

# Appeal Decision

Site visit made on 23 February 2022

**by Matthew Jones BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 June 2022**

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**Appeal Ref: APP/Y1110/W/21/3285483**

**141 Salters Road, Exeter EX2 5DB**

- 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 Barnaby Isard against the decision of Exeter City Council.
  - The application Ref 20/1158/FUL, dated 11 September 2020, was refused by notice dated 27 April 2021.
  - The development proposed is described as a new two-bedroom dwelling.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The development description on the planning application form refers to a two-bedroom dwelling. However, prior to the Council refusing planning permission the scheme was revised to a one-bedroom dwelling. I have assessed the appeal on the basis of the latter plans subject to the Council's decision.
3. The site is within influence of the Exe Estuary Special Protection Area (the SPA) and the Pebblebed Heaths Special Protection Area and Special Area of Conservation (the SPA/SAC). These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017. Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have significant effects on the integrity of the SPA and the SPA/SAC. It has consequently become necessary to consider this matter as a main issue.

## Main Issues

4. The main issues are therefore:
  - the effect of the proposal on the integrity of the SPA and the SPA/SAC;
  - the effect of the proposal on the character and appearance of the area; and,
  - whether adequate living conditions would be created for future occupiers of the dwelling and 141 Salters Road, with reference to outside space.

## Reasons

### *European Designated Sites*

5. 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(s).

6. The SPA is designated owing to its estuarine habitat and waterbird assemblage. The SPA/SAC qualifies due to its heaths supporting populations of southern damselfly. It also regularly supports 2.4% of the UK population of breeding nightjar and 8% of the UK population of breeding Dartford warbler.
7. These sites are also important recreational resources, and it is likely that occupants of the dwelling would visit them. 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 therefore have significant effects on the features of interest of the SPA and the SPA/SAC 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. However, the Council then suggests that this could be secured either via the Community Infrastructure Levy (CIL) or, if the scheme were not liable to CIL, through a planning obligation. The appellant considers that it could be secured by a planning agreement such as a unilateral undertaking or a S111 agreement under the Local Government Act 1972.
9. This is an inherently uncertain situation. If the scheme was to become exempt from CIL, for example as a self-build, there is no alternative means to secure any contribution, such as a unilateral undertaking or S111 agreement, before me. Consequently, there is no reliable mechanism at my disposal with which I can ascertain that necessary mitigation can be secured.
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 and SPA/SAC 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. No 141 is a modest end of terrace dwelling with a side garden occupying an elevated position at the street corner. However, open corners are not a particular characteristic of the surrounding street scene nor are houses always set back from the road. Instead, there are different relationships between its varied built form and the highway, including a dense row of houses on St Loye's Terrace which terminates in a tall gable hard to the pavement edge.
12. The proposal would not therefore lead to the loss of an open space of any significant importance here, nor would the dwelling appear cramped within the context of surrounding development. Whilst the decking to the side of the dwelling would have to be enclosed, I consider that this could be achieved with a suitable, lightweight and unimposing balustrading arrangement.
13. As such, the proposal would have an acceptable effect on the character and appearance of the area. It would accord with the relevant aims of Objective 9 and Policies CP4 and CP17 of the CS, saved Policies H2, DG1 and DG6 of the Exeter Local Plan First Review 1995-2011 (ELP) and the Framework.

#### *Living conditions*

14. Saved Policy DG4 of the ELP, amongst other things, states that proposals should be at the maximum feasible density taking into account site constraints,

and that proposals should also ensure a quality of amenity which allows residents to feel at ease within their gardens. Its supporting text elucidates that private garden spaces should not normally be smaller than 55 sq. metres, but the orientation and scale of buildings will be taken into account, and less space may be adequate for smaller houses.

15. No 141's side garden slopes steeply in places so as to make it of limited practical use, and its small front garden is not private. Thus, the subdivision of its grounds in the manner proposed would create usable, private garden spaces for the new dwelling and No 141 which would respectively fall below the spatial standards set out within the Residential Design Supplementary Planning Document (adopted 2010) (the SPD).
16. Nonetheless, the principal garden space for the new dwelling, formed to its side by decking, would offer an elevated position with excellent outlook and would have access to high levels of sunlight. Its elevation and distance from the nearest properties to the south would allow it to feel sufficiently private. The scheme would bring the reduced private garden space for No 141 approximately into line with that serving the other houses within this modest terrace. Within this specific context, I consider that residents of both No 141 and the new dwelling would feel adequately at ease within their gardens.
17. Accordingly, I conclude on this issue that the proposal would create adequate living conditions for future occupiers of the dwelling and 141 Salters Road, with reference to outside space. Whilst the guidance within the SPD would not be met, the proposal would accord with the relevant aims of Objective 3 of the CS, saved Policy DG4 of the ELP and the Framework.

### **Planning Balance**

18. The dwelling would be well-designed and would contribute to Exeter's housing supply in an established residential area. However, given the protection afforded to the integrity of the SPA and the SPA/SAC and my responsibilities as competent authority in this regard, the benefits of the scheme do not outweigh the harm 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**

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

*Matthew Jones*  
INSPECTOR