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# Appeal Decision

Site visit made on 19 May 2020

**by M Philpott BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16<sup>th</sup> July 2020**

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**Appeal Ref: APP/D1590/W/19/3242303**

**447 London Road, Westcliff-on-Sea SS0 9LG**

- 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 Paul Robinson Solicitors LLP against the decision of Southend-on-Sea Borough Council.
  - The application Ref 19/00722/FUL, dated 12 April 2019, was refused by notice dated 12 June 2019.
  - The development proposed is erect additional floor to existing building and three storey attached building to rear to form 5 self contained flats and bin store, layout parking and bicycle store to rear.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The description of the development in the heading above has been taken from the Council's decision notice. The appellant has confirmed that this description was agreed with the Council, as the description provided on the application form was inaccurate. The Council assessed the proposal on the basis of the description stated on the notice and so shall I.
3. Policy KP1 of the Southend-on-Sea Core Strategy (CS) is referred to within the reasons for refusal specified on the notice. However, the policy relates to the Council's spatial strategy and not the main issues in dispute. I do not therefore consider that the policy is relevant to the appeal and do not intend to engage with it any further.

## Main Issues

4. The main issues are the effect of the proposed development on:
  - the character and appearance of the area, including heritage assets;
  - the living conditions of the occupiers of 5 Brightwell Avenue, with particular regard to privacy; and
  - the living conditions of the future occupiers of the proposed flats.

## Reasons

### *Character and appearance*

5. The appeal site is located adjacent to signalised junctions between London Road, West Road and Brightwell Avenue. The Palace Theatre is located on London Road opposite the site. The site includes a single storey building ('the appeal building') facing towards the junctions, with a small car park to its rear. Brightwell Avenue is predominantly residential in character, whereas London Road and West Road appear as shopping streets, with commercial uses at ground floor level and offices and residential development above.
6. The theatre is a Grade II listed building and therefore constitutes a designated heritage asset. In addition, the parties do not dispute that the appeal building is locally listed and thus I consider it to be a non-designated heritage asset.
7. I have a duty to consider Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), which requires decision makers to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest. In addition, paragraphs 193 and 197 of the National Planning Policy Framework (the Framework) require me to give weight to the significance of heritage assets.
8. The theatre derives its significance from the features of architectural interest which are visible in its front façade, such as stucco ornamentation, arch headed doors and a tympanum. The appeal building is small and attractive; its significance stems from similar architectural features to the theatre, such as balustrades and ornamentation above its entrance. Although generally to a lesser extent, many other surrounding properties are characterised by detailed architectural features.
9. The appeal building visually complements and reinforces the theatre's features of interest. This is particularly apparent from viewpoints on approach to the appeal building from the junctions to the south-east and from Brightwell Avenue to the immediate east of the site, where the architectural features of both buildings are appreciable. I therefore find that the appeal building makes a positive contribution to the setting of the theatre.
10. The proposed development would be a disproportionately large, bulky and modern addition, which would overwhelm the appeal building when viewed from the junctions. Although the development's relatively simple design is intended to be subordinate to the appeal building, its size and appearance would detract from, and contrast poorly with, the intimate scale and detailed architectural features of the appeal building. Thus, it would reduce the contribution that the appeal building makes to the setting of the theatre and, as a consequence of these issues, the proposal would also have a negative effect on the character and appearance of the area.
11. The development to the front of the appeal building would consist of a single additional storey and be set back; however, it would be very close to and appear awkward behind the appeal building's balustrades. I note that the rear part of the development would be finished in stone cladding and a glazed section aims to provide a sense of separation between it and the appeal building. However, there would be a high proportion of cladding relative to the amount of glazing in the rear part, which would contrast poorly with the high

proportions of glazing present in the appeal building's principal elevations. Additionally, the irregular positions of the proposed windows would conflict with the formal rhythm and order of the appeal building's window arrangements.

12. The appellant believes that the appeal building currently appears at odds with the other properties in London Road, including the theatre, and that the car park has a negative effect on the appearance of Brightwell Avenue. However, the appeal building and the car park are an established part of the character and appearance of the area and, as I have already identified, the effects of the proposed development would be harmful.
13. In respect of the Act, I find that the setting of the listed building would fail to be preserved. I must give this matter considerable importance and weight. In the terms of the Framework, as the development would not physically impact or result in the total loss of the setting of the designated heritage asset, the harm caused would be less than substantial. In such circumstances, paragraph 196 of the Framework directs that the harm to the designated heritage asset should be weighed against the public benefits of the development.
14. The proposal would use previously developed land in an accessible location to make a modest contribution to local housing supply. I also note that the occupiers of the proposed flats are likely to contribute to the local economy and the community. The appellant suggests that public benefits would also be provided through improvements to the appearance of the area; however, for the reasons identified, this would not be the case. Overall, the public benefits of the development would not outweigh the less than substantial harm that would be caused.
15. I therefore find that the proposed development would be harmful to the character and appearance of the area, including the non-designated heritage asset and the setting of the designated heritage asset. Taking into account the considerable importance and weight that I must give to harm to designated heritage assets, I conclude that the effect of the proposed development on the character and appearance of the area, including the heritage assets, would be unacceptable.
16. The proposal is contrary to policies KP2 and CP4 of the CS; policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (DMD), the guidance within the Southend-on-Sea Supplementary Planning Document 1: Design and Townscape Guide (SPD) and the Framework which, amongst other things, seek to ensure that the character and appearance of an area and heritage assets are protected.

#### *Living conditions of the occupiers of 5 Brightwell Avenue*

17. Seven windows would be located in the rear elevation of the proposed development. The windows would relate to living rooms and bedrooms and face towards the car park. The proposal also includes a balcony for the flat at second floor level, towards the rear of the building. 5 Brightwell Avenue is a residential property with a large first floor bay window in its side elevation, which also faces the car park.
18. The proposed windows and balcony would be close to and provide for direct lines of sight into the window at no. 5 and, as such, would result in loss of privacy to the neighbouring property. I observed that the window at no. 5 is

secondary, however, this does not address the harm that would be caused by the development. The appellant has suggested that the distances between the windows would be similar to relationships between other properties within the area; however, I have not been provided with specific examples and I did not see any directly comparable instances of similar relationships during my site visit. In any event, this does not justify the proposed relationship in this case.

19. I therefore find that the proposed development would have an unacceptable effect on the living conditions of the occupiers of no. 5. The proposal is contrary to policies KP2 and CP4 of the CS, policies DM1 and DM3 of the DMD, the guidance within the SPD and the Framework which, amongst other matters, seek to ensure that the living conditions of occupiers of properties are not unduly impacted by development.

*Living conditions of the future occupiers*

20. The proposed development consists of a mix of dwelling sizes, including 3 bedroom flats in the rear part of the development that could accommodate families. Notwithstanding the aforementioned balcony, no private outdoor amenity space would be provided.
21. Although many of the habitable rooms would be served by a single, north facing window, the amount of natural light that each flat would receive would be acceptable. The outlook from the flats at first floor level and above would also be appropriate. However, given my concerns regarding the relationship with no. 5 as identified above, there would be limited privacy for the 3 bedroom flats. In addition, the ground floor flat would not have an appropriate level of outlook or privacy as all of its windows would either face directly onto the car park or the busy Brightwell Avenue.
22. Policy DM8 of the DMD states that proposals with no private outdoor amenity space will only be considered acceptable in exceptional circumstances, the reasons for which will need to be fully justified and clearly demonstrated. Limited reasoning has been provided for the lack of amenity space. I note that there is no local open space in the immediate vicinity of the development. Whilst there is open space in the wider area, I do not consider that this constitutes exceptional circumstances which justify the lack of provision. Thus, the proposal is unacceptable in terms of the provision of amenity space.
23. The appellant considers that the ground floor flat would have similar levels of outlook and privacy to properties in Brightwell Avenue. However, the properties in Brightwell Avenue are generally set back from the highway, whereas the flat would front directly onto the highway and the car park. The appellant also refers to Building Regulations to support their view that the proposed properties' living conditions would be acceptable. Although the development may comply with Building Regulations, this does not imply that the effects of a particular proposal should be accepted and, in this case, the effects would be harmful.
24. I therefore find that the proposed development would have an unacceptable effect on the living conditions of the future occupiers of the proposed flats. The proposal is contrary to policies KP2 and CP4 of the CS, policies DM1, DM3 and DM8 of the DMD, the guidance within the SPD and the Framework which, amongst other things, seek to ensure that development results in acceptable living environments.

## **Conclusion**

25. I conclude that the proposed development would result in harm to the character and appearance of the area, including heritage assets, and the living conditions of existing and future occupiers of residential properties. In respect of the harm to the designated heritage asset, I must attach great weight to that harm. There are no material considerations which outweigh the harm the proposal would cause and the consequent conflicts with the development plan.
26. For the reasons I have identified, and taking into account all matters raised, the appeal is dismissed.

*Mark Philpott*

INSPECTOR