The Planning Inspectorate

Appeal Decision

Site visit made on 4 February 2019

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2019

Appeal Ref: APP/Y1110/W/18/3212951
Ringswell Avenue, Exeter, Devon, EX1 3EG.

- 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 Westco Properties Limited and Exeter Royal Academy for Deaf Education against the decision of Exeter City Council (the LPA).
- The application Ref.18/0534/FUL, dated 4/4/18, was refused by notice dated 9/8/18.
- The development proposed is the erection of 48 dwellings (use class C3), means of access, public open space and associated infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 48 dwellings (use class C3), means of access, public open space and associated infrastructure. The permission is granted in accordance with the terms of the application Ref.18/0534/FUL, dated 4/4/18 and subject to the conditions in the Schedule below.

Preliminary Matters

2. The LPA accepts that it is unable to demonstrate a five year housing land supply[1] and it has not identified any conflict with the development plan[2] or any of its Supplementary Planning Documents or emerging development plan documents. I shall determine the appeal in accordance with the development plan unless material considerations indicate otherwise. Highway safety and the free flow of traffic are important material considerations.

3. The site was formerly used for educational purposes (St. Luke's High School) with access onto Ribston Avenue and Ringswell Avenue[3]. In 2012 the LPA granted outline permission for the erection of an Academy for Deaf Education with associated residential accommodation on the site[4] (ref. 12/0584/01). Reserved matters approval was granted in 2013 but this development did not proceed. The previous use of the appeal site and these permissions are also important material considerations.

4. As part of the appeal, the appellants have submitted an Agreement under the provisions of section 106 of the Town and Country Planning Act 1990. Amongst other things, this includes provision for an element of affordable

[1] I understand that it can only demonstrate just over 2 years supply, which amounts to a serious shortfall.
[2] This includes the Exeter Core Strategy 2006-2026, adopted in 2012 and the 'saved' policies of the Exeter Local Plan First Review 1995-2011, adopted in 2005.
[3] I understand that about 40 car parking spaces were accessed from Ribston Avenue and 20 spaces from Ringswell Avenue.
[4] I understand that only emergency access was envisaged onto Ringswell Avenue but this was not a condition of the approval and there was no actual restriction on traffic.

housing, open space provision and financial contributions towards the costs of: a Traffic Regulation Order (TRO) and a pedestrian cycle link to Warwick Road. I shall return to this Agreement below.

5. An application for an award of costs has been made by the appellants against the Council. This is the subject of a separate decision.

Main Issue

6. The main issue is the likely effect upon highway safety and the free flow of traffic along the local highway network, with particular regard to Honiton Road (B3183) and Ringswell Avenue.

Reasons

Highway Safety / Free Flow of Traffic

7. This 1.52 ha brownfield site lies to the west of Ringswell Avenue, to the south of the dwellings in Ribston Avenue/Bramley Avenue and to the east of the houses in Warwick Road. St. Nicholas Catholic Primary School lies to the south, with Honiton Road beyond.

8. Ringswell Avenue is a cul-de-sac that is subject to a 20 mph speed limit. There are parking restrictions along this street, including around the junction with Honiton Road. There are footways on either side of Ringswell Avenue, including a shared footway/cycleway for part of the western side of the street.

9. As I saw during my visit[5], there is on-street parking along this cul-de-sac. This restricts a section of the street to single carriageway width and encourages slower vehicular traffic speeds in the vicinity of the school entrance. On-street parking increases[6] when pupils arrive and depart from the school. There is also some congestion outside the school when the drivers of vehicles who have collected children, travel south and meet vehicles travelling in the opposite direction. When pupils leave the school there is some queuing[7] at the junction with Honiton Road. From what I saw, this is due mainly to the change in traffic light signals at the junction of Honiton Road/Sidmouth Road.

10. There are clearly some existing issues with vehicular traffic along part of Ringswell Avenue (such as inappropriate parking and congestion) when pupils are arriving and departing from the school. This is far from ideal and is a temporary inconvenience to residents and those accessing properties in this street. However, as recognised by the LHA within its consultation response, this situation is not dissimilar to roads serving other schools in Exeter. Moreover, an interrogation of the road traffic accident records by the appellants' transport consultant and the LHA do not reveal any inherent safety issues with Ringswell Avenue, including the junction with Honiton Road.

[5] This included observing traffic movements and flows before, during and after pupils left St. Nicholas's School.
[6] In addition to an increase in cars parked along the eastern side of Ringswell Avenue I also observed the drivers of 5 vehicles parking within the turning area to the north of the school entrance. I note from the representations made to me that this is commonplace. A driver of another vehicle that had parked in this turning area departed from one of the houses in Ringswell Avenue before parents/carers started to arrive at the school. I also observed another car parked on the double yellow lines along the junction with Ringswell Avenue and Honiton Road.
[7] I note from the appellants' Transport Assessment (TA), the Local Highway Authority's (LHA) consultation response and some of the representations from local residents that this queuing is greater during the peak morning period (08:00-09:00) when traffic flows are heavier along Honiton Road and Sidmouth Road.

11. The National Planning Policy Framework (the Framework), amongst other things, states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

12. The appellants recognise that Honiton Road is an important commuter corridor into Exeter and is often congested at peak periods of the day. An increase in congestion would be an adverse impact of the proposed development.

13. The appellants transport consultant using, amongst other things, TRICS[8], available traffic flow data for the Ringswell Avenue/Honiton Road junction and PICADY[9], has calculated that the vehicular trips from the proposed development would total 22 additional two-way trips during the peak morning period and 26 additional two-way trips during the peak evening period (17:00-18:00) along Ringswell Avenue. This is expected to constitute a 2% uplift in traffic flows on Honiton Road during these parts of the day.

14. The increase in traffic and congestion is not something to be welcomed. However, having considered the scheme and the TA, the LHA accepts that this increase would not be significant enough to justify withholding permission. In the context of the Framework, the impact would not be severe. Moreover, when compared to the previous use of the site, the proposal would involve a net decrease in two-way trips during the peak morning period.

15. In addition, the results of the appellants 2018 traffic survey and its forecast traffic profiles suggest that during the morning peak period a significant proportion of the trips generated by the proposed development would not interact with traffic associated with the school peak period. In essence, a number of residents would have departed from the appeal site for work etc.., before most pupils started to arrive at St. Nicholas Catholic Primary School.

16. As part of the proposed development, a new foot/cycle link would be provided to Ribston Avenue and a financial contribution secured towards the cost of providing a pedestrian/cycle link to Warwick Road[10]. A financial contribution towards a TRO, to restrict traffic speeds within the site to 20 mph, has also been secured. The proposal would be well connected to the surrounding streets and residents (including those neighbouring the site) would be able to safely walk and cycle in and around the site. It may also encourage a few people who currently drive to the adjacent primary school to walk instead.

17. Given the good road safety record along Ringswell Avenue, including the junction with Honiton Road, the generally slow moving traffic along the cul-de-sac, the availability of existing footways on both sides of the street, the new pedestrian and cycle links that would be provided through the site and the existing parking restrictions, I concur with the appellants, the LHA and the Council's officers that the proposal would not pose a significant risk to highway safety interests.

18. I note the arguments made by some interested parties[11] that the existing vehicular access into the site from Ribston Avenue should be used instead. Utilising this access would be logical and would reduce the traffic flows along

[8] Trip Rate Information Computer System (TRICS) database.
[9] Priority Intersection Capacity and Delay software model.
[10] I understand that this would be provided by the County Council.
[11] This includes the Ringswell Avenue Residents Association.

Ringswell Avenue and past the school. However, I understand that this would require the acquisition of third party land and a redesign of the scheme which would delay much needed housing development. I must also determine the appeal on its own planning merits. In this regard, as the proposal before me accords with development plan and I have found that the impact on the road network would not be severe and highway safety interests would not be compromised, it would be unsound to withhold permission.

19. I conclude on the main issue that the proposal would be unlikely to compromise highway safety interests and would not have a severe effect upon the free flow of traffic along the local highway network.

Other Matters

20. The proposed development would accord with the Government's objective of boosting the supply of homes. It would increase the choice and type of homes available within the City and would assist in addressing the shortfall in supply. The proposed 17 affordable dwellings would also help meet the pressing housing needs of the local community. There is also convenient access to public transport services and the network of cycleways that cross the City.

21. The proposal would entail the more efficient use of urban land and enhance the character and appearance of the site. It would also make a small, but positive, contribution to the ecological value[12] of the site. The new public open space would be available to existing residents and foot/cycle links would be provided. During the construction phase there would be support for the construction industry and afterwards, incoming residents would support local services (including businesses) and facilities.

22. These social, economic and environmental benefits of the proposed development carry considerable weight.

Section 106 Agreement

23. There affordable housing provisions would be necessary to help meet the pressing housing needs of the local community and would accord with relevant development plan policies for housing. The contributions towards the costs of providing a TRO to limit traffic speed within the site would be necessary in the interests of highway safety. These obligations are directly related to the development and fairly and reasonably related in scale and kind. They accord with the provisions of paragraph 56 of the Framework and the relevant provisions of the Community Infrastructure Levy Regulation 2010 (as amended). I have no evidence to indicate that they would breach the 'five obligation limit' to which Regulation 123(3) applies.

Planning Conditions

24. In the interests of certainty, a condition would be necessary specifying the approved plans. To safeguard the character and appearance of the area conditions would be necessary requiring: the buildings to be finished in accordance with an approved schedule of materials; a scheme of landscape planting; the protection of trees and shrubs that are to be retained within the

[12] Amongst other things, the appellants Ecological Appraisal found that the site was of limited value to bats and recommended a minimum of six bat boxes across the site to enhance the availability of roosting features.

site; any planting that fails within five years of planting to be replaced and; details of the finished floor levels.

25. In the interests of ecology, a condition would be necessary requiring the development to be undertaken in accordance with the details contained within the submitted Ecological Appraisal, as amended by the approved plans. As there is a separate licencing regime it would be inappropriate to include reference to this within a condition.

26. In the interests of public health a condition would be necessary requiring: the development to be undertaken in accordance with the recommendations contained within the submitted Ground Investigation Report and any necessary remedial works. To safeguard the living conditions of neighbouring residents a condition would be necessary requiring the development to be undertaken in accordance with the submitted Construction Environmental Management Plan.

27. To limit the impact upon climate change, ensure the site is adequately connected to the surrounding streets and to encourage travel by sustainable modes, conditions would be necessary requiring: details of the measures to limit/reduce CO_2 emissions; provision for electric vehicle charging points; secure cycle parking facilities; the provision of the proposed pedestrian and cycle links and; travel packs to be provided to incoming residents.

28. To limit the risk of flooding, a condition would be necessary requiring the development to be undertaken in accordance with the proposed drainage strategy.

29. The appellants have agreed to the conditions suggested by the LPA, including several pre-commencement conditions. Where necessary, I have modified some of these conditions either because some of the information was not provided to me (such as exchanges of e-mails) or because some of the requirements are unnecessary.

30. The conditions in the Schedule below accord with the provisions of paragraph 55 of the Framework.

Overall Conclusion

31. I do not set aside lightly the concerns of a number of local residents or those representing the local primary school. However, given my findings above, including the range of benefits that would arise from the proposed development, I conclude that there is greater force in the arguments for granting planning permission. The appeal should therefore succeed.

Neil Pope

Inspector

SCHEDULE OF PLANNING CONDITIONS

1. The development to which this permission relates must be begun no later than the expiration of three years beginning with the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1,000 scale site location plan (ref. P1610:01); 1:500 scale proposed site layout (ref. P1610:02); 1:1,000 scale site layout analysis (ref. P1610:04); 1:1,000 scale access & movement (ref. P1610:05); 1:1,000 scale tenure (ref. P1610:06); 1:1,000 scale boundaries (ref. P1610:07); 1:1,000 scale ecology (ref. P1610:08 Rev A); 1:1,000 scale adoptable highways (ref. P1610:09); 1:100 scale floor plans plots 1&2 (ref. 1610:10 Rev A); 1:100 scale elevations plots 1&2 (ref. 1610:11 Rev A); 1:100 scale floor plans plot 3 (ref. 1610:12); 1:100 scale elevations plot 3 (ref. 1610:13); 1:100 scale floor plans & elevations plot 4 (ref. 1610:14); 1:100 scale floor plans & elevations plots 5, 6 & 45 (ref. 1610:15); 1:100 scale floor plans & elevations plots 7 & 18 (ref. 1610:16); 1;100 scale floor plans plots 8 & 9 (ref. 1610:17); 1:100 scale elevations plots 8 & 9 (ref. 1610:18); 1:100 scale floor plans & elevations plots 10-13,40-41 (ref. 1610:19); 1:100 scale floor plans plots 14-16 (ref. 1610:20); 1:100 scale elevations plots 14-16 (ref. 1610:21); 1:100 scale floor plans & elevations plots 17 & 19 (ref. 1610:22); 1:100 scale floor plans & elevations plots 20-21, 28-31 (ref. 1610:23); 1:100 scale floor plans & elevations plots 22-23 (ref. 1610:24); 1:100 scale floor plans plots 24-27 (ref. 1610:25); 1:100 scale elevations plots 24-27 (ref. 1610:26); 1:100 scale floor plans plots 32-33 (ref. 1610:27); 1:100 scale elevations plots 32-33 (ref. 1610:28); 1:100 scale floor plans plots 34-36 (ref. 1610:29); 1:100 scale elevations plots 34-36 (ref. 1610:30); 1:100 scale floor plans & elevations plots 37-38 (ref. 1610:31); 1:100 scale floor plans & elevations plot 39 (ref. 1610:32 Rev A); 1:100 scale floor plans & elevations plots 42&44 (ref. 1610:33); 1:100 scale floor plans plot 43 (ref. 1610:34); 1:100 scale elevations plot 43 (ref. 1610:35); 1:100 scale floor plans plots 46 & 47 (ref. 1610:36); 1:100 scale elevations plots 46 & 47 (ref. 1610:37); 1:100 scale floor plans plot 48 (ref. 1610:38); 1:100 scale elevations plot 48 (ref. 1610:39); 1:50 & 1:20 scale garages & boundary treatments (ref. P1610:40 Rev A); 1:1,000 scale open space plan (ref. P1610:41); 1:200 scale planting details (refs. 475/01 Rev B, 475/02 Rev B, 475/03 Rev B).

3. No development above slab level shall take place until a schedule of materials to be used in the construction of the external doors & walls, roofs and windows has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

4. The development hereby permitted shall be carried out in accordance with the findings and mitigation measures identified in the Ecological Appraisal by Tor Ecology dated 5th February 2018 document ref TEO122/EA/B, including the provision of bird and bat boxes across the site, except as modified by drawing no. P1610:08 Rev A.

5. The landscaping scheme shown in the approved drawings refs. 475/01 Rev B, 475/02 Rev B and 475/03 Rev B shall be fully implemented in accordance with a timetable that shall be submitted to and approved in writing by the Local Planning Authority within 1 month of the commencement of the development.

6. In the event of failure of any trees or shrubs, planted in accordance with the approved scheme of landscaping, to become established and to prosper for a period of five years from the date of the completion of that scheme, such trees or shrubs shall be replaced with such live specimens of such species of such size and in such number as may be approved in writing by the Local Planning Authority.

7. No materials shall be brought onto the site or any development commenced, until the developer has erected tree protective fencing around all trees or shrubs to be retained, in accordance with the recommendations contained in the Arboricultural Impact Assessment Report by Aspect Tree Consultancy document ref 04921 AIA 29.3.18.Docx and Aspect Tree Consultancy drawing no 04921 TPP. The developer shall maintain such fences in situ until all development the subject of this permission has been completed. The level of the land within the fenced areas shall not be altered without the prior written consent of the Local Planning Authority (LPA). No materials shall be stored within the fenced area, nor shall trenches for service runs or any other excavations shall take place within the fenced area except by written permission of the LPA. Where such permission is granted, soil shall be removed manually, without powered equipment.

8. No development shall take place until all the recommendations from the submitted Ground Investigation Report (Geo Consulting, August 2017) have been undertaken, and the results and any remedial works necessary have been agreed with the Local Planning Authority (LPA). The buildings shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to the LPA detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.

9. The development hereby permitted shall be implemented in accordance with the provisions and details set out in the submitted Construction Environmental Management Plan Revision C dated 25th June 2018. There shall be no use of Ringswell Avenue by any vehicular traffic associated with the construction of the development, including that related to construction workers employed on the site.

10. No development above slab level shall take place until details of CO_2 emissions associated with the proposed dwellings and measures to achieve CO_2 savings have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be undertaken in accordance with the approved details and within 3 months of practical completion of any dwelling the developer will submit a report to the LPA from a suitably qualified consultant to demonstrate compliance with this condition.

11. The development hereby permitted shall not commence until details of the proposed finished floor levels and overall ridge heights of all dwellings and the final levels of all roads forming part of the development, in relation to an agreed fixed point or OS datum have been submitted to, and been approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

12. The development hereby permitted shall be undertaken in accordance with the

drainage strategy contained within the Flood Risk Assessment dated 28 March 2018 submitted by Hydrock (document ref RIN-HYD-PH1-XX-RP-D-5001 S2 P1).

13. Prior to the occupation of any dwelling hereby permitted, a travel pack shall be provided to the prospective occupants informing them of walking and cycling routes and facilities, public transport facilities including bus stops, rail stations and timetables, any car sharing schemes and car clubs, the form and content of which shall have previously been approved in writing by the Local Planning Authority.

14. No dwelling hereby permitted shall be occupied until the pedestrian/cycleway adjacent to plots A38/A37 to the western site boundary as indicated on the approved adoptable highways plan (ref. P1610:09) has been provided up to and including the appeal site boundary, in accordance with details and specifications that have previously been submitted to and approved in writing by the Local Planning Authority.

15. No development above slab level shall take place until details of pedestrian and cycle linkages/facilities up to and including the northern application site boundary to Ribston Avenue have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved links/facilities have been provided, surfaced and marked out in accordance with the approved details. Thereafter this shall be retained for those purposes at all times.

16. No development above slab level shall take place until details of the extension of the shared use path on Ringswell Avenue fronting the development site have been submitted to and approved in writing by the Local Planning Authority. The extension shall be undertaken in accordance with the approved details and prior to the occupation of any dwelling.

17. No development above slab level shall take place until details of secure cycle parking provision to serve each dwelling comprised in the development has been submitted to and be approved in writing by the Local Planning Authority. The approved cycle parking shall be provided before each dwelling is occupied.

18. No development above slab level shall take place until details of a scheme for the provision of electric car charging points within the site has been submitted to and be approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.