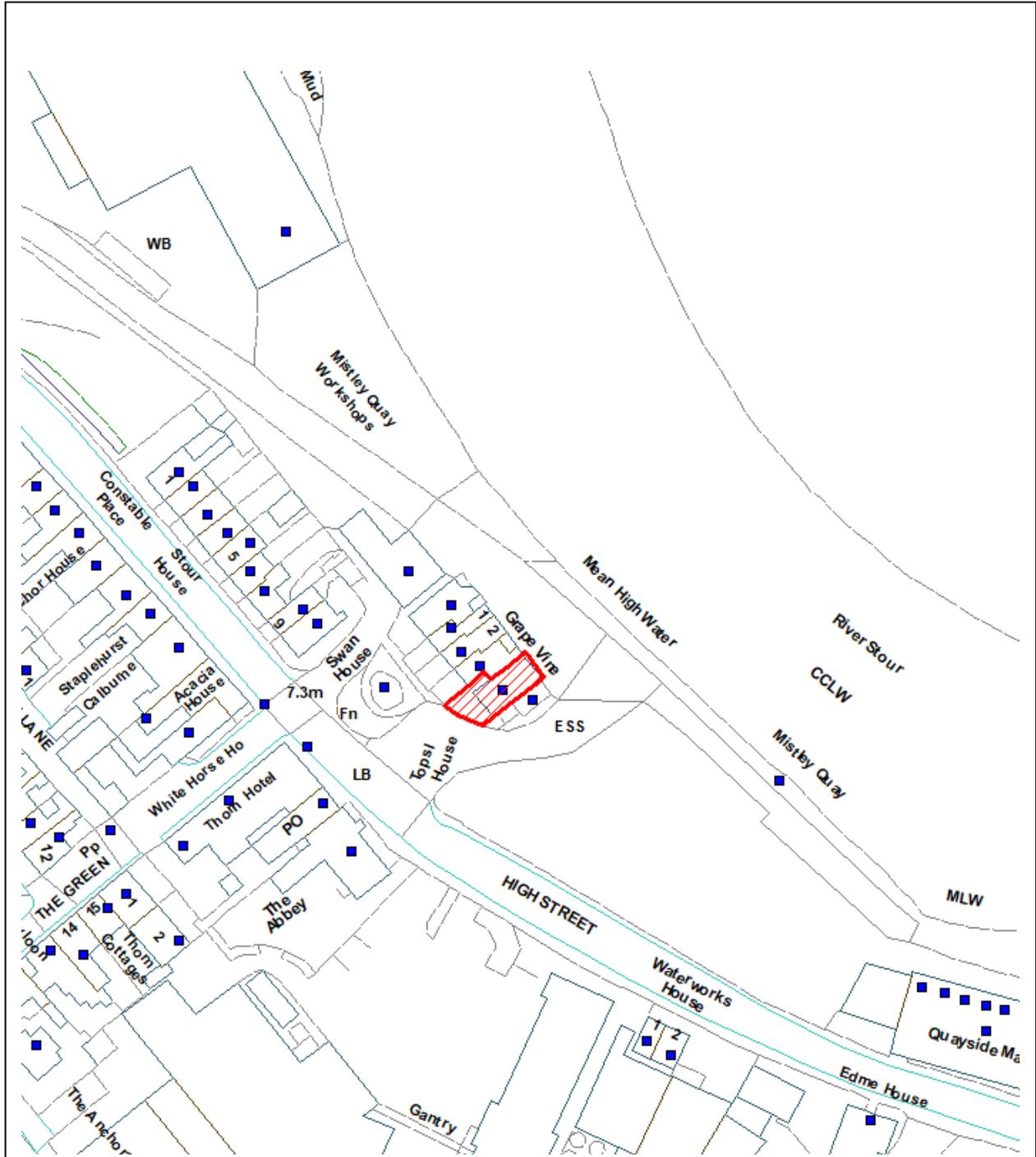


PLANNING COMMITTEE

18 January 2022

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

A.1 PLANNING APPLICATION – 21/00046/FUL – TOPSL HOUSE HIGH STREET MISTLEY MANNINGTREE



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Application: 21/00046/FUL

Town / Parish: Mistley Parish Council

Applicant: Sarah Misra & Julia Hegelstad

Address: Topsl House High Street Mistley Manningtree CO11 1HB

Development: Proposed balcony and window to a door to the Quay elevation

1. Executive Summary

- 1.1 This application was originally referred to Planning Committee at the request of Councillor Coley due to concerns with the building being listed and being in a Conservation Area, the introduction of a stairway access to the first floor, change of use of the first floor to residential, the building is located on the edge of a busy working dock and parking issues. This application was deferred from the Planning Committee meeting held on 28th September 2021. The Planning Committee deferred the application to allow for further negotiations on the application in relation to the omission or amendment of the balcony details to the rear and to address ECC Heritage objections as well as consideration of the external staircase to address overlooking and private amenity issues with the immediate neighbouring property.
- 1.2 The application has now been amended with the external staircase omitted. As such, the application now relates solely to the proposed balcony and window to a door to the Quay elevation only.
- 1.3 The application site is located within the settlement development boundary as defined within both the adopted Tendring District Local Plan 2007 and the emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft 2017. The application is located within the Conservation Area and adjacent to a Grade II Listed Building.
- 1.4 ECC Heritage have been consulted and have an objection to the proposed balcony.
- 1.5 The proposals are not considered to cause any impact upon the neighbouring amenities.
- 1.6 Mistley Parish Council have not commented on the amended application and no further letters of representations have been received.

Recommendation:

That the Head of Planning be authorised to grant planning permission for the development subject to:-

- a) Subject to the conditions stated in section 8.1

2. Planning Policy

- 2.1 The following Local and National Planning Policies are relevant to this planning application.
- 2.2 This planning application was first submitted when the NPPF - National Planning Policy Framework February 2019 was in place. During the LPA assessment phase of the development

proposals, a revised version of the National Planning Policy Framework (NPPF 2021) was published by the Ministry of Housing, Communities and Local Government (MHCLG) with revisions to both the NPPF and National Model Design Guide (NMDG), following consultation in January 2021. Among the key changes to the NPPF are updated policies aiming to improve the design of new developments, in response to the findings of the government's Building Better, Building Beautiful Commission. Due regard is given to both the NPPF 2019 as well as the NPPF 2021 (collectively referred to as the 'NPPF' in the remainder of this report) and as part of the assessment of this planning application.

NPPF National Planning Policy Framework February 2019

National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL11 Environmental Impacts and Compatibility of Uses (part superseded)

EN17 Conservation Areas

EN23 Development Within the Proximity of a Listed Building

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

Relevant Section 2 Policies (emerging)

PPL8 Conservation Areas

PPL9 Listed Buildings

SPL1 Managing Growth

Status of the Local Plan

- 2.3 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).
- 2.4 The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.
- 2.5 Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and the degree of consistency with the policies of the Framework. On 24th November 2021, the Council received the Planning Inspectors' final report on the legal compliance and soundness of Section 2 of the emerging Local Plan. The report has confirmed, that with the inclusion of a number of 'Main Modifications' (which have already been the subject of formal public consultation), the Plan is legally compliant and sound and can now proceed to

adoption. The report is due to be considered by the Planning Policy and Local Plan Committee on 11th January 2022 which is likely to recommend adoption of the Section 2 Local Plan to Full Council on 25th January 2022. On adoption, the new Section 2 Local Plan will join the new Section 1 Local Plan to form the 'development plan' for Tendring and the old 2007 Local Plan will be superseded in full.

- 2.6 Now that the Inspectors' final report is received, the Section 2 Local Plan has virtually reached the final stage of preparation, all objections have been resolved and the Inspector has confirmed that the Plan is sound and therefore in conformity with the Framework. For these reasons, Officers now advise that the emerging Plan should now carry 'almost full weight' in decision making.
- 2.7 Until the new Local Plan is adopted in January 2022, the 2007 adopted Local Plan, legally, will still form part of the 'development plan' and there will still be a requirement to refer to the 2007 Local Plan in decision making. However, the level of weight to be afforded to the policies in the 2007 Plan is reduced to very limited weight given that a more up to date Plan has progressed to such an advanced stage of the plan making process.

3. Relevant Planning History

94/00764/FUL	(4 Grape Vine, Mistley Quay, Mistley) Alterations to existing offices	Approved	16.09.1994
21/00040/FUL	Proposed external changes to fenestration including; the change of a window to a door to the front elevation, a change of a window to a door to the Quay elevation, a change from a door to a window to the side elevation and erection of a safety hand rail.	Approved	29.09.2021

4. Consultations

Essex County Council Heritage
08.12.2021

The application is for a proposed balcony and window to a door to the Quay elevation.

The building is situated within Manningtree and Mistley Conservation Area in Character Area 4 - The planned town along the High Street. Concerns were outlined within the first response regarding the potential impact to the significance of the Conservation Area and nearby listed buildings.

The balcony was previously noted as not being considered acceptable. Whilst the design has been amended, it is still considered inappropriate and should be omitted from the application to preserve the character of the building. Particularly in consideration with the recently approved 21/00040/FUL, the ground floor window will also be converted to a door. The Quay Street Scene elevation drawing demonstrates that the proposal would result in a door over a door and would not be considered in keeping with the character of the building or to the character and appearance of the Conservation

Area, contrary to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The harm to the significance of the Conservation Area is a small level of 'less than substantial' and paragraph 202 of the NPPF is relevant. Regard should also be given to paragraph 199 which affords great weight to the conservation of heritage assets.

As previously noted, if the balcony is omitted from the proposals, there are elements within the application that are acceptable in principle, but further detail is required to ensure that they will be in keeping with character and appearance of the Conservation Area and do not impact the surrounding listed buildings. As such the following conditions should be applied:

- Details of the types and colours of all external materials, shall be submitted to and approved by the Local Planning Authority in writing prior to their first use on site.

- Additional drawings that show details of any new windows and doors by section and elevation at scales between 1:20 and 1:1 as appropriate, shall be submitted to and approved by the Local Planning Authority in writing prior to their first construction or installation on site.

Subject to the balcony and the conditions, the proposals will be in line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and chapter 16 of the NPPF.

5. Representations

- 5.1 Mistley Parish Council have not commented on the amended plans.
- 5.2 No letters of representation have been received in regards to the amended plans.

6. Assessment

Site Context

- 6.1 The application site relates to Topsl House which is a two storey building located within the settlement boundary of Manningtree and located within the Conservation Area.
- 6.2 The building is located to the end of the row of buildings with views over the Quay and adjacent Grade II Listed Building.

Site History

- 6.3 Planning Permission was granted by the Planning Committee on 28th September under application reference 21/00040/FUL for the proposed external changes to fenestration including the change of a window to a door to the front elevation, a change of a window to a door to the

Quay elevation, a change from a door to a window to the side elevation and erection of a safety hand rail.

- 6.4 This application originally was for the change of use from an office (Class E (g) (i) to residential dwelling (C3). Due to recent changes to the use class order introduced by the Government, this change of use no longer requires planning permission and requires a prior notification application. Therefore, this is not being assessed within this application.
- 6.5 Under the current application reference 21/00046/FUL, the application was presented to Planning Committee on 28th September and requested planning permission for an external staircase, balcony, window to a door to the quay elevation and a window to a door to the North West elevation. The Planning Committee deferred the application to allow for further negotiations on the application in relation to the omission or amendment of the balcony details to the rear and to address ECC Heritage objections as well as consideration of the external staircase to address overlooking and private amenity issues with the immediate neighbour property.

Proposal

- 6.6 This application seeks planning permission for a proposed balcony and window to a door to the Quay elevation.
- 6.7 This application is to assess external changes only.

Principle of Development

- 6.8 The site is located within the Development Boundary therefore there is no in principle objection to the proposal, subject to the detailed considerations discussed below.

Design and Appearance (including Heritage Assessment)

- 6.9 Adopted Policy SP7 of the 2013-33 Local Plan seeks high standards of urban and architectural design which responds positively to local character and context. Emerging Policies SPL3 and LP4 of Section 2 of the 2013-33 Local Plan also require, amongst other things, that developments deliver new dwellings that are designed to high standards and which, together with a well-considered site layout, create a unique sense of place - avoiding the use of ubiquitous standard house types. Paragraph 130 of the Framework requires that developments are visually attractive as a result of good architecture, are sympathetic to local character, and establish or maintain a strong sense of place.
- 6.10 Policy EN17 of the Tendring District Local Plan 2007 and Policy PPL8 of the Tendring District Local Plan 2013-2033 and Beyond Preferred Options Consultation Document (July 2016) state that development within a Conservation Area must preserve or enhance the special character or appearance of the Conservation Area.
- 6.11 Policy EN23 of the Tendring District Local Plan 2007 states that proposals for development that would adversely affect the setting of a Listed Building, including group value and long distance views will not be permitted, emerging Policy PPL9 reflects these considerations.
- 6.12 The proposed works, external balcony and the window to a door to the Quay elevation will be visible to the Quay. The fenestration changes from a window to a door are not considered harmful to the street scene.
- 6.13 As the application relates to the Conservation Area and is adjacent to a Grade II Listed Building, ECC Heritage have been consulted on this application.

- 6.14 ECC Heritage have noted that the application is now solely for a proposed balcony and window to a door to the Quay elevation. The building is situated within Manningtree and Mistley Conservation Area in Character Area 4 - The planned town along the High Street. Concerns were outlined within the first response regarding the potential impact to the significance of the Conservation Area and nearby listed buildings.
- 6.15 The balcony was previously noted as not being considered acceptable. Whilst the design has been amended, it is still considered inappropriate and should be omitted from the application to preserve the character of the building. Particularly in consideration with the recently approved 21/00040/FUL, the ground floor window will also be converted to a door. The Quay Street Scene elevation drawing demonstrates that the proposal would result in a door over a door and would not be considered in keeping with the character of the building or to the character and appearance of the Conservation Area, contrary to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 6.16 The harm to the significance of the Conservation Area is a small level of 'less than substantial' and paragraph 202 of the NPPF is relevant. Regard should also be given to paragraph 199 which affords great weight to the conservation of heritage assets. As previously noted, if the balcony is omitted from the proposals, there are elements within the application that are acceptable in principle, but further detail is required to ensure that they will be in keeping with character and appearance of the Conservation Area and do not impact the surrounding listed buildings. As such conditions should be imposed in regards to the external materials and details of new windows and doors.
- 6.17 Subject to the balcony and the conditions, the proposals will be in line with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and chapter 16 of the NPPF.
- 6.18 The comments and concerns raised by ECC Heritage are noted in regards to the balcony; notwithstanding this, planning permission has previously been given and implemented for a variety of balconies along the Quay. The proposed balcony is, therefore deemed to have no greater effect on the character of the Conservation Area than those already 'in situ' and it would be difficult to substantiate a reason for refusal on this ground alone.

Impact upon neighbouring amenities

- 6.19 The NPPF, at paragraph 130 states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Adopted Policy SP7 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) requires that all new development protects the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, overbearing and overlooking.
- 6.20 The proposed balcony will be located to the quay elevation and views will be towards the quay and therefore will be away from any neighbouring private amenity space. The change from a window to a door is not considered to cause any impact.

7. Conclusion

- 7.1 The proposed works are considered acceptable subject to details of the external materials as well as the details of the windows and doors. The proposed works will not result in any harm to neighbouring amenities.

8. Recommendation

- 8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informatives.

8.2 Conditions and Reasons

- 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 following approved plans:

- Drawing no. TH05 REV12
- Drawing no. TH06 REV1
- Drawing no. TH12 REV1

Reason - For the avoidance of doubt and in the interests of proper planning.

- 3 Before any work is commenced drawings to a scale of not less than 1:20 fully detailing the new windows and doors and their surrounds to be used and indicating: materials; cross sections for glazing bars, cills, heads etc at a scale of 1:20; and method of glazing shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall be installed/carried out in complete accordance with the approved details.

Reason - The application relates to a building in the Conservation area and adjacent to a Grade II Listed building and therefore such details are necessary in order to preserve and enhance the historic character.

- 4 No development shall be commenced until a schedule of external finish materials shall be submitted to and agreed, in writing, by the Local Planning Authority. Such materials as may be agreed shall be those used in the development and permanently maintained as such.

Reason - To ensure materials are of a very high quality to respect the building and its setting.

8.3 Informatives

Positive and Proactive Statement

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.

9. Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
- 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;

- 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
- 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).
- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.

10. Background Papers

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.