
Appeal Decision

Site visit made on 8 October 2024

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/J1915/W/24/3337946

138 Fore Street, Hertford SG14 1AJ

- 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 G. Martorana (Martorana Properties) against the decision of East Hertfordshire District Council.
 - The application Ref is 3/21/0633/FUL.
 - The development proposed is Demolition of the existing building and erection of a new mixed-use development, comprising a retail/commercial unit on the ground floor; seven two-bedroom flats; six one-bed flats and associated car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Prior to the determination of the planning application, revised plans were submitted to the Council. However, the Council has stated that the plans were not the subject of consultation. Although these were submitted before a decision was made, they amount to significant amendments that interested parties should have the opportunity to comment upon. In consequence, it would cause prejudice to have regard to these revisions.
3. A viability assessment was also submitted. I have considered this document as it has been received by the Council, is referenced in the Appellant's Statement of Case and does not change the physical scheme.
4. Notwithstanding the description used on the application form; the Council's decision notice; and the appeal form, it is apparent that following the submission of amended plans, the scheme was changed to include four two-bedroom flats and nine one-bedroom flats. This is confirmed in the Appellant's Statement of Case. Therefore, whilst I have utilised the formal description of the development above; I have determined the appeal with reference to the plans formally considered by the Council.

Main Issues

5. The main issues relevant to this appeal are:
 - the effect of the development upon the character and appearance of the area;
 - the effect of the development upon the character and appearance of the Hertford Conservation Area; and

- whether appropriate living conditions would be provided for the future occupiers of the development.

Reasons

Character and appearance

6. The site is between Fore Street and Gascoyne Way and near to the junction between Fore Street and South Street. A unifying trend in the surrounding area is that buildings are typically constructed to traditional designs, with pitched roofs. However, there are a few exceptions to this as there are a limited number of nearby modern buildings including a supermarket, takeaway and a multi-storey car park.
7. Although the proposed building would have a height comparable to some of the existing, older, buildings in Fore Street, it would have a divergent design. In particular, the new building would have a large footprint that would stretch from the front to rear boundaries of the site. In addition, the building would have a flat roof, with few variations in height. These characteristics would create a building that is significantly bulkier than those nearby. The scheme would include some balconies, but these would be sited on a single elevation, which would not result in a lower level of massing. The bulky design would also be exacerbated by the fenestration pattern on the eastern elevation, which means that there would be limited architectural detailing to break up the massing of the building. This means that the proposed building would not assimilate to its surroundings.
8. A notable feature of existing buildings in Fore Street is that windows on the upper storeys are smaller than those that serve rooms on lower floors and are consistently spaced. In contrast, the proposed development features a uniform window size on the upper floors. Furthermore, a few of the windows on the western elevation feature irregular spacing. Although located behind a takeaway building, the front wall of the proposal would feature a section lacking in windows. Therefore, a blank wall would be readily viewable and would create a bleak building in contrast to its surroundings. Therefore, these factors create a building that would be notably discordant. Although the proposal would replace the existing buildings, these are much smaller than the proposal would be and, in result, these structures do not give rise to the same adverse effects that the proposal would.
9. The adverse effects would be experienced from several locations, which including Fore Street itself. Given the town centre location, there is a notable likelihood that there would be many people and traffic passing the appeal site. Furthermore, the front elevation of the development would be visible from South Street and the junction between South Street and Railway Street. Although the adjacent supermarket would provide some screening, the relatively greater height of the new buildings means that its bulky form would be readily experienced from the eastern part of Fore Street. The development would also be viewable from the multi-storey car park. In consequence, the bulk of the development would be readily experienced along with the contrasting roof shape.
10. Due to the scale of the building, there is limited room for soft landscaping. However, the surrounding area generally features soft landscaping in relatively small amounts. Furthermore, the existing buildings occupy a relatively large

proportion of the site, which when combined with the existing areas of hard standing means that the development would not result in a notable loss of existing planting. Accordingly, the absence of notable landscaped areas means there would not be an adverse effect upon the character. Moreover, the presence of existing areas of hardstanding would mean that the development would not be car dominated. A further softening of the development would arise from the proposed 'green wall' that would be present to the rear of the building.

11. Although detectable from Gascoyne Way, the scheme would be viewed alongside the multi-storey car park and a modern office building. These are constructed to functional styles of architecture and from this vantage point, the development would not appear incongruous. Furthermore, the pedestrian walkway is screened from the site by landscaping and a wall. As passersby are likely to be travelling, these factors mean that views of the development are likely to be of a glimpsed nature and would not erode the character of Gascoyne Way. However, this would not overcome the previously identified adverse effects.
12. The Council have referred to Policy DES3 of the East Hertfordshire District Plan (2018) (the District Plan). This policy refers to the need to retain, protect and enhance existing landscape facilities; and where seek replacements where losses are unavoidable. Owing to the nature and scope of the proposals and condition of the existing site, this policy is not applicable to this scheme.
13. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the surrounding area. The development, in this regard, would conflict with the requirements of Policy DES4 of the District Plan. Amongst other matters, this requires that all development proposals must be of a high standard of design and layout.

Effect on the Conservation Area

14. Although the Council's Decision Notice refers to the setting of the Hertford Conservation Area (the CA), the provided map of the CA shows that the appeal site is within it. This is confirmed by the appellant's Statement of Case. For the purposes of this appeal, the significance of the CA is, in part, derived from its importance in highlighting the original town centre and the contrast between the town centre and the more modern development in the wider area. Therefore, the CA has historical significance. Furthermore, buildings are typically located in a linear form and encompass the full width of plots. In result, the CA provides evidential value regarding historic building patterns and designs, irrespective that some alterations have taken place elsewhere.
15. Whilst the surrounding area features buildings that are constructed to differing designs, a unifying trend is the presence of architectural features, such as pitched roofs, consistent fenestration patterns and materials. Although the proposal might feature traditional building materials, the development would have several elements not reflected in the surrounding area. These include the roof and fenestration pattern. Furthermore, the building would include under-croft car parking, which is a feature not readily perceptible elsewhere in the vicinity. In result, the proposed development's modern design would conflict with the prevailing traditional architecture that is a feature of the CA. As such, the historical significance of the CA would be compromised by the development.

16. Although the site appears to be in the appellant's ownership, it currently contains a mixture of buildings that are relatively small in scale. Therefore, the site reflects the character of the CA in that buildings typically have smaller footprints and are arranged in a broadly linear manner. In contrast, the development would extend rearwards from the front boundary and behind the existing neighbouring takeaway. In consequence, the proposed development would erode the characteristic of a linear pattern of buildings by reason of its depth. Furthermore, the building would have the appearance of occupying multiple plots due to its width.
17. While the proposal might have a comparable footprint to the existing buildings, its greater bulk and mass means that it would be more perceptible. Whilst there are some relatively long buildings nearby, including a supermarket, these are much smaller and less prominent than the appeal scheme would be. Therefore, they do not give rise to the same adverse effects and, in consequence, do not allow me to forego the preceding concerns. Accordingly, the proposal would erode the evidential value of the CA.
18. I therefore conclude that the development would have an adverse effect upon the character and appearance of the CA. The development, in this regard, would conflict with the requirements of Policy HA4 of the District Plan. Amongst other matters, this states that new development in Conservation Areas will be permitted if they preserve or enhance the special interest, character, and appearance of the area.

Living conditions

19. The site is in the town centre, with several commercial businesses nearby. These can be expected to be open during the late evening or night-time periods. Furthermore, the site is near to roads that appear to be relatively highly used and a multi storey car park, which is also of a large scale. Owing to the pattern of development elsewhere in the surrounding area, most of the windows that would serve the development would be located on the front elevation facing Fore Street and a side wall.
20. It is likely that some noise would be generated in neighbouring properties, which may be more notable during periods when residents of the development would expect greater degrees of peace and quiet. Nonetheless, the appellant submitted, with the planning application, a noise assessment. Although this demonstrates that there are notable sources of noise in the surrounding area, the assessment also demonstrates that it would be possible, through the construction methods of the building, to mitigate any adverse effects arising from this. Furthermore, the assessment also indicates that these noise levels can be achieved irrespective of whether the windows are closed.
21. If windows were to be open, it is likely that noises in the surrounding area would be audible inside the proposed flats, however, the noise assessment also demonstrates that mechanical ventilation would also be installed. This would mean that should a resident prefer not to open their windows; they would have access to a source of fresh air and be able to regulate temperature in the home. Moreover, most of the flats feature balconies, which would provide an additional facility for some residents to access fresh air.
22. Although some of the flats would feature windows on a single elevation, the appellant has indicated that details regarding overheating would be addressed

under the relevant Building Regulations. The Council has not submitted any compelling evidence that challenges this position. Furthermore, most of the windows would face a westerly direction. Consequently, it is unlikely that significantly large amounts of sunlight would be directed into the rooms of the proposed homes for large portions of the day. Irrespective of this, the proposal would feature opening windows and mechanical ventilation, which means that residents would have an opportunity to adequately ventilate their homes. This means that the development would not be overheated.

23. Balconies would provide outdoor space for most of the occupiers allowing for some outdoors recreation. It has also been demonstrated that the scheme would not currently be viable for a financial contribution to be made. Furthermore, the appellant's Statement of Case confirms that the flats would comply with the National Described Space Standards. This, when combined with the number of bedrooms that each home would have, means that future occupiers would have sufficient room for the storage of household items and placing of furniture whilst allowing for sufficient circulation space.
24. Existing buildings would be located a relatively large distance from the proposed building's elevations. Moreover, existing buildings are arranged in a linear form that runs perpendicular to both Fore Street and Gascoyne Way or of lower heights. In result, the windows of the development would have a generally open aspect that would ensure an appropriate level of outlook. Furthermore, the balconies feature room for some planting. Although this would be of small scale, there are no adopted planning policies that specify a minimum provision. In consequence, the planting would serve to soften views of the more engineered surroundings. These measures, when combined, are sufficient to ensure that occupiers have an appropriate level of outlook.
25. The ground floor of the building features a room that could be utilised for the storage of refuse and materials for recycling. This would be conveniently located and would ensure that such items are appropriately, and tidily, stored whilst awaiting collection. Had I allowed this appeal, a condition that would have ensured the provision and retention of this storage throughout the life of the development, could have been imposed. Additionally, the size of the proposed homes indicates that they would not be occupied by large households. This means that some refuse could be readily stored within each home, pending collection. Moreover, the site features sufficient room to allow for the refuse to be collected.
26. I therefore conclude that the proposed development would provide appropriate living conditions for its future occupiers. The development, in this regard, would comply with the requirements of District Plan Policies CC1, DES4 and EQ1; the Hertfordshire Waste Local Plan; and the East Hertfordshire Open Space, Sport and Recreation Supplementary Planning Document. Amongst other matters, these seek to ensure that proposals demonstrate that the design, materials, construction, and operation of the development would minimise overheating in summer; make provision for the storage of bins; and that noise sensitive development should be located away from existing noise generating sources.

Other Matters

27. The site is near to Listed Buildings. However, as the appeal is being dismissed, the proposal would not have an adverse effect upon their setting.

28. The development would result in the retention of a pedestrian route and would not have an adverse effect upon air quality and flood risk. Whilst these are matters of note, they are unrelated from the main issues and therefore do not lead me to a different conclusion.

Heritage Balance

29. The harm to the character and appearance of the CA would not be severe and therefore it would be 'less than substantial' within the meaning of the National Planning Policy Framework (the Framework). Paragraph 208 of the Framework requires that such harm to be weighed against the public benefits of the proposal.
30. In this instance, the proposal would result in an increase in the overall housing supply in the area in an accessible location. However, although a previous appeal decision has been submitted which assessed the housing land supply position, the Council have confirmed, in their Statement of Case, that there is now a five-year housing land supply. This position has been acknowledged by the appellant in their Final Comments. Accordingly, the Council is currently significantly boosting the supply of homes. Therefore, given the number of new homes that would be generated in the proposal, the increase in the overall local housing supply carries a limited amount of weight.
31. The Council's Committee report indicates that the development would deliver some on-site affordable housing. If this were to be the case, there is no completed legal agreement before me. This means that there is no certainty that the affordable housing would be delivered. Even if I were minded to agree with the findings of the submitted viability assessment, the completed development would not come forward if a proportion of the development was made available for occupation on affordable tenures. In consequence, the potential delivery of affordable housing is a matter that carries limited weight, for I do not have certainty that it can be delivered.
32. The development would result in the reuse of previously developed land. However, I do not have any evidence regarding attempts to market the property for redevelopment and whether other uses or schemes are not feasible. In consequence, it has not been demonstrated that the appeal scheme is the only means by which the site might be developed. In consequence, the reuse of the site carries limited weight.
33. The construction and occupation of the development would generate some economic benefits. However, any such economic benefits arising from the construction process are likely to be time-limited in duration. In addition, the size of the homes is such that they are unlikely to be accommodated by large sized households. Therefore, there is unlikely to be significant amounts of patronage of local businesses and services. In addition, there is no evidence before me that is indicative that existing businesses are struggling for custom. Furthermore, the development would include a new commercial unit. However, it has not been demonstrated that the existing unit is not desirable for a modern occupier. Therefore, the economic benefits can also be given a limited amount of weight.
34. The development would result in some improvements to biodiversity. However, it is unclear as to how the ongoing maintenance of this would be secured throughout the life of the development. Moreover, such improvements

would not be, in quantitative terms, of a large amount, meaning this matter also can be attributed a limited amount of weight.

35. Therefore, when giving great weight to the special attention I must pay to the desirability of preserving or enhancing the character and appearance of the CA, I find that the harm that would arise from the proposal would not be outweighed by its limited public benefits. Accordingly, there would be a conflict with Paragraph 206 of the Framework as harm to designated heritage assets would not have clear and convincing justification.

Conclusion

36. The scheme would conflict with the Development Plan taken as a whole. There are no other material considerations that would indicate that the decision should be made other than in accordance with the Development Plan. Accordingly, for the preceding reasons, the appeal should be dismissed.

Benjamin Clarke

INSPECTOR