



Appeal Decision

Site Visit made on 24 November 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/Z1510/W/21/3266584

Land to rear 1 Feering Hill, Feering, Essex CO5 9NH

- 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 & Mrs Chris and Bill Rochester against the decision of Braintree District Council.
 - The application Ref 20/00097/FUL, dated 14 January 2020, was refused by notice dated 7 October 2020.
 - The development proposed is Erection of a raised single-storey two-bedroomed dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to the Braintree District Draft Local Plan 2017 (the emerging Local Plan). Nonetheless, as it is not yet part of the development plan and may be subject to change, including in respect to the policies cited in the refusal reasons, it carries limited weight only at this stage.
3. An ecological survey and an arboricultural impact assessment were submitted with the appeal. These reports indicate that biodiversity and arboricultural impacts of the proposal would be acceptable subject to the imposition of appropriately worded conditions. The Council has confirmed that its fourth and fifth reasons for refusal have been overcome. I have dealt with the appeal on this basis.
4. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties had the opportunity in their appeal submissions to comment on the implications of the resulting changes for this appeal and I have had regard to the comments made. The references to 'the Framework' made within my decision are to this revised version.

Main Issues

5. The main issues are (i) whether or not the proposal would preserve or enhance the significance of nearby Grade II* Listed Buildings, The Sun Inn, Sun Cottage and Feering House, and preserve or enhance the character or appearance of the Kelvedon Conservation Area; and (ii) the effect of the proposal on flood risk.

Reasons

Heritage assets - Listed Buildings

6. The appeal site is situated directly to the rear of a linear row of 20th Century houses that follow the building line of numbers 3, 5 and 7 Feering Hill, which lie to the east. These properties comprise The Sun Inn, Sun Cottage and Feering House, which are all individual Grade II* Listed Buildings, but which historically formed a single large medieval mansion called Strangers. The site in part borders the vegetable garden and car park associated with the Sun Inn and historically formed part of the wider land ownership associated with that property.
7. I am required under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
8. Whilst some level of consideration has been given to these nearby listed buildings, the appellants' heritage statement does not provide specific identification or analysis of the significance of the assets or their setting. The Planning Practice Guidance (PPG) states that heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals¹.
9. The setting of a heritage asset is defined in the glossary to the Framework as the surroundings in which a heritage asset is experienced. From the information provided and what I observed on my site visit, I consider that the significance of this group of 14th – 16th Century listed buildings derives primarily from the appreciation of their historic architectural interest and structural features and their position in the landscape. I further consider that the appeal site forms part of the setting of this group of listed buildings and contributes to their historical interest and significance.
10. The proposal would place a sizeable dwelling within the immediate setting of these heritage assets. Although their setting has undoubtedly altered over time, notably with the adjoining row of modern houses, there is still a sense of seclusion to the listed buildings that remains, because of the verdant and open nature of the fields to their rear and northwest. The appeal site positively contributes to this sense of space, being well treed and largely devoid of built form, supporting only low-profile sheds and a modest summerhouse type building.
11. The proposed building would be single storey and its design would be reflective of a Vanna Venturi House, presenting an opposing mono pitched roof, separated by a low flat roof. Despite the careful thought that has been given to the design and choice of materials, its scale and modern appearance would appear at odds with the modest proportions and steep traditional dual pitched roofs of the neighbouring properties. Although the proposal would be at the rear of the historic assets and largely absent from general public view, the

¹ Paragraph: 007 Reference ID: 18a-007-20190723 Revision date: 23 07 2019

setting of a listed building does not have to be capable of being viewed by the public in order to form part of its significance. The setting is also experienced from within the listed building itself. In this case the appeal proposal would be obvious from the rear of the frontage properties and the rear of The Sun Inn and its car park.

12. Although it is not clear what, if any, functional relationship previously existed between the site and the listed buildings, the intrusion of the appeal building and its inevitable accompanying domestic paraphernalia and activity, would result in a fundamental change in the character and appearance of the site. The manner in which the appeal building would be raised above ground level would highlight its position and further disrupt and erode the historic spaciousness and sylvan setting of the listed buildings. The appreciation of the relationship of the listed buildings to their surroundings would be undermined and their significance would be harmed.
13. I conclude that the proposal would result in less than substantial harm to the setting of The Sun Inn, Sun Cottage and Feering House and would fail to preserve their particular significance. This would be contrary to Policies RLP90, and RLP100 of the Braintree District Local Plan Review 2005 (LP), Policy CS9 of the Braintree District Core Strategy 2011 (CS), Policies SP1, LPP55, LPP56 and LPP60 of the emerging Local Plan and Paragraphs 199 and 202 of the Framework which require, amongst other matters, development to reflect local distinctiveness and to ensure the conservation and preservation of heritage assets and their settings.

Heritage assets - Conservation Area

14. The appeal site is located within the north-eastern extent of the Kelvedon Conservation Area (CA). Limited information has been provided by either party regarding the significance of the CA. However, it appears to me that it is largely based on its history as a medieval town. This part of the CA appears to be reflective of the former agricultural character of the area. The Blackwater River is a significant landscape feature which, combined with adjacent grassland and tree bordered meadows, provides a visually important natural divide between Kelvedon and Feering. The space east of the river and north of Feering Hill, which includes the appeal site, positively contributes to the character of the built environment and provides views through and out of the settlement.
15. I am required under section 72(1) of the Act to give special attention to the desirability of preserving or enhancing the character or appearance of the CA.
16. The area in the immediate vicinity of the appeal site has a semi-rural character and appearance. From the evidence provided it seems likely that the appeal site once had a functional relationship with The Sun Inn, which itself makes a direct historical contribution to the CA. The appeal site, by virtue of its historic freedom from significant built form and pleasant verdant appearance, positively contributes to the rural character and appearance of this part of the CA.
17. The introduction of a dwelling and its associated domestic paraphernalia and activity into the appeal site would increase the urbanisation of this part of the CA. The position of the dwelling would be a departure from and at odds with the existing linear arrangement of buildings which follow the line of the road. Whilst the effects would be localised and would be minimised by the proposed

retention of most of the existing trees, the alteration to the nature of the site would, nonetheless, fail to preserve or enhance the character or appearance of the CA. Due to the localised area of the harm, it would be less than substantial.

18. Thus, the proposed development would be contrary to Policies RLP90, RLP95 and RLP100 of the LP, Policy CS9 of the CS and Policies SP1, LPP55, LPP56 and LPP60 of the emerging Local Plan and Paragraphs 199 and 202 of the Framework. These require, amongst other matters, development to reflect local distinctiveness and to ensure the conservation and preservation of heritage assets, including conservation areas, and their settings.
19. I do not consider Paragraph 206 of the Framework (previously Paragraph 200) to be relevant in this case, it being largely concerned with local planning authorities looking for opportunities for new development within Conservation Areas and World Heritage sites.

Flood risk

20. The Framework establishes that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. CS Policy CS8 contains similar principles.
21. The appeal site lies within fluvial Flood Zone 3b, the Functional Floodplain, designated as 'land where water has to flow and be stored in times of flood', so has a high probability of flooding. Dwelling houses are categorised as 'more vulnerable' development. Therefore, the proposal should be subject to a sequential test. The aim of this is to steer new development to areas with the lowest risk of flooding from any source.
22. The appellants consider that the sequential test has been passed. However, the evidence provided in relation to the search for and availability of other sites, is limited only to enquiries being made to all the local estate agents. No substantive evidence has been provided in this regard or of the responses received.
23. As a consequence, I consider that there is insufficient evidence to demonstrate that the sequential test has been passed. Whilst the proposal would incorporate mitigation measures, including raising the building some 1.8 metres above ground level, incorporating flood proofing measures and ensuring occupants register with the Environment Agency Flood Line Alert Direct Service, these do not negate the need to first pass the sequential test under the Framework. Given that the sequential test must be passed before the decision maker goes on to take account of mitigation within the Exception Test, it is not necessary for me to do so.
24. The appellants have referred me to two local developments which they consider demonstrate that housing has been found acceptable within Flood Zone 3. However, these developments were granted permission in 2002 and 2007. The policy background, both locally and nationally, has changed since those decisions. The circumstances of those permissions are not therefore sufficiently comparable to the appeal scheme proposal as to be afforded weight in the determination of this appeal.
25. Further, even if I were to consider that the proposal was of outstanding and sustainable design, there is nothing in the Framework to suggest such matters would overcome the need to satisfy the sequential test.

26. I therefore conclude that it has not been satisfactorily demonstrated that the proposal would be acceptable in respect of the risk from flooding. The proposal is contrary to CS Policy CS8 and Policy LPP78 of the emerging Local Plan, which seek, amongst other matters, to minimise exposure of people and property to the risk of flooding. For the same reasons the proposal would also conflict with Paragraphs 159, 161 and 162 of the Framework.

Other Matters

27. The parties disagree about whether or not the appeal proposal meets the pre-application advice provided by the Council. However, pre-application advice is not binding on either party. In any case, I have determined the appeal on its own merits.

28. The appeal site is located outside of any defined settlement boundary and is within the countryside for the purposes of planning policy. The Council indicate that there is, therefore, conflict with LP Policy RLP2, CS Policy CS5 and LPP1 of the emerging Local Plan. This conflict did not form part of the Council's reasons for refusal. As I am dismissing the appeal on other grounds, it has not been necessary for me to reach a conclusion on this matter.

29. The evidence indicates that the appeal site is located within the recognised zone of influence of one or more European sites² and within the area covered by the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). The appellants have agreed in principle to making the financial contributions sought by the Council towards the RAMS. However, no legally binding mechanism to secure such payment has been received during the appeal process. Nevertheless, as I have found the proposal unacceptable in respect of the main issues it has not been necessary to consider this matter any further.

Planning Balance

30. The Framework indicates that great weight should be given to the conservation of designated heritage assets. Whilst I have not found the harm in this case to reach the high hurdle of substantial harm, the proposal would nonetheless result in harm that requires clear and convincing justification.

31. The proposal would make a small contribution to the supply of housing. The location of the proposed development is close to services and facilities which could be supported by future occupiers. The development would not be isolated. The scheme would provide economic benefits, both locally and regionally, by way of short-term employment during the construction phase, through supplier companies, future servicing of the property and an increase to local authority revenue. The proposal could also provide a self-build opportunity and could incorporate sustainable design principles and materials. These benefits are modest, commensurate with the scale of development proposed and they attract moderate weight.

32. Taking the above points together I do not consider that there would be public benefit sufficient to outweigh the significant weight to be attached to the harm I have identified in relation to designated heritage assets.

² Now the 'national site network' when referring to the network of European sites in the UK, following the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

33. At the time of the Council's decision, it was unable to demonstrate a five year supply of deliverable housing sites. However, the appellants accept that this position has changed during the course of the appeal, although they consider that this could be subject to change. Nevertheless, even if the Council were in an under-supply position, the conflicts with the Framework in terms of designated heritage assets and flood risk, provide clear reasons for refusal.
34. Overall, the development would conflict with the development plan taken as a whole and there are no other material considerations of sufficient weight to indicate that planning permission should be granted.

Conclusion

35. For the reasons given above the appeal is dismissed.

S Tudhope

INSPECTOR