

**Date 22 October 2020**

<b>Report of</b>	<b>Assistant Director for Place and Client Services</b>	<b>Author</b>	<b>Alistair Day ☎ 01206 282479</b>
<b>Title</b>	<b>Land at Queen Street, Colchester (Appeal ref: 3231964 and Planning ref: 182120)</b>		
<b>Wards affected</b>	<b>Castle</b>		

**This report concerns the proposal for the southern pedestrian access that is required to be delivered as a part of the approved Alumno development**

## **1. Decision(s) Required**

- 1.1 Members are asked to endorse the suggested approach to the creation of a new pedestrian access from Priory Street as set out in the report, namely that of Option 2, which provides an acceptable access solution with an equitable balance struck between a fully compliant ramped access (Option 3) and the contingent harm associated with widening the opening through the Town Wall (former C19 theatre wall not Roman in origin). Option 2 requires the creation of a new opening of less than half that required by Option 3 (1900mm versus 4474mm)

## **2. Reasons for Decision(s)**

- 2.1 The Planning Committee, when determining planning application 182120, cited two main reasons for refusal: first, the southern access did not provide adequate disabled access; and secondly, that the proposed development constituted poor design and, by virtue of this, would have an adverse impact on the townscape of the area, including that of the town centre conservation area. The applicant appealed the decision to refuse the planning application and the application was subsequently allowed at appeal.
- 2.2 The applicant is now drawing-up detailed design proposals for the scheme, which include finding a design solution for the southern access ramp pursuant to the relevant planning condition.
- 2.3 The access ramp needs to cross the Roman Wall at some point and an approximate alignment that crosses the wall, where it is buried under the bus garage floor and subsequently under an area of proposed open space (referred to as John Ball Square in the application) has been selected. At the present time, there is a height change of at least 1.5 metres between the car park and the bus garage floor above. The enclosure to the car park at this point is currently expressed through the former theatre wall on top of which sits the bus garage wall. Whilst only dating from the early nineteenth century, the theatre wall, which is located to the south of the buried Roman Wall, gives the impression of a historic wall continuing all the way across the site. As the Planning Inspector noted, this wall “undoubtedly improves the setting and interpretation of the exposed Town Wall to its east”.

- 2.4 The applicant has advised that the creation of a access design that complies with all aspect the BS recommendations (Option 3) will result in the creation of an opening within former theatre wall (about 4500mm). The creation of such a wide opening will result in the erosion of the enclosure provided by the wall, which in turn will cause harm to the character and appearance of the conservation area and the setting of the Town Wall. An alternative proposal has been developed (Option 2) that complies with the substantive guidance of the BS. This option requires the creation of an opening of approx. 1900mm in the former theatre wall. The significantly smaller opening proposed by Option 2 will minimise the loss of enclosure and, as such, will be less harmful to the character of the conservation area and the setting of the Town Wall. Given the conflict that arises between a scheme that is in complete compliance with the BS guidance (Option 3) and the duty to protect the character of the conservation area (which includes the setting of the Town Wall), Members are asked confirm that Option 2 provides the optimal equitable balance between the need to provide an acceptable level of access for all users and the need to safeguard the town's heritage.

### **3. Alternative Options**

- 3.1 Members can decide that the alternative scheme (Option 3) that fully complies with the BS guidance is preferable and the contingent harm caused by the larger opening in the former theatre wall (4474mm compared to 1900mm) is justified in the wider public interest is implemented.

### **4. Supporting Information**

- 4.1 As noted above, the Planning Committee resolved that planning application 182120 should be refused on the grounds that the southern access did not provide adequate disabled access and that the proposed development constituted poor design and would have an adverse impact on the townscape of the area, including that of the town centre conservation area.
- 4.2 The scheme's overall design and the southern access was discussed at length at the appeal (Public Inquiry). The appeal was subsequently allowed by the Inspector, subject to planning conditions and a legal agreement.
- 4.3 In his decision letter (paragraphs 93 to 104), the Planning Inspector set out his views on the southern access. The relevant section of the appeal is set out in Appendix 1 for Members convenience.
- 4.4 The Inspector acknowledged that an amended proposals for the southern access (tabled at the Inquiry) with four ramps set a gradient of 1:15, even with intermediate landings, may be too much for some manual wheelchair users, but that a ramp with a noticeably shallower gradient is unlikely to be achievable due to the levels, available space and potential archaeological constraints. The Inspector also stated that the tabled ramped solution complied with the requirements of the Equalities Act 2010. The Inspector concluded that, in the light of the guidance in the NPPG, it is preferable to impose a Grampian condition rather than to refuse the application. The relevant planning condition (condition 15) is set out below:

Prior to the commencement of development, a scheme to provide an inclusive access between Priory Street and John Ball Square (including any necessary alterations to the Theatre Wall) shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include:

- Detailed drawings (including specifications where relevant);
- An installation programme and accompanying method statement;
- The depth of any excavations and foundation details;
- Full details (including samples) of materials and finishes;
- Arrangement for the maintenance and management of the access scheme;
- In the event that the access scheme incorporates a lift, the scheme shall include health and safety measures for the lift, details as to operational controls, hours of operation, and service, maintenance and repair arrangements (including a protocol for dealing with defects, repairs, damage and breakdowns);
- In the event that the access scheme incorporates a ramp, the scheme shall be designed in accordance with the recommendations set out in BS8300 1:2018 Design of an accessible and inclusive built environment and include a protocol for dealing with defects, repair, damage and maintenance.

The access arrangements and associated works shall be implemented in accordance with the approved details and made available for use by the general public prior to occupation of any part of the development and shall thereafter be maintained and managed in accordance with the approved details.

4.6 The applicant has prepared two options for the south access. The applicant has advised that the two options have been developed under the guidance and scrutiny of their access and inclusivity consultant Martin McConaghy of IDACs and as such they have been through a rigorous audit process which has led the detailed design evolution. The Council has also engaged the services of a specialist access consultant (Chris Hawkins of Savills) to advise on the suitability of the access ramp design.

4.7 The most noticeable difference between the two options relates to the width opening in the former theatre wall; under Option 2 the opening is 1900mm, whilst Option 3 requires an opening of 4474mm. The larger opening allows for a wider ramp and complete guarding to the turning area at the landing of the middle ramp / steps. A summary of the difference between the two options together with the relevant section of the BS is set out below:

- The BS8300-1:2018 states that “for disabled people who need a generous amount of space when moving about, the provision of narrow approaches creates difficulties. “(section 8.1). It goes on to state that “People with sight loss, as well as visitors who might be unfamiliar with the location, can be assisted if street layouts are designed to provide a strong, legible framework with unobstructed sight lines supported by orientation features... “ (section 8.1).
  - ❖ The wider opening in the wall provided by Option 3 will allow for greater sight lines (when compared to Option 2) which will further help to reduce the risk of potential conflict and accident.
- Section 8.2.2.3 titled “protection from falling” states: “where there is a change in level between the access route and the surrounding area, the risk of falling should be assessed and appropriate measures should be taken to address this”.
  - ❖ Option 2 shows no complete guarding to the turning area at the landing due to the flight of the steps to the lower level.

❖ Option 3 shows a planter as providing guarding to the turning area at the landing and therefore meets the recommendation in the standard.

- Section 8.1.2 states: “To be accessible, the minimum surface width of an access route (i.e. between walls, kerbs or path edgings) should be at least 1800 mm for general routes, although a width of 2000 mm is preferable to accommodate larger electric mobility scooters.” With regard to landings, the standard states: “landings should be provided at the foot and head of a ramp. They should be at least the width of the ramp and not less than 1500 mm long, clear of any door swing or other obstruction.....If an intermediate landing is a quarter-turn or half-internal landing, the width of the ramp should be maintained throughout the turn or turns. Intermediate landings at least 1800 mm wide x 1800 mm long should be provided as passing places where there is no clear line of sight from one end of the ramp to the other, or where there are three or more flights. (Section 9.2.4).

❖ Option 2 gives the width of the opening within the wall as 1900mm which meets the standard, but a width of 2000mm is preferable. The width of the landing is shown to equal the width of the ramp at 1800mm meeting the standard.

❖ Option 3 gives the width of the opening within the wall as 4474mm which meets the standard. The width of the landing on the same drawing also meets the standard.

4.8 The Council's Access Consultant has advised that Option 3 is preferable from a pure accessibility perspective, as it meets the standard. Option 2 fails to meet the standard with regard to the risk of falling as it does not have complete guarding to the turning area at the landing of the steps to the lower level.

4.9 Consultation has also taken place with the Council's internal heritage specialists and with Historic England. Historic England have advised:

We are fully committed to the inclusion of equal access for all in any proposals for new development.... Having considered the set of drawings for the ramps and steps, in our view the most contextually appropriate option is Option 2, which retains a greater degree of enclosure than Option 3, as a result of the smaller scale of opening through the theatre yard wall. We always strive to achieve minimum intervention in relation to proposals for alterations/removal of historic fabric. In relation to proposals for achieving equal access for all in particular, we seek a proportionate response that will enable everyone to adequately access the site, thereby fulfilling the requirements of the specific condition attached to the planning permission.

The Council's Archaeological Officer has echoed a similar view to Historic England.

4.10 From a heritage perspective, Option 2 with the smaller opening is the preferred solution. It is fully accepted that when designing a scheme, it is an important principle that everyone should have dignified access to and within it. The Equalities Act requires a reasonable response to be made to the provision of disabled access. In this instance, as the Inspector noted, there are alternative routes by which disabled users can access the development which would not result in the need for damaging alterations to the historic environment. In the opinion of the Inspector, the ramped scheme tabled at the Inquiry provided an acceptable access solution and would meet the requirements of the Equalities Act 2010. The Option 2 scheme provides improvements on the scheme tabled at the enquiry and is more closely aligned with detailed recommendations set out in the BS. Whilst officer's accept that Option 2 does not comply with one aspect of the BS,

officers are cognisant of the fact that the BS is a guidance document only and the BS itself states that the extent to which the recommendations apply to scheduled monuments, registered parks and gardens, registered battlefields and conservation areas should be determined on a case-by-case basis – i.e. there is flexibility when it comes to works that affect the historic environment). Option 2, for the same reasons rehearsed by the Inspector at the appeal, is not considered to conflict with the requirement of the Equalities Act 2010 – a primary concern expressed by Members when considering the application at the time of the planning committee.

- 4.11 For the reasons given above, and when considering the relevant material planning considerations, including the statutory requirement to preserve and enhance designated conservation areas and to protect the setting of the Town Wall (dual designated - a Scheduled Ancient Monument and Grade I listed), Option 2 is considered, on balance, to be the preferred solution.

## **5. Strategic Plan References 2018-2021**

- 5.1 Theme - Responsibility: "Create new routes for walking or cycling and work with partners to make the borough more pedestrian-friendly"

## **6. Consultation**

- 6.1 Historic England: comments set out in the report

## **7. Publicity Considerations**

- 7.1 None directly arising from this report

## **8. Financial Implications**

- 8.1 None directly arising from this report

## **9. Equality, Diversity and Human Rights Implications**

- 9.1 For the reasons set out in the report, option 2 is considered to comply with requirements of the Equalities Act 2010.

## **10. Community Safety Implications**

- 10.1 None directly arising from this report

## **11. Health and Safety Implications**

- 11.1 None directly arising from this report

## **12. Risk Management Implications**

- 12.1 None directly arising from this report

## **Background Papers**

Planning application 182120

## Appendix 1

### Section from Appeal decision relating to the South Access Proposals

93. The MP [Master Plan] proposes a new north-south link between Queen Street, to the north of Roman House, and Priory Street opposite St Botolph's Priory. A footpath through the Priory grounds connects to the large Britannia surface car park, Colchester Town Station and beyond.

94. This route needs to cross the Roman Wall at some point and an approximate alignment that crosses the wall, where it is buried under the bus garage floor and subsequently under JBS [John Ball Square], has been selected. The route would also need to change height between the level of Priory Street car park and that at the site of the future JBS. At the present time there is a height change of at least 1.5 metres between the car park and the bus garage floor above.

95. This is currently expressed through the former Theatre Wall, atop which a part of the bus garage wall also sits. Whilst only dating from the early nineteenth century, this wall, which is located to the south of the buried Roman Wall, gives the impression of a historic wall continuing all the way across the site and to the rear of the buildings fronting Queen Street. It undoubtedly improves the setting and interpretation of the exposed Town Wall to its east. The restoration and retention of the older part of the Theatre Wall, once the bus garage wall has been removed, was an integral part of the scheme as originally designed. The public would be able to stand behind this wall and look directly at the Priory ruins to its south.

96. There is an entrance to the bus garage up steps through this wall. The original scheme widened the entrance through the wall and rebuilt the steps to modern standards, providing stepped access between Priory Street and JBS. Following representations from disability groups a ramped access was added to the proposal but at a gradient of 1:12.

97. The Council considered this to be unsatisfactory and reason for refusal No. 3 refers to the design of the proposed access ramp to the south of the Town Wall not being accessible to all users with disabilities. Before the Inquiry, the Appellant prepared a further scheme that involved steps and a lift. However, at the Inquiry there was criticism about the operation of a similar lift at Vineyard Street car park. Representors pointed out that that lift was often out of order and no regime for the long-term operation and maintenance of such a lift at the appeal site was put before the Inquiry.

98. The Council and the Rule 6 Party argued that a fully accessible access between the site and Priory Street was a necessary pre-requisite of the proposal. In the absence of one, it is their view that the appeal decision should be dismissed. The Appellant contrarily argued that such an access was not essential for the proper functioning of the scheme, there being adequate pedestrian accesses from Queen Street and from Lewis Gardens. Additionally, if I did consider a pedestrian access to be necessary at this point, then it could be made the subject of a condition. Furthermore, the access did not have to be fully accessible if the site circumstances dictated otherwise.

99. The appeal site is to be a largely vehicle free environment and the tenancy agreement for the accommodation would prevent occupants from parking a vehicle within a defined area within central Colchester or applying to the Council for a residential parking permit. The proposal includes arrangements for occupants to drop off luggage, particularly at the start and end of each term, in the Priory Street car park. That car park would also be used by hotel guests. That being the case, I consider it essential that there is an easy access into the site and to the hotel and student accommodation, that does not involve the carrying of heavy luggage up steps, from that car park. The route via Queen Street, given the restricted pavement widths and

busy traffic, is not an appropriate route for students or hotel guests carrying luggage in its present form.

100. During the course of the Inquiry, the Appellant submitted other solutions to the problems posed by this access, culminating in a ramped access with a gradient of 1:15 and 5.0 metre ramps. The scheme meets the requirements contained in the latest published guidance. Given the uncertainties attached to a lift solution, a ramp may be the most appropriate option. It would not be the only pedestrian access into the site and those from the north that already exist have noticeably shallower gradients. This route, if achieved as described above, would undoubtedly be more suitable and preferable to the use of the parallel route along Queen Street, even after the implementation of the lower part of the street.

101. Whilst four ramps at a gradient of 1:15, even with intermediate landings, may be too much for some manual wheelchair users, the levels, available space and potential archaeological constraints suggest that a solution with a noticeably shallower gradient is likely to be unachievable. The Appellant can do no more than provide the shallowest gradient feasible within the constraints. In the circumstances, which include other more disability friendly accesses into this site, I consider that the above ramped outcome would provide an acceptable access for able bodied persons accessing the student accommodation and hotel from Priory Street car park and would meet the requirements of the Equalities Act 2010.

102. The proposal would breach the wall for a distance of about 3.7 metres. This may not be the preferred solution of heritage interests. However, this design achieves two flights of stairs as well as a ramped access and a solution with only one stair access to JBS would be workable and would only require the wall to be breached for about 2.0 metres.

103. There would be a requirement for excavation between the buried Roman Wall and the Theatre Wall. Providing due regard is given to the need to excavate in an archaeologically sustainable way, then I can see no reason why this could not be satisfactorily achieved.

104. It seems to me that there is every prospect of an acceptable southern access scheme being implemented. The guidance in the NPPG suggests that in such circumstances it is preferable to impose a Grampian condition, rather than to refuse the application. As suggested by the Appellant, I consider a variation to s proposed condition to be preferable. With the imposition of this condition the proposal would be in accordance with CS UR2 and DP1 and DP12.