



## Appeal Decision

Inquiry held on 20-22 & 27 September 2022

Site visit made on 23 September 2022

by **D J Board BSc(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 6<sup>th</sup> December 2022**

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### Appeal Ref: **APP/P1560/W/22/3295313**

#### **Colchester Institute, Church Road, Clacton on Sea, Essex, CO15 6AP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Churchill Retirement Living Ltd against Tendring District Council.
  - The application Ref 21/02027/FUL, is dated 25 November 2021.
  - The development proposed is Demolition of existing buildings and redevelopment for retirement living accommodation for older people (sixty years of age and/or partner over fifty five years of age) comprising 61 retirement living apartments including communal facilities, access, car parking and landscaping.
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#### **Decision**

1. The appeal is dismissed and planning permission for Demolition of existing buildings and redevelopment for retirement living accommodation for older people (sixty years of age and/or partner over fifty five years of age) comprising 61 retirement living apartments including communal facilities, access, car parking and landscaping is refused.

#### **Preliminary Matters**

2. The appellant has provided amended plans. The plans were consulted upon following the case management conference<sup>1</sup>. Therefore interested parties have had an opportunity to make further representations in response to the amended documents. Having considered the scale of the changes and that they could be viewed I am minded to accept these plans as part of the appeal on the basis that no parties' interests would be prejudiced by my taking them into account.
3. Local Plan policy PPL3 was listed in the Council's putative reason 3. This policy is concerned with the rural landscape. The parties agreed that it is not relevant to the site given it is located in the urban area of Clacton on Sea<sup>2</sup>.
4. The parties drew my attention to the Emerging Clacton Seafront Conservation Area Character Appraisal and Management Plan 2021<sup>3</sup> (CCAA). However, this document has not been examined and found sound. As such I attach very limited weight to it.

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<sup>1</sup> SOCG para 3.5 table 3

<sup>2</sup> Para 83 ID9

<sup>3</sup> CD50

5. Evidence was submitted at the Inquiry regarding possible alternative schemes, with reference to pre application discussions<sup>4</sup>. However, these schemes are not before me. I have considered the scheme before me on its merits.

### **Background and Main Issue**

6. As set out above, this appeal is against the failure of the Council to determine the planning application. There is not, therefore, a formal decision of the Council. The evidence<sup>5</sup> makes it clear that, had it been in a position to determine the planning application, the Council would have refused planning permission for the scheme. The Council initially provided six putative reasons for refusal. Prior to the Inquiry opening the parties completed a heritage statement of common ground, viability statement of common ground and statements of common ground on other issues<sup>6</sup>.
7. The Council confirmed that it accepted that the site would be unlikely to be used for educational purposes<sup>7</sup> and that there would be appropriate parking provision for the scheme<sup>8</sup>. As such the Council would not be defending putative reasons 1 and 2.
8. During the Inquiry a s106 agreement was submitted in the form of a planning obligation. Following the closing of the Inquiry a sealed copy of the planning obligation was provided<sup>9</sup>. It makes provision for securing a financial contribution for mitigation in accordance with the Essex Coast RAMS SPD<sup>10</sup> which the parties consider would address putative reason 4. I address this under other matters. The obligation would also provide financial contributions toward provision of public open space and health infrastructure. I also address this under other matters. This sought to address putative reason 5 and the Council confirmed it would not be defending this reason<sup>11</sup>.
9. The viability statement of common ground<sup>12</sup> confirms that the Council and the Appellant's viability experts are in agreement that it has been proved that the scheme would not be economically viable if the affordable housing requirements of policy LP5 were applied. As such the Council confirmed it would not be defending putative reason 6 at the Inquiry<sup>13</sup>.
10. Accordingly the Inquiry focussed on putative reason 3 and the main issue in the appeal is:
- Whether the proposal would preserve or enhance the character or appearance of the Clacton Seafront Conservation Area.

### **Reasons**

11. The appeal site is in the Clacton Seafront Conservation Area (CSCA) which is a designated heritage asset. The adopted Conservation Area Appraisal (CAA)<sup>14</sup> provides a summary of the special character of the CSCA. In particular that this is derived from its seaside architecture and formal planned street pattern.

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<sup>4</sup> CD 12 3.4

<sup>5</sup> SOCG

<sup>6</sup> CD 62, CD 63, CD 64

<sup>7</sup> ID2 para 3

<sup>8</sup> ID2 para 3

<sup>9</sup> ID10

<sup>10</sup> CD 45

<sup>11</sup> ID2 Para 4

<sup>12</sup> CD 64

<sup>13</sup> ID2 Para 4

<sup>14</sup> CD49

It further identifies that the area includes Victorian and Edwardian buildings in the heart of the coastal resort. It recognises that these buildings were part of the early planned development of the resort.

12. There was no dispute that the more specific part of the CAA relevant to the appeal site would be the section headed 'East of Anglefield'. The appeal site would have frontages to Church Road, Harold Road and Thoroughgood Road. The CAA describes Church Road in further detail and the section within which the appeal site is located. In particular the institutional character derived from the presence of college buildings is identified and specifically the scale of those buildings within the existing street scene. The presence of the appeal building is a continuation of what is described as more varied development on the south side of Church Road. The overall significance of the CSCA in this area is derived from the Seaside Architecture and the formal planned street pattern.
13. The existing building on the site has been disused for some time. It was agreed that it was originally designed in a style typical of its period of construction<sup>15</sup>. Neither party suggests that the existing building makes a positive contribution to the CSCA or that it should be retained. The main area of dispute explored at the Inquiry was to what extent it should be used as a benchmark that informs the development of the appeal site. There was agreement about the area of the site where the existing building is four storey, which is described as the 'east' part of the site. Mr Murphy also accepted<sup>16</sup> that a new building of four storey height in this position would preserve the character of the CSCA. The dispute remains over the western end of the site where the existing building is lower in height.
14. The Design and Access Statement<sup>17</sup> (DAS) describes the existing development and that the western side of the site on the boundary with Harold Road as scaling down to two storeys. This change in scale is key to the Council's concerns regarding the scale of the proposed scheme. It is acknowledged by the Council that the existing building is a negative feature but nonetheless it is suggested that its proportions should provide the baseline for assessing what might be an appropriate form of new development on the site. I therefore consider this point below.
15. I understand why the Council consider the existing building could form a baseline. However, the appeal site sits within a varied area where both building heights along the surrounding road and the appearance of buildings are mixed. The urban grain plan<sup>18</sup> shows that the appeal site sits on a block which is between buildings with smaller plots and footprints and an area where there are buildings with larger footprints in the form of flatted development. Many of these buildings also address the corners with design features. As such I consider that it would be reasonable to have a higher building on the western area of the site. Indeed, within this context, a well-designed building of the scale proposed could be acceptable in principle.

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<sup>15</sup> ID 8 para 7

<sup>16</sup> ID 9 para 30

<sup>17</sup> CD12

<sup>18</sup> CD12 page 22

16. The Council was concerned about the extent of the landscape coverage<sup>19</sup> and building line<sup>20</sup> of the appeal scheme along Church Road compared to existing. In this regard the site plan for the scheme shows that it would not lead to a scheme that would protrude unacceptably beyond the extent of the existing buildings it would relate to in the street scene. In addition to this the landscape frontage drawing shows that an area commensurate with other sites nearby could be achieved. If I was minded to allow the scheme the detail and quality of this could be secured through the imposition of appropriate conditions.
17. The appeal plans contain a number of sections<sup>21</sup> through the site which were referred to in evidence. In particular these show the difference between the scale of the existing building and the appeal scheme and capture the relationships with nearby buildings on Church Road, Harold Road and Thoroughgood Road. Overall, these demonstrate that the scale of the building could sit comfortably within the area.
18. The scheme would be comprised of a single building that would have a frontage to Harold Road and then turn the corner and have a frontage to Church Road also. The building would be four storey in height throughout. There would be changes in height due to the use of different roof forms. The layout of the appeal scheme would not impact on the street pattern of the CSCA as it would not exceed the site frontages. However, the execution of the seaside architecture approach would in my view be the key to the success of the scheme in its entirety preserving or enhancing the CSCA. Policy SP 7 is clear that overall all new development should meet high standards of urban and architectural design. Therefore, the second element to consider is whether the design proposed would achieve this.
19. The design of the scheme is described as adopting a 'seaside' architectural style<sup>22</sup> with elements drawn from surrounding buildings that are representative of this style. In particular the design includes turrets on the corners of the building in order to create focal points and these would be highly visible within the street scene. The DAS also highlights the use of gable features, horizontal banding and window patterns along with a central set back in the building. The submitted Design Character Board provides examples from Marine Parade, such as The Grand and Turret House and also refers to Langtry Court to the rear. The site is located to the rear of Marine Parade but would be visible from it along the roads which lead from it. The buildings along Marine Parade are distinct from those to the rear and it seems to me that the site would sit in a transitional location between the sea front and the area to the north of Church Road. In this context the appellant's design approach to seek to deploy seaside architect is appropriate in principle. However, the execution of this is key.
20. The appeal scheme attempts to respond to the seaside architecture evident along Marine Parade and on the surrounding streets. The material palette would be appropriate and the quality could be secured by condition. However, the details shown to be applied to the appeal scheme would differ in proportion

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<sup>19</sup> Mr Lemburg Proof of Evidence Appendices – Appeal Brochure Section 08 Landscape frontage comparison drawing

<sup>20</sup> Page 33 CD12

<sup>21</sup> Sections AA and BB, CC and DD

<sup>22</sup> Para 43 ID9

to those they seek to emulate. In this regard the gables and turrets would not be successful in creating a 'seaside' style. In addition whilst the material palette would be appropriate, as would banding, the approach to the treatment of the appeal scheme would be convoluted and appear monotonous. As a result it would appear out of character in the street scene and would not be reflective of the high standard of design required by the development plan and national planning policy. In this regard the execution of the Seaside architecture approach would not be successful.

21. The historical mapping evidence<sup>23</sup> provided to the Inquiry demonstrates that the southern side of Church Road and east of Harold Road has never exhibited the same characteristics as the area to the west. The site is appreciated within the wider street scene of Church Road and would contribute to views to and from the seafront. There was agreement that the appeal scheme would not be visible in long distance views. However, it remains the case that the site would be visible in the immediate townscape. This would be from the surrounding streets and within the CSCA.
22. A number of viewpoint locations were provided<sup>24</sup> and addressed in evidence at the Inquiry. These views would be along primarily straight roads which would offer views of the appeal scheme within the street scene of the locality within this part of the CSCA. The scheme would introduce a four storey building across the site to both main frontages. Whilst the increase in massing in itself would be acceptable the architectural detail and finish of the scheme would result in it appearing unduly prominent, particularly when viewed in context with surrounding properties. This would be true particularly from views 01 and 04 shown on the viewpoint location plan<sup>25</sup>.
23. There would not be long distance views however the building would be visible within the immediate street scene within the CSCA. The overall design concept has merit however its execution shown on the submitted plans would lack the appropriate proportions and detail to be read as seaside architecture along with existing buildings. Further the approach deployed would not represent a contrasting approach of high quality that could enhance the CSCA. As such I consider that the appeal scheme would appear discordant and intrusive. Therefore I consider that the scheme would not preserve or enhance the character or appearance of the CSCA.
24. Having assessed the effect of the proposal in heritage terms it is necessary to identify any harm, characterise its magnitude and then balance that harm against any public benefits the proposals may bring<sup>26</sup>. In doing so I am conscious that great weight and considerable importance should be given to the asset's conservation. I have concluded that the scheme would not preserve or enhance the character or appearance of the CSCA. I am mindful of the scale of the development in relation to the designated heritage asset, the CSCA, and find that the harm caused would be less than substantial. However, the Framework is clear that great weight should be given to an asset's conservation. In this case the harm that I have identified needs to be weighed against the public benefits of the development and I set these out below.

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<sup>23</sup> CD12 Section 2

<sup>24</sup> Mr Lemburg Proof of Evidence Appendices – Appeal Brochure Section 6

<sup>25</sup> Appeal Brochure section 06

<sup>26</sup> ID5

25. The appeal scheme would provide 61 units of residential accommodation. It would provide housing during the plan period. Policy LP2 supports development for a variety of forms of residential accommodation to meet the future needs of older and disabled residents as well as family housing. The appeal scheme would not be in conflict with this policy. I understand that the plan seeks to deliver suitable housing over the plan period and that the district currently has a healthy supply of housing<sup>27</sup>. Nevertheless, whilst the plan may provide flexibility there is nothing to rule out development of suitable sites where other policies are met. Therefore I attach significant weight to the provision of housing.
26. The Council seeks to make provision for older persons over the plan period and highlight that the plan has been recently adopted. The appeal scheme would be specialised older persons accommodation in the form of sheltered housing or retirement living<sup>28</sup>. There was agreement at the Inquiry that if allowed the accommodation should be subject to a condition that would limit its occupation in this manner.
27. The Council's policies clearly support the provision of this form of housing whether as part of the overall dwelling mix of a scheme or as a specific scheme<sup>29</sup>. The appellant considers that there is a need for the provision of specialist accommodation of the type proposed and there is no dispute that the district has a high proportion of over 65s. I appreciate that there are no specific housing allocations within the plan solely for older persons market housing and that the appellant considers that there is an unmet need in the district. However, the Council's approach does not prevent schemes coming forward as part of allocations or on non allocated sites such as the appeal site, whether a need as suggested by the appellant exists or not. Indeed the Council's policy for the supply of housing (LP1) is expressed as a minimum. This allows for sites, such as the appeal site, to come forward. The provision of specialist housing is therefore also a benefit that attracts significant weight.
28. The site is located within a priority area for regeneration identified in Policy PP 14<sup>30</sup>. The areas identified are set out to be a focus for investment and that proposals which are consistent with regeneration aims will be supported. However, the policy also makes it clear that the Council will seek to preserve or enhance the heritage assets of the areas. The scheme would support economic growth through expenditure from use of shops and services. The policy aims to make places better to live, work and visit and to improve the quality of the physical environment. It is clear that redevelopment of the site would be within the aims of Policy PP 14 for the regeneration of the area. However, part of that regeneration is about the physical environment and in this case I consider that the design execution of the scheme would conflict with this part of the policy. As such I attach moderate weight to the regeneration benefits of the scheme.
29. The scheme would re-use a site that is previously developed and make effective use of the site. As such the scheme would make use of a previously developed site for housing in accordance with the Framework which attracts substantial weight.

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<sup>27</sup> ID8 para 29

<sup>28</sup> ID9 para 60

<sup>29</sup> Policy LP2

<sup>30</sup> CD 44

30. The appeal scheme would be located in a sustainable location, within the built up area of Clacton, which is not a matter in dispute. I understand that the appellant consider this to be important for the provision of older persons accommodation. In this regard the scheme would accord with LP policies SPL1, SPL2 and CP1. This would weigh in favour of the scheme. It would attract substantial weight.
31. The appeal scheme would make effective use of the site and in this regard would accord with paragraphs 119 and 124a of the Framework. This would also weigh in favour of the scheme and attract substantial weight.
32. In terms of social benefits, by providing specifically designed housing, the scheme would contribute to reducing demands on health and social services, benefits from new friends and companions, increased happiness and life satisfaction of future residents<sup>31</sup>. These benefits are not necessarily certain and have not been quantified. Therefore, overall, I attach moderate weight to these considerations.
33. The release of under occupied housing stock is also cited as a benefit. This is on the basis that when residents move to occupy retirement housing they free up underutilised family housing in the local area. The appellant considers that the appeal has the potential to free up 61 underutilised homes in Clacton and environs. This might be the case but it is by no means certain and I have no evidence that this would in fact be borne out. As such I attach limited weight to this consideration.
34. The scheme would provide a number of energy saving and efficiency measures and comply with LP policy SPL 3 B (d). The appellant's other submissions regarding environmental benefits focus on enhancement of the CSCA and the absence of adverse archaeological impacts. In particular that the scheme would remove the existing building which is considered to negative. Reference is also made to the draft CCAA and that within that document the appeal site is shown to be removed from the CSCA. However, the site has not been removed from the CSCA and I give limited weight to the CCAA. As such my considerations are on the basis of it being within the CSCA. Therefore, given my findings on the design approach I attach limited weight to environmental benefits.
35. The Framework states that when considering the impact of a proposal on the significance of a designated heritage asset great weight should be given to the asset's conservation. Therefore taking all the above into consideration, I am of the view that, the public benefits do not outweigh the harm I have found to the heritage asset whether balanced on an individual basis or cumulatively.
36. The statutory duty under section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the CSCA. I have found that the scheme would not preserve or enhance the character or appearance of the CSCA. It would therefore be in conflict with LP policy PPL8 (a) which amongst other things requires new development in conservation areas to preserve or enhance the special character of the area especially in terms of design, it would also be in conflict with SP7 and the Framework which seek new development that respond positively to local character and context to preserve and enhance the quality of existing places.

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<sup>31</sup> Mr Shellum Proof of Evidence 8.28-8.33

## Other Matters

37. Policy DI1 sets out infrastructure requirements for new development within the district. Part (d) of that policy allows for appropriate additional mitigation in the event that viability improves prior to completion of a development. The scheme before the Inquiry does not propose affordable housing and this was agreed between the parties. The submitted planning obligation<sup>32</sup> includes a review mechanism. This would involve payment of a deferred contribution for affordable housing or to undertake a Gross Development Value Report. This would accord with the requirements of the development plan. Therefore I consider that this obligation would be necessary, would be directly related to the development and fairly and reasonably related in scale and kind to the development. There would be no conflict with Regulations 122 & 123 of the Community Infrastructure Regulations 2010 (as amended) (CIL Regs) or paragraph 56 of the Framework.
38. In addition to affordable housing the planning obligation secures contributions for open space and healthcare. Based on the evidence presented, I consider that these contributions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. Therefore, they would meet the tests within the CIL Regs and those in paragraph 56 of the Framework. Overall, having regard to the matters secured by planning obligations I am satisfied that the scheme would make adequate provision for the infrastructure needs arising from the proposal, consistent with the aims of LP policy DI1.
39. The appellant has referred me to decisions at sites in Fleet Hampshire<sup>33</sup> and Basingstoke<sup>34</sup> and the planning balance and weight attached to benefits in these cases. I have carefully considered that case. However, I have considered the case before me based on its individual merits, location and circumstances and my considerations of weight in the preceding sections follow from this.
40. The Council requires mitigation for new development within the Zone of Influence for one or more European designated sites identified in the Essex Coast RAMS SPD<sup>35</sup>. The mitigation would be to address the likely significant adverse effect of the scheme on the designated sites, either alone or in combination with other projects, with regard to the effect of recreational disturbance on the integrity of the habitat sites as a result of the resultant increase in visitor numbers to the coast arising from the development. This is addressed in the submitted planning obligation. This approach reflects the requirements of the SPD. As I am dismissing the appeal for other reasons, I have not taken this matter any further.
41. I note that the Council did not raise concerns regarding the effect on the setting of the nearby Listed Buildings<sup>36</sup>. I have no reason to disagree with these conclusions.
42. Local residents expressed concerns regarding the condition of the building, the site overall and resultant anti-social behaviour. Correspondence was provided which shows that the appellant has been in direct contact with residents to try

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<sup>32</sup> ID10

<sup>33</sup> CD 58

<sup>34</sup> CD 59

<sup>35</sup> CD 45

<sup>36</sup> CD 12 page 23 & CD 53 para 6.27



and resolve issues. It demonstrates that the appellant has made every effort to resolve the matter. Consequently, whilst I am sympathetic to the concerns raised about antisocial behaviour this is not a matter that I can attach any significant weight to.

43. Whilst not a matter of dispute between the main parties<sup>37</sup> I understand that local residents are concerned about the level of car parking provision. In particular overspill of parking and visitor parking onto surrounding roads in the area. I was able to view the surroundings and locations referred to by Cllr Honeywood as part of my site inspection. The evidence provided to the Inquiry<sup>38</sup> sets out that the scheme would provide sufficient car parking to cater for the demand from future residents. This would be 20 spaces at a ratio of 0.33 spaces per apartment<sup>39</sup>. This would be below the Essex wide standard<sup>40</sup>. The standards allow for a reduction in an urban area with good public transport links. The location of the appeal site would meet this exception. In addition the parking survey information<sup>41</sup> demonstrate that there is generally on street parking available within close proximity of the site. Taken together I consider that all these factors demonstrate that the approach to parking is acceptable and planning permission should not be resisted on this basis.

### **Conclusion**

44. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the Development Plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework which is of course a material consideration to which substantial weight should be attached. In this case the scheme would be in conflict with LP policies PPL8 and SP7. I have also found that it would be in conflict with the heritage policies of the Framework. Therefore, in the circumstances of this appeal the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.
45. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

*D J Board*

INSPECTOR

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<sup>37</sup> CD 62 paras 8.14-8.18

<sup>38</sup> Mr Fayers proof of evidence

<sup>39</sup> Para 6.11 Mr Fayers PoE

<sup>40</sup> Table 3 Mr Fayers PoE

<sup>41</sup> Section 7 PoE Fayers

**APPEARANCES**

FOR THE APPELLANT:

Neil Cameron KC

He called:

Gideon Lemberg BArch RIBA

Paul White BA (Hons) MPhil MCIfA PIEMA

Matthew Shellum BA (Hons) DIPTP MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Paul Shadarevian KC

He called:

Tim Murphy IHBC MCIfA

Steven Stroud BA (Hons) LLB (Hons) MA MRes MSc MRTPI

INTERESTED PARTIES:

Cllr P Honeywood

J Gittins

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID1 Opening submissions on behalf of the Appellant
- ID2 Opening submissions on behalf of the Local Planning Authority
- ID3 Site inspection viewpoints
- ID4 Updated version of planning obligation
- ID5 Relevant case law agreed between the advocates
- ID6 Revised text condition 3
- ID7 Appellant's agreement to pre commencement conditions
- ID8 Closing submissions on behalf of the Local Planning Authority
- ID9 Closing submissions on behalf of the Appellant

### **DOCUMENTS SUBMITTED POST INQUIRY**

- ID10 Completed planning obligation