
Appeal Decision

Site visit made on 10 April 2017

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 May 2017

Appeal Ref: APP/Y1110/W/17/3167274

Land between Nos 39-41 Toronto Road, Exeter, Devon EX4 6LE - EX4 6LF

- 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 Terence Tancock on behalf of the Feoffees of St. Sidwell against the decision of Exeter City Council.
 - The application Ref 16/0076/03, dated 3 January 2016, was refused by notice dated 12 August 2016.
 - The development proposed is the demolition of 11 garages to be replaced by a 2 storey development of 6 apartments.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. This appeal follows unsuccessful application Ref 14/4657/03 which was for a 3 storey building of 5 apartments. Notwithstanding the discussion in the information before me related to that proposal, I have determined this appeal on its particular merits.
3. My decision relates to the iterations of plans before the Council at the time their decision was taken.¹ However certain plans were amended at application stage without alteration to reference numbers. Where plans share the same reference number, the version annotated 'revised development proposals 20/07/2016' represents the current proposal.
4. The appellant has clarified that the proposal is for 6 apartments, rather than 5 as indicated in the application form, and that no affordable housing is now proposed as defined in Annex 2 to the National Planning Policy Framework (the 'Framework').

Main issues

5. Based on the information before me the main issues in this appeal are:
 - 1) whether or not the apartments proposed would provide for suitable living conditions for their intended future occupants,

¹ The relevant plans listed in correspondence from the appellant dated 7 April 2017.

- 2) the effect of the proposal on the living conditions of the occupants of nearby properties with particular regard to outlook and privacy,
- 3) the effect of the proposal on the character and appearance of the area, and
- 4) the effect of the proposal on the efficient operation of Toronto Road.

Reasons

6. The appeal site is occupied by 11 utilitarian garages which step down in sections following the changing topography here. The garage block is atypical of the prevailing area, which is otherwise characterised by Victorian terraced properties fronting a comparatively narrow network of carriageways reflective of the historic origins of this part of Exeter.
7. Pedestrian access behind the garage block is between the side of the building and No 41 Toronto Road. To the rear is a narrow pathway and retaining wall beyond which is a natural strip of land. This land is approximately 1.5 metres to 2.5 metres higher in level than that of Toronto Road and slopes up away from the garages to the common boundary with the plot of Laurel Cottage.²
8. The rear boundary of the appeal site is demarcated by a substantial brick wall which defines the limit of the Belmont Conservation Area beyond. An imposing mature lime tree falls nearby the boundary wall within the garden of Laurel Cottage which substantially overhangs the appeal site.
9. The proposal is to demolish the garage block and to erect a 2 storey building comprising 6 apartments. The proposal would also incorporate a strip of highway land in front of the garages to provide for an access route to the apartments, which would be demarcated by a low wall and planting.³

Living conditions of future occupants

10. Policy CP4 of the Council's Core Strategy adopted on 21 February 2012 (the 'CS') establishes that residential development should be of the highest appropriate density compatible with the protection of 'local amenities'. Supporting paragraph 6.17 to policy CP4 explains that the policy seeks to prevent 'excessive density, poor design or inadequate open space'.
11. Supporting paragraph 6.18 to policy CP4 refers to the Council's Residential Design Supplementary Planning Document adopted on 28 September 2010 (the 'Design SPD'). Figure 9.2 of the Design SPD sets minimum internal floorspace standards: the minimum floorspace required for a 1 bedroom apartment occupied by 2 individuals is 50 square metres.⁴ The Design SPD further specifies that ground floor flats should be provided with private outside space and that flats above ground level should have balconies in addition to a minimum of 20 square metres of communal outside space per flat.⁵

² Figures quoted in the Council's appeal statement, which are not disputed by the appellant.

³ As illustrated on plan FEO/BHB/6.

⁴ As is the apparent illustrated occupancy of all apartments shown on the supporting plans.

⁵ At paragraphs 7.11- 7.13.

12. The approach in policy CP4 and the Design SPD aligns with that of saved policy DG4 of the Council's Local Plan First Review adopted originally on 31 March 2005 (the 'LP'). Text supporting saved policy DG4 reiterates that all flats should be provided with some semi-private outside space, and sets out that shared amenity space should be located so as to receive maximum sunlight.⁶
13. Policy DD13 of the Council's emerging Development Delivery Development Plan Document (the 'emerging DPD') establishes how the Council will seek to ensure a good standard of living conditions for occupants of buildings, including in respect of providing 'sufficient internal space... in accordance with the nationally described space standards'.
14. The Government's Technical housing standards: nationally described space standard published on 27 March 2015 (the 'space standards') sets out that for applicable development the minimum gross internal floorspace that should be provided for a 1 bedroom flat occupied by 2 individuals is 50 square metres. Therefore notwithstanding that the emerging DPD cannot yet be accorded full weight, the approach therein in respect of internal floor space provision appears consistent with the space standards (and indeed with the approach in policy CP4 of the CS with reference to the Design SPD).
15. The National Planning Policy Framework (the 'Framework') explains that the age of development plan policies is not in itself determinative of their currency.⁷ It further establishes that design is a key aspect of sustainable development, and that planning should always seek to ensure a good standard of amenity for all future occupants of buildings. The approach in the development plan policies and the Design SPD cited above is therefore aligned with that of the Framework. Whilst not part of the development plan, in this context I therefore accord the Design SPD substantial weight in this instance.
16. The versions of plans entitled FEO/BHB/3 and FEO/BHB/3 Rev. A, both dated 20 July 2016, show that the internal floorspace of the apartments proposed would be variously between 50.26 and 55.33 square metres. Therefore, on the face of it, the internal floorspace proposed would meet the levels set in the Design SPD and space standards (albeit by a fraction in certain instances).
17. However despite the revisions to the plans cited above, the communal floorspace proposed for refuse and cycle storage remains unchanged. The Design SPD recommends that the space needed to conveniently store 6 bicycles should be 3.2 metres as opposed to 2.6 as is the intention here.⁸ Moreover the Design SPD recommends that for ease of use cycle storage and refuse storage should be separate, rather than a combined space as is the proposal before me.
18. Given the limited space available for bicycle storage and as this area of the building would have a shared function with refuse storage, practically the use of the space for its intended purposes is likely to prove cramped and awkward. Were this space to be altered to comply with the approach in the Design SPD, this would likely necessitate a reduction in the floorspace of one or more

⁶ At paragraphs 13.36 and 13.40.

⁷ Paragraph 215.

⁸ Figures referenced by the Council in paragraph 4.13 of their appeal statement, which are not disputed.

apartments (the floorspaces of which, as noted above, on occasion exceed only fractionally the relevant standards).

19. There is furthermore a substantial retaining wall illustrated on drawing FEO/BHB/7 to brace the higher level land to the rear of the garages. This does not appear to be reflected on internal floorplan FEO/BHB/3. Therefore on the basis of the information before me I am not satisfied that the retaining wall proposed would not necessitate a further reduction of internal floorspace.
20. I cannot therefore conclude that the proposal would provide for appropriate internal floorspace to enable comfortable residential use, notwithstanding that I accept that any shortfall that may arise relative to the requirements of the Design SPD and space standards is likely to be relatively minor.
21. The outside space associated with the development is stated to be 150 square metres on the plans before me, which again numerically exceeds the 120 square metres recommended via the Design SPD. However none of this area would be associated with individual apartments, but would instead be communal. First floor apartments would furthermore not have balconies.
22. Given that the land to the rear of the garages is relatively narrow, its rear boundary demarcated by a substantial wall, and as the lime tree overhangs the site, the outside space proposed would in my view feel significantly enclosed and is likely to be overshadowed for a significant proportion of the day. Whilst I accept that many properties nearby have limited outside space and that Belmont Park falls relatively nearby, the outside space proposed in this instance would nonetheless be substandard.
23. Although there are high level windows proposed for the ground floor apartments to the rear, these would be located only fractionally above ground level.⁹ Consequently views through these windows would be extremely limited, and the principal outlook from the ground floor flats would be towards Toronto Road. Outlook in this direction would be significantly limited by the front boundary wall and planting proposed and by the dwellings opposite.¹⁰
24. For the above reasons I am not satisfied that the apartments proposed would provide sufficient or suitable internal or external outside space. I am furthermore of the view that the sense of enclosure within the ground floor flats would not represent high quality design. I therefore conclude on the balance of the evidence before me that the apartments proposed would fail to provide for suitable living conditions for their intended future occupants. Accordingly the proposal conflicts in this respect with the relevant provisions of policy CP4 of the CS, saved policy DG4 of the LP and with the approach in relevant elements of the Design SPD, the space standards and the Framework.

⁹ There appears to be some discrepancy in the plans before me given that on plan FEO/BHB/8 the first floor level of the building is indicated as below the level of the outside space to the rear.

¹⁰ Whilst I acknowledge as set out in paragraph 2.4 of the appellant's appeal statement that 'the profile of beneficiaries of the charity is such that the residents are likely to be elderly and therefore spending more time inside than younger residents might', with reference to paragraph 4 of this decision there is no mechanism before me restricting the occupation of the dwellings.

Living conditions of those nearby

25. As referenced above policy CP4 of the CS, saved policy DG4 of the LP and policy DD13 of the emerging DPD all require that development ensures a good standard of residential amenity, as is the approach in the Framework. I would further note that supporting text to saved policy DG4 of the LP and the Design SPD refer to a minimum 22 metre separation distance between facing habitable rooms to avoid undue loss of privacy.
26. As identified above the appeal site falls within an area characterised by Victorian terraced properties situated along a comparatively narrow network of carriageways, representing a relatively high level of residential density. Originally two storeys on occasion properties, such as a No 18 opposite, have converted roof spaces into accommodation including via the construction of rear dormers. Some properties have a close inter-relationship with one another, for example as is the case of those along nearby Albion Place.
27. Therefore whilst I accept that the modest height of the garages results in a relative sense of openness here, this is atypical of the prevailing nature development of the area. The proposed building would be two storeys in height, step down in sections in line with the topography of Toronto Road, and would broadly reflect the maximum ridge height of adjacent properties.
28. Whilst the proposal would therefore have some effect in respect of an increased sense of enclosure nearby and a reduced degree of privacy to the occupants of Nos 18 and 20 opposite in particular, with regard to the design of the development proposed and the nature of its surroundings I am not of the view that such effects would be unacceptable.
29. Nevertheless at its closest point the building proposed would be only approximately 11 metres from Laurel Cottage, which I visited during my site visit.¹¹ Notwithstanding the rear boundary wall and lime tree, the garage block is readily visible through several first floor bedroom windows of Laurel Cottage.
30. Aside from one bedroom window which faces the appeal site directly, views through the rear windows of the apartments proposed towards Laurel Cottage would be at an oblique angle. Nevertheless the separation distance between the windows proposed in the apartments and those of Laurel Cottage would be very limited at certain points, particularly in respect of apartment 4, and significantly below the separation distance recommended in the SPD.
31. Accordingly I conclude that the proposal would adversely affect the privacy from which the occupants of Laurel Cottage current benefit in conflict with the relevant provisions of policy CP4 of the CS, saved policy DG4 of the LP and with relevant elements of the Design SPD and of the Framework.

Character and appearance

32. As the nearby lime tree is a large mature specimen, and on account of the topography largely sloping away from the appeal site in all directions, it is highly prominent. Given the relatively dense pattern of development nearby

¹¹ As set out in paragraph 4.7 of the Council's appeal statement, which is not disputed by the appellant.

and the paucity of similar trees, the lime tree therefore makes a valuable contribution to softening the urban character of the area.

33. Indeed the value of the lime tree to the area, including to the Belmont Conservation Area in which it falls, is not disputed. The appellant's arboricultural report describes the lime tree as 'an important visual amenity'.¹² It is unclear, given this statement, what has therefore led to its categorisation as a 'B1' specimen within the arboricultural report, which is therein defined as 'of moderate quality and value'.
34. Saved policy DG1 of the LP explains how development should integrate appropriately with existing natural features. The Council's Trees in relation to development supplementary planning document adopted on 15 September (the 'Trees SPD') further guides how valuable trees should be safeguarded in respect of development proposed based on appropriate evidence.
35. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This is reiterated in saved policy C1 of the LP, with policy CP17 of the CS requiring that all development integrates appropriately with its surroundings.
36. The Framework likewise sets out that great weight should be given to the conservation of designated heritage assets, including Conservation Areas. The Framework also establishes that it is proper to preserve local distinctiveness, and the Planning Practice Guidance (the 'Guidance') explains that distinctiveness results from physical characteristics of areas including trees.¹³
37. Plan FEO/BHB/6 and the tree protection plan within the arboricultural report show that the development proposed would significantly encroach into the 12 metre projected root protection area for the lime tree (being the distance that roots may extend from the trunk of the tree). It does not appear that the construction of the retaining wall illustrated on plan FEO/BHB/7 has been referred to within the arboricultural report, or that any ground investigations were undertaken to establish definitively the extent of the root system of the lime tree that may be affected by development.¹⁴
38. There is moreover some ambiguity within the arboricultural report as to where root protection area fencing should be erected. There is reference at paragraph 4.3 to protective barriers being erected and the area within being 'considered sacrosanct', however for the above reasons these would need to be within the nominal root protection area for the tree and therefore it is unclear what protection such measures would practically afford. Indeed the arboricultural report also states that were the entirety of the root protection area protected this 'would significantly restrict construction operations'.
39. Based on the information before me I am therefore not satisfied that the development proposed would have a 'negligible detrimental affect' (sic) on the lime tree as the arboricultural report contends. I cannot conclude that the

¹² Prepared by Rowse Tree Services, dated 27 March 2015.

¹³ Reference ID: 26-020-20140306.

¹⁴ Notwithstanding the associated correspondence before me from Rowse Tree Services dated 5 January 2016 related to the continued validity of the report for this proposal.

proposal would safeguard the wellbeing of the lime tree, nor on the basis of the information before me that this could be achieved via conditions.

40. I therefore cannot conclude that the proposal would not harm the character and appearance of the area including that of the Belmont Conservation Area. Accordingly the proposal conflicts with the relevant provisions of saved policies DG1 and C1 of the LP, policy CPS17 of the CS, and with relevant elements of the Trees SPD, the Framework and the Guidance.

Effect on Toronto Road

41. Policy CP4 of the CS sets out that residential development should achieve the highest appropriate density compatible with, amongst other things, the safety and convenience of the road network. The Council's Sustainable Transport Supplementary Planning Document adopted in March 2013 (the 'Transport SPD'), although not part of the statutory development plan, sets out how development can be brought forward with appropriate regard to transport matters including avoiding inconvenience to existing users of the road.
42. As explained above the proposal would incorporate a strip of highway land which would be demarcated by a new boundary wall. On account of the historic origins of the area, Toronto Road and surrounding carriageways are relatively narrow. The Council has appended to their statement of case a diagram which illustrates that there is limited space available to drivers when cars are parked on either side of Toronto Road (approximately 3.16 to 4.7 metres, which are figures not disputed by the appellant).
43. Maintaining an appropriate carriageway width in this location is in my view particularly important as there is no dedicated space at the end of Toronto Road for vehicle turning. The proposal would directly reduce the functional space available to drivers in this location. Moreover the proposal would lead to some degree of increased parking pressure by virtue of the loss of existing garage spaces in a location where it appears that on account of the relatively high level of residential density, on-street parking is already at a premium.¹⁵ Additional pressure for parking immediately adjacent to the appeal site may therefore further reduce the functional carriageway width available here.
44. For the above reasons I therefore conclude that the proposal would have some degree of adverse effect in respect of the efficient operation of Toronto Road in conflict with the relevant provisions of policy CP4 of the CS and the approach in the Transport SPD. Whilst this effect would be limited given the existing baseline intensity of vehicular use and nature of carriageways in the area, this nevertheless carries some further limited weight against the proposal.

Planning balance

45. Both the CS and the Framework are supportive in general terms of enabling appropriate housing development. The Framework sets out that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

¹⁵ Notwithstanding the appellant's contention in paragraph 1.3 of his appeal statement that the garages are predominantly used for storage rather than parking on account of their limited size, it is not indicated that none are used for parking. Several residents have furthermore disputed the appellant's position in this respect.

46. In this context I accept that the proposal would result in an addition to housing stock of 6 new dwellings, making use of an existing utilitarian garage block. The proposal would further result in social and economic benefits in supporting employment during construction, and as future occupants would make use of local services and facilities.
47. However the benefits in respect of 6 new homes would be modest, particularly relative to the scale of housing growth in Exeter set out in policy CP1 of the CS. Moreover the support accorded to housing via the CS and Framework is not at the expense of ensuring that all dwellings integrate appropriately with their surroundings. Consequently the harm that would result in respect of the main issues in this case would clearly outweigh the benefits of the proposal.¹⁶

Other matters

48. The appellant explains at paragraph 2.13 of his appeal statement that there 'is no evidence of any significant wildlife activity', and consequently that adverse effects to ecology would not result from the proposal. However no robust evidence in support of this position has been brought to my attention. Therefore, notwithstanding the current nature of the site, I cannot conclude that the proposal would be acceptable with regard to its effect on ecology. However even were the proposal acceptable in this regard, this would be effectively neutral in the planning balance rather than weighing positively in favour of the proposal. Accordingly neither this, nor any other matter, is of sufficient significance so as to alter my reasoning as set out above.

Conclusion

49. For the above reasons, and having taken all other matters raised into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore dismiss the appeal.

Thomas Bristow

INSPECTOR

¹⁶ There is no information before me related to whether or not the Council are presently able to demonstrate a five year supply of deliverable housing sites relative to needs. However, for the avoidance of doubt, the harm arising would significantly and demonstrably outweigh the benefits of the proposal even were the Council unable to demonstrate such a supply.