

Appeal Decision

Site visit made on 11 July 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2024

Appeal Ref: APP/X1545/W/23/3333321

Willie Almshouse, School Road, Great Totham CM9 8PT

- 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 Mrs Clare Heyes of Willie Almshouse Charity against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/23/00317.
 - The development proposed is described on the planning application form as:
"Construct 2no 1 bedroom semi-detached cottages in the rear gardens of the existing Almshouses forming a courtyard appearance off the return of the existing property. The proposals will result in some site clearance of some of the trees and bushes on the footprint of the proposals, but will retain the large majority around the site and woodland. There will be no alterations or demolition of the existing listed building, and extensive discussions have been held with the local listed building officer on the design of the proposed dwellings to maintain the same design creating the courtyard appearance."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Part E of the appeal form notes that the description of development has changed. I have been provided with a copy of the letter indicating this change was made by the Council upon validation of the application. However, I have not received any written confirmation that a revised description of development was formally agreed between the parties. Accordingly, the description used in the banner heading above has been taken from the original application form.
3. The appeal site is located near the Grade II listed Willie Almshouse and Chapel and I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. The appellant has submitted a decision notice, along with floor plans, elevations, site and block plans, for a listed building consent¹ that was approved after the refusal of the application now under appeal. The appellant has requested that the appeal be determined based on these new plans. While the plans do share notable similarities to those previously considered, I am

¹ LBC/MAL/23/00769

mindful of the *Holborn Studios Ltd*² judgment and cannot be certain that the nature and extent of the changes proposed would not deprive those entitled to be consulted on the application of the opportunity to make any representations. Therefore, I shall determine the appeal against the plans on which the Council made its original decision.

Main Issues

5. The main issues are:

- whether the proposed development would be acceptable in terms of its effect on the character and appearance of the area, bearing in mind the special attention that should be paid to preserving the setting of the Grade II Listed Willie Almshouse and Chapel;
- whether the proposed development would provide acceptable living conditions for future occupiers and the occupiers of neighbouring properties; and
- whether the proposed development would make appropriate provision for biodiversity on site.

Reasons

Character and appearance

6. The appeal site is located within the grounds of the Grade II Listed Willie Almshouse and Chapel (the LB). The LB dates from the mid-19th century and originally consisted of almshouses and a chapel arranged in an L-shape, facing a garden courtyard with a central lawn. South of the courtyard lies mature landscaping bordered by woodland. It is understood that the LB has historically been operated by a charity since its inception, providing housing for local people in need.
7. The buildings are single-storey and constructed from brick with pitched roofs and chimneys. Externally, aside from modern peripherals such as television aerials and external lighting, there is little evidence of external alterations, although the chapel has been converted to residential use. The LB showcases intricate brick detailing and traditional mullioned windows with white frames, while the former chapel has leaded windows.
8. In the context of the appeal, the special interest of the LB derives from its traditional architectural design, its layout around the courtyard, its relationship to the surrounding woodland, and its contribution to the community through the provision of housing for those in need.
9. The proposed development involves constructing 2 additional semi-detached cottages within the grounds of the LB, designed to resemble the existing buildings. Although detached, they would be positioned to the southern side of the existing courtyard, effectively enclosing it with a U-shaped built form, as opposed to the current L-shape.
10. Because the new cottages would be located behind the LB and with no street frontage, the Council regards the proposal as a form of backland

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

development. The appellant disputes this, arguing that the new cottages are not standalone units but rather an extension to the almshouses complex as a whole.

11. In reviewing this issue, I have considered the development descriptions in the application form, appeal form and decision notice. Despite some variations, all describe the proposal as being for 2 no 1 bedroom semi-detached cottages. Additionally, the relevant section of the application form notes the proposal would result in a total net gain of 2 residential units. While some shared communal facilities, such as gardens, may exist, the proposal essentially adds new independent units of accommodation. I have thus treated the proposal as such.
12. Policy H4 of the Maldon District Approved Local Development Plan 2014-2029, July 2017 (the LDP) addresses the effective use of land. In relation to backland and infill development, Policy H4 provides that such development will be considered on a site-by-site basis and permitted if specific criteria are met. The supporting text defines that backland or infill development relates to the development of residential gardens. Although the appeal site is used communally, it is nevertheless part of a residential garden, leading me to conclude that the proposal qualifies as backland development.
13. Policy H4 requires proposals for backland development to meet 4 specific criteria, the first being that there is a significant under-use of land and the development would make more effective use of it. The garden area currently provides open space and mature landscaping for the benefit of residents. As such, I do not find the land is currently significantly under-used, and the proposal fails to satisfy the first criterion. Thus, by virtue of the conflict with this criterion alone, the proposal would conflict with the provisions of Policy H4. The remaining criteria, including those concerning living conditions, heritage and ecology, will be discussed in subsequent sections.
14. Policy D1 of the LDP emphasises the importance of respecting and enhancing character and local context, having regard to factors including the historic environment.
15. The lawned courtyard is not fully enclosed by built development, with the landscaping and woodland forming its southern boundary. The current LB layout ensures all units have views over the lawned courtyard toward the mature landscaping and woodland, providing a welcome sense of spaciousness.
16. The proposed development would introduce a substantial built form to the southern edge of the amenity area, severely diminishing the existing sense of spaciousness and drastically altering the character of the LB complex as a whole, which has remained largely unchanged from its original built form. Thus, the proposed development would represent an incongruous overdevelopment of the site that would not reflect the established character and context of its surroundings.
17. While the Council found the proposal would harm the character and appearance of the area, it did not identify harm to designated heritage assets, based on its Conservation Officer's advice. Under section 66(1) of the Act, decision-makers must give special regard to the desirability of preserving

listed buildings or their setting, or any features of special architectural or historic interest which they possess. I have sought the Council's clarification on this matter and its position has been confirmed. The appellant has also been given the opportunity to respond to the Council's comments and I have had regard to these representations in my decision.

18. Despite the Council's conclusion on this issue, having regard to my findings in respect of the character and appearance of the area and my statutory duty under section 66(1) of the Act, for the reasons set out previously I find the proposal would adversely affect the setting of the LB.
19. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given my findings above, I find the harm to the setting of the LB to be less than substantial but nevertheless of considerable importance and weight.
20. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
21. The appellant has emphasised the charitable status of the complex and noted the development's intention to provide an extension to the current provision of affordable accommodation. I acknowledge the positive historical role of the almshouses in serving the local community, and the expansion of its provision would constitute a public benefit.
22. However, I must assess the proposal based on the details before me, including those previously described as set out on the application form. In this respect, there is no planning obligation or alternative mechanism before me to secure the provision of affordable housing as described in perpetuity. Accordingly, I can give only limited weight to these public benefits.
23. For these reasons, given the great weight I must give to the conservation of designated heritage assets, the harm I have identified would not be outweighed by public benefits.
24. I have taken account of the plans subsequently approved by the aforementioned listed building consent, noting some similarities to the appeal proposal. However, the considerations for listed building consent and planning permission differ, and having reached a different conclusion from the Council regarding the effect of the proposal on the LB, the listed building consent is of limited weight in my decision. Additionally, even if I was to follow the appellant's request and determine the appeal against the plans granted listed building consent, the details shown on these plans would not overcome the previous harm I have identified.
25. While I note the reference in the submitted evidence to another Grade II listed building at 16 School Road, I am satisfied from my observations at my visit that the proposal would have no effect on its setting. However, the

absence of harm in this regard is a neutral factor that does not overcome my previous findings.

26. For the reasons given above, I conclude that the proposal would harm the character and appearance of the area and would fail to preserve the setting of the LB. Accordingly, the proposal would conflict with Policies S1, S8, D1 and H4 of the LDP. In respect of this issue, and in addition to the provisions set out previously, these policies seek to promote sustainable development and the effective use of land. It would also conflict with the relevant provisions of the Framework, the aims of which have previously been set out.

Living conditions

27. The current layout consists of 2 adjoining rows of single-storey terraced dwellings arranged perpendicularly to one another. There are no distinct boundaries separating the properties and all external spaces appear to be communal.
28. Because of this configuration, no dwellings within the complex directly face each other. As a result, while there may be some limited views between windows, the angle at which the buildings are positioned helps minimise this intervisibility.
29. The proposed development, however, would place the new dwellings directly opposite those in the northern wing of the complex. The north elevation of the new dwellings would feature kitchen windows. Although floorplans of the existing buildings were not provided, my observations at my visit suggested that some of the south-facing windows of the northern wing likely serve living areas or bedrooms. With no boundary treatments and the limited distance between the properties, the proposed development would lead to direct overlooking and a loss of privacy, which would adversely affect the living conditions of both current and future occupiers.
30. The appellant has suggested using obscure glazing for the kitchen windows of the proposed dwellings to prevent overlooking. While the kitchens are part of an open-plan layout with clear views from windows on the opposite side, blocking views over the communal garden would create a compromised living environment for future occupiers, and thus, this solution would not fully address the issue of privacy.
31. The proposed development would also be situated near the eastern wing of the existing almshouses. Although the Council expressed concern that the proposed building would appear overbearing to the occupiers of the eastern wing, this relationship is comparable to the existing arrangement between the northern and eastern wings at their northeast intersection. Moreover, the detached nature of the proposed building would provide a limited but welcome degree of separation to ease overbearing concerns. As such, I do not find the proposal would have a harmful overbearing effect on existing occupiers.
32. I have not been provided with any technical assessments regarding potential overshadowing. While the proposed building may reduce some sunlight to the communal garden area, its relatively low height would ensure that a reasonable amount of sunlight would be retained, particularly during the summer months when the garden is most likely to be in use. Similarly, while

the rear of the proposed dwellings may experience some overshadowing due to the proximity to landscape features, I am not convinced that this would significantly affect the living conditions of future occupiers.

33. Although I find no harm in respect of the overbearing or overshadowing effects of the proposal, I conclude that it would harm the living conditions of existing and future occupiers through overlooking and loss of privacy. It would therefore conflict with Policies H4, S1 and D1 of the LDP which, in respect of this issue, seek to promote sustainable development that protects amenity. It would also conflict with the relevant provisions of the Framework, which have similar aims.

Biodiversity

34. Policy N2 of the LDP requires that all development seeks to deliver a net gain in biodiversity and geodiversity where possible. Any development that may have an adverse effect on designated sites, priority habitats and / or protected or priority species, either individually or cumulatively, will require an assessment as required by relevant legislation or national planning guidance.
35. In this case, a Biodiversity Net Gain (BNG) assessment and a Preliminary Ecological Appraisal (PEA) have been submitted, although they were not before the Council when determining the planning application. These reports were submitted in support of a subsequent planning application, and the Council has been given the opportunity to comment on them. I am therefore satisfied that no party would be procedurally disadvantaged should I elect to consider these details.
36. While I do not have full details of the subsequent planning application to which the reports pertain, the details I have been provided with appear to closely resemble the appeal proposal. As a result, I find the conclusions of the BNG assessment and PEA broadly applicable to the appeal proposal.
37. Both the BNG assessment and PEA conclude that, subject to conditions, the proposed development could deliver a net gain in biodiversity and avoid harm to protected species and habitats. The scope of the assessments appears proportionate to the proposed development, and I am presented with no substantive evidence to lead me to an alternative conclusion than those reached in the submitted reports.
38. Accordingly, I conclude that the proposed development would not generate harm to protected or priority species or habitats on site. In respect of this issue, the proposal would therefore accord with Policies S1, S8, D1 and N2 of the LDP, which, in addition to the provisions previously set out, require development to conserve, enhance and make a positive contribution to the natural environment. It would also accord with the relevant provisions of the Framework, which have similar aims.

Other Matters

39. Paragraph 11 d) i. of the Framework provides that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies in the Framework that protect areas or

assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 directs that this includes the policies of the Framework relating to designated heritage assets.

40. Therefore, having concluded that the proposal would result in less than substantial harm to the setting of the LB that would not be outweighed by public benefits, the policies in the Framework relating to designated heritage assets provide a clear reason for refusing the proposed development. Accordingly, matters relating to housing land supply and the status of the development plan are not determinative to the appeal.
41. The site lies within the Zone of Influence of one or more European Sites comprising the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The appellant has submitted a Unilateral Undertaking (UU) with the appeal securing a financial contribution to mitigate the additional recreational pressure on the European Sites arising through the proposed development. The Council has advised that the UU would adequately secure the necessary mitigation. In the event that I was minded to allow the appeal, it would be necessary to consider this matter within an appropriate assessment. However, because I have found the proposal to be unacceptable for other reasons, an appropriate assessment has not been undertaken.

Conclusion

42. Although I have identified no harm in respect of biodiversity, I have concluded that the proposal would be harmful to the character and appearance of the area, would fail to preserve the setting of the LB, and would not provide acceptable living conditions for future occupiers or the occupiers of neighbouring properties. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

P Storey

INSPECTOR