



Appeal Decision

Site visit made on 1 November 2022

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/Z1510/W/21/3286262

Land North of Western Road, Silver End, Essex

- 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 Redrow Homes Limited, Chelmsford against Braintree District Council.
 - The application Ref 21/01810/FUL, is dated 25 May 2021.
 - The development proposed is erection of 126 homes with associated access, open space and infrastructure (following outline planning permission 15/00280/OUT and as a variation of reserved matters approval 18/01751/REM).
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Decision

1. The appeal is dismissed and planning permission refused.

Preliminary Matters

2. Since the submission of the appeal the Council has adopted the Braintree District Local Plan, July 2022. The Council has, in a letter dated 9 August 2022, stated that this supersedes the Braintree District Local Plan Review (2005) and the Braintree District Local Development Framework Core Strategy (2011). For clarity therefore the development plan is now comprised of the Braintree District Local Plan, adopted in July 2022. This is an amalgamation of the Braintree District Local Plan 2013-2033 Section 1, North Essex Authorities' Shared Strategy Section 1 Plan and the Section 2 Draft Local Plan referred to in the evidence. I will therefore be referring to the policies of the Braintree District Local Plan in determining this appeal.
3. The applicant has submitted revised plans since the appeal was lodged in order to address some of the Council's concerns. I have considered whether to accept these plans in accordance with the guidance set out in the Procedural Guide – Planning Appeals -England (the Guide) and the Wheatcroft principles. The Guide sets out that if an applicant thinks that amending their application proposals will overcome the local planning authority's reason for refusal they should normally make a fresh planning application. It goes on to say that the appeal process should not be used to evolve a scheme and it is important that what was considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
4. In considering whether to accept the amended plans submitted by the appellant I have had regard to the circumstances of this appeal, being against the failure of the Council to give notice of its decision on the application within the prescribed period, and therefore whether the appellant could address the

concerns of the Council prior to submitting the appeal. However I have to have regard to the Guide and the Wheatcroft principles in deciding whether to accept the amended plans. In this respect the Guide is clear in that the appeal process should not be used to evolve the proposals and that the scheme which is before me should be essentially the same as that considered by the local planning authority.

5. It is clear that, whilst the local planning authority did not make a formal decision on the scheme, it did consider the proposal at a Planning Committee. Therefore the scheme that was considered by the local planning authority was essentially the same as that which was originally submitted by the appellant. I have therefore decided in accordance with the Guide that I shall have regard to those plans that were considered by the local planning authority at the Planning Committee and not the plans submitted by the appellant during the appeal process.
6. It appears to me from my site visit and the documentation I have received as part of the appeal process that the approved scheme has more than a theoretical possibility of being implemented, should the appeal proposal be dismissed. This is due to building work on the adjacent site and the stage the construction work has reached. My attention has also been drawn by both parties to the relative merits of the permitted scheme and the appeal proposal. I therefore have had regard to the permitted scheme in this decision.

Background and Main Issues

7. The appeal is against the failure of the Council to give notice of its decision on the appeal application within the prescribed period. In these cases there is no formal notice of decision from the Council refusing the application. However the Council's Planning Committee has considered the application. As such it has decided that if it were the decision maker it would have refused the application for reasons based on the following considerations: the design and layout of the proposed development; living conditions of the proposed occupiers in terms of overlooking, privacy and the standard of internal space, having regard to the Nationally Described Space Standards, and the housing mix not reflecting the local need.
8. The Council has also made reference to the lack of an agreement made under s106 of the Town and Country Planning Act 1990 to secure certain requirements that applied to the previous permitted scheme as a reason for refusal.
9. Therefore the main issues in this appeal are:
 - whether the character and appearance of the proposal is acceptable both in itself and in relation to the local area;
 - whether the proposal would provide acceptable living conditions for the residents of the scheme;
 - whether the housing mix proposed within the scheme is acceptable having regard to the local housing need;
 - whether the proposed planning obligation complies with the requirements set out at paragraph 57 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community

Infrastructure Levy Regulations 2010 and addresses the requirements of the Council.

Reasons

Character and appearance

10. The site is part of a larger development a significant proportion of which has been completed. The completed part of the development to the south of the appeal site is comprised of a mix of detached houses, flats and smaller housing. There is also a builders' compound which contains materials, machinery and site buildings in this area. To the west of the site are the housing areas of Silver End, whilst to the north and east lie areas of agricultural land.
11. The area where the appeal proposal is located benefits from an earlier permission for 126 houses (the same number as the appeal proposal). In essence the appeal proposal, notwithstanding the fact that it is submitted as a full planning application, is an amendment to that previously permitted scheme. The appeal proposal is comprised of 126 houses which are made up of terraced, detached and semi-detached houses together with 2 apartment blocks, car parking, public open space and landscaping.
12. Street tree planting and parking set at 90 degrees to the road is a feature of both the permitted scheme and the appeal proposal. However, the second principal road in the west of the appeal proposal has more housing accessed from it and consequently more frontage parking which is at 90 degrees to the road than the permitted scheme. As a result the space for street trees is reduced which diminishes the overall quality of the scheme. Furthermore the presence of more cars parked in front of the proposed dwellings at 90 degrees to the street results in a layout that would be more car dominated. Moreover given the increase in car parking it is not capable of being sufficiently softened by an appropriate scale of planting.
13. In terms of what the appellant describes as the 'main avenue', whilst on the face of it this provides for 6 more trees than the approved scheme this also includes trees which are part of the relocated public open space. If the trees which are part of the open space in the permitted scheme were included then that would reduce the difference in tree planting between the two schemes. In this respect therefore I do not consider that there is a significant difference between the two schemes sufficient to agree that the appeal scheme is superior to the approved scheme as regards tree planting along the 'main avenue'.
14. In terms of the design of the dwellings the approved scheme provides details on the terraced and semi-detached properties that add to its interest and character. These details include chimneys, rendering, gables/entries and brick banding. These details are either lost or appear less prominent in the appeal scheme giving it a bland and generic appearance.
15. Reference has been made to the difference in the parking courts between the permitted scheme and the appeal proposal. In the permitted scheme the two apartment blocks have separate parking courts and landscaping. In the appeal proposal there is a single parking court to serve both blocks and the amount of landscaping is reduced. Consequently, the appeal scheme offers significantly

- less opportunity for the impact of the areas of parking to be softened through planting and landscaping.
16. In the eastern part of the proposal the straight runs of semi-detached and terraced houses which are part of the permitted scheme are proposed to be replaced by detached houses interspersed with a small number of semi-detached and terraced houses. This reflects the character of the larger development to the south, but is not on the whole characteristic of the parts of Silver End which are adjacent to the development.
 17. The character of the adjacent parts of Silver End is derived from a mixture of terraced, semi-detached and detached houses all from the mid to late 20th century. While they provide a spacious environment the housing areas are of no particular merit in themselves. Therefore I do not consider that there is overall benefit in replicating this type of character on the appeal site. Furthermore the lower density of the eastern part of the site helps to soften and provide a transition between the higher densities to the west and the open countryside to the east.
 18. The development plan is comprised of the Braintree District Local Plan 2013-2033 (BDLP). Of particular relevance to this issue are policies SP1, SP3, SP7, LPP1, LPP35 and LPP52 of the BDLP.
 19. As the proposal is part of a larger development which was granted on appeal a number of years ago the principle of housing on the site has been established. As a result Policies SP1 and LPP1 of the BDLP, that relate to development boundaries have limited relevance to this appeal. Moreover the site as a whole has been allocated for residential development in the BDLP¹. Therefore the principle of the proposal in this respect is consistent with the development plan.
 20. Policies SP3, SP7, LPP35 and LPP52 all relate, amongst other things, to the quality of the development in terms of layout, architecture, landscaping and the creation of a distinctive character that harmonises with its surroundings. Whilst I do not consider that the variations from the local character highlighted by the Council in terms of the eastern part of the site unacceptably harm local character and distinctiveness, I do consider that some of the design and layout elements are not of the highest quality.
 21. These are to a large extent set out above, however they can be summarised as excessive 90 degree on street parking on the western street, leading to a layout which is car dominated, the lack of sufficient street trees to break up the impact of the parking and the omission of architectural details which add interest to the proposal (ginnels/entries, chimneys brick banding and render). Moreover, the combining of the 2 parking courts into 1 to serve the apartment blocks and a consequent reduction in the amount of landscaping that could be provided in this area further diminishes the quality of the appeal proposal.
 22. The National Planning Policy Framework (the Framework) at Section 12 emphasises the role of the planning system in the creation of high quality and beautiful places. This emphasis includes creating developments that are visually attractive, with good layouts and appropriate and effective landscaping. Within this section the importance of street trees and the creation

¹ P274 of the BDLP, SILV389, Land North West of Western Road, Silver End

of tree lined streets is also emphasised. Furthermore, and in relation to this proposal as a revision of a previously permitted scheme, the Framework is clear that proposals should not materially diminish the quality of a previous permission. The addition of further on street parking at 90 degrees to the street, fewer street trees in the western part of the proposal and the dilution of the detailing on some of the dwellings does diminish the quality of the permitted scheme.

23. I therefore find that the proposal, for the reasons given above, is in conflict with the policies of the development plan that relate to the design and layout of development. Moreover the proposal is also not consistent with the parts of the Framework that relate to achieving well designed places, also for the reasons set out above.

Living conditions

24. Matters relating to living conditions include: the size of the gardens of the Warwick house type; the distance between facing windows in parts of the proposal resulting in a loss of privacy for residents; the non-compliance of some of the units with the Nationally Described Space Standards (NDSS); the convenience of remote car parking spaces for the occupiers of some of the dwellings; the effect of cars being parked in front of houses on the occupiers through increased noise and disturbance and the lack of access to the rear gardens of some terraced properties leading to reduced privacy and security.
25. The Warwick house type is described as a 2 bedroom house with two double bedrooms and a 'study' at first floor level. It is clear to me that the house type would be viewed by potential purchasers/occupiers as a 3 bedroom house comprised of two doubles and a single bedroom. In this respect the house type should comply with the standards of the development plan that relate to a 3 bedroom house. The standard for a 3 bedroom house set out in the Essex Design Guide is for a garden in excess of 100sqm. The garden proposed for this type of house is below that standard. Policy LPP52 of the BDLP, amongst other things, requires at point r) that private outdoor amenity space shall be provided having regard to the standards set out in the Essex Design Guide or its successors. Consequently the proposal is in conflict with the development plan in this respect.
26. The eastern part of the site contains a significant amount of detached housing which face both onto the open countryside and the main spine road. However the distances between the dwellings at the rear are below the standard adopted by the Council of 25m between facing windows. This potentially would lead to a loss of privacy both in the houses and in their gardens. Policy LPP52 of the BDLP, amongst other things, at point c) requires that there shall be no unacceptable loss of amenity of any nearby dwellings, including loss of privacy. Therefore the lack of an adequate distance between dwellings in this part of the proposal would lead to a loss of privacy both in the dwellings and in their rear gardens. Consequently the proposal is in conflict with the development plan in this respect.
27. The Council through the BDLP has adopted the NDSS at Policy LPP35. Therefore the internal space standards set out in the NDSS can be applied to the appeal proposal. 6 of the apartments fall below the size required by the NDSS. This would lead to a poor standard of internal accommodation for the

occupiers. Consequently, the proposal is in conflict with Policy LPP35 of the development plan.

28. I have had regard to the appellant's argument that these apartments can be enlarged through amendments or by condition. I do not consider that there is a mechanism for providing amended plans through the appeal process as I have set out in the preliminary matters above. Furthermore, as any condition might lead to a material change in the appearance of the proposal which might require a fresh planning application, it would not be appropriate to impose a condition requiring that the external dimensions of the apartment block should be increased.
29. A number of the dwellings are served by car parking spaces that are some distance away. Whilst ideally parking spaces should be close to the dwellings they serve, in this case given the relatively compact nature of the development, I do not regard this arrangement as unacceptable in terms of the living conditions of the potential occupiers. This arrangement is therefore not in conflict with the development plan.
30. I have already referred to cars being parked at 90 degrees to dwelling, primarily outside the terraced and semi-detached houses on the western part of the proposal. As well as giving the proposal the appearance of being car dominated, banks of cars parked facing the fronts of the houses could also lead to increased noise and disturbance caused to the residents due to headlights shining into rooms and noise generated by the coming and going of vehicles, especially where the cars are not owned by the occupiers.
31. The BDLP at Policy SP7 and LPP52 seeks to protect the living conditions of potential residents from the unacceptable noise or disturbance brought about by new development. The number of cars parked facing the dwellings on the western part of the proposal, where some will be cars belonging to neighbouring properties, will inevitably cause noise and disturbance to the future residents. The proposal is therefore in conflict with these Policies the development plan.
32. Finally, with regard to living conditions, the case has been made that the middle dwelling in the terraced housing would have to be accessed via a side entrance which would cut across the gardens of other houses. This, it is alleged, would affect the privacy and security of these the occupiers of these houses. It is further alleged that the previously permitted scheme addressed this matter by providing ginnels/entries through the blocks.
33. I am of the opinion that a separate access for each dwelling should be provided to their rear garden. This is in order to ensure that the privacy and security of other gardens is not compromised. It is clear from the previously approved scheme that this would be possible through the use of ginnels or entries between the properties. The BDLP at Policy LPP52 seeks, amongst other things, that new developments provide a safe and secure design. It is clear to me that the proposal does not achieve this for the reasons given above and is therefore in conflict with this policy of the development plan.

Conclusion on living conditions

34. The Council have clear and up to date policies to ensure that the living conditions of potential occupiers of new developments are protected. The

appeal proposal, for the reasons given above, would harm the living conditions of the potential occupiers of the proposal by not providing all dwellings with adequate garden space, an adequate standard of space inside the proposed apartments, nor would it protect dwellings from noise and disturbance from cars being parked in front of the dwellings and it would not protect the security and privacy of some dwellings' rear gardens.

35. Therefore, despite finding that the provision of remote parking for some of the dwellings was acceptable, overall and for the reasons given above I find that the proposals are in conflict with the policies of the development plan in respect of the living conditions of the future residents.

Housing mix

36. Assessment of the acceptability of the housing mix in the appeal proposal has to be done against the requirements of the development plan, in this case the BDLP, and the existence of a permitted scheme for 126 dwellings which is capable of implementation. As the statements by the appellant and the committee report and statement from the Council divide the assessment of housing mix for affordable housing and market housing, I will do the same. It is also apparent that in assessing these matters reference is made to the development of the whole site and not just the northern sector, the subject of this appeal.

Affordable Housing Mix

37. It appears to me from the evidence that the principal difference between the parties is the reduction in the number of 3 bedroom houses from 43 to 30, a loss of 13, 3 bedroom houses overall. However this reduction brings the number of 3 bedroom affordable houses to be delivered across the whole development closer to the SHMA figure of 35.
38. The relevant policy in this respect is Policy LPP35 of the BDBP which states, amongst other things, that the mix should be in line with the identified local need as set out in the 2015 SHMA unless material consideration indicate otherwise. On the face of it therefore the appeal proposal is more in line with the 2015 SHMA and therefore more policy compliant than the permitted scheme.
39. The Council has argued that the Strategic Housing Team through the housing register, which they state is more accurate than the SHMA, and through local knowledge that the demand for 3-4 bedroom housing has increased 'over the last 18 month's'. This data has been published and is publicly available through a system known as STATNAV.
40. The STATNAV data supplied with the appeal documents shows a need/demand for 29, 1 bed houses, 26, 2 bed houses and 20, 3 bed houses in Silver End. Thus indicating that the greatest demand in Silver End is for 1 and 2 bedroom homes with a lesser demand for 3 bedroom homes and none at all for larger homes. Therefore and on the basis of these figures and those of the SHMA I find that the affordable housing mix proposed is broadly in line with the SHMA as required by Policy LPP35 and is therefore compliant with this Policy.

Market Housing Mix

41. As with the affordable housing mix the area of difference between the parties can be narrowed to whether there are sufficient 3 bedroom houses to meet need and whether there are too many 4 bedroom houses. The Policy basis for this assessment is the same as that for affordable houses and contained in Policy LPP35 which again requires the housing mix to be in line with the SHMA unless material considerations indicate otherwise. The permitted scheme is also a relevant consideration. On a positive note the Council agree that the increase in 2 bedroom houses will better meet local needs than the permitted scheme. As with affordable housing the figures are given for the whole of the development not just the northern sector which is the subject of this appeal.
42. Therefore and to compare the proposals in detail, it can be seen that the number of 2 bedroom houses on the appeal proposal has increased from 9 to 26, the number of 3 bedroom houses has reduced from 109 to 83 and the number of 4 bedroom houses has increase from 92 to 101. In all cases, except for that of 4 bedroom houses this has brought the provision in the appeal proposal closer to that required by the SHMA than the permitted scheme. Therefore on the face of it the appeal proposal is more policy compliant than the permitted scheme.
43. However the Council has argued that due to the lack of 3 bedroom houses and too many 4 bedroom houses the appeal proposal is not policy compliant. In particular the percentage of 4 bedroom houses has risen to 48% from 44% in the permitted scheme, against 20% identified by the SHMA. I have had regard to these points, however they do illustrate that if the permitted scheme were built, 44% of housing across the entire site would still be 4 bedroom which is a considerably larger proportion than the SHMA. The increase in the proportion of 4 bedroom houses from 44% to 48% would result in an increase of 9, 4 bedroom houses over and above the permitted scheme which is a relatively small number compared to the overall size of the development.
44. Moreover the amount of 2 and 3 bedroom houses to be provided across the whole development would be more consistent with the requirements of the SHMA than the permitted scheme. Therefore, whilst the appeal proposal is not in line with the SHMA in terms of the mix of market housing, the material considerations of the permitted scheme and the change to provide more 2 and 3 bedroom houses which bring the appeal proposal more in line with SHMA mean that it is consistent with Policy LPP35.

The planning obligation

45. A signed deed of variation of planning obligation under s106A of the Town and Country Planning Act 1990 has been submitted as part of the appeal documentation. I am satisfied that this meets the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and those of paragraph 57 of the Framework in that it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
46. Furthermore given the Council being a party to this agreement I conclude that it meets the requirements of the Council as set out in the Committee Report.

Other Matters

47. The proposal falls within the Zone of Influence (ZOI) of European designated sites along the Essex Coast. Additional residential development in the ZOI could have a significant effect on the sensitive interest features of these sites, through increased recreational pressure. It is my duty, as the competent authority, to consider whether the proposed development would constitute a likely significant effect on the sensitive interest features of the designated sites as set out in Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017 (CHSR).
48. It is anticipated, without mitigation, new development in the ZOI could have a significant effect on the sensitive interest features of the European designated sites through increased recreational pressure, particularly when considered in combination with other plans or projects.
49. Therefore, by virtue of its proximity to protected European sites an Appropriate Assessment under the CHSR would be required were I minded to allow the appeal. Nevertheless, considering that the appeal is to be dismissed for other reasons mentioned in the decision, no further consideration is required on this matter.

Planning Balance

50. In terms of the character and appearance of the scheme I have found, for the reasons given above, that harm is caused through the amount of car parking spaces placed at 90 degrees to the road on the eastern road. This would lead to this part of the development being car dominated with reduced scope for tree planting in order to soften the impact of the proposed parking when compared to the permitted scheme. This would conflict with Policies SP3, SP7 and LPP52 of the development plan. I give substantial weight to this harm.
51. I have also found, for the reasons given above, that harm would be caused to the character and appearance of the scheme through the removal of the ginnels/entries and chimneys from the terraced houses. This would conflict with Policies SP3, SP7 and LPP52 of the development plan for the reasons set out above. I give this harm substantial weight in this decision.
52. Finally, with regard to character and appearance, I have found, for the reasons given above, that the parking court to serve the two apartment blocks would harm the character and appearance of the development by introducing a large expanse of hard surfaced car parking with little opportunity to soften its appearance with landscaping. The proposal for two parking courts in the permitted scheme offers more opportunity for landscaping. In this respect, for the reasons given above, the appeal proposal conflicts with Policies SP3, SP7 and LPP52 of the development plan. I give this harm substantial weight in this decision.
53. However I note that the appeal proposal relocates the area of open space to a more central position than the permitted scheme and repositions the parking spaces proposed in the area so they are not around its edge. This has some benefit to the appeal proposal over and above the permitted scheme. However, as both the schemes are relatively compact and therefore the open space would be relatively conveniently located in either scheme I give this benefit neutral weight in this appeal.

54. I also note that it is proposed to plant more trees along the principal spine road through the development. Whilst this is a benefit I am not convinced that this would lead to more overall planting within the site if the planting around the original open space was taken into consideration. I therefore give this benefit limited weight.
55. In terms of living conditions I have found that, for the reasons given above, harm is caused through the lack of adequate garden space for the 3 bedroom 'Warwick' house type, loss of privacy both in the houses and gardens of those houses where the distance between facing windows is less than the required standard, internal space standards being below those required by the NDSS in 6 of the apartments and the cars parked at 90 degrees in some parts of the proposal will cause occupants of some of the houses noise and disturbance. This would conflict with Policies SP3, SP7, LPP35 and LPP 52 of the development plan. I give these harms substantial weight.
56. Whilst I have found that remote parking allocated to some of the houses is acceptable I find that this is a neutral factor in the consideration of the appeal proposal.
57. In terms of the housing mix the appeal proposal is for the same number of dwellings as the permitted scheme. It is also proposed to provide the same proportion of affordable houses as the permitted scheme. However it does deviate from the permitted scheme in terms of the mix of house sizes, for both the market and affordable elements. Policy LPP55 expects housing mixes for both affordable and market housing to be in line with the SHMA unless material considerations indicate otherwise.
58. In terms of affordable housing I have found that the mix of house sizes in the appeal proposal to be closer to that required by the SHMA than the permitted scheme. I have also had regard to the evidence provided by the Council, in particular the STATNAV document and have found no reason to depart from the housing mix for affordable houses set out in the SHMA. I therefore conclude that whilst the scheme is not fully compliant with the SHMA in terms of the mix of affordable housing it is closer to the requirements of the SHAA than the permitted scheme. As the permitted scheme is capable of implementation I consider that the appeal proposal would not harm the delivery of a housing mix that meets the needs in the locality, over and above the permitted scheme.
59. In terms of the market housing mix the appeal proposal has benefits over the permitted scheme in that it proposes more 2 bedroom houses which will better meet local needs. The main difference between the parties are in the numbers of 3-4 bedroom houses now proposed. Both the appeal proposal and the permitted scheme propose a housing market mix that is not in line with the SHMA, required by Policy LPP55. However the appeal proposal provides for more 2 bedroom and 3 bedroom houses so that it is closer to the requirements of the SHMA. I therefore consider that the appeal proposal, when compared to the permitted scheme, would not harm the delivery of a market housing mix that meets the needs of the locality.
60. Benefits such as the delivery of affordable and market housing and economic benefit would be delivered through the permitted scheme. In terms of centrally locating the public open space the appeal proposal is compact and open space would be accessible to all residents no matter where it is located. The improvements proposed for the eastern footpath are relatively minor. In terms

of the removal of irregular shaped gardens I have compared the permitted scheme with the appeal proposal and there is very little material difference between the two schemes in this respect. In terms of the planting I acknowledge that there might be more planting along the main spine road of the development, however that appears to be offset by less planting elsewhere. Finally I do not see the removal of parking courts as necessarily being a benefit. Therefore I give very limited weight to these additional factors.

61. Planning decisions, according to S38(6) of the Planning and Compulsory Purchase Act 2004 have to be made in accordance with the development plan unless material considerations indicate otherwise. I have found that the appeal proposal is in conflict with the development plan in terms of its compliance with Policies SP3, SP7 and LPP52 of the BDLP in that it would harm the character and appearance of the area. I have also found that the living conditions of future residents would be harmed which would be in conflict with SP3, SP7, LPP35 and LPP52 of the BDLP. I have had regard to the other considerations which weigh in favour of the appeal proposal and found that material considerations are of insufficient weight for me to decide the appeal other than in accordance with the development plan.

Conclusion

62. The appeal is therefore dismissed.

Peter Mark Sturgess

INSPECTOR