
Appeal Decisions

Site visit made on 15 June 2021

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Appeal A Ref: APP/B1550/W/20/3253289

33 North Street, Rochford, Essex SS4 1AB

- 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 Mr Doug Spiers against the decision of Rochford District Council.
 - The application Ref 19/00795/FUL, dated 28 August 2019, was refused by notice dated 16 December 2019.
 - The development proposed is conversion of existing office/shop into original two bedroomed dwelling.
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Appeal B Ref: APP/B1550/W/20/3263763

33 North Street, Rochford, Essex SS4 1AB

- 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 Mr Doug Spiers against the decision of Rochford District Council.
 - The application Ref 20/00182/FUL, dated 12 February 2020, was refused by notice dated 3 June 2020.
 - The development proposed is conversion of existing office/shop into original two bedroomed dwelling.
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Decisions

1. Appeals A and B are dismissed.

Preliminary Matters

2. The Appeals relate to essentially the same development proposal on the same site. I have dealt with each appeal on its own individual merits although to avoid duplication I have considered both schemes together in my reasoning.
3. Since the Council issued its decisions and the Appeals were made, the National Planning Policy Framework (the Framework) has been revised. The main parties have been given an opportunity to comment on it. I have taken any comments into consideration in making my decision, which I have done in light of the revised Framework.

Main Issues

4. The main issues raised by both Appeals are:
 - the effect the development would have on the vitality, viability and character of Rochford Town Centre;
 - whether or not the development would provide acceptable living conditions for future occupiers, with particular regard to any noise and disturbance arising from the adjoining public house, and;

- the effect the development would have on the evening economy of Rochford with particular reference to any effects the development might have on the operation of the adjoining public house.

Reasons

Town Centre vitality, viability and character

5. The appeal building is a modest two storey commercial unit with a shopfront at ground floor. The appellant advises that it was last used as a physiotherapists and was vacant at the time of my visit. It is located in Rochford Town Centre in an area identified in the Rochford Town Centre Area Action Plan¹ (AAP) as being within the secondary shopping area and forming part of the town's Secondary Shopping Frontage.
6. It sits in a short terrace with a public house to one side and two small cottages to the other, beyond which is another small shop. An undertaker, and beyond that a church, sit opposite. Its surroundings are mixed in character and it is in a part of North Street where short rows of houses intermingle with commercial uses. However, the overall character of that part of the Secondary Shopping Frontage on North Street is of a commercial area with shopfronts and businesses predominating at ground floor. The row of cottages on the opposite side of the street is outside the designated Town Centre, which was reduced in size and consolidated in the AAP.
7. Although only a small unit with a modest frontage there is no compelling evidence that the building is of a size or configuration that could not be suitable for a range of town centre commercial uses. Its change of use would remove a small commercial unit from the Town Centre and would render the adjacent public house in a slightly more isolated situation within the commercial frontage on North Street as a result of intervening dwellings. This would dilute the commercial frontage and in doing so erode the vitality and commercial character of this part of the Town Centre.
8. By reducing the clustering of commercial units at the outer extent of the secondary shopping area, albeit that the cluster in this case is only two business premises, this would also detract from the viability of the Town Centre, including by limiting visitor trips to this part of North Street. It would also make the adjacent small cluster of residential properties adjacent slightly larger.
9. Notwithstanding the unit's size, even incremental changes such as that proposed would serve to undermine the Town Centre as an area where ground floors in commercial use form a coherent commercial area with the character of the commercial part of a town centre. Its loss would not enhance the Town Centre and would make it a slightly less attractive place for shoppers or others to visit.
10. By removing a commercial use, the development would conflict with Core Strategy² Policy RTC1 which seeks to enhance town centres for shoppers and to direct retail development to town centres to ensure a strong mix of retail uses.

¹ Rochford District Council – Local Development Framework, Rochford Town Centre Area Action Plan, 2015.

² Rochford District Council – Local Development Framework, Core Strategy Adopted Version, 2011.

11. The proposal would create a cluster of uses within the same use class in a locality that would undermine the character of the centre and it would not provide a non-retail use which would positively contribute to the overall offer or encourage people into the centre. The development would therefore also be contrary to AAP Policy 3 which only permits the loss of town centre uses in the secondary shopping frontage in particular circumstances, none of which apply in this case. Whilst the policy also seeks to avoid a detrimental effect on the more closely defined Primary Shopping Frontage, the situation of the site relative to that area is such that it is less likely to do so. Nevertheless, the proposal would conflict with AAP Policy 3 overall.
12. Development Management Plan³ (DMP) Policy DM34 predates AAP Policy 3 but is similarly worded, albeit that its criteria are framed in terms of non-A1 uses. For the above reasons the development would conflict with this policy as well.
13. As the proposal is for a residential use, the development would technically avoid conflict with the provisions of Core Strategy Policy RTC2 which sets a sequential approach for retail development, albeit that the development would remove a unit suitable for retail within the Town Centre which could undermine the purpose of the Policy. However, avoidance of conflict with this Policy is a neutral consideration and does not weigh in favour of the proposal. Core Strategy Policy RTC5 effectively sets out the intention to produce the AAP rather than particular requirements and is therefore less pertinent to this issue.
14. The appellant points out that they have marketed the property and that they consider a failure to secure a buyer or tenant shows that the building's use for a commercial use cannot be secured.
15. I can appreciate that the appellant has been seeking to find interest in the property for some time. However, the evidence provided to support this is piecemeal and not comprehensive. The appellant's estate agent wrote that the property was marketed to their 'investment clients' for around eighteen months before the first planning application was submitted. This is vague in terms of the basis upon which this was done, as well as how it was carried out, and as such I can only give this limited weight.
16. Neither main party have directed me to a policy or guidance which requires a marketing exercise in these circumstances nor any details of the steps necessary. It would appear that a second marketing exercise was only commenced following the Council's refusal of the second planning application. The information on levels of interest and website visits, with a conclusion that there was little interest, appeared to be provided after less than three months. The estate agent did advise that they continued to market the property for at least five months subsequently, but no data accompanies this. Although the Council's advice for a six to nine month period was only informal, a shorter period is not particularly long in order to effectively gauge interest in a commercial unit, especially under the uncertainty of a pandemic.
17. Enquiries were very limited, but it is unclear why one which included commercial ground floor with accommodation above was considered unsuitable bearing in mind the Council's policies. Although the price was lowered, there is no valuation to confirm how realistic the prices were for the types of uses which would be policy compliant. Furthermore, the estate agent was clearly of

³ Rochford District Council – Local Development Framework, Development Management Plan, 2014.

the view that the building should be changed to a dwelling and reached this conclusion after a relatively short marketing period.

18. I can appreciate that interest in the property may have been limited, particularly given the uncertainties and effects on business confidence that the pandemic and associated restrictions will have caused. However, the marketing exercise lacked rigour and comprehensive documentation. The evidence before me falls well short of convincingly demonstrating that there is no prospect of a commercial use being found for the building. Neither does it show that a change to residential would avoid undermining the vitality, viability and retail character of the Town Centre. Therefore, whilst I am sympathetic to the appellant's situation, this is not a consideration that leads me to find that the proposal would be acceptable in the circumstances.
19. The appellant refers to changes of use of other properties within the Town Centre including two banks which had been vacant for some time. However, the Council's evidence points to those new uses still being commercial uses, clearly a different situation to that proposed.

Future occupiers' living conditions

20. The proposed dwelling would share a party wall with the Golden Lion public house next door. Both the main living rooms downstairs and both bedrooms above would adjoin that party wall. The most useable part of the small outdoor space at the rear would be adjacent to an outdoor drinking area behind the Golden Lion. This configuration would mean that future occupiers of the dwelling would be susceptible to any adverse effects arising from any noise or disturbance from the public house, inside and out.
21. Given the use of the public house it is inevitable that there will be some noise generated inside it, for instance through music (the landlord refers to a jukebox) and the general hubbub of conversation whilst the public house is open. Similarly, there may not be relief outside, given the outdoor drinking area. Any noise or disturbance could take place well into the late evening. Although I have only very limited details about the activities that might take place at the Golden Lion, similarly I have no information of any noise mitigation nor is it clear whether this formed part of the works for which listed building consent was approved in connection with the proposal.
22. Comings and goings of customers may also be noticeable in the late evening when spirits may be high and voices loud. It is possible that customers may congregate at the front door which would be in close proximity to living room and front bedroom windows. During the day when activity and noise on the street might be greater this may not be remarkable, but later in the evening and at night could be particularly intrusive. Existing residential properties nearby may also experience such outside activity but would be considerably less likely to do so in combination with any noise and disturbance experienced from within or from private outside spaces.
23. As the property forms part of a listed building I cannot be certain that simply requiring noise mitigation or sound insulation would necessarily be compatible with the buildings' listed status, nor that it would be effective to deal with any issues. Therefore this is not a matter which could be satisfactorily be controlled by a planning condition.

24. Whilst there will be instances where such uses can happily coexist next to one another, in this particular case and without any evidence to the contrary, the living conditions of future occupiers would be harmed by the dwelling's proximity to the Golden Lion. The development would be contrary to DMP Policy DM1 which, amongst other criteria, requires new development to contribute positively to residential amenity.

Evening economy

25. For the above reasons, if future occupiers' living conditions were adversely affected by any noise or activities within the Golden Lion, occupiers may seek action from the Council to deal with this. The effects could be significant, particularly if it was found that a statutory nuisance had been caused. Any action, including statutory notices, would affect how the public house operates and even affect its viability.
26. This would be unfortunate for the operators of the public house given that it would be the proposed development that would introduce the change in circumstances. Such a situation is considerably less likely with a commercial use next door. As set out above, it is unclear whether or not any mitigation would be effective or acceptable given the building's listed status, but in any event the adverse effects would only be likely to arise with a residential neighbour.
27. The Council point out that three pubs have closed in recent years in the vicinity. Were the Golden Lion be forced to operate differently or close this would further erode the commercial offer and frontage in the area. It would also reduce choice in the Town Centre's evening economy in the face of the AAP's aims to strengthen it.
28. The development would consequently be contrary to Core Strategy Policy RTC1's approach to enhance and strengthen the Town Centre with a strong mix of uses. The proposal would not achieve the AAP key objective of providing a diverse range of uses, activities and facilities for local people and strengthening the evening economy.
29. The development would avoid conflict with Core Strategy Policies RTC2 and RTC5 for the reasons set out in paragraph 13 above. However, this would be a neutral consideration, and the development would be in conflict with the development plan overall in terms of its effect on the evening economy.
30. Whilst the circumstances of the pandemic will have no doubt affected the Golden Lion in terms of operation and opening, I also note the landlord advises that they are committed to the public house remaining open. As such there is no evidence that there will be a change in the neighbouring use at present.

Other Matters

31. The building forms part of a listed building known as Cottages and Golden Lion Public House, 29-35 (odd) North Street, and is situated within Rochford Conservation Area. As such I have had special regard to the desirability of preserving the listed building and have paid special attention to the desirability of preserving or enhancing the character of the Conservation Area. Notwithstanding the harm that the proposed use would cause to the commercial character of the shopping area, the use and the change from twentieth century shopfront to a more domestic frontage would preserve the

special architectural and historic interest of the listed building and the character and appearance of the Conservation Area.

32. I note that the Council took a similar view as reflected in the comments of their Built Heritage Consultant and their granting of listed building consent for works similar to the proposed development. However, although the appellant points to what they see as apparent contradictions in this, the considerations as to whether works requiring listed building consent would be acceptable are not all the same as the wider range of considerations which will be taken into account in determining whether planning permission should be granted or not. In this case I have found that the harm and conflict with the development plan indicate that planning permission should not be given.
33. The Council consider that the floor plans indicate that appeal building was likely to have been residential in use previously. However, there is no substantive evidence that the significance of the listed building or Conservation Area would necessarily be better preserved or enhanced by a return to its earlier or original use.
34. The appellant points to changes of use from commercial uses to dwellings which would not require planning permission. However, this is not a realistic fallback position in this case. This is because both former and current permitted development rights⁴ for the change of use from retail and commercial uses to dwellings do not permit such a change of use if the building is listed.
35. I agree with the appellant that it is not desirable to leave part of a listed building unoccupied for long periods of time, as this could make it more vulnerable to deterioration. However, there is no evidence that the listed building is at risk in this way such that the conversion of the appeal building to a dwelling would be the only way to avoid it.
36. A dwelling would help provide a new home in an accessible location and of a size which would no doubt suit a range of occupiers. Occupants would benefit from being able to easily access a range of town centre shops and services on foot. However, the development would not achieve the Framework's aims of promoting healthy and safe communities overall as it would reduce the likelihood of social interaction that would be achieved through a commercial use. The Framework recognises that residential development can be important in ensuring centres' vitality, however it does so on appropriate sites, which for the above reasons this site would not be.
37. Similarly, the development would not achieve the Framework's objectives for sustainable development when considering the Framework overall. Therefore, any benefits arising from an additional dwelling would be very limited and not outweigh the harm detailed above.
38. An absence of an objection in highways terms or other reasons does not weigh in favour of the appeal. The appellant has drawn my attention to the Council's new development partnership to help deliver the Council's Asset Delivery Programme but there is no information as to how this would be relevant to the planning issues raised by this appeal. These other matters do not, therefore, lead me to consider that the proposal would be acceptable.

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 3, Class MA; paragraph MA.1.(d)(ii), and formerly Class M, paragraph M.1.(g)(v).

Conclusion

39. For the reasons set out above, the development would harm the vitality, viability and character of the Town Centre, including its evening economy, and would fail to provide acceptable living conditions for future occupiers, in conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Both Appeals are therefore dismissed.

Geoff Underwood

INSPECTOR