



Appeal Decision

Hearing Held on 14 January 2020

Site visit made on 14 January 2020

by Jonathon Parsons MSc BSc (Hons) DipTP Cert (Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2020

Appeal Ref: APP/P1560/W/18/3215436

26 Rosemary Road, Clacton-on-Sea, Essex C015 1NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by East West Design and Build Ltd against the decision of Tendring District Council.
 - The application Ref 15/00578/FUL, dated 23 April 2015, was refused by notice dated 4 May 2018.
 - The development proposed is the demolition of all existing buildings (use classes C1 Hotels, A3 Restaurants, A4 Drinking Establishments and Sui Generis Nightclub). The construction of a building fronting Rosemary Road containing three A1 retail/A3 restaurant units at ground floor with Aparthotel (Use Class C1) above (17 units); the construction of an Aparthotel (Use Class C1) (34 units) in an up to seven storey building to the rear; the construction of a basement car parking access from rear service road (off Beach Road and Rosemary Road), and egress onto Rosemary Road and the provision of an external covered cycle parking on the ground floor.
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Decision

1. The appeal is dismissed insofar as it relates to the construction of a building fronting Rosemary Road containing three A1 retail/A3 restaurant units at ground floor with Aparthotel (Use Class C1) above (17 units); the construction of an Aparthotel (Use Class C1) (34 units) in an up to seven storey building to the rear; the construction of a basement car parking access from rear service road (off Beach Road and Rosemary Road), and egress onto Rosemary Road and the provision of an external covered cycle parking on the ground floor. The appeal is allowed insofar as it relates to the demolition of all existing buildings (use classes C1 Hotels, A3 Restaurants, A4 Drinking Establishments and Sui Generis Nightclub) in accordance with the terms of the application, Ref 15/00578/FUL, dated 23 April 2015 so far as relevant to that part of the development hereby permitted and subject to the following condition:
 - 1) The boundary fencing shall be retained and maintained in accordance with the existing boarding detailed in the submitted document titled Construction Method and Details.

Procedural Matters

2. The proposal has been amended during the Council's determination of the planning application and the revised description of the proposal detailed above has been agreed by the main parties. There are two applications forms with

differing declaration dates. The date of the original form has been used above but this appeal considers the amended proposal as set out.

3. The Council's granted planning permission for the demolition of the former existing buildings on the site but refused planning permission for redevelopment of the site. The demolition, that has taken place, is acceptable because of the compelling evidence on the structural instability of the former buildings and associated health and safety risks posed. Therefore, the reasoning in the decision will focus on the redevelopment aspect of the scheme.
4. The Council no longer wishes to defend its fourth reason for refusal that related to the development's unacceptable flood and water pollution risks. The County Council, as Lead Local Flood Authority (LLFA), has raised no objections to the proposed drainage measures subject to the imposition of planning conditions. On the basis of the drainage proposals, the Council and LLFA comments, it is similarly concluded that the development's drainage would be acceptable.

Main Issues

5. The main issues are (a) the effect of the proposal on the character and appearance of the area, having regard to whether the proposal would preserve or enhance the character or the appearance of the Clacton Seafront Conservation Area and (b) the effect of the proposal on the living conditions of the occupiers of neighbouring properties in Rosemary Road, Beach Road and High Street, having regard to outlook, privacy and light.

Reasons

Character and appearance

6. The appeal site comprises an open piece of land that has wooden boundary hoarding. The former building comprising hotel, restaurant, drinking establishment and night club uses has been demolished.
7. The footprint area of the former building lies within the Clacton Seafront Conservation Area whilst the rear area, beyond this, lies outside of it. The Conservation Area comprises the seafront either side of a substantial pier, and streets back from this. In relation to the appeal site, neighbouring buildings at 28 and 30 Rosemary Road, together with a flanking forecourt area, and neighbouring buildings in the other direction, from 24 Rosemary Road onwards, lie within the Conservation Area. The buildings opposite are also within the Conservation Area.
8. Behind the site, commercial buildings and rear yards/garages/storage buildings on the High Street and residential dwellings and a car parking area on Beach Road lie outside of the Conservation Area. Also, outside of the Conservation Area, there is a covered market behind and to the west of Nos 28 and 30 and further along from this, a tall and large building comprising multiple uses at 50 Rosemary Road. An alleyway wraps around the covered market and the back of the site linking Rosemary Road with Beach Road.
9. The Clacton Seafront Conservation Area Appraisal (CAA) 2006 details a history of railway and steam ship travel influence during the later 19th and early 20th century, during which the area was developed as a resort with hotels, boarding houses, open spaces, promenades, pier and coastal defence works. The main

hotel, the Royal Hotel, was initially opened in 1872, close to the pier whilst the railway station (outside of the seafront area) was opened in 1882. During these times, housing was built behind the seafront to the east of the pier, some of which takes the form of formal villas where they are close to the sea front. Some of the road patterns including Rosemary Road reflect pre-industrialisation times when agriculture dominated.

10. As the CAA indicates, there have been a number of unsympathetic designed developments. In the vicinity of the appeal site, there are commercial buildings with poorly designed shopfronts. The redevelopment of 24 Rosemary Road has resulted in an unattractive mansard type roof. At the corner of Orwell Road and Rosemary Road, the form and detailing of the new shop with dormer accommodation does not reflect the better proportioned form and architecture of original buildings along Rosemary Road. Views along Orwell Road also include unappealing areas of a car park and service areas to buildings. As such, developments are varied in terms of quality of design.
11. However, the Conservation Area still has attractive seaside architecture and formal planned street patterns. In the vicinity of the appeal site, commercial properties, upper stories mainly, and dwellings have retained many of their original traditional features, such as bay windows, eaves details, parapets (on commercial properties), and other decorative details around openings. Beyond No 24, there is the former Imperial Hotel (Council's Community Voluntary Services) that has retained much of its original exterior features and opposite this, a row of retail uses with upper floor pediment features around windows and parapets. Within the area, buildings are also generally rendered in visually soft pastoral colours. These aesthetic and architectural qualities contribute to the seaside Victorian and Edwardian character and appearance of the Conservation Area. Along with historic, these qualities make the Conservation Area distinctive and are therefore of significance and value, and are of special interest to the Conservation Area as a whole.
12. The proposed frontage building would be four storeys in height with overhanging upper storeys, a balcony and a flat roof. The façade would have matching, glazed and metal framed windows spaced at regular intervals in a brick exterior. The flank of the frontage building would also extend considerably deeper and higher than the two storey dwellings at Nos 28 and 30, and the former hotel demolished in January/February 2016. The former hotel plans show a much reduced scale and visual impact at 3rd and 4th storey level to the rear than what is now proposed. By reason of this form, height and plainer modern design, the frontage building would appear bulky and domineering. It would be markedly at odds within the traditional buildings within the Conservation Area that define it, which are generally more modestly scaled in form, varied and detailed in their architecture.
13. The proposed rear building would be of similar design and construction to that on the frontage, but it would graduate up to seven storeys with balconies at different levels. Although outside of the Conservation Area, there would be views of it from within the Conservation Area given its proximity. The visibility of a development is not a reason in itself to demonstrate an adverse impact and much of its flank will be masked in view by the covered market building from Rosemary Road. The fifth storey flank would also be planted with trailing vegetation. However, from the corner of Rosemary Road and Colne Road, there would be views of a significant part of a building, its stepped 6 to 7

storey flank, which would be markedly at odds with the more modest scaled frontage buildings in the Conservation Area.

14. As an interest or mitigation feature, the 'greened' area would also have to be extensive, high up on the building and sensitive to its seaside location. There is no doubt about the good intentions of the appellant and the awareness of these factors. Nevertheless, the 'greening' would not be a small scale undertaking and it has not been demonstrated that any scheme of this nature would be a success. Therefore, it is considered that the scale and bulk of this rear building would unacceptably intrude into this part of the Conservation Area.
15. By reason of their modern design, the buildings would be landmark in nature and take no cues from their surroundings. Nevertheless, such an approach does not work here for all the reasons indicated and the development would fail to preserve the character and appearance of the Conservation Area. With the absence of the former hotel, the existing site negatively contributes to the character and appearance of the Conservation Area. However, the design, height and bulk of the development would result in a far greater negative impact on the Conservation Area for all the reasons indicated.
16. The National Planning Policy Framework (the Framework) makes clear, 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. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
17. In accordance with the Framework, the type of harm identified above would be less than substantial. It is necessary that this identified harm is weighed against the public benefits of the proposal. In this regard, the proposal would provide economic benefit to Clacton and the District as a whole, by providing tourist accommodation and business uses in a town centre location. The three proposed commercial units would help the vibrancy of this part of Rosemary Road and would provide floorspace for new or relocated businesses. The Framework states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs, and wider development opportunities.
18. However, these benefits have to be weighed against the adverse impact on the significance of the Conservation Area for which considerable importance and weight is attached. Such an adverse impact would be permanent and almost certainly, irrevocable in the long term. Thus, the harm to the significance of the Conservation Area would outweigh the scheme's benefits.
19. Outside of the Conservation Area from Beach Road, there would be views of the staggered scaled rear building and rearward projection of frontage building at 3rd and 4th storey level. Within the street, frontage dwellings are largely domestic and two storey in nature. Given this context, the rear building would appear domineering given its design, height and bulk when viewed through gaps within the street and thus, there would be harm to the character and appearance of this area. There would be no adverse impact from the High Street because views of the rear building would at worst limited and distant.

20. At 50 Rosemary Road, there is a lapsed planning permission for the conversion and extensions of this building to form flats and a recent application to renew this permission. However, even if this was granted again, this development is not within the Conservation Area and further down Rosemary Road closer to town centre within a larger scaled building context. Therefore, there are material differences between the schemes and in any case, every proposal has to be considered on its particular planning merits.
21. For all these reasons, the development would harm the character and appearance of the area. It would fail to preserve the character and appearance of the Conservation Area. Accordingly, the proposal would be contrary to the policies QL9, QL11 and EN17 of the Tendring District Local Plan (LP) 2007.

Living conditions

22. The rear building would graduate in storey scale with balcony terraces, containing planting and privacy screens. There would be a gap of approximately 3 metres from a two storey part of the development and the rear property boundaries of 47-53 (odd numbers) Beach Road. Here, the existing fencing/walling is about 3m high. Within the gap between the rear building and common boundaries, there would be trees planted.
23. The Beach Road dwellings would be a reasonable distance from the rear building so as to avoid detrimental loss of outlook. However, the gardens serving these properties would be much closer and residents outlook would be dominated by the height and bulk of the rear building, even above the existing boundary treatments. The rear building would stretch across the full width of the gardens of three of the Beach Road properties. Planting on the balconies would only offer limited visual relief by virtue of such features not being extensive. The tree planting would also be of limited visual relief because any specimens would take some considerable time to become established and provide high level screening.
24. Furthermore, there can also be no guarantee that any new landscaping would remain in perpetuity and replacement would again take time to become established and provide screening. The rear building's balconies would be enclosed with high level screening which would prevent overlooking of the neighbouring properties, but this would add to its massing and bulk. For all these reasons, there would be an adverse loss of outlook to the occupiers of the four Beach Road properties.
25. At the rear of commercial buildings along the High Street, there are residential uses about the ground floor. However, none of these residential properties have any affected private outdoor space. In relation to the window openings, the separation distance with the rear building would ensure no significant loss of outlook. This separation would also ensure no significant loss of day and sun light to the windows of the residential properties.
26. For all these reasons, the development would harm the living conditions of the occupiers of neighbouring properties on Beach Road, having regard to outlook. Accordingly, the proposal would be contrary to the policy QL11 of the LP.

Other matters

27. The development lies within a Zone of Influence of the Colne Estuary Special Protection Area (SPA) and Ramsar site. Parties have agreed that the proposal

would not have a significant effect on the internationally important interest features of the SPA given the scale and tourist nature of the proposal and that no mitigation is required. Natural England also raised no objections to the proposal or indicated a need for any form of mitigation. As there are substantive reasons to dismiss this appeal, there is no requirement to assess the objective analysis underpinning the parties' conclusions on this.

Conclusion

28. The redevelopment would harm the character and appearance of the area and the living conditions of nearby residents in conflict with the referred policies of the LP. By reason of these conflicts, the proposal would conflict with the development plan taken as a whole. Material considerations would not be of sufficient weight or importance to determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.
29. However, the demolition of the former buildings on the site is acceptable and is severable from the scheme taken as a whole. Therefore, a split decision in this case is warranted. In respect of the demolition of the former buildings, a condition is necessary ensuring the retention and maintenance of the existing fencing around the site. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed insofar as it relates to the demolition but dismissed insofar as it relates to the redevelopment of the site.

Jonathon Parsons

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

F Bradley	Planning Consultant
R Simons	East West Design and Build Ltd

FOR THE LOCAL PLANNING AUTHORITY:

A Newland	Tendring District Council
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DOCUMENTS AFTER HEARING

1. Boarding detail document titled Construction Method and Detailing (contained in email dated 20 1 2020 from Attwells Solicitors LLP).
2. Planning permission documents Local Authority Reference 14/00593/FUL.