
Appeal Decision

Site visit made on 9 September 2021

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2021

Appeal Ref: APP/A1530/W/21/3271817
37 Mile End Road, Colchester CO4 5BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Jennifer Seaton Brown against the decision of Colchester Borough Council.
 - The application Ref 202893, dated 10 December 2020, was refused by notice dated 19 February 2021.
 - The development proposed is the demolition of existing buildings and creation of five apartments.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal is against the refusal of application 202893 for the development of five apartments, but the appellants appeal statement related to the refusal of an alternative application 192906. On realising this error, the appellant was given the opportunity to submit a revised statement which was followed by a response from the Council and final comments from the appellant.

Main Issues

3. The Council raised four main issues:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of the occupiers of No 41 Mile End Road in relation to privacy;
 - whether the proposal would be likely to adversely affect the Essex Coast European Sites as a result of recreational disturbance; and
 - whether the proposal would provide any necessary supporting infrastructure for sport/recreation and community facilities.
4. In addition, following the site visit, representations were invited as to whether the proposal would provide acceptable living conditions for future occupiers of the apartments in relation to noise, disturbance and privacy arising from use of the car park¹. The appellant did not respond to this issue.

¹ Letter to the parties dated 13 September 2021

Reasons

Character and appearance

5. The appeal concerns the redevelopment of a long narrow site on the western side of Mile End Road which is currently occupied by a disused single storey shop with a long range of outbuildings behind and a yard to one side. The proposal is for a part two-storey, part single-storey building on approximately the same footprint to provide five mostly two-bedroom apartments.
6. There is no dispute that the site is suitable for residential development, indeed planning permission has previously been granted for five units with shared kitchen and living room (Ref 171307). Subsequently two larger essentially two-storey schemes for eight and six self-contained apartments have been refused (191793 & 192906).
7. The edge of town centre location, close to the railway station, is characterised by primarily two-storey development lining either side of Mile End Road with some larger three and four storey buildings opposite the site in Groves Close. There is consequently no objection to the two-storey frontage element of the scheme with its first-floor link to the adjacent property Nos 39/39a. This has the appearance of a traditional semi-detached house but has been converted to two flats.
8. However, the site adjoins the car park of the Bricklayers Arms public house which forms a wide gap in the otherwise built-up frontage of Mile End Road. The car park provides a rear access to the public house which fronts onto Bergholt Road, but importantly exposes the full depth of the appeal site to public view. The proposal, like the current building, would be built hard up to the boundary of the car park, but the two-storey element would extend about two thirds of the length of the site, deeper than both Nos 39/39a/41 on one side and No 31 on the other side of the car park. The scheme would step down to a subservient single storey at the rear, but the depth of the two-storey element, albeit split visually into two sections, would be excessive in relation to its surroundings and would lead to an unduly bulky façade when seen from the street and the car park.
9. For these reasons the proposal would significantly harm the character and appearance of the area in conflict with Policy DP1 of the Council's Development Policies 2010 and Policy UR2 of the Core Strategy 2008, both revised in 2014. These require development to respect and enhance the character of the site, its context and surroundings, and resist developments that are discordant with their context.

Living conditions - No 41

10. The first-floor windows serving the kitchen area and, slightly obliquely, the dining area of apartment 4 would overlook the rear garden and patio area behind No 41 from a few metres away, the common boundary fence being just 7.1 m away². This would cause an undue loss of privacy for those using the rear garden, particularly the area immediately behind the house where privacy is most expected.

² Appellant's statement of case paragraph 7.2

11. The appellant proposes omitting the kitchen area window to resolve this but, notwithstanding possible compliance with the building regulations, this would lead to unsatisfactory living conditions for the occupiers due to a lack of daylight and ventilation in that part of the flat. The dining area window is not specifically mentioned by the Council and the appellant assumes that it is acceptable, but this would give only slightly oblique views of the rear garden and would also unduly affect the privacy of those using it.
12. For these reasons the proposal would provide unacceptable living conditions for the occupiers of No 41 due to a lack of privacy in the rear garden/patio area. This would conflict with Policy DP1 which seeks to protect existing residential amenity with regard to (inter alia) privacy and overlooking.

Living conditions – future occupiers

13. Although not raised by the Council as a reason for refusal, several living and bedroom windows would directly face onto the adjacent car park where cars park right up to the wall of the existing building. In the absence of details regarding fenestration, noise insulation and ventilation, this would lead to undue levels of noise, disturbance, light and exhaust pollution from people talking, car doors slamming, engines starting and vehicles manoeuvring immediately outside these windows, particularly in the late evening with the ground floor apartments most affected. There may also be privacy and security issues for the ground floor apartments. It is not clear that the design of the proposal would satisfactorily address these concerns.
14. For these reasons the proposal would be likely to provide unacceptable living conditions for future occupiers. This would conflict with Policy DP1 which requires a safe and secure environment and National Planning Policy Framework paragraph 130(f) which requires a high standard of amenity for future users.

Recreational disturbance and supporting infrastructure

15. The whole of Colchester Borough lies within the zone of influence of various Essex Coast European Designated Sites where visitor pressure from additional residents may adversely affect the integrity of the habitats concerned. However, the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy has identified a series of suitable measures to address this issue and the appellant has agreed to make the necessary financial contribution to the Council³.
16. Secondly, the Council has adopted supplementary planning documents which set out the need for new housing development to make financial contributions towards community facilities, open space, sport and recreational facilities in order to meet the needs of the additional population. There is no evidence submitted to dispute these requirements and again the appellant agrees to make the necessary financial contributions to the Council⁴.
17. Whilst these payments are offered by means of a unilateral undertaking from the appellant, the document is not yet finalised. However, given the findings in relation to the other main issues this matter need not be pursued further.

³ £127.30 per new dwelling totalling £636.50

⁴ £7,387.29 for community facilities and £16,870.59 for open space, sport and recreational facilities

Other matter

18. In this edge of town centre location it is reasonable for external amenity space standards to be relaxed or for communal space to be provided and in this case the Council's standard of 25 m² space per flat would be provided communally. Nos 39/39a have no external amenity space but lie outside the application site.

Conclusion

19. The proposal would provide five additional apartments which would make a useful contribution towards local housing needs in a sustainable location and offer social and economic benefits for the town. However, these material considerations are insufficient to outweigh the harm identified under three of the main issues and the associated conflict with the development plan.
20. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR