



Application No: 152438

Location: 40 Boadicea Way, Colchester, CO2 9BE

Scale (approx): 1:1250

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7.2 Case Officer: Nadine Calder

Due Date: 04/03/2016

HOUSEHOLDER

Site: 40 Boadicea Way, Colchester, CO2 9BE

Application No: 152438

Date Received: 2 November 2015

Agent: Mr Steve Dobbs

Applicant: Mr Oris Bojko

Development: To retain additional windows, repositioning of side door and window in newly built garage

Ward: Shrub End

Summary of Application: Conditional Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This item returns to the Committee for deliberation after the Planning Committee deferred it at its meeting on 21 January 2016. Then, members considered the officer report that recommended conditional approval, but was concerned that the windows and rooflights the subject of this application would have a harmful impact on neighbouring amenities and that the garage would be used for purposes other than the parking of vehicles. It was therefore resolved 'that consideration of the planning application be deferred and the Head of Professional Services be requested to facilitate further negotiations with the applicant in order to seek a better level of protection to neighbouring properties, by means of an amendment to the proposed windows and to secure more control over the garage use and to report back to Committee in due course'.
- 1.2 No additional consultation letters have been sent out to neighbours as their comments have already been taken into consideration as part of the original report. This report considers the changes that have been made to the proposed development following the Planning Committee deferral, having regard to concerns that have been raised by the Committee and representations made by third parties. A copy of the original report to the Committee is included at the end of this report as an addendum.

2.0 Report

- 2.1 Following the Planning Committee's request to seek assurance that the windows and rooflights the subject of this application would not cause any undue loss of privacy to the neighbouring occupier, the applicant has taken off the window handles on the ground floor windows in the rear elevation of the existing garage. Those two windows would now not only be obscure glazed but also non-opening, thereby eliminating any form of overlooking of the neighbouring rear garden or property. This could be conditioned to offer protection in perpetuity, as other means of ventilation are available.

- 2.2 Concerns were also raised by Members of the Planning Committee that due to the very pleasant internal fitting of the existing garage, the structure may in the future be used for purposes other than the parking of vehicles. When revisiting the site, the applicant confirmed that they were requested to plaster the ceiling for Building Control purposes. Instead of just the ceiling, the applicant decided to plaster all four internal walls at ground floor too. It should be noted that this in itself does not represent development and would therefore not require planning permission. The applicant has suggested that their previous garage elsewhere in the Borough was also finished to this quality, but was nonetheless maintained as a garage (this has not been substantiated by officers).
- 2.3 In any event, planning law confirms that you cannot take in to account matters that are not certain with regard to future uses. A planning authority must determine cases on the situation “on the ground” and at “face value” rather than giving weight to assumptions of what may be the intentions later on. Where necessary, conditions can be used to prevent unacceptable development from taking place by the removal of permitted development rights. However, this may not be necessary (a legal test of all conditions) where planning permission would be required anyway. This is because the planning system then builds in automatic controls against potential future changes. In other words, should the garage be converted into a dwelling later on then this would require permission in its own right and would be dealt with at that time. If permission was not sought, it would be proper for the enforcement system to be employed to rectify this as appropriate at that time.
- 2.4 It is also worth noting that the issues around the rear access to the neighbouring property at No. 39 is not a planning matter and can therefore not be given any material weight. This is a private matter between the applicant and the neighbor and should not influence Member’s decision with regards to the proposal. At the Committee meeting it was previously suggested that a right of way existed across the site. The applicant has since suggested that this was an informal arrangement allowed for a short time, and never an actual right of way. However, this would not be relevant to planning and therefore the evidence one way or another is not pertinent to the consideration of the application on its planning merits. Even if a right of way exists, planning permission being granted would not change that, it is simply a matter for private dispute through the courts.
- 2.5 With regards to the retrospective nature of this current planning application, Members of the Committee are aware that planning law again dictates that retrospective application are treated no different to “normal” planning applications. That means that if they would have been acceptable then they should be approved, and if they are not then they should be refused. However, the fact that no permission was originally sought should not affect that decision in any way, shape or form and applicants are not allowed to be penalised simply because they originally failed to make an application for something that required permission. Not making an application is not a planning breach in itself, it is not an offence to do works without permission and as it is not illegal the Council will often permit a retrospective application where planning permission is deserved on the merits of the development that already took place. In order to refuse a (retrospective) planning application, it is necessary to identify the actual *material harm* caused as a direct result of the development. In many ways, this is easier to evidence than from plans of what will later be built. As indicated in the original report, in this instance, no such harm could be identified and it is therefore

your Officer's opinion that the proposed development is acceptable. The retrospective nature of this application does not alter this assessment.

- 2.6 The concerns of overlooking seem to have been central to the Committee's concerns in the lead up to the deferral. As stated above, the rear facing windows are now without handles, so that they cannot be opened, and it can be conditioned that they remain fixed shut and obscure glazed. Officers have visited the site again, and it is our opinion that none of the windows offer an opportunity for overlooking. It was also noted that the fence is lower than usual, but the result of this is that you can see into the neighbouring garden from the applicant's garden, where it seems more likely to occur frequently and for longer durations (compared to the garage). The "loft" of the garage has multiple beams, which make access into this part of the building inconvenient for regular use and it does appear likely to be only for storage use, minimising the use of that area. Furthermore, the rooflights do not offer views downwards into the neighbours garden and therefore cause no actual overlooking concerns (although from the outside the presence of windows may make it feel like there is potential for overlooking, but that is not the case)..

3.0 Conclusion

- 3.1 Having revisited the application site and negotiated with the applicant to secure improvement where this may be possible, it is now acknowledging that the ground floor windows have been changed to be non-opening as well as obscure glazed, Officer's remain of the opinion that the proposed development would not cause any visual or material harm to neighbouring amenities or the character and appearance of the surrounding area. Whilst it is accepted that the proposed garage has been finished to a high standard, this does not impact on the acceptability of the proposed development the subject of this application as this is outside the scope of this proposal. There are sufficient restrictions in place to ensure that the existing building can only be used as a domestic garage and for no other purpose and considering the fact that speculation is not a valid planning matter, a refusal on the basis of local residents' concerns in terms of any potential future use of the building would therefore not warrant a refusal that would be sustainable at an appeal. On this basis, it is your Officer's view that the development is acceptable, subject to conditions.
- 3.2 It is also considered necessary to reiterate the fact that the garage shall only be used for the purpose of parking of motor vehicles and for the sole benefit of the occupants of 40 Boadicea Way or their visitors, and for no other purposes whatsoever via condition rather than, as originally suggested, via informative. The full list of suggested conditions is therefore as follows:

1 - Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2 - *Development to Accord With Approved Plans

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers BOJKO3 Sheets 1 to 3 of 3 dated 29th October 2015.
Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.

3 - Non-Standard Condition/Reason

The 2 no. windows and 2 no. rooflights in the northern elevation hereby approved shall be obscure glazed (to a minimum equivalent of level 4 of the Pilkington scale) and non-opening, and shall be permanently retained as such thereafter.

Reason: To avoid the overlooking of neighbouring rear gardens in the interests of the amenities of the occupants of those properties.

4 - Non-Standard Condition/Reason

Notwithstanding the provisions of the The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class A (or any Order modifying or re-enacting that order), no windows or openings other than those hereby permitted shall be inserted into any wall or roof-slope of the garage.

Reason: In the interests of residential amenity.

5 - Non-Standard Condition/Reason

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order modifying or re-enacting that order), the garage shall be used solely for the parking of motor vehicles and for the sole benefit of the occupants of 40 Boadicea Way or their visitors, and for no other purposes whatsoever.

Reason: In order to ensure that the development retains adequate parking provision in accordance with the Council's adopted standards and in order to allow further consideration of any intensification in the use of the building that may increase the opportunity for overlooking or loss of other amenities).

ADDENDUM – PREVIOUS REPORT

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee at the request of Councillor Pauline Hazell on grounds of “loss of privacy to neighbouring occupier at No. 38 Boadicea Way” [though it is assumed that this relates to the directly adjacent occupier, i.e. 39 Boadicea Way]. Further comments were made with regards to the potential use of the building as additional living accommodation as well as the location of the garage and its impact on the amenities of the neighbouring occupier at No. 39 Boadicea Way in terms of loss of light, however, these comments are either not relevant planning matters or not relevant to the current application and can therefore not be given any weight.

2.0 Synopsis

- 2.1 The key issues explored below are the impact the proposed development would have on the amenities of neighbouring occupiers as well as the character and appearance of the surrounding area. Having carefully assessed the proposed development, and having had regard to representations received from local residents and Councillors, it is considered that the proposed development would not cause any material or visual harm on either the amenities of neighbouring occupiers or the character and appearance of the wider area. The proposal is therefore found to be satisfactory and is recommended for conditional approval.

3.0 Site Description and Context

- 3.1 The application site relates to a corner plot towards the south eastern end of the residential development on the western side of Boadicea Way. The site comprises an end of terrace dwelling on the north eastern end of the rectangular plot and a detached garage at the bottom of the garden of the application site (towards the south western end). The site is located within the defined settlement limits of Colchester in a predominantly residential area. To the north, the site adjoins its neighbouring property 39 Boadicea Way and associated private rear amenity space, while to the south west of the site (outside of the curtilage of the application site) there are three garages. The north western corner of the application site also shares a boundary with the rear garden of No. 39 Gloucester Avenue.

4.0 Description of the Proposal

- 4.1 Retrospective planning permission is sought for the relocation of an approved window and door in the side elevation of the existing garage (leading into the garden of the application site) and the installation of two windows as well as two rooflights in the rear elevation of the building (facing the neighbouring rear garden to the north).

5.0 Land Use Allocation

- 5.1 The application site is located in a predominantly residential area.

6.0 Relevant Planning History

- 6.1 Planning permission for the detached garage was granted in December 2014 (146125) and this has since been implemented. The residential property itself was granted permission in 2013 (reference 121907).

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National planning Policy Framework (NPPF) must also be taken into account in planning decisions and sets out the Government's planning policies to be applied. The NPPF makes it clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental.
- 7.2 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:

SD1 - Sustainable Development Locations
UR2 - Built Design and Character

- 7.3 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):

DP1 Design and Amenity
DP13 Dwelling Alterations, Extensions and Replacement Dwellings
DP19 Parking Standards

8.0 Consultations

- 8.1 n/a

9.0 Parish Council Response

- 9.1 This area is non-parished.

10.0 Representations

- 10.1 One letter of objection was received from the directly adjoining neighbour at 39 Boadicea Way. The main reasons for objecting can be summarised as follows:
- Loss of privacy; and
 - Speculation with regards to use of the garage as additional habitable accommodation.

The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

- 11.1 The proposed development would not impact on the provision of parking which complies with current standards.

12.0 Open Space Provisions

- 12.1 There is no requirement for public open space provision in connection with this application.

13.0 Air Quality

- 13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (S106) of the Town and Country Planning Act 1990.

15.0 Report

- 15.1 The current application solely seeks permission for the installation of two windows and two rooflights in the rear elevation of the garage and the relocation of the previously approved door and window in the side elevation (to be positioned more centrally in the same elevation). It is understood that the openings have already been created without planning permission having been sought. It was noted that the original consent for the garage includes a condition that limits the use of the garage to the parking of motor vehicles and for the sole purpose of the occupier of No. 40 Boadicea Way. The desire for more daylight in the garage to ‘make it a practical space to work’ therefore required further clarification with regards to the use of the garage to ensure that this would not breach the afore-mentioned condition. On this basis, the Agent was requested to confirm the proposed use of the garage. The following clarification was received:

“The garage has been built as part of this domestic dwelling and is purely used for domestic purposes i.e. parking of vehicles. As with any domestic garage built for car storage, my client as a householder inevitably wants to keep his personal motor related supplies in the garage e.g. motor oil and other motor sundries, vehicle tools, battery charger etc. etc. (things that one would not store [in] a house) and also store his personal cycle(s) and his routine garden equipment - no different to any householder who benefits from having a garage or double garage. It is totally understood that permission is not for any other purpose e.g. living accommodation or any commercial use and nor is it intended to be.”

- 15.2 It is acknowledged that the requirement for natural light for a garage is questionable, however, it is not the role of planning to question the need for development but to assess whether this is acceptable in terms of its impact on the surrounding area and neighbouring amenities.

- 15.3 The existing garage is located at the bottom of the garden of the application site, directly adjacent to the neighbouring garden of 39 Boadicea Way. The submitted drawings, however, indicate that the four new openings in the rear elevation, i.e. two ground floor windows and two rooflights, are proposed to be obscure glazed. Whilst this is not considered to be ideal, it would provide the internal space with more daylight as sought by the Applicant while at the same time ensuring that the new openings would cause no material harm to the amenities of neighbouring occupiers in terms of loss of privacy. Furthermore, it should be noted that the garage is located at the very bottom of the garden of the application site and therefore, any impact on neighbouring amenities is considered to be limited as the protected sitting out areas would not be affected. It is acknowledged that the additional openings may result in some perceived overlooking (rather than actual overlooking given that the windows are proposed to be obscure glazed - with the velux rooflights also being non-opening - a detail that could be conditioned). There is usually held to be a lesser degree of privacy at the bottom end of the garden of an application site and, as stated above, even the sense of perceived overlooking would not cause such material or adverse harm to the amenities of the directly adjoining neighbour, or any other neighbours in the vicinity of the application site, that would justify a refusal on that basis. In the absence of any identified material harm, it is concluded that the proposal would be acceptable in terms of its impact on neighbouring amenities.
- 15.4 There are some concerns with regards to the resulting appearance of the outbuilding which would be comparable to a small residential dwelling as a result of the added windows. These are, however, located away from public view and with the exception of the relocation of the previously approved window and door in the side elevation, the proposal would not have any impact on the street scene. The relocation of the two openings in the side elevation is not considered to cause any significant harm to the character and appearance of the application building or that of the surrounding area and there is therefore no objection to this element of the proposal. Similarly, having regard to the above, whilst the proposed openings in the rear elevation are considered to give the garage a more residential appearance, its use for parking purposes only is secured via the condition on the original consent for the garage and this, coupled with the location of the openings to the rear and away from public views, would ensure that the proposed development would not be conspicuous from any vantage point or result in an unacceptable impact on the character and appearance of the surrounding area. As set out above, the proposal would not cause any materially harmful impact on neighbouring amenities and the number of parking spaces would remain the same, thereby complying with current parking standards.
- 15.5 The comments with regards to the potential use of the garage are noted; however, as stated above, the original consent restricts the use of the garage to the parking of motor vehicles and for the sole purpose of the occupier of 40 Boadicea Way and any other use of the garage would be in breach of this condition. Similarly, the existence of the garage is a matter of fact and the only relevant matters in the determination of this current application are the impact the proposed windows and the relocation of the existing openings have on neighbouring amenities and the character and appearance of the surrounding area. Therefore, no further consideration is given to the location of the garage and its potential impact in terms of loss of light as these are matters that would have been given adequate consideration in the determination of the original application.

16.0 Conclusion

- 16.1 On the basis of the above, it is concluded that, on balance, the proposed development accords with the Council's policy requirements. It is, however, considered necessary to reiterate the fact that the garage shall only be used for the purpose of parking motor vehicles and by the occupiers of 40 Boadicea Way (or their visitors) only, to ensure that the garage is not used for any other purpose which would require a detailed assessment in terms of its acceptability. Given that this condition and the previous consent remain extant, it is not necessary to impose the same condition on the current application and the reminder should therefore take the form of an informative. Furthermore, although the submitted drawings state that the proposed windows would be fitted with obscure glazing, with the velux rooflights also being non-opening, it is considered necessary to reiterate this by way of a condition, to ensure that these windows are retained as such at all times.

17.0 Recommendation

- 17.1 APPROVE subject to conditions and informatives.

18.0 Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.
2. The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers BOJKO3 Sheets 1 to 3 of 3 dated 29th October 2015.
Reason: For the avoidance of doubt as to the scope of this permission and in the interests of proper planning.
3. The 2no. Windows and 2 no. rooflights in the northern elevation hereby approved shall be permanently retained in their approved form.
Reason: To avoid the overlooking of neighbouring rear gardens in the interests of the amenities of the occupants of those properties.
4. Notwithstanding the provisions of the The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class A, no windows or openings other than those hereby permitted shall be inserted into any wall or roof-slope of the garage.
Reason: In the interests of residential amenity.

19.0 Informatives

- 19.1 PLEASE NOTE that the original consent for the double garage the subject of this application (reference 146125) conditioned its use to the sole purpose for the parking of motor vehicles and for the sole benefit of the occupants of 40 Boadicea Way or their visitors, and for no other purposes whatsoever. This condition remains extant and should be adhered to at all times.

20.0 Positivity Statement

- 20.1 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.