



Appeal Decision

Site visit made on 18 January 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2022

Appeal Ref: APP/P1560/W/21/3276871

3 Rosemary Road , Clacton on Sea, CO15 1NY

- 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 Marios Aristidou against Tendring District Council.
 - The application Ref 20/00884/FUL, is dated 4 July 2020.
 - The development proposed is retention of retail unit and creation of 1 ground floor studio flat and 1 ground floor one bed flat. Removal of existing rear extension and creation of amenity space and provision of cycle spaces.
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Decision

1. The appeal is dismissed and planning permission for retention of retail unit and creation of 1 ground floor studio flat and 1 ground floor one bed flat. Removal of existing rear extension and creation of amenity space and provision of cycle spaces is refused.

Application for costs

2. An application for costs was made by Marios Aristidou against Tendring District Council. This application is the subject of a separate decision.

Preliminary Matters

3. As part of the appeal the appellant has submitted a revised plan which subdivides the proposed amenity space. I have not considered this as part of this appeal as I consider that this change would materially alter the nature of the application and would prejudice the interests of interested parties.¹
4. Since the submission of the application Tendring District Council has adopted the North Essex Authorities Shared Strategic Section 1 Plan in January 2021 and Section 2 of the 2013-33 and Beyond Local Plan was adopted by the Council at its meeting of 25 January 2022. Therefore, the 'development plan' for Tendring District Council now comprises the adopted Section 1 and Section 2 of the Tendring District Council 2013-33 and Beyond Local Plan (LP).
5. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The policies in the LP supersede some of those referred to in the Council's delegated report. The appellant had an opportunity to address the change in policy through their appeal submissions and again following the adoption of Section 2.

¹ Annex M of the Procedural Guide Appeals – England advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

6. The appellant has submitted a duly executed unilateral undertaking which I have taken into account. It provides for a contribution towards ecological mitigation and I have contemplated this further later in my decision.

Main Issue

7. The main issue is the effect of the proposed development on the living conditions of future occupiers in respect of outlook and privacy.

Reasons

8. Rosemary Road comprises a mix of both commercial properties some with residential flats above and residential dwellings. The appeal site comprises a two storey building located on the corner of Rosemary Road and Rosemary Crescent. The building comprises ground floor retail units with storage to the rear with internal access to the three upper floor flats. The rear yard has an access onto Rosemary Crescent.
9. The proposal would result in the conversion of one of the ground floor retail units to a 1 bedroom flat which would be accessed from the rear access and the demolition of one of the existing storage buildings. A further studio flat would be created following the conversion of the remaining storage area. The parties agree that the development would meet the nationally described space standards.
10. The rear yard would provide amenity space and cycle and bin storage for both the existing upper floor flats and the proposed ground floor units. It would also provide access for five flats in total.
11. The proposed studio flat would have two windows facing over the amenity space. Given the lack of other windows, the outlook from the studio flat would be confined to the views from these windows. One of the windows would look out onto the proposed bin and cycle storage. Owing to the close proximity of the proposed bin and cycle storage, the outlook from this window would be severely restricted.
12. The outlook from the other window would be towards the boundary of the courtyard and oblique views out would be partially obscured by the enclosure of the bin and cycle storage. Given the very close proximity of the rear boundary treatment and the bin and cycle store this would represent a dominant and oppressive feature which would have a significantly adverse impact on the outlook from this window. This loss of outlook would be compounded by the poor outlook from the other window.
13. The ground floor windows of the proposed residential properties would be located overlooking the access to the existing upper floor flats. There is nothing to suggest that because of the comings and goings associated with the use of the amenity space there would be an unacceptable loss of privacy to the ground floor windows. Furthermore, as the area is sufficiently wide people would not need to pass directly in front of the windows to access the upper floor flats.

14. However, I conclude that the proposed development would not provide acceptable living conditions for future occupiers of the dwelling in respect of outlook. It would therefore conflict with policy SP7 of the LP which requires development to meet high standards of urban design which protect the amenity of future residents with regard to outlook. It would also fail to accord with policy SPL3 Part B(e) which requires buildings to be designed to ensure adequate outlook for future residents.

Other Matters

15. It would appear that the appeal site falls within a 'Zone of influence' for a designated site and the appellant has submitted a unilateral undertaking to secure ecological mitigation. As the competent decision making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

16. For the reasons given above I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

