

Appeal Decision

Site visit made on 8 June 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2022

Appeal Ref: APP/Y1110/W/21/3285801

Land adjacent to 17 New North Street, Exeter EX4 4HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Belton Properties Ltd against Exeter City Council.
 - The application Ref 21/0510/FUL, is dated 19 March 2021.
 - The development proposed is demolition of existing garages and construction of 1no. building to form 5no. new apartments with associated landscaping (revised scheme to approval ref. 19/0360/FUL).
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Belton Properties Ltd against Exeter City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for two reasons relating to the effects on the settings of neighbouring listed buildings and the St David's Conservation Area (CA), and the effects on the living conditions of future occupiers.

Main Issues

4. In light of the putative reasons provided by the Council, the main issues are:
 - whether the proposal would preserve the settings of the Grade II listed buildings at Nos 9 – 17 and 19 – 27 New North Road, and whether it would preserve or enhance the character or appearance of the CA; and
 - the effects of the proposal on the living conditions of future occupiers of the lower ground floor unit, with particular regard to light, outlook and the quality of its outdoor space.

Reasons

5. By way of background, a permission exists on the site for a similar scheme also comprising 5 apartments which was granted on the 30 October 2019 under planning permission Ref 19/0360/FUL and remains extant until 30 October 2022. The main differences between the proposed and extant schemes would

be a difference in the building's height to make it around 1 metre higher and increase in depth by approximately 2.6 metres towards the back of the site. These changes would increase the internal floor areas of each apartment to enable the provision of en-suite WCs for the main bedrooms and would also enable a marginal increase in internal floor to ceiling heights.

6. The extant permission therefore forms a significant material consideration as a 'fallback' as directed by relevant caselaw¹.

Heritage Assets

7. The terraces at Nos 9 – 17 and 19 – 27 New North Road are Grade II listed for their group value as terrace houses dating from c. 1850 of around three or four storeys with stucco facades and common detailing such as gables, dormers, splayed bays, architraves to upper windows and verandahs. In relation to this appeal, the significance of the listed buildings are their age, including original historic fabric, their special historical and architectural features, and the coherence of the terrace, particularly in terms of the scale, form and unity of the principal façade facing towards the streetscene.
8. Insofar as it relates to the appeal, the special qualities, and thus significance of the CA is the manner in which it signifies the trend to build housing for the wealthy beyond the City wall as a means to escape the then cramped conditions within the City. This housing took the form of villas and grand terraces, including those at New North Road which have generally consistent scale, form and features of interest with those in nearby streets which also derive from the same period. Therefore, whilst the CA is to be experienced as a whole, the appeal site makes a particular contribution in this arrangement of high-end housing which addresses the street and is set within generously spaced streets and blocks with many street trees.
9. The proposal would be little different from the extant scheme in terms of overall design modern design concept, appearance and siting. The differences would be the additional 1 metre height, the additional 2.6 metre depth which would be added to the rear of the building and its overall form as a result of these changes.
10. There is a minor level change between the ends of the terraces between Nos 17 and 19 New North Road which means that the ridge heights step up gradually with the increased levels. The extant proposal would sit more between the two heights and the extant proposal would be closer to the overall height of No 19. Despite that there would be some additional height at the rear for the lift shaft, on balance, I do not consider that this overall increased height would be perceptible when seen in context with neighbouring buildings within the streetscene. That said, I do not agree with the appellant that the altered floor levels and height would change the relationship between the glazed openings and the more domestically-scaled fenestration of the adjoining buildings. In my view, this would still have a slightly mismatched relationship as per the current scheme and could not be said to be an improvement.
11. The increased depth of the building would be more noticeable from private views obtainable from adjoining houses and gardens to the sides and rear of the building. However, the rear of the building would be largely difficult to view

¹ Mansell V Tonbirdge & Malling Borough Council, [2017] EWCA Civ 1314

in the context of the streetscene given the setback position from its adjoining neighbours. Thus, whilst there would be additional bulk to the building when compared with the extant scheme, this would not be experienced in the streetscene and nor would it harm the character or appearance of the CA.

12. For the foregoing reasons, when considered in context with the fallback position, the appeal proposal would preserve the settings of the Grade II listed buildings at Nos 9 – 17 and 19 – 27 New North Road, and would preserve the character and appearance of the CA, thus preserving the significance of these heritage assets. It would therefore comply with, in particular, Policies H1 and D1 of the Exeter St James Neighbourhood Plan (2013), Policy DG1 of the Exeter Local Plan First Review (2005) (Local Plan), and policy CP17 of the Core Strategy (2012). These Policies, amongst other things, collectively require good design and that development affecting heritage assets must pay special regard to the need to conserve and enhance their settings and any special architectural or historic features of significance.

Living Conditions of Future Occupiers

13. In terms of the requirements of Local Plan Policy DG4, it states that residential development should *"ensure a quality of amenity which allows residents to feel at ease within their homes and gardens"*. The preamble explains, inter alia, that this means occupiers being able to *"enjoy their gardens without feeling overlooked or hemmed in"*, through such means as *"...imaginative design which avoids rooms directly facing each other or facing unsightly structures"*.
14. In respect of flatted development, the Policy preamble states that *"each ground floor dwelling should be provided with a veranda, patio or similar semi-private sitting out area directly connected to the building"*. This is the case under the extant permission, with the lower ground floor apartment having access to an enclosed space to the north of the building. The proposal would see this enclosed private space reduced by 2.6 metres in depth to an area of 2.2 metres deep and extending the full width of the building. Owing to the level differences, the height of the rear retaining wall enclosing this space would be approximately 2.8 metres high.
15. In the Residential Design Supplementary Planning Document (2010) (SPD) it states in 7.12 that *"...private sitting out space should be provided for all ground floor flats in addition to the 20 square metres of communal open space. The space should adjoin and be directly accessible from the flat and the communal open space. It should be a minimum of 3 metres deep and be the same width as the dwelling it is serving"*. None of the other apartments were provided with access to an area of communal open space, although the landscaped area to the front of the building and nearby parks and public spaces were considered to mitigate this omission. The proposed scheme does not differ in this regard.
16. The proposal does however seek to reduce the private sitting out space that would be dedicated to the lower ground floor flat. Whereas before it would have benefitted from being larger given the north-facing orientation and proximity to high retaining walls, it is intended to reduce by around a half of its intended depth. Though the space would still directly adjoin and be accessible from within the apartment, it would not achieve the minimum 3 metre depth. Furthermore, from within this space, in such close proximity to the block's full five storey height and enclosure by high retaining walls to the side and rear,

the space would feel oppressive and occupiers would feel 'hemmed in' and certainly not at ease.

17. The appeal was submitted with a 'Daylight and Sunlight Assessment' (Erban Consulting, 11.02.21) which assesses the effects of the proposal in terms of loss of daylight and sunlight in windows at existing Nos 17 and 19 New North Road. Whilst the effects on the living condition of neighbouring occupiers was not raised as an issue, the likely number of hours of daylight and sunlight received by the future occupiers of the lower ground floor apartment and within the sitting out space has not been covered in the same. In my view, the proposed siting and orientation of the building would render the lower ground floor flat a less pleasant place in which to live. Despite that the rear rooms would be bedrooms and a bathroom, the changes promoted by the scheme would make it feel almost subterranean and single aspect, substantially inhibiting the outlook and light afforded to future occupiers when compared to the extant scheme.
18. For the above reasons, the scheme would not provide adequate living conditions for future occupiers of the lower ground floor unit, with particular regard to light, outlook and the quality of its outdoor space, contrary to, in particular, Local Plan DG4. This Policy seeks a quality of amenity which allows residents to feel at ease within their homes and gardens. Though not carrying the same status as policy, the proposal would also fail to adhere to guidance set out in the SPD in respect of outdoor spaces to serve future occupiers.

Other Matters

19. The proposal has the potential to affect the Exe Estuary Special Protection Area through recreational activities of future occupiers of the development. Though the effects of the proposal would be no greater than the extant scheme in this regard, I have not considered this matter further as the appeal is failing for other reasons in any event.

Planning Balance and Conclusion

20. The current proposal represents a diminution of the spaces that would be provided to future residents, and in particular to occupiers of the lower ground floor apartment, when compared to the extant scheme. This would have consequent effects on the enjoyment of both internal and external living areas and thus brings the scheme into conflict with Local Plan Policy DG4 and the development plan when read as a whole.
21. The benefits of the scheme in terms of the additional contribution to the local housing stock would be captured through the extant scheme in any case and, in land use terms, would be no more efficient. I note the additional benefits offered in terms of slightly larger unit sizes. However, this minor benefit does not outweigh the harm or indicate that a decision should be taken other than in accordance with the development plan.
22. Therefore, for the reasons set out above and taking all other matters into account, the appeal is dismissed.

Hollie Nicholls

INSPECTOR