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## Appeal Decision

Site visit made on 17 October 2022

**By Terrence Kemmann-Lane JP DipTP FRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2nd November 2022**

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**Appeal Ref: APP/P1560/W/22/3291146**  
**22 Penfold Road, Clacton-on-Sea, CO15 1JN**

- 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 and Mrs Carl against the decision of Tendring District Council.
  - The application Ref. 21/01615/FUL dated 16 September 2021, was refused by notice dated 6 December 2021.
  - The development proposed is a change of use from a bed and breakfast to a single residential dwelling (retrospective application).
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use from a bed and breakfast to a single residential dwelling (retrospective application) at 22 Penfold Road in accordance with the terms of the application Ref 21/01615/FUL, dated 16 September 2021.

### Preliminary matters

2. As paragraph 2 of the National Planning Policy Framework (the Framework) points out, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. At the time that the appeal application was determined by the council, the adopted local plan consisted of the saved policies of the 2007 Local Plan and Section 1 (the more strategic policies) of the Tendring District Local Plan 2013-2033 and Beyond (TLP), which was formally adopted on 26th January 2021. Section 2 (more specific policies) of the TLP was then still under examination, but was formally adopted on 25th January 2022. The policies of the 2 sections of the TLP supersede the 2007 local plan. Since applications should be determined in accordance with the development plan, it is the recently adopted plans that are my starting point in considering this appeal proposal.
3. In its response to the appeal, the council notes that in the appellants' statement the building is described as a family home, two bedrooms occupied by family friends with a separate kitchen and a shared bathroom. During consideration of the application the planning officer requested an amended description to read 'Retrospective application for change of use from a bed and breakfast to a house of multiple occupation' due to the floor plans demonstrating that there would be 5 bedrooms for the family and 2 rooms for friends which are linked to two kitchens. The appellants' agent disagreed with the proposed changed description and stated that the house is not a house in

multiple occupation and that the council has misinterpreted the definition in the Use Classes Order.

4. The application to the council and the appeal form both state that the change of use sought is from bed and breakfast accommodation to a single residential dwelling: that is the proposal before me. I appreciate that the floor plans show a kitchen on the ground floor and one of the first floor, but it is a matter for the council to consider any other action if it considers that there has been a different change of use.

### Main Issue

5. The main issue in this case is the effect of the proposed change from a bed and breakfast business to a single family dwelling on the supply of serviced tourist accommodation in the coastal resort of Clacton.

### Reasons

#### Planning policy

6. As set out in paragraph 2 above, Sections 1 and 2 of TLP, now constitute the district-wide adopted development plan. The relevant policy in the development plan is Policy PP9 'Hotels and Guesthouses', which supports new and improved hotels and guest facilities within defined centres (the defined centres as listed in Policy PP2). Importantly for this case, it also states that *"Within defined centres and along the seafront within the district's coastal towns, the Council will seek to retain the accommodation provided within hotels and guesthouses. Outside of these areas, the change of use or redevelopment of existing hotels and guesthouses will only be permitted if the applicant can demonstrate that the current use is no longer economically viable"*.
7. Policy PP2, mentioned in policy PP9, sets the Retail Hierarchy. It states *"The following centres, as defined on the Policies Map, provide the key locations that can be resilient to future economic changes and which should be considered as part of a sequential test for proposed main town centres. Retail development should take place at a scale appropriate to the size and function of the centre within which it is to be located. To guide this approach, the following retail hierarchy is defined: Major Town Centre - Clacton"* (The only centre of interest in this case). Beneath the list of centres it states: *"These centres will be the focus for 'town centre uses' which include retail, leisure, commercial, office, tourism and cultural, community and residential development. The Council will promote a mix of appropriate town centre uses within these defined centres with 'active street frontages' at ground floor level. Proposals must be properly related in their scale and nature having regard to the above hierarchy"*.
8. I note that in the planning officer's report it is stated that the site lies within the Town Centre Boundary, and the Protected Hotels and Guesthouses designation as defined **within both** the adopted Tendring Local Plan 2007 and *the emerging* Tendring District Local Plan 2013-2033 and Beyond (my emphasis). However, the Policies Maps of TLP, inset 'B.6 Clacton-on-Sea and Jaywick Sands' does not show Penfold Road as being in the Town Centre, and there is no designation of 'Protected Hotels and Guesthouses' within the key to the inset map (or the main Policies Maps). The only designation that Penfold Road comes within, as shown on inset B.6, is the 'Priority Area for Regeneration'.

9. Thus my understanding of the most relevant TLP policies includes the following:

In policy PP9, in the paragraph below the 3 bullet points, reference is made to "Within defined centres and along the seafront within the District's coastal towns".

The appeal site is not within a 'defined centre', as set out in policy PP2. I note that this policy is for retail and town centre development and does not mention 'visitor accommodation'.

The 'seafront' appears to be undefined, but it might reasonably be said that Penfold Road, and in particular No.22,- is a little remote from the seafront which, in this case I might interpret as Marine Parade, with its frontage to the north and the beach, Pavilion, Pier, etc, to the south.

Thus it is not in a locations where "the Council **will seek** to retain the accommodation provided within hotels and guesthouses" (my emphasis), but, as it continues "Outside of these areas, **the change of use or redevelopment of existing hotels and guesthouses will only be permitted** if the applicant can demonstrate that the current use is no longer economically viable" (again, my emphasis).

10. It seems a little unusual that within the defined centre and the seafront, the policy is to 'seek to retain the accommodation provided within hotels and guesthouses', whilst anywhere else in the district a change of use of existing hotels and guesthouses will only be permitted if the applicant can demonstrate that the current use is no longer economically viable. Nevertheless I can see that in Tendring District with its significant coastline and sandy beaches, it makes sense to help bolster the local economy by encouraging visitors, especially if they stay for 1 or more nights. It might be thought that the part of the policy that refers to areas outside the town centres and the seafront, is more concerned with the district's wider tourist economy (it includes an Area of Outstanding Natural Beauty, for instance), but since the site is within a seaside resort but not in a defined location or the seafront proper, I will approach the decision in this case giving a little less weight to protecting visitor accommodation than had it been clearly in a prime area for such uses.
11. In connection with the above, at the time that the application was refused, the adopted policy was the saved policies of the Local Plan 2007. It is clear from information before me that there are very distinct difference between the relevant policies of the 2007 plan and those in the current TLP. For instance, under the 2007 policies there was a protection area under policy ER24 within which the appeal site was situated, which clearly drove the council's decision.

#### The appeal site and the business

12. The application site comprises a semi-detached property having a small yard to the rear and a parking area comprising three spaces at the front. The property has three floors of accommodation. It appears that it is occupied at present by an extended family, the appellant, her husband and her father, her 2 sons, and a couple of the family's friends said to be lodgers. I saw the whole premises at my site visit; what I saw convinced me that it needs a considerable amount of renovation, and its accommodation would not be attractive to a visitor to the district, except one on a very low budget. A sizeable amount of capital would be likely to be needed to bring it to a good condition.

13. As to the viability of the business, it appears that there have been 2 previous applications for the change of use now sought, both in 2019, when I am told that marketing information was provided, but I have not been given sight of this. What I have been told is the applicant did initially run the property as a bed and breakfast and the Council sent potential occupiers who were homeless to her property, but that the flow of clients dried up. The appellant has submitted accounts from 2014 to 2017 which show the following profits: 2014 - £8831; 2015- £7771; 2016- £5172; 2017- £5513. It appears that since 2018 the premises has been mainly or wholly used as it is at present. These figures show a lowering of profit, following the first year and represent a poor return, and not a level of income that would finance the degree of renovation and up-lift in quality that might lead to it being a business making a reasonable level of profit.
14. Reference is made to the competition from the likes of the new Premier Inn and the Travelodge, which provide modern accommodation and facilities. I am told that the Premier Inn opened in 2015, on the seafront, overlooking the sea and has modern facilities, with reasonable room rates. The Travelodge is located in the town centre, again with modern facilities, and again I am told that this hotel opened in 2009 and offers discounted accommodation which resulted in a significant loss of trade from the appellants' business. The appellants' evidence is also that the Royal Hotel on Marine Parade East was recently renovated commanding a sea view, with modern facilities and has taken a lot of trade from existing B & B businesses in the area.
15. I have been given details about the personal circumstances of some of the occupants of the appeal property, primarily in terms of health issues. These may help to explain the deterioration that may have occurred recently in the condition of the property. But setting that aside, I am satisfied that the business was not viable when it was last trading and that there is little prospect of that situation being turned around as a result of dismissing the appeal. In my judgement the dwelling is not particularly suitable for a bed and breakfast business that could compete with modern facilities that Clacton has attracted in recent years. Added to this is the degree of renovation and up-grading that would be necessary in an attempt to make it viable, which the trading figures do not support. I consider that the officer's report is not correct to say that market forces are not a material planning consideration – in a case where commercial viability is concerned, market forces can certainly amount to a material consideration.

## **Conclusions**

16. My conclusions have obviously been reached under the policies of the recently adopted TLP. These policies, whilst sharing the same aim of maintaining and boosting the supply of visitor accommodation in the district, are couched in noticeably different terms to the earlier local plan policies under which the appeal application was decided. Viewing the proposed change of use against Policy PP9, there is clearly a conflict, but the appeal site is not in a prime area for visitor accommodation, and the over-riding fact to my mind is that I judge the business not to have been profitable, and the chances of it being turned around upon the refusal of permission are very small indeed. I conclude that it would serve no planning purpose to dismiss the appeal, and therefore I will grant planning permission.

## Conditions

17. The Council has suggested a number of conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance (PPG). The council's suggested conditions appeared to have ignored the fact that the appeal proposal does not include any operational development, and does not seek to change the building or its outside layout in anyway. It simply seeks retrospective permission for the existing property to be used as it has been in recent years. I therefore see no reason to require the development to be carried out in accordance with the plans, which merely record what is being used now. The parking provision exists and I see little or no scope to add secure cycle parking. There are no new hardstanding areas to be controlled, and no clear justification has been put forward for a removal of permitted development rights under Article 3, Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) England Order 2015, as required by paragraph 54 of the Framework. Part of the justification put forward for this condition is that the site is in a semi-rural area, which is clearly not correct. The council's suggested conditions do not pass the tests referred to in paragraph 56 of the Framework.

*Terrence Kemmann-Lane*

INSPECTOR