



Appeal Decision

Site visit made on 21 February 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Appeal Ref: APP/A1530/W/21/3289530

56 Military Road, Colchester CO1 2AN

- 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 Higgins against the decision of Colchester Borough Council.
 - The application Ref: 212451, dated 3 September 2021, was refused by notice dated 29 October 2021.
 - The development proposed is a new studio dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have used the Council's title at the time of determining the application. However, following Colchester's recent designation as a City, the Council is now known as Colchester City Council.
3. The Colchester Borough Local Plan 2017-2033 Section 2 (Section 2 LP) was adopted on 4 July 2022, while the appeal was under consideration. Its policies replace those in the Colchester Core Strategy adopted December 2008 and Development Policies document adopted October 2010, which were referred to in the reasons for refusal. Both main parties have had the opportunity to comment on the implications of the recently adopted policies and I have considered the appeal based on the adopted development plan.

Main Issues

4. The main issues are:
 - whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to the internal layout, floor area and outlook, and
 - the suitability of the proposed outdoor amenity space for current and future occupiers.

Reasons

Internal living conditions

5. The appeal site contains a two-storey building, originally containing a shop unit with flat above, but now converted to two flats. There is a narrow, rectangular parcel of land to the rear, accessed via a footpath between adjacent buildings. The rear of the site, where the proposed dwelling would be located, adjoins an

existing building to one side and is otherwise enclosed by close boarded fencing.

6. Requirements for the standard of residential accommodation are set out in Policy DM12 of the Section 2 LP. This includes a requirement to comply with the Nationally Described Space Standards¹ as well as more general requirements relating to the quality of internal accommodation.
7. The proposed studio dwelling would provide one bedroom accommodation on a single storey. The Council's evidence describes the gross internal area as approximately 30sqm and I have been provided with no alternative figure. The application does not clearly specify whether one or two-person accommodation is proposed, although a double bed is indicated on the plans. If single person occupation is intended, the minimum gross internal floor area required by the NDSS would be 37sqm (with shower room), rising to 50sqm for occupation by two people. Even if the lower level of occupation is assumed, the proposed internal space would fall significantly below this required minimum area.
8. Although the appellant states that the minimum room sizes required by the NDSS would be met, the bedroom would have an awkward shape due to its angled rear wall and L-shaped layout. This would significantly limit options for furnishing and there would be little flexibility to adapt the accommodation to the evolving needs of future occupiers. No built-in storage is indicated and there appears little scope for free-standing storage, given the limited extent of the accommodation.
9. Since only two main rooms are proposed, it would be particularly important that each provides a satisfactory living environment. Therefore, I find that the size and shape of the bedroom, in combination with the lack of storage, would result in cramped and inflexible accommodation that would not provide adequate and fit for purpose living conditions for future occupiers.
10. While the bedroom would lack any conventional windows, a substantial skylight is proposed, with a second over the hallway. The lounge/kitchen area would also have a generous forward-facing window. As such, the proposed dwelling would benefit from a reasonable standard of daylight and ventilation. On that basis, I find that the lack of direct outlook from the bedroom would not, in itself, materially undermine the quality of internal accommodation.
11. Nevertheless, for the reasons set out above, I conclude that the proposed development would not provide satisfactory living conditions for future occupiers, as a result of the internal layout and floor area. This conflicts with the relevant requirements of Policies DM12 and DM15 of the Section 2 LP and Policy SP7 of the North Essex Authority's Shared Strategic Section 1 Local Plan, adopted February 2021 (the Section 1 LP). These policies, amongst other things, require that new residential development complies with the Nationally Described Space Standards and protects residential amenity, including that of future occupiers.

Outdoor amenity space

12. The existing flats are both accessed at the rear. An external staircase provides access to the first floor, while the ground floor flat is accessed from a paved area immediately behind the building. At present, the site of the proposed

¹ Technical Housing Standards – Nationally Described Space Standard (2015)

dwelling is separated from this area by a close boarded fence. However, the alignment of the fence does not correspond with that shown on the application drawings, which indicate that it would be set further back.

13. Policy DM19 of the Section 2 LP sets out standards for the provision of private amenity space for residential development, indicating a minimum requirement of 50sqm for one-bedroom houses and 25sqm per flat. The policy goes on to confirm that reduced garden sizes for houses may be acceptable in accessible locations, but with the minimum 25sqm standard still applying.
14. The site is in a tight knit urban location, outside but close to the city centre. There is a bus route along Military Road and the railway station is within easy walking distance. There is a convenience shop nearby and good access to the extensive services in the city centre by a range of transport options. There is also a recreation ground within walking distance.
15. Given this surrounding context, I find that the appeal site is in an accessible location where Policy DM19 indicates a reduced garden size would be acceptable. Therefore, the proposed 25sqm outdoor amenity space for the studio dwelling would meet the minimum standard.
16. The rear part of the appeal site was until recently occupied by a storage container. The evidence shows that that this was in place, and the area fenced off, when planning application ref. 190379 was approved in May 2019 for subdivision of the building into two flats. Various plans have been provided in the evidence, showing slightly different alignments for the dividing fence. These also differ from the alignment I observed during my site visit. However, it is clear from the evidence before me that only a very limited outdoor area was proposed for the two flats when the building was subdivided. In particular, this did not include the area occupied by the storage container. Therefore, while this area may have theoretically become available for future use by the flats, it was as a matter of fact not available when planning permission was granted for subdivision of the building.
17. The planning history also indicates that introduction of a walkway past the flats and their outdoor areas would not be a new feature, since similar access to the container and storage area was previously required. While use of this area to access a separate dwelling may create a greater level of comings and goings, it would not reduce the extent of available land.
18. Taking account of the above, I find that the proposed development would not materially intrude on the outdoor amenity space for the flats, either as it currently exists or as shown on previously approved plans. Each flat would continue to benefit from a small but private outdoor space. While these would not meet the 25sqm minimum standard, they would be capable of use as a courtyard for sitting out, drying washing etc. Provision would continue to be made for storage of refuse and recycling, and the occupiers would also benefit from proximity to the recreation ground for more active outdoor activities.
19. For the above reasons, I conclude that the proposed development would provide suitable outdoor amenity space for future occupiers, without materially undermining the existing availability of outdoor amenity space for current occupiers. It would not conflict with the relevant requirements of Policy DM19, DM12 and DM15 of the Section 2 LP and Policy SP7 of the Section 1 LP. Neither would it conflict with relevant sections of the Council's Backland and Infill

Development Supplementary Planning Document (SPD), adopted September 2009 and revised December 2010. These policies, amongst other things, protect residential amenity, including that of current and future residents, while allowing for a reduced standard of private amenity space where new dwellings are proposed in accessible locations.

Other Matters

20. A Unilateral Undertaking has been provided in response to the second reason for refusal. This undertakes to make financial contributions in relation to community facilities and facilities for sport and recreation. The evidence supporting a requirement for such payments is set out in the Council's Provision of Community Facilities SPD adopted September 2009, updated July 2013 and Provision of Open Space, Sport and Recreational Facilities SPD, adopted July 2006. These indicate that financial contributions are required in respect of new housing, to meet the additional demand for open space, sports, recreation and community facilities generated by the development.
21. The Council has expressed concerns about the effectiveness of the Unilateral Undertaking. Therefore, while it is clear that the appellant is agreeable to entering into an appropriate undertaking and making the required contributions, it has not been confirmed whether the second reason for refusal has been resolved. However, since I am dismissing the appeal for other reasons, as set out above, it is not necessary for me to consider this matter in any further detail.
22. Policy SP2 in the Section 1 LP identifies a requirement for mitigation measures to address the effects of recreational disturbance on Habitats Sites on the Essex Coast. A strategy for such mitigation is in place, in the form of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS). The second and third reasons for refusal consequently identify a requirement for a financial contribution towards mitigation measures, as set out in the RAMS. Although the Unilateral Undertaking does not cover RAMS payments, evidence has been provided that the required payment has been made in advance of determination of this appeal.
23. As the competent decision-making authority, had I been minded to allow the appeal, it would have been necessary for me to complete an appropriate assessment in relation to likely significant effects on Habitats Sites, having regard to the effectiveness of the RAMS payment in mitigating any such effects. However, since I am dismissing the appeal for other reasons, it is not necessary for me to address the effect on Habitats Sites in any further detail.
24. My attention has been drawn to recent nearby developments where more limited outdoor amenity space was provided, including on the immediately adjacent site. However, these are of limited relevance, since I have concluded that the proposed outdoor amenity space would be acceptable. The evidence provided about other developments does not pertain to standards for the extent and quality of internal accommodation.
25. I have taken into account that the development would contribute to the supply of housing, making more effective use of previously developed land, in an accessible urban location where there is existing backland development. However, these benefits would be small, given the very modest scale of the proposal, and they do not outweigh my overall conclusion on the main issues.

26. I have had regard to the lack of any identified harm to the character and appearance of the area, including the setting of the adjacent Conservation Area, and to the living conditions of neighbouring occupiers. I further note that absence of on-site car parking was concluded to be acceptable when an appeal in relation to a previous proposal was considered². Based on the evidence before me I have no reason to reach a different view. However, these are neutral factors which do not weigh for or against the proposal.

Conclusion

27. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR

² Appeal ref APP/A1530/W/20/3249636