
Appeal Decision

Site visit made on 25 September 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/J1915/W/24/3336444

Waterfront House, Station Road, Bishops Stortford, Hertfordshire CM23 3BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
 - The appeal is made by Mr W Thomas against the decision of East Hertfordshire District Council.
 - The application Ref is 3/23/1149/FUL.
 - The development proposed is demolition of existing two storey office building and erection of a new four storey residential block consisting of 4 one bedroom flats, 4 two bedroom flats and 1 three bedroom flat - resubmission.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr W Thomas against East Hertfordshire District Council. This application is the subject of a separate decision.

Procedural Matters

3. The description of development in the above banner heading has been taken from the original application form. The decision notice does however include first floor and second floor rear facing balconies and third floor terrace. I have determined the appeal accordingly.
4. The Council has confirmed that following the determination of the application, a new five-year housing land supply position statement has been published which confirms that the Council is able to demonstrate a housing land supply in excess of five years. On this basis and without any compelling evidence to the contrary, paragraph 11 d) of the National Planning Policy Framework (the Framework) is not engaged in the determination of the current appeal.

Main Issues

5. The main issues are:
 - The effect of the proposed development on the character and appearance of the site and surrounding area, including whether it would preserve or enhance the character or appearance of the Bishop's Stortford Conservation Area (CA); and
 - Whether the proposed development would be suitably located having regard to its location to the river and the risk of flooding.

Reasons

Character and appearance

6. The appeal site relates to an existing two storey office building which sits next to the river Stort. It is located behind the retail units which front onto Station Road with access provided via the narrow passage to the rear of the retail units. Although the site is within a back-land position with no road frontage, it is prominently located by being clearly visible from the bridge on Station Road to the north and from the river path which runs alongside the site to the east.
7. The site lies within the CA and I have a duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. I have had regard to paragraph 205 of the Framework which explains that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
8. The CA is noted for its large prosperous market town which continues to evolve but at the same time maintains its medieval heritage. The Bishops' Stortford Conservation Area Appraisal and Management Plan, 2014 (CAAMP) explains that the CA generally has a diverse and high-quality built environment with substantial numbers of worthy buildings. However, there are several sites that detract and one of these which is particularly disruptive is the Mill site whose tall buildings and silos dominate many views and much of the town. It is recognised that the setting of the site and the immediate vicinity within the Conservation Area could do with some improvements.
9. The proposed development seeks planning consent for the demolition of an existing two storey office building, and for the erection of nine flats contained in a four-storey building on this site.
10. The site is set down at a lower level than Station Road and the shop units to the immediate north of the site are two storeys, but because of the change in levels they are only single storey fronting the highway. The buildings either side of the access are two storeys in height on Station Road. To the south is Nicholls Lodge a flatted scheme which ranges from two to four storeys although the two storey elements are adjacent to the appeal site. On the other side of the river are a number of taller buildings with a number of other larger buildings evident within the wider area. Based on my observations onsite, the existing building is however read alongside those immediately to the north and south of the site.
11. The proposed development would replace the existing building with a four storey building almost entirely spanning the width of the site being close to the two-storey shops on Station Road. The overall height despite the top floor being setback on all sides from the footprint of the main building along with its overall scale would dominate the modestly sized shops appearing as an unsympathetic addition to its surroundings. It would dominate the view from the River Stort and adjoining path, and views looking south from the bridge at Station Road. The flat roof design and elevational details would further emphasise its impact by failing to complement the character of the area which would be overbearing when read alongside its adjoining buildings to the north and south. The footprint of built development would increase to the extent of

appearing cramped, with very little space retained to the side boundaries in particular with limited scope to undertake any meaningful soft landscaping as part of the development.

12. I acknowledge the appellants' claims regarding the site's context lying within an area that the CAAMP describes as being particularly in need of some improvements. This would not however alter my findings as the proposed development would still be out of context in this particular location and would not improve the built environment. A lack of objection from the Town Council would also not mean that the development would not be harmful and thus would not alter my findings.
13. For the reasons given above, I conclude that the development would unacceptably harm the character and appearance of the site and surrounding area and thus would fail to preserve the character or appearance of the CA. Given the nature of the proposals, the harm is localised and is therefore less than substantial within the meaning of the Framework. Paragraph 208 of the Framework explains that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
14. The benefits associated with the scheme include the provision of nine dwellings added to the local housing stock in a highly sustainable location. There would be employment created during the construction of the building, along with the likely purchasing of building materials locally. Given the relatively small-scale nature of the proposals, the extent to which these matters are beneficial are limited and are insufficient to outweigh the less than substantial harm to the CA that I have identified which I have attached great weight given the CA's conservation advised by the Framework.
15. The proposed development would therefore be contrary to Policies HA1, HA4, DES2, DES4, and HOU2 of the East Herts District Plan, 2018 (EHDP) and Policies HDP1, and HDP2 of the Bishop's Stortford Town Council Neighbourhood Plan for All Saints, Central, South and part of Thorley 1st Revision 2021-2033 (BSNP). These policies taken together, amongst other matters, explain that all development proposals, including extensions to existing buildings, must be of a high standard of design and layout to reflect and promote local distinctiveness. Development proposals should also preserve and where appropriate enhance the historic environment of East Herts.
16. For the same reasons, the proposed development would also be contrary to guidance contained in the Framework relating to conserving and enhancing the historic environment.

Flood risk

17. The appeal site is located in flood zone 2 with a very small section of the site being within zone 3 although I note the appellants claims that this element appears to remain within the banks of the River Stort and does not encroach into the site. Nonetheless, the Planning Practice Guidance (PPG) explains that for areas at risk of river and sea flooding, this is principally land within flood zones 2 and 3.

18. Paragraph 165 of the Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The PPG requires a sequential test for major and non-major development if any proposed building, access and escape route, land-raising or other vulnerable element will be in flood zone 2 or 3. It goes further to explain that a development is not exempt from the sequential test just because a Flood Risk Assessment shows it can be made safe throughout its lifetime without increasing risk elsewhere. A Flood Risk Assessment and SuDS Report has been prepared for the site which also confirms that because of its location, a sequential test will be required, and this approach is also required by Policy WAT1 of the EHDP.
19. Details about the sequential test and if necessary, exceptions test are included in the PPG. It should show that there are no reasonably available, lower-risk sites that are suitable for the proposed development. Based on the evidence before me, no such exercise has been undertaken and thus the proposed development fails to demonstrate that other sites at lower risk of flooding are not reasonably available to accommodate the development. The development would therefore be contrary to national and local policy.
20. I am aware of the planning history associated with the site and the previous reasons for refusal. However, it still remains the case that the requirement for a sequential test is clearly set out and the previous reason for refusal would not mean that a sequential test is not required particularly as the previous reason for refusal was on flood risk grounds referring to Policy WAT1 of the EHDP. This Policy specifically states that the sequential test will be used. The Council also set out that the absence of a sequential test was highlighted by consultees in considering the previous proposal. Even if this consultee did not specifically request a sequential test, it does confirm that this was indeed highlighted as being absent. Based on the evidence before me, I am sufficiently satisfied that the appellant was aware of the requirement in local and national planning policy for a sequential test as part of the appeal application which has not been undertaken.
21. Moreover, the proposed development involves works within 8 metres of a main river and flood defence. It is understood that the Environment Agency require an 8-metre undeveloped buffer zone to allow sufficient access for heavy machinery and vehicular access to allow work to be able to be carried out. This is reflected in Policies WAT1 and WAT3 of the EHDP. The Environment Agency has therefore confirmed that they would unlikely grant a flood risk activity permit for the proposed works due to the lack of access for emergency works. The Environment Agency also highlight that the building may interfere with natural geomorphological processes and could be placed at risk of damage arising from channel migration/erosion.
22. Whilst I note the claims made that the new building would be over the footprint of the existing building and moved away from the river bank and thus would not worsen the existing situation, the proposed development would still be within 8 metres of the main river and flood defence comprising of an increase in built footprint and additional storeys which would increase the load almost directly atop the river bank. The evidence before me does not demonstrate that load bearing / foundations will not compromise the bank

stability which is critical for maintaining an effective flood defence. If the flood defence structure were to fail, this could increase flood risk both on and offsite. There may have been a lack of objection from the Lead Local Flood Authority albeit with recommended conditions although they do still explain that the proposal has the potential for significant flood risk and advice from the Environment Agency should be sought.

23. For the above reasons, I conclude that the proposed development would not be suitably located having regard to its location to the river and the risk of flooding. The lack of a sequential test and if necessary, exceptions test means there can be no confidence that other sites at lower risk of flooding are not reasonably available to accommodate the development. The proposed development would therefore conflict with Policies WAT1 and WAT3 of the EHDP and Policy GIP8 of the BSNP which together, amongst other matters, requires development proposals to neither increase the likelihood or intensity of any form of flooding, nor increase the risk to people, property, crops or livestock from such events, both on site and to neighbouring land or further downstream. For the same reasons, the proposed development would also be contrary to guidance contained in the Framework relating to meeting the challenge of climate change, flooding, and coastal change.

Other Matters

24. I note the changes made to the scheme and that the appellant may have overcome a number of the other issues identified. However, I have determined the current appeal based on its own merits and thus such matters would not affect my findings on the above main issues.
25. The building is not listed and is located in the urban area already accommodating built form. The property may also not lend itself to modern business requirements remaining vastly unutilised with no real prospect for future occupation. To this end, measures have been taken to explore employment use without success. Such matters however would also not alter my findings on the above main issues nor be sufficient to weigh in favour of the appeal. The appellant has referred to Class O permitted development rights as constituting a fall-back position although details are very limited on this to explore it further as to whether reliance could be placed on such permitted development rights as a fall-back position. I cannot therefore attribute this any material weight.

Conclusion

26. The proposed development conflicts with the development plan when considered as a whole. There are no material considerations, either individually or in combination including the provisions of the Framework, that would outweigh the identified harm and associated plan conflict. I conclude that the appeal should therefore be dismissed.

N Teasdale

INSPECTOR