



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: 15 November 2022

Appeal Ref: APP/P1560/W/22/3291788
115 Tower Street, Brightlingsea, CO7 0AN

- 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 Karen Cooke against the decision of Tendring District Council.
 - The application Ref. 21/01906/FULHH dated 4 November 2021, was refused by notice dated 19 January 2022.
 - The development proposed is clearing of land and demolish existing garden outbuildings and construct a 2 storey double garage and workshop.
-

Decision

1. The appeal is allowed and planning permission is granted for clearing of land and demolish existing garden outbuildings and construct a 2 storey double garage and workshop at 115 Tower Street, Brightlingsea, CO7 0AR in accordance with the terms of the application, Ref 21/01906/FULHH, dated 4 November 2021, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

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

Preliminary matters

3. 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 25 January 2022. Since an application 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.

Main Issues

4. The main issues in this case are: i) The effect of the proposed development on the character of the area and the street pattern; and ii) the effect on the living conditions of neighbours in their rear gardens, particularly in respect of overlooking.

The site and its surroundings

5. Tower Street is mainly comprised of terraces of Victorian and Edwardian dwellings with those on the south-east side of the road benefitting from lengthy rear gardens. Uneven numbers 3-125 further benefit from rear access to their gardens by virtue of 'Lime Street' – an unmade track which runs at the rear of these properties. Lime Street provides secondary access to a number of ancillary storage buildings and areas serving the Shipyard Estate. There are a number of existing buildings at the end of the long back gardens, including long standing ramshackle sheds as well as more recent and substantial buildings. The structure at the rear of No.101 is dual pitched with an incongruous parapet roof above the entrance, whilst there are 2 tall large flat roofed structures at No. 105 finished in a corrugated metal with substantial roller shutter doors with rectangular metal housings at the top.
6. At this point, Lime Street forms the boundary between the residential area and a large commercial, mainly maritime/sailing related, area. There is a large storage shed with dual pitched roof in the immediate vicinity of the appeal site, and other open areas of boat storage. Beyond these the industrial area comprises large modern industrial sheds. Thus Lime Street marks the transition between commercial-industrial uses and long established housing, separated by long back gardens. The industrial buildings also front part of Tower Street at its southern end, beginning at the flank of No.137. Here there is a recent large commercial building in the modern architectural idiom, followed by an area of shipping containers, corrugated iron sheds and a recent car sales/workshop, faced in profiled metal sheeting, topped with a multifaceted barrel roof.

The effect of the proposed development on the character of the area and the street pattern

7. Policy SP7 of Section 1 of TLP seeks high standards of urban and architectural design which responds positively to local character and context. Policy SPL3 of Section 2 of TLP also requires, amongst other things, that the development respects or enhances local landscape character, views, skylines, landmarks, existing street patterns, open spaces and other locally important features.
8. The appeal proposal is a two-storey building comprising garaging and workshop/studio and small offices. It is architect designed with a definite modern aesthetic which nevertheless reflects traditional building forms in the local area that stem from the Dutch influence on the Essex coast. The dark material of walls and roof - powder-coated black squared steel corrugated sheet - echo timber cladding frequently seen in the coastal areas. The Lime Street façade features round windows utilising coloured glass for visual affect. The gambrel roof form has 2 separately angled facets to maximise the collection of the sun's heat. This roof form also maximises headroom for a given overall height and enables a centralised supporting structure delivering more sustainable shorter timber spans.

9. An important element of the design is the use of the cladding material chosen to act as an air solar heater which once heated is collected by a mechanical heat-recovery ventilation system and pumped through the building at lower level as ambient preheating, serving to test potentials for sustainable heating methodology integrated with the built fabric. Overall I consider that this is a high quality modern design that meets the aim of policy SP7.
10. This is all very well, of course, but the design also needs to be a good neighbour with adjacent development, including the housing on Tower Street. I have described in some detail the built surroundings of the appeal building in paragraphs 5 and 6 above. Because of the long gardens to the houses, the garden face of the building would be almost 40m from the principle rear elevation of the existing house and its neighbours. There is also a considerable number of curtilage structures in the rear gardens and planting, so that the building would have a good degree of separation from the housing. On the other hand, the building would mainly react with the rather dismal character of Lime Street and the commercial/employment/storage uses beyond. I also bear in mind that there are some recent buildings in the near vicinity that are unashamedly modern in appearance, and clearly reflect an acceptance that good design must embrace modern materials and sustainable building forms as well as responding to traditional idioms.
11. The main objection to the proposed building with regard to its effect on the character of the area, is the scale and form of the roof. The eaves height of the proposal is 2.7m whilst the ridge would be almost 5.7m high. I am told that there are 3 other buildings on Lime Street that have been approved in recent years that have ridge heights of 5m or over, the highest has a ridge height of 5.6m, but these all have dual pitch roofs. The appellant's architect has calculated that the additional size of the proposed gambrel roof compared with a dual pitch roof of the same height. The gambrel roof would be 17.145% greater in volume, but of course the dual pitch roof would sacrifice usable internal volume in the building compared with what is proposed.
12. The fundamental question is what would be the effect of the proposed development on the character of the area and the street pattern? I regard the street pattern as being the layout of the streets, but here the council seem to be referring to the pattern of development that lines the street. Be that as it may, the effect of the proposal would be a new building that would be somewhat larger than those that occupy other rear gardens in the vicinity, but no greater in its impact than the very large single storey dual pitched roofed workshop building on the opposite side of Lime Street. It would depart from the present character of this part of Lime Street in as much as at present it is bordered on the housing side by ramshackle sheds and fencing, and rather unpleasant storage buildings.
13. In contrast, the appeal building would be very well designed, and visually delightful, which would enliven the street scene. It would be a marker for the quality that could be expected of any future building on either side of the track, and it would have good credentials of sustainability. It would introduce a different element into the street scene, but one that I consider would add to and enhance the character of the area, and make it a more enjoyable place to be in. The gambrel roof, harking back to traditional building on the coastline, would very much be a part of the added experience.

The effect on the living conditions of neighbours in their rear gardens, particularly in respect of overlooking

14. The development proposes a first floor balcony with a platform height in the region of 2.8m to the north-west (garden) elevation, in conjunction with full-height glazed doors providing access to the balcony. In support of the appeal proposal it is put forward that garden areas which would be overlooked contain ramshackle structures on both sides.
15. Whilst the distance between the rear of the neighbouring houses and the location of the balcony would be over 40m, occupiers are entitled to be able to enjoy most of their garden without a perception of being over-looked other than from, usually, bedroom windows. This is particularly so in a situation such as here where, from what I could tell, this has been the case until now. Balconies are built to be used, and I can well understand a desire to protect the current degree of privacy.
16. The appellant's statement of case includes consideration of this issue and indicates an acceptance of using a fully opaque privacy screen or omitting the balcony completely. Since I have concluded that the present rear fenestration and balcony would lead to a sense of loss of privacy in the adjoining rear gardens, I have given consideration to dismissing the appeal for that reason. However, rather than reject the entire proposal I consider that I could limit the development to the building without the balcony by a condition, and also require revised details of the garden elevation of the building to be agreed with the council. I have decided that this course of action is the correct approach, meaning that there would be little further delay to the scheme without the added uncertainty that dismissing the appeal would bring.

Conclusions

17. On the principal matter of the effect of the proposed building on the character of the area and the street pattern I have concluded that, whilst the building would be a departure from the present street scene along Lime Street, it would be very well designed, and a visual delight. The gambrel roof would be a new feature in the area, but would be a design approach that would look back to many historic buildings that can be found on the coastline and its hinterland in Essex. The design is nevertheless overtly modern, but it should not be dismissed on this account, otherwise no creative development would take place. Set in the present environment of Lime Street, the building would give a lift to the immediate area which currently is characterised by ramshackle structures, broken fencing and large incongruous storage buildings. The appeal proposal would add to and enhance the character of the area and the pattern of development on Lime Street. As such it would be in conformity with the aims of policies SP7 and SPL3 of TLP.
18. With regard to the balcony and fenestration on the garden façade of the building, I conclude that there would be a distinct sense of loss of privacy and overlooking experienced by the adjoining neighbours when using what should be reasonably private open space. However this could be overcome by a conditions that require the balcony to be omitted and the revised treatment to the glazed areas in the garden elevation to be agreed with the council.
19. For these reasons I will allow the appeal subject to conditions.

Conditions

20. The Council has suggested a number of conditions in the event that the appeal is upheld. However, these relate to an entirely different development. Other than the standard condition to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004, the only relevant conditions are compliance with plans (but requiring the correct plans for the correct development to be substituted) and the frequently used construction management plan requirement. I will impose condition that I consider necessary that relate to the appeal development.
21. I consider that condition 2 requiring compliance with plans is necessary for certainty and avoidance of doubt as to the development permitted. Conditions 3 and 4, removing the balcony and requiring the submission of details of the garden facing elevation, are required for the reasons set out in paragraph 16 above. Condition 5 is for the construction management plan required for the reasons set out below. Condition 6 is to control exterior lighting which I consider is necessary to avoid extraneous light affecting neighbouring gardens and to reduce light pollution generally.
22. Condition 5 is a pre-commencement condition, because clearly the management plan has to be agreed before any construction can start, and I consider that it is necessary in this case because of the limited space on and alongside Lime Street and the appeal building occupies most of the width of the curtilage. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). In this case the appellant's agent has clearly stated on her behalf that the condition is acceptable.

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 hereby permitted shall be carried out in accordance with the following approved drawing numbers, except where required by other conditions: 0/A100/LP/001/A Location Plan A, 0/A100/LP/002 Proposed Plan, 0/A100/PR/001 Proposed Plan – Ground and First Floor, 0/A200/PR/001 Proposed Elevations, 0/A200/PR/002 Proposed Section and Roof Plan.
- 3) Notwithstanding the detail shown on drawing Nos. 0/A100/PR/001 Proposed Plan – Ground and First Floor and 0/A200/PR/001 Proposed Elevations, no balcony shall be erected on the garden elevation of the building hereby permitted unless express permission in writing is obtained from the local planning authority.
- 4) Notwithstanding the detail shown on drawing Nos. 0/A100/PR/001 Proposed Plan – Ground and First Floor and 0/A200/PR/001 Proposed Elevations, details of the garden elevation of the building hereby permitted shall be submitted to, and approved in writing, by the local planning authority, and the development shall be completed in complete accordance with the approved elevations.
- 5) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan 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 underbody washing facilities
- 6) No external lighting shall be installed on the building hereby permitted without details having been submitted to, and approved in writing by the local planning authority. Such lighting shall be located, designed and directed [or screened] so that it does not cause avoidable intrusion to adjacent residential properties or cause unnecessary light pollution outside the site boundary - "avoidable intrusion" means contrary to the Code of Practice for the Reduction of Light Pollution issued by the Institute of Lighting Engineers. Subsequently this lighting shall not be altered or augmented with any additional lighting without the prior approval in writing by the local planning authority.

End of Schedule