



Appeal Decision

Site visit made on 4 January 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/P1560/W/23/3315944

The Tavern, 55-57 Frinton Road, Holland on Sea CO15 5UH

- 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 A Smith, Anglia Holland Pub and Clubs Limited against the decision of Tendring District Council.
 - The application Ref 21/00964/FUL, dated 21 June 2021, was refused by notice dated 1 December 2022.
 - The development proposed is change of use and conversion of first and second floors to create 4 x two-bedroom flats, elevational changes to the building, demolition of single storey extension, erection of 3 x two-bedroom houses, parking, landscaping and turning area.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr A Smith, Anglia Holland Pub and Clubs Limited against Tendring District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the quality of the proposed development, with regard to the quality of environment this would create and the effect of this on the living conditions of residents and neighbours.

Reasons

Environment

4. The proposal incorporates two main elements. The first is the change of use and alterations to the first and second floors of the existing space used in association with the Tavern pub, into 4 x 2-bed flats. The second is the demolition of the single storey function room to the rear of the pub (including the loss of the small smoking yard area) necessitating alterations to the internal layout of the 'back of house' part of the pub and the addition of a new side door (service entrance) and the erection of a terrace of 3 x 2 bedroom houses.
5. The frontage of the proposed terrace would face the existing service road, and the adjacent Co-op store. The service road is to include a new turning area, for vehicular traffic associated with the development site and Co-op store. Views of the side elevation of the Co-op store would also be available from the proposed

houses. Nevertheless, the frontages of the houses would incorporate areas of defensible space, which in part would be enclosed by boundary treatments. This defensible space would provide a buffer between the terrace and the service road/turning area and the side elevation of the Co-op store. In this location, a low boundary treatment could be secured by a condition, which is designed to create the defensible space and offer some screening to the houses. These would also enhance the frontages, and complement the quality of the houses and provide some improvement to the appearance of this part of the site.

6. Notwithstanding the above arrangement, the main amenity areas for the houses would be in the form of rear gardens. I have not been given any specific size requirement for rear gardens for this type of house. However, Policy LP 4 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 (January 2022) ('LPS2') seeks to ensure that new dwellings are served by a private amenity space of a size and configuration that meets the needs and expectations of residents and which is commensurate to the size of dwelling and the character of the area. As such, I have assessed these on their merits.
7. Each house would incorporate a part paved and grassed rear garden, located close to and easily accessible from its respective living area. Each garden is broadly equivalent in size to the footprint of a single proposed house and of a regular shape, which would make these useable. These gardens would be capable of facilitating different activities, such as seating and drying out areas with some space for leisure and storage commensurate with a two-bed dwelling.
8. The rear gardens for the houses would be secured by fencing. The combination of the generous windows to the rear of the houses and the appreciable separation between these and the rear garden fencing, would allow sufficient daylight to the houses and an acceptable outlook from these. Also, the internal size of the accommodation for each house would exceed the government's 'Technical housing standards - nationally described space standard'.
9. Each house would also incorporate a first floor rear balcony. The balconies are intended to incorporate high obscure glazed screens on their side elevations. Nonetheless, these would allow a greater degree of overlooking of the gardens of the terrace. Therefore, and because I have found that the proposed gardens would provide acceptable amenity areas for the houses, the balconies are not necessary. As suggested by the appellant, the implementation of these could be prevented by a condition, if the appeal were to succeed.
10. The area between the Co-op store and the proposed and existing buildings is limited in size and would serve a number of purposes. These include the service road, vehicle parking, cycle storage, a service entrance for the retained public house and access to the proposed houses.
11. The scheme includes some parallel parking for the proposed development. However, there is some evidence of historical parallel parking along the service road. Based on the information before me, the proposed parking spaces are of an adequate size and the new turning area would allow these to function appropriately.
12. The parking associated with the residential use is limited and the site is within a centre with a range of shops and services nearby. As such, the use of the

vehicle parking is likely to be limited. On the information before me the servicing associated with the Co-op store is largely undertaken from the highway fronting this and the turning area would only accommodate small commercial vehicles. The servicing arrangements associated with the pub are also limited.

13. In light of the above and whilst there is no dedicated pedestrian access, I see no reason why the extent of the access within the appeal site, could not be designed and enhanced to function as a shared surface by incorporating a high quality finish, which could be secured by a planning condition if the appeal were to succeed.
14. Overall, I consider the quality of the external environment for the proposed houses to be acceptable.

Living conditions

15. The proposed terrace would introduce built development closer to the rear boundaries of the dwellings at 10 and 12 Colchester Road. Both these dwellings are single storey and incorporate rear gardens with a generous depth.
16. Because of its flat roof design, the height of the proposed terrace would be limited to about 6.4m and would be sited about 1m from the shared boundary wall. Furthermore, the northern gable of the terrace, due to its modest depth, would only extend part way across the rear gardens of the two adjacent dwellings in Colchester Road. The only facing window in the side elevation of the proposed end terrace house would serve a bathroom, which could be obscure glazed by a planning condition.
17. The shared boundary between the above dwellings and the appeal site comprises a wall which is over 2m in height with some mature landscaping near this. Together, these would provide some intervening screening of the proposed terrace.
18. As such, the proposed terrace, would not be visually intrusive or dominant. Therefore, this would not unacceptably affect the level of outlook or daylight received to the windows within the rear elevations of the adjacent dwellings in Colchester Road.
19. Furthermore, the creation of the terrace would require the removal of the car parking, outdoor cellar and smoking area of the pub and function room which are located adjacent to the rear boundaries of 10 and 12 Colchester Road. This is likely to lead to a reduction in the levels of noise and general disturbance arising from the use of this area.
20. The buildings known as 59-63 Frinton Road, incorporate flats on the first floor. Pedestrian access to these flats is via passageway to the right of the building which leads to an external staircase. The staircase leads to a modest flat roof terrace. This area is used for informal cycle and other storage. The rear windows of the first floor flats, which serve kitchens, living rooms and bathrooms face the terrace area.
21. The retained flat roofed area at the appeal site is to incorporate two roof terraces. The one would serve Flat 1 and the other would function as a communal area for the other 3 apartments. The plans show how these areas would be subdivided by obscure glazed balustrade and/or planting.

22. Based on the appellant's submissions, I accept that the use of a tall privacy screen would prevent intervisibility between the terraced area serving the flats at 59-63 and the proposed communal terraced area for the flats in the appeal property. The boundary treatment between the existing and proposed flats here would be limited in length and not located directly in front of the windows associated with the flats at 59a-63a. Therefore, this arrangement would not have an overbearing impact on the existing flats. Also, because these existing flats are slightly setback from the three storey tavern building and would not directly face the rear gardens of the terrace of houses, any views from the existing flats would be limited and therefore unlikely to result in any unacceptable overlooking.
23. The use of a tall boundary treatment along the perimeter of the communal amenity area for the proposed flats, would be sufficient to mitigate overlooking of the gardens for the proposed houses.
24. Nevertheless, the layout for the communal amenity area for the proposed flats includes an enclosure which faces the windows to bedrooms for Flat 1, which is single aspect and rearward facing. To safeguard the privacy of the occupiers of Flat 1, this enclosure would need to be tall. Therefore, the siting of tall enclosure close to the bedroom windows is likely to compromise the outlook from this flat. Also, this sizeable and outdoor communal amenity area, would be located just beyond some of the windows for Flat 1. This would introduce a degree of noise, activity, and disturbance.
25. The second floor balcony would be located centrally along the rear elevation of the extant pub building and would be at a high level. The extent of any overlooking from this towards the rear gardens of the proposed houses would be limited because of its siting and separation. However, its siting would allow more direct overlooking of the proposed amenity space for Flat 1.
26. Overall, the above arrangement would be wholly unsatisfactory for the living conditions of the occupiers of Flat 1 and is indicative of a contrived layout.
27. On the information before me, the Council found the overall quantum of the communal amenity space for the proposed flats to be acceptable. On the other hand, the appellant asserts that based on the Essex Design Guide, only 5 sqm of amenity space is required per flat. However, the full details of the Essex Design Guide are not before me. I have also considered the use of a condition to secure an alternative arrangement for the communal amenity area for the proposed flats. Nevertheless, in the absence of an alternative proposal, there is no certainty that a scheme which meets the private amenity space requirements for the flats without compromising the living conditions of the occupiers of the flats can be delivered. Thereby, resulting in an unimplementable planning permission.
28. For the above reasons, the design and layout for the proposed development would unacceptably harm the living conditions of its residents with regard to Flat 1. Accordingly, this would be contrary to Tendring District Local Plan 2013-2033 and Beyond Section 1 (January 2021) Policy SP 7 and LPS2 policies SPL 3 and LP 4. Together, these policies give a strong emphasis towards a high standard of urban design and place shaping principles. Amongst other things, these seek to protect the amenity of existing and future residents and users by requiring that buildings and structures are designed and orientated to ensure adequate daylight, outlook and privacy for future and existing residents.

Other Matters

29. The appeal site is located within the zone of influence of the Colne Estuary Special Protection Area and Ramsar site and the Essex Estuaries Special Area of Conservation. These are sites which are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations').
30. The conservation objectives of these sites generally seek to maintain and restore the distribution and function of the habitats upon which the qualifying features rely, thereby increasing their populations and distributions. Increased recreational activity has the effect of disturbing and reducing the activities of breeding and wintering birds which can have a subsequent impact on their population and distribution.
31. The Council has produced the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document ('Habitats SPD'), detailing a strategy for the avoidance and the mitigation of impacts of new residential development upon these important sites. This requires that a contribution is made towards mitigating the impact of additional residents, including measures to control access, monitoring, and mitigation of the sites.
32. Given the location of the appeal site, future occupiers would be likely to impact upon the sites thereby having a significant effect upon their integrity. The Habitats Regulations require the decision maker to undertake an Appropriate Assessment ('AA') where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority.
33. I have also consulted Natural England ('NE') as part of undertaking the AA. NE is not content that the proposed payment is sufficient to avoid an adverse impact to the integrity of the European Sites and relevant features. This is because the quoted figure is out of date, and applies to the previous financial year only. Nevertheless, all relevant contributions in the UU are index linked. As such, I am satisfied that the UU can secure the appropriate contribution towards the mitigation measures identified in the Habitats SPD.
34. The submitted UU also includes a Public Open Space contribution, based on a tariff set out in a 2021 update to the Council's Provision of Recreational Open Space for New Development Supplementary Planning Document. The UU specifies that the financial contribution would be paid prior to commencement of the development and is to be used by the Council for improvements to the nearest play area and open space to the site on Hereford Road.
35. The Council's Delegated Decision Officer Report identified that there is currently a deficit of about 17.68 hectares of equipped play/open space in Holland/Clacton-on-Sea. Any additional development in Holland/Clacton will increase demand on play facilities further.
36. Accordingly, the Public Open Space contribution is consistent with the aims of Policy HP 5 of LPS2 which says that the Council will work with partners and sports providers across the district to maintain, expand and improve the quality and accessibility of public open space, sports and recreational facilities of different types and will aim to achieve and exceed standards set out in the Council's 2017 Open Spaces Strategy or any future update and Policy DI 1 of

LPS2 which says that all new development should be supported by, and have good access to, all necessary infrastructure.

37. Therefore, the above obligations are directly related to the development, fairly and reasonably related in scale and kind to the development. The UU also complies with the tests set out in the Framework, the advice in the Planning Practice Guidance and with Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended).
38. I am aware that the appellant has sought pre-application advice and that the appeal scheme has been amended in light of the advice received. Even so, this and the above obligations do not address my concerns in respect of the main issue and overall conflict with the development plan.

Conclusion

39. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR