



Appeal Decision

Site visit made on 17 November 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2022

Appeal Ref: APP/Y1110/W/21/3280305

Land adjacent to 64 Danes Road termed 65 Danes Road DN711486, Exeter EX4 4LS

- 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 Jonathan Johns against the decision of Exeter City Council.
 - The application Ref 19/1415/FUL, dated 10 October 2019, was refused by notice dated 5 February 2021.
 - The development proposed is described as '*The construction of 3 bedroom house on land adjacent to 64 Danes road termed 65 danes road for the purposes of this application, in a style consistent with the existing terrace*'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Jonathan Johns against Exeter City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal is accompanied by a set of plans which reflect the proposal as originally submitted to the Council, and a second set of plans which encompass the revised proposal ultimately subject to the Council's decision to refuse planning permission. In the interest of certainty, I have assessed the appeal on the basis of the plans subject to the Council's decision.
4. The site is within influence of the Exe Estuary Special Protection Area (the SPA) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether or not the proposal would be likely to have a significant effect on the integrity of the SPA. As such, it is necessary to consider this matter as a main issue.

Main Issues

5. The main issues are therefore the effect of the proposal on:
 - the integrity of the SPA;
 - the character and appearance of the area; and
 - the living conditions of the future users of the proposed dwelling and the occupants of 64 Danes Road, with reference to outside space.

Reasons

Special Protection Area

6. The Habitats Regulations require that permission may only be granted for a development where the competent authority has ascertained that it will not adversely affect the integrity of the European Designated Site.
7. The SPA is designated owing to its estuarine habitat and waterbird assemblage. There is no dispute between the main parties, nor Natural England, that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would have significant effects on the features of interest of the SPA due to increased recreational use. I have no reason to disagree.
8. It is also agreed that this could be mitigated by a financial contribution made pursuant to the South-east Devon European Site Mitigation Strategy (ESMS). However, there is a long list of mitigation schemes within Table 26 of the ESMS, the status of which have not been explained, nor is it explained which projects may mitigate the effects of the scheme on the SPA in this case.
9. It is also suggested that the contributions could be secured via the Community Infrastructure Levy (CIL) or alternatively an agreement under Section 111¹. With regard to the former, a number of the candidate projects within the ESMS appear to be non-infrastructure related. Moreover, whilst the appellant does not intend to apply for a self-build exemption to the CIL prior to commencement of the development, I cannot be certain that those circumstances will not change. No S111 agreement has been submitted with the appeal. Consequently, there is no reliable mechanism before me to secure the mitigation measures.
10. As such, adopting the precautionary principle, I must conclude my Appropriate Assessment that the proposal would have adverse effects on the integrity of the SPA without clear or certain mitigation. The scheme would conflict with the biodiversity aims of Policy CP16 of the Core Strategy (adopted 2012) (CS) and the National Planning Policy Framework (the Framework).

Character and appearance

11. The appeal site comprises a narrow open space at the northern extremity of the dead-end Danes' Road, aside the flank wall of the end of terrace dwelling 64 Danes' Road. Danes' Road is a narrow, linear and enclosed Edwardian street characterised by terraced red brick dwellings in repetitive styles set against the background of woodland within the Lower Hoopern Valley to the north.
12. However, as one reaches the site environs, the street scene unravels, with a variety of unconforming, modern housing and the premature termination of the public highway with a fence and parking area, which effectively inhibits public access to the area immediately around the site. Nos 66 and 68, to the site's immediate north, are also out of step with the terracing in that they project forward of its building line, partly obstructing the street's sylvan backdrop.
13. Within this context and given the oblique way in which the site is barely observed from the public realm, the gap it offers is not of any particular significance. The dwelling would be a suitably proportioned and scaled addition,

¹ Pursuant to the Local Government Act 1972

allowing a successful transition from the terracing to the newer development, stepping down with the topography with a nod to the street's Edwardian style.

14. The Council is troubled by the removal of the bay window in the flank of No 64. Whilst I recognise the loss of this feature, I am also mindful that it is well obscured from public view, and that its original aspect towards the woodland has already been compromised by the housing constructed directly in front of it.
15. Consequently, I conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area. It would accord with the design aims of Policy CP17 of the CS, saved Policies H2, DG1 and DG4 of the Exeter Local Plan First Review 1995-2011 (adopted 2005) (LPFR), Policy D1 of the St James Neighbourhood Plan (made 2013) and the Framework.

Living conditions

16. With regard to No 64, the reduction in size of its outside space has already, in practical terms, occurred through a change in ownership within the previous plot. The area of the site formerly part of No 64 is hardstanding and was of little leisure use to residents in any event. I recognise that the outside space serving the new dwelling would be small, and indeed lower than as guided within the Council's Residential Design Supplementary Planning Document. However, this needs to be applied to the local context, where similarly modest garden spaces are commonplace in relation to old and newer dwellings alike.
17. I therefore conclude on this issue that the proposal would create acceptable living conditions for future users and would also have an acceptable effect on the living conditions of the occupants of 64 Danes Road, with reference to outside space. It would accord with Policy DG4 of the LPFR and the Framework.

Other Matters

18. The appellant has referred to a previous appeal decision at the site in 2004. The circumstances around that appeal were quite different, not least with regard to the effect of this scheme on the SPA. Its conclusions have therefore carried limited weight in my own reasoning. Similarly, the comments made by the appellant about the procedural conduct of the Council are not germane to my assessment, which focuses on the planning merits of the scheme.

Planning Balance

19. The dwelling would contribute to Exeter's housing delivery. However, given the protection afforded to the integrity of the SPA, and my responsibilities as competent authority in this regard, the benefits of the scheme do not outweigh the harm that I have identified. Consequently, the proposal would conflict with the development plan when read as a whole and there are no other considerations, including the Framework, that outweigh the conflict.

Conclusion

20. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Matthew Jones
INSPECTOR