
APPLICATION REFERRED FROM THE WEEKLY LIST**WEEKLY LIST NO. 1698 – 09 February 2024****23/00817/FUL****11 SPA PLACE, MAIN ROAD, HOCKLEY, ESSEX****CHANGE OF USE FROM A VACANT RETAIL UNIT TO ONE 2-BED RESIDENTIAL DWELLING.****1 DETAILS OF REFERRAL**

- 1.1 This item was referred from Weekly List No.1698 requiring notification to the Planning and Building Control Technical team by 1.00 pm on Wednesday, 14 February 2024 with any applications being referred to this meeting of the Committee.
- 1.2 Cllr A H Eves referred this item on the grounds that additional wording be added to the reason for refusal number 1. To include reference to the marketing of the commercial unit.

Cllr Eves has proposed the following additional text shown in bold typeface:

The application site is currently designated as Secondary Shopping Frontage by the Council's Hockley Area Action Plan. The development of the site for solely residential use would result in a loss of a commercial unit, which would have a negative impact on the viability and vitality of Hockley town centre. **The submitted evidence to demonstrate there has been a lack of interest in the purchase or rent of the commercial unit is ambiguous and inconsistent.** The proposed development would not therefore be compliant with and contrary to the requirements of Policy H7 of the Hockley Area Action Plan and paragraph 86 of the National Planning Policy Framework.

All other reasons for refusal remain as recommended.

- 1.3 The item that was referred is attached at Appendix 1 as it appeared in the Weekly List.
- 1.4 A plan showing the application site is attached at Appendix 2.

2 RECOMMENDATION

- 2.1 It is proposed that the Committee **RESOLVES**

To determine the application, having considered all the evidence.

Appendix 1

Application No :	23/00817/FUL Zoning: Hockley Town Centre
Case Officer	Mrs Elizabeth Milne
Parish :	Hockley Parish Council
Ward :	Hockley
Location :	11 Spa Place Main Road Hockley
Proposal :	Change of use from a vacant retail unit to one 2-bed residential dwelling.

1. The site is in Hockley's Town Centre with a frontage onto Main Road. A private road runs along the site's eastern boundary. Residential properties border the site to the west, east and north. The site previously comprised a commercial building. The building to which the application relates was granted planning permission for 10 self-contained flats with one commercial unit at ground floor (ref: 19/01181/FUL). The development works have since been completed and it is understood that all residential units have now been sold.
 2. The site was granted planning permission allowed on appeal in 2014 (reference APP/B1550/A/14/2217593). The 2014 consent allowed for conversion (including extension and alteration) of the main three-storey building to form 10 No. flats with a retail unit at ground floor and for the conversion of the outbuilding to the rear of the site to 3 No. live-work units.
 3. Planning permission is sought to change the use of the retail unit (former Class A1 now Class E(a)) at ground floor to residential (Class C3). In 2018 an application was submitted to convert the main building to form eleven 2-bed flats (ref: 18/00482/FUL). This application was refused because the proposal omitted to retain any commercial use which would have a negative impact on the viability and vitality of Hockley Town Centre.
 4. Subsequently, the development which was approved on 20th February 2020 (ref: 19/01181/FUL) was conditioned (condition 16) to restrict the use of the commercial unit:
16. *The commercial unit as shown on the plans hereby approved shall remain in A1 (Retail) use only in perpetuity notwithstanding any change of use that would otherwise be permitted by the Town and Country Planning (Use Classes) Order 1987 or the Town and Country Planning (General Permitted Development) Order 2015 (as amended).*

A further application was then submitted for the change of use of the ground floor retail unit to residential to form a two bed dwelling, however this was refused on 29th June 2022 for the following reasons:

1. *The application site is currently designated as Secondary Shopping Frontage by the Council's Hockley Area Action Plan. The development of the site for solely residential use would result in a loss of commercial units, which would have a negative impact on the viability and vitality of Hockley town centre. The proposed development would not therefore be compliant with the requirements of Policy H7 of the Hockley Area Action Plan and paragraph 86 of the National Planning Policy Framework.*

2. *The application does not include a mechanism to secure suitable mitigation in the form of a standard contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMs) or otherwise. Based on the precautionary principle, it is considered that the proposed scheme would be likely to have a significant adverse effect on the SAC and SPA due to the potential increased disturbance through recreational activity. The proposal would therefore fail to comply with the requirements of the Regulations. It would also fail to accord with Policy ENV1 of the Rochford District Council, Local Development Framework Core Strategy which seeks to maintain, restore and enhance sites of international, national and local nature conservation importance. It would also be contrary to Paragraph 175(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused.*

RELEVANT PLANNING HISTORY

5. Application No. 13/00469/FUL - Construct New Roof to Out Building and Convert to 3-Bed Live Work Unit, Single Storey Front Extension and Three Storey Rear Extension and Additional Floor to Main Building to Provide Shop and Development of 8 No. One-Bedroomed Flats and 2 No. Two-Bedroomed Flats With Parking and Amenity Areas. REFUSED AND APPEAL ALLOWED.
6. Application No. 17/00018/DPDP3J - Change of use from existing B8 to C3 (residential) to provide 2 no. residential units. PERMITTED DEVELOPMENT
7. Application No. 18/00482/FUL - Conversion of commercial building to form 11 x 2no bedroom apartments. REFUSED.
8. Application No. 18/01104/NMA - Application for non-material amendment to application 13/000469/FUL to revise outer wall positions to top floor apartment. APPROVED
9. Application No. 19/00473/NMA - Non-material amendment following approval 13/00469/FUL dated 20 February 2015 for the following: 'Construct New Roof to Out Building and Convert to 3-Bed Live Work Unit, Single Storey Front Extension and Three Storey Rear Extension and Additional Floor to Main Building to

Provide Shop and Development of 8 No. One-Bedroomed Flats and 2 No. Two- Bedroomed Flats With Parking and Amenity Areas. Revisions to comprise: 1. internal alterations to layout and roof to accommodate lift and staircase 2. Relocating refuse and cycle store.' APPROVED.

10. Application No. 19/01181/FUL - Conversion of commercial building to form 10 x 2no bedroom apartments and one commercial unit – APPROVED
11. Application No. 20/00386/FUL - Conversion of existing B8 Warehouse to C3 Residential (2 dwellings) to include additional storey – APPROVED
12. Application No. 20/00893/FUL – change of use from retail to residential to form 1no. 2 bed apartment – WITHDRAWN
13. Application No 22/00154/FUL. Change of Use of Ground Floor Retail Unit to Residential to Form 1 No. 2 Bed dwelling – REFUSED

MATERIAL PLANNING CONSIDERATIONS

14. The proposed development must be assessed against relevant planning policy and with regard to any other material planning considerations. In determining this application regard must be had to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise.
15. The relevant parts of the adopted Development Plan are the Rochford District Core Strategy (2011), the Allocations Plan (2014) and the Development Management Plan (2014).
16. Following the previously refused application, this proposal seeks to address the reasons for refusal in application 22/00154/FUL by way of an updated marketing report and by providing a standard contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMs).
17. It is noted that the completed works to the retail unit do not appear to have been constructed in accordance with the plans as approved in application 19/01181/FUL. This is of particular relevance as the approved plans were for full height windows which would be more representative of a commercial unit, and additionally the space appears to have been reduced in size from approximately 69sq m to approximately 61sq m to allow for a new entrance into the building.

Impact on the Town Centre

18. The site is located in Hockley Town Centre, where policy RTC6 of the Core Strategy would apply. Additionally, the proposed development should be assessed in accordance with the National Planning Policy Framework (NPPF).
19. Hockley Town Centre is a thriving centre which offers a range of commercial uses including retail alongside a range of other uses which attract people to the area. There are very few vacant commercial premises. Paragraphs 85 and 86 of the NPPF recognises the role that the planning system plays in ensuring the vitality of town centres and requires that decisions should support the role that town centres play at the heart of local communities by taking a positive approach to their growth. Rochford District Core Strategy Policy RTC6 seeks to produce an Area Action Plan for Hockley Town Centre which delivers an enhanced retail offer for Hockley. The Council's Hockley Area Action Plan policies set out local requirements to ensure the success of this centre. The site is designated as Secondary Shopping Frontage in this action plan.
20. Policy 7 of the HAAP identifies that the Council will encourage development within Hockley town centre that supports its vitality and viability specifically identifying that within the primary and secondary shopping frontages, proposals for change of use for non-retail purposes will be permitted subject to certain criteria, namely where a proposal would:
 - not have a detrimental impact on, or undermine, the predominance of A1 uses, both within the centre as a whole and within the primary shopping frontage;
 - not create a cluster of similar non-retail uses of the same class within a locality that undermines the retail character of the centre; and
 - entail the provision of non-A1 use which is considered to positively contribute to the overall offer and encourage people into the centre.
21. Policy H7 of the HAAP is clear in stating that the loss of a retail use must be justified. A marketing report has been provided to support the application and was prepared by Ayers and Cruik in August 2023. The report concludes that the property has been actively marketed for four years and has failed to generate any real interest, therefore there is no value associated with the site at its current use. The proposal has been reviewed by the Rochford District Council Economic Development team whose response is summarised below.

22. ...It is appreciated that times are challenging for the retail sector across the country and we concur that other uses (e.g. food & drink or personal services, such as hairdressing) have fared better than more traditional format retail. However, the agent's own evidence suggests that other units in Hockley have let well, which has led to no advertised vacancies. Whilst the unit is set back from Main Road, Spa Place's position in an elevated position, with the unit adjacent to a side access road, means there is a good line of sight to the unit from traffic and pedestrians walking along Main Road. Had the unit been developed to its full envisaged width in accordance with permission granted, this would be even more prominent, however it appears its appearance has deviated from the original planning permission in a way which makes the commercial nature of the unit less obvious and its position less prominent.
23. It is also mentioned in the report that the unit has been marketed 'for many years', and that marketing commenced over 4 years ago. However, a Streetview image of the site from November 2020 suggests that the unit (and wider residential development) were not complete at that point, something which is unlikely to appeal to many occupiers, who would require a property to be completed and ready to occupy. It is also noteworthy that the Covid-19 pandemic introduced a nationwide lockdown for the majority of 2020 until Spring 2021, with all restrictions only being lifted in July of that year. These restrictions had a significant negative economic impact upon the retail and leisure sectors and effectively suppressed demand for retail and leisure space in town centres for a significant period of time after this.
24. A Rightmove commercial property search, carried out on 20th November for commercial properties 'to let' in the Hockley area found no properties available, with the exception of a small office and a light industrial unit on Eldon Way Industrial Estate. This indicates firstly that there is a shortage of units available to let in Hockley Town Centre, meaning there is no logical reason that the right type of unit, marketed at an appropriate price, would struggle to be occupied. Secondly, it also indicates that the property is not being marketed 'to let' to its fullest potential, which raises questions as to the effectiveness of the marketing to date. It is noted that the property does come up as available for sale (and that the particulars in this also mention the possibility of rental), but this is not likely to be seen by any prospective occupiers solely seeking rental.
25. In addition to the marketing report, we also note the subsequent email correspondence kindly provided by the planning agent, providing further detail on the marketing of the property via

Rightmove, as well as the site enquiry schedule since May. We acknowledge the enquiries listed suggest no firm interest, although would query whether this is influenced by the property both not appearing on searches for rental units, along with it not having been implemented to the finish and size approved in the original permission. It is noted in correspondence from the agent that the property does come up if a search is carried out for Hockley, Essex, through the general (residential) homepage of Rightmove, hit 'enter' and subsequently 'find properties'. However, this assumes a prospective occupier does not go either immediately to the Rightmove Commercial homepage, or select 'commercial' from the top navigation bar of the general Rightmove homepage. It also assumes they know to hit the 'enter' key to bring up a drop down menu. This series of steps is not the most direct or intuitive in terms of searching for commercial property and does raise questions about how prominently it was marketed.

26. Some further points regarding a potential market are touched upon in the section below considering the wider Hockley area.

Appearance of the Unit and Marketability

27. *Also an issue of concern relating to the marketing of the property is how its physical appearance has been presented. The appearance of the unit, which we understand under the permission granted for 13/00469/FUL to have been for a unit incorporating full-height glazing, is not in keeping with this original permission. Instead, the window is much smaller and potentially less attractive to prospective occupiers – especially those in retail/services/food & drink seeking to take advantage of the prominent street position for passing trade.*
28. *It also appears the width of the unit has been reduced, with an additional door installed immediately to the left of the unit's window, which may be a further access to a flat, thereby making the unit smaller. It is noted that two of the recent enquiries from the Rightmove enquiry schedule cited the unit's size as the reason they did not proceed with occupying.*
29. *In addition, the present Google Streetview image for the property, dated June 2023, shows the unit without any form of signage indicating its availability, whilst it is fronted by a series of small trees in planters which give the impression of being a residential garden. It is not considered that the presentation or implemented finish of the unit is conducive to its letting for commercial purposes and, given the planning history on this unit and the developer's clear intention to realise a residential unit, this is likely intentional.*

Wider Hockley area

30. *The status of this unit should be viewed in the context of the wider Hockley commercial property market and the role of adopted planning policy, including Core Strategy RTC6 and the HAAP Policies 6 and 7, which seek to both protect the vitality and vibrancy of Hockley Town Centre as a commercial and retail hub. As such, it is considered important to protect and maintain the town centre's existing economic vibrancy and to ensure businesses have sufficient accommodation to trade and grow, considering both the town centre frontages along Spa Road and Main Road and the employment areas of Eldon Way and Foundry Business Park.*
31. *Earlier this year, the Foundry Business Park was acquired by a property developer, sparking concerns that the site will be redeveloped for residential use and expectations of an imminent planning application¹. At present, the site is home to a large number of small, medium-sized and micro businesses, the presence of which enhances Hockley as a destination for employment and services. Visitors to and employees of these businesses serve to support the wider town centre and provide a significant source of footfall. Whilst no formal application has yet been received for the redevelopment of the main site, the two adjacent office blocks, Furzedown House and Kilnfield House, have been the subject of permitted development proposals from the same developer to convert them into apartments. The loss of even part of the Foundry site will both displace existing Hockley businesses and reduce the town's capacity to accommodate future start-up and growing businesses in a sustainable location, and in the event of such displacement taking place it is critical to consider the role of other commercial property stock in the vicinity for accommodating displaced businesses.*
32. *As an available Class E unit in a town with very few vacancies, the Spa Place property has the potential to accommodate a local business displaced from this site. It should also be noted that the Foundry does not rely on a prominent position for passing trade, meaning the position of Spa Place would not be a barrier. A Council economic development officer would be very happy to have further conversations with all parties to explore the possibility of the Spa Place unit accommodating one of these tenants.*
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33. It is considered that the proposal to add an additional ground-floor residential use would conflict with the HAAP, as this would result in a larger cluster of non-commercial/town centre uses at ground level. The loss of retail frontages to uses such as residential serves to create 'dead zones', as has occurred in town centres where 'permitted development' rights enable this conversion. Nevertheless, a condition has been imposed on an earlier planning permission removing permitted development rights. 'Dead Zones' are reflected in a recent 'health check' study the Council's Economic Development Team commissioned of neighbouring Rochford Town Centre, using the consultants Lichfields. This report noted that over time there has been loss of retail/commercial space to residential uses in Rochford and that this has created a series of breaks (particularly in peripheral areas) which 'do not encourage pedestrian flow'. It is considered that the situation in Hockley is similar, and that creating further breaks within the secondary retail frontage would serve to discourage footfall continuing to/from Main Road and Spa Road, further severing the commercial units on Main Road from the wider Hockley Town Centre.
34. The HAAP acknowledges the need for flexibility, and since its publication there has been significant change in the retail landscape, something reflected in town centres across the country. It is clear that the NPPF is steering local authorities to promoting mixed-use town centres, in which a broad mix of retail, dining, leisure, community, health, cultural and employment uses are present, ensuring town centres and high streets are the hubs of their communities, rather than merely places to shop. The need for greater flexibility in town centre uses has been manifested in the latest Planning Use Class changes, which have replaced classes A1-3, B1 and parts of D2 into a new 'Class E'. As such, it is clear that a wider range of uses in town centres contributes to overall vibrancy and footfall.
35. Nevertheless, there is a lack of robust evidence that such a unit cannot attract a potential tenant or buyer to justify the loss of a commercial unit within Hockley Town Centre. Consequently, in the absence of sufficient evidence to justify the contrary, the proposal therefore fails to meet Policy H7 of the HAAP.
36. The applicant submits within the Planning Statement that the proposal would contribute to the Council's 5-year housing land supply which had not been met at the time of the preparation of the Planning Statement. However, the latest 5 year housing land supply figure found in the 2022-2023 Authority Monitoring report confirm that the Council can demonstrate a 5.15 year housing supply.

Impact on Character and Residential Amenity

37. The appearance of the proposed building would remain unaltered from what was previously approved by planning application 19/01181/FUL and therefore, no objections are raised upon the character and appearance of the surrounding area.
38. It is acknowledged that a number of letters have been received in support of the application with a preference for a residential unit instead of retail. Whilst this demonstrates that it would be unlikely for there to be concerns from neighbours should the unit become residential, the original permission was for ten residential units and one commercial unit and therefore the principle of a commercial unit has been considered and approved on this site by way of the original application.
39. Similarly, as there is no alteration proposed to the elevations the proposal would not have any further impact upon the surrounding neighbouring occupiers.

Access and Car Parking

40. The application is not supported by a car parking layout plan however, application No. 19/01181/FUL shows a layout to comprise eleven on-site car parking spaces which equate to one space per flat plus one visitor space. This application proposes to use the retail unit as residential. The proposal would comprise eleven two-bed flats rather than the 10 two-bed flats as previously proposed.
41. The adopted parking standards seek two car parking spaces per two-bed flat as a minimum which in this case would equate to 22 spaces, plus visitor parking provision at 0.25 spaces per dwelling which would require an additional 3 spaces. The total on-site provision that the parking standards would require for a development of 11 No. 2-bed flats would therefore be 25 spaces. 11 cycle spaces would also be required.
42. The parking standards do however acknowledge that in main urban areas where there is good access to public transport a lower on-site car parking provision may be accepted. The previous appeal decision at this site is a material consideration to the determination of this application and in this the Inspector specifically referred to this site being in a highly sustainable location. The site is within walking distance of a range of local amenities and facilities and close to Hockley train station and bus services. The site fronts a main road and the location is such that

parking restrictions on nearby roads would prevent any additional parking from taking place in the immediate locality. Existing dwellings in the locality benefit from on-site parking.

43. The proposed parking in terms of number, size and layout of spaces to serve the proposed residential flats is exactly the same as was proposed in the 2019 scheme where no objection was raised in relation to this matter. The proposed parking would now serve one additional residential unit rather than a retail unit. It is considered that the proposal would deliver adequate parking provision on site and would not give rise to on-street parking that would cause significant and unacceptable inconvenience to nearby residents.
44. Vehicular access to the site would be off the private road to the sites eastern boundary in the same approximate positions as the vehicular accesses on the approved scheme. There is no highway objection to the scheme and the proposal would not be harmful to highway safety.
45. A cycle store is proposed which could accommodate 14 spaces which would meet the policy requirement.

Sustainability

46. The Ministerial Statement of the 25th March 2015 announced changes to the government's policy relating to technical housing standards such that now planning permissions should not be granted requiring, or subject to conditions requiring, compliance with any technical housing standards other than for those areas where authorities have existing policies on access, internal space, or water efficiency.
47. Rochford District Council has existing policies relating to all of the above, namely access (Policy H6 of the Core Strategy), internal space (Policy DM4 of the Development Management Plan) and water efficiency (Policy ENV9 of the Core Strategy) and can therefore require compliance with the new national technical standards.
48. Policy DM4 requires new dwellings to meet minimum internal space standards, However, until such a time as existing Policy DM4 is revised, this policy must now be applied in light of the Ministerial Statement (2015) which introduced a new technical housing standard relating to internal space standards. Consequently, all new dwellings are required to comply with the new national space standard as set out in the DCLG Technical housing standards - nationally described space standard March 2015.

49. The proposed additional flat would be a 2 bedroomed, 3-person unit which have one double bedroom (including en-suite) of at least 11.5 square metres and one smaller bedroom. The minimum gross internal floor space for such a unit is 61 square metres which would be exceeded slightly as the flat would have a gross internal floor area of approximately 62 square metres. The flat would be provided with the required 2 metres squared off built-in storage.
50. Until such a time as existing Policy ENV9 is revised, this policy must be applied in light of the Ministerial Statement (2015) which introduced a new technical housing standard relating to water efficiency. Consequently, all new dwellings are required to comply with the national water efficiency standard as set out in part G of the Building Regulations (2010) as amended. A condition is recommended to ensure compliance with this Building Regulation requirement.
51. Policy ENV8 requires that developments of five or more dwellings secure at least 10 percent of their energy from decentralised and renewable or low-carbon sources unless this is not feasible or viable; a condition is recommended to secure this.
52. In light of the Ministerial Statement which advises that planning permissions should not be granted subject to any technical housing standards other than those relating to internal space, water efficiency and access, the requirement in Policy ENV9 that a specific Code for Sustainable Homes level be achieved and the requirement in Policy H6 that the Lifetime Homes standard be met are now no longer sought.

Refuse and Recycling

53. Refuse storage is shown to be positioned adjacent to the eastern boundary of the site alongside the private road. This position is appropriate to enable collection and the capacity of this storage facility would be adequate to cater for the number of flats proposed. Details of the building/enclosure to house the residential bins would also be required by condition were the application being recommended for approval.

Sustainable Urban Drainage and Flood Risk

54. The site is in Flood Zone 1 at the lowest risk of flooding where residential development is appropriate. Policy ENV4 requires all residential development over 10 units to incorporate runoff control via sustainable urban drainage systems to ensure that runoff and infiltration rates do not increase the likelihood of

flooding. As the proposal relates to a site which is entirely hard surfaced the proposal would provide a net gain in terms of surface water.

55.

Off-site Ecology and Recreation Avoidance Mitigation Strategy

56. 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). This means that residential developments could potentially have a significant effect on the sensitive interest features of these coastal European designated sites, through increased recreational pressures.

57. The development for one dwelling falls below the scale at which bespoke advice is given from Natural England. To accord with NE's requirements and standard advice and Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMs) Habitat Regulations Assessment (HRA) record has been completed to assess if the development would constitute a 'Likely Significant Effect' (LSE) to a European Site in terms of increased recreational disturbance. The findings from HRA Stage 1: Screening Assessment are listed below:

HRA Stage 1: Screening Assessment – Test 1 – the significant test

Is the development within the zone of influence (Zol) for the Essex Cost RAMS?

- Yes

Does the planning application fall within the following development types?

- Yes. The proposal is for 11 dwellings

Proceed to HRA Stage 2: Appropriate Assessment - *Test 2 – the integrity test*

Is the proposal for 100 houses + (or equivalent)?

- No

Is the proposal within or directly adjacent to one of the above European designated sites?

- No

58. The current proposal has been considered in respect of the Habitat Regulations, taking account of advice submitted by Natural England and the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) developed by Essex

County Council which seeks to address impacts (including cumulative impacts) arising from increased recreational activity. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) was adopted by Rochford District Council on the 20 October 2020. Advice from Natural England in August 2018 has been followed and the HRA record template completed.

59. The conclusion of the HRA is that, subject to securing appropriate mitigation, the proposed development would not likely result in significant adverse effects on the integrity of the European site along the Essex coastline.
60. On submission of the application an upfront payment of £156.76, the standard contribution towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMs), was made to the Council. It is therefore considered that appropriate mitigation has been secured and this aspect of the application is now acceptable.

Affordable Housing

61. A more up to date requirement for the provision of affordable housing in relation to all major development was introduced in the National Planning Policy Framework. Whilst the Council's affordable housing policy H4 of the Core Strategy still relates to developments of 15 units or more, the more recent national policy requirement relates to sites of 10 units or more and it is this up to date policy which is taken into account when considering contributions to affordable housing. 10% affordable housing provision is required on developments of 10 or more units up to the thresholds at which the councils H4 policies are triggered.
62. Paragraph 63 of the NPPF states that local planning authorities should expect affordable housing to be provided on-site, unless off-site provision for an appropriate financial contribution can be robustly justified and the agreed approach would contribute to the objective of creating mixed and balanced communities. Paragraph 65 of the NPPF states:

'Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

provides solely for build to rent homes; provides specialist accommodation ...; ...is exclusively for affordable housing ...'

63. The accompanying planning statement refers to Policy R4 of the Rochford District Council Development Plan and suggests that this should take precedence over the NPPF requirements for affordable housing provision. This stance was also taken in the previously refused application and was addressed at that stage however to clarify, whilst policy H4 has primacy as part of the adopted development plan, the NPPF is a material consideration which carries significant weight as national policy, and due to being significantly more up to date than policy H4 it is therefore entirely justified to take this approach.
64. The officer's report for application ref: 18/00482/FUL at paragraphs 47-49 recorded that, having undertaken a viability assessment, the development could make a financial contribution to affordable housing and that the applicant had agreed in principle to pay a commuted sum of £32,312 to be secured by a planning obligation under section 106 if permission was granted.
65. The refusal of 18/00482/FUL was not appealed. Rather, a further application was made (ref 19/01181/FUL) which was in all material respects identical, except that one of two-bed flats previously proposed at ground floor level had been replaced with a "commercial unit". This application was granted on 20 February 2020 subject to conditions, including condition 16 which restricts the use of the commercial unit to a Class A1 retail use.
66. The officer's report for that application records that a viability assessment had shown to officer's satisfaction that, as a result of the inclusion of the ground floor commercial unit, no affordable housing contribution could viably be paid. This consent has been implemented and recently completed. To date however there is no tenant of the commercial unit.
67. It is undesirable as a matter of public policy that developers should be able to avoid providing affordable housing by artificially dividing sites, and/or submitting separate, consecutive applications in order to circumvent policy thresholds such as those in the NPPF definition of "major development" and Policy H4.
68. There are two authorities which deal with such a situation: R (City of Westminster) v First Secretary of State and Brandlord Ltd [2002]; and New Dawn Homes Ltd v Secretary of State for Communities and Local Government and Tewkesbury BC [2016]. In both of those cases, there was express wording that envisaged consideration of whether or not a proposal for

planning permission should be taken together with development outside the scope of that proposal when considering a threshold requirement. It has therefore been considered reasonable for the proposed development to be considered together with the other 10 dwellings consented by planning application ref: 19/01181/FUL when considering the affordable housing requirement.

69. During the consideration of application 22/00154/FUL, the applicant agreed to pay an affordable housing contribution of £32,312 that was agreed following the financial viability appraisal submitted with application ref: 18/00482/FUL. The submitted appraisal was independently tested and the conclusion reached that the proposal could make a financial contribution of £32,312 which would equate to the 10% requirement which could be secure by a S106 legal agreement were the application being recommended for approval.
70. The omission of an agreement to provide a financial contribution to equate to the 10% affordable housing requirement would be contrary to Policy H4 of the Rochford District Council Development Plan and Paragraph 63 of the National Planning Policy Framework. It is also noted that should an affordable housing contribution be forthcoming, an up to date viability appraisal may be required by the Local Planning Authority due to the time that has passed since the previously assessed appraisal. The applicant has since indicated that they would be willing to make a contribution in any future application, however as no further detail has been submitted for consideration under this application the conclusion remains as above.

CONCLUSION

The application would be considered to have a detrimental impact on the secondary shopping frontage as identified in the Hockley Area Action Plan and would be contrary to policy H7 of the Hockley Area Action Plan and Paragraph 86 of the National Planning Policy Framework, the loss of a commercial unit having a negative impact on the viability and vitality of the town centre. Furthermore, the omission of any agreement to provide a contribution to affordable housing would be contrary to Policy H4 of the Rochford District Council Development Management Plan and Paragraph 63 of the National Planning Policy Framework.

CONSULTATIONS AND REPRESENTATIONS (summary of responses):

Hockley Parish Council: No response recorded.

Neighbours: Eight responses from the following addresses;

Spa Place; No, 1, 5, 6, 8
Main Road; No, 10, 11, 19, 26a, 26b
The Drive; 38
Fambridge Road; Milford
Barnwell Drive; 107
Belchamps Way; 25b

Support

- Residential use welcomed by residents
- Concern for parking if retail
- Parking situation difficult at present and retail use would exacerbate this problem
- Customers of other retail units use the access to the property already, do not need any more
- Hazard to pedestrians
- Parking issues due to retail units
- Residential more appropriate and would reduce congestion
- More flats would help the local area
- Not a viable commercial space due to size
- Infrastructure already there for residential
- Considerable parking congestion around site and a retail unit would add to the problem
- Trade deliveries to retail would be difficult
- Lack of parking for retail, residential more appropriate
- Status of commercial not attainable due to the lack of parking space
- Cars for retail would use the private access which is a dead end and is the only access for 26a and 26b Main Road and for the residents at the rear of Spa Court.
- Little parking for commercial
- All other properties at Spa Place are residential so it would make sense for this to be residential too

Object

- The site is already overdeveloped in terms of parking
- Spa Place residents use private parking on Barnwell Drive
- Whole site provides inadequate parking for the number of residents it has brought in
- It was part of the planning permission that a shop should remain, I have checked on a number of occasions but have not seen this shop for sale or rent.
- I do not believe sufficient effort has been made to sell or let this shop

RDC Economic Development: Object, (please refer to the relevant sections of the) .

Essex Highways: No objection

A reduced parking standard has been applied. Rochford District Council's adopted parking standards state that "for main urban areas a reduction to the vehicle parking standard may be considered, particularly for residential development." The local highway network is protected by parking restrictions and in transport terms the site is considered to be in a sustainable location with good access to frequent and extensive public transport, as well as Hockley's facilities, therefore:

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to conditions :

Relevant Development Plan Policies:

National Planning Policy Framework (July 2023)

Rochford District Council Local Development Framework Core Strategy (Adopted December 2011) Policies: H1, H4, CP1, ENV9, CLT1, T8, RTC 6

Rochford District Council Local Development Framework Development Management Plan (Adopted December 2014) Policies DM1, DM3, DM4, DM30,

Rochford District Council Local Development Framework Supplementary Planning Document 2 Housing Design (January 2007)

Essex Parking Standards: Design and Good Practice Supplementary Planning Document adopted December 2010

The Essex Design Guide (2023)

RECOMMENDATION: REFUSE

1. The application site is currently designated as Secondary Shopping Frontage by the Council's Hockley Area Action Plan. The development of the site for solely residential use would result in a loss of commercial units, which would have a negative impact on the viability and vitality of Hockley town centre. The proposed development would not therefore be compliant with and contrary to the requirements of Policy H7 of the Hockley Area Action Plan and paragraph 86 of the National Planning Policy Framework.
2. The application proposes no indication or mechanism to provide a financial contribution to equate to the 10% affordable housing requirement would be contrary to Policy H4 of the Rochford District

Council Development Plan and Paragraph 63 of the National Planning Policy Framework.

The local Ward Member(s) for the above application is/are Cllr A H Eves Cllr J R F Mason Cllr Mrs E P Gadsdon



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