developer(s) or their successors in title, with species of the same type, size and in an agreed location, in the first available planting season following removal.
- 7) specification and finish of all external materials to be incorporated into the development These details shall include details of all wall elevation treatment and finishes including brickwork, render, external cladding (including its colour, finish, and texture), details of all roofing materials, details of all windows and frame casing, doors, fascia, bargeboards, soffits, and all rainwater goods. The development shall be implemented in accordance with the approved details and permanently retained as such thereafter.
- 8) Prior to first installation, details of an external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include details of all external lighting and illumination within the development site, including details of the height and position of all lighting columns, together with details of luminosity. The development shall be implemented in accordance with the approved details.

- 9) Prior to first occupation of the development, details of footway improvements shall be submitted to and approved in writing by the Local Planning Authority. The details shall include widening the footways along the adjacent northern and eastern highway frontages of the site. A total footway, approx. 80 metres in length shall be provided at a minimum width of 2 metres heading north from the access on Louis Drive West and heading west adjacent to the site frontage on London Road to the site boundary. The improved footways shall also include a new pram crossing and pedestrian crossing transition in the verge to tie in with the existing opposite transition on the eastern side of the carriageway on Louis Drive West, which serves the continuing footway along the parallel London Road service road (including all tactile transitions as required). The development shall be implemented in accordance with the approved details prior to first occupation of the development and permanently retained as such thereafter.
- 10) Prior to first occupation of the development the vehicular access as shown on planning drawing 19.177/11 Rev G shall be constructed at right angles to the highway boundary and to the existing carriageway and shall be provided with a dropped kerb vehicular crossing of the highway verge and footway. The development shall be retained as such thereafter.
- 11) Prior to first occupation of the development, the two existing vehicle accesses at the site frontage on London Road shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge, footway and kerbing.
- 12) Prior to first occupation of the development, the vehicle parking areas shall be provided in accordance with the layout details as shown by the proposed basement plan reference 19.177/10 Rev E, including any parking spaces for the mobility impaired. These shall be hard surfaced, sealed and marked out in parking bays and available for use on first occupation of the development hereby permitted. The vehicle parking areas and associated turning areas shall thereafter be retained and kept available at all times for the parking of vehicles that are related to the use of the development.
- 13) Prior to first occupation of the development details of the motorcycle and cycle parking facilities shall be submitted to and approved in writing by the local planning authority. The facilities shall be in accordance with the EPOA Parking Standards and be secure, convenient and covered. The development shall be implemented in accordance with the approved details prior to first occupation of the development and permanently retained as such thereafter.
- 14) Prior to first occupation of the development a final, detailed SUDS maintenance plan, in line with the final detailed surface water drainage scheme, shall be submitted to and approved in writing by the Local Planning Authority. It should detail the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, and logs of maintenance. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided. The development shall be carried out in accordance with these details.

- 15) Prior to first occupation of the development details shall be submitted to and approved in writing by the Local Planning Authority to demonstrate how at least 10 per cent of the energy source serving the development would be derived from decentralised and renewable or low-carbon sources. Unless it is demonstrated that this attainment is not achievable on site by way of clear evidence, in which case a report demonstrating the case and the amount of decentralised/low carbon/renewable energy that would be provided shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to first occupation of the development and permanently retained as such thereafter.
- 16) Prior to first occupation of the proposed development a residential travel plan shall be submitted to and approved in writing by the Local Planning Authority. The travel plan shall include details of; implementation for a minimum period from first occupation of the development until 1 year after final occupation; a Residential Travel Information Pack for sustainable transport to be distributed to each dwelling free of charge, to include six one day travel vouchers for use with the relevant local public transport operator. The development shall be implemented in accordance with the approved details.
- 17) Notwithstanding the details of the basement parking plan reference 19.177/10 Rev E prior to the first occupation of the development at least 26 in number of 3-7kW charging points shall have been installed and be fully operational. These charging points as installed, and as may be subject of upgrades in future to an equivalent kW output, shall be permanently retained as such thereafter.
- 18) Prior to the importation of any material brought onto the site for use as subsoil, topsoil or backfill, a compliance certificate for that material proposed to be imported to the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 19) All vehicular parking spaces serving the development shall have minimum dimensions of 2.9 metres x 5.5 metres.
- 20) In the event that contaminated material including but not exclusive to asbestos is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment must be undertaken in accordance with the following requirements and submitted to and approved in writing by the Local Planning Authority. The risk assessment should include: -
 - i) a survey of the extent, scale, and nature of contamination
 - ii) an assessment of the potential risks to: - human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites, and ancient monuments.
 - iii) an appraisal of remedial options, and proposal of the preferred option(s).

This shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Where remediation is necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works (including two weeks written notification of commencement of the remediation scheme works to the Local Planning Authority) and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the development is resumed or continued.

- 21) Works during any part of the construction phase of the development, including all associated ground works, building operations deliveries and / or collections shall take place only between 0700 and 1800 on Monday to Friday, and between 0700 and 1300 on Saturdays. No construction works, deliveries or collections shall take place on a Sunday or on any bank holidays.
- 22) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 23) The development hereby permitted shall be carried out in accordance with chapter 5 Acoustic Design Statement and chapter 7 Ventilation of the acoustic report prepared by AF Acoustics (B1021-AF-00001-02) dated 17 February 2021.