



Appeal Decision

Site visit made on 10 May 2022

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2022

Appeal Ref: APP/Y1110/W/22/3291505

Unit 5, Tan Lane, Exeter EX2 8EG

- 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 Steve Williams against the decision of Exeter City Council.
 - The application Ref 21/0859/FUL, dated 19 May 2021, was refused by notice dated 10 December 2021.
 - The development proposed is redevelopment of site including new two storey office/residential building, with bike and bin store and associated parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) The effect of the development on the living conditions of the occupants of Crocker Court, with regard to light and privacy;
 - b) Whether the development would provide suitable living conditions for future occupants with regard to private outdoor space, outlook and noise;
 - c) Whether the development would be compatible with the nearby employment uses; and,
 - d) Whether the site would provide a safe location for residential use with regard to contamination.

Reasons

Living conditions of occupants of Crocker Court

3. The appeal site comprises a commercial yard, with a portable cabin at its southern end and two permanent single-storey buildings, forming an L-shape, on the northern boundary. These buildings wrap around two sides of a two-storey building to the north, which contains residential flats in a development known as Crocker Court. The wall of the block of flats that faces the appeal site has no windows, but there are nine rooflights in the roof slope, and a number of roof lanterns in a single storey flat-roofed projection that abuts the appeal building.
 4. The proposal involves the removal of the single-storey buildings and the construction of a two-storey building on virtually the same combined footprint.
-

The new structure would accommodate car-parking and commercial office space on the ground floor, and a residential flat on the first floor. The stairwell would be three-storey, and would allow access to gardens that would cover the entire roof area. These roof terraces would be enclosed by a parapet, so the walls of the building would be more than two-storeys in height all around.

5. The rooflights in the southern roof slope of Crocker Court are set well above the single storey building on the appeal site, so currently receive unimpeded southerly light. The rear wall of the proposed building would rise well above the level of the lower row of rooflights, and would be directly opposite them. It would run along the entire length of Crocker Court and would be within a few metres. As a result, it would significantly reduce the amount of sunlight and daylight that would reach the rooflights from the south. The evidence shows that some of these rooflights are the main source of light to kitchens, with the only other light source for most habitable rooms being north facing windows. Consequently, the areas at the rear of the building, that are currently served by the rooflights, are likely to become gloomy and reliant on artificial light.
6. The roof lanterns in the flat roofed projection are currently only shaded by a small upstand on the monopitched roof of the adjacent building, so receive significant levels of southerly sun and daylight. The wall of the proposed building would be within a metre of these lanterns, and would rise to a height of about 1½ storeys above them. As the building would wrap around the entire south and east elevations of Crocker Court, it would block almost all sunlight from reaching the lanterns, and would seriously reduce the amount of daylight they receive as well. The ground floor flat has a kitchen that is lit primarily by these roof lanterns, and partially via a light well served by one of the rooflights. The only other openings in the flat are in the north elevation, and the depth of the floorplan means that little light will penetrate from these sources to the kitchen at the back. Consequently, the loss of sunlight to the lanterns and rooflight would result in this room receiving very little natural light.
7. The proposed roof garden would be the only outdoor amenity space for the occupants of the flat, so it is likely to be regularly used. The proposed East Elevation drawing shows that occupants of the terrace would be able to look over the parapet wall and down into the rooflights of Crocker Court from close quarters. As these rooflights serve kitchens and bathrooms of first floor flats, which are currently not overlooked from anywhere else, the proposal would result in a significant loss of privacy for the occupants. It is suggested that privacy could be maintained by screens or planting, however an increase in the height of the boundary treatment would result in further loss of light to the rooflights and lanterns.
8. I therefore conclude that the proposal would harm the living conditions of the occupants of Crocker Court, through a significant loss of light and privacy. Consequently, the development would be contrary to Objective 9 of the Exeter City Council Core Strategy (2012) (the Core Strategy) and Policy DG4 of the Exeter Local Plan First Review 1995-2011 (the Local Plan). These policies seek to raise the quality of urban living and ensure a quality of amenity which allows residents to feel at ease within their homes and gardens. The proposal would also fail to meet the aim of the National Planning Policy Framework (the Framework) of achieving well-designed places with a high standard of amenity for existing and future users.

Living conditions for future occupants

9. The proposed first floor flat would provide spacious accommodation, with a large open plan living/kitchen area and three double bedrooms. It would be lit by windows in its south, west, and east elevations. Although these windows would look onto largely unattractive commercial yards and buildings, the outlook would be open, with wider views beyond. The roof terrace would exceed the 55 sq m garden area for houses as advised by the Residential Design Supplementary Planning Document (2010) (the SPD). Whilst paragraph 7.7 of the SPD says that roof gardens will not count towards private garden space provision for houses, paragraph 7.10 says that they are permissible as private amenity space for flats. In terms of the area available, and the accessibility from the flat, the outdoor space would be suitable. Consequently, in terms of floorspace, light, outlook, and extent of outdoor space, the flat would provide suitable living conditions for the occupants.
10. However, the site is surrounded to the west, south and east by commercial uses. Traffic accessing the units to the west would pass in front of the proposed building, directly below the large living space window. Two of the bedroom windows would face directly onto the communal yard serving these units, and would only be set back from the boundary by a metre or so. Tan Lane lies immediately to the east of the building, and I saw that commercial vehicles approaching the railway bridge are held by a traffic light directly below the location of the proposed east-facing living space window. Consequently, occupants of the proposed flat would be significantly affected by vehicle noise close to the windows in all three elevations.
11. It is contended that the surrounding commercial uses are quiet in nature, so would not be disruptive to the occupants of the flat. Whilst this may be the case for some of the current operators, I have little evidence relating to the approved uses of the surrounding land and buildings, or whether there are any restrictions on their hours of use. Consequently, I cannot be certain that similar conditions will prevail in the future.
12. In any event, I saw that the area is busy with commercial traffic and activity that generates a considerable level of background noise. There is a very large industrial building to the east, which has an open yard. I heard the reversing sirens of forklift trucks in operation and saw a sign advising drivers to sound their horn before entering the building. I also heard the continuous sound of a generator at a level that could cause a nuisance to occupants of the flat. Dependent on future users, similar operations could take place in the yards to the south and west, in very close proximity to the residential use.
13. No evidence has been submitted to demonstrate the current levels of noise at the site, or how they could be mitigated within the building. From my observations, however, the current levels of noise from the surrounding operations and commercial traffic would be likely to deter occupants from opening windows, and would significantly affect the use of the roof garden as an area for relaxation.
14. I therefore conclude that the proposal would not provide suitable living conditions for future occupants, due to the noise from the nearby commercial operations and traffic. The proposal would, therefore, be contrary to Objective 9 of the Core Strategy, Policy DG4 of the Local Plan, and the aims of the Framework as summarised under the previous issue. The proposal would also

be contrary to Policy EN5 of the Local Plan, which seeks to avoid noise sensitive development where it would be affected by existing noise-generating uses.

Compatibility with nearby employment uses

15. As concluded under the previous issue, there is considerable potential for noise generated by the operations of surrounding commercial businesses, to cause nuisance to occupants of the flat. Paragraph 187 of the Framework says planning decisions should ensure that new development can be integrated effectively with existing businesses, and that these businesses should not have unreasonable restrictions placed on them because of development permitted after they were established. Where, as is the case here, existing businesses could have a significant adverse effect on new development, the Framework advises that the applicant should be required to provide suitable mitigation.
16. No noise assessment has been submitted to demonstrate whether the noise levels from the surrounding businesses could be successfully mitigated, such that the businesses could continue to operate without the potential for complaints of noise nuisance from the occupants of the flat. Consequently, I cannot be satisfied that the 'agent of change' principle set out in paragraph 187 of the Framework could be successfully applied.
17. I am mindful that there are other residential properties nearby, including Crocker Court, which could also be affected by noise from the commercial uses. However, the proposed flat would be more intimately associated with them, having windows immediately adjacent to yards on two sides, and with a large industrial building on the opposite side of Tan Lane. It would, therefore, be more vulnerable to noise sources from multiple operators, and in closer proximity.
18. It is suggested that the adjacent commercial site and the industrial building on the opposite side of Tan Lane are likely to be redeveloped in the near future. However, I have not been provided with any evidence to demonstrate the likely nature, acceptability, or timescale for such proposals. I cannot, therefore, give any weight to this prospect.
19. I therefore conclude that the development would not be compatible with the surrounding commercial uses. The proposal would, as a consequence, be contrary to Policy DG1 of the Local Plan, which seeks to ensure that new development contributes to the provision of a compatible mix of uses which work together to create vital and viable places.

Contamination

20. Paragraph 183 of the Framework advises that planning decisions should ensure that a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land contamination. The Council's Environmental Health Officer advised that contamination is suspected on the site. However, a contaminated land risk assessment was not submitted with the application.
21. A contamination report has been submitted with the appeal, which demonstrates elevated levels of lead. Consequently, site-wide implementation of appropriate cover systems is recommended to prevent dermal contact and to minimise dust generation. Had I been minded to allow the appeal, these mitigating measures could have been secured through a planning condition.

22. I therefore conclude that the site could provide a safe location for residential use with regards to contamination. As a result, the proposal would accord with Policy EN2 of the Local Plan, which seeks to ensure that this is the case.

Planning Balance

23. I have found that the proposal would conflict with development plan policies that seek to protect the residential amenity of existing and future occupants, and to ensure a compatible mix of uses. However, the appellant states that the Council cannot currently demonstrate a five-year supply of deliverable housing sites, and this is not disputed by the Council. In these circumstances, Paragraph 11 d) of the Framework advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. The Local Plan dates from 2005 and the Core Strategy from 2012, but the weight to be attached to them does not hinge on their age. Paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. Paragraph 130 of the Framework says that planning decisions should ensure that developments create places that are safe, inclusive, and accessible, and which promote health and well-being, with a high standard of amenity for existing and future users. I see no fundamental conflict between this aim and those of Objective 9 of the Core Strategy and Policies DG4 and EN5 of the Local Plan. The conflict between the proposal and these development plan policies should, therefore, be given significant weight in this appeal.
25. Similarly, the aims of Policy DG1 of the Local Plan, to achieve a compatible mix of uses, are consistent with the Framework's advice at paragraph 187, that planning decisions should ensure that new development can be integrated effectively with existing businesses. So, again, the Local Plan policy should continue to carry significant weight in my decision.
26. Set against the harm that I have identified, there would be benefits associated with the development. It would support the Framework's objective of significantly boosting the supply of homes as set out at paragraph 60. The proposal would also provide economic benefits through the creation of office space. However, as the proposal is only for one flat, and a relatively small office, these benefits would be limited. Consequently, when assessed against the policies in the Framework taken as a whole, they are significantly and demonstrably outweighed by the harm to the living conditions of existing and future occupants, and the incompatibility of the residential use with existing businesses. The advice at paragraph 11 d) does not, therefore, indicate that my decision should be otherwise than in accordance with the development plan.

Conclusion

27. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies
INSPECTOR