
Appeal Decisions

Site visit made on 11 July 2017

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 26th July 2017.

Appeal A - Ref: APP/Y1110/W/17/3168134

Land bounded by Exeter Road and The Retreat Drive (Heritage Homes Office), Exeter Road, Topsham, Exeter, OS 957889

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Heritage Developments (SW) Ltd against the decision of Exeter City Council.
 - The application Ref 16/0963/03, dated 29 July 2016, was refused by notice dated 4 November 2016.
 - The development proposed is the erection of a B1 office building, access and associated infrastructure works.
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Appeal B - Ref: APP/Y1110/W/17/3168133

Land bounded by Exeter Road and The Retreat Drive (Heritage Homes Office), Exeter Road, Topsham, Exeter, OS 957889

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Heritage Developments (SW) Ltd against the decision of Exeter City Council.
 - The application Ref 16/1505/03, dated 8 November 2016, was refused by notice dated 11 January 2017.
 - The development proposed is the construction of 7 residential units (flatted development), access and associated infrastructure works.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the erection of a B1 office building, access and associated infrastructure works at land bounded by Exeter Road and The Retreat Drive (Heritage Homes Office), Exeter Road, Topsham, Exeter, OS957889 in accordance with the terms of application Ref 16/0963/03, dated 29 July 2016, and the plans submitted with it, subject to the conditions set out in the Appendix.

Appeal B

2. The appeal is allowed and planning permission is granted for the construction of 7 residential units (flatted development), access and associated infrastructure works at land bounded by Exeter Road and The Retreat Drive (Heritage Homes Office), Exeter Road, Topsham, Exeter, OS957889 in accordance with the terms of application Ref 16/1505/03, dated 8 November

2016, and the plans submitted with it, subject to the conditions set out in the Appendix.

Main Issues

3. The first main issue, which is addressed in the Council's Decision Notice, is whether the proposals would harm the landscape setting of the city and the integrity of the strategic gap between Topsham and Exeter.
4. The second main issue, specifically in relation to Appeal B, is whether, if the conclusion in relation to the first main issue is that the landscape setting of the city were considered to be harmed by the proposed development, whether the lack of a five year housing supply, which the Council's most recent report accepts is the case, would have sufficient weight in relation to a scheme for seven residential units, to outweigh any harm identified in the first main issue.

Reasons

5. The one hectare appeal site is open, flat land of little landscape distinction, currently occupied by the Appellant's temporary site office, before which it had been unused for some time. It is located on the south-west side of Exeter Road, immediately to the east of the bridge where this road passes under the M5 motorway, whose embankment physically dominates the site. The site's sense of containment will increase further when the scheme for 60 dwellings, immediately to the south-east, currently under construction, will be completed, on the opposite side of The Retreat Drive. Further to the south-east, housing extends continuously along Exeter Road towards the settlement of Topsham. The site is also visually contained to the south-west by a line of mature trees.
6. On the opposite (north-west) side of the M5 from the appeal site, there is a recently constructed Aldi retail store, together with further housing under construction, within area defined on the Core Strategy¹ Key Diagram as the Newcourt Strategic Allocation, which extends the urban area of the city as far as the M5. There is a boatyard to the south-west and beyond that, the estuary of the River Exe. On the opposite side of Exeter Road, to the north-east, there are nurseries on flat, open land, with the boundary of the nurseries to the main road defined by a thick hedge.

Effect of the proposals on the landscape setting of the city and the strategic gap

7. The appeal site is located within the Topsham Gap, whose purpose, as defined in Core Strategy policy CP16, is to prevent the merging of the urban areas of Topsham with Exeter. The key determining feature which separates the two settlements is the M5 motorway. On the south-west side of Exeter Road to the south of the M5 (i.e. the Topsham side), the gap has almost disappeared, to the extent that development on the small and physically contained appeal site, either for residential or business use, would have no impact on the integrity of the gap. There is also a significant amount of recent and planned development immediately to the north of the M5 along Exeter Road.
8. The proposed residential development would also be in keeping with the residential character which prevails along the south-west side of Exeter Road, with the remaining open site currently under construction for new housing immediately facing the appeal site on the opposite side of The Retreat Drive. I

¹ Exeter City Council: Core Strategy; February 2012.

also consider that the proposed business use, in a three storey development, would not be out of scale with the M5 embankment and bridge deck forming its immediate backdrop.

9. The appeal site is included within a small part of the City's landscape setting, straddling both sides of the M5, to the south-west of Exeter Road, as set out in the Core Strategy Key Diagram, where policy CP16 applies. That part of the policy area to the north of the M5 has already been developed for a retail store (Aldi), whilst most of the policy area to the south of the appeal site is currently being developed for housing. This leaves the appeal site, which in my view is insufficiently extensive and insufficiently distinctive to contribute meaningfully to the city's landscape setting or to the integrity of the strategic gap between Exeter and Topsham.
10. This point is reinforced by the City Council's DPD Proposals Map², which does not designate the appeal site for any form of protection and does not acknowledge that it forms part of the landscape setting. This is in contrast to the Broom Park Nurseries on the opposite side of Exeter Road, which comprises an extensive area of open space, or the Exe estuary, immediately to the south-west. Whilst this map is not part of an adopted Plan, which limits the weight I can attach to it, it nevertheless shows that the Council's most recent development plan document has removed the landscape setting policy from the appeal site. In fact, the appeal site is conspicuous in its absence of Development Plan designations which in my view reflects the picture on the ground that it is a site which is not critical to the success of the landscape setting of the city or the integrity of the Topsham Gap.
11. I therefore conclude, in relation to the first main issue, that neither the landscape setting of the city nor the integrity of the Topsham Gap would be harmed by the proposals. As such they are not contrary to Core Strategy policy CP16.

Five year housing land supply

12. Given my conclusion in relation to the first main issue, the balancing exercise in relation to Appeal B in relation to the proposed residential development is no longer necessary. The development of seven units of flatted development would make a modest contribution towards meeting the national aim in paragraph 47 of *the Framework*³, to boost significantly the supply of housing, and specifically, in meeting the city's housing requirements.
13. I therefore conclude in relation to the second main issue that the housing provision in the Appeal B scheme would constitute an additional argument in favour of the proposal.

Other considerations

14. Several other matters were raised by local representations, and I deal with these below.
15. Air pollution: Concern is expressed that the impact of air pollution from the M5 on the health of future occupiers of the proposed residential development would be unacceptable. The Appellant's air quality assessment concludes that

² Exeter City Council : Proposals Map, Map 16; 02/07/2015.

³ DCLG: National Planning Policy Framework (*the Framework*); March 2012.

future occupiers of the proposed development are unlikely to be exposed to concentrations of air pollution that exceed the relevant objective levels, based on measured levels from nearby monitoring sites. The Council's Environmental Health officer, responding to the concerns from local residents, reviews the Appellant's air quality assessment and accepts its conclusions that no specific air quality mitigation measures are required. I have no reasons to come to a different conclusion.

16. Drainage and flood risk: There is no objection from either the Environment Agency or from the County Council as Local Lead Flood Authority.
17. Boatyard access: No concerns have been expressed by the highway authority or the local planning authority regarding possible impedance to the access to the boat yard via The Retreat. There is nothing from studying the proposed access to the appeal site which would lead me to the conclusion that the proposals would result in access to and from the boatyard being restricted or unsafe.
18. Archaeology: An archaeological investigation has already been carried out. However, in recognition of the importance of the need to address anything of archaeological significance once development is underway, this can be addressed through an appropriate condition.
19. Impact on ecology: An independent consultant ecologist instructed by the Appellant states that he is able to predict with confidence, on the basis of a survey that he carried out, that the appeal site has very limited ecological value and that additional ecological survey work would be neither necessary nor justifiable. This conclusion was not robustly challenged and I see no reason to come to a different view.
20. Pressure on community facilities: Specific concerns were expressed regarding pressure on local health centres and schools. No representations were received, however, from health or education service providers.
21. Visual impact: The proposed three storey developments, both for residential and for offices in contemporary design, would not sit out of place with the surrounding context, including three storey housing immediately to the south-east and the M5 motorway embankment immediately to the north-west. I also note that the Devon Design Review Panel do not object to the design of either proposal and consider that the proposed developments are acceptable in terms of the character of the area. I have no reason to come to a different conclusion, and I do not agree with some of the representations that the proposals would constitute an unsightly addition to the skyline.
22. Traffic safety and parking: Clearly, the developments would generate additional traffic onto what is already a busy road network in and around Exeter. The additional volume of traffic, however, would be relatively slight in comparison to the significantly larger urban extensions on the eastern side of the city. The proposals are located sustainably in relation to existing bus routes between Exeter and Topsham, and its sustainability is enhanced by the proposed on-site cycle provision and proximity of footpaths. The parking provision accords with policy T10 of the Exeter City Local Plan First Plan Review, 2005. Neither the highways authority nor the city council has raised concerns over traffic safety or parking, and on the basis of the above considerations I come to the same conclusion.

Planning Conditions

23. All the conditions set out in the Council's officer reports are agreed by the Appellant. They are relevant and necessary for the proposals to go ahead in the interests of highway safety, public amenity, safeguarding the living conditions of nearby residential occupiers, and in the interests of sustainable development.
24. The two lists of conditions vary, in order to reflect the differences in the two proposals. I acknowledge, for example, that the BREEAM 'excellent' standard can no longer be required for residential development through a planning condition, although I agree with the Council's suggested condition to secure a reduction in CO2 emissions with reference to the Building Regulations. However, I fail to see why the archaeological recording and travel plan conditions are only considered applicable to the proposal for B1 office development, and not for residential development. In view of the importance of these considerations to both appeal developments, I therefore consider it appropriate to attach both of these two conditions to both proposals.
25. The conditions are set out in the Appendix .

Conclusion

26. I find that the proposals would not harm the landscape setting of the city and neither would they harm the integrity of the Topsham Gap. In this context, the balancing exercise in relation to Appeal B for residential development is no longer necessary, and it is my view that the provision of an additional seven dwellings in the context of a five year housing supply shortfall would constitute an additional argument in favour of this proposal. For the reasons given and having regard to all other matters raised, I conclude that both appeals should be allowed.

Mike Fox

INSPECTOR

Appendix

Conditions

Appeal A

- 1) The development to which this permission relates shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the submitted details received by the local planning authority on 29 July 2016 (*Dwg nos OFC-003 Rev E; OFF-001 Rev C; and OFF-SEC1 Rev C*) as modified by other conditions in this approval.
- 3) Samples of materials it is intended to use externally in the construction of the development shall be submitted to the local planning authority and the development shall not be started before their approval is obtained in writing and the materials used in the construction of the development shall correspond with the approved samples in all respects.
- 4) The development shall not begin until full details of drainage works have been submitted to and approved by the local planning authority in writing, they shall be implemented in accordance with the approved details.
- 5) No development shall take place, including any works of demolition, until adequate areas shall have been made available within the site to accommodate operatives' vehicles, construction plant and materials, and a Construction Management Statement has been submitted to and approved in writing by the local planning authority. The Statement should include details of access arrangements, measures to minimise the impact on the adjacent footpath and timings of the proposed works. The approved Statement shall be adhered to throughout the construction period.
- 6) A noise assessment shall be undertaken for the development hereby approved which shall be submitted and approved in writing prior to commencement of the development. This report shall consider the impact of environmental noise on the development as well as the impact of noise from new plant and equipment on neighbouring receptors. If, following the above assessment, the local planning authority concludes that noise mitigation measures are required, a scheme of works shall be submitted to ensure that the development is protected from ambient noise and does not have a significant impact on local amenity. These measures shall be agreed in writing by the local planning authority and shall be implemented prior to and throughout the occupation of the development.
- 7) A detailed scheme for landscaping, including the planting of trees and/or shrubs, the use of surface materials and boundary screen walls and fences, shall be submitted to the local planning authority, and no development shall take place until the local planning authority has approved the scheme in writing; such scheme shall specify materials, species, tree and plant sizes, numbers and planting densities, and any earthworks required together with the timing of the implementation of the scheme. The landscaping, including the agreed programme, shall be carried out in accordance with agreed detailed scheme.

- 8) No development shall take place until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority, and the CEMP shall be adhered to throughout the construction period. Notwithstanding the details and wording of the CEMP, the following provisions shall be adhered to:
- (a) There shall be no burning on site during demolition, construction or site preparation works;
 - (b) Unless otherwise agreed in writing, no construction or demolition works shall be carried out, or deliveries received, outside the following hours: 0800 to 1800 hours Mondays to Fridays, 0800 to 1300 hours on Saturdays, and not at all on Sundays and Public Holidays;
 - (c) Dust suppression measures shall be employed as required during construction in order to prevent off-site dust nuisance; and
 - (d) Details of access arrangements and timings and management of arrivals and departures of vehicles.
- 9) No development related works shall take place within the site until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority. This scheme shall include on-site work, and off-site work, such as the analysis, publication and archiving of the results, together with a timetable for completion of each element. All works shall be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority.
- 10) Travel Plan measures including the provision of sustainable transport welcome packs shall be provided in accordance with the details agreed in writing by the local planning authority and local highway authority in advance of occupation of the development.
- 11) No part of the development hereby approved shall be brought into its intended use until secure cycle parking facilities have been provided and maintained in accordance with details that shall have been submitted to and approved in writing by the local planning authority and retained for that purpose at all times.
- 12) The development hereby approved shall achieve a BREEAM 'excellent' standard and shall achieve 'zero carbon' if commenced on or after 1 January 2019. Prior to commencement of such a building, the developer shall submit to the local planning authority a BREEAM design stage assessment report, the score expected to be achieved and which standard this relates to. Where this does not meet the minimum required standard, the developer must provide details of what changes will be made to the development to achieve the minimum standard, and thereafter implement those changes. A post completion BREEAM report shall be submitted to the local planning authority within three months of the substantial completion of any such building hereby approved. The required BREEAM assessments shall be prepared, and any proposed design changes approved prior to commencement of the development, by a licensed BREEAM assessor.
- 13) No part of the development hereby approved shall be brought into its intended use until the visibility splays and on-site parking have been

provided in accordance with the requirements of this permission and retained for those purposes at all times.

Appeal B

- 1) The development to which this permission relates shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the submitted details received by the local planning authority on 18 November 2016 (*Dwg nos APTS-003 Rev H; APP-001 Rev H; and APP SEC 1*) as modified by other conditions in this approval.
- 3) Samples of materials it is intended to use externally in the construction of the development shall be submitted to the local planning authority and the development shall not be started before their approval is obtained in writing and the materials used in the construction of the development shall correspond with the approved samples in all respects.
- 4) No development shall take place until details of the implementation, maintenance and management of the sustainable urban drainage system have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - (i) Timetable for its implementation; and
 - (ii) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime.
- 5) No development shall take place, including any works of demolition, until adequate areas shall have been made available within the site to accommodate operatives' vehicles, construction plant and materials, and a Construction Management Statement has been submitted to and approved in writing by the local planning authority. The Statement should include details of access arrangements, measures to minimise the impact on the adjacent footpath and timings of the proposed works. The approved Statement shall be adhered to throughout the construction period.
- 6) Before the development commences, a scheme for the protection of the occupiers from ambient noise shall be submitted to, and approved in writing by the local planning authority. This shall include mechanical ventilation such that the future occupiers do not need to rely on open windows for ventilation. The approved measures shall be implemented in full prior to occupation and maintained thereafter.
- 7) A detailed scheme for landscaping, including the planting of trees and/or shrubs, the use of surface materials and boundary screen walls and fences, shall be submitted to the local planning authority, and no development shall take place until the local planning authority has approved the scheme in writing; such scheme shall specify materials, species, tree and plant sizes, numbers and planting densities, and any earthworks required together with the timing of the implementation of the scheme. The landscaping, including

the agreed programme, shall be carried out in accordance with agreed detailed scheme.

- 8) No development shall take place until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority, and the CEMP shall be adhered to throughout the construction period. Notwithstanding the details and wording of the CEMP, the following provisions shall be adhered to:
 - (a) There shall be no burning on site during demolition, construction or site preparation works;
 - (b) Unless otherwise agreed in writing, no construction or demolition works shall be carried out, or deliveries received, outside the following hours: 0800 to 1800 hours Mondays to Fridays, 0800 to 1300 hours on Saturdays, and not at all on Sundays and Public Holidays;
 - (c) Dust suppression measures shall be employed as required during construction in order to prevent off-site dust nuisance; and
 - (d) Details of access arrangements and timings and management of arrivals and departures of vehicles.
- 9) No development related works shall take place within the site until a written scheme of archaeological work has been submitted to and approved in writing by the local planning authority. This scheme shall include on-site work, and off-site work, such as the analysis, publication and archiving of the results, together with a timetable for completion of each element. All works shall be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority.
- 10) Travel Plan measures including the provision of sustainable transport welcome packs shall be provided in accordance with the details agreed in writing by the local planning authority and local highway authority in advance of occupation of the development.
- 11) No part of the development hereby approved shall be brought into its intended use until secure cycle parking facilities have been provided and maintained in accordance with details that shall have been submitted to and approved in writing by the local planning authority and retained for that purpose at all times.
- 12) No part of the development hereby approved shall be brought into its intended use until the visibility splays and on-site parking have been provided in accordance with the requirements of this permission and retained for those purposes at all times.
- 13) Before commencing development, a SAP calculation shall be submitted which demonstrates that a 19% reduction in CO₂ emissions over that necessary to meet the requirements of the 2013 Building Regulations can be achieved. The measures necessary to achieve this CO₂ saving shall thereafter be implemented on site, and within three months of practical completion of any dwelling the developer will submit a report to the local

planning authority from a suitably qualified consultant to demonstrate compliance with this condition.