
Appeal Decision

Site visit made on 3 June 2025

by **E Dade BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal Ref: APP/A1530/W/24/3357825

2 Creffield Road, Colchester, Essex CO3 3JB

- 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 Nigel O'Brien on behalf of OBW Holdings Limited against the decision of Colchester City Council.
 - The application Ref is 240150.
 - The development proposed is change of use of ground and first floor into 7-bedroom HMO (sui generis) including rear dormer window and rebuilding of existing rear outrigger and rear boundary wall.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Nigel O'Brien on behalf of OBW Holdings Limited against the decision of Colchester City Council. This application is the subject of a separate decision.

Preliminary Matters

3. As the proposal is in a conservation area, I have had special regard to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

4. The main issues in this appeal are:
 - whether the proposed development would provide adequate living conditions for future occupants, with particular regard to internal floor area, private amenity space, privacy, and daylight;
 - the effect of the proposed development on highway safety and whether the proposal would prioritise sustainable transport, with particular regard to parking provision and cycle storage;
 - the effect of the proposed development on the character and appearance of the area, with particular regard to the Colchester Conservation Area no 2: Lexden Road, The Avenue; and
 - the effect of the proposed development on the capacity of local infrastructure and community facilities.

Reasons

Living conditions

Internal floor area

5. The proposal relates to a vacant, mid-terrace property, formerly used as a retail premises at the ground floor and a two-bedroom flat at first floor. The proposal seeks a change of use to a seven-bedroom house in multiple occupation (HMO).
6. Policy DM13 of the Colchester Borough Local Plan Section 2 2022 (CBLP) requires proposals for the conversion and sub-division of existing residential premises and conversion of non-residential buildings not result in an unsatisfactory living environment for prospective occupiers.
7. The appellant indicates each bedroom would be single occupancy, providing a maximum of seven persons. The Council suggest it would be difficult to control the number of occupants through its HMO licensing process. However, the maximum occupancy could reasonably be specified and enforced through a suitably worded planning condition. Therefore, there is adequate certainty that the total number of HMO occupants would not exceed seven persons.
8. CBLP Policy DM12 requires residential development accord with the 'Technical housing standards – nationally described space standard' (NDSS)¹. In addition, Part 2 of the Housing Act 2004 specifies minimum bedroom sizes for licensed HMOs. All bedrooms would exceed size standards for single occupancy, as specified in the NDSS and Housing Act.
9. At paragraph 10(a), the NDSS requires dwellings meet or exceed its gross internal floor area standards. The NDSS does not provide a minimum gross internal floor area standard for seven-bedroom dwellings, and therefore the proposal would not breach any specific gross internal floor area standard.
10. The HMO would provide a single, shared kitchen/dining/living space with a floor area of 25.7sqm. The Council has not referred to any specific standards relating to the size of communal spaces.
11. The floor plan provides an example of a furnished layout of the kitchen/dining/living space. Whilst this is for illustrative purposes, opportunities for alternative furniture layouts would be limited since the space also serves as the route from the hallway to bedrooms 2 and 3, and to the communal courtyard.
12. The dining area is situated between the kitchen units, close to the worktops and appliances. This arrangement appears cramped and unlikely to provide adequate space for occupants to use the kitchen facilities when the dining area is in use.
13. The floor plan shows a sofa within the living space. However, the amount of seating shown would not accommodate all occupants at the same time, and any additional seating would likely impede access through the space. Users of the living space would be disturbed by persons crossing the room to access bedrooms and courtyard, or by users of the kitchen and dining area.

¹ Department for Communities and Local Government, March 2015

14. Therefore, it would be difficult for occupiers to spend time together comfortably in the proposed communal space and the proposal would not be conducive to the close bonds and friendships that a well-managed HMO can provide.
15. The available evidence indicates the proposal would meet the minimum HMO standards of accommodation which regulate matters including internal space, safety, and access to basic facilities. However, I must determine the proposal against the development plan which, as discussed above, concerns the quality of living environment for future occupiers.
16. For the reasons set out above, I consider the proposed communal living area would not be spacious enough to comfortably accommodate the potential number of occupants, and therefore the living environment would be unsatisfactory.

Private amenity space

17. CBLP Policy DM19 expects all new residential development provide easy access to private amenity space. The policy indicates that in accessible locations where higher densities may be appropriate, a minimum of 25sqm of usable private amenity space should be provided.
18. The site includes external space to the front of the dwelling, a rear courtyard, and roof terrace/balcony. Most of the area to the front of the dwelling would be occupied by vehicle parking, and bin and cycle storage. Moreover, the front boundary would be open to the street and would not provide the privacy expected of a private amenity space.
19. The courtyard is enclosed by a high wall and the balcony is situated at first-floor level at the rear of the building. Both would provide private amenity space, with a combined total area of 18.8sqm. The area of usable space within the courtyard would be further constrained by the staircase access to the street, and the balcony would be accessible only to occupants of bedroom 5. Therefore, the extent of private amenity space would be significantly below the 25sqm minimum standard.
20. The appellant refers to a permitted scheme for a seven-bedroom HMO at 52-53 High Street which they assert does not meet the private amenity space standard. I have not been provided with the reasons why the standard was not met. However, I am not bound by previous decisions of the Council, and this consideration is not of sufficient material weight so as to disengage the policy.
21. The site is constrained by the building's form and layout. However, the HMO would have a high intensity of use through its relatively large number of prospective occupants. The extent of private amenity space would not meet the minimum standard and would be insufficient to meet the needs of future occupants.

Privacy

22. Bedrooms 2 and 3 would have windows facing into the courtyard at ground floor level. Bedroom 2's window would overlook the stairwell access to the street. Use of the private amenity space, such as for sitting outside, would be close to bedroom 3's window. This would create a perception of overlooking for occupants of bedrooms 2 and 3. Whilst the appellant indicates privacy could be maintained with soft furnishings, this would require the occupant choose between privacy and natural light, and thus would not provide satisfactory accommodation for occupants of bedrooms 2 and 3.

Daylight

23. CBLP Policy DM12 requires residential development provide acceptable levels of daylight to all habitable rooms and provide no single aspect north-facing homes.
24. The kitchen/dining/living space would be served by a single window, below the balcony, set back from the two-storey projection which houses bedrooms 2 and 5, and enclosed by the rear projection of bedroom 3. The built form would constrain the amount of natural light entering the window.
25. The window would be relatively small. It would be next to an internal wall and would have a worktop and appliances in front, which would obstruct natural light from entering the room. The kitchen/dining/living space would therefore be gloomy and dependent on artificial light, and the proposal would not provide acceptable levels of daylight to all habitable rooms.
26. Bedrooms 1 and 4 would be served by large, canted bay windows. The main window would face broadly north, with the angled side panels providing a wide aspect. Whilst noting the daylight constraints above, occupants of bedrooms 1 and 4 would have access to the communal space and therefore would not have a single aspect, north-facing home.

Living conditions - conclusions

27. As set out above, the kitchen/dining/living space would experience poor daylight levels and would be of insufficient size to achieve a suitable quality of communal space to meet the needs of future occupants. In addition, the proposal would not provide adequate private amenity space. Furthermore, the courtyard would have a poor relationship with windows, resulting in inadequate privacy for occupants of bedrooms 2 and 3. For these reasons, the proposal would fail to provide suitable living conditions for future occupants.
28. The proposal would conflict with CBLP Policy DM13, which requires conversions not result in an unsatisfactory living environment for prospective occupiers. In addition, the proposal would not comply with CBLP Policy DM12 which requires development achieve a high standard of design and layout, including providing acceptable levels of daylight to all habitable rooms, and adequate privacy for rear-facing habitable rooms. Furthermore, the proposal would be contrary to CBLP Policy DM19 which requires all new residential development provide private amenity space to a high standard, where the siting, orientation, size and layout make for a secure and usable space.
29. Consequently, the proposal would fail to satisfy Policy SP7 of the North Essex Authorities' Shared Strategic Section 1 Plan 2021 (SSP) which requires development protect the amenity of future residents and users.

Highway safety and sustainable transport

30. The Parking Standards Design and Good Practice Supplementary Planning Document 2009 (Parking Standards SPD) sets out recommended parking provision by use class. However, no standard is provided for HMOs.
31. For dwellings of up to six persons, the Parking Standards SPD requires provision of two parking spaces. However, it also indicates that in urban areas a reduction to the vehicle parking standard may be considered.

32. The site is within an urban location close to the city centre, within walking distance of a range of shops, services, community facilities, employment, and rail and bus stations. The area is served by pedestrian footways, street lighting, and there is nearby bus and cycle infrastructure. The proposed dwelling would therefore be in an accessible location offering future occupants a choice of transport modes, without dependence on a car.
33. The Parking Standards SPD recommends a preferred bay size for cars of 5.5m x 2.9m, with a minimum bay size of 5m x 2.5m which may only be used in exceptional circumstances. In addition, the SPD recommends that parking areas with end bays adjacent to solid structures should increase the bay width by 1m.
34. The proposed dwelling would utilise the existing hardstanding at the front of the property for parking. The Council estimates the total parking area available would be approximately 5m x 5m, and drawing no 225-00 B is annotated with two parking spaces of equal size. Car parking space 1 would be next to a brick wall, and there would be a metal railing along the edge of proposed car parking space 2.
35. The proposed car parking spaces would not satisfy the preferred bay width. Whilst the spaces would meet the minimum bay size, the appellant's justification is that the area was used for parking of multiple vehicles during the building's former use. I do not consider this would amount to exceptional circumstances to warrant a reduction in parking bay size. Furthermore, no additional space has been provided to account for solid structures.
36. Therefore, the proposed parking spaces would not comply with the Parking Standards SPD. The proposed parking area would comfortably accommodate one parked car. However, provision of two spaces would result in it being inconvenient to manoeuvre within the site, and difficult to enter or exit parked vehicles.
37. There are no useable public car parks that are close enough to provide convenient alternative parking. On-street parking in the surrounding area is controlled by double yellow lines and demarcated on-street parking bays.
38. The parking permit scheme is over-subscribed. However, the property includes an existing lawful residential use and therefore would not increase the number of dwellings. Whilst the proposal would increase the number of occupants, the parking scheme administrator indicates households in permit areas are limited to two permits, and it is unlikely to fulfil requests for additional permits. Therefore, on-street parking associated with the proposal would not exceed two vehicles.
39. Due to existing parking controls, I have no compelling evidence the proposal would have an adverse impact on safety through an increase in on-street parking.
40. The Parking Standards SPD advises cycle parking must be secure and covered. The proposal includes four hooped metal cycle stands (Sheffield stands). Both the Parking Standards SPD and CBLP Policy DM22 indicates Sheffield stands are preferred as they provide adequate support and security. The proposal would therefore provide secure cycle storage.
41. However, the proposed cycle storage would be uncovered. Stored cycles would be vulnerable to the effects of adverse weather, such as rain.
42. The Council suggests a cycle storage structure would harm the character and appearance of the site and Conservation Area, and the appellant indicates the

cycle storage has been selected to be visually sensitive to the site's location. Whilst the Parking Standards SPD provides examples of covered cycle storage, I cannot be certain these structures would be compatible with the Conservation Area's character. The National Planning Policy Framework (the Framework) requires any harm to heritage assets be weighed against the public benefits of the proposal. Therefore, it would not be appropriate to secure provision of covered cycle storage through a planning condition.

43. Nonetheless, in the absence of covered storage, the proposed cycle stands would offer limited use in adverse weather conditions and would function poorly.
44. Paragraph 116 of the Framework indicates development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. As set out above, on-street parking in the area is strictly controlled and having assessed the proposal in accordance with the local parking standards, levels of local accessibility, and forecast car ownership levels, as required by CBLP Policy DM22, I am satisfied the proposal would not result in unacceptable impacts on highway safety.
45. However, Framework paragraph 115 requires sustainable transport modes be prioritised. The proposed cycle storage would be of inadequate standard. The proposal would therefore conflict with CBLP Policy DM22 which requires cycle parking be useable and function to serve its purpose.

Character and appearance

46. The proposal relates to a traditional, late-Victorian, mid-terrace property. It is constructed of brick with a slate roof and has a prominent, two-storey canted bay window. The building is currently vacant and in poor condition.
47. The appeal property is on the south side of Creffield Road, and the site's rear garden boundary abuts Maldon Road. The site is within Colchester's urban area and is within Colchester Conservation Area no 2: Lexden Road, The Avenue (CA). The CA's significance is derived from its planned layout in the 19th century with residential streets lined by detached and semi-detached houses and trees.
48. Within the vicinity of the appeal site, the character of Creffield Road changes, comprising dwellings of gault brick and slate roof terraces whose stepped elevations reflect the rising slope of the street. Whilst differing in form from the large villas to the west, the appeal property is contemporary with development in the CA and shares some characteristic architectural features. The appeal property therefore contributes positively to the CA's character.
49. The proposal would refurbish the building and return it to active residential use. Notably, the unsympathetic shop door would be removed and the bay window reinstated, thereby restoring the building's original character and appearance.
50. On the approach from Maldon Road, the proposed rear roof dormer would be generally obscured from long distance views by a street tree and the two-storey outrigger. The proposed dormer would not therefore be visually prominent.
51. The proposed rear dormer would have a pitched roof, timber framed windows, and would be clad in slate to match the roof. The dormer would be set down from the roof ridge and set back from the eaves and would be modest in scale. It would not dominate nor detract from the appearance of the roof plane.

52. Any views of the dormer would be viewed in the context of the rear roof planes of the terrace row and other nearby dwellings, which contain a variety of styles of dormers and rooflights. Whilst the Council suggests the dormer would have wide cheeks, the proposed dormer would not appear out of keeping with dormers at nearby buildings.
53. The proposal would include a timber-clad bin store, oriented perpendicular to the front elevation and tucked to one side of the plot, behind the parking area. The boundary wall would serve to screen the bin store on the approach along Creffield Road. The bin store would be of moderate height and would not detract from the dwelling's front elevation.
54. The Council suggest the proposed bin store may not be of sufficient size to accommodate refuse and recycling for the potential number of occupants. Under-provision of bin storage would lead to refuse and recycling bags and boxes being left to the front of the site, which would have a harmful visual impact on the character and appearance of the site and area, along with potential public health and environmental impacts. However, the capacity and appearance of the bin storage could be secured through a planning condition. I do not consider a domestic timber bin store would detract from the appearance of the appeal property or character of the CA.
55. As set out above, the proposal would remove the shop door and reinstate the original appearance of the bay window at the front elevation. The proposed rear dormer and bin store are modest features and would not appear out of context with the residential character of the area, nor detract from the visual qualities of the CA.
56. The proposal would therefore preserve the character and appearance of the CA and would satisfy the requirements of the Act.
57. In this regard, the proposal would comply with CBLP Policy DM16 which requires development conserve and enhance the significance of heritage assets. In addition, the proposal would satisfy SSP Policy SP7 and CBLP Policy DM15 which require development respond positively to local character and context to preserve and enhance the quality of existing places and their environs, and protect and enhance assets of historical value, and integrate with the existing built environment and heritage assets.

Local infrastructure

58. SSP Policy SP6 requires all development be supported by the provision of infrastructure, services and facilities that are identified to serve the needs arising from the development. In addition, CBLP Policy SG7 indicates permission will be granted only if it can be demonstrated there is sufficient infrastructure capacity to support the development.
59. The Provision of Community Facilities Supplementary Planning Document 2013 identifies the importance of community facilities to the well-being of residents and as a mechanism for building community cohesion. In addition, the Provision of Open Space, Sport and Recreational Facilities Supplementary Planning Document 2006 considers that all new residential developments of one or more dwellings will impact on sport and recreation provision. The Council requested the appellant provide a unilateral undertaking (UU) to secure payment of developer contributions in accordance with the SPDs. However, no UU has been submitted.

60. Regulation 122 of the Community Infrastructure Levy Regulations 2010 makes it unlawful for any planning obligation to be taken into account as a reason to grant a planning permission if it does not meet the three statutory tests; that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The tests are reflected in paragraph 58 of the Framework.
61. The Council indicate that development contributions would be spent on identified projects relating to facilities that could be used by future occupiers of the proposed HMO, located close to the development, and would either directly increase operational capacity of the facility, reduce the cost of delivering the existing offer, or otherwise improve the quality of the existing offer, helping to mitigate against the anticipated increased demand on these facilities, including the associated cost.
62. However, no adverse impacts arising from the development on specific facilities have been identified. Furthermore, no details or costs of projects to be funded by the financial contributions have been provided. Therefore, I cannot be certain the requested planning obligations would comply with the statutory tests.
63. In the absence of evidence to the contrary, I am satisfied the proposal would not have an adverse effect on the capacity of infrastructure and community facilities. The proposal would therefore comply with SSP Policy SP6 and CBLP Policy SG7.

Other Matters

64. Planning permission was granted in 2020 for conversion of the ground floor retail unit to a flat. In addition, in 2024 planning permission was granted to extend the first-floor flat to incorporate the existing ground floor commercial unit, thus forming a two-storey residential dwelling. Each scenario would provide up to six bedspaces. Were the 2024 permission implemented, the appellant asserts the dwelling would benefit from permitted development rights for change of use to an HMO for up to six residents, and thus represents a valid fallback position.
65. The proposed HMO would provide accommodation for up to seven occupants, and therefore would be greater in scale and intensity of use than the fallback position. The harm identified above in respect of living conditions are exacerbated by the number of occupants, such as the extent of communal space and private amenity space. In this regard, the fallback position would be more favourable. Therefore, the appeal proposal is not justified by the fallback position.
66. The whole of the Council's area, including the appeal site, is within the zone of influence of one or more European sites on the Essex coast. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (Essex Coast RAMS) indicates that residential development in this location is likely to have significant effects on European sites through increased recreational disturbance.
67. Where a proposal is likely to have a significant effect on European sites, Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires the competent authority to carry out an Appropriate Assessment (AA). However, AA is only necessary where the competent authority is minded to give consent for the proposal. Since I am dismissing the appeal for other substantive grounds which result in conflict with the development plan, it is not necessary to address the proposed development's effects on European sites in further detail.

Conclusion

68. Whilst I have identified no harm to the character and appearance of the CA or in respect of the provision of local infrastructure, the proposal would provide inadequate cycle storage and unsatisfactory living conditions for future occupants.
69. The proposal would therefore conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR