



Appeal Decision

Site visit made on 16 August 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2022

Appeal Ref: APP/Y1110/W/22/3292741 1A Rosebarn Avenue, Exeter EX4 6DY

- 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 Tim Davies against the decision of Exeter City Council.
 - The application Ref 21/1796/FUL, dated 18 November 2021, was refused by notice dated 31 January 2022.
 - The development proposed is new dwelling with associated access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for new dwelling with associated access and parking at 1A Rosebarn Avenue, Exeter, EX4 6DY, in accordance with the terms of the application, Ref 21/1796/FUL, dated 18 November 2021, subject to the conditions in the attached schedule.

Procedural Matters

2. The site is within influence of the Exe Estuary Special Protection Area (SPA). The SPA is afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). 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 it has consequently become necessary to consider this as a main issue.

Main Issues

3. The main issues are:
 - the effects of the proposal on the character and appearance of the area;
 - whether the living environment created for future occupiers would be adequate, with particular regard to outlook;
 - the effects on the living conditions of neighbouring occupiers at 1 Rosebarn Avenue and No 170 Pennsylvania Road, with particular regard to outlook; and
 - the effect of the proposal on the integrity of the SPA.

Reasons

Character and appearance

4. The scheme would involve the construction of a 3 bed detached house relatively centrally within the appeal site. Parking would be to the front and side, with gardens also to the front and rear. The dwelling would have a pitched slate roof and would have its principal elevation to face onto Rosebarn

Avenue. Whilst it would be mainly constructed from brick to assimilate with others in the area, it would have a side and rearward projecting element that would be clad in timber. The appeal proposal follows a dismissed appeal for a single dwelling¹.

5. The appeal site is situated within an area generally characterised by larger detached dwellings of two storeys in height, some with attic accommodation. The common building materials are red brick and tiled roofs. Dwellings are set back from the street and appear to have relatively generous gardens, giving the area a spacious quality.
6. The appeal proposal seeks to maintain the typical urban grain of the area through the siting of a two storey dwelling relatively centrally within the plot, maintaining a relatively consistent building line with others along the street. The scale of the dwelling, at two storeys, is smaller than had been proposed previously and it is sited further away from No 1 Rosebarn Avenue. It would, however, still appear well-proportioned so as not to appear contrived when viewed in context with others in the street. Therefore, the scheme would appear harmonious in terms of scale, mass, form and siting in between its neighbouring counterparts, following the typical rhythm of buildings and spaces along the street.
7. In terms of its design and appearance, the dwelling would have a typical suburban house design with a subtle contemporary edge which would appear well-designed in context with the style of dwellings in the surroundings. The use of timber cladding on the side and rear projection which would be set back and down from the principal façade would add a feature of interest and would not jar with the typical red brick treatment that features heavily in the area.
8. In view of the above, the proposal would not harm the character or appearance of the area and would therefore comply with Objective 9 and Policy CP17 of the *Exeter City Council Core Strategy (2012)* (the Core Strategy) which, amongst other matters, requires that development reinforces local distinctiveness, is of a high standard of design and provides housing density compatible with the character and appearance of the surrounding area. For the same reasons, the scheme would comply with Policy DG1 of the *Exeter Local Plan First Review 1995-2011 (2005)* (the Local Plan) which seeks to ensure that development is appropriate to its surroundings in terms of shape and density. The proposal would also suitably adhere to guidance within the *Residential Design Supplementary Planning Document (2010)* (SPD) concerning design principles.

Living environment for future occupiers

9. The dwelling would have its main outlook to the north to face onto Rosebarn Avenue. There would be a window in each flank elevation at ground floor level and glazed openings to the rear, again at ground floor level. Windows at first floor level at the rear would be relatively minimal in number and are proposed to be obscure glazed in order to prevent overlooking.
10. In my view, aside from the disputed third bedroom, all of the other rooms would have a suitable outlook and means of allowing sun and daylight in. The solution proposed for Bedroom 3 is for an obscure glazed window in the rear elevation, and a full-length glazed window to the far side of the room. Whilst

¹ APP/Y1110/W/20/3265231 dated 22 April 2021

this offset window would require occupants to move from the centre of the room or bed to see clearly out onto the street from it, it would nonetheless provide the room with an outlook and large enough glazed opening to allow light to enter. With the addition of the light source from the obscure glazed window, I consider that this room would provide a sufficiently pleasant living environment for future occupants. Whilst the first floor windows in the rear would be obscure glazed by condition, or absent, as in the case of the flank elevations, I do not consider that this solution would be contrived or that the dwelling would provide anything other than a satisfactory living environment.

11. As such, the proposal would provide an adequate living environment for future occupants, with particular regard to outlook, and therefore complies with Policy DG4 of the Local Plan. This Policy seeks to ensure that development offers a quality of amenity that allows residents to feel at ease within their homes and gardens.

Living conditions of neighbouring occupiers

12. The dwelling would be constructed relatively centrally within its plot and would have a typical side-to-side relationship with No 1 Rosebarn Avenue, alike others in the street. The proposed dwelling would be approximately 3m from the boundary of 1 Rosebarn Avenue at ground floor level, but this would increase to approximately 4.5m at first floor level. There are around 9 relatively narrow glazed openings on the side elevation of No 1 Rosebarn Avenue facing towards the site, of which around 5 are obscure glazed. The windows at ground floor level are in such proximity to the intervening boundary fence that the views therefrom are already restricted.
13. Notwithstanding the advice in the SPD, given the scale and siting of the proposal, the existence of the boundary fence and the secondary nature of windows in the side elevation of No 1 Rosebarn Avenue, I do not consider that the proposal would harm the outlook of neighbouring occupiers.
14. The dwelling would be situated such that its rear elevation would be close to the shared boundary with the rear garden of No 170 Pennsylvania Road. The dwelling has been reduced in scale since the previous appeal scheme and positioned further from the boundary so that the closest element would be the single storey kitchen, set down into the site. Owing to its siting, scale and design, the proposal would not appear overbearing and would not result in a substantial enclosure of the garden of No 170.
15. There would be three obscure glazed windows at the rear of the proposed dwelling; one in a bathroom, one in the stairwell and another to serve bedroom three as a secondary source of light. Owing to the number, size, position and intention for the windows to be obscure glazed, there would be no direct overlooking and I do not consider that the perception of being overlooked would be materially harmful to the living conditions of neighbouring occupiers.
16. For the reasons set out above, the proposal would not harm the living conditions of neighbouring occupiers with particular regard to outlook and therefore complies with Local Plan Policy DG4 and Objective 9 of the Core Strategy which, amongst other things, seek to ensure that development ensures a quality of amenity which allows residents to feel at ease within their homes and gardens.

Protected Site - SPA

17. 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 a protected site. The SPA is designated owing to its estuarine habitat and waterbird assemblage. It is also an important recreational resource, and it is likely that future occupants of the dwelling would visit it.
18. There is no dispute between the parties 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. Following a screening assessment under the Habitats Regulations, I do not have any reason to disagree.
19. The parties mutually agreed that such effects could be mitigated by a financial contribution made pursuant to the *South-East Devon European Site Mitigation Strategy (2014)* (the Strategy) which the Council would ordinarily collect through the Community Infrastructure Levy (CIL) or, if the scheme were not liable to CIL, through a planning or similar such legally-binding obligation.
20. Given the uncertainty of such a situation, the appellant submitted a S111 agreement under the Local Government Act 1972 on the standard template issued by the Council (dated 13 September 2022) and made the payment of £1035.23 to the Council. The S111 agreement guides how the contribution shall be spent towards the mitigation measures set out in the Strategy.
21. I have undertaken an appropriate assessment under the Habitats Regulations. My findings are that the adverse effects of the proposal on the integrity of the SPA would be adequately mitigated by the means to be employed by the Council, as directed by the S111 agreement and the Strategy and with the contribution which has already been paid prior to any commencement of works.
22. As such, the scheme complies with the biodiversity aims of Policy CP16 of the Core Strategy and the National Planning Policy Framework (the Framework).

Other Matters

23. I note the suggestions from objectors' correspondence that there may be covenants on the land that would prevent the scheme being built. However, these are not a material planning consideration that dictates how I should determine the appeal. I have given due regard to the appeal decision relating to the previous scheme and note that neither the principle of development or subdivision of the garden have previously been found unacceptable. I do not find any reason to reach an alternative conclusion in this regard.
24. In terms of the use of the other properties within the ownership of the appellant as homes in multiple occupation, I do not have any details as to the lawfulness of such and nor that the addition of a dwelling on the site would add to any related issues for neighbouring residents. The appeal plans depict a relatively modest dwelling with three bedrooms and I have considered the appeal on this basis.
25. Whilst I note that the occupiers of No 174 Rosebarn Avenue are concerned about overlooking, given the intervening distance and enclosed nature of that

dwelling and garden, I do not consider that material overlooking would occur from the proposal that would not otherwise be typical in an urban environment.

26. In respect of biodiversity matters, the loss of vegetation will have had an effect on the biodiversity value of the site. The re-introduction of greenery would be capable of mitigating some of this loss, but a further condition seeking the installation of bat and bird boxes would be capable of securing the biodiversity gains necessary for such a proposal.

Planning balance

27. For the foregoing reasons, the appeal scheme complies with the development plan and there are no considerations to indicate that the decision should be taken other than in accordance therewith.

Conditions

28. In addition to the statutory time limit for commencement, a condition is necessary stipulating the approved plans in the interests of certainty.
29. In order to maintain the character and appearance of the area, a condition is necessary specifying that materials of construction shall be agreed prior to implementation. For similar reasons, a condition is needed to ensure that soft and hard landscaping measures are implemented as set out, particularly to reintroduce some greenery to the site.
30. In the interests of environmental quality, conditions are necessary relating to drainage and the carbon-reducing measures that will be implemented in the construction of the dwelling. Separate conditions are required on the similar theme of electric car charging points and cycle parking. To ensure the mitigation and enhancement of the biodiversity value of the area, a condition is necessary seeking relevant measures prior to occupation of the dwelling.
31. To protect the living conditions of neighbouring occupiers, conditions are necessary to require obscure glazing to be installed within the rear first floor windows. Similarly, a condition is necessary stipulating construction hours.
32. Whilst the Planning Practice Guidance indicates that conditions removing householder permitted development rights are rarely justifiable, I have given careful consideration to the issues raised by this appeal. As the design has had to be deliberately tailored to avoid harm, and only does through such careful consideration to detail, to leave the householder permitted development rights in place could have the effect of undermining this process and could result in harm to neighbouring occupiers. Therefore, I consider that the removal of permitted development rights is necessary and proportionate in this particular case, though I have adapted the condition in the interests of clarity.

Conclusion

33. In conclusion, the appeal is allowed.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan, Ref 2128-SLP, dated October 2021
 - Proposed Site and Floor Plans, Ref 2128-01, dated October 2021
 - Proposed Elevations, Ref 2128-02, dated October 2021
 - Proposed Landscaping Plan, Ref 2128-03, dated October 2021
3. No development shall take place until details of the implementation, maintenance and management of a sustainable urban drainage scheme have been submitted to, and approved by, the Local Planning Authority. The scheme shall be implemented, and thereafter managed and maintained, in accordance with the approved details. Those details shall include (i) a timetable for its implementation, and (ii), a management and maintenance plan for the lifetime of the development detailing any arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime.
4. Before commencement of construction of the superstructure of the development hereby permitted, a SAP calculation shall be submitted which demonstrates that a 19% reduction in CO2 emissions over that necessary to meet the requirements of the 2013 Building Regulations can be achieved. The measures necessary to achieve this CO2 saving shall thereafter be implemented on site. Within 3 months of practical completion of any dwelling a report prepared by a suitably qualified consultant shall be submitted to the Local Planning Authority to demonstrate compliance with this condition.
5. Before commencement of construction of the superstructure of the development hereby permitted, details of the provision of integral bird and bat boxes shall be submitted to and approved in writing by the Local Planning Authority. Upon written approval of the details, the scheme shall be fully implemented as part of the development and shall be retained thereafter.
6. Prior to their use in the development hereby approved, samples of the proposed materials shall be submitted to, and approved by, the Local Planning Authority. The development shall thereafter be constructed using the agreed details.
7. No site machinery or plant shall be operated, no process shall be carried out and no demolition or construction-related deliveries shall be received or dispatched from the site except between the hours of 8am to 6pm Monday to Friday, 8am to 1pm Saturday and at no time on Sundays, Bank or Public Holidays.
8. Prior to occupation of the dwelling hereby approved, the landscaping shown on Proposed Landscaping Plan, Ref 2128-03, shall be implemented, and shall be retained thereafter. In the event of failure of any trees or shrubs, planted

in accordance with the landscaping scheme approved by the Local Planning Authority, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees or shrubs shall be replaced with specimens of such species of a size and number as may be approved by the Local Planning Authority.

9. Before the dwelling hereby permitted is first occupied, all rear windows at first floor level shall be glazed with obscure glass to a minimum level of obscurity to conform to Pilkington Glass level 3 or equivalent, and shall thereafter be maintained as such.
10. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, and any Order revoking and re-enacting that Order with or without modification, no development within Classes A, B, E or F of Part 1, Schedule 2 shall be carried out without express consent.
11. Prior to occupation, the electric car charging points shown on the Proposed Site Plan Ref 2128-01, shall be installed and shall thereafter be retained as such.
12. Prior to occupation, the cycle parking shown on the Proposed Site Plan, Ref 2128-01, shall be installed and shall thereafter be retained as such.