The Planning Inspectorate

Appeal Decision

Site Visit made on 23 February 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal Ref: APP/Y1110/W/20/3263784
Aprillo, 3 Pinn Lane, Exeter, EX1 3QX

- 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 Mr & Mrs Bernard Carter against the decision of Exeter City Council.
- The application Ref 20/0367/FUL, dated 11 March 2020, was refused by notice dated 21 July 2020.
- The development proposed is described as proposal for 4 new 2-storey detached 4-bedroom market houses and 2 new 2 storey attached 3-bedroom affordable houses within the grounds together with a new DCC compliant road and the refurbishment and replacement entrances to Nos 1 and 3 Pinn Lane.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above has been taken from the planning application form. However, the evidence before me indicates that various plans were amended during the Council's determination of the planning application, with for example a reduction in the number of new dwellings being proposed from six to five.

3. A number of amended plans were also submitted with the appeal. In considering whether to accept them, I have had regard to the 'Wheatcroft Principles', including in relation to whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation.

4. Amongst other aspects, the amended proposed site plan includes some relatively minor changes to the extent of hard surfaced areas on the site. However, the amended plans also include an increased height and additional first-floor accommodation at No 3 Pinn Lane, and include additional windows which would face towards adjoining properties.

5. It has been put to me that the amended plans submitted with the appeal, particularly as they do not relate to the proposed new build dwellings, would not lead to any prejudice. However, this appeal relates to the scheme originally determined by the Council and accepting amendments at appeal stage could deprive parties of the opportunity to comment on the amendments. In this case, the additional changes proposed to No 3 are significant and would also result in an increase in the overall scale of development and proposed accommodation on the site.

6. Taking the amended plans into account could therefore prejudice other parties' interests. The Planning Inspectorate's Procedural Guide (Planning Appeals – England, 2021) sets out that the appeal process should also not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. In addition, it seems to me that the changes shown in the amended plans would materially alter the nature of the appeal proposal to the extent that it would be different in substance from the scheme determined by the Council and would also necessitate a change to the description of development. Consequently, I have determined the appeal on the basis of the plans before the Council when it made its decision on the planning application and have not taken into account the amended plans submitted with the appeal.

Main Issues

7. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area;
- The effect of the proposed development on the living conditions of adjoining occupiers, with particular regard to disturbance, overlooking and outlook.
- Whether the living conditions of future occupiers of the proposed development would be acceptable, with particular regard to external amenity space, disturbance, light and outlook.

Reasons

Character and appearance

8. The appeal site contains Nos 1 and 3 Pinn Lane (the latter known as Aprillo) and their gardens. The existing vehicular access lane runs along the northern boundary – which contains a number of mature trees and separates the site from the railway line – and terminates in the parking area next to Aprillo. Containing numerous shrubs and trees, the sizeable garden of Aprillo takes up the majority of the site and adjoins the gardens of neighbouring properties. Accordingly, the site and surrounding area have a residential character and a verdant and relatively open, spacious appearance.

9. The proposed development would lead to a significant increase in built form on the site, which would be dominated by the extensive areas of hard landscaping for the revised access lane, driveways and parking in front of the five new dwellings. The appeal scheme would therefore read as a poorly-designed vehicle-dominated development with an uncharacteristically stark, dense and incongruous form that would erode the verdant and open nature of the locality. The similar design, materials, scale and dimensions of the proposed dwellings to existing properties in the locality do not lead me to a different conclusion.

10. The restricted garden sizes for the new and existing properties indicate that soft landscaping could not offset the dominance of hard landscaping. Furthermore, the considerable extent of hard surfaced parking areas mean that the development is likely to encourage significant vehicle ownership. Accordingly, although sufficient cycle storage for each unit – in for example garages or

gardens – could be secured by condition, the development also cannot reasonably be described as being laid out in a way that would maximise the use of sustainable modes of transport and encourage walking and cycling.

11. For the above reasons, I conclude that the proposed development would significantly harm the character and appearance of the surrounding area. I therefore find that it conflicts with Objectives 1 and 9 and Policies CP4 and CP17 of the Exeter City Council Core Strategy (CS) and Policies H2, DG1, DG6 and T3 of the Exeter Local Plan First Review (LPFR). Amongst other aspects, these seek to achieve the highest appropriate density compatible with the protection of the character and quality of the local environment and without detriment to it, and set out that development should: reinforce local distinctiveness and complement character and local identity; contribute positively to townscape; be of a design that ensures that parking provision is arranged so that urban form may be created without vehicles dominating the street scene; be laid out in ways that will maximise the use of sustainable modes of transport; and make the fullest contribution possible to the mitigation of, and adaptation to, climate change and the transition to a low carbon economy by reducing the use of fossil fuels and encouraging walking and cycling.

12. The proposal would also be inconsistent with: the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places and promoting sustainable transport; and Chapter 6 of the Exeter City Council Supplementary Planning Document, Residential Design (2010) (SPD), particularly in relation to the guidance that cars should be accommodated on street in a way which maintains a high quality public realm and that parking should be arranged so that it does not dominate the street scene.

Adjoining occupiers

13. Although the appellants' Design and Access Statement sets out that no new windows would overlook surrounding properties within 22 metres, the distance between the front windows of the proposed new dwellings and the gardens of 11-19 Rews Meadows would generally be much less than this. On my site visit, I observed that the site is also slightly elevated above Nos 11-19 and their gardens. Accordingly, while their angle and position would mean that the new dwellings would not result in direct overlooking of the rear gardens of Nos 11-12, the proposed development would result in significant overlooking of Nos 13-19's gardens from the first-floor windows in the new dwellings. Despite this being an urban area where levels of privacy may not be expected to be as high as more-rural situations, the appeal scheme would nevertheless significantly harm the privacy of occupiers in those properties. In coming to this view, I have taken into account that the existing fence on the shared boundary allows some inter-visibility between Aprillo's large garden and Nos 11-19.

14. The new dwelling at the far end of the site (No 5 Pinn Mews) would be situated in close proximity to the shared boundary with 15 Rews Park Drive. The relatively deep flank wall of the proposed two-storey dwelling would extend along much of the garden of that existing property, which is set down below the site. Despite its angled orientation, No 5 Pinn Mews would therefore appear as a dominating and enclosing feature from No 15's garden and would significantly harm the outlook of the occupiers of that property.

15. Extending across the site and running along its southern boundary, the revised access lane would be in close proximity to a number of adjoining residential

plots, including 15 Rews Park Drive, 11-19 Rews Meadow, Little Brookfield and 5 Pinn Lane. This would bring vehicles and pedestrians entering and leaving the site in close proximity to adjoining properties and their gardens. However, given the scale of the development, the number of vehicular and pedestrian movements into and out of the site would not be particularly significant. With boundary treatment also providing some relief between the revised access lane and adjoining plots, the proposed development would therefore not result in unacceptable disturbance and noise to adjoining occupiers.

16. However, for the above reasons, I conclude that the proposed development would significantly harm the living conditions of adjoining occupiers, with particular regard to overlooking and outlook. I therefore find that it conflicts with CS Objective 9 and LPFR Policies DG1 and DG4. Amongst other aspects, these seek to raise the quality of urban living and set out that development should be of a size which is appropriate and relates well to its surroundings, and ensure a quality of amenity which allows residents to feel at ease within their homes and gardens. The proposal would also be inconsistent with: the provisions in the Framework in relation to achieving a high standard of amenity for existing users; and Chapter 7 of the SPD, particularly in relation to the guidance on privacy and outlook.

Future occupiers

17. With the revised access lane running along the rear/south of Nos 1 and 3 Pinn Lane, the garden of No 1 would effectively be re-located to the west and north of the property. Although its overall size may not be significantly less than the current situation, the revised garden would be bounded by both the public highway and railway line and I observed on my site visit that it would also effectively adjoin the railway crossing. The quality of the proposed garden area for No 1 Pinn Lane would therefore be unacceptably poor, particularly in relation to privacy levels for the occupiers of the property.

18. The revised access lane and adjoining footway would run directly in front of the windows of habitable rooms in Nos 1 and 3 Pinn Lane with little defensible space in between. Despite the scale of the development meaning that comings and goings on the access lane and footway would not be particularly significant, the limited degree of separation and the lack of separating features means that the appeal scheme would result in unacceptable levels of privacy and disturbance for the occupiers of those properties.

19. The five new dwellings proposed on the site would each have private rear gardens. However, the gardens of the proposed Nos 1-4 Pinn Mews would be poor quality due to, in particular, their shape, layout and limited depth, and their position in relation to orientation, the railway line and the adjacency of the relatively deep, dominating flank walls of the adjoining new dwellings. In addition, the rear windows and garden of the other proposed dwelling (No 5 Pinn Mews) would be dominated by the large trees to the north. If those trees were to remain, and the submitted evidence does not clarify whether the trees are in the control of the appellant or Network Rail, the quality of accommodation at No 5 Pinn Mews would also be poor due to the limited outlook and light it would receive. In coming to this view, I have taken into account the findings of the Noise Assessment in relation to the railway line.

20. Although the new dwelling No 1 Pinn Mews would be relatively close to the existing property of No 3 Pinn Lane, its position and angled orientation,

extending away from No 3, means that it would not result in significant loss of outlook for the occupiers of No 3. However, the staggered position of the proposed new dwellings, combined with their relatively sizeable depths and the limited degree of separation between them, means that bedroom 1 of Nos 2-5 Pinn Mews and the lounges and bedroom 3 of Nos 1-4 Pinn Mews would receive unacceptably poor levels of light and outlook.

21. For the above reasons, I conclude that the living conditions of future occupiers of the proposed development would be unacceptable, with particular regard to external amenity space, disturbance, light and outlook. I therefore find that it conflicts with CS Objective 9 and LPFR Policies DG1 and DG4. Amongst other aspects, these seek to raise the quality of urban living and set out that development should be of a size which is appropriate and relates well to its surroundings, and ensure a quality of amenity which allows residents to feel at ease within their homes and gardens. The proposal would also be inconsistent with: the provisions in the Framework in relation to achieving a high standard of amenity for future users; and Chapter 7 of the Residential Design SPD, particularly in relation to the guidance on garden spaces, light and outlook.

Other matters

22. The submitted Design and Access Statement and the application form refer to the provision of two affordable housing units on the site. However, there is nothing before me which secures the delivery of affordable housing as part of the appeal proposal. I have therefore determined the appeal on the basis that the appeal scheme would not provide affordable housing.

23. The proximity of the appeal site to the Exe Estuary Special Protection Area and the East Devon Pebblebed Heaths Special Protection Area and Special Area of Conservation means that the development would be likely, in combination with other plans and projects, to have a significant effect on the internationally important interest features of the designated sites. Mitigation measures are therefore required to make the development acceptable and avoid an adverse effect on the integrity of the designated sites. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it could not lead me to a different decision.

Planning Balance

24. The main parties agree that the Council cannot demonstrate a sufficient supply of housing land and it has been put to me that the current supply of deliverable housing sites in the district equates to only two years and one month. This substantial shortfall against the five year requirement has not been contested by the Council.

25. The development plan policies that I have found the appeal proposal conflicts with relate to the acceptability of development with regards to character and appearance, mitigating climate change and maximising sustainable modes of transport, and the living conditions of existing and future occupiers. They are broadly consistent with the Framework. However, on the basis of the above and the available evidence, and in accordance with paragraph 11d) of the Framework, as this is an application for the provision of housing, the development policies which are most important for determining the application are considered to be out-of-date.

26. The application of policies in the Framework that protect areas or assets of particular importance – as per paragraph 11d)i – do not provide a clear reason for refusing the development proposed. Accordingly, and in line with paragraph 11d)ii, I am required to consider if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

27. The appeal scheme would provide five additional accessible dwellings. The Design and Access Statement sets out a high level of energy conservation and sustainability methods would be adopted, with for example each dwelling being well insulated and provided with vehicle recharging points. It is also said that the site is in a sustainable location, while the Council indicates that it does not object to the principle of residential development on the site.

28. Given the scale of the development, the benefits – including its contribution to the supply of housing in the area – would be relatively limited. Nevertheless, as identified in the appeal decision at Land off Woodwater Lane, small developments can cumulatively make an important contribution to housing supply. Accordingly, and in light of the Council's substantial shortfall in supply, the limited benefits of the provision of five additional dwellings on the site attracts moderate weight.

29. However, I have found that the living conditions of future occupiers of the proposed development would be unacceptable and that the appeal scheme would significantly harm the character and appearance of the surrounding area and the living conditions of existing occupiers. Taken together, the harm arising from the development would be significant, as would the conflict with the development plan and relevant provisions in the Framework. Accordingly, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits of the development proposed. The appeal proposal does not therefore benefit from the presumption in favour of sustainable development. In coming to this conclusion, I have taken into account that it is said that reducing the density of the development would not necessarily completely address the issues relating to the living conditions of existing and future occupiers.

30. The submitted evidence indicates that there is a considerable shortfall in housing land supply in the district. I attach significant weight to this, and the development plan and Framework also support increasing the density of development. However, despite this, the limited benefits of the appeal proposal, even when attracting moderate weight on a cumulative basis, would neither outweigh the totality of the harm nor the conflict that I have identified with the development plan and the provisions in the Framework. Accordingly, material considerations do not indicate that the appeal proposal should be determined other than in accordance with the development plan. Given the harm I have identified, the proposed development also cannot reasonably be described as making effective use of land.

Conclusion

31. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR