



Appeal Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/U2615/W/24/3343521

6 Trafalgar Road, Great Yarmouth NR30 2LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Frew against the decision of Great Yarmouth Borough Council.
 - The application Ref is 06/23/0663/CU.
 - The development proposed is change of use from mixed use (Classes C3 & C1) dwelling and B&B to class C3 residential dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At time of my site visit, the appeal property was occupied as a dwelling by the appellant and their family. The change of use had therefore occurred. This a neutral factor weighing neither for nor against the proposal and I have determined the proposal on the basis of the submitted plans.
3. There is limited planning history available for the site. However, no 6 operated as a guest house prior to its purchase by the appellant. There is disagreement between the parties regarding no 6's existing lawful use, namely whether the building comprises a mix of C1 and C3 uses, or whether the building is wholly in use class C1 with the owner's accommodation ancillary to its primary function. It is agreed the proposal seeks change of use to a residential dwelling, and I have considered the appeal on this basis.
4. Since the Council's decision was issued, the Great Yarmouth Design Code Supplementary Planning Document January 2024 (Design Code SPD) has been adopted. This adds further detail to policies in the development plan and is capable of being a material consideration in my decision.
5. On 30 July 2024, government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Also on 30 July, the Secretary of State made a written ministerial statement (WMS) entitled "Building the homes we need". During the appeal, the parties were invited to consider whether the proposed reforms to the Framework and WMS are of relevance to the appeal proposal and I have had regard to the parties' written responses in my decision.

Main Issues

6. The main issues in this appeal are:

- the effect of the development on the availability of visitor accommodation and the tourism economy;
- whether the development would provide a suitable standard of living conditions for occupants, with particular regard to private amenity space;
- the effect of the proposed development on the character and appearance of the area; and
- whether the proposed development would make adequate provision for local infrastructure, with particular regard to public open space.

Reasons

Supply of visitor accommodation

7. The appeal property is a five-bedroom guest house. The guest bedrooms are situated at the first floor and attic. The ground floor includes a dining room to serve visitors, and owners' accommodation including a bedroom, bathroom, and lounge. The appearance and layout of the appeal property is typical of other guest houses along Trafalgar Road.
8. Policy CS8 of the Great Yarmouth Local Plan Core Strategy 2015 (CS) identifies Great Yarmouth as one of the UK's top coastal tourist destinations. It recognises the significant value of tourism to the local economy, and the supporting text notes the high proportion of tourism-related employment within the borough. To ensure the tourism sector remains strong, criterion (b) of Policy CS8 safeguards the existing stock of visitor holiday accommodation.
9. The appeal property is within the 'Great Yarmouth Seafront Area', as defined by Policy GY6 of the Great Yarmouth Local Plan Part 2 2021 (LPP2). This area is the main focus for holiday makers with the greatest concentration of tourist attractions and range of related tourism and entertainment uses. At criterion (c), Policy GY6 resists the loss of key tourism uses to non-tourism uses.
10. The proposal would result in a loss of visitor accommodation. This would reduce the capacity of the borough to accommodate visitors, with associated reduction in footfall and spending within the local tourism economy. There would also be a loss of employment associated with the running of a guest house business. The proposal would therefore be counter to the aims of Policies CS8 and GY6 which seek to retain tourism uses and maintain the local tourism economy.
11. However, Policy CS8 permits the loss of existing visitor holiday accommodation in certain circumstances, including where it can be demonstrated that the current use is not viable. In addition, at 4.8.12 the CS requires that where it is no longer viable to continue the existing use, alternative leisure/visitor uses will be explored before loss to a non-tourism use is accepted.
12. The appeal property was marketed as a guest house business opportunity by a local estate agent, with details published on their website and third-party sites. The estate agent's marketing literature explains the appeal property was ran as a guest house for 18 years, receiving multiple industry awards and with regular forward bookings. The reason for the sale of the guest house was the

- retirement of the former operators. The building has been modernised with double-glazed windows, new boiler, and ensuite shower rooms serving each bedroom. Therefore, the marketing literature suggests the existing business was successful and the standard of accommodation is good.
13. The marketing exercise commenced in January 2020 and ran for a period of 21 months until the purchase by the appellant. The building was therefore marketed for a significant period, during which time there were 18 viewings and the price reduced on two occasions. However, with the exception of the appellant, no other offers were made. The reasons why other prospective buyers did not submit offers are not known. The marketing exercise therefore suggests there was limited commercial interest from prospective operators.
 14. The marketing exercise took place during the COVID-19 pandemic, including the periods of national lockdowns during 2020 and 2021. The estate agent continued to operate for the majority of the marketing period and therefore the pandemic is not likely to have prevented a prospective business operator from submitting an offer. However, during the hearing, the Council explained the significant adverse effects of the pandemic on the local tourism economy. Therefore, there is a reasonable prospect the marketing exercise was frustrated by the economic uncertainty of the time, deterring prospective buyers.
 15. The appellant indicates that since the refusal of planning permission, four guest houses at Trafalgar Road of similar size to the appeal property have been listed for sale and two have sold. In addition, the appellant identifies two larger guest houses at Trafalgar Road have been placed on the market, of which one has sold. This suggests there has been recent commercial interest in guest house businesses in the immediate area.
 16. The estate agent suggests the vendors had realistic expectations of the valuation of the property. However, the appellant estimates the current mean price for similar business premises is £214,000. This is significantly below the asking prices for the appeal property in 2020 and 2021. This suggests no 6 was advertised at a price above the market rate, which may have discouraged potential buyers.
 17. The appellant notes that any guest house business operating from the appeal property would face competition from chain hotels and other guest houses offering low-cost rooms. However, it is not demonstrated that there would be insufficient visitor demand or that low market rates would not achieve a suitable profit margin.
 18. The appellant suggests the former guest house business's low volume of online reviews implies low occupancy rates. However, online reviews are submitted voluntarily and cannot be assumed to accurately reflect rates of occupancy. The marketing literature notes that forward booking and account information was available. Such information may have provided further detail of occupancy rates but was not obtained by the appellant.
 19. Based on a national dataset, the appellant refers to an industry average occupancy rate of 45% across the season. However, no locally derived figure has been provided and it is unclear how occupancy rates would affect the overall viability of a guest house business.
 20. The appellant notes that some guest houses are used to provide short-term accommodation for homeless families during the low season. Whilst this

conflicts with the purpose of the guest houses in providing visitor accommodation, it nonetheless provides an additional source of income for guest house operators, particularly when occupancy rates and demand for holiday accommodation may be lower such as during autumn and winter months. The use of guest houses as temporary accommodation would therefore have a positive impact on the viability of a guest house business.

21. In summary, Policy CS8 permits the release of visitor accommodation where it is demonstrated the current use is not viable. The appellant asserts the existing use is not viable, relying principally on a marketing exercise undertaken in 2020 and 2021 in which there was limited commercial interest. However, this marketing exercise is somewhat aged and was undertaken during a bleak period for the local tourism economy as a consequence of the COVID-19 pandemic. Recent guest house sales provide a more optimistic picture of commercial interest in such businesses, and mean price data suggests the asking price for the appeal property exceeded market rates.
22. The Council's concerns with the reliance on a marketing exercise as evidence of viability were clearly articulated. However, limited additional evidence has been supplied. The appellant has made observations of the cost of room rates and occupancy levels and speculates that rates of return would be low and insufficient to employ additional staff beyond the owner occupiers. However, such information has not been quantified so as to demonstrate whether use as a guest house would or would not be viable.
23. Trafalgar Road comprises numerous guest houses in similar buildings. I have been provided no evidence to suggest the accommodation would be unsuitable or that the former guest house business was anything other than successful. Therefore, I have been presented no compelling evidence why the appeal property could not viably support a guest house business.
24. As discussed above, criterion (c) of Policy GY6 resists the loss of key tourism uses to non-tourism uses. The supporting text at LPP2 paragraph 3.46 places particular emphasis on resisting the loss of tourism uses where the building provides ground floor activity or frontage to the Seafront Area, but recognises that within upper floors offer more flexibility to incorporate non-tourism uses, where it is demonstrated there is no longer a need.
25. The appeal property's ground floor provides the main access, dining room, kitchen, and owner's accommodation, and therefore supports the overall tourism function of a guest house. However, it does not offer the same extent of ground floor activity as some units in the Seafront Area, such as the colourful, vibrant frontages at Marine Parade that are designed to entice holidaymakers from the street.
26. In an appeal decision¹ at no 19 Trafalgar Road for change of use of a guest house to residential use, the Inspector recognised Policy GY6 supports self-contained residential accommodation on upper floors, and that the scheme would not result in loss of a prominent frontage. However, the Inspector found the loss of visitor accommodation would conflict with Policy GY6. Since the appeal proposal fails to demonstrate the existing use is not viable, it has not been demonstrated that there is no longer a need for upper-floor tourist related uses, and a loss of tourism uses is not justified.

¹ APP/U2615/W/23/3327923

27. Permission was granted for change of use of nos 2 and 4 from guest houses to dwellings² and the Council's assessment of each suggests the change of use complied with the former Borough Wide Local Plan. The policy context has changed significantly and therefore I attach limited weight to those decisions.
28. The proposal fails to demonstrate the existing use as a guest house would not be viable. The proposal would therefore result in the unjustified loss of holiday accommodation and the loss of a tourism use within the Seafront Area. The proposal would therefore reduce the availability of visitor accommodation, with an associated loss of visitor investment and tourist-related employment and would therefore have an adverse impact upon the local tourism economy.
29. The proposal would conflict with CS Policy CS8 which seeks to ensure the tourism sector remains strong, including through safeguarding the existing stock of visitor holiday accommodation, and LPP2 Policy GY6 which resists the loss of tourism uses within the Great Yarmouth Seafront Area.

Private amenity space

30. No 6 has a short, hard surfaced front garden set behind a low front wall with railing, which provides separation between the building and the street. Some occupants of other buildings within the terrace row use their front gardens for outdoor seating. However, the front garden is overlooked from the street and by adjacent buildings and therefore offers little privacy. In addition, its functional use as a garden is constrained by its small size.
31. The building's rear elevation abuts the site boundary where it adjoins a footway that provides pedestrian access to the terrace row. No 6 therefore has no private amenity space.
32. The proposal would comprise a terrace dwelling with ground floor living areas. The Design Code SPD expects dwellings of this type to have direct access to a private walled courtyard garden with a minimum area of 25sqm, or a shared communal garden/courtyard.
33. The proposal would not provide direct access to a private or shared garden of the required size. Due to the constrained nature of the plot, it is unlikely that a suitable private garden could be provided within the site boundary.
34. The layout and limited provision of garden space at no 6 is typical of dwellings and guest houses within the terrace row. Furthermore, prior to its use as a guest house, no 6 has been used as a dwelling. However, the Design Code SPD indicates its purpose is to "inspire higher standards of design across the borough" and "set out clear principles and standards for how development should be designed in the borough, focusing on the priority aspects of design". The purpose of the Design Code SPD is not to replicate design standards of the past, but to increase the quality of design.
35. At paragraph 138, the Framework requires the Council make appropriate use of tools and processes for assessing and improving the design of development, with the primary means of doing so being the use of local design codes in line with the National Model Design Code (NMDC). At H.2.iii, the NMDC recognises that access to external private space is important for people's wellbeing and indicates design guides may include minimum standards for the provision of

² LPA Refs: 06/17/0567/CU (No 2) and (06/19/0401/CU)

- private space. Consequently, the Design Code SPD is a relevant material consideration of significant weight.
36. The dwelling would have five bedrooms and therefore could accommodate a large household. Conversely, the guest house use would support a smaller number of permanent residents, with most bedrooms occupied on a temporary basis by visitors. The increased number of permanent occupants of a large family home would generate greater need for private amenity space than that of a guest house.
37. Occupants of no 6 would benefit from access to public open spaces, including the open area of public green space opposite, and nearby St Georges Park. However, these are public spaces separated from the site by road infrastructure and would not compensate wholly for a directly accessible private or communal amenity space. For example, in the appeal decision at no 19, the Inspector noted the site's relationship to a large communal outdoor space used by existing residents for hanging out washing. No 6 would not benefit from an outdoor area for drying laundry.
38. The appellant notes that permission for change of use from a guest house to dwelling was granted at nos 2 and 4, which also lack private amenity space. However, both decisions were taken before the adoption of the LPP2 and Design Code SPD, and therefore were not subject to their requirements. Likewise, the appeal decision for no 19 pre-dates the Design Code SPD.
39. The proposal would result in a large family home with limited outdoor space. In the absence of private external amenity space, the proposal would not meet the functional needs of occupants and would not promote their health and wellbeing. Having particular regard to private amenity space, the proposal would fail to provide suitable living conditions for its occupants.
40. The proposal would therefore conflict with CS Policy CS9 which requires all new development protect the amenity of existing and future residents, and fulfil the day-to-day social needs of residents, including through providing suitable private and communal open space.
41. In addition, the proposal would fail to comply with LPP2 Policies A1 and A2 which support development that promote a high standard of amenity and ensure a suitable living environment and demonstrate high quality design. Furthermore, it would not satisfy paragraphs 135 and 139 of the Framework which require development achieve a high standard of amenity for existing and future users and indicates development that is not well-designed be refused.

Character and appearance

42. No 6 is within a mid-19th century terrace, comprised of properties of similar layout and appearance, with large bay windows at ground and first floor, traditional front doors with an ornate cornice, set behind low front boundary walls with railings and short front gardens. Properties within the terrace rows are painted with bold colours, particularly around the windows and doors and boundary wall coping stones. Each differs in colour from its neighbours, creating a vibrant and striking appearance when viewed along Trafalgar Road.
43. Whilst adjoining properties to the west are dwellings, those to the east comprise guest houses. A terraced row of guest houses of similar appearance

to no 6 continues beyond Russell Road. The two terrace rows form an extended group of guest houses along the northern side of Trafalgar Road.

44. The guest houses are readily distinguishable from dwellings by their signage which, are typically sited prominently on the front of the bay window and generally reflect the colour palette of the painted exteriors. Conversely, the dwellings which are grouped at the western end of the terrace are identifiable by their absence of signage.
45. The proposal would extend the group of dwellings. This would be evident principally though the absence of signage on the building's frontage, and to a lesser degree, the change in the intensity of the use building. No 6 is the last in the row of guest houses, before the dwelling group. Therefore, the proposal would erode the row of guest houses, reducing its length by one unit, but would not interrupt its continuous nature.
46. The magnitude of visual change arising from the proposal would be relatively small. The use of the building as a dwelling would be in keeping with the adjacent dwellings and would be compatible with adjoining guest houses. For these reasons, the proposal would not harm the character and appearance of the area.
47. The proposal would therefore comply with CS Policy CS9 which requires development respond to and draw inspiration from the surrounding area's distinctive built and historic characteristics.

Public open space

48. LPP2 Policy H4 requires new residential development make provision for publicly accessible recreational open space unless there is a sufficient surplus of open space provision.
49. The appellant considers the guest house owner's accommodation amounts to a dwelling and asserts there would not be a net increase in residential development. However, the Council considers the existing lawful use of no 6 falls wholly in use class C1. Paragraph 1.3 of the Open Space Supplementary Planning Document February 2023 (Open Space SPD) states that for the purposes of the SPD, holiday lets and holiday accommodation are not considered to be a residential use.
50. On this basis, the proposal would result in a net increase in residential development of one dwelling, and the requirements of Policy H4 would apply. The proposed use as a dwelling would place increased demand on open space within the ward, especially on facilities used mainly by the resident population, such as allotments, formal play space, and outdoor sports.
51. The appeal site is in Nelson Ward. Table 1 of the Open Space SPD has been informed by an open space needs assessment and identifies a deficit across all open space typologies in the ward. No evidence has been submitted to dispute this deficit in provision.
52. In the no 19 Trafalgar Road appeal decision, the Inspector concludes the intensity of use of public open space by visitors of a guest house would be greater than a dwelling. The Inspector notes they were not provided evidence of a local shortfall of public open space or details of how a financial contribution would be used. The Council considers that in the no 19 appeal case, it failed to

fully demonstrate the demand for open space associated with a dwelling. The Council's decisions relating to nos 2 and 4 were not subject to the same requirement for public open space since both decisions preceded the adoption of LPP2 and also the Open Space SPD.

53. The Council indicates that the effects of the proposed development can be mitigated through a financial contribution toward open space provision. Whilst the appellant maintains their view that the planning obligation would not be necessary, during the appeal a completed Unilateral Undertaking (UU) was submitted. The UU contains a planning obligation which secures a financial contribution to be paid to the Council and used for the provision of open space within Nelson Ward.
54. Since the proposal would comprise new residential development with an increase in permanent population, it would result in additional demand for public open space where a deficit of provision is demonstrated. The total sum of the off-site contribution reflects the per dwelling costs identified in Table 3 of the Open Space SPD, adjusted to account for inflation. Section 7 of the Open Space SPD sets out how the financial contribution will be spent. Therefore, I am satisfied that the planning obligation would be used for its intended purpose and would meet the statutory tests.
55. Having particular regard to public open space, subject to the planning obligation provided, I conclude the proposed development would make adequate provision for local infrastructure.
56. The proposal would therefore comply with LPP2 Policies H4 and GSP8 which requires new residential development make provision for publicly accessible recreational open space, including through use of planning obligations.
57. In addition, the proposal would comply with CS Policies CS14 and CS15 which require proposals provide relevant improvements to local infrastructure and promote healthy lifestyles by addressing deficiencies in the provision, quality of and access to sports facilities, playing pitches, play spaces and open spaces.

Other Matters

Personal circumstances

58. The appellants experience poor health and consider themselves to be disabled persons. The appellant's favoured the appeal property due to its size and location which enables the appellants to live with their extended family, who provide care to the appellants. Since the appellants acquired the property, the ground floor bathroom has been adapted to a wet room with the assistance of grant aid from Adult Social Services. A new kitchen has been fitted which offers better accessibility for the appellants.
59. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, and the Human Rights Act 1998. The PSED includes three duties, namely the need to eliminate discrimination, harassment, victimisation, and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and do not share it; foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In addition, I have had regard to paragraph 60 of the Framework which requires the needs of groups with specific housing requirements are addressed.

60. The appellant is reliant on care being provided at home and their health needs could not suitably be met within a residential institution. I have been provided no evidence that the appellant's sought housing suited to their needs through the social housing sector. The appellant confirmed at the hearing that, at the time of purchasing the appeal property, there were a small number of existing five-bedroom dwellings available in the local area within their budget. Therefore, the evidence before me does not demonstrate that the needs of the family could not reasonably have been met by an existing dwelling within the local housing market. Therefore, I attach only moderate weight to the personal circumstances as a factor in favour of the scheme.

Local land charges search

61. The estate agent's marketing literature describes the appeal property as a business opportunity for a guest house. However, the selling agents were unable to provide any information on the authorised status of the property.
62. The Local Land Charges Search response, dated 30 September 2021, identifies the documents of the development plan, including the CS. Copies of a small number of CS policies relating to housing development were appended to the land charges search response. However, not all CS policies were provided, including policies relevant to this appeal, for example Policy CS8 which is a strategic policy applicable to all areas in the borough.
63. The land charges search response was undertaken shortly prior to the adoption of the LPP2 and does not list its policies since it did not form a part of the development plan at that time. The response does however identify the LPP2 as in preparation. The land charges search therefore provided necessary information regarding development plan policies.
64. It is unfortunate the appellants were unaware that planning permission would be necessary to occupy the appeal property at time of purchase. However, this factor does not outweigh conflict with the development plan.

Listed building

65. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires I have special regard to the desirability of preserving listed buildings, their setting, or any features of special architectural or historic interest which they possess.
66. The College of Art and Design, including its railings to east and north, is situated to the southwest of the appeal property and is a Grade II listed building. The building has been converted to flats.
67. The art college is a two-storey building with a basement, constructed in 1912 with a steel frame, red brick cladding and terracotta details. The corners have polygonal turrets with terracotta panels at the divisions of the storeys and terracotta sills to the windows. The deeply recessed central door is within a round-arched recess below the art college's signage. Therefore, the building's significance is derived from its architectural, historic and cultural interest.
68. There are views between the front of the appeal property and the art college building. However, the art college building is on the southern side of Trafalgar and beyond the junction with Nelson Road Central. The art college building is therefore physically separated from the appeal site by road infrastructure and

the green space to the south of Trafalgar Road. The proposal includes no changes to the appearance of the appeal property and therefore would not affect the listed building or its setting.

Proportionality

69. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to ensure the tourism sector remains strong, including through safeguarding the existing stock of visitor holiday accommodation, which is a legitimate objective. The relevant planning policy objectives could not be achieved by means less imposing or intrusive, and the minimum action necessary to achieve those important ends, would not have an excessive or disproportionate effect on the interests of the persons affected.
70. The public interest cannot be served by means that cause less interference with the appellant's rights. Therefore, dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 1 and Article 8 would not occur.
71. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Conclusion

72. I have found the proposal would not harm the character and appearance of the area and would make suitable provision for public open space. However, I have identified harms in respect of the supply of visitor accommodation and tourism economy, and a failure to provide suitable living conditions for occupants.
73. I have had regard to the personal circumstance of the appellant. However, in this instance, these do not outweigh the conflict with the development plan.
74. The proposal would therefore conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

- Mr Simon Wheatman BSc (Hons) MRTPI, Agent
- Mrs Ann Frew, Appellant
- Mrs Stephanie Frew-Mulligan, Relative of appellant

FOR THE LOCAL PLANNING AUTHORITY:

- Mr Robert Tate, Planning Officer
- Mr Robert Parkinson MRTPI, Development Manager
- Ms Sammy Buttifant, Planning Officer

DOCUMENTS

- Unilateral Undertaking 20 August 2024 (signed version)
- Decision notice, extract of delegated report, and floor plan for planning application 06/17/0567/CU (No 2 Trafalgar Road)
- Decision notice and delegated report for planning application 06/19/0401/CU (No 4 Trafalgar Road)