



Appeal Decision

Site visit made on 5 September 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/A1530/W/22/3306395

Roof void above 10-15 Point Chase, Marks Tey CO6 1FN

- 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 J Usher against the decision of Colchester City Council.
 - The application Ref 220067, dated 11 January 2022, was refused by notice dated 8 March 2022.
 - The development proposed is conversion of existing roof space of Block A2 to create 1no. 1bed flat with 25sqm private terrace, together with allocation of 1no. car parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing roof space of Block A2 to create 1no. 1bed flat with 25sqm private terrace, together with allocation of 1no. car parking space at roof void above 10-15 Point Chase, Marks Tey CO6 1FN in accordance with the terms of the application, Ref 220067, dated 11 January 2022, subject to the conditions contained in the attached Schedule.

Preliminary Matters

2. During the course of the appeal, the Council adopted the Colchester Borough Council Local Plan 2022 and revoked the Local Plan version adopted in 2010 and revised in 2014. I have determined the proposal on the basis of the adopted development plan at the time of my decision. This includes the Marks Tey Neighbourhood Plan 2022, which was incorrectly cited on the Decision Notice.
3. The appellant has submitted a Unilateral Undertaking (UU) containing planning obligations which secure financial contributions toward the provision of community facilities and open space, sport and recreation facilities. The Council indicate that the UU provides a legally binding mechanism to secure those planning obligations required in association with the proposed development, and therefore the reason for refusal is no longer an issue for the appeal. I am satisfied that, through addressing the proposal's effects in respect of local infrastructure, those planning obligations are necessary to make the development acceptable and thus are compliant with the tests set out in the National Planning Policy Framework (the Framework). On this basis, I need not consider this matter further.
4. The UU also secures a financial contribution to mitigate the proposal's effects on European sites. However, the Conservation of Habitats and Species Regulations 2017 requires mitigation measures be assessed within the framework of an appropriate assessment. Since I am allowing the appeal, I

have considered the effects of the proposal on European sites in my reasoning, below.

5. The appellant has submitted an additional plan showing headroom height across the area of the proposed roof terrace. Since the plan does not alter the proposal but provides additional measurement data and annotations, no party would be prejudiced by my acceptance of the plan.

Main Issues

6. Having regard to the above preliminary matters, the main issues in this appeal are:
 - whether the proposal would provide adequate living conditions for future occupants, with particular regard to the provision of private outdoor amenity space; and
 - the effect of the proposed development on the integrity of European Sites on the Essex coast.

Reasons

Living conditions

7. The proposal would involve the conversion of the roof space of an existing apartment block to provide a flat. Through the creation of roof voids in sections of pitched and flat roof, the proposed development would include a roof terrace to serve as external private outdoor amenity space for occupants of the flat.
8. Policy DM19 of the Colchester Borough Council Local Plan 2022 (LP) states that a minimum of 25sqm amenity space should be provided for flats. The roof terrace would have a total floor area measuring 27.3sqm, thereby exceeding the 25sqm requirement.
9. However, remaining sections of the roof and building structure would result in some areas of the roof terrace being without standing headroom. Policy DM19 does not specify headroom requirements, therefore there is a degree of uncertainty regarding the application of the policy's minimum area threshold.
10. The area of the roof terrace with standing headroom exceeding 1.8m would measure 23.7sqm, of which 22.8sqm would have headroom of 2m or greater. If the area considered usable space were limited only to those areas with standing headroom, this would amount to a slight shortfall against the 25sqm requirement. However, areas with low headroom could provide storage, or areas for planting as illustrated on the floorplan, and therefore would contribute usable space.
11. The void over areas would be below the 25sqm area standard but would account for most of the space overhead and at eye level along the pitched roof plane. Therefore, the roof terrace would be perceived by users as an outdoor space across its full extent.
12. The areas with low headroom would be below the sloping sections of roof plane at the building's front gable, positioned furthest from the proposed flat's doors and glazing. Therefore, the siting and orientation of the roof terrace would be well-related to the flat.

13. The floorplan provides an indicative layout of the roof terrace, showing a bench, table and chairs, and areas of planting, which appear to fit comfortably within the space. The position of the areas of low headroom would not therefore restrict use of the roof terrace by future occupants and would not result in a layout that is contrived or inappropriate.
14. The Council and some local residents suggest the roof terrace would result in the building becoming prone to water ingress, resulting in difficulties with drainage and dampness. Other flats located across the wider development include balconies and there is a roof terrace above a habitable room at flat 21a. Therefore, there are other spaces within the existing buildings on site which are exposed to the weather. The construction of the proposed flat and roof terrace must comply with building regulations, and therefore there is no reason to suspect the proposal would result in the building becoming not watertight.
15. For these reasons, the proposal would provide suitable living conditions for future occupants. The proposal would comply with Policy DM19 which requires all new residential development to provide private amenity space of a high standard, where the siting, orientation, size and layout make for a secure and usable space, which has an inviting appearance for residents.
16. In addition, the proposal would comply with LP Policies DM12 and DM15 which together require new development to achieve a high standard of design and a good standard of amenity. In this regard, the proposal would satisfy paragraph 130 of the Framework, which requires new development to create a high standard of amenity for future users.

Integrity of European Sites

17. The appeal site is located within the administrative area of Colchester City Council. Relevant designated habitats for the borough include Colne Estuary Special Protection Area (SPA) and Ramsar; Hamford Water Special Area of Conservation (SAC), SPA and Ramsar; the Blackwater Estuary SPA and Ramsar; and the Stour and Orwell Estuaries SPA and Ramsar (hereafter 'Essex coast habitats').
18. The conservation objectives for those Essex coast habitats are to ensure that the integrity of the sites is maintained or restored as appropriate, and to ensure that the sites contribute to achieving the aims of the Wild Birds Directive.
19. The qualifying species for the Essex coast habitats are: Colne Estuary: dark-bellied brent goose, common pochard, hen harrier, ringed plover, common redshank, little tern, and its waterbird assemblage. Hamford Water: dark-bellied brent goose, common shelduck, Eurasian teal, pied avocet, ringed plover, grey plover, black-tailed godwit, common redshank, little tern. Blackwater Estuary: dark-bellied brent goose, common pochard, hen harrier, ringed plover, grey plover, dunlin, black-tailed godwit, little tern, waterbird assemblage. Stour and Orwell Estuaries: dark-bellied brent goose, northern pintail, pied avocet, grey plover, red knot, dunlin, black-tailed godwit, common redshank, and its waterbird assemblage.
20. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) supports sustainable residential growth in Essex while protecting Habitats sites and their wildlife from the increased disturbance from recreation

associated with a growth in population. The RAMS identifies that housing and consequent population growth in Essex is likely to increase the number of visitors to sensitive coastal areas, creating the potential for impacts from increased recreational disturbance of birds and their habitats, unless adequately managed.

21. The population increase associated with the creation of one new dwelling would therefore increase recreational pressure on Essex coast habitats. The proposal would therefore have a likely significant adverse effect on the qualifying features of the above European sites, due to the type and location of the development, alone and in combination with similar development.
22. The RAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on relevant designated habitats.
23. The UU secures a financial contribution toward the RAMS. I therefore consider that appropriate mitigation has been secured and the financial contribution is necessary to make the development acceptable in planning terms.
24. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body it will transfer the funds to the organisation responsible for administering the mitigation strategy. Therefore, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
25. The proposal would not therefore have significant effects on European Sites on the Essex coast. The proposal would comply with LP Policy ENV1 which seeks to protect and enhance habitats of international importance, and Policy MT12 of the Marks Tey Neighbourhood Plan which requires proposals to mitigate the effects of development in accordance with the Essex Coast RAMS.

Other Matters

26. The site has an extensive planning history, and the Council refers to findings of the Inspector from an appeal decision¹ relating to the roof void. The appeal decision indicates that the proposal sought to provide a "large full height roof window that opens out to create a covered space", which the Inspector noted would be "smaller than a typical balcony but slightly more than a Juliet balcony". Since the proposal did not seek to provide outdoor private amenity space, it is materially different from appeal proposal and carries limited weight in my decision.
27. Some respondents raised concerns that the proposal would result in overdevelopment of the site, loss of green space, would harm the character of the building, give rise overlooking of nearby flats, and place additional pressure on vehicle parking in the area. The proposed flat would be wholly contained within the building's roof space and would not alter green space around the site. The creation of roof voids would result in a modest change to the

¹ Appeal ref: APP/A1530/W/19/3230019

appearance of the existing roof which I do not consider would amount to harm to the building's character. The roof voids would be oriented toward the side elevation of the adjacent block which is generally blank with only small areas of glazing, and therefore the proposal would not result in a loss of privacy for existing occupants. The proposed dwelling would be provided with an allocated car parking space and cycle storage and therefore would not harm highway safety through on-street parking.

28. To address concerns raised by residents of the apartment block regarding noise and disturbance during the construction phase of the development, I have attached a planning condition which specifies the periods during which construction may take place.
29. The Council's Environmental Protection officer raised concerns that use of the roof terrace could give rise to noise disturbance to occupants of the apartment block. However, Part E of the Building Regulations 2010 requires that the proposed development be constructed to provide reasonable resistance to the passage of sound.

Conditions

30. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance. In addition to the standard time limit of the planning permission granted, in the interests of certainty I have attached a condition specifying the approved plans.
31. To provide satisfactory vehicle parking for the proposed development, I have included a condition requiring provision of the allocated car parking space, which is to be retained in perpetuity.
32. To ensure the proposal complements local character, I have attached a condition requiring materials used on external surfaces match those used on the existing building.
33. As discussed above, to minimise noise and disturbance for neighbouring occupants during construction, I have attached conditions specifying the periods where works may take place.
34. I have not included the Council's suggested condition relating to noise insulation since this matter is addressed by the building regulations and therefore the condition would not be necessary within the context of the Framework's tests.

Conclusion

35. For the reasons given above, having regard to the development plan taken as a whole and all other relevant material considerations, I conclude the appeal should be allowed.

E Dade

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PC.OS.800 – OS Location Plan 13.08.2020; PC.P.881 – Proposed Site Plan 24.12.2021; PC.S.801 – Existing Site & Roof Plans Block A2 13.08.2020; PC.S802 - Existing Elevations Block A2 & London Road 13.08.2020; PC.P.882 – Proposed Plans 3rd & Roof 24.12.2021; PC.P.883 – Proposed Elevations 24.12.2021; PC.P.884 – Proposed Section, Isometric and Sketch of Terrace 24.12.2021; 3rd Floor Plan Terrace Headroom.
- 3) Prior to the first occupation of the development hereby permitted, 1no parking space shall have been laid out within the site in accordance with approved plan PC.P.881 and that space shall thereafter be kept available at all times for the parking of vehicles.
- 4) The external surfaces of the development hereby permitted shall be constructed in the materials which match those of the existing building.
- 5) Demolition or construction works shall take place only between 08:00 and 18:00 on weekdays and 08:00 and 13:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

END OF SCHEDULE