

Appeal Decision

Site visit made on 13 November 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Appeal Ref: APP/D1590/W/22/3311158

Kingsbridge House, 19 Rectory Grove, Southend-on-Sea SS9 2HA

- 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 A Watson of Hair & Son against the decision of Southend-on-Sea Borough Council.
 - The application Ref 22/01479/FUL, dated 21 July 2022, was refused by notice dated 15 September 2022.
 - The development proposed is the conversion of the first floor from offices to residential (C3) with 4no dwellings and the construction of a new second floor penthouse to provide one additional dwelling (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The postcode in the banner heading above has been taken from the appellant's appeal form and grounds of appeal, as the planning application form contained an incorrect postcode.

Main Issues

3. The main issues are the effect of the proposal on:
 - a) the character and appearance of the surrounding area; and
 - b) the living conditions of the occupiers of neighbouring properties, with particular reference to privacy.

Reasons

Character and Appearance

4. The appeal site is within Leigh-on-Sea District Centre that predominantly comprises commercial/retail uses to the ground floor and offices/residential uses to the upper floors. The buildings are mixed in their age, design and materials and comprise between two and four storeys in height. The appeal building fronts onto Rectory Grove. It is two-storeys in height with three retail units to the ground floor and offices to the first floor. It is proposed to change the first floor offices to three flats and construct a third storey rooftop extension to form a fourth flat.
5. The first floor front elevation is constructed of red brick with decorative framing and has a regular pattern of fenestration comprising two large casement windows above each ground floor shop front. The building has a parapet roof with decorative features to the front elevation. The front elevation of the

building is attractive, detailed, and enhances the character and appearance of the street. While the side and rear elevations of the building are more passive with little detailing and are rendered.

6. The proposed rooftop extension would be set back from the building's exterior walls. However, due to the limited height of the building, the limited height of the buildings to either side, and the presence of a frequently used alleyway to one side of the building, it would be highly visible from the surrounding area. The proposed rooftop extension would be positioned off-centre, with a larger gap to the eastern side of the building while fenestration within its front elevation would be irregularly positioned. These elements of the design would detract from the rhythm of the building's three-bay design and evenly positioned first floor windows and would appear incongruous.
7. The use of render to the exterior walls of the proposed rooftop extension and the simple flat roof design would not reference the architectural detailing or brick of the building's existing front elevation. While I accept that an extension does not have to mimic the existing building, in my opinion, the proposed rooftop extension would not appear contemporary or innovative. Consequently, it would comprise an uninspiring solid box that would not positively enhance the character of the original building or surrounding area.
8. I have been directed to an example of a rooftop extension on a building further along Rectory Grove. However, at three-storeys in height, the building is taller than the appeal building and therefore the rooftop extension is not highly visible from the street. Furthermore, the building is of a more modern construction than the appeal building, and is simple in its design and detailing. Consequently, it is not directly comparable to the appeal proposal. In any event, I must determine each case on its own merits.
9. In reference to the first main issue, the proposed development would have an adverse effect on the character and appearance of the surrounding area. It would conflict with Policies KP2 and CP4 of the Southend-on-Sea Core Strategy Development Plan Document One, adopted 2007 ('the CS') and Policies DM1 and DM3 of the Southend-on-Sea Development Management Document, adopted 2015 ('the DMD'). These policies, amongst other things, seek to ensure all developments add to the overall quality of the area and respect the character of the site, its local context and surroundings; and makes a positive contribution to the character of the existing building and the surrounding area.
10. It would also conflict with the National Planning Policy Framework ('the Framework'), the National Design Guide, published 2021 and the Southend-on-Sea Council Supplementary Planning Document 1 Design and Townscape Guide, adopted 2009 ('SPD') which all seek to achieve well-designed places.

Living Conditions – Privacy

11. To the eastern side of the appeal site is a narrow passageway that links Rectory Grove to Broadway West. The buildings fronting the passageway contain residential uses to the upper floors. Flat 1 of the proposal would be in close proximity to these residential uses due to the narrowness of the passageway. From my site visit, there was no discernible difference in the height of the buildings' storeys.

12. The first floor kitchen/lounge window within the rear elevation of Flat 1 would directly face towards a first floor glazed opening and outdoor terrace of a flat within Sterling Hall. I noticed on my site visit that screens have been erected around the perimeter of the neighbouring property's first floor terrace, one of which comprises a close boarded fence that would prevent views into the glazed opening from the proposed kitchen/lounge window. However, the perimeter fencing is not uniform in height or type and therefore, overlooking of the outdoor terrace would be possible from proposed window.
13. I acknowledge that the first floor rear window of the appeal building is existing and consequently there is currently a degree of overlooking of the neighbouring property's terrace. However, the window currently serves a self-contained office within a larger office unit and therefore, it is likely to be unoccupied in the evening and at weekends when the occupiers of the neighbouring flat would more likely utilise the terrace. In contrast, the kitchen/lounge would be the only living area within Flat 1; would accommodate the kitchen, dining and lounge areas which would be frequently occupied; and would likely be occupied at similar times as the neighbouring flat/terrace. Therefore, overlooking of the terrace from this window would significantly increase.
14. Should I find that overlooking from Flat 1's kitchen/lounge window would be unacceptable, the appellant has suggested the internal configuration of the flat could be amended by condition. However, I must determine the scheme that is before me. Furthermore, the reconfiguration of the internal layout could result in the overlooking of other neighbouring properties and the occupiers of those properties would not have had the opportunity to comment. Consequently, third parties could be prejudiced by the inclusion of such a condition.
15. Part of the roof would be utilised as a communal garden area for the occupiers of the three first floor flats, with the more useable shaped area located to the southeast corner of the building closest to Stirling Hall. Consequently, users of the rooftop garden would directly overlook a second floor window and would have an elevated view into a first floor glazed opening and terrace within Stirling Hall. I acknowledge that a condition requiring a screen to be erected around the perimeter of the rooftop garden area could prevent overlooking of neighbouring properties. However, the screen would need to be a minimum of 1.7m high and solid. Therefore, it would be highly visible and could negatively impact upon the character and appearance of the existing building and the surrounding area. Consequently, such a condition would not be acceptable in this instance.
16. In reference to the second main issue, the proposed development would have an adverse effect on the living conditions of the occupiers of neighbouring properties, with particular reference to privacy. It would conflict with Policy CP4 of the CS and Policies DM1 and DM3 of the DMD. These policies, amongst other things, seek to maintain and enhance the amenities of residential areas, securing good relationships with existing development; and protect immediate neighbours having regard to privacy and overlooking. It would also conflict with the Framework and the SPD, both of which seek to create places with a high standard of amenity for existing users. The Council's reason for refusal also references CS Policy KP2. However, this policy is not directly applicable to the second main issue.

Other Matters

17. The appeal site is located within the Zone of Influence of the Benfleet and Southend Marshes Special Protection Area and Ramsar ('the SPA'), which is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). The appeal proposal would result in a net increase of four dwellings and the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, adopted 2020 outlines that there is a requirement to pay a financial contribution for each additional dwelling to mitigate against the likely significant effects the development would have on the SPA. The information before me suggests that the financial contribution has not been paid, nor has the appellant provided a signed and sealed planning obligation. However, as I am dismissing the appeal on other grounds, I do not need to consider this matter further.
18. I acknowledge that other than the Town Council, statutory consultees raised no objection. However, this is a neutral matter. I accept that the building is not a listed building. However, this does not forego a proposal's requirement to respect the character and appearance of the existing building and surrounding area. The lack of letters of representation objecting to the proposed development during the planning application process does not indicate no objection. Concerns raised regarding the Council's handling of the planning application are not material to the determination of the appeal.
19. The Council has outlined there are discrepancies with the submitted drawings which, on viewing the submitted drawings, I would agree. However, these matters have not prevented me from forming a view on the main issues.

Planning Balance

20. The Council has stated that it currently does not have a five-year supply of deliverable housing sites and the results of their Housing Delivery Test show that there is an underperformance of housing delivery in the borough. Paragraph 11(d)(ii) of the Framework states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. The proposal would result in a net gain of four dwellings. The Council states there is a lower percentage of suitable sized dwellings for families within the borough and, due to the number of bedrooms, the proposed flats could be occupied by families. Consequently, the provision of four additional family-sized dwellings weighs in favour of the proposal and would make a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes. This carries moderate weight in favour of the scheme.
22. Weighing against the proposal is the harm I have identified in respect of its effect on the character and appearance of the surrounding area and the living conditions of the occupiers of neighbouring properties, with particular reference to privacy. I attach substantial weight to these matters. Consequently, the adverse impacts of the proposal would significantly and demonstrably outweigh the moderate benefits identified above, when assessed against the policies in the Framework taken as a whole.

Conclusion

23. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR