



Appeal Decision

Site visit made on 30 August 2024

by G Sylvester BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2024

Appeal Ref: APP/D1590/W/23/3331357

447 London Road, Westcliff-on-Sea, Southend-on-Sea SS0 9LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Robinson of Rural City Properties Limited against the decision of Southend-on-Sea City Council.
 - The application Ref is 23/00647/FUL.
 - The development proposed is the extension of existing building to form 3no. two bedroom residential flats and private amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have determined this appeal in accordance with my duty under Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 ("the Act"), to pay special attention, and have regard to, the desirability of preserving the settings of listed buildings.
3. The evidence indicates that the appeal site lies within the Zone of Influence of one or more of the designated habitats sites that are scoped into the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, Supplementary Planning Document ("the RAMS"). These sites are of nature conservation importance under the Conservation of Habitats and Species Regulations 2017, as amended ("the Regulations") and are subject to statutory protection under EU derived legislation. I will return to this matter later in this decision.

Main Issues

4. The main issues in this appeal are the effects of the proposed development on the character and appearance of the area, including the significance of the appeal building as a non-designated heritage asset (NDHA), and whether it would preserve the setting of the Grade II listed building known as the Palace Theatre ("the PT").

Reasons

5. London Road in the area around the appeal site is lined on both sides by long rows of mostly period style buildings in traditional architectural styles, some with high levels of architectural detailing. Ground floor commercial uses are common, many with shop style frontages, and the area has the character and

appearance of a traditional linear shopping street, despite the occasional modern building.

6. The Grade II listed PT, located on the opposite side of London Road to the appeal site, is a substantial building with a highly detailed and ornamented façade. It is finished in red brick and stucco, with semi-circular arched headed doorways on either side and a central balustraded parapet, flanked by dutch gables above a large central tympanum. Its significance is derived in part from its considerable architectural qualities, which are appreciated from the appeal site and the area around it. It contributes positively to the character and appearance of the area.
7. The appeal site is a prominent corner plot opposite the PT and is occupied by a low rise building with street facing elevations that are finished in stone, with a well-ordered repetitive pattern of large windows separated by pilasters. There is elaborate decorative ornamentation to the building's stonework above the doorway and above roof level, which includes a prominent balustrade. The evidence suggests the building was formerly a bank and is locally listed. The building's age, architectural qualities and functional relationship with the area gives it a strong degree of heritage interest that warrants it being considered as a NDHA. The Inspector in the 2020 appeal decision¹ reached a similar conclusion.
8. The appeal building's impressively attractive and distinctive traditional architecture makes a positive contribution to the character and appearance of the area, which is generally defined by period style buildings, albeit to a markedly lesser degree of architectural detailing than the appeal building.
9. The appeal building's architectural quality also positively complements those of the PT opposite. Although different in scale and appearance, there is a discernible visual affinity between the highly decorative exteriors of the appeal building and the PT, which distinguishes them from the comparably simpler traditional buildings in the area. This is particularly noticeable from London Road and Brightwell Avenue, where the buildings stand opposite one another, and where the PT's façade can be partly seen over the roof of the appeal building and to its side. Given the relationship between them, I therefore find that the appeal building makes a positive contribution to the setting of the Grade II listed PT, and I note that the Inspector in the 2020 appeal decision reached a similar conclusion.
10. The proposal is intended to appear as a subservient addition with its street facing walls set back from those of the appeal building, and with a height that would be comparable to the nearby taller buildings. However, compared to the appeal building's modest size and low rise form, the scale and massing of the proposed extension at the rear of the appeal building and projecting upwards from a large part of its roof, would result in it appearing as a large and bulky addition to the appeal building.
11. Occupying a prominent and highly visible position in street level views from London Road and Brightwell Avenue, the scale of the proposed addition would be exacerbated by the combination of its box-like form and 3 storey proportions, and large areas of brick walling and modestly sized windows.

¹ APP/D1590/W/19/3242303

Consequently, it would overwhelm the relatively modest scale of the appeal building and would fail to appear as a subserviently scaled addition.

12. The proposal's architectural style and materials would reflect elements from several period style buildings in the area with relatively simple, plain elevations, modestly sized timber sash style windows and a high proportion of brick walling. However, given its scale, form and massing, the style and appearance of the proposed extension would fail to relate sympathetically to the appeal building's modest proportions and attractive architectural style and materials. It would contrast harmfully with the appearance of the appeal building's stone finished walls, repetitive pattern of large windows and richly detailed, decorative architectural style, resulting in a discordant composition of styles.
13. There would be an awkward visual relationship between the appeal building's distinctive stone balustrading and the proposal's mixture of metal railings and brickwork, including the unbalanced pattern of front facing window openings, which would be visible behind and above the balustrading. This would have the effect of harmfully disrupting the balustrading's attractive appearance in the roofscape.
14. Even if alternative external materials could be secured by condition, this would not alter the scale, form or style of the proposal, nor would it make the harmful effects of the development acceptable. Stone and brick are commonly found to varying proportions on buildings in the area of the appeal site. There are buildings faced with stone at ground floor level with brick walling on the upper floors above. However, those buildings are materially different in design and appearance to the appeal development. As such, they do not justify the appeal development's harm or outweigh it.
15. Together, the scale, form and appearance of the proposal would constitute a bulky addition to the appeal building that would overwhelm its modest proportions and contrast markedly with its impressively attractive and distinctive architectural style and materials. As such, it would cause significant harm to the character, appearance and significance of the appeal building as a NDHA, and it would negatively diminish the appeal building's positive contribution to the setting of the Grade II listed PT, and harm the character and appearance of the area. The setting of the PT would not be preserved as a consequence.
16. The appeal proposal would therefore conflict with the Southend on Sea Borough Council Supplementary Planning Document 1 Design and Townscape Guide 2009, which advises that additions and external alterations to locally listed buildings should preserve the scale and character of the building and should use appropriate traditional materials and design.
17. In terms of the National Planning Policy Framework ("the Framework"), the harm that would be caused to the significance of the PT as a designated heritage asset would be 'less than substantial'. Nevertheless, I am required by Paragraph 205 to give great weight to the conservation of a designated heritage asset and therefore this is a matter of considerable weight and importance. Harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification.

18. Framework Paragraphs 208 and 209, require the harm to be weighed against the public benefits of the proposal and, in the case of development directly or indirectly affecting a NDHA, a balanced judgement reached having regard to the scale of any harm or loss, and the significance of the heritage asset.
19. The proposal would make a small but valuable contribution to housing supply, particularly as the evidence indicates that the Council is currently unable to demonstrate a 5-year supply of housing land in its area. It would make efficient use of previously developed land in an urban location where housing is supported as a matter of principle by the Council's spatial strategy.
20. Construction and occupation of the proposal would deliver short and long term economic and social benefits to the area, through residents contributing to the many businesses, services and facilities in this urban area. Conditions could be imposed to secure an environmentally beneficial reduction in energy usage and water consumption, and encourage zero and low emission vehicle ownership, along with travel by cycle. The large roof area would appear capable of accommodating solar PV to generate renewable energy, albeit limited details of this are before me, and potentially meet the proportion of on-site energy generation set out in Policy KP2 of the Southend on Sea Borough Council Core Strategy 2007 ("the CS"). However, given the relatively small scale of the development, these benefits weigh no more than moderately in its favour.
21. The car park and its palisade type boundary fence are an established part of the area. The unsympathetic rear element of the appeal building is relatively modest in scale. The visual benefits of removing these elements would be small and of limited weight in favour of the proposal and it would not outweigh the appeal proposal's harm. In any case, I have limited evidence that removing these elements would be contingent on the delivery of the appeal proposal.
22. Taking account of all the above, the public benefits of the appeal proposal would not outweigh the harm it would cause to the NDHA, or its less than substantial harm to the significance of the PT as a designated heritage asset. I have given considerable importance and weight to the proposal's harmful effect on the designated heritage asset. The proposal's benefits do not amount to clear and convincing justification for the harm that would be caused to it.
23. For the reasons given above, I conclude on the main issues that the appeal proposal would cause significant harm to the character, appearance and significance of the appeal building as a NDHA, would fail to preserve the setting of the Grade II listed PT, and would harm the character and appearance of the area.
24. Consequently, the proposal would conflict with Section 66(1) of the Act, and Policies KP2 and CP4 of the CS, and Policies DM1, DM3 and DM5 of the Southend on Sea Borough Council Development Management Document 2015 ("the DMD"), insofar as they seek well-designed development and that alterations and additions to a building are subservient to its scale and successfully integrate with, and make a positive contribution to, its character, local context and townscape setting, and conserves and enhances heritage assets.
25. There would also be conflict with the conserving and enhancing the historic environment objectives of Framework Chapter 16, and Paragraph 135 of

ensuring that development is visually attractive, sympathetic to local character and history, including the surrounding built environment.

26. Nothing I have read in the evidence leads me to conclude, as a matter of principle, that the appeal proposal conflicts with the Council's spatial strategy in CS Policy KP1, as stated in refusal reason 1. However, this does not alter my conclusions on the main issue or outweigh the harms I have identified above.

Other Matters

27. The appellant has expressed a willingness to enter into a legal agreement with the Council to secure payment of the tariff-based financial contribution towards the delivery of the Essex Coast RAMS. They have indicated that such an agreement would accompany this appeal and mitigate the proposal's potential significant adverse in-combination effects on the nature conservation interests of the relevant protected habitats sites.
28. However, there is no mechanism before me to properly secure this contribution and therefore I cannot be certain that the appeal proposal would not harm the nature conservation interests of the habitats sites in the RAMS. The appellant has raised concerns over the Council's lack of cooperation with preparing the necessary legal agreement. The Council has suggested that I allow the parties an opportunity to resolve this matter.
29. Regulation 63(1) of the Regulations indicates that the requirement for an Appropriate Assessment (AA) of a proposal's effects on habitats sites is only necessary where the decision maker, as Competent Authority, is minded to grant consent for the proposal. Given my findings on the main issues above, the proposal is unacceptable for reasons unrelated to habitats sites, and dismissing the appeal would not result in harm to those habitats sites. Therefore, delaying a decision to allow the main parties to prepare a legal agreement would not change the outcome of this appeal. In any case, the efficient operation of the appeals process necessitates that I determine this appeal on the evidence before me.
30. The evidence suggests that the appeal proposal would meet all applicable policy standards regarding accessibility for future occupiers, and the amounts of internal and exterior space, and it would provide adequate living conditions. Vehicle parking provision would be adequate and no harm to public or highway safety would arise. However, even if I were to agree on these matters, these would be requirements of any well designed scheme. An absence of harm in these respects is therefore neutral and does not weigh either in favour or against the proposal.
31. The evidence indicates that the previous unsuccessful applications for development at the site, including the 2020 appeal proposal, were materially different in scale and design to the proposal before me. I have limited information on the circumstances under which other developments in the locality were granted planning permission by the Council, including whether they were heritage assets or affected heritage assets. I have determined the appeal on its own merits, based on site specific circumstances, the evidence before me and the relevant development plan policies and the Framework. As such, those examples of other developments are of limited relevance and weight to my considerations in this appeal.

Planning Balance and Conclusion

32. The proposed development would cause significant harm to the character, appearance and significance of the appeal building as a NDHA, would fail to preserve the setting of the Grade II listed PT, and would harm the character and appearance of the area. Whilst the proposal may comply with other policies in the CS and the DMD, the harms identified would result in conflict with CS Policies KP2 and CP4, and DMD Policies DM1, DM3 and DM5, which in turn would bring the appeal proposal into conflict with the development plan when read as a whole. Given the importance placed by the development plan on securing well-designed development and conserving heritage assets, I give substantial weight to the totality of this conflict.
33. The proposal would, as I have found above, make efficient use of previously developed land in an urban location where housing is supported as a matter of principle. It would make a small but valuable contribution to boosting housing supply, particularly given the Council's current housing land supply.
34. Social and economic benefits would accrue through the construction process and from residents contributing to the many businesses, services and facilities in this urban area. Energy and resources could be used efficiently, and renewable energy generated on-site. The urban location would encourage travel by walking and cycling. Electric vehicle charging points would encourage zero and low emission vehicle ownership. Removing the unsympathetic rear element of the appeal building and the palisade type fence would bring a small visual benefit to the area.
35. Collectively, given the relatively small scale of the development, these benefits weigh no more than moderately in its favour.
36. Under Footnote 7 to Framework Paragraph 11.d)i. the appeal proposal's adverse effect on the setting of the Grade II listed PT, as a designated heritage asset, would provide a clear reason for refusing the development proposed. Therefore, the proposal does not benefit from the Framework's presumption in favour of sustainable development in Paragraph 11.d).
37. There are no material considerations of sufficient weight, including the benefits of the proposal or the provisions of the Framework to outweigh the conflict with the development plan and indicate that a decision should be made other than in accordance with it. I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR