



Appeal Decision

Site visit made on 21 August 2024

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2024

Appeal Ref: APP/A1530/W/23/3335956

Bonnie Blue Oak Public House, 40 Oak Road, Tiptree, Essex CO5 0NF

- 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 P Hiller against the decision of Colchester City Council.
 - The application Ref is 223042.
 - The development proposed is erection of a shop to be used as a convenience store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an amended drawing no OAK/ 10 C with the appeal. This shows a revised car park layout, amended pedestrian access, cycle parking and the installation of bollards. I have considered whether it would be appropriate to accept this plan, having regard to the 'Procedural Guide: Planning Appeals – England' (2024), and the tests given in the Holborn Studios judgement¹. The Procedural Guide makes clear that the appeal process should not be used to evolve the scheme and that in most cases the appeal should be determined on the basis of the plans upon which the Council made its decision. I cannot be certain that interested parties and statutory consultees are aware of the revised plans. This would prejudice the interests of those parties and I have determined the appeal on the basis of the plans originally submitted.
3. The Council has confirmed that the reference to Tiptree Neighbourhood Plan 2022-2033 (made May 2023) (TNP) Policy TIP17 in the second reason for refusal was an error. I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - whether the site is a suitable location for the proposed use with regard to local and national policy for the siting of main town centre uses;
 - the effect of the proposal on the character and appearance of the area; and
 - whether the proposed car park would be safe for pedestrians, cyclists and drivers.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Reasons

Suitable Location

5. Colchester Borough Local Plan 2017-2033 Section 2 (July 2022) (LPS2) Policy SG6 sets out that proposals for town centre uses will need to demonstrate that a sequential approach has been undertaken as required by national policy. The National Planning Policy Framework (the Framework) sets out at paragraph 91 the requirements for the sequential test.
6. The site is not within an existing centre. I have not been provided with details of the locations of other defined centres within Tiptree. The appellant asserts the site is in an edge of centre location. Edge of centre is defined in the glossary to the Framework for retail purposes as a location that is well connected to, and up to 300 metres from, the primary shopping area. From the evidence before me and my observations at my site visit, I have no reason to consider that the site lies in such a location. I have therefore considered the appeal on the basis that the site lies in an out of centre location. Consequently, the proposal should be subject to the sequential test. There is no exception for small scale urban development in the policy or the Framework.
7. The appellant's case largely relies on the benefits of a small food store within walking distance of residents, and reducing the need to travel by the private car. However, there is no robust assessment to substantiate either of these benefits in the submitted evidence. I concur with the Council's assessment that the store at the Shell Garage on the B1022 is closer to a 10 minute walk from the appeal site than the 20 minutes alleged by the appellant. While it may primarily serve those purchasing fuel, it nonetheless provides a service. The larger stores beyond this would be within a reasonable cycling distance of the appeal site.
8. Given the very limited space shown for cycle parking, the proposal would not readily encourage travel by cycle, but rather would make provision for it. I also note that the appellant refers to the proposed unit as being attractive to drivers travelling past the site when avoiding the centre of Tiptree. The proposal would therefore not be car-free as put forward in part of the appellant's case. There is no evidence to support the appellant's assertion that the proposal would maintain the vitality of the Town Centre and the existing businesses within it. It is not the role of the planning system to prevent competition between retailers, therefore an absence of competition with other retailers would not weigh in support of the proposal.
9. Paragraph 95 of the Framework advises where an application fails to satisfy the sequential test, it should be refused. There is no sequential test before me. There is insufficient evidence to demonstrate that there would be over-riding benefits from the provision of a local facility which would outweigh the conflict with the development plan.
10. It has not been demonstrated that the proposed development would be in a suitable location for the proposed use. It would therefore be contrary to LPS2 Policy SG6 and Paragraph 91 of the Framework which require development in out of centre locations to be supported by a sequential test.

Character and Appearance

11. Oak Road is a mostly residential street, with a range of dwelling styles, types and positions relative to the road. There are a range of materials with red and brown bricks predominating, but render and weatherboarding can also be found. The exception is the Bonnie Blue Oak, which has a long history as a public house. The appeal site occupies land adjacent to the Bonnie Blue Oak which is partially hardstanding in use as its car park, and some grassed land with a hedge and a tree.
12. The proposed retail unit would sit adjacent to the dwelling at 48 Oak Road which is a two storey semi-detached property. The first floor windows, and the gable features on the side elevation to the car park give the proposed building a domestic appearance at first floor level. The proposed building would be the same height as No 48. However, its detached, narrow form would be at odds with the prevailing form of development in the surrounding area, where properties tend to be semi-detached, terraced or otherwise linked to create wider frontages.
13. The proposed retail unit would effectively have a shop front to two elevations. These would be limited in refinement or detailing that would add visual interest to the building. The overall width of the shop front, and the proportions of the elements of the shop front would not appear cohesive or well related to the elevations on which they would be sited. They would also be poorly related to the upper floor of the building, with the windows on the front elevation to Oak Road appearing cramped due to the height of the shopfront. There would be no meaningful relationship between the shop front on the side elevation and the features of the upper floor.
14. Furthermore, the extent of glazing would be at odds with the prevailing domestic pattern of fenestration in the surrounding area. This domestic pattern is also reflected in the appearance of the Bonnie Blue Oak which although in commercial use, also exhibits this pattern.
15. The Council has identified the Bonnie Blue Oak as a non-designated heritage asset (NDHA). Its significance is derived from its historic interest as a public house of some longstanding. The appeal site forms part of its setting as it is part of the wider area used in association with the public house, in this instance for parking.
16. Were the development to be allowed, it would result in a reduction in the separation between the public house and the surrounding built development. However, the public house would continue to occupy a much wider plot than the surrounding development. While a further commercial use would be introduced, two modest commercial units would not be akin to a small local centre. Views through to the surrounding countryside and the rural setting of the NDHA would be retained.
17. Landscaping on the site consists of an area of grass, a small stretch of hedge and a tree. This makes only a very limited contribution to the character and appearance of the area and to the setting of the NDHA given the small scale of the grass and hedge, and the relative youth of the single tree. The appellant's case sets out the tree is to be retained, and details of protection for the tree could be secured by condition. Its loss would not cause unacceptable harm to

either. I therefore consider that the proposed development would have a neutral effect and therefore would preserve the significance of the NDHA.

18. I have found that the proposed building would not be of a high standard of design. I attach significant weight to this harm which would not be outweighed by the lack of harm I have identified in relation to the significance of the NDHA. The proposal would therefore have an adverse effect on the character and appearance of the area, contrary to Colchester Borough Local Plan 2013-2033 Section 1 (2021) (LPS1) Policy SP7, LPS2 Policies DM15 and DM16, and TNP Policy TIP02. Taken together and insofar as they relate to this appeal, these policies require development to be of a high standard of design and exhibit individual architectural quality.

Car Park Safety

19. The proposal would utilise the existing wide access which serves the car park for the public house. While it may be that the appellant intends the proposal to mainly serve people walking to the site, their evidence also refers to the proposed shop being used by those passing through Tiptree and avoiding the town centre. This would suggest those using the car. The proposal would therefore result in increased use of the access.
20. The layout of the proposed car park would require drivers turning left into the site to continue to turn quite sharply left to access the parking spaces. I am not satisfied that drivers making this manoeuvre would have sufficient visibility to be able to safely respond to the presence of cars exiting the site or other more vulnerable road users passing across the site. This has the potential for creating conflict between different road users, including pedestrians and cyclists.
21. I therefore conclude that the proposed car park would not be safe for pedestrians, cyclists and drivers. It would therefore be contrary to LPS2 Policy DM21 which requires development proposals to create safe layouts that minimise conflicts between traffic, cyclists and pedestrians. It would also be contrary to the advice in Paragraphs 115 and 116 of the Framework which confirm that development should create safe places and be refused if there would be an unacceptable impact on highway safety.

Other Matters

22. There would be economic benefits arising from the proposal during the construction process and while the shop was in operation from the employment it would provide. I attach limited weight to this given the small scale of the proposed development.
23. The proposal would be within the development limit of an existing settlement. However, the site is at present in use as a car park to serve the public house and providing a small buffer between the residential property and the car park. I therefore would not categorise the site as being under-utilised.
24. The proposal is for a shop. There is no evidence that the proposal would be for a shop within Use Class F.2 which is for the local community. Furthermore, the appellant had no objection to the Council's proposed condition to restrict the use of the building to Use Class E(a) which is a commercial use class. The proposal therefore would not be a community facility.

25. While the Council identified a number of policies which were relevant to the development, it is not merely a numerical exercise when assessing development proposals. The main parties agree there would be no harm to residential amenity. However policy compliance is to be expected of development proposals and these factors would be at best neutral.
26. Two site allocations are proposed, one with a boundary in proximity to the appeal site. I am not aware how development of the allocations would relate to the appeal site or that it would be likely that the service provided by the proposed retail unit would be a practical or realistic option for future occupiers of those allocations. These therefore provide only very limited support for the proposal. The assessment of heritage assets in relation to those allocations would have no bearing on this decision.

Conclusion

27. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to indicate the decision should be made otherwise. For the reasons given, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR