



Appeal Decision

Site visit made on 23 July 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Appeal Ref: APP/Y1110/W/19/3244078

Aaron Court, Pinhoe Road, Exeter, Devon EX4 8AS

- 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 Anil Harital Gadhia, Mak Nahal and Nidal Adatia against the decision of Exeter City Council.
 - The application Ref 19/0875/FUL, dated 14 June 2019 was refused by notice dated 20 September 2019.
 - The development proposed is described on the application form as a '6 bed extension'.
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Decision

1. The appeal is dismissed.

Preliminary matters

The site

2. Aaron Court is also referenced in the information before me as No 328 Pinhoe Road, alluding to the history of the property. No 328, accessed close to the junction of Pinhoe Road and Whipton Village Road, appears early-to-mid twentieth century in origin. Many houses nearby are of similar era. Aaron Court has, however, been used as a residential care home since around 1986.¹ Whilst predominantly residential, there are nevertheless occasional residential and non-residential institutions relatively nearby. No 328 has been extensively altered over time. It now comprises 21 bedrooms and its plot includes part of the former rear garden to neighbouring No 326. I understand that Aaron Court is currently operating at capacity.

Policy context

3. Notwithstanding the planning history to the site, each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The development plan in this instance includes policies of the Council's Core Strategy ('CS') and saved policies of the Exeter Plan First Review ('LP').² I have also had regard to various material considerations including the National Planning Policy Framework ('NPPF'), along with relevant elements of the Planning Practice Guidance ('PPG') and of the National Design Guide ('NDG').³

¹ Use Class C2 as defined via the Town and Country Planning (Use Classes) Order 1987 as amended, as opposed to C3 'dwellinghouses'.

² Adopted February 2012 and, originally, in 2005.

³ Whilst the Pinhoe Neighbourhood Forum is working towards developing a neighbourhood plan, that endeavour does not appear yet to be at a sufficiently advanced stage of preparation such that it may be accorded significant weight in this decision.

Relevant policies

4. CS objectives 3 and 9, along with policy CP17, seek to ensure provision of 'decent homes for all' and excellence in design. More specifically LP policy DG1 sets out how development should integrate appropriately with its surroundings, including in respect of the layout of development and distinctiveness (criteria (b)(c)and(h)).
5. LP policy DG4 sets out how residential development should be at the 'maximum feasible density'. That is subject to the caveat of being contingent upon site constraints and effects on the local area, and so as to ensure 'a quality of amenity which allows residents to feel at ease within their homes and gardens'. LP policy EN5 further sets out how 'noise-generating development will not be permitted if it would be liable to increase adversely the noise experienced by the users of existing or proposed noise-sensitive development nearby [without suitable mitigation]'.
6. Similarly the NPPF sets out how all development should function well and add to the overall quality of an area, be sympathetic to local character, and 'optimise the potential' of a site (paragraph 127, criteria a), c) and e)). NPPF paragraphs 127, criterion f), and 180, criterion a) seek to ensure 'a high standard of amenity' for all, and to ensure that new development is appropriate for its location in terms of noise implications. Likewise NDG sections C1, B2 and H2 indicate how development may be designed so as to integrate appropriately with the layout, built form and prevailing living conditions of its surroundings.
7. LP policies are now of some vintage, albeit that age is not in itself determinative of currency. No argument has been made that the relevant provisions of the development plan referenced above are inconsistent with the approach in the NPPF or NDG (insofar as they relate to the specific circumstances in this appeal). Inherent in my reasoning above is that I have identified no substantive conflict in that regard.

Main issues

8. Against the background above the main issues are the effects of the scheme on (i) the living conditions of the occupants of neighbouring properties, (ii) the living conditions of the occupants of Aaron Court, (iii) the character and appearance of the area. In the event that I find that harm would result, I will then gauge whether or not any other material considerations in favour of the proposal are nevertheless sufficient to justify allowing the appeal.

Reasons

The proposal

9. Simply, the proposal is to remodel and to extend Aaron Court to provide for six additional bedrooms. The proposal is focussed on the north-western corner of the plot of No 328, by the rear gardens of Nos 326 and 324 Pinhoe Road (and also Nos 51-55 Widgery Road). That area presently accommodates outbuildings and is part hard surfaced, part lawn. The design of the scheme would reflect the appearance of existing extensions to Aaron Court; single storey extensions of understated design with a shallow-pitched roof form.

Living conditions of occupants of neighbouring properties

10. I acknowledge, as the appellants put it, that the implications of a care home are not comparable to those of a nightclub in terms of noise and disturbance. As set out above, No 328 has been in C2 use for quite some time. Therefore, to some extent, noise and disturbance resulting from its operation has become part of the established character of the area.⁴ Aaron Court is also detached, whereas the prevailing arrangement of properties in the surrounding area is semi-detached.⁵
11. I have also set out how there are a handful of non-C3 uses nearby, which likely give rise to different patterns of noise to that typically associated with dwellinghouses, and that Aaron Court falls close to Pinhoe Road (the B3212, a main east-west route through Exeter). The area is therefore characterised by a certain baseline noise profile, which in my view sets the benchmark relative to which implications of the proposal should be assessed.
12. However, a care home inherently represents a more intensive use than a dwelling. As equally set out above, the surrounding area is principally residential. The prevailing pattern of development is also more spacious, in terms of the relationship between the footprint of buildings relative to their plots, than would result by virtue of the proposal. In this instance maintenance, visitors, and deliveries associated with the operation of a 21-bed facility will inevitably have some implications in respect of noise and disturbance. Visits by medical professionals or emergencies may unavoidably occur at any time.
13. In that context, the proposal entails a significant additional intensity of use. The proposal would result in a care home with 27 rooms in place of 21 currently. Judging by their age and scale, few dwellinghouses in the surrounding area are in themselves six bedroom properties. The proposal represents an increase in the capacity at Aaron Court of some 29%. That will, in all likelihood, increase the number of staff required, visitors, and potential for unforeseen circumstances to occur.
14. Similarly, the proposal would result in the potential for additional use of outside space from time-to-time (although I acknowledge that depends on individual occupants' circumstances). By virtue of the location of the extension proposed, outside space closer to the rear gardens of Nos 326 and 324 is likely to be more frequented than at present. In my view intermittent noise, such as from conversations, in close proximity to neighbouring rear gardens where a reasonable degree of tranquillity is legitimately expected, would be more intrusive than continuous autonomous noise (such as that generated from vehicular use of nearby roads).
15. Notwithstanding certain mitigation factors, the proposal would in my view result in clear potential for additional noise and disturbance, and consequent adverse effects to the living conditions of the occupants of Nos 326 and 324. At times the resultant noise would, in all likelihood, result in material changes to

⁴ Whilst I note the representations of the occupants of No 326, who explain that they are 'constantly' disturbed by noise, separate provisions exist to address noise amounting to a statutory nuisance under the relevant provisions of the Environmental Protection Act 1990 (as amended).

⁵ Albeit that there is a scattering of detached properties including The Red House Whipton Village Road, a hostel, No 2 Whipton Road behind it, No 330 Pinhoe Road, and Woolserly to the rear of No 12 Whipton Village Road.

behaviour (such as closing windows at certain times, and potentially disturbing sleep on occasion). There is no empirical evidence before me to the contrary.⁶ In that context recourse to separate provisions referenced in footnote 4 above would not, in my view, be sufficient to safeguard appropriate living conditions of the occupants of neighbouring properties; noise and disturbance may adversely affect quality of life at a lower threshold than that which would necessarily amount to a statutory nuisance.

16. I therefore conclude that the proposal would conflict with the relevant provisions of LP policy DG4, EN5 and NPPF paragraphs 127, criterion f) and 180, criterion a). Paragraph 7.16 of the Council's Residential Design Guide Supplementary Planning Document (adopted 28 September 2010) recommends a 22 metre separation distance between windows related to habitable rooms. Whilst that would not be met in this instance, given that extensions are proposed at ground floor level, and given the presence of nearby boundary features as reasoned subsequently, I am not of the view that unacceptable effects would result insofar as visual privacy is concerned.

Living conditions of occupants of Aaron Court

17. The nature of accommodation at care homes, reasonably, differs from standards that would be expected of independent dwellings. Qualified living conditions might be said to be the necessary corollary of the care provided by a facility. Limited outlook may, for example, be acceptable to certain occupants. Representations before me attest to the quality of care provided at Aaron Court.⁷ There is no evidence or contention before me that the proposal would fail to achieve the necessary standards set out in Regulation 15(1)(c) of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 or associated Care Quality Commission guidance in that respect (albeit that it is not for me to reach a finding on that matter, being a separate regime).
18. Nevertheless, as set out in paragraphs 4 to 6 above, relevant provisions of the development plan and those of the NPPF set out how all development should be well-designed and achieve suitable living conditions. There is a growing body of academic evidence indicating how living conditions, including outlook, have a significant effect on wellbeing.
19. In that context, albeit that some rationalisation of outside space and landscaping is proposed, the scheme would significantly reduce the open space available within the plot of No 328. Proposed rooms would have a single external aspect, with little separation between windows and boundaries of the plot (thereby limiting outlook and natural light). There would furthermore be no meaningful outlook from proposed bedrooms Nos 1 and 2, given their proximity to the boundary of the property or to other parts of the building.
20. Notwithstanding my reasoning in paragraph 17, in that context the proposed bedrooms would likely benefit from highly qualified levels of outlook and natural light. That would, for example, be in contrast to certain rooms currently (such as those projecting north-westwards from the existing internal communal

⁶ For example a noise survey or assessment with regard to industry guidance in that regard such as British Standard 8233:2014, Guidance on sound insulation and noise reduction for buildings.

⁷ Representations to application Ref 19/0875/FUL from the Exeter City Health and Social Care Team, and from a General Practitioner associated with the nearby Southernhay House Surgery (and also as reflected in the latest CQC inspection dated 10 March 2020).

area which are dual aspect). As such I similarly find that conflict would arise with the relevant provisions of the development plan and NPPF as set out in paragraph 16.

21. The onus falls primarily on an applicant to substantiate their case.⁸ Noted only insofar as such evidence may have carried weight in favour of the proposal, there is no indication as to whether or not natural light levels from which the proposed bedrooms would benefit would meet relevant industry guidelines.⁹

Character and appearance

22. The appellant gives the appeal site area as around 1,325 sqm. The application form sets out that the proposal would entail the creation of about 150 sqm of floorspace, which would result in the footprint of No 328 amounting to approximately 616 sqm. Numerically, therefore, the proposal would represent an uplift in the plot ratio of some 11% (i.e. from 35% to 46% of the plot being occupied by buildings). The area is characterised by a lower plot ratio, or more open layout; during my site visit I was unable to identify other examples of comparably limited plots in the vicinity (with the potential exception of the dwelling named Woolserly).¹⁰
23. Nevertheless the majority of the plot would remain open. Moreover, in my view, matters of character and appearance are not reduceable to mathematical calculations alone. As set out in paragraph 9 above, in terms of intrinsic design, the proposal would tie in well with the character of the building. Alterations would be limited to ground floor level, with a shallow pitched roof form hipped away from boundaries. There is, furthermore, no meaningful visibility of the north-western corner of the plot of Aaron court from surrounding public vantage points (by virtue of the level topography, presence of other buildings, and intervening features such as trees and planting). I also note that the area is not formally protected on account of the character of its built environment (such as falling within a Conservation Area).
24. Similarly, whilst there comes a point where the cumulative experience from multiple private vantage points becomes a legitimate matter of public interest, on account of the squat form of the proposal and established boundary features, there would be little meaningful visibility of the scheme discretely, i.e. relative to the existing form of No 328 as it stands, from surrounding private vantage points. Protection of existing boundary features, or suitable replacements, could in my view be secured via appropriately worded conditions (were the development proposed otherwise acceptable).
25. As such, in this instance relative to the existing form of No 328 and the particularities of its surrounding context, I am not of the view that the proposal would be unacceptable in terms of character and appearance (and thereby that any conflict arises with the relevant provisions of the development plan or NPPF set out in paragraphs 4 to 6 above). Nevertheless that is essentially a neutral finding, rather than one that weighs positively in favour of allowing the appeal.

⁸ Section 62(3) of the Town and Country Planning Act 1990 as amended.

⁹ Such as that contained within British Standard EN 17037: 2018, 'Daylight in buildings'.

¹⁰ For which permission was granted in 1988 (Ref 88/0497) under a different policy context; there is no substantive evidence before me of the planning circumstances that applied in that instance or of their comparability to the circumstances here.

Other matters

26. Evidently the proposal would have certain benefits. Given demographic trends, and as reflected in paragraph 61 the NPPF, planning for an ageing population is increasingly important. Representations before me referenced in footnote 7 refer to compelling local needs for suitable provision in that context. However there is no empirical evidence before me as to the current, or forecast situation, in terms of needs relative to provision in that respect in this area.
27. In that context it is difficult to quantify the benefits of six additional bedrooms at Aaron Court relative to the specific harm that would result. However, in broad terms, the benefits of six additional bedrooms are likely to be modest (Exeter has a population of over 118,500 with the CS setting a minimum overall housing requirement of 12,000 dwellings to 2026). Moreover neither the support in the development plan, nor that in the NPPF, for the provision of accommodation relative to demographic needs is at the expense of ensuring that all proposals integrate appropriately with their surroundings.
28. Consequently, whilst I understand the appellants' motivation for the proposal related to an existing facility commended for the quality of care it provides, neither the benefits of the scheme nor any other material considerations are sufficient to outweigh the harm that I have identified would result.

Conclusion

29. For the above reasons, having had regard to the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow
INSPECTOR