



Appeal Decision

Site visit made on 4 April 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/B1550/W/22/3302837

57 South Street, Rochford, Essex, SS4 1BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by GB Partnerships (Rochford) Ltd against Rochford District Council.
 - The application Ref 21/01278/FUL, is dated 23 November 2021.
 - The development proposed is the demolition of existing building and redevelopment of site to provide seven apartments with associated parking, amenity space and landscaping.
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Decision

1. The appeal is dismissed, and planning permission for the demolition of existing building and redevelopment of site to provide seven apartments with associated parking, amenity space and landscaping is refused.

Preliminary Matters

2. The appeal is against the failure to give notice within the prescribed period of a decision on an application for planning permission. Following the lodging of the appeal, the Council considered the application and indicated in its statement that they would have refused the application.
3. For clarity, the appellants' submitted amended drawings after the submission of the planning application. However, following a series of emails on 25 January 2023, the Council has confirmed that had it accepted the amended drawings, they would not have required re-consultation. I have examined the revised documents submitted to the Council identified on 25 January 2023 and in the absence of any substantive evidence to the contrary, I consider that no interested parties would be prejudiced through accepting the revised documents. I have dealt with the appeal on this basis.
4. For clarity, whilst the Council has provided a plethora of policies within its Questionnaire, it has not referenced all of them in its submission and in the case of flood risk and surface water drainage, no development plan policies have been cited. However, I will refer to policies contained within the Questionnaire in my decision, where they are relevant. As these policies have been available during the course of the appeal, I will not prejudice any interested party through taking this approach. In the event that development plan policies have not been cited in respect of a main issue, I will have regard to the requirements of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG).

Main Issues

5. I have formulated the main issues on what the Council's reasons for refusing

planning permission would have been, as outlined in its statement. Therefore, the main issues of this appeal are:

- whether the appeal property comprises a non-designated heritage asset (NDHA);
- the effect of the proposed development on the character and appearance of the Rochford Conservation Area (RCA);
- the effect of the proposed development, with regard to flood risk and surface water drainage; and,
- the effect of the proposed development on the living conditions of neighbouring occupiers, and whether satisfactory accommodation would be provided for future occupiers of the scheme.

Reasons

NDHA

6. The Heritage Statement¹ (HS) submitted by the appellants' to the Council in support of its planning application, identifies 57 South Street as a NDHA. Whilst there is initial ambiguity in the HS, there is eventually a more defined stance taken, particularly on pages 36 and 38, where the significance of No 57 is derived from many elements that contribute to the character of the exterior, such as: dark red brick, slate roof, decorative clay ridge tiles, chimneys, terracotta detailing, hung tiles, bay windows, original front and side doors, original or matching sash windows and stained glass in the margin light. It is noted that the side and rear elevations are more plain in appearance, but the south elevation has some detailing. Consequently, No 57 is a good example of an Edwardian period house, albeit it has changed its use and was last used as Council offices/storage.
7. I note that the Council's Heritage Officer also considers No 57 to represent a NDHA. Furthermore, there is agreement between the parties that No 57 is not locally listed. However, I do not consider that this is a decisive factor, and whilst the appellants' now appear to question No 57 as a NDHA, the parties have both referenced No 57 as a NDHA in their submissions. The PPG² identifies NDHAs as buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of heritage significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets. However, the PPG acknowledges that only a minority have enough heritage significance to merit identification as NDHA. Thus, even if there is some doubt on this matter, I am satisfied that the evidence merits No 57 being considered as a NDHA.

Character and appearance of the RCA

8. The site is located within the RCA, which was originally designated in November 1969, covering the historic town centre, then reviewed and revised in May 2007 to include the backlands east of South Street and north of West Street, and also the area west of the town covering the station, the parish church, and Rochford Hall, a Tudor mansion now partially demolished. The significance of the RCA is that it is an exceptional example of a historic market town centred

¹ Heritage Statement Issue 06 (Final), dated December 2021

² 039 Reference ID: 18a-039-20190723

on crossroads. Just a handful of buildings survive from the medieval period, the street plan and location of the marketplace remain largely medieval in footprint. The site is located in Character Zone 5: Bradley Way of the RCA, which is identifiable by large isolated modern buildings surrounded by spaces used for car parking and the ring road itself. However, given the proximity of the site to Character Area 6: South Street (CA6), I also find CA6 of relevance in the determination of this appeal.

9. When considering the details of the proposed development, I am mindful of the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of any land or buildings in a Conservation Area³. The Conservation Area is a designated heritage asset. Furthermore, the Framework, requires the effect of an application on the significance of a NDHA to be taken into account in determining an application, and that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
10. The RCA Appraisal⁴ identifies No 57 as being well preserved, additionally the HS identifies No 57 as having medium significance at a local level, making a contribution of medium significance to the special interest of the RCA. Thus, as the scheme would include the demolition of No 57, the removal of this building would cause harm to the RCA and undermine part of its significance.
11. It is also necessary to consider the effect of the proposed development on the RCA, so that this impact, either positive, neutral or negative, can be considered in the overall balance of considerations. The RCA Appraisal identifies South Street as the longest and best preserved street of period houses in the historic town centre. The proposed development whilst modern in appearance would include traditional features, which would not result in harm in itself. Additionally, the proposed external materials, would be generally typical and not unreasonable for a development of this type in the RCA. Furthermore, I do not find the increase in the amount of development, along the frontage or of the site in general to be harmful.
12. Whilst I recognise that the new development has been designed to respond to the flood risk in the area, I do have concerns with the design of the new development, particularly surrounding its scale and massing, as some elements of the new development would extend above the ridge lines of neighbouring properties, by an appreciable distance. Furthermore, the tallest section of the new development, through its overly wide front facing gable, with parapets would result in a large and bulky building element that would sit uncomfortably in the streetscape. This effect would be further emphasised through the large expanse of brickwork on the front elevation at second floor, resulting in a discordant feature. Given the prominent location of the site in the RCA, the new development would be readily visible from a number of vantage points in the public realm.
13. The removal of No 57 on the site would be harmful to the character and appearance of the RCA. This harm would be compounded by the new development both in its adverse effect on the site itself and to this part of the RCA. The overall effect of the proposed development would be to harm the character and appearance of this part of the RCA and therefore detract from

³ Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act)

⁴ The Rochford Conservation Area Appraisal and Management Plan, dated May 2007

the significance of this designated heritage asset. Nevertheless, the harm to the RCA as a whole would be less than substantial within the meaning of paragraph 202 of the Framework. In accordance with the Framework, this harm should be weighed against the public benefits of the proposed development.

14. The appellants' have explained the benefits that are considered would result from the proposed development. These include an opportunity to achieve a new sustainable form of residential development at the site; the provision of new dwellings in light of the Council's lack of a deliverable 5-year housing land supply (5-year HLS); that all potential options have been considered for the retention of the existing building and there are no realistic options for securing the retention of the existing building at the site as part of a future development scheme; there is an opportunity to deliver the aims of the Area Action Plan, through providing a new development at the site to "strengthen the gateway" to Rochford Town Centre; the existing condition of No 57 leading to some deterioration to the quality of this part of the RCA and its sustainable location, amongst other things.
15. I also acknowledge, the construction works and related expenditure would provide a boost to the local economy and local employment during the period of the works, although this would be for a limited period. Taking all these matters into account, apart from matters surrounding the Council's housing land supply, which I shall expand upon later, I assess that the cumulative benefits of the scheme would be reasonably minor and should be afforded limited weight in support of the proposed development.
16. The statutory duty in Section 72 of the Act is a matter of considerable importance and weight. Furthermore, the Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm. I have found that the public benefits of the proposal attract limited weight and therefore would not outweigh the harm to this part of the RCA and its significance which, in accordance with the Framework, is required to be attributed great weight.
17. Added to the overall heritage balance is the loss of No 57, where its demolition would result in the loss of its significance. Given the concerns raised with the new development, I attach substantial weight against the loss of No 57 as a NDHA. This in the overall balance, collectively adds further weight against the proposed development. I note the judgments⁵ referenced by the appellants' in their submission, which I consider material considerations in the determination of this appeal. Additionally, I note reference to an appeal decision⁶ within the same Council area as the scheme before me. However, this scheme was for a much larger development and did not involve heritage matters as a main issue.
18. For the reasons given above, I conclude that the proposed development would harm the character and appearance of the appeal site and surrounding area, and fail to preserve the character and appearance of this part of the RCA and adversely affecting the significance of the NDHA.

⁵ Pugh v Secretary of State for Communities and Local Government [2015] EWHC3 (Admin), and Bohm v Secretary of State for Communities and Local Government [2017] EWHC 3217 (Admin).

⁶ APP/B1550/W/21/3283646

19. In the absence of sufficient public benefits to outweigh these harms, I conclude the works and development would not conserve the heritage assets in a manner appropriate to their significance contrary to the design, heritage, character and appearance aims of Policies CP1, H1 of the Rochford District Council, Local Development Framework Core Strategy Adopted Version, 2011 (CS); Policies DM1, DM3, DM8 of the Rochford District Council Local Development Framework Development Management Plan, 2014 (DMP); Essex Design Guide, 2018 (EDG) and Supplementary Planning Document 2 - Housing Design, 2007 (SPD2).
20. Together, and amongst other things, the above policies and guidance require good high-quality design that relates well to the character of the locality, positively contributing to the built environment and avoiding a detrimental impact on the historic environment. The scheme would also fail to accord with the requirements of the Framework and the Act.

Flood risk and surface water drainage

21. The site is located in Flood Zone 3a, with a high probability of fluvial flooding. Additionally, the Framework⁷ identifies buildings used for dwelling houses as More Vulnerable development. Given these factors, the PPG⁸ states in Table 2 that the development requires an Exception Test⁹.
22. In response, the appellants' Flood Risk Assessment¹⁰ (FRA) considers the Sequential Test and Exceptions Test. A Sequential Test¹¹ was undertaken initially in October 2021 and then an addendum¹² was provided in January 2022 to demonstrate that no sites with a lower probability of flooding are available, where they found there are no alternative sites in Rochford Town Centre Area Action Plan (RTCAAP) area that are reasonably available. Whilst the Council appear to have changed its position on this matter, an email dated 7 February 2022 accepted that there are no other sites within the RTCAAP that the development could be carried out on. I consider this confirmation to form a material consideration of substantial weight, in the absence of substantive evidence to the contrary to support a change in stance on this matter. Nonetheless, the PPG does not expressly state the geographic area of search. Notwithstanding this point, I consider the extent of the search by the appellants' was accepted by the Council in February 2022.
23. Upon considering the scheme to satisfy the Sequential Test, the appellants' have gone on to undertake an Exception Test, which they also consider to be satisfied¹³. I note the appellants' view regarding wider sustainability benefits to the community. However, even if the new development would be safe for its lifetime without increasing flood risk elsewhere, I am unable to accept that wider community benefits would arise, given my conclusions in respect of the RCA and the NDHA.
24. I have considered whether further information could be provided, given the evidence within the appellants' submission and I am satisfied that matters, surrounding resistance and resilience measures and an emergency plan could

⁷ Annex 3: Flood risk vulnerability classification

⁸ PPG - 079 Reference ID: 7-079-20220825 - Table 2: Flood risk vulnerability and flood zone 'incompatibility'

⁹ PPG - 031 Reference ID: 7-031-20220825

¹⁰ Flood Risk Assessment and Drainage Strategy by Connisbee, dated 10 November 2021

¹¹ Flood Risk Sequential Test Assessment, by One Planning Consultants, dated 13 October 2021

¹² Flood Risk Sequential Test Assessment Addendum, by One Planning Consultants, dated January 2022

¹³ Paragraphs 6.32 to 6.34 of the Appellant's Statement

be secured by means of suitably worded conditions. Additionally, I accept the limitations of the site with regards to sustainable drainage and find it highly likely that a number of sustainable drainage systems other than those proposed would be inappropriate for the site. It is unfortunate that the Lead Local Flood Authority (LLFA) were not consulted earlier and whilst the planning application was under consideration. Nonetheless, whilst recognising the limitations of the drainage solutions already present at the site, I am not convinced that it would be feasible to expect the development to provide storage for tidal or fluvial flood events, as requested by the LLFA in its letter¹⁴. In any event, as I am dismissing the appeal for a number of other reasons, I have not considered this particular matter any further.

25. For the reasons given above, I conclude that whilst the sequential test is accepted, the proposed development would not provide wider sustainability benefits to the community to outweigh the flood risk. This is contrary to the requirements of the Framework and the PPG.

Living conditions

Existing occupiers

26. To the north of the new development would be 51 South Street. Whilst the development would be sited in proximity of No 51, the only concern that has been raised is in relation to the proposed windows at first and second floor of the north facing flank element, which would serve the bedrooms and living area of apartments no's 5 and 7. In the case of the living areas, the north facing window is the only opening for no. 5 and would be the main opening in the case of no.7, as it would have a smaller window on the opposite elevation.
27. Reference to the EDG has been made by both parties. I accept that the EDG does not specifically cover the proposed situation surrounding the proposed bedrooms of both no's 5 and 7. However, in respect of living areas, the EDG states 'upper-storey flats can cause problems due to overlooking from living rooms'; and, 'It should, however, be acknowledged that oblique views over side boundaries from upper-storey living rooms can also be a problem; this should be safeguarded against'. Additionally, the SPD2 states 'In this respect, the location of living rooms on any upper floor must not directly overlook the private garden areas of adjoining properties'. I viewed No 51 from the existing first floor side window at no 57. Consequently, I find that the new development would overlook No 51, particularly its rear conservatory and rear garden area. This would result in a significant loss of privacy to the occupiers of No 51.
28. Furthermore, as the side boundary between No 51 and No 57 tapers towards the rear of the site, this narrowing effect would heighten the negative impact from the proposed north facing living room windows serving no's 5 and 7 in the proposed development, even though they are situated at an oblique angle to No 51. I note a condition to obscure glaze these windows has been suggested by the appellants'. However, given the habitable nature of these rooms, I do not consider that such a condition would be reasonable, especially in the case of the living rooms. In this instance it is not possible for unacceptable development to be made acceptable through the imposition of a suitably worded condition.

¹⁴ Essex County Council, Development and Flood Risk Environment and Climate Action, dated 10 January 2023

29. For the reasons given above, I conclude that the proposed development would be harmful to the living conditions currently afforded by the occupiers of No 51, through significant overlooking and a resultant loss of privacy. Therefore, the proposed development fails to comply with the amenity aims of DMP Policy DM1, the EDG and the SPD2, which together and amongst other things, requires development to positively contribute towards residential amenity, avoiding overlooking and ensuring privacy. The proposed development would also fail to accord with the requirements of the Framework.

Future occupiers

30. Whilst not specifically referencing apartments no's 2 and 4, the DAS lists the breakdown of accommodation in the new development. In this list it clearly states the number of units and in the first bullet point it references '2no. one bedroom, one person apartments'. On this evidence, I am prepared to accept the appellants' position that unit no's 2 and 4 are intended for occupation by only one person. Thus, given that internal floor areas both proposed unit no's 2 and 4 exceed the minimal gross internal floor areas set out in the Technical housing standards, I consider that future occupiers of unit no's 2 and 4 would be provided with satisfactory living conditions, in respect of their internal floor areas.
31. I note comments from the Council with regard to the lack of private and communal amenity areas included within the scheme, but highlights this as a characteristic in the locality, as a number of public spaces are located in proximity of the site. In the absence of evidence to the contrary, I agree with the Council's position, that such a shortfall is not harmful in this instance.
32. For the reasons given above, I conclude that the proposed development would provide satisfactory living conditions for future occupiers of the scheme. Therefore, the proposed development complies with the amenity aims of DMP Policy DM4 and the Technical housing standards, which together and amongst other things, requires new development to provide sufficient accommodation for its occupants. The proposed development also accords with the requirements of the Framework in this respect.

Other Matters

33. I am informed that the Council does not have a 5-year supply of deliverable housing sites, and so the development plan policies referenced above are out of date according to Paragraph 11 d) of the Framework. In such circumstances planning permission should be approved unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 of the Framework, lists heritage assets.
34. In this case, I have determined that the proposed development would harm the RCA, which is a designated heritage asset with the loss of a NDHA. The policies of the Framework in that regard provide clear reasons for refusing the scheme. Consequently, the absence of a 5-year HLS does not lead me to conclude that permission should be granted.
35. The application site falls within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The appellants' have

paid the required financial contribution per new dwelling to contribute towards longer term monitoring and mitigation along the coastline, to mitigate adverse impact from the proposed development on the European designated sites by way of increased recreational disturbance. However, as I am dismissing the appeal in any event, I have not needed to consider this matter further.

36. I have considered the findings contained within FVA¹⁵, but find that the scope of the FVA is limited as it only covers 2no. development scenarios for office and residential conversion. For example, there is no scenario for a development involving an extension to No 57, as part of a conversion, which could potentially increase the number of units. Furthermore, whilst the advice of the appellants' property professionals¹⁶ is a material consideration, I find that it does not adequately address a scenario where measures could be introduced to No 57 to improve its resilience in the event of a flood. Additionally, I note the comments surrounding the condition of the property, and whilst I saw damaged internal flooring as a direct consequence of a significant flood in 2013 and an overall level of deterioration of the building, due to it receiving little maintenance since the flood in 2013. Nonetheless, whilst there is little doubt that No 57 requires refurbishment, there is no evidence to suggest that the building is beyond repair or has significant structural defects. Whilst the building has not been used since the flood in 2013, this does not mean that remedial works could not have been undertaken to bring the building back into use after the flood.
37. I have noted the comments from the appellants' about the way the Council handled the application and the Asset Delivery Programme procurement process, but these do not go to the planning merits of the case. I have considered this appeal scheme on its own particular merits and concluded that it causes harm for the reasons set out above.

Planning Balance and Conclusion

38. Sustainable development has three dimensions. The adverse impacts of the development would relate to the environmental role, where there would be significant harm to the RCA and a NDHA. Weighing against these impacts the scheme would result in benefits to the economic and social roles through the construction of the proposed development and the provision of homes that would positively contribute to the Council's 5-year HLS. Satisfactory living conditions for future occupiers attracts neutral weight in the overall balance.
39. Given my findings above, the proposed development conflicts with the development plan when considered as a whole, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. The scheme also fails to accord with the requirements of the Framework and the Act.
40. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

¹⁵ Financial Viability Assessment for No 57 undertaken by BNP Paribas Real Estate, dated April 2021

¹⁶ Ayers and Cruiks letter dated 26 April 2021