



Appeal Decision

Site visit made on 25 January 2023

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/X1545/W/22/3293837

20 High Street, Maldon CM9 5PJ

- 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 Mr Gary Tann against the decision of Maldon District Council.
 - The application Ref FUL/MAL/21/01064, dated 6 October 2021, was refused by notice dated 10 January 2022.
 - The development proposed is described on the application form as the refurbishment and extension of historic high street building to create work unit and a 1 bedroom flat to ground floor and 2 no. 1 bedroom flats to first floor.
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Decision

1. The appeal is allowed and planning permission is granted for the refurbishment and extension of historic high street building to create ground floor work unit (Use Class E), 1 bedroom ground floor flat and 2 no. 1 bedroom first floor flats at 20 High Street, Maldon CM9 5PJ in accordance with the terms of the application, Ref FUL/MAL/21/01064, dated 6 October 2021, subject to the 19 conditions set out in the attached schedule.

Preliminary Matters

2. 20 High Street is a Grade II listed timber framed building dating back to the 14th to 16th centuries with later alterations. Listed building consent¹ was granted by the Council on 13 December 2021 for internal and external works related to the proposal that is subject to this appeal. I have had regard to this matter in my decision.
3. The description of the development in the formal decision uses the Council's wording in order to be consistent with the listed building consent decision. The differences in wording from the application form are minor.
4. The third reason for refusal refers to the lack of a completed Section 106 (S106) legal agreement to address the mitigation of impacts on protected European habitat sites along the Essex coast. A completed S106 agreement in the form a unilateral undertaking dated 25 November 2022 was provided by the appellant when the appeal was submitted in February 2022. However, the stated level of financial contribution (£381.90) for the mitigation of three flats was less than the current requirement of £137.71 per dwelling. The appellant has provided a second completed S106 agreement dated 11 August 2022 with a financial contribution of £413.13. I have had regard to both S106 agreements in my decision.

¹ LBC/MAL/21/01065

Main Issues

5. The main issues are the effect of the proposed development on:
- (a) the provision of employment space;
 - (b) the living conditions of future occupants of the development and existing occupiers at 18 High Street with regard to privacy, outlook, light, and private outdoor space; and
 - (c) protected European habitat sites.

Reasons

Employment space

6. The appeal property at 20 High Street is currently vacant but was last used as an estate agents office. According to the application form, this use ended on 1 June 2020. The property is located in Maldon Town Centre within a designated secondary retail frontage. The proposed development would result in a 37sqm work unit on the ground floor adjacent to the High Street, with a one-bedroom flat on the rest of the ground floor and two one-bedroom flats at first floor.
7. Policy E1 of the Maldon District Local Development Plan 2017 (LDP) seeks to encourage employment generating developments. The loss of existing employment uses, whether the sites are designated or undesignated, will only be considered if one of three criteria apply. While the policy contains references to uses within Class B (as was) of the Use Classes Order 1987 (UCO), the supporting text notes that non-traditional employment can be found in sectors such as education, health, retail and tourism.
8. LDP Policy E2 permits town centre uses within defined town centre areas where the scale and type of development proposed is directly related to the role and function of the centre and its catchment, and where there would be no significant adverse impact on the vitality and viability of the centre. The policy also seeks to protect ground floor retail uses within secondary retail frontages and support a wider range of other uses subject to meeting various criteria.
9. Amendments to the UCO in 2020 merged the previous use classes A1 (shops), A2 (financial and professional services) and B1 (business) into a new Class E (commercial, business and service) along with other previous use classes. The proposed work unit is described as Class E by the Council's decision notice and the appellant's appeal form. Therefore, I consider that LDP Policies E1 and E2 are both relevant to this development as it concerns both employment and town centre uses.
10. The Council considers that as the proposed development would retain a commercial unit at ground floor within Class E following the most recent previous use as an estate agent, there would be no harm to the vitality and viability of the town centre. I have no reason to disagree and consider that the commercial unit would accord with the secondary retail frontage criteria in LDP Policy E2. Therefore, there would be no conflict with this policy.
11. Turning to LDP Policy E1, while the primary workspace for the previous estate agent use may have been confined to the front of the ground floor, the plans and my site visit observations indicate that the whole of this floor has functioned as one workspace. This is due to the open plan layout through to a

small kitchen and toilets at the rear. The previous first floor use is less clear although stairs lead up from the middle of the open plan layout rather than from an external door. The appellant also refers to the remainder of the building being used, albeit occasionally, by the estate agents for meetings, storage and toilets.

12. While the proposed work unit could accommodate the same number of people employed by the estate agents before they vacated the property, it is clear that LDP Policy E1 looks to protect employment use and space rather than jobs. Therefore, the proposed development would result in a reduction in employment floorspace. This requires an assessment to be carried out against the three criteria listed in LDP Policy E1 to see if any would be met.
13. There is no evidence to show that the present use or activity at the site significantly harms the local area, either in its vacant form or most recent use as an estate agent. While conversion to residential provides additional accommodation, it has not been demonstrated that this would present a greater benefit to the local community than employment use. Therefore, the first two criteria of LDP Policy E1 are not met by the proposed development.
14. The third criterion requires the site to have been marketed effectively at rate comparable to local market value for its existing use, or as a redevelopment opportunity for other Class B uses or sui generis uses of an employment nature, and it can be demonstrated that the continuous use of the site for employment purposes is no longer viable taking into account the site's existing and potential long-term market demand for an employment use.
15. Marketing of the property began at the end of August 2018 as a retail unit for let. The advertised annual rental price appears to be competitive and not over-inflated compared to rental prices being sought on other properties in the High Street based on the evidence provided by the appellant. The property was also put up for sale in early September 2020 and was bought by the appellant in December 2020. The lease remained in place and marketing continued until May 2021.
16. While the appellant's purchase indicates that there is clearly interest in the property, they had in mind the proposed development that is now the subject of this appeal rather than a pure employment use. In the two years before purchase, there appears to have been a lack of serious interest in the property as a retail unit despite the Council indicating that there has been a high demand for premises in the High Street with limited vacancies in the past few years. Most of that two year period pre-dates the Covid pandemic lockdowns and so the lack of interest cannot be greatly attributed to that factor.
17. Therefore, I consider that the property has been adequately and effectively marketed for employment use and that the third criterion is met. It is not necessary for opening up works to the property to be made good and for the property marketed again. The reduction in employment floorspace would not have a harmful effect on the provision of such space due to the lack of demand. Moreover, an area of usable employment floorspace would be retained by the proposed development which would help to support the local economy and the vitality and viability of Maldon Town Centre.
18. Concluding on this main issue, the proposed development would have an acceptable effect on the provision of employment space. Therefore, the

development would accord with LDP Policy E1 as well as LDP Policies S1, S2 and S8. Amongst other things, these three other policies seek to ensure a healthy and competitive local economy and promote sustainable development within settlement boundaries to deliver economic growth.

Living conditions

19. The neighbouring building at 18 High Street is to the south-west of the appeal property and separated by a narrow passageway. No 18 is occupied by an estate agent at ground floor with a residential flat above. This flat faces directly at the first floor of the appeal property. There is also a two storey addition at the rear of No 18 containing additional residential flats, one at ground and the other at first floor. These flats face onto a yard behind the appeal property.
20. The windows on the existing flats at No 18 vary in terms of the glazing and rooms served. Most of the ground floor windows serving the existing flats have frosted glass or film along with blinds. The same applies at first floor where net curtains are also used. As a consequence, the ability to look into or out from the existing windows is restricted. The proposed windows along the side of No 20 would be smaller than existing and would mostly serve hallways, kitchens, shower rooms and bedrooms where occupants are likely to spend less time during daylight hours. The living room window on the proposed first floor rear flat would look directly at a bedroom window at No 18, but again occupants of the flat at No 18 are likely to spend less time in the bedroom during the day.
21. It would not be reasonable to insist on obscure glazing for every window along the side elevation of No 20 as this would affect the outlook of future occupants. However, it is likely that such glazing would be used for the shower rooms and future occupants may choose to install blinds or net curtains in any event. As a consequence, the development would result in no more than a moderate adverse effect in terms of privacy for existing occupants of No 18 or future occupants of No 20.
22. Existing occupants of No 18 already look out at the built form of No 20, so any additional effect on their outlook would only result from the proposed two storey rear extension. This would be positioned in front of windows that already use various methods to obscure the glass and so there is unlikely to be material adverse effects on the outlook for any existing occupants of No 18.
23. The existing buildings at Nos 18 and 20 already affect how much light reaches the windows in either building. While the passageway is narrow, it did not appear overly gloomy at my site visit while internal light levels will be affected by blinds and curtains and room size. The extension would be to the east of No 18 and so only have a limited effect on any sunlight to the existing flats. It would not narrow the passageway any further and so is unlikely to have a significant effect on daylight levels. Future occupants of the flats at No 20 would not receive much sunlight due to the orientation of the buildings but would receive reasonable daylight from the passageway. Thus, the development would have no more than a moderate adverse effect in terms of light for existing occupants of No 18 and future occupants of No 20.
24. The plans show the yard as shared amenity space measuring 45sqm although this is without any bin or cycle storage. The Maldon District Design Guide requires 25sqm per flat which means there would be a shortfall. Moreover, this space currently appears to be used as private outdoor space for the occupants

of the flats at No 18. Whether this is a formal arrangement is unclear, but this would exacerbate any shortfall in provision. However, this is a town centre location where the provision of private outdoor space is often at a premium. Moreover, there is a public park around 5 minutes' walk to the south of the site that would provide an alternative outdoor space. Therefore, despite the shortfall in private outdoor space, I consider the effect on the living conditions of future occupants would be acceptable.

25. Concluding on this main issue, the proposed development would have no more than a moderate adverse effect on the living conditions of future occupants of the development and existing occupiers of the flats at 18 High Street with regard to privacy, outlook and light. Nevertheless, the development would conflict with LDP Policy D1 which, amongst other things, seeks to protect the amenity of surrounding areas taking into account matters such as privacy, outlook and light.

European Protected Habitat Sites

26. The site is within the zone of influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS). There are several protected European habitats sites along the Essex coast which are designed to safeguard breeding and non-breeding birds as well as coastal habitats. Potential adverse effects on these protected sites can be caused by recreational disturbance arising from visitors to the coast. The proposed three flats could result in likely significant effects on the integrity of these protected sites in combination with other plans and projects. As such, it is necessary to carry out an appropriate assessment (AA) as part of my decision.
27. As part of the AA, it is necessary to consider whether any potential effects could be addressed through specific measures. The RAMS seeks financial contributions from applicable development schemes towards a package of mitigation measures intended to alleviate recreational pressures on protected sites. Natural England is supportive of this strategy.
28. The two completed S106 agreements seek to provide a financial contribution towards the cost of the RAMS. The S106 agreement dated 25 November 2022 is incorrect in terms of the figure. Although the agreement allows for index linking, it is unclear whether the increased rate of £137.71 per dwelling reflects index linking or other factors. Therefore, I do not consider the S106 agreement dated 25 November 2022 is effective and so I have not taken it into account.
29. The S106 agreement dated 11 August 2022 shows the correct figure for the RAMS contribution. This agreement would accord with LDP Policies S1 and I1 which seek to conserve and enhance the natural environment and provide necessary infrastructure to address the effects of development. Therefore, the Essex Coast RAMS Contribution would meet the three tests set out in NPPF paragraph 57 and regulation 122 of the CIL Regulations 2010. I can therefore take the S106 agreement dated 11 August 2022 into account as part of my decision. As a consequence, the proposed development would not result in a significant effect on the protected European habitat sites along the Essex coast.

Planning Balance

30. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing sites. NPPF paragraph 11(d) states that where the policies

most important are out of date, including where the Council cannot demonstrate a five year housing land supply, planning permission should be granted unless one of two exceptions applies. The first exception in paragraph 11(d)(i) is not applicable as there are no policies in the NPPF that protect areas or assets of particular importance that provide a clear reason for refusing the proposed development.

31. Turning to the second exception in paragraph 11(d)(ii), there would be moderate adverse effects relating to the living conditions of future occupants of the proposed development and existing occupiers of 18 High Street. There would be no significant effect on protected European habitat sites while the development would have an acceptable effect on the provision of employment space. These two issues carry neutral weight in the planning balance.
32. In terms of the proposal's benefits, the delivery of three flats would boost housing supply while there would be economic benefits from the construction of the development and the local expenditure of future occupants. The town centre location means there would be good access to a wide range of services and facilities. However, given the limited number and size of the proposed dwellings, I afford these benefits no more than modest weight.
33. The development would secure a number of heritage-related benefits in terms of securing a long-term use for the building and carrying out various repairs along with several enhancements including a new traditionally detailed shopfront and restored internal walls, fireplaces, and windows. Listed building consent has already been granted for these works, where the Council concluded that the less than substantial harm to the listed building was outweighed by the above heritage benefits. NPPF paragraph 199 states that great weight should be given to the conservation of heritage assets. Therefore, I give significant weight to the benefits of the development overall.
34. Concluding on the planning balance, the adverse impacts of the proposed development would not significantly and demonstrably outweigh the benefits. As a consequence, the presumption in favour of sustainable development would apply in line with NPPF paragraph 11(d). While the proposed development would conflict with LDP Policy D1 in terms of the effects on living conditions, there are sufficient other material considerations to indicate that planning permission should be granted on this occasion.

Conditions

35. I have had regard to the Council's list of suggested conditions alongside the conditions imposed on the listed building consent. I have removed references to matters that relate to internal features and have omitted a condition relating to a pre-commencement meeting as these relate to the listed building consent only. I have also omitted a duplicate archaeology condition.
36. Conditions 1 and 2 setting a time limit for the commencement of the development and specifying the approved plans are necessary for clarity and compliance. The plans specified are those which relate to the planning permission rather than those which only relate to the listed building consent. Conditions 3 to 9 are necessary to safeguard the special interest of the listed building and the character and appearance of the area. Conditions 10 and 11 are necessary due to the archaeological interest of the building and the site.

37. Condition 12 is necessary to ensure that the storage of building materials does not affect the highway, but given the constrained nature of the site, it is not possible to provide off-road space for any vehicles. Conditions 13 and 14 are necessary to promote sustainable modes of travel and suitable cycle parking. Condition 15 is necessary to ensure adequate refuse storage.
38. Conditions 16 and 17 are necessary to ensure satisfactory means of drainage given that the development involves the refurbishment and conversion of the whole site and not just an extension. However, given the small scale nature of the development I have not included the detailed wording that seems more appropriate for larger greenfield sites. Condition 18 is necessary to ensure satisfactory living conditions for existing and future residents. Condition 19 is necessary to ensure that the work unit is used for Class E purposes given the description of development. There is no reference to live/work units in this condition as they are not part of the development, while Class B1(a) and (b) have been replaced by Class E.

Conclusion

39. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Schedule of Conditions (19)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A20635-Loc Rev A; A20635-Block Rev D; A20645 PL-03; A20645 PL-04; A20635-DD02; A20645 PP03D; A20645 PP05D Rev F; A20645 PP06D Rev D.
- 3) Prior to the installation of the new shopfront and all new external windows and doors, plans showing elevations at 1:20 and sections through heads, cills, jambs, glazing bars and glazing at 1:2 shall be submitted for approval prior to their installation and approved in writing by the local planning authority. The development shall be carried out only in accordance with the approved details.
- 4) Details of the location and external appearance of any new flues or extract vents shall be submitted to and approved in writing by the local planning authority prior to their installation. The development shall be carried out only in accordance with the approved details and retained as such thereafter.
- 5) Prior to the commencement of the development, a report by a conservation accredited structural engineer, detailing how the timber-framed walls and roofs are to be repaired and insulated, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out only in accordance with the approved details and retained as such thereafter.
- 6) Prior to the commencement of any external plastering, a specification by a specialist lime plasterer detailing all new external plaster finishes and a methodology for repairing existing historic plaster and daub shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out only in accordance with the approved details and retained as such thereafter.
- 7) Prior to their use in the development, high quality photographs of the tiles to be used on the roof of the extension and information on their source shall be submitted to and approved in writing by the local planning authority. The development shall be carried out only in accordance with the approved details and retained as such thereafter.
- 8) All new rainwater goods shall be of cast metal finished black.
- 9) All new external joinery (including windows, doors, weatherboarding, verges and soffits) shall be of painted timber.
- 10) No development including any site clearance or groundworks of any kind shall take place within the site until an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site has been submitted to and approved in writing by the local planning authority. The assessment will inform the implementation of a programme of archaeological work and the development shall be carried out in accordance with the approved details.
- 11) No development or demolition/conversion of any kind shall take place within the site until the implementation of a programme of archaeological building recording from an accredited archaeologist or historic building

specialist has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in a manner that accommodates the agreed programme of works.

- 12) Areas within the curtilage of the site for the purpose of storage of building materials shall be provided clear of the highway.
- 13) Prior to first occupation of the development, the occupiers of each dwelling shall be provided, free of charge, with a Residential Travel Information Pack for sustainable transport, details of which shall have been submitted to and approved in writing by the local planning authority. The Pack shall include six one day travel vouchers for use with the relevant local public transport operator.
- 14) Prior to first occupation of the development, cycle parking facilities shall be provided in accordance with the current parking standards. The facilities shall be secure, convenient and covered and details shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained for such purposes at all times thereafter.
- 15) None of the dwellings hereby permitted shall be occupied until details of the means of refuse storage including details of any bin stores to be provided have been submitted to and approved in writing by the local planning authority. The bin storage approved shall be provided prior to the first occupation of the development and retained for such purposes at all times thereafter.
- 16) No development works above ground level shall occur until details of the surface water drainage scheme to serve the development has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.
- 17) No development work above ground level shall occur until details of the foul drainage scheme to serve the development has been submitted to and agreed in writing by the local planning authority. The agreed scheme shall be provided prior to the first occupation of the development.
- 18) Before the installation of any extract ventilation system, compressors, generators, refrigeration equipment, and any other fixed plant, details of the equipment, its location, acoustic housing and any vibration isolation measures, together with the projected noise levels at the boundary of the property, shall be submitted to and approved in writing by the local planning authority and only approved plant shall be installed and retained in the approved form thereafter.
- 19) The use of the work unit shall be restricted solely to those purposes as defined within Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order).