

MC/16/3533

Date Received: 22 August, 2016

Location: 21 Victoria Street, Rochester, ME1 1XJ

Proposal: Listed Building Consent for demolition of existing building (in part) and construction of a 5 bedroomed terraced house

Applicant: Mr N Jenkins

Agent: Mr J Jenkins Stable Cottage Scragged Oak Road Detling Kent ME14 3HA

Ward Rochester East

Case Officer Chris Butler

Contact Number 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 16 November 2016.

Recommendation - Refusal

- 1 The demolition of this Grade II Listed Building, in part, would result in substantial harm to the significance of 21 Victoria Street. This substantial harm has not been justified by any of the tests set out in paragraph 133 of the National Planning Policy Framework and consequently the proposal would if permitted fail to comply with:
 - A) The desirability of preserving listed buildings, their setting and any features of special architectural or historic interest which they possess as set out in Section 16(2) of the Planning (Listed Building And Conservation Areas) Act 1990 (as amended);
 - B) The requirement to provide clear and convincing justification as to why the demolition of this listed building, in part, is appropriate as required by Paragraph 132 and 133 of the National Planning Policy Framework and the requirement of Policy BNE16 of the Medway Local Plan 2003, including *the requirement to demonstrate that the* benefits resulting from the demolition of this heritage asset would outweigh that harm or loss of the heritage asset in terms of the nature of the heritage asset preventing all reasonable uses of the site; and demonstrating that no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and conservation

by grant-funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use, as required by Paragraph 133 of the National Planning Policy Framework.

Proposal

This application seeks Listed Building Consent for demolition of existing building (in part) and construction of a 5 bedroomed terraced house.

Relevant Planning History

- MC/16/3537 Full planning application seeking the demolition of existing building (in part) and construction of a 5 bedroomed terraced house
Decision - Also under consideration on this planning committee agenda
- MC/10/4377 Application for variation of conditions 2, 3 & 5 and removal of condition 9 of Listed Building Consent MC/09/2762 (Listed Building Consent for conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21)
Decision Approval With Conditions
Decided 20 January, 2011
- MC/10/4369 Application for variation of conditions 2, 3 and 5 and removal of condition 8 of planning permission MC/09/2761 (conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21)
Decision Approval With Conditions
Decided 20 January, 2011
- MC/10/3256 Details pursuant to conditions 02, 03, 05 & 09 on Listed Building Consent MC/09/2762 for Listed Building Consent for conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21
Decision Discharge of Conditions
Decided 18 October, 2013
- MC/10/3255 Details pursuant to conditions 02, 03 & 08 on planning permission MC/09/2761 for Conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No. 21

Decision Withdrawn by Applicant

Decided 18 October, 2013

MC/09/2762

Listed Building Consent for conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21

Decision Approval With Conditions

Decided 8 June, 2010

MC/09/2761

Conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No. 21

Decision Approval With Conditions

Decided 8 June, 2010

MC/08/0100

Conversion of the existing buildings at 19-21 Victoria Street into one 1-bed flat and four 2-bed flats together with the construction of a block of one 1-bed flat and four 2-bed flats and a block of five 2-bed flats with associated parking

Decision Refusal

Decided 06/01/2009

MC/08/0099

Listed building consent for conversion of existing building 19-21 Victoria Street to four 2-bed flats and one 1-bed flat together with the construction of a block to the rear comprising one 1-bed flat and four 2-bed flats.

Decision Refusal

Decided 06/01/2009

Representations

This application has been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties.

The Ancient Monuments Society for England, The Council for British Archaeology, The Georgian Group, Historic England, Kent County Council (KCC) Archaeology, The Society for the Protection of Ancient Buildings The Twentieth Century Society, The Victoria Society, Southern Water have also been consulted.

The Ancient Monuments Society for England (AMSfE) have written advising:

"The applicant's Design and Access Statement claims that the building is of "low quality" and was "originally only listed for group value." This is not the information the Heritage List gives, however. Although it is stated that the building is included for group value, it is also described as a "former service wing" to No. 21, which was originally listed together with No. 19... It is not clear why each building now has its own/separate list entry, but the fact that No. 21 was kept on the list shows that Historic England (then English Heritage) believed it deserved continued protection.

The Heritage Statement included with the Design and Access Statement states that: "[21 Victoria Street] feels out of context with its 3 storey neighbours and has differing fenestration and brick detailing to the adjoining properties. The finish to the No. 21 property is lower quality than the rest of the Victoria Street. It is clear that the building was not considered to be worthy of high quality build finish at the time of construction." There is some speculation that the building may have been "higher at one time", but no detailed analysis is given. The list descriptions states that 19 and 21 were built contemporaneously and were designed to function together. The information provided does not conclusively challenge this assertion. We suggest that an expert historic building consultant is employed to provide an analysis of the significance of No.21, as well as the contribution it makes to the significance of No.19, and its other neighbour No.23, so that the site can be better understood. It would be useful to see some reference to historic maps, which may give further information on the origins, function and development of the buildings.

A detailed heritage impact assessment should also be produced. The Heritage Statement refers to PPS5, a guidance document which was cancelled in March 2015 and replaced with the National Planning Policy Framework (NPPF). Paragraphs 132 to 134 of the NPPF set out the conditions under which harm to the significance a designated heritage asset may be deemed acceptable. In this case the harm to the listed building itself (No. 21) would be substantial (total loss) and there would also be harm to the setting of No 19. In our view the conditions listed in Paragraph 134 of the NPPF have not been met - the applicant must be able to demonstrate that the demolition of the listed building is acceptable under the terms of the NPPF."

Finally that AMSfE state that they also have concerns about the proposed new building. They advise that "...it is not clear to us why an asymmetrical arrangement has been chosen..." and go on to question whether it is really the applicant's intention to retain the existing building's façade?

Historic England have **objected** to this development advising:

"21 Victoria Street is listed in its own right at grade II. It appears to be contemporary with the grade-II listed, early nineteenth-century Victoria House, to which it is attached. It is a three-cell, single-storey building with two large sash windows fronting the road, an entrance doorway directly off the pavement and a slate roof. It may initially have been used as a service wing to Victoria House, but was certainly later used as a surgery for a doctor living in Victoria House. As a group, this is an unusual and special survival, illustrating a period in which doctors' surgeries formed a part of their residences, but usually had separate entrances. The relationship between the house and its side wing clearly demonstrates this history, as well as adding variety and architectural interest to the streetscape. A grade-II listing is therefore entirely justified. Although 21 Victoria Street has been sadly neglected in recent years, it survives well preserved and its relationship with Victoria House remains clearly legible.

The current proposal is for demolition of the majority of 21 Victoria Street and re-use of the site to form a three-storey house. It is not clear whether it would really be possible to retain the ground-floor masonry and support two storeys of masonry above, as is suggested on the application drawings; we suspect not and that the implications of the scheme are likely to be even more serious than currently

suggested. In any event the scheme involves loss of almost all of the building and complete loss of its physical and historical relationship with Victoria House and the attractive variety it produces in the street scene. We therefore must conclude that the scheme constitutes substantial harm to significance and should be considered in accordance with paragraph 133 of the NPPF. In making your decision on these applications, you should also be aware that paragraph 132 of the NPPF requires that you give 'great weight' to the conservation of designated heritage assets like this one, and that any harm requires 'clear and convincing justification'. The statutory test for preserving listed buildings at paragraph 16(2) of the Planning (LBs and CAs) Act 1990 also applies.

Paragraph 133 of the NPPF requires that consent should be refused in cases of substantial harm, unless one of two sets of circumstances apply. The first is that the 'substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss'. Whilst provision of a new dwelling might be treated as a public benefit, this could not in our view be classed as a 'substantial public benefit', and in any event it doesn't seem to us to be 'necessary' to demolish, or even partly demolish, the existing building in order to achieve a new dwelling on this site.

The second set of circumstances requires that all of the following tests should apply: the nature of the heritage asset prevents all reasonable uses of the site; no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use.

The first two of the above tests are perhaps most relevant in this case. Firstly, we have seen no evidence to suggest that the heritage asset prevents all reasonable uses of the site. There is no reason, for example, why 21 Victoria Street could not remain in use as an annexe to Victoria House. Alternatively, there has been a previous permission for this site allowing an extension to the rear of this building to form a separate single-storey residence. It has not been demonstrated, in light of the second above test, why this scheme is not viable and, if not, what the deficit is in this case. It may well be possible, for example, to make a scheme for this site viable by means of an amended version of the previous permission, albeit perhaps with more accommodation to the rear if this is demonstrably necessary to make the scheme viable. We think it is unlikely that a scheme of that sort (i.e. consisting of a rear extension to the existing range) would constitute substantial harm and therefore might be justified if it can be demonstrated to be the 'optimum viable use' for the site (see NPPF, paragraph 134).

Historic England concludes that these applications would result in substantial harm to the significance of 21 Victoria Street, a grade-II listed building, and that this substantial harm is not justified by any of the tests set out in paragraph 133 of the NPPF. On this basis we formally object to the current application and recommend that planning permission and listed building consent should be refused..."

The Applicant's Architect responded to Historic England's advice challenging some of the content of their letter of objection. In the light of the response from the Applicant's Architect, Historic England were asked to reconsider their position,

regarding this submission. Having reviewed the Applicant's Architects response, Historic England responded by advising that they maintain their objection. They note that the applicant "...offers some helpful clarifications about the history of the site, [but] the scheme still proposes almost complete demolition of the listed building, which in our [Historic England's] view amounts to substantial harm to its significance and must therefore be considered in accordance with paragraph 133 of the NPPF. Our [Historic England's] objective here is absolutely not to prevent re-use of a site that has evidently been neglected for some time. Instead, we [Historic England] are promoting the exploration of all possible alternative solutions to find the outcome which best preserves the significance of the existing building. We [Historic England] have not seen clear and convincing justification (NPPF 132) [National Planning Policy Framework] that suggests re-use of the site in alternative, less harmful ways would not be viable..."

Whilst maintaining their current objection **Historic England** does concede "that it may now not be possible to create a link between this range and the adjacent house...", but they go on to state that they "...can't see any reason why the existing range could not be extended to its rear to provide additional accommodation..." and stress that in their opinion "...it has certainly not been demonstrated that this is not a viable alternative."

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2012 and are considered to conform.

Planning Appraisal

Background

Number 21 Victoria Street is a Grade II listed building. This property has been listed individually and as part of a group of listed buildings for their group value. It is located within the Rochester City Centre Conservation Area, and is in close proximity to the Star Hill Conservation Area. The properties that form Victoria Street are typically terraced with two to three storeys and there are still some shop fronts visible in this streetscape, but the majority of properties in this street frontage are now solely residential flats or houses. The street's buildings are of a Georgian and Victorian era and are likely to have been constructed at the time to accommodate the expanding town and High Street due to a thriving maritime industry, which would explain the mixed use which is still in evidence today.

No. 21 building is listed as part of the street frontage including Nos. 3 to 25 Victoria Street. The architectural and historic interest of the buildings relates to their value as a group, and the buildings are typical of their period. It is considered that No. 21 has a negative effect on this group value given its scale and impractical floor area for conversion.

The existing single storey building opens immediately to the pavement of Victoria

Street, this access leads to a further door to the internal space or a series of steps down to the large garden. It may initially have been used as a service wing to Victoria House, but was certainly later used as a surgery for a doctor living in Victoria House. As a group, it is considered by Historic England (HE) and the Ancient Monuments Society for England (AMSfE) that this is an unusual and special survival, illustrating a period in which doctors' surgeries formed a part of their residences, but usually had separate entrances. The relationship between the house and its side wing clearly demonstrates this history, as well as adding an unusual character to the streetscape.

Despite the low level of No 21, the building feels out of context with its 3 storey neighbours and has differing fenestration and brick detailing to the adjoining properties. The historic connection of the Doctors Surgery attached to their residence may not be recognised or understood as it has been derelict for some time and therefore only acknowledged by those of a particular age or long standing appreciation of its history. The finish of the No.21 property is of lower quality than the rest of the Victoria Street. It is clear that this building was not considered to be worthy of high quality build finish at the time of construction. The relationship with No. 23 (as well as No.19), is evidenced by a blocked up door which would have led to the larger building in the past.

The only element within the development proposal which is to be retained is the front Façade, which has an aged patina and the southwest facing party wall with number 23 Victoria Street. In terms of the front Façade its character helps with its integration into the street scene. The existing internal space is small and would appear potentially to why the building has suffered no longer facilitate a practical use. Indeed the poor state of repair of the building, both internally and when viewed from the rear does not assist in this regard or from an officer level perspective add to the heritage value of either the local streetscene and the conservation area as a whole.

Principle

The starting point for consideration of this Listed Building Consent (LBC) application is the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act) and the relevant parts of the National Planning Policy Framework (NPPF). Section 16(2) of the Act states: *"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."* In regard to the matter of demolition of a listed building Paragraph 132 of the NPPF is also considered to be of relevance and states:

"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. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly*

exceptional."

In terms of the Council's own policies regarding works to listed buildings and the impact of development on conservations areas, Policy BNE16 of the Medway Local Plan 2003, which relates to the demolition of listed buildings is considered to be of specific relevance. This policy states:

"The demolition of Listed Buildings will not be permitted unless it can be demonstrated that there are exceptional and overriding reasons for demolition, and that all possible methods of preserving the building have been investigated."

The pre-able to this policy justifies the Council's position regarding demolition by advising: *"The starting point for the exercise of Listed Building control is a recognition of the great importance of protecting these buildings of special architectural or historic interest from unnecessary demolition and from inappropriate alteration. Once lost, historic buildings cannot be replaced and the destruction of such buildings is seldom necessary for reasons of good planning. The council will not give consent for the demolition of any Listed Building without convincing evidence that either real efforts have been made to find viable uses for the building or that redevelopment would produce substantial planning benefits for the community which would decisively outweigh the loss of the building. Subjective claims about the architectural merits of proposed replacement buildings will not be a justification for the demolition of a Listed Building."*

The Council also has policies regarding the general protection of listed buildings and conservation areas, as well as preserving their character appearance and setting. However, consideration would only need to advance to the consideration of the development against these policies in any great detail where harm or loss of the listed building has been supported by *"clear and convincing justification..."* (Extract from Paragraph 132 of the NPPF).

Historic England (HE) have been quite clear in their advise stating: *"...the scheme involves loss of almost all of the building and complete loss of its physical and historical relationship with Victoria House and the attractive variety it produces in the street scene"* In advising this HE state that they *"...must conclude that the scheme constitutes substantial harm to significance and should be considered in accordance with paragraph 133 of the NPPF."*

Paragraph 133 of the NPPF requires:

"Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and*
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*

- *the harm or loss is outweighed by the benefit of bringing the site back into use."*

In consideration of the above and based on the strong representations received from both HE and the Ancient Monuments Society for England (AMSfE) who have been very clear in their advice, whilst a new dwelling might be treated as a public benefit, this does not amount to a '*substantial public benefit*'. In any event, even were the Council to conclude that the demolition of this grade II Listed Building did amount to a '*substantial public benefit*' HE and the AMSfE are both quite clear that, based on the evidence currently provided with this LBC application, it does not seem 'necessary' to demolish, or even partly demolish, the existing building in order to achieve a new dwelling on this site.

Bearing the above in mind, in the absence of adequate evidence to suggest that the heritage asset prevents all reasonable uses of the site or why an alternative viable scheme, that retains the heritage asset, could not be brought forward the development proposal is considered to fail the requirements of Section 16(2) of the Act, Paragraphs 132 and 133 of the NPPF and the Council's own policy, policy BNE16 of the Medway Local Plan 2003, that seeks to protect these heritage assets where exceptional justification for their removal has not been demonstrated.

As a final point HE has advised that it does not consider the details of the application to be clear in regard to whether the retention of the ground-floor masonry would really be possible, especially in the light of the detailed plans showing the existing masonry, being the parts of the listed building retained in the demolition process, would need to support two storeys of masonry above it. HE have also raised their suspicions that the implications of the scheme are likely to be even more serious than currently suggested, in that do not consider, based on the information currently available to them, that it would be realistically possible to retain the existing frontage of the building in these circumstances.

Local Finance Considerations

None.

Conclusion and reason for refusal

On the basis of the evidence currently available to the Local Planning Authority, it is considered that this LBC application would result in substantial harm to the significance of 21 Victoria Street, a grade-II listed building, and that this substantial harm has not been justified by any of the tests set out in paragraph 133 of the NPPF. On this basis it is recommended that listed building consent be refused.

The application would normally be determined under delegated powers but is being referred to Committee due to the number of representations received in relation to the associated planning application, expressing a view contrary to the recommendation.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>