

APPEAL BULLETIN FOR JANUARY 2007



Appeal Ref APP/B1550/C/06/2016288
Application No 06/00017/BLDG_A
Appellant Mrs S Hales
Location Highgate, Lower Road, Hockley, Essex SS5 5NL
Decision Allowed under ground (d) and enforcement notice is quashed (03.01.07)

The appeal relates to a breach of planning control regarding the erection of a single storey building with a pitched roof and the requirements of the notice were:

- (i) demolish the building
- (ii) permanently remove from the land all building materials and rubble arising from compliance with requirement (i) above.
- The period for compliance was:
 - (i) 12 weeks after the notice takes effect
 - (ii) 24 weeks after the notice takes effect

The ground of appeal is that at the date that the notice was issued no enforcement action could be taken in respect of any breach of planning control. The Local Planning Authority maintained its opinion that the case had not been made that the new building was materially complete long enough for it to become immune from enforcement action before the issue of the enforcement notice. The appellant confirms that the appeal structure was a new building and not a conversion of former pigsties.

The Council provided aerial photographs to show that although the building was not there in its present form in 2000 it was there, largely in the shape it is today, by 2005. To aid the appellant's case, that the building was substantially complete 4 years before the issue of the enforcement notice, 11 statutory declarations were submitted. The Inspector found two of them particularly telling.

The first is that of Mr Critcher who confirms that during a valuation survey he undertook on 25 February 2002 for the whole property known as Highgate, he saw, and took a photograph of, the appeal building. Mr Critcher states that the building was effectively substantially concluded at the time he undertook the survey. The photograph shows the north elevation of the appeal building with completed external walls, windows and roof. An electric light appears to be switched on in one of the rooms indicating that there was electricity in the building in support of his assertion.

The second is the statutory declaration of Mr Stoton, the Hales' family solicitor, who visited Highgate on 26 February 2002. Mr Stoton's diary was produced to the inquiry. Mr Stoton remembers being taken to see the building complete with music room and a room dedicated to a model railway. The walls were painted and there was a big kitchen.

The Inspector concluded that all of the statutory declarations submitted point to the building being finished in or around the early part of 2002. Although most a little vague on exact dates, and some factual details are not always precise, it seemed inconceivable that in a case like this, 11 people, some of them professionals, would be prepared to perjure themselves by not telling the whole truth as they believed it to be. Therefore, the appeal should succeed on ground (d) and the enforcement notice is quashed.

APPEAL BULLETIN FOR JANUARY 2007



Appeal Ref APP/B1550/A/06/2022964
Application No 06/00227/FUL
Appellant Mr & Mrs B King
Location Ferndale, Stile Lane, Rayleigh, Essex SS6 8JA
Decision Dismissed (15.01.07)

The Inspector dismissed the appeal for a first floor rear extension.

Ferndale predates most other properties in Stile Lane, which have been built closer to the road, so that Ferndale now lies well back from the general building line. Within its plot, Ferndale sits to one side, about 1m from its boundary with number 11. Their relative positions mean that the original two-storey part of Ferndale projects well beyond the original rear wall of the adjacent bungalow, number 11.

The living room at number 11 is at its rear. Even though it has a small side window that gains light past the front part of Ferndale, it is poorly lit. The living room at number 11 has been extended to the rear and across the full width of the property and more recently a full-width conservatory has been added on. The part of the extended lounge closest to Ferndale is also poorly lit, partly because the two storey part of Ferndale projects beyond it, partly as a result of the high privet hedge on the boundary which hides from view the existing single storey rear projection at Ferndale.

The extension proposed would add an extra storey and a hipped roof to the existing single storey flat roofed rear extension at Ferndale. This would project about 5-6m from the existing two-storey part of Ferndale along the side of the property closest to the boundary with number 11. The Inspector concluded this would worsen the already poor lighting conditions at number 11 to such a degree that would be unacceptable and dismissed the appeal.



APPEAL BULLETIN FOR JANUARY 2007

Appeal Ref APP/B1550/A/06/2023306
Application No 06/00053/FUL
Appellant Ms N More
Location 113 New Road, Great Wakering, Essex SS3 0AR
Decision Allowed subject to condition (15.01.07)

The Inspector allowed the appeal for the proposed development of a vehicular crossover, subject to the condition that the development should be begun before the expiration of three years from the date of this permission. The Inspector took into consideration the Rochford District Replacement Local Plan (policy HP6) and the Essex and Southend-on-Sea Replacement Structure Plan (policy T3).

113 New Road is a semi-detached house with a shallow front garden. The property has a single garage in the rear garden. The provision of a dropped kerb and the removal of the front garden wall would allow only parallel parking on this site. Although such a layout does not feature in the Essex Design Guide, there is nothing intrinsically dangerous about parallel parking, provided the driver's view of the footway is not obscured. The Inspector felt there are no features at this location to create such a problem and was satisfied the proposed development would not be detrimental to road safety, and in this respect accords with the Development Plan.

The Inspector acknowledged concerns that a proliferation of such access could have wider consequences for highway safety and concluded that there is no justification for withholding permission in this instance on highway safety grounds and allowed the appeal granting planning permission.

APPEAL BULLETIN FOR JANUARY 2007



Appeal Ref APP/B1550/A/06/2022178
Application No 06/00206/FUL
Appellant Mr Dearman & Mr Jerwood
Location 36 Hockley Road, Rayleigh, Essex SS6 8EB
Decision Allowed subject to conditions (18.01.07)

The Inspector allowed the appeal for the proposed development to demolish existing bungalow and erect 20 No 2-bed apartments with parking and amenity space access for vehicles off Mill Field Close. The Inspector took into consideration the Essex and Southend-on-Sea Replacement Structure Plan (policy BE1), the Rochford District Replacement Local Plan (policy HP3, HP6 and HP11).

The appeal site is situated in a mainly residential area but in close proximity to Rayleigh town centre. Its main frontage is to Hockley Road from where the existing vehicular access is taken. The site slopes down from Hockley Road to the rear where there is a short frontage to Mill Field Close. There is currently a substantial bungalow located centrally on the site but well set back from Hockley Road. The surrounding garden is mainly grassed but there are a number of trees and shrubs close to the site boundaries, some of which are subject to a tree preservation order.

The appeal proposals entail the demolition of the bungalow and other outbuildings and their replacement with two blocks of 2-bedroom apartments each of two storeys. One block of 8 apartments would front Hockley Road while the other 12 would be to the rear. There would be 20 off-street parking spaces, some in an area between the two blocks and the others adjacent to Mill Field Close. Other elements would include refuse bin stores, a secure cycle store and landscaped areas.

There are local bus services on Hockley Road and the railway station is within walking distance. There are schools in the locality and a wide range of facilities in the town centre, also within walking distance. In the Inspector's view, in accessibility terms, a density above the range in policy HP3 would be acceptable in this location.

Taking account of a fall in levels across the front of the site, the 2-storey height of the proposed Hockley Road block relates well to the scale of the street scene, having the appearance of a short terrace of houses. Its depth would be greater than would generally be expected for houses, the Inspector considered that the block would not be unduly massive in the context of other nearby buildings and would not appear dominant or overbearing.

Even with the additional traffic generated by the proposed development the approach roads would be within their design capacity. However, particularly for residents of dwellings around the turning head of Mill Field Close, there would be a significant proportionate increase in the numbers of passing vehicles. The Inspector felt that given the existing low levels of vehicle movements, although the percentage increase would be high, the likely numbers and frequency would not be so great that the comings and goings of vehicles would give rise to significant noise and disturbance for existing residents and does not envisage that they would give rise to any material highway safety problems on local roads.

The Inspector allowed the appeal and granted planning permission to demolish existing bungalow and erect 20 No 2-bed apartments with parking and amenity space, access for vehicles off Mill Field Close at 36 Hockley Road in accordance

with the terms of the application ref 06/00206/FUL dated 24 February 2006 and the plans submitted with it as amended by drawings ref 105/01, /02L, /03J, /04H, /05B, /06B, /07C, /08B, /09A, /10A, /11 and 12A, Barratt (Landscaping Proposals) 105/10A and 06.06.0964 Rev B, 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 all external facing materials (including windows and doors) and roofing materials to be used in the construction of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) 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), the north-west facing element of the first floor window to bedroom No 2 in Unit No 7 as shown on approved Drawing Ref 105/05B shall be glazed in obscure glass and shall be of a design not capable of being opened below a height of 1.7m above finished first floor level. The window shall be retained thereafter in its approved form.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority plans and particulars showing details of means of screening or enclosure to be erected, including any pedestrian or vehicular gates, fences or walls. The screening or means of enclosure shall be erected in accordance with the approved details before the buildings are occupied or in accordance with a timetable agreed in writing with the local planning authority. 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) the screening or means of enclosure shall be retained thereafter in the approved form.
- 5) The boundary fence or wall between the site and No 9 Mill Field Close shall have a maximum height of 600mm within the site line of the access referred to in condition 14.
- 6) 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: the species, size, density and spacing of all trees, shrubs and hedgerows to be planted, including suitable replacement trees; existing trees to be retained; areas to be grass seeded or turfed; paved or otherwise hard surfaced areas; proposed finished levels or contours; minor artefacts and structures (eg. Furniture, play equipment, signs, lighting etc); proposed and existing functional services above and below ground (eg. Drainage, power and communications cables, pipelines etc. indicating lines, manholes, supports etc).
- 7) All hard and soft landscape works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the local planning authority. If within a period of 5 years from the date of planting any tree, shrub or hedge plant included in the approved landscape works (including replacement plants) is removed, uprooted, destroyed, dies, or becomes seriously damaged or defective, another of the same species and size as that originally planted shall be planted in the same place in the first available planting season unless the local planning authority gives its written consent to any variation.

- 8) All the retained trees, shown on approved drawing Ref. 06.06.0964 Rev B and numbers T001, T003 and T004, shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced areas, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority. Any works to the retained trees shall be in accordance with an approved schedule of tree works that has been previously submitted to and approved in writing by the local planning authority.
- 9) No equipment, machinery or materials shall be brought onto the site until details of the method of working during the construction period have been submitted to and approved in writing by the local planning authority. These details shall include the phasing of the development; the means of access to the site for construction, delivery and other vehicles and the means by which vehicle movements will be controlled; the areas where vehicles can be parked and building materials received and stored clear of the highway; and the means by which the roots and canopies of the retained trees defined in condition 8 would be protected from construction works or underground services. The works shall take place in accordance with the approved details.
- 10) The buildings shall not be occupied until the car parking spaces shown on the approved drawings have been defined or otherwise marked on the finished surface of the car parking areas in accordance with details submitted to and approved in writing by the local planning authority. Thereafter these defined car parking spaces shall be used for no purpose other than the parking of vehicles.
- 11) No development shall take place until details of the finished ground floor levels of the buildings hereby permitted in relation to the existing and finished ground levels of the site have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 12) No development shall take place until plans and particulars of the means of surface water drainage for the site have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 13) No development shall take place until details of the apparatus to be provided on the site to provide water for the fire fighting requirements of the Fire Authority have been submitted to and approved in writing by the local planning authority. The buildings shall not be occupied until the apparatus has been provided in accordance with the approved details.
- 14) Prior to the commencement of any works on site the new access onto Mill Field Close shall be constructed in accordance with details to be submitted to and approved in writing by the local planning authority.

APPEAL BULLETIN FOR JANUARY 2007



Appeal Ref	APP/B1550/A/06/2024715
Application No	05/01049/REM
Appellant	Mr H Davidson Developments Ltd and Asda Stores Ltd
Location	Former site of Park School, Rawreth Lane, Rayleigh, Essex SS6 9RN
Decision	Allowed subject to conditions (25.01.07)

The Inspector allowed the appeal for development proposed: Details of retail foodstore and part two-storey part three-storey building comprising 5 no. Class A1 (retail) units, 1 no. Class A3 café, no. Class D1 (non-residential institutions), 1 no. Class D1 community hall at first floor, and 1 no. Class D1 nursery at ground, first and second floor with access and car parking layout. The Inspector took into consideration the Essex and Southend-on-Sea Replacement Structure Plan (policy BE1, CS1, CS4 and TCR4), the Rochford District Replacement Local Plan (policy SAT1, SAT6, SAT7, TP4, PN4, PN5, PN6 and PN7).

The appeal site comprises part of the former Park School site, situated on the southern side of Rawreth Lane, Rayleigh, approximately 0.6km west of the Rawreth Lane/Hullbridge Road/Hambro Hill junction. It forms part of a wider area of mixed use development comprising residential, school and leisure centre uses. The school and leisure centre are open and in use. The residential development is under construction, with part completed and occupied. The area to which this appeal relates is to provide a neighbourhood centre.

Outline planning permission for a mixed use development comprising housing, neighbourhood centre, public open space, primary school and leisure centre was granted in June 2003 (01/00762/OUT).

The Inspector reviewed the range of statistical data relating to capacity, existing traffic flow, anticipated traffic generation and forecast growth; having assessed the impact of the combined traffic flow both during and outside peak hours; and in light of his observations on site, was satisfied that Rawreth Lane has sufficient practical reserve capacity to accommodate the totality of development completed, under construction and proposed on the former school site.

The Inspector considered all issues raised by objectors concerning retail impact, but none caused him to question the submitted Planning and Retail Statements' conclusions that the proposed supermarket would not have an unduly adverse affect on vitality or viability of Rayleigh or Hullbridge centres. He was also satisfied that, with the exception of peak hour movement of cars on Priory Chase, vehicular movements associated with the proposed store will not exceed WHO guidance levels and that, on balance, will not have an unacceptably adverse affect on the amenities of nearby occupants. Furthermore, the proposed 1.8m wall surrounding the service area and 3m high wall enclosing the foodstore loading area will help to mitigate noise generated within the service area.

The Inspector allowed the appeal subject to the following conditions:

- 1) Prior to the commencement of development, details (including samples) of all external facing and roofing materials to be used in the construction of the development hereby approved, shall be submitted to and agreed in writing by the Local Planning Authority.
- 2) The permission hereby granted does not convey or construe any consent for external security shutters to any of the buildings to which this decision relates. Prior to their installation, details of any wrought iron grills or gates to enclose the shop-fronts to the mixed use building or retail foodstore hereby approved shall be submitted to and agreed in writing by the Local Planning Authority.
- 3) Prior to the commencement of development, a scheme for noise attenuation measures, including ventilation for properties requiring insulation and proposed plant and equipment associated with both the retail foodstore and mixed use building, shall be submitted to and agreed in writing by the Local Planning Authority. Any works that form part of the approved noise attenuation scheme shall be submitted to and agreed in writing by the Local Planning Authority.
- 4) Prior to the commencement of development, details (including acoustic specifications) of any external equipment or openings in the external walls or roofs of the buildings to which this decision relates shall be submitted to and approved in writing by the Local Planning Authority, and shall be maintained in the approved form unless otherwise agreed in writing by the Local Planning Authority.
- 5) Prior to the commencement of development, details of any fume extraction and ventilation equipment shall be submitted to and approved in writing by the Local Planning Authority. The equipment shall be maintained in the approved form unless otherwise agreed in writing by the Local Planning Authority.
- 6) Prior to the commencement of development, details of any internal lift system and associated plant shall be submitted to and approved by the Local Planning Authority. The agreed scheme shall be installed prior to the commencement of the use of the buildings hereby approved.
- 7) No amplified music or speech shall be broadcast in the open areas of the site.
- 8) Prior to the commencement of development, details for the proposed method of storage and disposal of waste matter associated with the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The agreed method shall be implemented upon first occupation of the development hereby approved.
- 9) Prior to first occupation of the development hereby approved, visibility splays of 70m x 4.5m x 70m to the car park entrance shall be provided and thereafter retained in that form free of any obstruction clear to ground level.
- 10) Prior to first occupation of the development hereby approved, visibility splays of 48m (to south) x 4.5m x 70m (to north) to the retail store

service yard access shall be provided and thereafter retained in that form free of any obstruction clear to ground level.

- 11) Prior to commencement of development, the appellant shall, in conjunction with the Local Highway Authority, undertake an inspection and survey of Priory Chase, including photographic evidence, as to the condition and state of the road. A further inspection and survey shall be undertaken upon completion of the development and any damage caused as a result of the development being constructed shall be rectified in agreement with and at no cost to the Local Highway Authority.
- 12) Prior to first occupation of the development hereby approved, Priory Chase shall be constructed to at least base level. The footways serving all frontages shall be completed prior to first occupation of any part of the development hereby approved.
- 13) Prior to the commencement of development, details of a restrictive height barrier to be erected at the entrance to the public car park serving the development shall be submitted to and approved in writing by the Local Planning Authority. The approved barrier shall be erected prior to the first occupation of any part of the development hereby approved.
- 14) The retail foodstore hereby permitted shall only accept deliveries of goods to be sold between the hours of 0700 hours and 2300 hours on any day.
- 15) Scrub and vegetation containing nesting species shall not be cleared or otherwise disturbed until such time as the nest has been vacated and is no longer in use.
- 16) Within six months of the opening of the retail foodstore, the applicant shall carry out 3 months of continuous monitoring for nitrogen dioxide at the Priory Chase/Rawreth Lane junction. The findings of that monitoring shall be reported to the Head of Housing, Health and Community Care at Rochford District Council by the end of the seventh month following the opening of the foodstore.
- 17) Prior to the opening of the retail foodstore, a traffic management plan for delivery vehicles shall be submitted to and agreed in writing by the Local Planning Authority.
- 18) Prior to the commencement of development, details of any gates, walls, fences or other means of enclosure to be erected on the site shall be submitted to and agreed in writing by the Local Planning Authority. Notwithstanding the provisions of Article 3, Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) the approved means of enclosure shall be erected prior to first occupation of the development and shall thereafter be maintained in their approved form.
- 19) The loading and unloading of vehicles in the service yard shall only take place with the gates shut.
- 20) All vehicles and mechanical handling equipment operating on the site required to have reversing alarms shall have broadband reversing alarms.