



Appeal Decision

Site visit made on 25 January 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/A1530/W/22/3293060

Former Odeon Cinema, 16 Crouch Street, Colchester, CO3 3ES

- 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 Blumarble Property Management Limited against the decision of Colchester City Council.
 - The application Ref 200910, dated 29 April 2020, was refused by notice dated 20 August 2021.
 - The development proposed is demolition of former cinema buildings and the re-construction of the foyer building and the erection of a new apartment block in place of the auditorium to provide 55no. apartments, 2no. retail Units (A1) and 32no. basement car parking spaces.
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Decision

1. The appeal is dismissed.

Main Issues

2. The effect of the proposed development on the significance of the former Odeon Cinema as a non-designated heritage asset and on the setting of nearby listed buildings and whether it would preserve or enhance the character or appearance of the Colchester Town Centre Conservation Area.

Reasons

3. The proposed development is to entirely demolish the existing cinema building and re-develop it with residential units and two retail units fronting Crouch Street. Planning permission was given in 2018 for the part demolition and part conversion of the foyer building along the frontage and the replacement of the rear auditorium with a block of 46 apartments together with 30 parking spaces. This scheme did not proceed as it proved to be unviable and the permission will now have lapsed. Whilst it is a material consideration the main task is to assess the appeal proposal.

Significance of the heritage assets

4. The Odeon Cinema (originally The Regal) opened in 1931 and was designed by the architect Cecil Masey who specialised in the design of theatres and cinemas. Its principal significance is as a regional example of Masey's work and for its contribution to the streetscape of Crouch Street. In particular, its distinctive central gable with its curved, Moorish shape. The façade of the foyer is therefore of value but the rear auditorium is utilitarian. The cinema closed in 2002 but is a tangible reminder of the heyday of this type of

entertainment and of those who performed there. Its importance is therefore historic, aesthetic and cultural.

5. The building has been empty for over twenty years and is now in a sorry state. It is boarded up and has an air of dereliction. The appearance of the front elevation has deteriorated over the years and there have been incidents involving intruders, a series of fires and anti-social behaviour. The former glory of the cinema has therefore been eroded by the passage of time. However, there is no clear evidence that the building has been deliberately neglected and the appellant company claims to have been actively seeking a planning solution and to have maintained it.
6. The former cinema nevertheless makes a positive contribution to this part of the conservation area because of its interesting and slightly exotic design. It also occupies a considerable proportion of the southern side of this part of Crouch Street. This thoroughfare retains a strong historic character by virtue of the tightly packed buildings along it which are a mixture of ancient and more recent. The site is at the southern edge of the conservation area. Outside but immediately adjoining it is Southway (a dual carriageway) and Crouch Street is bisected by Balcerne Hill to the west.
7. There are two listed buildings in Crouch Street which also contribute to the significance of the conservation area as well as being important in their own right. To the west of the appeal site is 20/22 Crouch Street which is Grade II* and dates from the mid-eighteenth century. It has a handsome façade. To the east is the Bull Hotel which is Grade II listed and is a timber framed structure with an eighteenth-century frontage. The significance of both of these buildings is derived from their architecture and history.

Effect on the heritage assets

8. The National Planning Policy Framework recognises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
9. The demolition of the former cinema would result in the total loss of all of its value as a building. That said, it is not the finest or most original example of Masey's work and is of local rather than national importance. Furthermore, planning permission was given previously to remove 70% of all of the buildings on the site although they would have been re-built. However, its complete destruction would finally bring the curtain down and so the terminal effect of the proposal should be given significant negative weight.
10. The replacement building seeks to emulate the front elevation of the cinema by including a Spanish style gable. However, whilst acknowledging the original, this rebuilding would not be a faithful facsimile. Lost decorative details could be reinstated and the original building could be recorded for posterity. Whilst welcome, these measures and the proposed design would not compensate for the total removal of the non-designated heritage asset.
11. The loss of a large and prominent building would also have a negative impact on the conservation area. Separate consideration needs to be given to the front and rear of the proposed replacement. The Crouch Street elevation would not replicate the existing in that the flanking wings would be higher in relation

to the central gable. However, the design would have familiar overtones and would recognisably resemble the original. Whilst other approaches may be possible the proposed frontage is one way of fitting a new building into the street and it would not, in itself, detract from the qualities of the conservation area. By reinstating built development the effect of the removal of the cinema foyer on the conservation area would be mitigated.

12. The rear section would be replaced by a six-storey contemporary building although the top floor would be recessed. The previous permission was for a five-storey block. The footprint and mass would be much greater than the smaller historic buildings in the vicinity but that is already the case with the auditorium. However, the proposal would be noticeably taller and much higher than the prevailing scale of surrounding development. As such, it would stand out in the immediate townscape and be prominent on the skyline.
13. The proposal would be most obvious when seen from Headgate across the car park. From here the contrast with the diminutive historic buildings nearby would be readily apparent and the proposed rear section would have a dominant effect. From Southway and Butt Road the view would include modern office buildings but the proposal would be larger than them. Moreover, its size and flat roof would conflict with the more intricate roofscape of the older buildings within the conservation area as they gradually rise up the hill. In angled views along Crouch Street the rear wing would also be apparent looming above the front section in an odd and intrusive way.
14. These negative effects would be compensated by removing the blank box of the auditorium. However, as well as its greater height, the fenestration and articulation of the proposed rear wing would announce its presence more forcibly than the existing brickwork. Therefore, the overall effect would be detrimental to the significance of the conservation area. Whilst the appeal site is in its south-west corner the magnitude of the resulting harm means that the proposal would detract from the area as a whole.
15. The rear of 20/22 Crouch Street is surrounded by the office buildings facing the roundabout and by car parking. Because of this and the existing auditorium it has an enclosed setting. The side elevation of the proposal would be higher than the current building but would not fundamentally change the already limited appreciation of this part of the listed building. Along Crouch Street the proposed development would be seen together with the front of No 20/22. However, as it is adjoined by fairly dense development, the implications for the listed building would be minimal.
16. The Bull Hotel is sufficiently far from the proposed rear block that this would not directly impinge on its setting from this direction. In the context of Crouch Street the change would also be negligible due to the distance and the built-up nature of the street.
17. Therefore, there would be no adverse effect on the setting of the nearby listed buildings. However, the demolition of the former cinema would have a significant negative effect on the significance of this non-designated heritage asset. In turn, this would have a consequential and harmful impact on the conservation area. Furthermore, the excessive scale and bulk of the proposed rear wing would detract from its qualities.

18. To conclude, the proposed development would fail to preserve or enhance the character and appearance of the Colchester Town Centre Conservation Area. As such, it would conflict with Policy DM16 of the Colchester Borough Local Plan (Section 2) which is concerned with the historic environment. It would also be contrary to the place shaping principles in Policy SP7 of the Section 1 Local Plan and Policy DM15 which is concerned with design. As the massing would not be appropriate having regard to its context, the proposal would also fall foul of Policy DM9.
19. In the words of the Framework, the development would lead to less than substantial harm to the significance of designated heritage assets. However, the totality of that harm would be towards the upper end of the spectrum. This is a matter that should be given considerable importance and weight.

Heritage balance

20. Paragraph 202 of the Framework establishes that where the development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this should be weighed against the public benefits. Paragraph 203 indicates that a balanced judgement is required for applications that directly affect non-designated heritage assets.
21. The proposed development would provide a considerable number of housing units in a central and sustainable location. This is consistent with the policies in the Framework that seek to deliver a sufficient supply of homes and make an effective use of land. The retail units would contribute to the vitality of the city centre by reinstating an active frontage. This would be consistent with the aim of Local Plan Policy TC1 to make Colchester city centre the priority focus for new town centre uses and larger scale development. It would also be in line with Policy TC2 which seeks to maintain a high proportion of retail uses. There would be associated economic and social benefits arising from the construction period and once the shops were trading.
22. Indeed, the regeneration of this site would end a lengthy period of stagnation and the deadening effect that this empty building has on the fortunes and appearance of the street. It would also remove a source of anti-social behaviour. At a stroke it would resolve all these issues and re-development would be beneficial to the city.
23. The site has been marketed on and off since 2005. A restrictive covenant prevents the building being used as a cinema again. Alternative options for the site, including the re-use of the existing building, therefore appear to be extremely limited. After over twenty years of vacancy in a busy city centre, it would be reasonable to expect a high profile site such as this to have attracted interest from other parties if it were there. Furthermore, developing a city centre site hemmed in by other buildings is challenging.
24. The appellant has undertaken an options review of the viability of different ways of re-developing the site. Of those considered, only the proposed scheme would generate a profit and this would give a very modest return of 2.91% of gross development value. The Council's advisors have undertaken full viability appraisals of the same options and conclude that all of them would lead to a significant deficit. There is some disagreement about the outcome of an option involving the demolition of the cinema and a development of 37 units that matched the existing townscape. Whether or not that scheme would be the

'least worst' does not alter the finding that none of the options are viable if assessed by conventional means.

25. There is no dispute, for example, that the previously permitted scheme is not viable and would not therefore go ahead. This is due to the lesser quantum of development but also the additional cost of retaining some of the original structure and keeping it upright during construction. Working round the remains of the existing building would also be more complex logistically.
26. The appellant's approach is deliberately intended to be high level and treats the investment already made in purchasing the site and on-going costs as a 'given'. It is also comparative and shows the returns that might accrue from several ways of proceeding when assessed on the same basis. The proposed scheme is a means to recoup some of the expenditure incurred. It is also proposed to retain ownership and to offer the apartments for rent and so increase the overall return over time.
27. The Council is nevertheless dubious that the development would proceed if permitted. However, there is a logical rationale in the appellant's position in that it would allow losses to be crystalised and end the need to maintain and secure an unoccupied building. In any event, a condition could be attached to any permission stating that demolition of the old cinema should not commence until a contract for implementing the re-development had been let.
28. It is no part of the appellant's case that re-development is required because the existing building is structurally unsound. Rather that it is uneconomic and impractical to retain it. Given the length of time that it has been empty, the prospect of keeping the idiosyncratic foyer building intact seems quite bleak. If re-developing the site were to result in a scheme that integrated successfully into its historic surroundings, then the associated public benefits would weigh strongly against the heritage harm.
29. However, the proposal would not achieve this but rather the bulk of the rear element would be overly dominant and would detract from the grain of this part of the city. That said, sanctioning the proposed development would bring the saga of the site to an end, especially as other options considered are not viable. The likelihood is therefore that the site would remain unused for some time to come.
30. On the other hand, the Framework confirms that great weight should be given to the conservation of heritage assets. Furthermore, it also seeks to achieve well-designed places. The public benefits of breathing new life into a dormant site are considerable. These include new housing in a central location, the provision of retail units and bolstering the function of the city centre. They are nonetheless countered by the provisions of the Framework relating to design and heritage assets. At the end of the day, given the importance attached to conserving the historic environment, the public benefits do not outweigh the significant harm that would be caused to heritage assets.

Other Matters

31. The appeal site is within the zone of influence of the ecologically rich and diverse Essex Coast habitats sites. The proposed dwellings would be likely to increase recreational disturbance at these sites as future residents would be liable to travel to them. In combination with other development in Colchester,

the proposal would therefore lead to a likely significant effect on the designated features of the habitats sites.

32. The appellant has made a direct payment towards the adopted Recreational Disturbance Avoidance and Mitigation Strategy. However, given that the appeal is to be dismissed, there is no need to consider whether this would be effective or to undertake an appropriate assessment under the Conservation of Habitats and Species Regulations.

Conclusion

33. The proposal would not preserve or enhance the character or appearance of the conservation area and it would have a serious adverse effect on the significance of a non-designated heritage asset. It would not accord with the development plan and there are no other considerations to outweigh that finding. Accordingly, the appeal should fail.

David Smith

INSPECTOR