



Appeal Decision

Site visit made on 6 July 2020

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2020

Appeal Ref: APP/P1560/W/20/3244205

**Land adjacent to 1 Holly Tree House, Third Avenue, Frinton-on-Sea
CO13 9EQ**

- 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 Mrs Kinloch against the decision of Tendring District Council.
 - The application Ref 19/00715/FUL, dated 15 April 2019, was refused by notice dated 3 July 2019.
 - The development proposed is the demolition of existing garage block and replacement with new 3 bed dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's decision notice makes reference to policies from the emerging Tendring District Council Local Plan 2013-2033 and Beyond Publication Draft (ELP). Although Section 1 of the plan has been through public examination, it remains the subject of outstanding concerns that were raised by the Inspector. Section 2 will not progress until these matters have been resolved. Therefore, the ELP does not yet form part of the development plan and I have afforded its policies only limited weight in the determination of this appeal, with regard to paragraph 48 of the National Planning Policy Framework (the Framework).

Main Issues

3. The main issues are;
 - whether or not the proposal would preserve or enhance the character or appearance of the Frinton and Walton Conservation Area; and
 - the effect of the proposal's parking layout on highway safety.

Reasons

Conservation Area

4. The appeal site lies within the Frinton and Walton Conservation Area (CA). I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of this CA. The Framework also advises that great weight must be given to the conservation of designated heritage assets and any harm which is less than substantial must be weighed against the public benefit of the proposal.

5. The significance of the CA is derived from the nature of Frinton as a planned resort which dates from the end of the 19th Century. It contains fine examples of English domestic architecture of this period, set in a spacious residential suburb. The appeal site is located in a character area known as 'The Avenues', which contains a series of generally straight, wide, streets with some established trees. Properties in Third Avenue are mainly large, detached, dwellings set in wide and generous plots. This gives them a spacious feel and a sense of rhythm and uniformity.
6. The appeal site comprises a section of land to the side of No 1 that accommodates a detached single-storey garage associated with this property. Although No 1 is somewhat unusual in that it forms one half of a pair of semi-detached dwellings set at an angle to the carriageway, its wide plot harmonises with the size of nearby plots. In addition, the gap to the side of No 1, together with the relatively unobtrusive nature of the existing garage, contributes positively to the spacious nature of the street. The appeal site therefore makes a positive contribution to the character and appearance of this part of the CA.
7. This proposal seeks permission to construct a detached, two-storey, three-bedroomed dwelling. This new dwelling would remove the existing garage, which is of no historic or architectural merit. However, it would be set forward within the plot and would be considerably taller and greater in footprint compared to it. Overall, the scheme would add a substantial amount of additional built mass to the appeal site and would occupy a significant proportion of the gap to the side of No 1. It would therefore erode the spacious feel of this part of the street. Furthermore, whilst the proposal's plot would be similar in width compared to the adjacent semi-detached dwellings, it would be markedly narrower than the majority of nearby plots. Consequently, it would disrupt the rhythm and uniformity of development in the immediate area.
8. The supporting text to Policy FW5 of Tendring District Local Plan (LP) does not expressly restrict infill development on plots that would be 15 metres or less in width (as would be the case with the appeal scheme). That said, judgements relating to a proposal's impact upon the CA require more than such a purely numerical approach. The supporting text to Policy FW5 of the LP goes on to state that new dwellings would need to stand on plots that compare favourably with neighbouring houses. In addition, the wording of the policy itself seeks to ensure that developments do not reduce the spacious character of the area. I have found that the scheme would not achieve this.
9. Taking all of the above into account, the proposal would fail to integrate effectively with the character and appearance of the immediate streetscene. As such, it would cause harm to this part of the CA which would be clearly apparent from the public domain.
10. For the reasons given, I conclude that the proposal would fail to preserve or enhance the character or appearance of the Frinton and Walton Conservation Area. It would therefore conflict with Policies QL9, QL11, EN17 and FW5 of the LP. Amongst other things, these seek to ensure that proposals protect and enhance local character, do not harm the character or appearance of conservation areas and resist the reduction of the spacious nature of The Avenues character area. I have also been referred to Policy QL10 of the LP. However, this deals with the functional requirements for new developments and is not strictly relevant to this main issue.

11. Turning to national policy, the harm I have identified to the CA would be less than substantial within the meaning of the Framework. Nonetheless, any such harm merits great weight in accordance with paragraph 193 of the Framework and falls to be weighed in the balance with the public benefits of the development. I will return to this in my overall planning balance.

Highway Safety

12. Policy TR7 of the LP states that adopted car parking standards will apply for new developments. Two off-street parking spaces are shown at both the proposed dwelling and No 1. This quantum of parking spaces appears to be acceptable. However, there is a dispute between the parties as to whether or not the spaces would meet the minimum dimensions in terms of size shown in adopted standards.
13. Regardless of this dispute, the layout of parking spaces would be likely to restrict manoeuvrability at both dwellings so that vehicles could not enter, turn around, and leave in a forward gear. I have not been provided any evidence, such as a swept path analysis, to show that this would not be the case. Consequently, even if the proposed parking spaces met the minimum standards in terms of their size as advocated by the appellant, their arrangement would result in vehicles reversing out of the site, over the adjacent footway and then onto the carriageway. The Highway Authority has raised concern with such manoeuvres and, on the evidence before me, I am not persuaded that this would not result in hazardous conditions, particularly for pedestrians.
14. For the reason given, I conclude that the proposal's parking layout would adversely affect highway safety. Even in the event that there was no conflict with the Council's adopted parking standards in terms of the size of spaces, the proposal would therefore conflict with Policy TR1a of the LP. Amongst other things, this seeks to ensure that developments reduce and prevent hazards and inconvenience to users of the highway.

Other Consideration – Special Protection Area

15. The appeal site is within a Zone of Influence of the Hamford Water Special Protection Area and Ramsar site, which are designated European sites. Natural England (NE) has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this instance, the appellant has submitted an executed Unilateral Undertaking which would secure financial contributions towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy to mitigate any harmful impacts on nearby European sites.
16. The Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European site, must consider mitigation within the framework of an Appropriate Assessment (AA)¹. As the competent authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties, as well as NE, to seek further information in order to undertake an AA for this scheme.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

However, as I am dismissing the appeal for other reasons, I have not taken the matter further as it would not be determinative in my decision.

Other Matters

17. The Council raise concern that this proposal could set a precedent for similar developments in the area. However, it would retain the right to consider such developments on their individual merits, as I have done here. This, therefore, carries little weight in my decision.
18. The appellant makes reference to unreasonable behaviour on the part of the Council. However, she has not made a formal application for costs. As such, I have not taken this matter any further.

Planning Balance

19. The Government is seeking to significantly boost the supply of housing. The principle of residential development at this site would be acceptable. However, the provision of one additional dwelling would make only a minimal contribution to the Council's housing stock. Similarly, the economic benefits associated with its construction and occupation would also be minimal. In this context, I attach only limited weight to the proposal's social and economic public benefits.
20. The scheme would be acceptable in some respects. For example, it would not harm the living conditions of the occupants of surrounding properties. However, these are requirements of the development plan and are therefore neutral factors in the overall balance.
21. On the other hand, I cannot be certain that the proposal's parking arrangement would not prejudice highway safety. Moreover, the proposal would result in harm to the CA, which is a designated heritage asset. It would therefore fail to fulfil the Framework's environmental objective for sustainable development insofar as it seeks to protect and enhance our built and historic environment. Collectively, these matters carry significant weight against the proposal.
22. Taking the above factors into consideration, I am not persuaded that a clear and convincing justification for permitting the less than substantial harm to the heritage asset has been demonstrated. Such harm would therefore outweigh the public benefits associated with this scheme. Having regard to paragraph 11(d)(i) of the Framework, there is therefore a clear reason to dismiss the appeal, even if the Council is unable to demonstrate a five year supply of deliverable housing land.

Conclusion

23. For the reasons given, I conclude that the proposal conflicts with the development plan when read as a whole. There are no other material considerations, including the advice of the Framework, that outweigh this conflict. I therefore conclude that the appeal should be dismissed.

M Heron

INSPECTOR