



Appeal Decision

Site visit made on 29 November 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/Y1110/W/22/3295247

32 Okehampton Street, Exeter, EX4 1DY

- 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 Wakeburn Ltd against the decision of Exeter City Council.
 - The application Ref 21/1122/FUL, dated 12 July 2021, was refused by notice dated 20 December 2021.
 - The development proposed is the erection of 8 dwellings (C3) following demolition of existing commercial building.
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Decision

1. The appeal is dismissed.

Main Issues

2. Since the planning application was determined and the appeal lodged, the Council has withdrawn its reason for refusal in relation to the absence of a planning obligation that provides education contributions. The Appellant has been made aware of this change to the reasons for refusal and has had the opportunity to comment. Therefore, the sixth reason for refusal given by the Council on the Decision Notice no longer applies to this appeal. Accordingly, and on review of the remaining reasons for refusal given by the Council, I have considered it appropriate to identify seven main issues and determine the appeal on that basis.
3. The main issues in this appeal are:
 - The effect of the proposed development on biodiversity,
 - The effect of the proposed development on the living conditions of future residents,
 - The effect of the proposed development on the living conditions of nearby residents,
 - Whether the proposed development would be in a suitable location having regard to the risk of flooding and arrangements for drainage,
 - Whether adequate arrangements have been made with regards to bicycle and refuse bin storage and whether adequate information has been provided to ensure that the proposed development remains car-free,
 - The effect of the proposed development on the character and appearance of the surrounding area; and,

- The effect of the proposed development on employment land.

Reasons

Biodiversity

4. Amongst other matters, Objective 8 of the Exeter City Council Core Strategy (the Core Strategy) seeks to protect and enhance Exeter's biodiversity and geological assets. Paragraph 180 of the National Planning Policy Framework (the Framework) provides that, when determining planning applications, if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
5. A preliminary ecology report submitted in support of the planning application, identified bat activity within the appeal building, and that report confirms that "it is not possible to be confident that bats will not be impacted by the proposed works", that further surveys would therefore be required, with any mitigation being formulated once the results of additional survey work is known.
6. In the absence of results from the required additional surveys, it would not be possible to assess the impact of the proposed development or assess any proposed mitigation in respect of the impacts on bats. I do not consider this is a matter that can be satisfactorily addressed through a planning condition requiring the submission of further surveys, as such information could raise matters that bring into question the merits of the scheme as a whole.
7. I therefore conclude that the proposed development would be contrary to the aims of Objective 8 of the Cores Strategy and would fail to accord with the provisions of paragraph 180 of the Framework.

Living Conditions of Future Residents

8. Collectively, Objectives 3 and 9 of the Core Strategy seek to ensure that everyone in the community has the opportunity of living in a decent home and to raise the quality of urban living through excellence in design. Policy DG4 of the Exeter Local Plan First Review 1995-2011 (the Local Plan) concerns residential layout and amenity and, amongst other matters, seeks to ensure a quality of amenity which allows residents to feel at ease within their homes.
9. In terms of internal space provision, the Council raises concerns about some of the bedroom sizes. In the proposed units 5,6,7 and 8, which the planning application and plans describe as three bedroom units, the third bedroom is shown as a study. The amount of space provided would appear to be approximately in line with the standards as provided in the Government's Technical Housing Standards for a single bedroom. For the proposed units numbers 2 and 3, plans show the third bedroom as including a double bed. However, the units are described as being for three bedrooms and as the dwelling would contain a double bedroom of sufficient size then the third bedroom could be permitted as a single. I find no harm in that respect.
10. With regards to external amenity space provision, the supporting text to Policy DG4 of the Local Plan confirms that private garden space should not normally be smaller than 55 sqm. I have also been referred to Chapter 7 of the Residential Design Supplementary Planning Document (the SPD), which advises

that in respect of private gardens for houses, gardens must be located towards the private non-main entrance side of the house.

11. The plans provided in support of the planning application, indicate that in terms of area, the overall external amenity space for each of the units would meet the policy requirements when factoring in orientation. Whilst I acknowledge that the Council raises concerns regarding garden spaces at the proposed units 5,6 and 7, it does appear that when the areas which are not located on the main entrance side of the house are combined, the amounts of space provision would accord with the policy and the SPD requirements.
12. However, that does not appear to be the case in respect of the proposed units 1, 2, 3 and 4 where it appears that the minimum standards would only be met where the front gardens, on the main entrance side of the house, have been included. In light of the above and with regards to paragraph 7.9 of the SPD which further specifically confirms that front gardens would not count towards minimum private amenity space provision, the appeal scheme would fail to provide the necessary external space and thus would be harmful to the living conditions of future residents of those proposed units.
13. In terms of outlook, overlooking and loss of privacy there are concerns regarding a number of the proposed units. For the proposed units 2 and 3, which would be located either side of the access lane, one of the bedroom windows would face out towards a largely blank elevation of the adjacent dwelling. Given the very limited separation distance between those windows, there would be potential for overlooking and which would result in unacceptable loss of privacy for future residents. Whilst I acknowledge that within urban residential areas there would be a degree of overlooking and intervisibility between properties, by reason of the limited separation distance and height and spread of the respective proposed units, I find that the appeal scheme would result in an unacceptable level of overlooking and loss of privacy for future residents at units 2 and 3.
14. With regards to the relationship between proposed units 3 and 4 and the proposed dwelling 7, given the orientation and separation distance between the buildings, I do not find any harm to living conditions of future residents with regards to outlook or loss of light.
15. Nonetheless, I further conclude that the living conditions at the ground floor of proposed dwellings 1 and 2 in respect of outlook would be unacceptably compromised given the separation distance to the side elevation of the proposed unit 6, and that, given the proximity of a tree to be located within an area to the front of proposed unit 8, outlook from the front bedroom at that dwelling would be restricted. Whilst details concerning boundary treatments between the rear of proposed units 7 and 8 and the neighbouring properties within Okehampton Place are limited, it is also apparent that outlook from the rear ground floor rooms in those proposed dwellings would be poor given the extremely limited separation distance between those rooms and any boundary treatment that would be of sufficient height to limit potential overlooking from nearby existing properties.
16. Policy EN5 of the Local Plan specifically concerns noise and provides that development will not be permitted if its users would be affected by noise from existing noise generating uses unless adequate mitigation can be provided to

achieve an acceptable environment. Criterion e) of paragraph 174 of the Framework contain similar provisions.

17. Immediately adjacent to the southwest of the appeal site is an embankment and railway line. A noise assessment acoustic review has been provided in support of the planning application and which, in respect of noise impact from the adjacent railway line, concludes that mitigation could be achieved by, amongst other matters, installation of acoustic screens. Whilst I acknowledge the Council's concern regarding the height of the railway line, it is apparent from the assessment that some of the recommendations would be able to provide sufficient mitigation. In that respect it is noted that the Council's consultee has recommended that a pre-commencement condition requiring approval of further details would be sufficient to overcome this part of the reason for refusal. As such, in the event that the appeal was allowed, a suitable planning condition could be included.
18. Notwithstanding the above findings in respect of noise and internal space provision, for the reasons given I conclude that, overall, future residents of the scheme would experience unacceptable living conditions in respect of outlook, loss of privacy and external amenity space provision. As such, the appeal proposal would conflict with Policy DG4 of the Local Plan, would be contrary to the aims of Objectives 3 and 9 of the Core Strategy, and would fail to accord with criterion f) of paragraph 130 of the Framework.

Living Conditions of Nearby Residents

19. In terms of the effect of the proposed dwellings on the living conditions of nearby residents, concerns are raised by the Council in respect of loss of outlook and light, as well as overlooking and loss of privacy.
20. The proposed units 1 and 4 would include two storey wings extending to the rear and which would be set back, to a limited degree, from the boundary with the respective neighbouring properties at 30 and 35 Okehampton Street. Given the set back from the boundary, and by reason of the depth of the garden space at 35 Okehampton Street and the presence of the existing buildings at the site, I do not find that the proposed unit 1 would have an overbearing effect on occupants at 35 Okehampton Street or would be likely to result in significant reduction of light into that neighbouring dwelling.
21. However, whilst again noting the set back of the rear projecting wing at the proposed unit 4, the garden space at the existing neighbouring property is modest in depth, with the separation distance between the rear projecting wing of the proposed unit 4 and the habitable rooms at ground floor being more restricted than that relationship between the proposed unit 1 and its neighbour as described above. In that respect, the proposed dwelling 4 would have a somewhat overbearing effect on the living conditions of residents at 30 Okehampton Street, restricting outlook to an unacceptable degree.
22. The rear elevation of the proposed units 7 and 8 would be in very close proximity to the boundary with private gardens that serve dwellings located within Okehampton Place. In that regard, given the height and proximity of those proposed units to the boundary, there would be direct overlooking into the modest gardens that serve properties 9 to 14 Okehampton Place, resulting in an unacceptable loss of privacy for residents in those dwellings.

23. For the above reasons, the appeal proposal would have an unacceptable effect on the living conditions of nearby residents and, as such, the scheme would conflict with Policy DG4 of the Local Plan and would be contrary to paragraph 130 of the Framework which, together and amongst other things, seeks to ensure a high standard of amenity for existing and future users and a quality of amenity that allows residents to feel at ease within their homes and gardens.

Flood Risk and Drainage

24. The appeal site is located in Flood Zone 3. Policy EN4 of the Local Plan provides that permission should not be granted for development at risk of flooding. Policy CP12 of the Core Strategy provides that all developments must mitigate against flood risk utilising a Sustainable Urban Drainage System where feasible and practical, with the supporting text providing that the aim of the policy, amongst other matters, is to avoid inappropriate development in flood risk areas.
25. In support of the planning application and contained within the planning statement, the Appellant has provided a Flood Risk Assessment (FRA) in addition to details concerning surface water disposal from the site.
26. Paragraph 159 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is substantiated in Paragraph 162 of the Framework, which outlines the need for development to pass a Sequential Test, the aim of which is to steer new development to areas with the lowest risk of flooding.
27. Given existing development in this area of Exeter and by reason of flood relief works within the city, the main parties agree that the site would not fail the Sequential Test. Paragraph 163 of the Framework provides that where the Sequential Test is passed, an Exceptions Test may be required in line with the Flood Risk Vulnerability Classification. The vulnerability of different types of development to flood risk is detailed within Annex 3 of the Framework, with the Planning Practice Guidance Flood Risk and Coastal Change Table 2, identifying that, for the proposed development, an Exception Test would be required. Paragraph 164 of the Framework provides that for the Exception Test to be passed, it should be demonstrated that the scheme would provide wider sustainability benefits to the community that outweigh the flood risk and that the proposed development would be safe for its lifetime.
28. Notwithstanding the potential wider sustainability benefits to the community such as the provision of housing in a location close to services and facilities, as noted above to pass the Exception Test it must be demonstrated that the proposed development would be safe for its lifetime. It is noted that the proposal would provide safe refuge for residents at the first floor level of the proposed individual dwellings. The submitted FRA provides, amongst other flood resilience measures and references to flood defence works, that it is recommended that the ground floor level be raised to 300mm above Ordnance datum in order to make the development safe. Whilst those details are noted, no information has been provided which confirms how that figure had been calculated. I therefore cannot be sure that that measure would be sufficient to ensure that the development remained safe.

29. Within the details provided in respect of surface water drainage contained within the planning statement, the Appellant states that a Detention Basin is proposed to serve the development. However, calculations provided by the Appellant refer to the use of a soakaway, with the submitted Proposed Site Plan showing a surface water attenuation tank within the design. As such the information provided in respect of the drainage solution is somewhat contradictory and, consequently, it does not appear that there is sufficient evidence to confirm that a suitable sustainable drainage solution can be provided at the site to mitigate against flood risk.
30. For the above reasons, the proposed development would conflict with Policy EN4 of the Local Plan and Policy CP12 of the Core Strategy and would fail to accord with those parts of the Framework that concern planning and flood risk.

Bicycle Storage, Refuse Bin Storage and Car-Free Development

31. Objective 1 of the Core Strategy concerns climate change and the transition to a low carbon economy and seeks to reduce the use of fossil fuels by, amongst other matters, encouraging walking and cycling. Objective 5 of the Core Strategy seeks to reduce the need to travel by car and reflects the provisions of Policy AP1 of the Exeter Local Plan First Review 1995-2011 (the Local Plan).
32. Policy T3 of the Local Plan specifically provides the requirements in terms of storage for residents' bicycles, with reference to standards set out in an accompanying schedule. That schedule confirms that for three bedroom dwellings with garages, the standard required is for two bicycle spaces, and that for two bedroom dwellings with garages the standard required is for a single space.
33. The proposed development is for a mixture of three bedroom and two bedroom dwellings. In that respect and to accord with the requirements of Policy T3 of the Local plan, a total of fourteen bicycle storage spaces would be needed to serve the development.
34. The proposal includes provision of an area at the rear of the site, for a communal cycle and bin store. I do not appear to have any details or plans of the proposed communal store and cannot be sure, given the amount of floorspace for that store given on the site plan, that it would be of sufficient size to accommodate the required fourteen spaces, in addition to providing adequate refuse bin storage.
35. The Appellant has put it to me that the final details of this storage could be dealt with by way of planning condition. However, I have not been provided with any details of how such a condition would be constructed and without information concerning the scale of the communal store, I cannot be sure that it would not impact on other matters such as its effect on the character and appearance of the area or its potential impact with regards to the living conditions of future residents.
36. In terms of car free development, the Council raise concerns that future residents would be able to use the access lane within the proposed development and that given the restricted space, there would be potential for conflict between residents regarding parking. The Council further has put it to

me that the turning head space within the access lane would be of insufficient size to accommodate refuse collection vehicles.

37. The entrance to the access lane would include provision of bollards. The Appellant maintains that the Council's queries concerning how the bollards would operate, were provided during discussion of the planning application. The evidence before me includes an email from October 2021, which only provides that "Bollards will prevent public motor vehicle access but allow emergency vehicular access if ever required". As such there does not appear to be any information before me as to how those bollards would operate such that only emergency vehicles could enter and, furthermore, there does not appear to be any details of how refuse vehicles would be able to operate the bollards so as to access the development for bin collections.
38. In light of the above, the appeal proposal would conflict with Policy T3 of the Local Plan, would fail to accord with the aims of Policy AP1 of the Local Plan or Objectives 1 and 5 of the Core Strategy and would be contrary to those paragraphs of the Framework that concern promoting sustainable transport.

Character and Appearance

39. The appeal site is located within a predominately residential area which is largely characterised by terraces of dwellings which are consistent in terms of appearance and design features. When viewed from within Okehampton Street, the density of the proposed dwellings would not appear to be inappropriate within this residential area.
40. Four of the proposed new dwellings would face onto Okehampton Street, positioned as the continuation of terraced dwellings either side of the existing access to the site. Whilst it would appear that the height and mass of these proposed dwellings would be consistent with the neighbouring terraced housing when viewed from within Okehampton Street, the design and external appearance of these dwellings would not be consistent with the neighbouring residences, and would draw the eye by disrupting the strong visual rhythm and character of the terrace.
41. Whilst the harm would be very limited, affecting only its immediate surroundings, the proposed development would result in some harm, failing to create or reinforce local distinctiveness. Thus, the proposal would conflict with Objective 9 and Policy CP17 of the Core Strategy and would be contrary to Policy DG1 of the Local Plan which, together and amongst other matters, seek to create and reinforce local distinctiveness and raise the quality of urban living through excellence in design.

Employment Land

42. Policy E3 of the Local Plan states that the loss of employment land or premises will not be permitted where it would harm business or employment opportunities in the area. Policy CP2 of the Core Strategy concerns Employment and, amongst other things, provides that an alternative use for the site may be acceptable where it is demonstrated that employment use is not viable or needed to meet current and long term needs or where there are unacceptable amenity impacts for local residents.
43. The existing lawful use of the appeal building is for storage and distribution (Use Class B8). Whilst the condition of the existing building is noted by the

Council, it has been put to me that it has not been demonstrated that the permitted existing use of the building is not viable or is no longer needed to meet current and long term needs.

44. Nonetheless, whilst the loss of this employment use could harm employment opportunities in this location, Policy CP2 is clear that alternative use may be acceptable where there are unacceptable amenity impacts for local residents. The permitted use of the site is for storage and distribution. As such, the permitted use of the site could result in significant traffic movements and other activities throughout the day. The site is located within a predominately residential area where the density of housing is moderate, and it is likely that residential use of the site would result in a reduction in potentially noisy activity at the site, which would benefit the living conditions of residents in dwellings that are adjacent to the site.
45. For the above reasons, I do not find that the appeal proposal would conflict with Policy CP2 of the Core Strategy, or would fail to accord with the aims and objectives of Policy E3 of the Local Plan.

Other Matters

46. The appeal site is located within 10km of the Exe Estuary Special Protection Area and the East Devon Pebblebed Heaths Special Protection Area and Special Area of Conservation and therefore it is within an area where new development has the potential to have a significant adverse effect on the integrity of Protected Habitats. However, while important issues, I have not found it necessary to examine these matters in greater detail as, for the reasons outlined above, it does not alter my overall conclusion in relation to this appeal.
47. Interested parties raise additional objections to the appeal proposal on the grounds of highway safety, health and safety concerns regarding potential asbestos, and potential disruption during construction. I also acknowledge an objection from an interested party in respect of notice periods for submissions and application of incomplete reference numbers in respect of the appeal. These are all important matters and I have taken into account all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my decision.
48. I acknowledge and sympathise with the Appellant regarding their frustrations with the Council's communication and the way in which it handled the planning application. However, in this regard such matters do not impact on the planning merits of the proposal and consequently are not matters that are for my consideration in relation to this appeal.

Planning Balance and Conclusion

49. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
50. For the reasons given above, the appeal scheme would conflict with the requirements of the cited development plan policies concerning biodiversity, flood risk, drainage, the storage requirements of refuse bins and bicycles, and would result in unacceptable living conditions for future and existing residents. The proposed development would also result in harm, albeit very limited harm, to the character and appearance of the surrounding area. The appeal scheme

therefore would conflict with the policies of the development plan when taken as a whole, and I attach significant weight to that conflict in the determination of this appeal.

51. In respect of the benefits that the proposal would bring, the appeal scheme would provide some economic benefits in terms of employment during the construction phase, which would be temporary and limited. The proposal would also assist with the Government's objective to significantly boost the supply of housing, and the proposed dwellings would be at a location with convenient access to services and facilities, with the spend of future residents helping support the local economy. The removal of the somewhat run down existing buildings and potential site contamination would also be a benefit of the proposal. Cumulatively, I attach moderate weight to the benefits of the proposal by reason of its scale.
52. Consequently, the benefits of the scheme do not outweigh the identified harm and resulting conflict with the development plan. Accordingly, the material considerations do not indicate that planning permission should be granted.
53. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR