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## Appeal Decisions

Site visit made on 10 February 2015

**by L Rodgers B Eng (Hons) C Eng MICE MBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 March 2015**

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### **Appeal A Ref: APP/U1430/A/14/2217525**

#### **Gristmill Pine, Winchelsea Road, Rye, East Sussex, TN31 7EL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Jeremy Jones (Rye Property Ltd) against Rother District Council.
  - The application Ref RR/2013/2570/P is dated 9 December 2013.
  - The development proposed is a commercial unit at ground floor level for B1, A1, A2, A3 or D1 uses (or any combination thereof) and one residential unit at first and second floor levels.
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### **Appeal B Ref: APP/U1430/A/14/2221250**

#### **Gristmill Pine, Winchelsea Road, Rye, East Sussex, TN31 7EL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Jeremy Jones (Rye Property Ltd) against Rother District Council.
  - The application Ref RR/2014/924/P is dated 26 April 2014.
  - The development proposed is B1a offices and one apartment.
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## **Decisions**

### ***Appeal A***

1. The appeal is dismissed and planning permission for a commercial unit at ground floor level for B1, A1, A2, A3 or D1 uses (or any combination thereof) and one residential unit at first and second floor levels is refused.

### ***Appeal B***

2. The appeal is dismissed and planning permission for B1a offices and one apartment is refused.

## **Procedural matters**

3. The two appeals concern different developments. However, the site address and Appellant are the same in both cases and to avoid duplication I have dealt with both appeals in the same decision letter. Whilst certain matters are common to both appeals and are referred to only once I have nevertheless determined each appeal on its own merits. For convenience I have referred to

the appeals as 'Appeal A' (APP/U1430/A/14/2217525) and 'Appeal B' (APP/U1430/A/14/2221250).

4. With respect to Appeal A, the Appellant has proposed a number of amendments to the scheme considered by the Council and has provided a revised set of drawings for consideration as part of the appeal. The proposed amendments include alterations to the design of the building to incorporate a mansard roof together with a reduction in the site area - the latter necessitating alterations to matters such as parking.
5. Where amendments are proposed, those amendments should be considered in light of the 'Wheatcroft' judgement (*Bernard Wheatcroft Ltd vs SSE* [JPL, 1982 P37]) which established that "*the main, but not the only, criterion on which...judgement should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation*".
6. The Appellant has drawn my attention to the letter notifying third parties of the appeal and suggests that in consequence all interested parties were fully consulted and had the opportunity to comment on the revised plans. However, that letter was not sufficient of itself to ensure that all parties were made fully aware of the proposed changes. Whilst the letter refers to the appeal documents being available for inspection it also confirms that previous representations have been forwarded to the Inspectorate for consideration by the Inspector; in consequence many people may simply have been content to accept that their views would be taken into account without further representation.
7. I accept that there may be occasions where amendments could be made to a scheme without prejudice to the delivery of a fair and more efficient system. However, it seems to me that in this case the proposed amendments are significant and to proceed on the basis of the proposed amendments would deprive those who should have been consulted on the changed development of that opportunity. In any event it is important that what is considered by the Secretary of State is essentially what was considered by the local planning authority.
8. The Appellant considers that he would be seriously prejudiced were I not to consider the amended plans as the opportunity to acquire the additional land intrinsic to the earlier proposals has now been lost. However, I must determine the appeal before me and whilst I acknowledge the Appellant's difficulties I also note that the Council states that it advised the Appellant that the application could be withdrawn and a revised proposal submitted.
9. In light of the above I have based my assessment of Appeal A on the drawings considered by the Council, not the amended drawings submitted during the appeal process.
10. Although the Council failed to determine both applications within the prescribed period the Council has confirmed that, had it determined the applications, it would have been minded to refuse both - with the Council's putative reasons for refusal being outlined in the respective Officer's reports. Those putative reasons for refusal, as well as referring to policies in the National Planning Policy Framework (NPPF), refer to policies in both the Rother District Local Plan

(2006) (LP) and the emerging Core Strategy. However, the Rother Local Plan Core Strategy (CS) was formally adopted on 29th September 2014 and LP Policies EM2, GD1 and RY1 have now been superseded. My determination must be made in accordance with the development plan unless material considerations indicate otherwise; consequently I must assess both of the proposals against the adopted CS - which now forms part of the statutory development plan for Rother District.

11. In respect of Appeal A the emerging CS Policies to which the Council refers and which I consider of most relevance to the appeal are OSS5 (ii) and (iii), EN2 (iii) and (iv), EN3 and RY1 (iii). For Appeal B, Policy EC3 is also relevant. Although emerging CS Policy OSS5 has been re-numbered to OSS4 in the adopted CS, the emerging policies (as set out in the Council's statements and including the examining Inspector's modifications) have been incorporated materially unchanged into the adopted CS. Given the absence of material changes between the adopted CS policies and the emerging CS policies (incorporating the Inspector's modifications) referred to by the Council, I see no need to undertake further consultation on this matter. My findings against national policy are in any event unaffected.

### **Applications for costs**

12. Applications for costs were made by Mr Jeremy Jones (Rye Property Ltd) against Rother District Council in respect of both appeals. An application for costs by Rother District Council against Mr Jeremy Jones (Rye Property Ltd) was made in respect of Appeal B. These applications are subject to separate Decisions.

### **Main Issues**

13. Although the appeal site lies outside Rye Conservation Area (CA), the CA boundary runs along the opposite side of the river. Taking this into account I consider that for Appeal A the main issues are: the effect of the proposed development on the character and appearance of the area; and, its effect on the living conditions of neighbouring residents on the opposite side of Winchelsea Road. These same issues also apply to Appeal B.
14. As far as Appeal A is concerned the Council considers that, as the development would provide commercial floor space similar in area to that of the previous commercial use on the site, there would be no conflict with the thrust of planning policies intended to protect land and premises currently, or last, in employment use. I see no reason to take a different view. However, this would not apply to the development proposed under Appeal B. I therefore consider that there is a further main issue in respect of Appeal B; the effect of the proposed development on the provision of employment space.

### **Reasons**

#### **Background**

15. The Rye Conservation Area Appraisal (2006) (CAA) describes Rye as an ancient citadel town of national importance and high architectural value. It goes on to note that one of the main economic functions of Rye is as a destination for tourists and that its architectural character and quality, including the abundance of historic buildings and narrow streets and the integrity of the historic core, is the main attraction. Strand Quay, on the opposite side of the

river to the appeal site, is described as having a fine group of warehouses in mixed use with the CAA noting that in "...height they range from three to four storeys, very obviously not a domestic scale".

16. In describing the setting of the town, the CAA notes that the surrounding landscape aids the perception that the core is a citadel, sitting on a hill rising above the marshes, and vertically separated from the surrounding plain particularly when viewed from the southeast and southwest. Identified significant views include those from Winchelsea Road looking north east; these views are said to show the most significant definers of the character of the setting of the town including the legibility of the profile of the hill and the visual and physical prominence of buildings and landmarks on the hill. The town's topographical and landscape setting is noted as being a fundamental part of its architectural and historic character.
17. In describing the approach to the town along Winchelsea Road, the CAA notes that the arrival is signified with the onset of the more gritty face of Rye with a number of light industrial and commercial units still lining the Quay - giving a busy and active feel to the area. Over the Quay, the distinctive black weather-boarded historic warehouses of the area known as Strand Quay present a characterful and imposing 'edge' to the town.
18. Based on my site observations I see no reason to take issue with any of the descriptions in the CAA. With regard to the appeal site and its immediate surroundings, the site currently contains a largely dilapidated, partly demolished, warehouse style building with the remnants of a pitched roof. Adjacent to the site to the northwest is an area of open land, formerly part of a petrol filling station, and to the southeast an open car park. Further commercial uses occupy the stretch of land between Winchelsea Road and the river; none of the buildings in this area appear to be of any particular architectural or historic merit.
19. The opposite side of Winchelsea Road contains an eclectic mix of both residential and commercial uses. Some of the residential properties appear Victorian in origin whereas others are obviously much later. These properties vary considerably in height and include both single and three storey buildings. A small commercial estate of industrial and warehousing units is set well back from the road.

## **Appeal A**

### *Character and appearance*

20. The development would combine a commercial use of the ground floor with residential accommodation above. A mixed use such as this would not, itself, be out of character with the area.
21. The proposed three storey building would occupy a similar footprint to that of the existing warehouse and according to the drawings would have maximum height in excess of 10m. In consequence it would be a building of considerable size and with its regular planform and flat roof would appear overtly box-like. With the exception of the elevation facing towards the river and Strand Quay, where balconies would add interest, the side elevations and that facing Winchelsea Road would have very little articulation. The limited fenestration on the side elevations would result in a fairly bland appearance that would

- emphasise the building's height and depth and whilst the proposed Winchelsea Road elevation would contain a range of windows, the proportions and symmetrical arrangement of those windows would give an impression of homogeneity - further reinforcing the development's bulky appearance.
22. Taking account of all these matters I consider that the proposed building would appear particularly cumbersome and its size, together with its positioning relative to the road, would make it a dominant feature of the street scene. Whilst the proposed building may be no taller than the warehousing on Strand Quay, and I have already noted that the height of that warehousing is identified in the CAA as "...very obviously not a domestic scale", the proportions and pitched roofs of the warehousing on Strand Quay help to avoid the squat and bulky appearance that would ensue here. Whilst I am also conscious that some of the commercial development on Winchelsea Road is itself sizeable, as is some newer residential development, the bulk and design of the proposed building would nonetheless be such as to set it apart.
23. Although the proposed cladding would be an acknowledgement of that on the warehousing on Strand Quay, the use of cladding would not be sufficient to successfully integrate the development with the area. Indeed, it seems to me that the contrast of the black, horizontal, half lap, oak cladding with the otherwise regular and more modernist nature of the building would appear an uncomfortable juxtaposition - and would simply serve to highlight the development's incongruous appearance.
24. I accept that the existing building, particularly in its current condition, detracts from the character and appearance of the area. However, whilst there are potential benefits from the removal of the existing building it is in any event clear from NPPF Paragraph 64 that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.
25. In light of the above analysis it is my view that the proposed building would not only appear out of scale with its surroundings but would also appear out of place in terms of design. The development would therefore be contrary to CS Policy OSS4 (iii) which requires development to respect, and not detract from, the character and appearance of the locality as well as CS Policy EN3 which, amongst other matters, requires development to be of a high design quality by contributing positively to the character of the site and surroundings, including taking opportunities to improve areas of poor visual character.
26. The development would also be contrary to the aims of the NPPF which seeks good design. Whilst Paragraph 60 notes that planning decisions should not attempt to impose architectural styles or particular tastes, it also notes that it is proper to seek to promote or reinforce local distinctiveness.
27. As far as the effect on the nearby CA is concerned the Council has referred to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This says that in the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. However, notwithstanding the Council's reference to Section 72(1), the appeal site is not within the CA. Nonetheless, Paragraph 132 of the NPPF states 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. Amongst other matters it goes on to note that the significance of a designated heritage asset can be harmed or lost through development within its setting.

28. Having regard to the descriptions in the CAA and my own views gathered on site I am clear that views of the town and citadel from Winchelsea Road are important in revealing the significance of the CA. This is not only by revealing the architectural character and quality of the buildings but also by revealing them in their topographical and landscape setting - noted in the CAA as being a fundamental part of the CA's architectural and historic character.
29. A number of the views from Winchelsea Road would include the proposed development in the foreground; in consequence I am clear that it should be regarded as being within the setting of the CA. Having already found that the development would be out of scale with its surroundings and out of place in terms of design, I consider that the juxtaposition of the proposed building against the architectural character and quality of the buildings in the CA would, particularly in these important views, be materially harmful to the significance of the CA.
30. I nonetheless accept that the harm to the CA would be less than substantial. In those circumstances NPPF Paragraph 134 advises that the harm should be weighed against the public benefits of the proposal.
31. In constructing an additional residential dwelling there would be some public, as opposed to purely private, benefits. There would be further public benefits from the provision of employment space and tidying up the site could also be seen as a public benefit. However, the NPPF is clear that great weight should be given to the heritage asset's conservation and not even the collective sum of all the potential public benefits would be sufficient to outweigh the harm to the significance of the CA.
32. I therefore consider that the development would be contrary to the NPPF aim of conserving heritage assets in a manner appropriate to their significance as well as to CS Policies EN2 and RY1 (iii) which, amongst other matters, seek for development to preserve, and ensure clear legibility of, locally distinctive vernacular building forms and their settings and in particular to preserve and enhance the character and historic environment of the Citadel and wider conservation area and the distinctive landscape setting of the town.

#### *Living conditions of neighbouring residents*

33. I agree with the Council that the proposed positioning and orientation of the development relative to the properties on the opposite side of Winchelsea Road make it unlikely that the residents of these properties would experience material harm in terms of overlooking or loss of light.
34. In terms of outlook, I accept that the development would result in residents on the opposite side of Winchelsea Road experiencing some increased sense of enclosure. However, given the separation distances involved I do not consider that this would amount to material harm. I also note the concerns expressed by the resident at No 57 relating to the loss of certain views and the potential effect on house values. However, the planning system does not, in general,

seek to protect private views nor are house prices a planning matter in their own right.

35. Against this background it is my view that there would be no conflict with CS Policy OSS4 (ii) which seeks for development to not unreasonably harm the amenities of adjoining properties. This finding does not, however, affect the harm I have identified to the character and appearance of the area or the designated heritage asset.

## **Appeal B**

### *Character and appearance*

36. The drawings show a number of changes to the proposed building in comparison to that considered under Appeal A. Internal changes include altering the previously proposed commercial use of the ground floor to car parking and cycle storage, the provision of offices on the second floor and alterations to the residential layout. External changes include the proposed fenestration and cladding, additional articulation and the use of a mansard roof. The building would also be slightly lower and with a slightly reduced footprint which in turn would position the building further back from the road.
37. However, notwithstanding the range of external amendments, the fundamental concerns expressed above in my consideration of Appeal A remain. I acknowledge that the lower height, smaller footprint and the use of a mansard roof would have some effect on the bulk and box-like nature of the building. I also acknowledge that the articulation, fenestration and cladding would help in this regard. Nevertheless, these changes would not be sufficient to alter the fact that the proposed building would still appear very large, bulky and out of scale with its surroundings. The proposed mixture of claddings with light oak, black oak and lead would, whilst intended to soften the elevations and add interest, again result in a confused appearance that would fail to integrate the building with its surroundings and would instead emphasise the development's incongruous nature.
38. The Appellant has pointed out that the height of the building is similar to that of the three storey building on the opposite side of Winchelsea Road. Whilst I have no reason to doubt that assertion it does not overcome my concerns with respect to both the bulk and the appearance of the proposal.
39. I therefore consider that, for similar reasons to those expressed above in respect of Appeal A, the proposed development would again be materially harmful to the character and appearance of the area and the significance of the designated heritage asset and contrary to CS Policies OSS4 (iii), EN3, EN2 and RY1 as well as the NPPF.

### *Living conditions of neighbouring residents*

40. I have found above that the building proposed under Appeal A would cause no material harm to the living conditions of neighbouring residents on the opposite side of Winchelsea Road. As the building proposed under Appeal B would be both smaller and further away from those properties I see no reason to reach a different conclusion here. I have not therefore pursued this matter further.

### *Employment space*

41. CS Policy EC3 notes that, until a full review of existing and potential employment sites and the allocation of sites in the Development and Site Allocations Plan and/or Neighbourhood Plans has taken place, land and premises currently (or last) in employment use will be retained as such unless it is demonstrated that there is no reasonable prospect of its continued use for employment purposes or it would cause serious harm to local amenities.
42. Although the proposed development is intended to provide two B1a offices on the second floor these would be considerably smaller in area than the former commercial premises. The Council also suggests that they would be accessed off the same internal circulation, and via the same front door, as the proposed dwelling. Indeed, the Council further points out that to move between the bedrooms and bathrooms of the dwelling on the first floor and the living areas on the second floor would involve using the same circulation area serving both the occupants of, and visitors to, the offices.
43. The Appellant suggests that the "...second floor offices would be used by ourselves for our own businesses..." and that in consequence there would be no conflict between the residential and office uses. However, the Appellant has also suggested that he wishes to retire to Rye and in consequence any such use is likely to be limited. In any event my considerations cannot be limited to the personal circumstances of the current occupier; I must take into account more general planning considerations. In that respect I am conscious that, even ignoring any practical access and circulation issues, compared to the former use of the site the proposals would significantly reduce the amount of floor space in commercial use - in prima facie conflict with CS Policy EC3.
44. The Appellant further suggests that, having consulted an estate agent with respect to continued employment use on the site as well as contacting a number of national chains, there is no demand for commercial premises in this location. He also considers, due amongst other matters to the need for flood resilience, that commercial use of the ground floor would not be practical. However, I do not consider that these matters amount to cogent or substantive evidence demonstrating that there is no reasonable prospect of the site's continued use for employment purposes. Consequently I consider the proposed development in conflict with CS Policy EC3.

### **Other matters**

45. I note that the Council's Strategic Housing Land Availability Assessment (SHLAA) 2013 Review has identified the site, together with other parcels of land along Winchelsea Road, for a comprehensive mixed use development. I also understand that the Town Council has aspirations through the emerging Rye Neighbourhood Plan to develop the area as part of a holistic and comprehensive strategy for the area. However, given that the Neighbourhood Plan is at an early stage and the Council has considered the proposed developments on their own merits I have done likewise.
46. The Appellant disputes that the Council has a five year housing land supply and has drawn my attention to an earlier appeal decision dated 27 March 2014 (Ref APP/U1430/A/13/2202104) in which the Inspector concluded that "...a 5 year supply of deliverable housing sites does not presently exist in Rother." NPPF Paragraph 49 is clear that housing applications should be considered in



the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. However, even if I was to accept that the Council cannot demonstrate a 5 year supply of deliverable housing sites, the development plan policies referred to above in Appeal A are not, in my view 'relevant policies for the supply of housing'. I therefore see no reason to believe that they should be considered out of date nor, in consequence, do I consider that the absence of a five year housing supply would alter my reasoning in Appeal A.

47. I acknowledge that the NPPF states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose and that it might, in Appeal B, be argued that CS Policy EC3 has some relevance to the supply of housing. However, even if there was deemed to be no 5 year supply of deliverable housing sites *and* CS Policy EC3 was deemed out of date, that does not mean that policies in respect of character and appearance should be considered out of date - nor does it alter my reasoning in that regard.
48. Consequently, even if the Council is unable to demonstrate a 5 year housing land supply it is a matter which carries little weight in my deliberations.
49. I note that the Appellant wishes to retire to Rye and that his wife suffers from health problems and that this has led not only to the desire for a dwelling on the site but also to certain of the proposed design features. However, personal circumstances seldom outweigh more general planning considerations and the harm I have identified is likely to remain well into the future whereas the Appellant could choose to move elsewhere at any time. For this reason the personal circumstances of the Appellant cannot weigh heavily in favour of the proposal.
50. The Appellant has submitted an extensive list of complaints against the Council suggesting that the Local Government Ombudsman "...found that she could not investigate my complaints because those complaints fall under the jurisdiction of the Planning Inspectorate". In consequence the Appellant considers that I should rule upon his complaints which he believes are not only relevant to this appeal but have wider importance to other planning applications in Rother and to the Rye Neighbourhood plan. In particular the Appellant invites me to consider that the recently adopted CS should now be regarded as unsound in light of the further evidence he has put forward.
51. However, my role is not to investigate the Appellant's complaints nor is it to reconsider whether the CS is sound. My role is to determine the appeal on the basis of the evidence before me in accordance with s38(6) of the Planning and Compulsory Purchase Act 2004. Whilst I note the Appellant's frustrations and have taken into account all his submissions insofar as they are material to my determination of this appeal, I have not sought to investigate or address each of his complaints. Indeed, I note that the Ombudsman's decision of the 22 May 2014 simply states that "The Ombudsman cannot investigate this complaint about the Council's handling of a planning application as the complainant has used his right of appeal to the Planning Inspectorate and so it is outside the Ombudsman's jurisdiction."

52. The Ombudsman does, however, suggest that if the complainant believes that the Council has acted unreasonably then he can ask the Inspector to award costs against the Council. I have dealt with the matter of costs in the associated Costs Decisions.

## **Conclusions**

### ***Appeal A***

53. The proposed development would be materially harmful to the character and appearance of the area and would fail to conserve the Rye CA in a manner appropriate to its significance. As such the development would be contrary to both the development plan and to national policy.

54. Having had regard to all other matters, including the benefits of the development identified above, the further representations of third parties both for and against the appeal, the personal circumstances of the Appellant and his wife, the Appellant's views on the redevelopment of the area and his contention that there would be gaps to either side of the development, the additional policies drawn to my attention by both the Council and the Appellant, the Appellant's views on the sustainability credentials of the site and the development and his concerns that the Council has failed to comply with NPPF Paragraph 50, I find nothing to outweigh the development plan conflict identified above. I therefore conclude that Appeal A should be dismissed and planning permission refused.

### ***Appeal B***

55. The proposed development would be materially harmful to the character and appearance of the area and would fail to conserve the Rye CA in a manner appropriate to its significance. It would also result in the loss of employment uses. As such the development would be contrary to both the development plan and to national policy.

56. Having had regard to all other matters, including those listed above, the Appellant's further concerns in respect of the Council's approach to other developments nearby and the further representations of third parties both for and against the appeal, I again find nothing to outweigh the development plan conflict - even if that conflict is solely in respect of the development's effect on the character and appearance of the area and the significance of the CA. I therefore conclude that Appeal B should also be dismissed and planning permission refused.

*Lloyd Rodgers*

Inspector

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