



Appeal Decisions

Inquiry held on 24 to 27 July and 31 July to 1 August 2012

Site visit made on 1 August 2012

by K Sheffield BA(Hons) DipTP MRTPI

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

Decision date: 27 September 2012

Appeal A: APP/Z1510/A/12/2171723

Former Fleetshields Site, 66 East Street, Coggeshall, Essex, CO6 1SW

- 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 East of England Cooperative Society against the decision of Braintree District Council.
 - The application Ref 11/00157/FUL, dated 7 February 2011, was refused by notice dated 2 November 2011.
 - The development proposed is the demolition of existing commercial workshop buildings and redevelopment for retail store, car parking and new access.
-

Appeal B: APP/Z1510/E/12/2171727

Former Fleetshields Site, 66 East Street, Coggeshall, Essex, CO6 1SW

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
 - The appeal is made by East of England Cooperative Society against the decision of Braintree District Council.
 - The application Ref 11/00158/CON, dated 7 February 2011, was refused by notice dated 31 October 2011.
 - The demolition proposed is of existing commercial workshop buildings.
-

Decisions

1. Appeal A and Appeal B are both dismissed.

Application for costs

2. At the Inquiry an application for a partial award of costs was made by the appellant against the Council. The application is the subject of a separate Decision.

Procedural matter

3. In refusing planning permission the Council relied on policies of the Braintree District Local Plan Review, 2005 (LP), Planning Policy Statements *Delivering Sustainable Development* (PPS1), *Planning for Sustainable Economic Growth* (PPS4) and *Planning for the Historic Environment* (PPS5). However in September 2011 the Council adopted the Braintree District Council Local Development Framework Core Strategy (CS) and whilst most of the policies of the LP cited by the Council remain in force, Policies RLP 78, RLP79 and RLP111 have been superseded by Policies CS5, CS8 and CS6 of the CS respectively. Policy CS9 of the CS is also relevant to the appeal. In addition PPS1, PPS4 and PPS5 were superseded by the publication of the National Planning Policy Framework (the Framework) in March 2012, although the Practice Guide to

PPS4: *Planning for Town Centres* is not listed in Annex 3 to the Framework as being replaced and is therefore extant.

4. The Framework reaffirms the statutory duty to determine applications for planning permission in accordance with the development plan unless material considerations indicate otherwise. Whilst the CS was adopted in accordance with the provisions of the Planning and Compulsory Purchase Act 2004 the LP was not and therefore the weight which can be attributed to them in determining the appeals differs. Whilst, in accordance with paragraph 214 of the Framework, full weight can presently be given to the policies of the CS even if there is a limited degree of conflict with the Framework, in respect of policies of the LP paragraph 215 indicates that due weight should be given according to their degree of consistency with the Framework. In determining the appeal appropriate weight has been accorded to the policies of the development plan in line with this guidance.

Main Issues

Appeal A

5. The main issues in respect of Appeal A are:
 - (a) The effect of the development on the vitality and viability of the retail centre of Coggeshall;
 - (b) Whether the development would preserve or enhance the character or appearance of the Coggeshall Conservation Area and the setting of nearby listed buildings;
 - (c) The effect of the development on the open countryside in view of its location in relation to the boundary of the village envelope;
 - (d) The effect of the development on the living conditions of residents of nearby dwellings by reason of noise and disturbance from vehicle movements and the operation of plant and equipment and from light spillage from external lighting;
 - (e) The level of traffic generated by the development and whether the proposed parking provision would be sufficient; and
 - (f) The effect of the development on flood risk with regard to surface water drainage.

Appeal B

6. The main issue in respect of Appeal B is whether, in the absence of an acceptable scheme for their replacement, the demolition of the existing buildings would preserve or enhance the character or appearance of the Coggeshall Conservation Area.

Reasons

The site and its surroundings

7. The appeal site, which lies within the Coggeshall Conservation Area, is located on East Street, one of the main routes into the settlement. The site is currently occupied by a range of buildings whose design is typical of their previous commercial use as workshops for the repair, servicing and upgrading of commercial vehicles.

8. To the east of the site lies a modern single storey telephone exchange and further east there are detached dwellings of varying sizes, designs and ages, some of which are set close to the road. Abutting the western boundary of the site is a track which provides access via a field gate to the water meadows at the rear of the site. Beyond the access track there are three modern dwellings set back from the road and to the west of them are terraces of significantly older properties of varying sizes which front directly onto the footway.
9. Opposite the site and elevated above the level of East Street is a recreation ground within which a War Memorial is located. To the west of the recreation ground and set back from the road is a modern detached property. Beyond it is an outbuilding with a gable end facing the road and a terrace of older predominantly two storey properties which mainly front directly onto the road, there being no footway on this side of East Street.

Appeal A

Retail vitality and viability – the sequential test

10. Coggeshall is recognised in the CS as a local centre which Policy CS6 seeks to protect and enhance in order to provide small scale shops, services and community facilities for local residents. The proposed retail store would replace the existing Co-Op shop which forms part of a small parade of commercial units at Doubleday Corner at the junction of East Street and Market Hill. It is within the core retail area which contains a variety of shops and businesses as well as hosting a weekly street market. Whilst a number of businesses have closed over the last ten years and some of the vacated units have been converted to residential use, the centre is nevertheless active with very few vacant units.
11. The Co-Op is considered by the main parties to be the anchor store of the town, its main competitors being Spar, Martin's and Buntings, an independent food retailer. All these shops are small, the existing Co-Op having a floorspace of 195 sq. m gross (125 sq m. net retail). Although the evidence suggests that some residents carry out their main shop at the Co-Op, its primary function is top up shopping with the larger supermarkets in Braintree and Colchester being used for main food shopping. Nevertheless, it was accepted by all the parties that the existing shop is overtrading, its turnover being significantly above the company average and the shop often being overcrowded and congested. The need for a larger store in Coggeshall was not disputed.
12. In seeking to ensure the protection and enhancement of the retail centre of Coggeshall Policy CS6 of the CS requires retail proposals to be based on the sequential approach in accordance with the Framework. This requires applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered.
13. The appeal site is not within the retail centre of Coggeshall and although it lies within 200 metres of its boundary, the pattern of the intervening residential development prevents any visual link between the two. Nevertheless the site is only a few minutes walk from the centre and its car park and bus stops and whilst there is only a footway on the southern side of East Street, the appeal site is easily accessible on foot or by bicycle or car. The site can also be accessed via a footpath from Church Street and across the recreation ground

and although, due to its narrow alignment, surface treatment and lack of lighting this route is currently not accessible or attractive to all, it provides an alternative pedestrian route from the residential areas within the north eastern part of Coggeshall. The site therefore accords with the definition in the Framework of an edge of centre site as it is well connected and within 300 metres of the primary shopping area. It also accords with the CS which defines an accessible location as being within 30 minutes walking time.

14. The Council confirmed that it is content that there are no sequentially preferable sites which are suitable and available to accommodate the type and scale of development proposed. However, local residents and shopkeepers who make up the Rule 6 Party (the Coggeshall Group) contend that the site of the existing Co-Op at Doubleday Corner would be sequentially preferable to the appeal site and it could be successfully redeveloped as demonstrated by the recent works to the Co-Op store in Earls Colne.
15. The existing building at Doubleday Corner and the small car park to the rear are owned by the appellant and although it is acknowledged that the site could be redeveloped, the evidence indicates that the resultant store would be significantly smaller than the 760 sq. m gross (492 sq. m net) floorspace currently proposed. Planning permission¹ has previously been granted by the Council for works to create a store of 256 sq m net retail floorspace at Doubleday Corner. Whilst the permission has lapsed, the appellant did not consider the scheme to be suitable or viable as it did not provide the amount of floorspace identified as necessary to satisfy demand nor did it address matters of servicing. Although the Coggeshall Group disagreed with this conclusion, there is no conclusive evidence that the deficiencies of the existing shop and delivery arrangements could be satisfactorily overcome through the redevelopment of Doubleday Corner.
16. The parade of shops is a relatively modern design which is considered to be out of keeping with other buildings within the centre of Coggeshall which has medieval origins. The redevelopment of the site would provide an opportunity to ensure that any replacement buildings would enhance the character of the conservation area. However, this does not outweigh the conclusion drawn from the evidence that although the existing site may be available it would not be suitable or viable for the proposed development.
17. Whilst the Coggeshall Group identified in excess of twenty possible alternative sites for the development, it only relied on two as potentially being sequentially preferable to the appeal site. The first is a greenfield site on Colne Road which is in the ownership of the appellant but outside the village envelope and it is understood that there are access problems. The second is the Anglia Cargo Terminal which is a vacant industrial site within the settlement boundary but allocated for employment purposes.
18. Whilst both sites are relatively close to residential areas and within 30 minutes walking time of most of Coggeshall, they are in excess of 300 metres from the retail centre. For the purposes of the sequential test they are classed as being out of centre and therefore neither could be considered to be sequentially preferable to the appeal site. In the absence of any suitable or viable sites for the development within the retail centre and no suitable or viable alternatives

¹ Application Ref 06/00134/FUL extensions and alterations to provide new Co-Op store, granted 27/06/2006

in an edge of centre location, it is concluded that the appeal site satisfies the sequential test.

Retail vitality and viability – the need for a retail impact assessment

19. A retail impact assessment did not form part of the planning application and although the appellant contends that there is no policy requirement for the submission of such an assessment for the scale of the development proposed, one was submitted in support of the appeal.
20. Policy CS6 of the CS does not set out the circumstances in which a retail impact assessment is required but defers them to a subsequent Development Plan Document (DPD). The Council had sought to set a local threshold of 200 sq m as part of the CS. However, the Inspector, in examining the plan, concluded that the proposed figure was significantly lower than the figure in national policy and the evidence base was insufficiently detailed to be confident that the particular threshold chosen and the circumstances in which it would be applied had been justified. The wording of the policy was therefore amended in order to enable further work on the threshold to be undertaken in the context of a DPD. In the meantime, the Inspector indicated that the default threshold of 2,500 sq m gross floorspace as set out in PPS4 would form the basis for determining the need for impact assessments.
21. PPS4 has now been replaced by the Framework which states that, in the absence of a locally set threshold, applications for retail development outside of town centres, which are not in accordance with an up-to-date Local Plan, and which would exceed the default threshold of 2,500 sq m will require an impact assessment. Whilst it is not clear from the Framework whether the default threshold applies to gross or net floorspace, the proposed floorspace of 760 sq. m gross (492 sq. m net) falls well within it.
22. Although the Council considers that its intention to impose a locally set threshold which would be significantly below the default threshold set out in the Framework is well known, there is no current policy support for its stance, even in draft form. Whilst the Council has indicated that retail impact assessments have been submitted in support of other retail applications of a comparable size to the appeal proposal, detailed reasons for doing so have not been given. Notwithstanding this, under the terms of Policy CS6 of the CS and the Framework, the submission of a retail impact assessment for the scale of the development proposed is not required.
23. In any event the submitted evidence, although indicating that existing patterns of trade would change, does not conclusively demonstrate that the relocation of the Co-Op from Doubleday Corner to the appeal site would clearly lead to a significant adverse impact on the vitality and viability of the retail centre of Coggeshall. Whilst the proposed retail store would increase the range of goods available to the local population it is noted that no part of the unit would be used as a delicatessen, pharmacy or post office and that the area for the display of comparison goods would be restricted in size. These restrictions, which could be controlled by condition, would help protect the trade of existing shops within the centre and although the development might affect those providing a similar range of goods, this could equally apply to the provision of a larger Co-Op at Doubleday Corner. In addition the proximity of the appeal site to the centre would not prohibit linked trips and the development would

therefore be unlikely to divert trade away from specialist shops within the centre.

24. The increased range of goods on offer would reduce the reliance of residents on larger stores outside of Coggeshall, reducing the need to travel in accordance with the core objectives of the CS and the Framework. Whilst it is recognised that some residents may choose to continue to travel to larger stores in other locations, the option of reduced travel would be available and would benefit some residents, particularly the elderly or those reliant on public transport. The development would therefore make a positive contribution to the local economy by improving local shopping facilities, retaining expenditure within the settlement and creating an additional 4 full and 15 part time jobs.
25. The evidence therefore leads me to conclude that the development would not be detrimental to the vitality and viability of the retail centre of Coggeshall in accordance with Policy CS6 of the CS, to which full weight can be attributed, and the guidance in the Framework which supports sustainable economic development.

Effect on the Conservation Area and Listed Buildings

26. The site lies within the Coggeshall Conservation Area where there are several listed buildings, in particular the group comprising 39 to 59 East Street to the north west of the site. In refusing planning permission the Council was concerned that the form and design of the building was inappropriate in the context of the terraces to the north and west of the site and that the expanse of hard surfacing and lack of soft landscaping would present a harsh setting which would detract from the character of the conservation area.
27. Whilst no specific reference was made in the reason for refusal to the effect of the development on the listed buildings, cited Policies RLP90 and RLP95 of the LP state a need to have regard to local features of architectural and historic importance and reflect the guidance in the Framework in this respect. In addition Policy CS9 of the CS seeks the highest possible standards of design and layout in all new development in response to the local context especially where development affects the setting of historic buildings and conservation areas. It is therefore necessary and appropriate to consider the effect of the development on the setting of the listed buildings as well as on the character and appearance of the conservation area.
28. The design of the building takes reference from several older buildings in parts of Coggeshall with a history of industrial or commercial use. It is understood that this approach was supported by officers of the Council and relevant experts from Essex County Council and English Heritage with whom the scheme was discussed in detail. However, it is noted that the consultation response from Essex County Council makes no reference to the effect it considers the development would have on the conservation area, and English Heritage, in its response, makes the assumption that the Council has taken into account the requirement of Policy HE 7.2 of PPS5. Whilst PPS5 has been cancelled, the Framework contains similar requirements, namely the need to assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) and take account of that when considering the impact of a proposal on a heritage asset in order to avoid or minimise conflict between its conservation and any aspect of the proposal.

29. Although it is not disputed that the result is a well designed building fit for its intended purpose, the impact of the scale, design and landscaping on the character and appearance of the conservation area and the setting of the listed buildings has to be weighed in the balance.
30. Approaching the site from either direction along East Street and in views from the recreational ground the site is in a prominent position and at a point where the character of the street scene begins to change. The development to the east of the site is generally large detached properties and although some are built close to the roadside, they are set in spacious plots which, together with the tree lined frontage to the recreation ground, give this section of East Street a relatively open setting softened by planting.
31. To the west of the appeal site is the access to the water meadows which is marked by a field gate. Adjacent to this is the pair of semi-detached properties, 60 and 58 East Street, and the detached property to the west which are all of relatively modern appearance. These properties are set back from the road in landscaped plots, and although their proximity to each other reduces the appearance of spaciousness, their landscaped frontages make a significant contribution to softening the street scene. Beyond these properties the character changes to a much tighter form of development. The dwellings are predominantly terraced and whilst on the southern side the properties are set at the back of a narrow footway, on the northern side there is no defined footway and many properties open straight onto the road or have narrow frontages which are hard landscaped. This section of East Street is devoid of any frontage planting which is in direct contrast with the area within which the appeal site is set.
32. The variation in the size of the existing properties, which is readily apparent in the street scene, adds to the character of the area and although the proposed building would be significantly larger than many of the neighbouring dwellings, its scale would be reflective of the buildings currently on the site. In addition, the site has been in commercial use for a considerable length of time and from the submitted photographic evidence the scale of the buildings which preceded the current ones was reflective of their use with little reference to nearby residential properties. The occupation of the site by a building larger than its residential neighbours is therefore established and would not necessarily harm the character or appearance of the conservation area.
33. Although the size of the building would be greater than neighbouring domestic properties, its height would be only slightly in excess of the telephone exchange and 60 East Street to either side and would be comparable with 66a East Street to the east of the telephone exchange. However, this would be achieved by inserting a section of flat roof along the length of the building between the front and rear planes of the roof but set below the ridge creating a wide channel which would be visible in the side elevations. In addition the ridge of the roof to the front gable would be slightly above that to the front plane. Whilst it would create an interesting roofscape, it would be out of character with the relative simplicity of the design of the roofs in the immediate area.
34. The roofscape of the dwellings in the vicinity of the site is punctuated by chimneys and there are dormers to some properties. Although the dormer and chimney style features which would puncture the roof of the proposed building draw reference from similar features found on buildings in other parts of

- Coggeshall, their number and scale would be out of keeping with those in the vicinity of the site. It is accepted that visually a building of the size proposed could accommodate larger scale structures on the roof than a domestic dwelling and it is noted that these features would form part of the ventilation system and allow the installation of photovoltaic panels. However, the scale and number of the features increase the complexity of the roof design to the detriment of the character of the conservation area.
35. In the vicinity of the appeal site the predominant material, particularly on the residential properties, is render and the variety of colours in which it is finished makes a significant contribution to the character of the conservation area. However, there is evidence of the use of brick on the modern dwellings to the west of the site and the telephone exchange and in the boundary wall to the recreation ground and the outbuildings opposite the site. Although the use of brick for the external elevations of the proposed building would be in contrast to the render of the residential properties, given its proposed use and scale and the use of brick in other larger buildings in commercial use within Coggeshall, it is considered that the use of brick in this part of the conservation area would not be inappropriate.
 36. The open areas of the site which would surround the proposed building would be predominantly used for access and car parking with very little space remaining for soft landscaping. It is accepted that soft landscaping is not a characteristic of East Street further west of the site where interest is created in the hard landscaping by the variety of materials and textures used and that similar interest could be created in the appeal scheme by the choice of appropriate materials for the building and the hard landscaping.
 37. Although it is accepted that there is little planting on the site at present, it lies within a part of East Street where there is frontage planting. Whilst hedge and tree planting is proposed to the side boundaries and some ground cover planting to the rear boundary, the hard surfaced frontage of the site, which would demarcated from the footway by a line of bollards, would only be broken by the planting of three trees.
 38. Whilst the proposed tree planting to the front of the site and to a lesser extent the planting to the other boundaries would be visible within the street scene, it would not be sufficient to overcome the harsh setting which would be created by the predominance of the hard landscaping and would be insufficient to create a soft setting for the building and would not reflect the character of the immediate vicinity of the site.
 39. The water meadows to the rear of the site also fall within the conservation area and although views of this area can be glimpsed from East Street, they are presently restricted by the existing buildings on the site. Whilst the position of the proposed building and the use of railings and low level planting to the rear boundary would open up views from East Street and the recreation ground through to the water meadows, the proposed access and car park would form the foreground to this view. The limited planting both within the car park and on the rear boundary of the site would fail to soften the foreground to the views through to the open land beyond and would create a harsh contrast between the two land uses which would fail to enhance the character of the conservation area. Although this is reflective of the current situation, the views are presently more restricted and the site is not accessible to the public as it would be as part of the car park to a retail store.

40. It is acknowledged that the Framework does not wish to prevent or discourage appropriate innovation but it requires development to respond to local character and reflect the identity of local surroundings and materials. It also seeks to ensure that developments are visually attractive as a result of good architecture and appropriate landscaping. Although there are many features of the proposed building which have been found to be acceptable, overall they do not outweigh the concerns identified regarding the roof and its impact on the street scene or those regarding the preponderance of hard landscaping in the open areas of the site and the consequent lack of planting to soften the appearance of the building in the street scene. Whilst landscaping is a matter which can be addressed by condition, in this instance any increase in the areas of planting could have repercussions for other aspects of the development, namely the amount of space for parking and turning and general circulation around the building. It is therefore considered that the matter could not be satisfactorily addressed by condition in this instance.
41. Although views of the proposed retail store in the context of the listed buildings to the north west of the site would be limited, the appeal site does play a role in their setting, particularly in views from the east. In view of the concerns raised with regard to the conservation area a similar conclusion is reached in respect of the setting of the listed buildings.
42. On balance, it is therefore concluded that the development would neither preserve nor enhance the character or appearance of the Coggeshall Conservation Area or the setting of nearby listed buildings, contrary to Policies RLP90 and RLP95 of the LP and Policy CS9 of the CS to which significant weight has been attached in determining the appeal.

Open countryside

43. Whilst the majority of the appeal site lies within the settlement boundary, an area in the south eastern corner falls outside of it and is classed as being within open countryside and a Special Landscape Area. The part of the site in question is currently overgrown but it was evident during the site visit that it formed part of the operational area of the previous commercial use of the site. In the appeal scheme it would lie within the car park and the boundary with the adjacent water meadows would be marked by railings and a narrow belt of planting. Views towards this area of the site and the water meadow beyond would be possible from East Street and the recreation ground as already described.
44. Given the size of the area in question and its status as previously developed land, it is considered that its proposed use as part of the car park, which would ensure it would remain open, would be appropriate. It is therefore concluded that the development would not be detrimental to the open countryside and would comply with Policies CS5 and CS8 of the CS which seek to protect the countryside and the Special Landscape Area from inappropriate development, in accordance with the Framework.

Noise and disturbance

45. There is no dispute that the development would generate noise and as the site is currently vacant any noise generated would alter the present acoustic character of the area. However the matter which needs to be addressed is not whether the development would generate noise which would be audible but

whether it would be sufficient to harm the living conditions of local residents. The properties which would be most directly affected by the development by reason of noise and disturbance would be 54, 60 and 66a East Street.

46. It is proposed that the retail store would open between 07.00 and 22.00 hours on Mondays to Saturdays and 10.00 and 16.00 on Sundays, Bank and Public Holidays. The main sources of noise which might cause nuisance to residents would be from an increase in road traffic noise, the parking and manoeuvring of delivery vehicles and the transfer of goods into the store, noise generated by customers and the operation of plant and equipment, including air conditioning and refrigeration units, both in relation to the building and delivery vehicles. It is noted that, in assessing the planning application, officers of the Council recommended that the issue of noise could be addressed by conditions requiring the submission of a detailed noise assessment and attenuation measures and restricting deliveries to 08.00 and 18.00 hours on Monday to Saturday and none on Sundays or Bank or Public Holidays.

Noise and disturbance – volume of traffic

47. There was dispute as to the level of existing traffic using East Street. The Council assessed it as a quiet location with occasional passing traffic, few commercial vehicles and no heavy goods vehicles (HGV) following two half hour periods of observation. In contrast the automated traffic count undertaken by the appellant recorded a traffic flow approximately double the Council's figures and HGV movements accounted for approximately 12%. In view of my own observations over the course of the Inquiry of the level and nature of the traffic at various times during the day and into the late evening and the sound base from which the appellant's figures were derived in comparison with the short duration of the Council's survey, it is considered that the results of the survey conducted by the appellant give a more accurate representation of the traffic situation in the area of the site.
48. The appellant estimated that the development would generate an additional 135 vehicle movements per day on East Street of which 20 would be delivery vehicles. On the basis of these figures the appellant has calculated that the overall road traffic noise would increase by 0.2 dB (LA_{10,18hrs}) on an average weekday and 0.6 dB (LA_{10,18hrs}) on Saturdays. These changes would be hardly perceptible and although there are no figures to confirm the anticipated change on a Sunday, it is considered that the overall change in daily traffic noise on East Street attributable to the development would not be intrusive.

Noise and disturbance – vehicle movements

49. Of particular concern to the Council and the Coggeshall Group was the noise which would be generated from deliveries and in particular the operation of the tailgate on delivery vehicles and the movement of crates both within and from the vehicles into the building. The Coggeshall Group illustrated the scale of the nuisance it considered could be caused by reference to the experiences of residents living adjacent to existing Co-Op stores and in particular to the one in Kelvedon where a dwelling directly abuts the store and the delivery area. My visit to the Kelvedon store coincided with a delivery and it is acknowledged that the noise which emanated from the operation of the tailgate and from the movement of the cage trolleys was clearly audible within the car park. However, the distance between the loading bay and nearby residential

- properties is significantly greater in the appeal case than at Kelvedon and the consequences in respect of noise would therefore not be directly comparable.
50. No deliveries would take place to the site before 05.30 or after 18.00 hours on Monday to Saturday and before 05.30 or after 12.00 on Sundays or Bank or Public Holidays. In addition no deliveries by vehicles exceeding 7.5 tonnes would take place before 08.00 hours on any day and all deliveries would be made via the delivery area at the rear of the store. However, deliveries made before 07.00 hours are considered to be during unsocial hours and the schedule submitted in evidence indicates that deliveries of newspapers and cash would take place before that time.
 51. Whilst the Council accepted the source noise levels and distance corrections employed by the appellant in the submitted noise level assessments, it contended that the peaks generated in noise levels, particularly from delivery vehicles, resulted in the potential for background noise levels to be exceeded sufficiently for residents to be disturbed.
 52. The evidence submitted by the appellant indicates that the noise generated by the newspaper and cash deliveries scheduled to take place before 07.00 hours would be up to 33 dB LAeq,1hr or 54 dB LAmax which would be within the 42 dB LAeq,8hr or 57 dB LAmax threshold value representing an acceptable external sound level outside residential bedrooms at night cited by the World Health Organisation (WHO)² and in British Standard BS 8233³.
 53. The submitted schedule indicates that the majority of deliveries would occur between 08.30 and 13.30 hours and up to 11.00 hours on Sundays. Some of the deliveries would be made by refrigerated vehicles a number of which would be articulated. Deliveries by this type and size of vehicle would have greater potential to disturb the occupants of nearby properties, particularly in the use of their private gardens. The Coggeshall Group contend that delivery vehicles arriving at the site and off loading goods in cage trolleys could generate noise levels of 80 dB LAmax and 64 dB LAmax respectively. Although this level of noise might be found in some large scale retail developments, they are not supported in the evidence of the expert witnesses in respect of the appeal.
 54. The Council raised concerns regarding the potential peak noise levels likely to be generated by the day time deliveries both in the arrival and departure of the vehicles and the off loading of goods. The Council calculated that the noise generated during deliveries had the potential to exceed the background noise level of 43.5 dB(A) which it had recorded on East Street by a maximum of 18.5 dB(A). It was stated that this level of noise above background was likely to cause harm by reference to BS 4142:1997⁴ which considers that a difference of 10dB is deemed to indicate a significant likelihood of complaint.
 55. However BS 4142 was developed to assess steady and continuous noise and is intended to apply to noise from factories, industrial premises and other fixed installations. The WHO and BS 8233 standards provide a more realistic indication of people's response to the level of noise arising from vehicular activity and deliveries and it is noted that BS 8233 has been used by the Council in its assessment of other retail developments within its area.

² World Health Organisation Guidelines for Community Noise, 1999, Table at page XV

³ BS 8233:1999 Sound Insulation and Noise Reduction for Buildings - Code of Practice Section 7

⁴ BS 4142: 1997 *Method for rating industrial noise affecting mixed residential and industrial areas*

56. The appellant has used BS 8233 and has calculated that the noise level from daytime deliveries would reach a maximum of 49 dB LAeq,1hr which is within the 50 to 55 dB LAeq,16hr threshold value of WHO and BS 8233. Although the Council's calculations may have introduced some uncertainty regarding the level of noise likely to be generated by the development it is clear from the appellant's evidence that the levels would fall within acceptable recognised standards for this type of noise.
57. Concerns were expressed by the Coggeshall Group regarding noise which would arise from customers and staff in accessing the store and in their use of the car park, including the use of the pathway between the western elevation of the building and the site boundary with the access to the water meadows and 60 East Street beyond. There is no dispute that an element of noise would be generated and which would extend to 22.00 hours, a time when children resident in nearby dwellings would be asleep.
58. Whilst the evidence confirms that the noise generated from cars within the car park would fall within the acceptable threshold values set out in BS 8233, the Council has expressed concern regarding the effects of peak noise on local residents. In response the appellant has calculated that the peak level of noise from a car in the car park would be between 50 and 55 dB LAmax attenuated to the nearest dwelling. These noise levels fall below the 57 dB LAmax threshold value representing an acceptable external sound level outside residential bedrooms at night cited by the WHO and in BS 8233. On this basis it is considered that there would be no detriment to the living conditions of nearby residents from noise generated in the use of the car park.
59. Concern was also raised in respect of customers who might choose to park on East Street in preference to the car park or who walk from the centre. However, it is not anticipated that the noise generated would differ from that generated by anyone parking or walking along the street.

Noise and disturbance –plant and equipment

60. Whilst it was generally accepted between the parties that the level of noise which would be generated by plant associated with the air conditioning, ventilation and refrigeration would be relatively low, there was concern from the Council that if the noise was continuous it could result in a creeping up of the background level or that the intermittent use of equipment such as cooling fans could become a source of complaint. This could be particularly relevant at night when background noise levels usually fall to their lowest. Although the Council has questioned whether the background noise levels recorded reflect the lowest possible, no substantive evidence in support of this contention has been submitted and the levels provided in evidence have been relied on.
61. The appellant has calculated that the level of noise likely to arise from plant and equipment allowing for any tonal variations and the lowest background noise level overnight would be below that defined in BS 4142 as being very low. However, the plant and equipment which would be installed has not been confirmed and would be subject to change over time and there is a possibility that the recorded noise level readings are not completely representative. Therefore, although the noise from plant and equipment is calculated to fall within acceptable recognised standards, it would be appropriate for the level to be controlled against current background levels in order to ensure no detriment would be caused to the living conditions of local residents in this respect.

62. The Framework recognises that development will often create noise and states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum any adverse impact through the use of conditions. At present the local residents do not experience noise from regular activity on the site and therefore the introduction of any use would cause a change to their quality of life. Whilst the evidence does not demonstrate that the level of noise that would be generated by the proposed retail store would be sufficient to cause detriment to the living conditions of residents, it would nevertheless be important to control noise levels and opening hours by condition.
63. On balance, it is concluded that the development would not cause detriment to the living conditions of the occupiers of nearby residential properties by reason of noise and would accord with Policies RLP90 and RLP62, in compliance with the Framework, which seek to protect residents from undue or unacceptable impact from noise.

External lighting

64. Whilst little detail in respect of external lighting was submitted as part of the application, a detailed scheme formed part of the appeal and as the Council found the scheme to be acceptable it did not present any evidence on this matter. However the submitted scheme did not overcome the concerns of the Coggeshall Group that the living conditions of residents, particularly those of 60 East Street, would be affected by light spillage as experienced by residents living opposite the Co-Op store in Hatfield Peverel.
65. At present the main light sources in the proximity of the appeal site are the street lights and light emanating from residential properties. The proposed supermarket would require external lighting to its car park and rear loading bay as well as the entrance and the pedestrian walkway along the western boundary of the site. Whilst lighting of the site would not be required during all hours of darkness it would be required whilst the store was open and to the delivery area to allow early morning deliveries outside of opening times.
66. It is acknowledged that the level of external lighting required would be in excess of the existing external lighting levels presently found in the area and might exceed that which would be required if commercial operations were resumed on the site. However, the submitted lighting scheme indicates no light spillage would reach the boundary of 60 East Street. In addition the use of the lighting would be limited by condition to the store opening times and a maximum of 30 minutes at the end of each trading day. To facilitate deliveries outside of these times illumination of the delivery area only would be allowed.
67. Although the proposed external lighting as part of the development would increase the level of illumination currently experienced in the area, the evidence leads me to conclude that there would be no light spillage which would cause harm to the living conditions of residents of nearby properties. In this respect the development accords with Policy RLP65 of the LP and the Council's Supplementary Planning Document: *External Artificial Lighting Sustainability Appraisal*, 2009 which seek to minimise the level of illumination in the interests of highway safety and residential amenity and reflects one of the core principles of the Framework to always seek a good standard of amenity for all existing and future occupants of land and buildings.

Parking provision

68. In refusing permission on the grounds that the proposed parking provision would not meet the demands of the retail store and therefore would cause a significant increase in on-street parking, the Council relied on Policies RLP56 and RLP111 of the LP. Although Policy RLP111 has been superseded by Policy CS6 of the CS, Policy RLP56 remains extant and requires parking to be provided in accordance with the Council's adopted standards. Whereas Policy RLP111 reflected Policy RLP56 in requiring the provision of car parking in accordance with the adopted standard, Policy CS6 is silent on this matter, although Policy CS7 requires traffic and car parking to be carefully managed to encourage sustainable travel. The car parking standards adopted by the Council are the Essex County Council *Parking Standards Design and Good Practice*, 2009.
69. The proposed development would provide 31 car and 10 cycle parking spaces. Whilst the Highway Authority raised no objection to this number of spaces, it calculated a need for 35 spaces based on net retail floorspace. However, the standards state that the calculation should be based on gross floorspace which would give rise to a requirement for a maximum of 55 spaces. Nevertheless, it is noted that the standards indicate that a lower provision of vehicle parking may be appropriate in urban areas where there is good access to alternative forms of transport and existing car parking facilities.
70. In order to ascertain the likely level of demand for parking spaces at various times of the day, the appellant undertook a survey of the use of the car park at a Co-Op store in Elmswell, Suffolk. Elmswell was selected as the size of the settlement, the store and its car park and the location of the store within the settlement bear close similarities to Coggeshall and the proposed retail store. The survey, which was undertaken over a full week, confirmed that out of a total of 29 spaces the minimum number available at any one time was 3 and the average available was 12. The results were submitted in support of the planning application and accepted by the Highway Authority and during an unaccompanied visit to Elmswell I was satisfied with the similarities between the two schemes and found that the number of empty spaces in the car park corresponded with the survey.
71. It has already been established that the site, being within 200 metres of and only a few minutes walk from the centre of Coggeshall and its bus stops and car park, is accessible on foot and that linked trips with the centre would be possible. However, it is possible that customers may park at the appeal site and walk into the centre for linked trips, as might equally happen at Elmswell. Whilst this might give rise to cars being parked at the appeal site for longer periods, there is no evidence that it would result in insufficient parking being available.
72. The survey demonstrates that the level of parking proposed would be sufficient to serve the development and it is therefore considered that, in this instance, a level of car parking below the Council's standards would be appropriate.
73. The submitted HGV swept path analysis drawing indicates that drivers, in manoeuvring articulated vehicles within the site, would need to encroach onto a limited number of parking spaces to reverse into the delivery area. It was also suggested that the parking of delivery vehicles in the designated area would restrict the space available for customers to manoeuvre into and out of

nearby spaces during a delivery. The manoeuvring of an articulated vehicle into the delivery area would only take a few minutes and would be at a time when shopping patterns predict the number of customers would not be high. In any event it was suggested that a slight re-arrangement of the parking layout would facilitate sufficient space for the manoeuvring of the articulated vehicles without encroachment onto parking spaces. In addition the drawings indicate sufficient space would be available for drivers of vehicles to enter and leave parking spaces whilst a delivery took place. The manoeuvring of articulated vehicles within the site would therefore be unlikely to result in any reduction in the number of parking spaces available to customers.

74. Nevertheless there will always be customers who choose to park on the road rather than use the parking provided within the site. Although some of the residential properties in the vicinity of the appeal site have off-street parking, the majority of residents rely on on-street parking. On-street parking is restricted along parts of East Street and demand for spaces by residents in the vicinity of the site is high and is increased by visitors to the recreation ground. The evidence of the Coggeshall Group clearly identifies the problems residents encounter when unable to park outside their properties and their concerns that these difficulties would be exacerbated by the proposed development, particularly in the light of the evidence of residents who live close to the store at Hatfield Peverel.
75. In order to ascertain the demand for on-street parking in the vicinity of the appeal site the appellant undertook a survey. Although the length of time over which the survey was conducted was limited, it did cover the times of the day and days of the week when demand could be expected to be high. I also visited the site at various times of the day and into the later evening and my observations did not conflict with the results of the survey which confirmed that at any one time spaces were available in the vicinity of the appeal site and at times in excess of 20 spaces were available.
76. The installation of a pedestrian crossing as part of the development and the possible future need for parking restrictions if on-street parking interferes with delivery vehicles would reduce the available space for on-street parking. However, on the basis of the submitted parking survey, it is anticipated that adequate on-street capacity would still remain.
77. It is accepted that customers wishing to make a quick visit to the store or use the ATM might, on occasion, stop on East Street in preference to using the car park. It is apparent from the evidence that such parking causes problems at Hatfield Peverel where residents contend private driveways are blocked by customers' vehicles, private property has been damaged and confronting drivers has resulted in verbal and physical abuse. However, at Hatfield Peverel on-site parking is severely restricted with only a few spaces to the front of the shop which is also used by delivery vehicles. In addition there is limited space within the site frontage for drivers to manoeuvre vehicles and as a result drivers reverse in the road. This is in direct contrast to the appeal proposal where parking to the front of the site is and would continue to be restricted, the car park would be easily accessible and separate parking for delivery vehicles would be provided.
78. The evidence therefore leads me to conclude that the parking proposed would be appropriate to serve the needs of the development without causing detriment to the living conditions of residents in their reliance on on-street

parking, in accordance with Policies RLP56 and RLP90 of the LP and Policy CS7 of the CS which accord with the guidance in the Framework.

Flood Risk

79. Whilst flood risk does not form part of the Council's reasons for refusing planning permission, the Coggeshall Group raised concerns in this respect and provided evidence of several instances of flooding in the area. It is understood that although improvements were made following an incident in 2001 when East Street in the vicinity of the site was flooded, standing water on the land to the rear of the site and the rear garden to 60 East Street has been recorded by residents as recently as May 2012.
80. The site lies within Flood Zones 2 and 3 where less vulnerable uses, which include the proposed use, are appropriate. The building would be located within the area of the site which is in Flood Zone 2, with the car park occupying the land classed as Flood Zone 3. The Flood Risk Assessment and subsequent Addendum report submitted as part of the planning application concluded that the development would ensure that flood risk was not increased elsewhere. Nevertheless, the Coggeshall Group contended that the drainage measures proposed would result in additional surface water being deposited on the water meadows and the gardens of nearby residential properties.
81. The proposed sustainable drainage measures include the provision of a short drainage ditch and underground tanks to store surface water run-off prior to its controlled discharge from the site towards the water meadow at a rate equal to that which would occur if the site was greenfield. Although details of the scheme have not been finalised, no objection to the submitted proposals has been raised by the Environment Agency and no definitive evidence that it would result in additional surface water discharge from the site onto the water meadows or increase flood risk elsewhere has been forthcoming. The appellant has also confirmed that the identified flood compensatory measures would be contained within the site and would not encroach onto land beyond its boundary. On this basis the provision of an acceptable drainage scheme could be satisfactorily controlled by condition.
82. The Coggeshall Group also contended that there were other sites which were sequentially preferable to the appeal site in terms of flooding. However, my attention has only been drawn to the Colne Road site already referred to in terms of the retail sequential test. Whilst it is accepted that this site would be sequentially preferable to the appeal site in respect of flooding, the test set out in the Technical Guidance to the Framework requires the site to be reasonably available. In view of the conclusions reached regarding the unsuitability of the Colne Road site in comparison with the appeal site for the development proposed it is concluded that the site is not reasonably available.
83. The evidence therefore leads me to conclude that the proposed development would constitute an appropriate use of the site and would ensure that flood risk is not increased elsewhere, in accordance with Policy CS8 of the CS and the Framework.

Other material considerations

84. The appeal site has remained vacant since the previous use ceased in 2007 when the company operating from the site relocated to larger premises. However, permission for the use of the site for industrial purposes remains

extant and whilst the previous occupant did not operate during the evenings or at weekends and Bank or Public Holidays it is understood that there are no conditions restricting the hours of operation. Whilst several of the residents giving evidence had moved to their properties after the previous use had ceased, one resident who had been living in his property at the time the company was trading did indicate that noise from operations on the site could be heard in the rear garden of his property located on the northern side of East Street.

85. The appellant indicated that, should the appeal be unsuccessful, the building would be let for commercial use, although the Coggeshall Group questioned whether there would be any demand particularly given the state of the site and the buildings. Whilst the buildings and the site generally are in need of repair and attention, there is no evidence that the work required would prevent them being brought back into use.
86. There is therefore the potential for the commercial use of the site to be resurrected and if it operated under the terms of the extant permission there would be no restriction on the hours of operation. The effect of a commercial use on the character and appearance of the area and the living conditions of residents could be as significant as the proposed supermarket. Therefore some weight needs to be attached to the potential fall back position in the determination of the appeal.
87. The Coggeshall Group referred to problems arising from the anti-social behaviour of youths congregating in the recreation ground and their concerns that these would increase as a result of the proximity of the recreation ground to the proposed supermarket and the ability of the youths to purchase alcohol from it. It was also contended that the open areas of the appeal site would be available and attractive to the youths to congregate. Whilst the anti-social behaviour of youths can be detrimental to the living conditions of local residents, there is no evidence that a retail store on the appeal site rather than in the centre of Coggeshall would directly cause an increase in the problem.
88. There was also concern amongst residents that the retail store and the resultant increase in activity in the area could lead to an increase in criminal activity and in particular theft. In support of this contention reference was made to the application for the renovation of the Co-Op store in Earls Colne which stated that the number of break-ins was high. Whilst increased activity may result in a perceived increase in crime, there is no evidence to support these claims and as it is recognised that appropriate external lighting in association with increased activity can act as a deterrent, little weight can be attributed to fear of crime in the determination of the appeal.
89. Concerns were also expressed by residents that the location of many of the properties close to or at the back of the footway allowed passing pedestrians views into their homes and any increase in footfall would increase the effect on the privacy of occupants. Whilst the concerns of residents are recognised, the harm to privacy caused by passing pedestrians already exists and any additional harm which might be caused by an increase in the number of pedestrians passing residential properties would not be sufficient to justify dismissing the appeal.
90. Finally the Coggeshall Group contended that there is a reasonable possibility that protected species may be present on or immediately adjacent to the site.

No evidence in support of this contention was submitted whereas the Phase 1 Habitats Survey identified the site to be of low ecological value and concluded that the development could proceed subject to precautionary measures being undertaken. There is therefore insufficient evidence to dismiss the appeal on these grounds.

Unilateral Undertaking

91. At the Inquiry the appellant submitted a signed Section 106⁵ Unilateral Undertaking (UU) regarding the provision of a pedestrian crossing on East Street and to ensure that the units which would be vacated at Doubleday Corner would remain in retail use and the building would be renovated and upgraded. The Council confirmed it found the contents of the UU to be satisfactory and that it would meet the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Whilst I agree with the Council, the provisions of the UU do not outweigh the concerns identified in respect of the proposed development.

Conclusions on Appeal A

92. It has been concluded that the development would not harm the retail vitality or viability of Coggeshall, the living conditions of local residents or the character of the open countryside and the Special Landscape Area; that adequate on-site parking would be provided and there would be no increased risk of flooding. However, the weight these carry in favour of the appeal do not outweigh the harm which it has been concluded the development would cause in neither preserving nor enhancing the character or appearance of the Coggeshall Conservation Area or the setting of nearby listed buildings.

Appeal B

93. Whilst there was no dispute between the parties that the site and the existing buildings in their existing state of repair detract from the street scene, the visual gap which would be created by their demolition would not necessarily be an improvement. It is therefore concluded that in the absence of an acceptable scheme for the replacement of the existing buildings their demolition would neither preserve nor enhance the character or appearance of the Coggeshall Conservation Area, contrary to Policy RLP96 of the LP.

Conclusions

94. For the reasons already given, and having had regard to all other matters raised, both Appeal A and Appeal B are dismissed.

K. Sheffield

Inspector

⁵ Section 106 of the Town and County Planning Act 1990.

APPEARANCES

Some witnesses for the Rule 6 Party were not formally called but their statements were taken as read.

FOR THE LOCAL PLANNING AUTHORITY:

David Whipps LARTPI	Solicitor Partner, Holmes & Hills LLP
He called	
Andrew Claiborne Dipl Arch	Partner, Plater Claiborne Architecture and Design
(Hons) MaPS FFB RIBA	Environmental Health Officer, Braintree District Council
Pamela Sharp CIEH	Principal Planner, Capita Symonds
Olivier Spencer BA(Hons) MSc MRTPI	Planning Consultant
Clive Tokely MRTPI	

FOR THE APPELLANT:

Tom Cosgrove	Counsel for the appellant
He called	
Dean Barke MSc MIOA	Director, Sharps Redmore Partnership
Mark Geddes IENG AMICE	Director, Richard Jackson Limited
Mark Potter BSc Dip Arch RIBA ARB	Director, Hurley Porte and Duell
Ray Ricks DipTP MRTPI	Director, Boyer Planning
Mark Wood BA(Hons) BTP MSc MRTPI MCIT MILT	MWA Planning and Development Consultancy

FOR THE RULE 6 PARTY (THE COGGESHALL GROUP):

Janick Fielding	Counsel for the Coggeshall Group
He called	
Don Proctor DipTP MRTPI	Director of Planning, RPS Group
Russell Johnston	Resident of Coggeshall
Neil Spragg	Resident of Coggeshall
Elizabeth Barnett	Resident of Coggeshall
Lisa Waller	Resident of Hatfield Peverel
Hubert Gaitskell Ashton	Resident of Coggeshall
Paul Woolston	Shopkeeper in Coggeshall
Bill Potter	Resident of Coggeshall
Louise Wade	Past resident of Coggeshall and owner of land to south of the site

INTERESTED PERSONS:

Brian Spraggon	Chair of Planning, Coggeshall Parish Council
John Reed	Local Resident

DOCUMENTS

- 1 Opening submissions on behalf of the appellant.
- 2 Opening submissions on behalf of the Council.
- 3 Signed Planning Obligation under Section 106 of the Town and Country Planning Act 1990 submitted by the appellant.
- 4 Proposed lighting scheme submitted by the appellant.
- 5 Statement of Coggeshall Parish Council and draft minute confirming the agreement of the Council to its content, submitted by Brian Spraggon on behalf of the Parish Council.
- 6 Retail Planning Assessment for Co-Op store in Wimpole Road, Colchester, submitted by the appellant.
- 7 Noise level readings which had formed the basis of the evidence of Neil Spragg.
- 8 UK Retail Rankings 2011 submitted by the Rule 6 Party.
- 9 List of former shops in Coggeshall now in residential use, submitted by the Rule 6 Party.
- 10 List of suggested conditions submitted by the Council.
- 11 Policy RLP 126 of Braintree District Local Plan Review, 2005 submitted by the Rule 6 Party.
- 12 Suggested condition in respect of shop display windows, submitted by the Council.
- 13 Closing submissions for the Rule 6 Party.
- 14 Closing submissions for the Council.
- 15 Closing submissions for the appellant.
- 16 Costs application on behalf of the appellant.
- 17 Response to the costs application by the Council.

PLANS

- A Drawing Nos. 11/227-03 and JBA 11/227-02 Rev A of revised car parking layout and landscaping scheme, submitted by the appellant.
- B Drawing No. JT71 01N revised site plan correcting line of footway to north east of the appeal site and the footprint to 60 East Street, submitted by the appellant.
- C Drawing indicating the position and height that 3D images submitted as part of the application were taken from, submitted by the appellant.
- D Drawing Nos. JT34 02 C and JT34 03 D of alterations and extensions to existing Co-op in Coggeshall submitted by the appellant.