
Appeal Decision

Site visit made on 7 April 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Appeal Ref: APP/W1525/W/21/3284223

13 Cottage Place, Chelmsford CM1 1NL

- 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 Man Limited against the decision of Chelmsford City Council.
- The application Ref 21/01563/FUL, dated 26 July 2021, was refused by notice dated 23 September 2021.

The development proposed is described as the “demolition of existing building and erection of mixed-use development comprising of 125 sq. m of commercial ground floor and 7no. residential apartments above”.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and erection of mixed-use development comprising of 125 sq. m of commercial ground floor and 7no. residential apartments above at 13 Cottage Place, Chelmsford CM1 1NL in accordance with the terms of the application, Ref 21/01563/FUL, dated 26 July 2021, subject to the conditions on the attached schedule.

Applications for costs

2. An application for costs was made by Man Ltd against Chelmsford City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the living conditions of future occupiers with particular regard to light and outlook.

Reasons

4. The appeal site forms an existing two storey, rendered building that is currently used as a restaurant known as “Back Inn Time”. The area is generally urban in character with a variety of style and size of building in the vicinity, ranging from the modern, glazed office building at Amlin House to the immediate west of the appeal site, to more traditional two and three storey brick buildings opposite and east of the site.
5. It is proposed to demolish the existing building and replace it with a four storey building with commercial use on the ground floor and seven residential apartments over the remaining floors. The loss of the building and its replacement has been accepted by the Council and from the information that has been provided, I find no reason to come to a different conclusion on this matter.

6. Policy DM26 of the Chelmsford Local Plan 2020 (LP) states that all new dwellings, including flats, shall achieve suitable privacy and living environments for residential occupiers, in accordance with the standards set out in Appendix B of the LP, which sets out a range of criteria for privacy and proximity standards, and natural light.
7. Amlin House itself is largely constructed of glazed curtain walling, with a central staircase on its eastern elevation, flanked by office windows within its first, second and third floors which look over the appeal site. However, the windows to the south of the stairwell are set back further from the appeal site than the windows to the north. The Council calculate that there would be a distance of some 11m between Amlin House and the bedroom windows in the southwest elevation and some 16m between Amlin House and the balconies facing onto Cottage Place. Both of these distances would fail to comply with the standards as set out in Table 9 of Appendix B of the LP.
8. It is clear from the Council's evidence that the use of obscure glazing and vision control film would largely overcome concerns raised regarding loss of privacy through overlooking to bedrooms and kitchen/dining rooms. Furthermore, the use of privacy screens on balconies would achieve a similar aim. However, it is argued that the use of such screening would also serve to reduce natural light and affect the outlook that would be afforded these rooms. Thus, there is tension between seeking to provide adequate living conditions ensuring that both privacy and light are acceptable.
9. The appeal site is within the built-up area of Chelmsford where one could expect levels of privacy may not be as great as in more spacious suburban locations. As the proposed bedroom windows in the southwest elevation would be positioned at an acute angle of some 45° to Amlin House, this would ensure that potential overlooking would be severely limited and the use of vision control film would not be necessary. Consequently, the outlook afforded to these bedrooms would not be compromised.
10. The privacy screens on the southern elevation would be adjacent to large areas of south facing glazing. Additionally, the first and second floor south facing apartments to the rear would also benefit from wide, open rooms and given their orientation and urban situation, I am not persuaded that the shape of these particular rooms would result in them not receiving adequate light or having an appropriate outlook for their location. Moreover, the kitchen window to apartments 03 and 06 would be at an oblique angle to the closest windows within the east elevation of Imperial House. Consequently, obscure glazing or vision control film would not be required for these windows either.
11. Turning to the apartments on the first and second floors at the front of the building, those rooms with elevations facing onto Amlin House and Imperial House would have an obscurely glazed kitchen windows facing east or west onto the respective building. French windows would also be installed in the northern elevation. The Council argue that the use of obscure glazing in the side kitchen windows, coupled with the depth of the rooms and their north facing orientation, would render them dark and without adequate light.
12. Appendix B of the LP recognises the challenges taller buildings may face when considering daylight and states that they will generally be limited to appropriate city centre locations. I acknowledged that the use of obscure glazing to the kitchen windows does not mean the absence of light, rather its reduction. I also accept that it would be unreasonable to require each room to receive maximum levels of light throughout the day, with levels changing as a result of the position of the sun,

with darker and lighter periods depending on the location of windows and proximity to surrounding buildings.

13. Moreover, as part of the appeal submissions, the appellant provided a Daylight Report¹ which concludes that the development would comply with the objectives of the BRE document² (the BRE document), following reasonable design steps to optimise the available daylight within the building. Therefore, the development would be acceptable in this regard.
14. Although the DR was submitted as part of the appeal submissions and requires revising openings to overcome objections raised, the appellant has suggested a condition requiring details of window size and transparency to be submitted for approval by the Council. Given the limited size increase required to allow more light into the rooms, I am satisfied that a pragmatic solution to the issues regarding light into the development before me would be to impose such a condition.
15. The Council also refer to the quality of the light within the room and have provided an appeal decision³, (the appeal decision) whereby the Inspector concluded that whilst the apartments in question would meet the minimum average daylight factor, it was not clear whether measurements took account of the drop off in light towards the end of the room. However, in conjunction with the clear glazing proposed on the northern elevation of the development before me, and the increase in size of the windows affected, I am not persuaded that the quality of light would significantly affect the living conditions of future occupiers.
16. Moreover, although the Inspector commented that the development failed to provide acceptable internal levels of natural light, they also offered a constrained outlook from the windows, failing to compensate for the lack of direct sunlight. It is also clear from the appeal decision and plans that the apartments had a single window in the northern elevation, one apartment had an irregular layout, with a narrow kitchen and a cupboard blocking light and the other apartment had a single kitchen, living and dining room some distance from any windows. Moreover, the appeal site comprised ground floor apartments to the north of Amlin House, which is a six storey building, and proposed the use of obscure glazing to the front windows and doors, further diminishing natural light. Thus, it is evident that my colleague considered a quite different scheme to the development before me.
17. In contrast, the rooms as part of this appeal have a side window to allow light to the end of the room and the windows on the northern elevation would not be obscurely glazed. Moreover, the rooms are relatively uniform and without obstruction, are located on the first and second floors and opposite a two storey building. Thus, the circumstances that led to the dismissal of the appeal referred to are not directly comparable to the scheme before me.
18. Thus, the development would not result in harm to the living conditions of future occupiers with particular regard to privacy and light. It would not be in conflict with Policy DM26 of the LP, the specific requirements of which are specified above.

Other Matters

19. There have been several objections to the development from interested parties, some of which are decrying the loss of the building as a local landmark and destination restaurant. Whilst I have sympathy with those that wish to see the

¹ Daylight Report of the North Facing LKDining Room dated 18 January 2022

² BRE Site layout planning for daylight and sunlight. A guide to good practice (2012)

³ APP/W1525/W/21/3271316

building remain as a restaurant, its loss has been accepted by the Council which indicate that as a privately run enterprise there are no Policies within the Development Plan preventing the owner from seeking to close the restaurant, or indeed operating a different venture from the site. Moreover, the motives of the appellant are not material to the determination of the appeal before me.

20. As a site within a sustainable location with good access to public transport, services and amenities, the Council confirm that there is no requirement to provide parking at the site. From the evidence that has been submitted, I see no reason to disagree with that assessment.
21. With regard to designated heritage assets, I note that the appeal site abuts Imperial House which is a Grade II listed building. The building is 'L' shaped with its elevation on Victoria Road facing into a car park and a further elevation onto Cottage Place. The significance of the building is largely derived from its historical construction as an early 18th century timber framed building and is connected to the appeal site via a single storey element.
22. The area is decidedly urban in character and travelling along Victoria Road, the listed building is largely obscured from view by the arrangement of existing buildings and the road, until one is close to it. Thus, it is not a dominant building within the street scene although it is quite noticeable when viewed from close by, with Amlin House clearly dominating the backdrop of the listed building.
23. Nonetheless, at a larger scale than Imperial House, the proposal would undoubtedly alter the relationship that the appeal site has with the listed building. However, given the urban nature of the area, the stepping back of the proposed development, and the transition of heights between Amlin House, the appeal site, and Imperial House, I am not persuaded that the setting of the listed building would be unduly affected. Thus, the development would have a neutral impact on the setting of Imperial House. Moreover, the demolition method statement demonstrates that the building can be demolished without harming the fabric of the listed building.

Blackwater Estuary Special Protection Area and Ramsar Site

24. The appeal site falls within the zones of influence for the Blackwater Estuary Special Protection Area and Ramsar site. New residential development within the zone of influence is likely to have a significant effect on the habitat sites through increased recreational pressures. As the competent authority it is necessary for me to carry out an appropriate assessment to ensure that no significant adverse effects would arise from the proposed development, either alone or together with other development in the area.
25. The Council, together with Natural England and other Essex authorities, have developed the Essex Coast Recreational avoidance and Disturbance Mitigation Strategy (RAMS). Policy DM16 of the LP states that contributions from developments will be secured towards mitigation measures identified in the RAMS. The Council has confirmed that the appellant has entered into an agreement to pay the necessary contribution under the RAMS. That contribution is necessary to make the development acceptable in planning terms, directly related to the scale of development and fairly and reasonably related in scale and kind to the development. It therefore accords with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and would count as mitigation toward maintaining the integrity of the habitat sites.
26. The development would not therefore result in a significant adverse effect on the integrity of the European Designated Sites.

Conditions

27. The Council has suggested a number of conditions that I have considered in accordance with the Framework and the national Planning Practice Guidance. In accordance with the pre-commencement regulations⁴ the appellant has stated within its final written statement that it supports the Council's suggested conditions, which include the use of a single pre-commencement condition.
28. Along with the standard time condition(1), the approved plans (2) should also be specified to provide certainty. To ensure that the development does not give rise to pollution or contamination, a scheme to assess any contamination (3) at the site shall be submitted to and approved by the Council before any development commences.
29. To protect the living conditions of future occupiers of the apartments, the building shall be constructed to meet specified internal noise levels (4). In the interest of sustainable development, the building shall be constructed to achieve increased water efficiency (5). In the interest of the visual amenities of the area, samples of the materials (6) shall be submitted and approved by the Council before any development commences. Details of windows, doors, shop fronts and other external features (7) shall also be agreed with the Council to ensure that the development is visually satisfactory and the appearance of the adjacent listed building is fully taken into account.
30. In the interest of sustainability, details of cycle parking (8) shall also be submitted to and agreed by the Council. In the interest of highway safety, there shall be no outward opening doors or windows on the Victoria Street elevation (9). The appellant has also suggested further conditions requiring the submission of details for privacy screens and railings (10) and details of windows to include size and transparency (11).
31. As I have found that vision control film is not required, there is no need for a condition for its submission to the Council. Moreover, the condition requiring the dimensions of the French doors and flank windows is also not necessary as such matters would be controlled through the submission of details to satisfy condition (11) above.

Conclusion

32. For the above reasons, and having regard to the development plan when read as a whole, the appeal is allowed.

Graham Wyatt

INSPECTOR

⁴ The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

Schedule of Conditions

1. The development hereby permitted shall begin no later than 3 (three) years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the approved plans: 001.02 (as existing site location plan), 200.08 (proposed ground floor plan), 201.07 (proposed first and second), 202.07 (proposed third floor plan), 203.06 (proposed site plan), 204.08 (proposed elevations), 205.05 (proposed street scenes) and 21117se-01 (topographical survey).
3. a) No development shall take place until a scheme to assess and deal with any contamination of the site has been submitted to and approved in writing by the local planning authority.

b) Prior to the occupation or first use of the development, any remediation of the site found necessary shall be carried out, and a validation report to that effect submitted to the local planning authority for written approval and the development shall be carried out in accordance with that scheme.
4. The building shall be constructed so that internal noise levels meet the standards of BS8233: 2014 Guidance on Sound Insulation and Noise Reduction for Buildings. The internal noise levels in bedrooms at night (2300 hours - 0700 hours) with windows closed should not exceed 30dB(A) LAeq. The internal noise levels in habitable rooms during the day (0700hours - 2300hours) with windows closed should not exceed 35dB(A) LAeq. The sound insulation works shall be completed before the use of the building begins and retained thereafter.
5. All new dwelling units as hereby approved shall be constructed to achieve increased water efficiency to a standard of no more than 110 litres of water per person per day in accordance with Building Regulations Approved Document Part G (2015 - as amended).
6. Prior to their use, samples of the materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
7. Prior to their installation large scale drawings shall be submitted to and approved by the local planning authority showing details of the following :-
 - (a) Fenestration, including elevations, the setback from face brickwork;
 - (b) Shopfronts;
 - (c) Doors, door casings and surrounds;
 - (d) Parapets;
 - (e) Balustrades;
 - (f) Balconies;
 - (g) Brick detailing;
 - (h) Vents and flues;
 - (i) Meter boxes;
 - (j) Satellite dishes;
 - (k) External lighting.

The development shall then be carried out in accordance with the approved details.

8. No dwelling shall be occupied until the secure bicycle parking has been laid out within the site in accordance with details shown on drawing no. 200.08. Those spaces shall thereafter be kept available for the parking of bicycles only.
9. There shall be no outward opening doors or windows to the Victoria Road elevation.
10. Prior to their construction, details of the privacy screens and railings to the proposed balconies are to be submitted for approval to the local planning authority. The approved details shall be installed prior to the occupation of the development hereby permitted and permanently retained thereafter.
11. Prior to construction at first floor level, details of all window openings including their size and transparency are to be submitted for approval to the local planning authority. The approved details shall be installed prior to the occupation of the development hereby permitted and permanently retained thereafter.

END.