The Planning Inspectorate

Appeal Decision

Site visit made on 27 January 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/X1545/W/20/3257325
The Sun and Anchor, The Street, Steeple, CM0 7RH

- 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 Gray & Son (Chelmsford) Ltd against the decision of Maldon District Council.
- The application Ref FUL/MAL/19/01163, dated 21 November 2019, was refused by notice dated 11 February 2020.
- The development proposed is the demolition of the Sun & Anchor Public House and erection of 6 dwelling houses.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the Sun and Anchor Public House and erection of 6 dwelling houses at the Sun and Anchor, The Street, Steeple, CM0 7RH in accordance with the terms of the application, Ref FUL/MAL/19/01163, dated 21 November 2019, subject to the conditions set out in the Schedule annexed at the end of this decision.

Procedural matters

2. Refusal reason 3 related to parking provision for plot 6 and the effect of the development on the free flow of traffic on the highway. The appellant has submitted revised plans as part of this appeal, which revise the size of the garage associated with this plot. The Council has confirmed that the scheme now meets the minimum requirements and the garage is deep enough to allow for storage use as well as for the parking of motor vehicles, and is in accordance with the Maldon District adopted Vehicle Parking Standards. Thus this reason for refusal has been overcome.

3. Refusal reasons 4 refers to the lack of mitigation measures with regard to the impact on the European designated nature conservation sites in accordance with the Essex Coastal Recreational Avoidance and Mitigation Strategy which is currently under preparation. Subsequently the appellant has submitted to the council a Unilateral Undertaking, dated 1 December 2020, pursuant to Section 106 of the Town and Country Planning Act 1990. This has been acknowledged by the council as satisfying this refusal reason. For the avoidance of doubt, on the information before me, I confirm that the obligation is complaint with regulation 122 of the Community Infrastructure Regulations 2010 (as amended). Thus this reason has been overcome.

Main Issues

4. The main issues in this case are i) the loss of a community facility, and ii) the effect on the character and appearance of Steeple and the setting of the adjacent listed buildings.

Reasons

The loss of a community facility

5. The Sun and Anchor public house must be regarded as a community facility. Policy E3 of the Maldon Local Development Plan 2014 – 2029 (MLDP), adopted in July 2017, is the principal policy relevant to this issue. The essential elements of this policy are *"The Council will seek to retain and enhance the provision of community services and facilities within the District, particularly where they are essential to the local community ….. Where a proposal will result in the loss of community services or facilities, an application will be required to demonstrate to the Council's satisfaction that:*
1) The existing business/service is not and cannot be made viable; and
2) Effective marketing has been undertaken to demonstrate that there is no viable and appropriate alternative community service based use"; and
"… the Council will maintain a register of assets of community value and will support community groups seeking to buy community assets through the Community Right to Bid".

6. The justification of this policy states that evidence of a marketing strategy will be required to show reasonable and appropriate marketing of the site for community use over a sustained period of time, and evidence of the level of interest in the site for community uses during the marketing period. The council points out that, as mentioned in the appeal statement, 'marketing has just begun', thus there is no evidence of marketing over a sustained period. In fact it appears that marketing has not taken place, since it was agreed with the council that marketing at this time of pub closures because of 'Covid-19 lock-down' would not be sensible.

7. Nevertheless, the appellant has commissioned an assessment of viability from a commercial property consultancy specialising in the licensed property sector dealing with sales, lettings, valuation and expert witness work. I need not detail the contents, since both parties have copies of the resulting report. It is clear that the report is by an independent reputable professional consultant, with substantial experience, utilizing industry standards, using the profits method of valuation, as set out in Royal Institution of Chartered Surveyors practice standards, UK (GN67/2010).

8. This assessment among other matters, used barrelage history from 2008 to closure in 2017. It recognised that the property has been maintained and repaired under the current ownership and is capable of being reintroduced as a public house again after several years of closure without prohibitive remedial work. Nevertheless, the conclusion is that the property is unable to provide a sustainable profit to support an income, or property costs. This is evidenced by actual barrelage information over nine years; alternative provision is already provided in Steeple and the re-introduction of another pub would affect profitability at The Star (the other pub); any business which is unable to provide a sustainable level of profit, to provide an income or dividends to an operator, or to cover property costs cannot be a viable business. Therefore the

consultant's opinion was that the premises is not capable of running as a commercially viable trading entity.

9. At this point I should make reference to the fact that Steeple Parish Council supported the application, as did the Maldon and Dengie Branch of the Campaign for Real Ale (CAMRA). The latter was fulsome in its praise for the appellant company. Since it might be expected that CAMRA would normally be highly critical of a pub closure, and since its members are from the area and likely to have local knowledge, as would the parish council, I place considerable weight on the views of both.

10. The council's policy requires the demonstration that the existing business/service is not and cannot be made viable. Whilst there has not been a sustained attempt to market the Sun and Anchor, I find the evidence that has been put forward in the consultant's report to be persuasive. Quite clearly there has not been effective marketing undertaken to demonstrate that there is no viable and appropriate alternative community service based use available to take over the building. However, it is equally true that there have been no representations putting forward of an alternative community use with evidence of its likely support and viability.

11. I also note that the council's policy is to maintain a register of assets of community value and will support community groups seeking to buy community assets through the Community Right to Bid. Again there is no suggestion that the council's support has been sought from any community group seeking to buy the asset through this right. Since the pub has been closed since 2017, there has been time for a community group to come forward showing some interest.

12. In the light of the above it is reasonable to conclude that the Sun and Anchor is not a viable business and that there is unlikely to be a community group that could make a bid to buy it. I conclude that this refusal reason is not a sound basis for the refusal of planning permission.

The effect on the character and appearance of Steeple and the setting of the adjacent listed buildings

13. The most relevant development plan policy is policy D1 of the MLDP. This seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of, as most relevant here:
a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
b) Height, size, scale, form, massing and proportion;
e) Historic environment particularly in relation to designated and non-designated heritage assets;

14. In addition section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires that, in considering whether to grant planning permission…..for development which affects a listed building or its setting, I 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.

15. There are grade II listed buildings immediately to the east of the application site. Sun Cottage is a Georgian $1^1/_2$ storey brick house with a gambrel roof, and The Old Bakery beyond that is a Georgian weatherboarded $1^1/_2$ storey house. The significance of these grade II listed buildings can be said to relate to their age, vernacular character, traditional materials and the contribution they make to the street-scene. Sun Cottage used to be the Sun and Anchor Public House before the present pub was built. These listed buildings are typical of the oldest houses in the village.

16. The local character of The Street is a mixture of old buildings, such as Sun Cottage and The Old Bakery, with modern, mostly post war houses; the historic buildings are generally in small enclaves within the general run of the modern. Sun Cottage and The Old Bakery would have been village houses fronting the road along with similar buildings in their time. Their natural setting is that of a village street. The appeal proposal does not harm their fabric, nor can it be realistically said to harm their setting, since it is natural that they will be accompanied by buildings of different ages. Therefore, what is important is that any new development should have a satisfactory relationship in terms of scale, materials and features, such as gables, hips, etc; but pastiche should be avoided, as this would devalue the listed building's setting by a lack of authenticity.

17. A village with origins in the 18th century will inevitably have a variety of buildings with difference scales, from modest to relatively grand; although in Steeple it would appear that they would generally have been labourers' cottages. There will thus be a variety of roof forms, ridge heights, frontage widths, and so on, and the current character of the village largely stems from development in more recent times.

18. As noted in the consultation response by the conservation and heritage specialist, the style of the buildings proposed is in the vein of the Essex Design Guide, with house-types referencing traditional Essex examples. Also, the proposed materials are complimentary to the historic character and appearance of the area in particular through the use of timber windows and timber weatherboarding; and the choice of brick and render is in keeping with the materials used on the existing pub and neighbouring dwellings.

19. Whilst the proposed houses would be taller that the adjacent listed buildings, their set-back and the distance which separates the nearest from Sun Cottage would prevent the development from having an unduly overbearing or awkward relationship with it. It is important that the appeal scheme maintains the setback of the pub, since this enables the gable-end of Sun Cottage to be a prominent feature in the street scene as The Street bends round to the left when approaching from the west.

20. I conclude that the proposed development would cause no harm to the significance of the heritage asset, and that there is no conflict with the desirability of preserving the listed buildings or their setting or any features of special architectural or historic interest which they possess.

21. Turning to the particular criticisms of the council of the appeal scheme, I cannot see any real conflict of the short cul-de-sac with the general village character. And since the two houses at the rear would not impinge on the living conditions of the occupiers of the frontage dwellings, it is not particularly instructive to describe them as form of backland development. Whilst these 2

houses substantially fill their frontages, their effect on the village scene is diminished by their distance from the road and the screening provided by the existing shrubs and trees. In my judgement the double garage to No.6 would not have an awkward relationship with the first floor windows of the dwelling, since it is sufficiently separated by the linkage formed by the study. Furthermore, this garage would make a suitable closure at the end of the cul-de-sac.

22. I conclude that the proposed development would have a satisfactory relationship with the character and appearance of Steeple, thereby meeting the requirements of policy D1 of the MLDP, and would not harm the setting of the adjacent listed buildings.

Overall conclusion

23. In view of the reasoning that I have set out above, I consider that the loss of a community facility has been justified and the effect on the character and appearance of Steeple and the setting of the adjacent listed buildings would be satisfactory. The appeal is allowed.

Conditions

24. The council has suggested a number of conditions that it would wish to see imposed on any planning permission for the appeal development, in addition to the standard time limit for commencement. I am imposing most of these, amending the wording where necessary to accord with good practice and national guidance.

25. The conditions are necessary for the following reasons: condition 2 is for clarity and the avoidance of doubt; conditions 3 and 4 are to ensure that the external appearance of the development is appropriate to the street scene and to protect the living conditions of neighbouring occupiers; condition 5 is to ensure that vehicles involved in the development shall not park on street in the interests of highway safety and convenience; condition 6 is to ensure the provision of a safe and suitable access to the development; condition 7 is to safeguard any archaeological significance of the site; conditions 8 and 9 are to prevent hazards occurring on the highway resulting from water or loose material flowing onto the highway in the interests of road safety; condition 10 is to encourage travel by alternative means to the private car to promote sustainable transport; conditions 11, 12, 13 and 14 are to avoid undue risks to human health, property, etc from contamination; and condition 15 is to ensure that the development is connected to a satisfactory foul drainage system; conditions 16 and 17 are to guard against flooding and environmental damage by runoff of surface water by ensuring a satisfactory means of storage and disposal of surface water is installed, and maintained thereafter; condition 18 is to ensure suitable hard and soft landscaping of the development so that the external appearance of the development is attractive in the immediate environment; and condition19 is to ensure that the development takes place at levels which relate to neighbouring development to protect residential living conditions of occupiers in the immediate vicinity.

26. I will not impose the suggested condition that windows in first floor side elevations shall be obscure glazed and not openable since they serve stairwells, bathrooms and en-suite facilities and there is little risk of overlooking of neighbouring occupiers from them. Nor will I impose a condition removing

normal permitted development rights. The intention of the legislation with regard to permitted development is to provide general rights that should only be curtailed where there is a cogent reason to do so; no sufficient reason has been made out in this case.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development shall be carried out in accordance with the following approved plans and documents: 2801/101, 2801/103 Rev B, 2801/104, 2801/105, 2801/106, 2801/107, 2801/108 Rev A, 2801/109 Rev B, 2801/110 Rev A

3) No development works above ground level shall take place until samples of the facing material to be used, including glazing, have been submitted to and approved in writing by the local planning authority. The works must then be carried out in accordance with the approved details.

4) No works above ground level shall take place until details of the siting, height, design and materials of the treatment of all boundaries including existing hedging, gates, fences, walls, railings and piers have been submitted to and approved in writing by the local planning authority. The screening as approved shall be constructed prior to the first occupation of the development to which it relates and be retained as such thereafter.

5) No development other than demolition of the existing building shall take place, including any ground works, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 i. the parking of vehicles of site operatives and visitors
 ii. loading and unloading of plant and materials
 iii. storage of plant and materials used in constructing the development
 iv. wheel and under body washing facilities

6) The development shall not be occupied unless and until the vehicular access as shown on the plan attached to and forming part of this permission has been constructed, surfaced and made available for use. The access shall be retained as such at all times thereafter.

7) No development, other than demolition of the existing building above ground level, including any groundworks of any kind shall take place within the site until an archaeological assessment by an accredited archaeological consultant has been submitted to establish the archaeological significance of the site and recommendations as appropriate to the findings for the implementation of a programme of archaeological work. The assessment and programme of work shall be submitted to the local planning authority for approval in writing and the development shall be carried out according to the approved programme.

8) There shall be no discharge of surface water from the development onto the Highway.

9) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.

10) Prior to first occupation of the proposed development, the Developer shall be responsible for the provision, implementation and distribution of a

Residential Travel Information Pack for sustainable transport, which shall previously have been submitted to and approved in writing by the local planning authority, to include six one day travel vouchers for use with the relevant local public transport operator. These packs (including tickets) are to be provided by the Developer to each dwelling free of charge.

11) No development shall be carried out, other than demolition of the existing building above ground level, or where necessary to carry out additional investigation, until a report of investigation and risk assessment has been submitted to and approved in writing by the local planning authority. The risk assessment shall assess the nature and extent of any contamination on the site whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers'. The report of the findings must include:

(i) a survey of extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:
- Human health,
- Properly (existing or proposed) including buildings, pets and service lines and pipes,
- Adjoining land,
- Groundwaters and surface waters,
- Ecological systems
- Archaeological sites;

(iii) an appraisal of remedial options, and proposal of the preferred option.

12) No development shall take place other than allowed by condition 11 until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The development other than allowed for under condition 11 shall not commence until the measures set out in the approved scheme have been implemented, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority may give approval for the commencement of development prior to the completion of the remedial measures when it is deemed necessary to do so in order to complete the agreed remediation scheme. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. This must be conducted by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers'.

13) The remediation works shall be carried out prior to commencement of construction in accordance with the details approved unless otherwise agreed in writing by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced. This must be completed by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and the Essex Contaminated Land Consortium's 'Technical Guidance for Applicants and Developers' and is subject to the approval in writing of the Local Planning Authority.

14) Should the existence of any contaminated ground or groundwater and/or hazardous soil gases be found that were not previously identified, it must be reported in writing immediately and a risk assessment of the site shall be undertaken and a scheme and programme to bring the site to a suitable condition shall be submitted to and agreed in writing with the Local Planning Authority. A "suitable condition" means one in that represents an acceptable risk to human health, the water environment, property and ecosystems and scheduled ancient monuments and cannot be determined as contaminated land under Part 2A of the Environmental Protection Act 1990 now or in the future. The work will be undertaken by a competent person in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination (CLR 11), the Essex Contaminated Land Consortium's Land Contamination Technical Guidance for Applicants and Developers and current UK best-practice guidance and policy.

15) No development shall commence other than the demolition of the existing building until details of the foul drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.

16) No development other than the demolition of the existing building above ground level shall occur until a detailed Sustainable Urban Drainage System has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development and should include but not be limited to:
Discharge rates/location,
Storage volumes,
Treatment required,
Detailed drainage plan.
A written report summarising the final strategy and highlighting any minor changes to the approved strategy
Where the surface water drainage strategy proposes the use of soakaways the details of the design and the results of a series of percolation tests carried out upon the subsoil in accordance with DG 365 2016 shall be included in the strategy. In order to satisfy the soakaway condition the following details will be required:- details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.

Where discharging to a watercourse the proposed scheme shall include details of the destination and discharge rates equivalent to "greenfield runoff" up to and including a 1 in 100 year rainfall event inclusive of climate change.

17) Prior to the occupation of the development details shall be submitted to and approved in writing by the local planning authority of a management and maintenance plan for the surface water drainage scheme agreed pursuant to condition 16. The management and maintenance plan shall cover the lifetime of the development and shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

18) Full details of the provision and subsequent retention of both hard and soft landscape works on the site shall be submitted to and approved in writing by the local planning authority prior to any works occurring above ground level at the application site. These details shall include:
Soft landscape works
1) Schedules of species of trees and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities.
2) Details of the planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding rates, planting methods, mulching, plant protection, staking and/or other support.
3) Details of the aftercare and maintenance programme.
The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of any part of the development hereby approved unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted as a replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.
Hard landscape works
4) Details of walls with brick types, construction design and dimensions
5) Details of paved surfacing, with materials finishing and edgings
6) Details of street furniture, with designs, materials and dimensions
The hard landscape works shall be carried out as approved prior to the first use / occupation of any part of the development hereby approved and retained and maintained as such thereafter.

19) No works related to the alteration of ground levels at the site and no works above ground level other than demolition of the existing building shall occur until details of existing ground levels and proposed finished ground levels, and their relationship to the adjoining land, and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.