



Appeal Decision

Site visit made on 17 May 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

Appeal Ref: APP/V1505/W/21/3284930

97 Chapel Street, Billericay CM12 9LR

- 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 Mrs J Jarvis of Jarvis Developments against the decision of Basildon Borough Council.
 - The application Ref 21/00373/FULL, dated 8 March 2021, was refused by notice dated 14 June 2021.
 - The development proposed is described as: 'demolition of existing redundant property and provision of 5 No domestic dwellings'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has confirmed that since the decision was issued, the emerging Basildon Borough Local Plan has been formally withdrawn from examination. I have therefore determined the appeal on the basis of the most up to date policies contained within the Basildon Local Plan Saved Policies (2007) (the Local Plan).
3. The appellant has provided a protected species survey and an ecological assessment at the appeal stage in order to address the Council's reasons for refusal on these matters. However, it is important that what is considered at appeal is essentially what was considered by the Council in making its decision. Given the lack of formal consultation I have concluded that it could be prejudicial to the interests of interested parties to take these additional documents into account, particularly as the effect on wildlife is a concern of numerous parties that commented on the application. I have therefore determined the appeal on the basis of the documents on which the Council made its decision.
4. I received a request to view the site from a neighbouring property. However I was able to see all I needed from the appeal site, adjacent car park and grounds of the church.

Main Issues

5. The main issues are:
 - whether the proposed development would preserve or enhance the character and appearance of the Billericay Conservation Area (the CA); and,

- the effect of the proposed development on biodiversity including the effect on protected sites and on protected species.

Conservation Area

6. The appeal site is a two storey red brick detached villa constructed between the late nineteenth and early twentieth centuries. The building has a distinctive projecting gable to the front featuring prominent bargeboards. Its windows have a vertical emphasis, the larger of which are divided by painted masonry mullions. The dwelling and its adjoining large flat roofed garage is set back from the road behind a front garden. It is one of a pair of properties built to a similar design, together with its immediate neighbour, 95 Chapel Street (No 95). No 95 is now used as a doctor's surgery and has been extended to the front and rear.
7. The appeal property has a sizeable rear garden that has become overgrown, beyond which there are vacant single storey buildings that were previously used as a builder's yard. These are screened from the street by the existing dwelling and trees. The appeal site also includes an access to the side of No 95 running along the length of the boundary with the appeal property and which provides access to the car park to the rear of the doctors surgery.
8. Fronting the street to the opposite side of the building is the United Reform Church, a much taller pale brick building with a distinctive, well balanced, and attractive frontage. It sits centrally within its plot with space to either side forming its setting, much of which is occupied by mature trees. Third party representations refer to this building as dating to 1838. A row of mature trees, within the church grounds, some of which are protected by a Tree Preservation Order, are located close to the boundary and the adjacent flat roofed garage.
9. The appeal site also shares a number of features including its projecting gable, barge boards and mullioned windows with the neighbouring dental surgery, 105 Chapel Street. This is located on the opposite side of the church to the south of the appeal site.
10. Like those described above, buildings along this side of Chapel Street tend to be two storeys high, set within reasonably large plots, and front the road. As referenced in the Billericay Conservation Area Management Plan (2011) (the MP) the CA is characterised by buildings dating from the fifteenth to the nineteenth centuries that are modest in scale, and whilst three storey buildings are occasionally present, buildings are rarely above two storeys in height. Dominant materials are weatherboard, brick, plain tiles and slate.
11. Defined as a building of townscape value in the Billericay Conservation Area Appraisal (the CAA) both parties agree that the appeal property is a non-designated heritage asset although the appellant notes that the building has seen substantial alterations externally and has been unused recently, resulting in decay and rot infestations internally. Whilst the building has seen the addition of UPVC windows and concrete roof tiles, the form of the building and the features in common with No 95 and No 105 described above remain. Owing to its scale, design and materials, it reinforces the character of the CA described above.
12. Paragraph 203 of the National Planning Policy Framework (the Framework) sets out that the effect of an application on the significance of a non-designated

heritage asset should be taken into account in determining the application. Based on the evidence before me, including the comments of the Council's historic environment officer, the appeal property is certainly of sufficient historic interest to be considered a non-designated heritage asset. The CAA identifies the United Reform Church as a building of local importance. Given my above assessment I am satisfied that given the extent of intact historic fabric and its positive contribution to the CA, its level of heritage significance is sufficient to also be considered a non-designated heritage asset.

13. The CA's character is varied, with mid to late twentieth century development sitting between older buildings. As is set out in the MP, some of these later buildings detract from the character and appearance of the CA. The often tall and bulky development constructed at this time contrasts with the form, height, bulk and design detailing of traditional buildings. The MP guides that: *'the result is a fragile townscape which could easily be destroyed if further development with buildings of this form is permitted'*.
14. It is proposed to demolish the appeal property, garage and the buildings associated with the builder's yard and construct five new three storey dwellings. This would comprise a terrace of three dwellings occupying the frontage of the site in a similar position as the existing dwelling and garage, albeit with a larger floor area and set further forward. A pair of semi detached dwellings would be located in a similar position to the former builder's yard at the back of the site. Access through to these buildings would be provided via the access adjacent to the boundary with No 95. A large parking and turning area would be provided between the two proposed blocks, with both of these fronting onto this area.
15. Owing to its considerable bulk and significant height the proposed development would dominate the surrounding buildings, whilst the frontage block in particular would become an oppressive feature within the streetscene. Given its scale and height, and the substantial depth of the gable of the frontage block, the proposal would be highly imposing and significantly at odds with the prevailing character of predominantly two storey buildings, adversely affecting the character and appearance of the CA. The use of white render and dark coloured window features would, only serve to emphasise the dominance of the building and further distinguish it from its surroundings.
16. In addition, the siting of the frontage building with its rear elevation and rear gardens fronting the street would also be at odds with the prevailing character. Precise details of the 'screen wall' forming the boundary of the rear gardens with the pavement have not been provided, however such a feature is likely to emphasise the conflict with the prevailing character arising from the orientation of the units. Moreover, the provision of a three storey building to the back of the site would also be at odds with the prevailing pattern of frontage development and the presence of this tall structure would be highly evident in views along the access road.
17. The proposal would amount to an increase in ridge height of around 2.5 metres compared to the existing building. The frontage block would be set much closer to the church than the existing dwelling as it would be constructed over the space currently occupied by the large flat roofed garage. It would also be set slightly further forward. As a result, owing to its bulk, height and proximity, the frontage block would be significantly more imposing on the church than the

- existing building, would intrude into its setting and would visually compete with the church in the streetscene. Due to its position close to the boundary, the excessively wide gable extending to three storeys in height with a white render finish would appear overbearing and oppressive in views from the grounds to the front and side of the church, adversely affecting its setting.
18. Overall, the proposal would amount to an incongruous and harmful form of development in a prominent location, that would adversely affect the setting of a non-designated heritage asset and that would be reminiscent of the tall and bulky development referred to in the MP. The proposed development would not be visually comparable to the extensions at No 95.
 19. The proposal would also result in the total loss of the appeal property, a building of townscape merit and a non-designated heritage asset that contributes to the character and appearance of the CA. This loss would in itself fail to preserve or enhance the character and appearance of the CA.
 20. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
 21. The appellant has provided a Structural Report of the building. This concludes that the building: *'is in a very poor condition and requires some major works to first ensure its safe and then remedial works to make it habitable and usable'*. I see no reason to doubt this conclusion.
 22. Whilst it notes that it would be *'safer and easier'* to demolish the existing building and replace with a modern construction, the report goes on to list an extensive number of works necessary including cost estimates (totalling £302,500 – £342,500) notwithstanding that the authors of the report do not appear to be quantity surveyors. However, in this regard, there is considerable doubt in my mind whether works such as the replacement of all windows and painting is required to make the building habitable. Furthermore, whilst I don't doubt the need to remove the existing conservatory, its replacement is equally not necessary in this respect.
 23. Furthermore, the appellant states that on top of the costs outlined above, there is at least a further £100,000 to £200,000 to bring the property up to a modern standard of living and to provide all the necessary repairing and enhancing of the structure. The appellant's statement concludes that at least £450,000 to £500,000 would need to be spent on this structure to make it fit for purpose. No details have been provided as to what the additional works would involve given that the Structural Report included new kitchen, new sanitaryware, replacement of all windows, replastering and painting. This limits the weight I can give to the figures provided.
 24. At this point I would note that no estimates for the cost of demolition and rebuild have been provided. These could have been used in comparison to the figures above in order to support the appellant's claim that the refurbishment of the existing building is not viable. This limits the weight I can give to this argument. Nonetheless it is accepted that given the extent of damage arising from a leaking roof over a prolonged period, that the cost to bring the building up to a habitable standard is likely to be substantial.

25. In this regard, notwithstanding my doubt with regard to the cost of the works, even if I were to conclude that the refurbishment of the existing building was unviable, the proposed development would result in significant harm to the character and appearance of the streetscene and to the setting of the United Reform Church, a non-designated heritage asset, and would thereby fail to preserve or enhance the CA. Nevertheless, the harm would be less than substantial and in accordance with paragraph 202 of the Framework, that harm should be weighed against any public benefits of the proposal including, where appropriate, securing its optimum viable use.
26. In terms of public benefits, the proposal would result in a net increase of four dwellings through the redevelopment of an existing site in an accessible location. This would make a modest contribution to housing supply in the area, particularly given the recent under-delivery in that respect (to which I shall turn to later). Minor economic benefits would arise from the development and occupation of the houses, whilst there would also be minor benefits in terms of supporting local services. Given that the existing builders yard consists of low-rise buildings that are not prominent within the streetscene, the visual benefits of their removal would be limited.
27. However, taken together these comparatively minor benefits would not be outweighed by the significant harm to the character and appearance of the CA that I have found above.
28. For the above reasons, I conclude that the proposal would result in significant harm to the character and appearance of the streetscene and would be harmful to the setting of a non-designated heritage asset, thereby failing to preserve or enhance the character or appearance of the Conservation Area. The proposal would therefore conflict with the aims of Local Plan Policy BAS BE12(i) which seeks to ensure only development of satisfactory design and layout takes place. The proposal would also be contrary to the provisions of the Framework which seeks to conserve and enhance the historic and natural environment.

Biodiversity

29. The appeal site lies within the zone of influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). This was developed together with Natural England and other Essex councils to deliver the mitigation necessary to avoid the likely significant effects of residential development across Essex, leading to increased recreational pressure on European designated habitat sites and Special Protection Areas along the Essex coast.
30. In this instance, a financial contribution is sought in accordance with the RAMS to mitigate the effects of increased recreation pressure from the development. The appellant has provided a unilateral undertaking committing to pay the contribution sought by the Council which equates to £127.30 for each net additional dwelling proposed.
31. The contribution is necessary to make the development acceptable in planning terms, is directly related to the scale of development and fairly and reasonably related in scale and kind to the development. Consequently, it accords with Regulation 122 of the Community Infrastructure Levy Regulations, and so counts as mitigation towards the affected sites. The appeal proposal would not therefore result in a significant adverse effect on the integrity of these sites.

32. The appeal site bounds a wooded scrubland area, whilst mature trees are located growing within the site and outside. The evidence before me from the Essex Badger Group and the Council's Ecologist indicates that badgers are active on and around the appeal site. In addition to the aforementioned mature trees, the site contains a variety of buildings all of which are proposed to be demolished. These could be used by roosting bats or nesting birds.
33. Badgers¹, bats² and wild birds³ are protected by law and their presence is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat (or sett, in the case of badgers).
34. Norsey Wood Site of Special Scientific Interest (SSSI) is situated 25 metres south east of the appeal site. As a result, in addition to information with regard to the protected species, the Council's Ecologist has recommended that further information with regard to the effect of the proposal on Hedgehogs and Toads (Priority Species) is provided. There is a statutory duty on me to have regard to the conservation of biodiversity⁴.
35. ODPM Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
36. The appellant provided no ecological surveys in support of the application. In the absence of such surveys, and on the basis of the information before me, I cannot be certain whether protected species are present or the extent to which they may be affected. Furthermore, if protected species were affected, I cannot be certain as to what mitigation, if appropriate, may be required. There is no evidence before me, including from the Council's Ecologist or the appellant, that would lead me to take a different view.
37. In this regard, paragraph 180 of the Framework states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
38. I therefore cannot conclude that the proposal would not adversely affect protected species, specifically badgers, bats and nesting birds. The proposal would therefore conflict with paragraph 174 (d) of the Framework which amongst other things, seeks to minimise impacts on and provide net gains for biodiversity.

Planning Balance and Conclusion

39. The appellant states that the Council cannot demonstrate a five year supply of deliverable housing sites. The Council is silent on this matter. The appellant states that there is only 2.4 years' worth of deliverable housing supply in Basildon Borough, a significant shortfall. Furthermore, housing delivery is also low. The appellant states that the Council has only delivered 45% of its housing

¹ Protection of Badgers Act 1992.

² Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981).

³ Wildlife and Countryside Act (1981).

⁴ Section 40 of the Natural Environment and Rural Communities Act 2000, as amended.

requirement over three years (2017-2020) as demonstrated in the Housing Delivery Test Results. The housing delivery has thus been significantly less than 75% of the housing requirements over the previous three years. This represents a substantial shortfall, and I acknowledge that in an incremental numerical way the scheme would contribute towards rectifying that shortfall.

40. Paragraph 11 d) of the Framework states that in such circumstances permission should be granted unless the application of policies in the Framework that protect assets or areas of particular importance provide a clear reason for refusing the development. Footnote 7 indicates that designated heritage assets are one such protected asset. I have found that the proposal would amount to significant harm to the character or appearance of the conservation area, a designated heritage asset. There is therefore a clear reason for refusing the proposal in any event, and the presumption in favour of sustainable development is not engaged.
41. I have considered all other matters raised but none outweigh the conclusions I have reached. For the reasons set out above, I dismiss the appeal.

Paul Martinson

INSPECTOR