



Appeal Decision

Site visit made on 11 February 2025

by **H Lock BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 February 2025

Appeal Ref: APP/A1530/D/24/3355674

5 Fairhaven Avenue, West Mersea, Essex, CO5 8EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr B Fox against the decision of Colchester City Council.
 - The application Ref is 241634.
 - The development is variation to previously approved scheme 230920. Reconfiguration and relocation of Velux & Cabrio windows to new first floor. Removal of existing French doors and replaced with new window. Retention of existing window at ground floor level. Relocation of entrance door to new porch to form covered entrance.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged a revised National Planning Policy Framework (the Framework), and further revisions, have been published. Having reviewed the changes, I am satisfied that they do not affect the substantive matters of the appeal, and that proceeding without seeking further comments from the parties would not be prejudicial to their cases.
3. Planning permission at the appeal property was granted for a 'proposed rear & front extension, re-roof and loft conversion' under application ref. 230920. The development is largely complete and the rooflights and alterations the subject of this appeal have been installed.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular reference to the potential for overlooking and loss of privacy.

Reasons

5. The appeal building is within a residential area where there are a mix of dwelling types, and a degree of mutual overlooking of garden areas. Within this context, there is no objection in principle to the installation of rear-facing roof windows at the appeal property. Although the four 'standard'¹ rear-facing rooflights have been installed lower down the roof slope than their approved positions, at the appeal site

¹ Serving the en-suite shower room, dressing area, landing and guest bedroom identified on the first-floor floor plan on drawing no. 0137-A-200 Revision 01

visit it was apparent that they do not give rise to any material or atypical overlooking of neighbouring residents.

6. There is some disagreement between the parties as to the view that would have been afforded by the approved rear rooflights. The Council's delegated report states that, as far as can be determined, a majority of the glazing would have been above 1.7 metres from the internal finished floor level. The appellant advises that, as the rooflights could not be sited above the ceiling, the section drawing shows that they would have needed to be set at a level that people within the room would be able to view out. On the basis of the information supplied, and in the absence of a scale bar to the approved section drawing, I cannot verify heights, but it is apparent that the position of all the rooflights has lowered in the roof slope. As noted above, for the most part, this repositioning has not been unduly harmful.
7. However, the relocation of the two approved 'cabrio' style rooflights from the front to the rear roof slope has materially altered their effect. As approved, they overlooked front gardens and the public domain of Fairhaven Avenue. In contrast, they now overlook the private gardens of neighbouring residents, in particular at 7 Fairhaven Avenue. The cabrio rooflight does not create an external balcony or additional floorspace, but their design facilitates a much wider viewing angle than a standard rooflight. The inclusion of the railings and the top-hinged pane enables a person to stand or sit closer to the edge of the roof than would otherwise be the case. This was evident at the appeal site visit, comparing the view afforded by the cabrio light when opened and closed, and alongside the 'standard' rooflights.
8. I note the extracts from the Essex Design Guide (EDG) provided by the appellant, and given the separation distance from the properties to the rear, I do not consider that these rooflights would materially reduce the sense of privacy for residents in Seaview Avenue. However, the EDG extracts address back-to-back relationships, rather than the potential to look down into a neighbouring garden positioned to the side. Given the siting and proximity of the cabrio windows, they have the potential to cause material overlooking of the private garden area of 7 Fairhaven Avenue (No.7). At the appeal site visit, there were views down towards the swimming pool and seating area of that property from the cabrio rooflights, particularly when open. The extension at No.7 reduced the area that could be viewed to a degree, but did not act as a fully effective screen.
9. I appreciate that there is overlooking between properties in the area, and agree with the appellant, that expectations of complete privacy are unrealistic in a built up environment such as this. However, whilst residents could stand at first-floor windows and look at neighbouring properties, I consider that the sense of being overlooked would be greater when being viewed from a cabrio rooflight, which is designed to facilitate a wider outlook. If approved, there would be no control available to prevent residents using the two cabrio rooflights as quasi-balconies.
10. This is acknowledged in an appeal decision² provided by the appellant, which related to the issue of a Lawful Development Certificate for the installation of this type of rooflight; where that Inspector notes that the formation of a balustrade around part of the existing floor area within the loft space provides the occupiers with a greater facility than putting their heads out of an open window.

² APP/L5810/X/15/3002668 - 36 St James's Avenue, Hampton Hill, Hampton, Middlesex TW12 1HH

11. Whilst I accept that it may not be the appellant's intention to stand and overlook his neighbours, by design, the cabrio rooflight would enable more intrusive overlooking by others in the future; they provide for more than light and access to fresh air. Similarly, although the appellant intends to use the room as a bedroom, there is no reasonable control that could prevent it being used differently by future occupants of the property, who may wish to use the facility afforded by the cabrio rooflight in the manner suggested by the manufacturer. I am not persuaded that the roof slope being set some distance back from the rear of the house due to the ground floor extension materially reduces the effect on overlooking.
12. The appellant has quoted a second appeal decision in his statement, but in the absence of more detailed information I cannot make a comparison with this appeal. However, as that Inspector noted that the proposal resulted in "less direct overlooking" than before the building works were completed, it does not appear to be comparable. As such, it offers limited weight to this appeal.
13. I therefore conclude that the two cabrio rooflights have the potential to cause unacceptable overlooking and loss of privacy to the garden area of 7 Fairhaven Avenue, to a degree that the living conditions of occupants would be harmed. This would be contrary to Policy SP 7 of Section 1 of Colchester Borough Local Plan (2021)³, which amongst other criteria requires all new development to protect the amenity of existing and future residents in matters including overlooking; and contrary to Policies DM13 and DM15 of Section 2 of the Colchester Local Plan (2022), which support residential alterations provided they do not result in unacceptable adverse impacts on the amenities of neighbouring residential properties, including privacy. For the same reason, it conflicts with paragraph 135 of the Framework, which seeks to ensure that developments create places with a high standard of amenity for existing and future users.
14. I find the window alterations on the southern side elevation, the replacement of rear French doors with a window, the porch changes, and the standard rooflight changes to be acceptable in their impact. However, this does not alter my conclusion of harm above.
15. For the reasons given above the appeal should be dismissed.

H Lock

INSPECTOR

³ Colchester Borough Local Plan 2013-2033 - North Essex Authorities' Shared Strategic Section 1 Plan 2021