



Appeal Decision

Site visit made on 24 April 2023

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 30th June 2023

Appeal Ref: APP/A1530/W/22/3295112

10 Cambridge Road, COLCHESTER, CO3 3NS

- 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 Littlecroft Properties Limited against the decision of Colchester Borough Council.
 - The application Ref 202754, dated 4 December 2020, was refused by notice dated 24 September 2021.
 - The development proposed is described as a change of use from one ground floor flat to two ground floor flats, including single storey extensions and internal alterations, the conversion of a former coach house to one residential unit, car parking and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Policies from the Core Strategy (adopted 2008, revised 2014) and the Development Policies Document (adopted 2010, revised 2014) referred to by the Council in refusing permission have been superseded by policies from the Colchester Local Plan (Section 1 2021/Section 2 2022) (the LP). I must base my decision on the development plan prevailing at the time of my determination. I am satisfied that the main parties have had the opportunity to provide submissions in writing on the relevance of the new LP to the case.
3. A new site plan (reference 3578/01R) was submitted by the appellant during the appeal process. This corrects errors in the calculation of amenity space areas.
4. In considering whether to accept the amended drawing I have had regard to the "Wheatcroft principles". The plan does not alter the proposed development and consequently the development is not so changed that to accept it would deprive those who should have been consulted of the opportunity of such consultation. Accordingly, I have formally considered the additional drawing in my determination of the appeal.

Main Issues

5. The main issues are the effect of the proposed development on:
 - The living conditions of the occupiers of the new development with regard to private amenity space provision and privacy;
 - The character and appearance of the area with particular regard to the effect on the Lexden Conservation Area and a locally listed heritage asset; and

- Highway Safety.

Reasons

Living conditions

6. The two proposed ground floor flats would accommodate up to four people each. One of the flats would have a total of 70 metres² of amenity space, of which 30 metres² would be private. The other would have 26 metres² of private amenity space, which would be formed by two separate areas on different sides of the dwelling. An area marked shared amenity space would additionally be available.
7. Policy DM19 of the LP states that all new residential development shall provide private amenity space to a high standard, where the siting, orientation, size and layout make for a secure and useable space, which has an inviting appearance for residents. The policy additionally sets amenity space standards. These differentiate between houses and flats, with a minimum of 25 metres² of amenity space per flat to be "provided communally". The policy states that the area of amenity space should be informed by the needs of the residents and the accessibility of the location.
8. As the appeal proposes at least 104 metres² of shared amenity space between the four flats according to the new plan, it has not been demonstrated that the appeal proposal conflicts with the standards in this regard. Equally, any compliance with Policy DM9 of the LP in terms of accessible location has not been demonstrated, so that the reduced private amenity space size of 25 metres² envisaged by Policy DM19 of the LP in such cases has not been shown to apply here.
9. In qualitative terms, the areas of private amenity space associated with the two main building ground floor flats would be bordered at close quarters on most sides by multiple storey built form, fencing or walls. This, combined with the modest areas available for use, would give rise to cramped spaces which would lack the high standard and inviting appearance prescribed by Policy DM19 of the LP, with resulting unacceptable harm to the living conditions of the occupiers of the two flats with regard to private amenity space provision. Due to the overall level of enclosure which would occur, this harm would be irrespective of any compliance with the amenity space standards set by local policy, or the potential for a condition limiting the height of fencing.
10. Turning to the amenity space offered at the proposed coach house conversion, as a one bedroomed house this would need to offer at least 50 metres² of private amenity space in order to comply with the space standards of Policy DM19 of the LP. The proposed 30 metres² of such space would consequently be substantially below the minimum acceptable size, resulting in an area which would not feel useable and inviting due to its cramped appearance. This would cause additional unacceptable harm to the living conditions of the occupiers of the coach house with regard to private amenity space provision.
11. Whilst shared amenity space is additionally provided, this encompasses accesses to the proposed former coach house dwelling, the private amenity area of one of the flats and the entrance to the upper floor flats. The comings and goings of occupiers within these areas would consequently be likely to reduce the space which was actually available for enjoyment as a communal

amenity area. As a result, the shared amenity space would fail to meet the high standard envisaged by Policy DM19 of the LP. Its presence would therefore fail to compensate for the identified harm to living conditions which would be associated with the private amenity spaces.

12. A Lawful Development Certificate (LDC) was issued by the Council on 16 August 2022. This states that the change of use of the ground floor flat at the site from dwellinghouse to a small house in multiple occupation would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 on 23 June 2022. The appellant submits that the change of use could occur without a requirement for additional amenity space.
13. Whilst that may be the case, my concerns identified above relate mainly to the quality rather than the quantity of the private amenity space proposed by the appeal scheme. The areas of amenity space proposed by the scheme are largely those available for use by occupiers of the existing ground floor flat, which would also be amenity space if the LDC were implemented.
14. The appellant considers that the occupation of the ground floor by between three and six people is allowed for by the LDC. However, the appeal scheme would allow for occupation of the ground floor by a maximum of eight people. On that basis the appeal scheme would allow for use of the private amenity spaces by two more people than the operations allowed for by the LDC. It follows, therefore, that the harm to living conditions which I have identified to arise from the quality of the amenity space would be lessened by the implementation of the LDC, as it allows for fewer occupiers than the appeal proposal. Accordingly, the LDC does not provide a fallback position resulting in support for the appeal scheme on this main issue.
15. Given the proposed fenestration of the main building, the setback of the majority of its windows from the coach house's private amenity space and the absence of substantive evidence on the matter, it has not been demonstrated that any unacceptable harm to the privacy of the coach house's occupiers would occur.
16. Nevertheless, as identified above, the proposal would result in unacceptable harm to the living conditions of the occupiers of the two ground floor flats and the coach house with regard to private amenity space provision. It consequently conflicts with Policy DM19 of the LP, the aims of which are set out above. Further conflict exists with Policy DM15 of the LP, which sets out that all development must be designed to a high standard. Additional conflict exists with the provisions of the National Planning Policy Framework (2021) (the Framework) in respect of design.

Character and appearance

17. The appeal site lies within the Lexden Conservation Area (the CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
18. The significance of the CA as a whole, insofar as it relates to this appeal, derives from its spacious appearance arising from wide streets and well-spaced and set back dwellings of a generous size. The open areas surrounding the host dwelling currently contribute positively to this spaciousness.

19. The appeal scheme would include the erection of fencing at various points around the site, in order to provide amenity and refuse storage areas. The significant areas of fencing proposed would appear visually dominant around the host dwelling. This would erode the spacious appearance of the CA, failing to preserve or enhance its appearance. The scheme would consequently cause less than substantial harm to the significance of the CA.
20. The coach house to the rear of the site is a building of some age which is locally listed. It therefore has an established historic value and its conservation is consequently a consideration in this determination.
21. A large area of new fencing would enclose the private amenity space to the front of the coach house. The modern appearance and substantial extent of this fencing would visually compete with the historic appearance of the coach house, and the resulting visual incongruity would cause material harm in this respect. Whilst the building is not particularly visible from Cambridge Road, it would still be visible from neighbouring properties and this incongruity would consequently be apparent within the wider residential area.
22. Although it is submitted that there was a lack of objection from the Council department with responsibility for heritage matters, the Council's delegated report includes a response in that regard raising concerns regarding the proposed fencing around the refuse area. The suggested lack of objection has consequently not been demonstrated. Even in the absence of any objection from that department, I am required to make my own assessment of the proposal's effect.
23. The appellant submits that the scheme could be altered by the removal of the proposed fence. Nevertheless, the appeal process should not be used to evolve a scheme. It is important that what is considered at appeal is essentially the same scheme that was considered by the Council and interested parties at the application stage. The proposal includes several areas of fencing and its removal would alter the development sufficiently to necessitate consultation. Thus, the suggestion would evolve the scheme beyond the parameters of this appeal.
24. The appeal scheme would consequently result in less than substantial harm to the significance of the CA, and material harm to the appearance of the locally listed coach house. It consequently conflicts with Policy SP7 of the LP, which states that all new development should respond positively to local character and context to preserve and enhance the quality of existing places and their environs. Further conflict exists with Policy ENV1 of the LP, which sets out that the historic environment will be conserved and enhanced. Additional conflict exists with Policy DM15 of the LP, which states that development proposals must respect and enhance the character of the site in terms of architectural approach. Further conflict exists with Policy DM16 of the LP, which states that development affecting the historic environment should seek to conserve and enhance the significance of the heritage asset.

Highway Safety

25. On-street parking on Cambridge Road is available to permit holders only, indicating an ongoing high level of demand for such parking. The Council considers that a minimum of nine parking spaces would be required at the

proposed development according to local policy. The scheme would provide three parking spaces.

26. Policy DM22 of the LP states that the amount of car parking to be provided in association with new residential development will be assessed using the most recent local Parking Standards and taking account of various factors. These include levels of local accessibility and the size, type, tenure and location of the dwellings.
27. The site lies close to the town centre, with good access to public transport and shopping facilities within 700 metres. The Manual for Streets sets out that having a range of facilities within 800 metres results in locations for development which are most conducive to walking. It is consequently likely that a proportion of journeys by occupiers of the development could be undertaken by means other than the private car, and therefore a limited reduction in the number of recommended parking spaces is appropriate.
28. Nevertheless, the development would comprise four two-bedroomed flats and the one bedroomed coach house conversion. The provision of three parking spaces would rely on two of the five households having no vehicle and the remaining three households having only one vehicle, with no provision for visitor parking, if on-street parking is not to be relied upon. It is likely that most of the households would own a vehicle and/or would regularly require a visitor parking space. The proposed level of parking provision is consequently insufficient to meet the likely demand at the development, which would increase local demand for on-street parking. In an area of parking stress this may give rise to inappropriate parking which would obstruct visibility, with resulting harm to highway safety.
29. It is proposed that the development could be secured as car-free by means of a planning condition. Nevertheless, this would need to be accompanied by the removal of the on-site parking from the scheme if the development were to be car-free. Such an amendment to the scheme would require consultation, which is beyond the scope of this appeal. Furthermore, additional information concerning amendments to the relevant Traffic Regulation Order is not supplied with the appeal, but would be necessary to enable an assessment of the reasonableness of such a condition. As the development would be unacceptable in other respects, I have not sought additional information in this regard.
30. Implementation of the LDC would not include the conversion of the coach house to a dwelling, so that demand for parking space would not arise in that regard. Nevertheless, the LDC would allow for two fewer occupiers of the ground floor area of the main building than the appeal scheme, as identified above. The overall demand for parking from occupiers of the site would consequently be likely to be similar in the case of both the appeal scheme and implementation of the LDC. Accordingly, the LDC does not provide support for the appeal scheme on this main issue.
31. Thus, the appeal scheme would be likely to cause material harm to highway safety. It consequently conflicts with Policy DM22 of the LP, which sets out that the amount of car parking to be provided in association with new residential development will be assessed using the most recent local Parking Standards, taking account of a number of factors. Further conflict exists with Policy DM12 of the LP, which states that regard will be had to vehicle parking standards as

set out in Policy DM22 in considering proposals for new residential development.

Other Matters

32. The appellant has submitted a unilateral undertaking (UU) with the appeal. This seeks to resolve reasons for refusal in respect of the lack of provision for contributions to a recreational disturbance avoidance and mitigation strategy, sport and recreation and community facilities. The Council states that the UU potentially resolves its concerns in these respects. However, as I am dismissing the appeal for other reasons, it has not been necessary for me to consider this matter in any further detail.
33. The Council submits that conflict exists with Policy DM13 of the LP, which superseded Policy DP11 concerning flat conversions. Whilst Policy DP11 is referred to in the Council's decision report, neither policy is relied on in its reasons for refusal, and any relevance of the two policies is consequently not addressed by the appellant in their statement of case. As a result, I have not found against Policy DM13 in respect of the first main issue.
34. I have had regard to other matters raised, including concerns about the proposal's effect on the living conditions of neighbouring occupiers. However, as I am dismissing the appeal on the main issues for the reasons given above, I have not pursued these matters further.

Planning Balance

35. The proposal would provide additional housing with access to sustainable means of transport in an area with good access to services and facilities, and would be likely to contribute to the provision of sport, recreation and community facilities in the area through the UU. Given the modest scale of the development proposed, these benefits attract modest weight.
36. Paragraph 119 of the Framework supports development that makes effective use of land, including previously developed land of the type present at the appeal site. This is subject to the provision of healthy living conditions at new developments. As I have found that the proposal would cause harm in this respect, paragraph 119 of the Framework does not provide support for the proposal.
37. There is nothing before me to suggest that a less harmful scheme could not result in similar benefits in terms of retaining the historic coach house and enhancing its appearance, so that this effect is a neutral consideration which does not form a particular benefit of the scheme. Similarly, the lack of identified harm to trees and ecology is a neutral matter which does not attract any particular weight.
38. Conversely, the proposal would cause less than substantial harm to the significance of the CA. The desirability of preserving or enhancing the appearance of the CA attracts considerable importance and weight. It would additionally cause unacceptable harm to living conditions and material harm to the appearance of the locally listed coach house and to highway safety. These matters outweigh the benefits associated with the scheme.
39. The proposal consequently conflicts with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

40. For the reasons given above, I conclude that the appeal should be dismissed.

C Beeby

INSPECTOR