
Appeal Decision

Site visit made on 7 June 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref: APP/P1560/D/21/3281346

4 Cliff Way, Frinton On Sea CO13 9NL

- 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 Mr & Mrs J Trigg against the decision of Tendring District Council.
 - The application Ref 21/00482/FUL, dated 8 March 2021, was refused by notice dated 28 May 2021.
 - The development proposed is described on the application form as 'Roof terrace and rooftop extension to existing 2 storey dwelling house.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework) and I have had regard to it in considering this appeal. The appeal process has afforded suitable opportunity for the main parties to comment on the foregoing policy changes.
3. On 25 January 2022, the Council adopted Section 2¹ of the Tendring District Local Plan (TDLP) which now stands alongside TDLP Section 1² (adopted in January 2021) to form the development plan for the area, superseding the saved policies of the previous district-wide Local Plan, adopted in 2007. Both main parties have made representations in relation to the TDLP Section 2 policies. The Council has cited the former draft policies referred to within the reasons for refusal along with an additional policy, PPL9 (Listed Buildings). Albeit, it has not explained how PPL9 is relevant to the reasons for refusal. The Council has also cited TDLP Section 1 Policy SP7 (Place Shaping Principles).
4. The appellants have pointed out that some of the previous local plan policies referred to were not cited in the reasons for refusal and that TDLP Section 2 Policies PPL9 and SP7 are new policies. I accept this. However, TDLP Section 1 Policy SP7 is only cited by the Council as relevant insofar as it relates to the existing reasons for refusal. For this reason, and given that the appellants have been provided with an opportunity to comment on it, I have had regard to it in this decision.
5. In relation to Policy PPL9, it is true that the effect of the proposed development on the nearby listed building is not referred to in the final paragraph of the Council's first reason for refusal. This casts some doubt over whether the

¹ Tendring District Local Plan 2013-2033 and Beyond: Section 2 – Adopted 24th January 2022

² Tendring District Local Plan 2013-2033 and Beyond: Section 1 – Adopted January 2021

Council allege a development plan conflict in this regard. However, under section 66 (1) and section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am obliged to have special regard to the desirability of preserving the listed building (the Round House), its setting and any features of special architectural or historic interest. I have sought representations from both main parties in this regard and this matter therefore forms part of the first main issue of this appeal.

Main Issues

6. The main issues are as follow:

- Whether the proposed development would preserve or enhance the character and appearance of the Frinton and Walton Conservation Area and preserve the setting of the Round House (Grade II Listed).
- The effect of the proposed development on the living conditions of occupiers of residential properties on Waltham Way and at 5 Cliff Way, with particular regard to privacy.

Reasons

7. The appeal site comprises an existing two storey dwelling located at 4 Cliff Way (The Host Property). The host property is designed in a 'Modern Movement' style and incorporates a distinctive curved front elevation, a flat roof, relatively simple fenestration and two separate balconies with glazed balustrades. In common with several adjacent properties, the host property is white rendered. The building is set back from the road, with a driveway, planting and a distinctive boundary treatment provided to the front.
8. This part of Cliff Way includes various residential properties which face towards the sea over an area of managed informal open space opposite. Numbers 4, 6 and 7 Cliff Way were originally designed by Oliver Hill³ and form part of Frinton Park. Frinton Park includes the largest collection of Modern Movement houses in the country, many of which were constructed in the 1930s. These properties, and others nearby, have been subject to varying degrees of alteration and extension.
9. No 7, the Round House, is a Grade II listed property which formerly comprised the estate office for Frinton Park. The appeal site is also located within the Frinton and Walton Conservation Area (CA).
10. In addition to the previously cited obligations with regard to the nearby listed building, under section 72 (1) of the same Act, I am obliged to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area.

Conservation Area

11. In general, the Frinton and Walton CA derives some significance from its location adjacent to the sea, with the two towns connected by a long seafront, both containing relatively unique styles. The CA in Frinton primarily derives its significance from a combination of architecture from between the 1890's and the Modern Movement architecture of the 1930's. The Modern Movement architecture in particular is a key defining characteristic of the area and

³ Albeit the appellants outline that R. J. Page contributed to the design

although the CA has been the subject of fairly extensive additions over the years, the style of these properties has often been retained.

12. Within the surrounding area, 2 Cliff Way is a much more prominent four storey building comprising flats. This building does not clearly exhibit any of the curved architectural forms of the buildings directly further to the north, although it does retain what could be considered as elements of Art Deco style. 3 Cliff Way has been extended upwards such that it has three storeys. This property has a distinctly different style to the host property in that it has straight elevations. Neither of these properties are located within the CA.
13. The scale and design of properties to the north (within the Conservation Area) is far more consistent. For example, No 5, although not designed by Oliver Hill, appears to have been altered to incorporate a curved front elevation and a flat roof⁴ with a front facing balcony. As such, there is currently a gradual transition, in terms of both scale and appearance, between the larger buildings to the south and Numbers 4, 5, 6 and 7 to the north. Indeed, the latter four properties all make a positive contribution to the significance of the CA either comprising or reflecting Modern Movement architecture in a prominent location on the sea front.
14. The proposed development would extend the host property upwards to create an additional storey. This would be set back from the existing front elevation. Nonetheless, this aspect of the proposal would be particularly prominent, almost matching the scale of the neighbouring dwelling at No 3. The straight edges and the scale of the development would both significantly detract from the Modern Movement appearance of the dwelling. This would significantly diminish the contribution that the host property makes to the significance of the CA, given the important role which it plays in providing a key exemplar of Modern Movement housing in a prominent location.
15. Far from providing a gradual transition between the properties to the south and the north, the proposed development would disrupt the existing transition as it would appear at roughly the same height as No 3, particularly when viewed from the lower lying land to the north east of the appeal site. The fact that the buildings to the north are of a greater scale does not therefore provide a justification for the proposed development.
16. I have noted that there is plenty of deviation in the character of development within the CA, with more recent development throughout, including significant extensions to residential buildings on Cliff Way. That said, the host property, as well as those directly to the north, largely retain the Modern Movement design, which is a key element of the CA. Not only this, but these properties are all prominently located on the sea front and historically would have served as a focal point for prospective residents visiting the former estate office. As such, even taking into account the fact that Oliver Hill-designed dwellings elsewhere have been extended upwards, the locational and historical context of the site are such that the development would harmfully erode the contribution that the host property makes within this wider context.
17. The proposed materials do provide an acceptable blend between the existing appearance and a slightly more modern appearance. In themselves they would not lead to significant harm. However, this does not detract from the harm

⁴ See Frinton and Walton Conservation Area: Frinton Park Appraisal (2006) image 4

which would be caused as a result of the scale and overall appearance of the development. Therefore, having regard to the desirability of preserving or enhancing the CA, I conclude that the proposed development would lead to 'less than substantial harm' within the meaning of Framework Paragraph 202.

18. The proposed development would not preserve the character and appearance of the CA. As such, and for the reasons outlined above, it would conflict with TDLP Section 2 Policies SPL3 and Policy PPL8, which seek to ensure that development is in keeping with local character and has regard to the desirability of preserving or enhancing the special character and appearance of the conservation area, respectively. Policy PPL8 refers to the Framework with regard to the consideration of harm. I apply the relevant provisions of the Framework in the 'planning balance' below.

Listed Building

19. The Round House, designed by Oliver Hill, derives its significance partly from its unique circular appearance in a prominent corner location overlooking the sea. The evidence before me demonstrates that this building originally constituted the Estate Office for the wider Frinton Park Estate. Indeed, its prominent location would have provided a focal point for prospective residents of the estate. As such, its historic function is also a factor which contributes to its significance.
20. The setting of the building includes the immediately surrounding area and in particular, the other adjacent properties which were designed by Oliver Hill, including the host property. Indeed, 4, 5 and 6 Cliff Way all reflect the style of the Round House, comprising partially curved frontages, but they do so in a way which draws the eye towards the more prominent and focal listed building on the corner.
21. The proposed development, even when taking into account the existing alterations to the host property and surrounding properties, would appear as a far more dominant feature within the street scene. As a result, it would reduce the prominence of the listed building particularly when viewed from the street and from the area of open space opposite the site. Furthermore, even though the primary architectural features would be retained to the building frontage, such as the 'wave like' elevation, this would not mitigate the visual harm caused by the straighter edges of the proposed extension, given the prominence of the development.
22. Indeed, the listed building is clearly visible from several public vantage points in conjunction with the host property. As such, not only would the development diminish the historic function of these buildings (through a reduction in the prominence of the Round House) but it would result in visual harm within the setting of the Listed Building as it would detract from the existing more subtle Modern Movement design features.
23. The appellants refer to various judgements⁵ which address the approach to establishing the degree of harm to a heritage asset and whether there is substantial harm, less than substantial harm and no harm. I have had regard to these judgements in reaching my conclusions and I consider that the

⁵ R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited [2019] EWHC 2899 (Admin) and Bedford BC v SSCLG [2013] EWHC 2847 (Admin)

proposed development would cause 'less than substantial harm' to the setting of the Listed Building within the meaning of Framework Paragraph 202.

24. The proposal would be harmful to the setting and thereby the significance of the Listed Building. As such, it would conflict with TDLP Section 2 Policies SPL3 and PPL9. Policy PPL9 refers to the Framework with regard to the consideration of harm to the setting of a listed building. I apply the relevant provisions of the Framework in the 'planning balance' below.

Living Conditions

25. The proposed development would not extend the host property any further to the rear. Indeed, there are already several windows which face towards the neighbouring dwellings on Waltham Way and the development would not increase overlooking to the west in comparison to the existing position. Furthermore, there would be a significant distance in excess of 35m retained to the neighbouring properties on Waltham Way. As such, there would not be any harm to the living conditions of these neighbouring dwellings.
26. The neighbouring dwelling at No 5, directly north of the host property, includes a front facing balcony which extends across the width of the property. This balcony is already partially overlooked by a window in the host property's north facing elevation. Furthermore, the impact of the proposed development could be mitigated through a condition requiring that the glass balustrade is brought further away from the edge of the property. This would make it very difficult to obtain views down towards the neighbouring balcony. Therefore, subject to an appropriately worded condition, there would not be any harm to the living conditions of the occupiers of No 5.
27. The proposed development would therefore comply with TDLP Section 1 Policy SP7, insofar as it requires that new development protects the amenity of existing residents.

Other Matters

28. The Council considers that the host property comprises a non-designated heritage asset. The National Planning Practice Guidance (PPG) makes clear that all non-designated heritage assets should be identified as such. Indeed, the Glossary of the Framework establishes that non-designated heritage assets are 'those identified by the local planning authority'. However, the development plan policies do not refer to the host property as a non-designated heritage asset, nor is it referred to in the Council's 'Local List'.
29. Nonetheless, the PPG also makes it clear that non-designated heritage assets can be identified as part of the decision-making process. It is therefore necessary to consider whether or not the host property is a non-designated heritage asset.
30. It is acknowledged that the building plays a very important role within the context of the wider Frinton Park Estate and that it was designed by Oliver Hill. The site also makes a positive contribution to the significance of the CA and listed building. However, these factors alone are not sufficient in this case to warrant its consideration as a non-designated heritage asset, particularly when taking into consideration the relatively large number of modern movement houses in the surrounding area. It should however be noted that this does not

diminish the importance to which I attribute to the building and its role within the CA.

Planning Balance

31. Framework Paragraph 202 requires that less than substantial harm is weighed against the public benefits of a proposal including, where appropriate, securing the heritage asset's optimum viable use.
32. The development would expand the living accommodation, but this would be a private benefit. In terms of public benefits, there would be some very minor social and economic benefits associated with temporary support for construction jobs during the construction of the development. The appellants suggest that a public benefit arising from this development includes that it would visually screen part of the upper storeys of No 2. However, the development would not provide a much greater level of visual screening than the existing dwelling at No 3. As such, this would be a very small benefit of the proposal.
33. The public benefits are very modest and as such they can only be afforded moderate weight. Conversely, the less than substantial harm to the heritage assets (the CA and Listed Building) should be afforded great weight, in line with the provisions of Framework Paragraph 199. As a result, the modest public benefits of the proposed development would not outweigh the less than substantial harms.

Conclusion

34. The proposed development would conflict with the development plan taken as a whole. There are no other material considerations of sufficient weight which indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR