



Appeal Decision

Site visit made on 10 January 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref: APP/Y1110/W/22/3300296

Land and garages between numbers 39-41, Toronto Road, Exeter EX4 6LE

- 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 T Tancock of The Feeoffees of St Sidwell against the decision of Exeter City Council.
 - The application Ref 21/0805/FUL, dated 27 April 2021, was refused by notice dated 16 December 2021.
 - The development proposed is demolition of existing garages and construction of three, 2-storey, 3-bedroom dwellinghouses, with integral cycle parking, private amenity space and first floor balcony to rear.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr T Tancock of The Feeoffees of St Sidwell against Exeter City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In the banner heading above, I have taken the description of development from the appellant's appeal form as this more accurately describes the appeal proposal.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including the setting of the Belmont Conservation Area;
 - whether the proposed development would provide satisfactory living conditions for future occupiers, in respect of external amenity space;
 - the effect of the proposed development on the lime tree; and
 - whether the proposal would introduce an opportunity for crime and anti-social behaviour.

Reasons

Character and Appearance

5. The appeal site consists of a terraced row of 11 garages, situated in between 39 and 41 Toronto Road. The garages, which are constructed of brick with a shallow mono-pitched roof, step down in height, reflecting the slight change in site level along the road. To the rear of the garages is a low retaining wall, behind which is an area of overgrown vegetation which is situated at a higher level than the street level at which the garages are positioned. A 1.8m brick boundary wall encloses the site to the southern boundary.
6. The garages are situated within a built-up residential area, consisting of predominately terraced properties. The terraced properties along the southern section of Toronto Road, which the proposal would be read alongside, are consistent in their appearance by virtue of their modest design. This includes a uniformed layout in their window and door arrangement, including a simple ground floor bay window, finished with a tiled roof.
7. Whilst the appeal site itself is situated outside of the Belmont Conservation Area (CA), the boundary to the CA runs along the southern and eastern boundary of the appeal site. The setting of the CA includes those areas in close proximity to it, which are part of the surroundings in which the heritage asset is experienced. The proposal would be prominently located in the street scene, and it would be situated immediately adjacent to the CA.
8. The Belmont Conservation Area Appraisal (CAA) (May 2007) states that its significance lies partly in the presence of important historic routes, and partly in its development as a suburb in the late 18th and 19th Centuries. It references the terraces within the CA, which display strong architectural features, giving presence and character to the street scene. The CAA confirms that the eastern side of Toronto Road was included in the CA because of the high proportion of original features that remain intact, such as interesting porches, pentice roofs, unusual sash windows and ornate brickwork. The view looking down Toronto Road from its junction with Old Tiverton Road has been identified in the CAA as an 'other significant view'. The north-western end of the appeal site is visible as you travel south-eastwards down Toronto Road. The existing terrace, within which the appeal site is located helps give context and understanding of the development of the suburb and its uniformity contributes positively to the significance of the CA.
9. As a result of its poor design, the proposal would unbalance the existing uniformed nature of the terrace. This would be most noticeable through the recessed porches, the timber door and panel to the bin and bike stores, and the cantilevered, flat roofed, first floor bay window, all of which would be read as incongruous additions to the streetscene. I note that the proposal would have a red brick finish, brick detailing and brick chimneys to integrate the proposal in to the streetscene. However, overall, the proposal would result in an uncomfortable juxtaposition, the effects of which would be emphasised by its prominent position in the streetscene, immediately adjacent to the pavement. Consequently, the character and appearance of the area would be harmed.
10. There are examples of pitched roof canopy porches along the eastern side of Toronto Road and some front doors are slightly set back. However, they are not recessed to the same degree as the proposed recessed porches. It is also noted that there are examples of timber cladding used on some of the dormer windows in the immediate locality. However, this would not justify the use of

timber cladding on the proposed bay window, which would be much more visible in the streetscene due to its lower position.

11. I note that some of the windows on the proposal are 'simple traditional window openings'. However, a different window design would be used on the first floor bay, which would further emphasise its inappropriate design. Furthermore, whilst there are other 'false' windows along Albion Place, there are only a handful and they do not form part of the overall character of the area. Therefore, their inclusion in the appeal scheme is a neutral finding rather than weighing positively in favour of allowing the appeal.
12. Whilst the layout of the fenestration to the rear elevation of the proposal would be slightly unusual, it is acknowledged that its layout has been driven to prevent overlooking to neighbouring properties, whilst still allowing for sufficient light in the proposed dwellings. As the rear elevation is not visible from any public vantage points, I am satisfied that the design of the rear elevation would not be harmful to the character and appearance of the area.
13. I accept that the existing garages are not particularly characteristic of Toronto Road and may be underutilised. However, their replacement with the proposal which, for the reasons set out above, would harm the character and appearance of the area and undermine the contribution that the existing Toronto Road properties make towards the significance of the CA as development within its setting, would be unacceptable.
14. Consequently, the proposal would harm the character and appearance of the area, including having regard to the setting of the CA. The proposal would conflict with Objective 9 and Policy CP17 of the Exeter Local Development Framework Core Strategy (February 2012) (Core Strategy) and Policies C1 and DG1 of the Exeter Local Plan First Review 1995-2011 (adopted March 2005) (Local Plan). These policies, in combination, seek to ensure that development creates and reinforces local distinctiveness, enhances Exeter's character and local identity, and raise the quality of urban living through excellence in design as well as requiring development affecting a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposals would also be contrary to the principles within Chapters 12 and 16 of the National Planning Policy Framework 2021 (the Framework) which seek good design sympathetic to the local area to conserve and enhance the historic environment respectively.

Living Conditions

15. There is a mature lime tree situated within the garden of Laurel Cottage, the neighbouring property to the south. The tree is situated close to the southern boundary wall enclosing the appeal site. Whilst the tree was not in leaf at the time of my site visit, I did note there were no visible low branches overhanging the site.
16. As confirmed by the 'Arboricultural Impact Assessment & Appeal Response', which was prepared by A.M.Lane Limited, dated May 2022, and submitted with the appeal, the tree appeared to be well managed, with 'sympathetic and reasonable crown management to reduce its size'. The A.M. Lane report also sets out that the height of the tree is slightly shorter than expected for a tree of its age, which is more than likely due to its history of pollarding and pruning works.

17. The proposed section drawing submitted with the appeal¹ demonstrates that the dwellings would be situated at a lower ground level to the lime tree. Consequently, the canopy of the tree would be at approximately eaves height. The lime tree would still be prominent in the outlook for future occupiers from their rear windows. However, it would not be significantly overbearing.
18. Regarding the potential for overshadowing, the A.M. Lane report states that the daylight shading would occupy around 50% of the middle garden and less of the adjoining gardens and, as the tree is deciduous, only when the tree is in leaf. The gardens of the proposal would receive more than adequate daylight during the summer months. Furthermore, the introduction of the trellis on top of the boundary wall, due to its lightweight latticework material, would not be significantly overshadowing to the external amenity space of the future occupiers. Therefore, I am satisfied that the canopy height of the lime tree and the boundary treatment to the south would limit overshadowing and the feeling of enclosure.
19. The discharge of sap and falling of leaves into the gardens of the future occupiers are not matters which, in my mind, would warrant refusal of the proposal.
20. Finally, in regards to the gradient of the external amenity space, due to the site level differences, the external amenity space would be accessed via the first floor living rooms. However, I am satisfied that the proposed section drawing demonstrates that the gradient of the rear gardens would allow for usable outside space.
21. Consequently, for the reasons above, I conclude that the proposal would provide satisfactory living conditions for future occupiers in respect of external amenity space. The proposal would be in accordance with Policy DG4 of the Local Plan which requires development to ensure a quality of amenity which allows residents to feel at ease within their homes and gardens.

Lime Tree

22. The lime tree discussed above, due to its height of approximately 16m, is a prominent tree in the area. It contributes positively to the visual amenity of the otherwise built-up area and the character and appearance of the CA. An Arboricultural Impact Assessment (AIA), produced by Clark Landscape Design, was submitted with the application. It categorises the lime tree as a category 'B' tree and recognises that the Lime tree 'is the most significant tree within the local area'.
23. The A.M.Lane report notes that the Root Protection Area (RPA) of the lime tree is likely to extend in to the appeal site, within the strip of land along the southern boundary and within the top 600mm of soil. The garages are approximately 2m lower than the garden level of Laurel Cottage within which the lime tree is situated. They state that due to this height difference, there would be a 'vanishingly low likelihood of tree root ingress beyond the brick retaining wall behind the garages'. These findings would be in accordance with the guidance within the Council's Supplementary Planning Document 'Trees in relation to Development' (adopted 2009), which states that 90% of tree roots are usually located within the top 1m of soil. This has also been confirmed by

¹ Drawing no 2200 of Job no 2102

an open trial pit directly behind the garages, which revealed a small number of roots less than 5mm diameter which are likely to be from the overgrown vegetation.

24. The built form of the proposal would be kept to the front half of the site, utilising the footprint of the existing garages up to the low retaining wall to the rear. The incorporation of the existing site level changes into the design of the proposal would help to minimise any impact on the lime tree. I am therefore satisfied that the siting of the proposal would ensure that the RPA of the lime tree would be protected within the proposed rear gardens of the dwellings, within the existing earth bank behind the garages.
25. The future of the lime tree would be protected by virtue of its position in the CA. Therefore, the Council would have full control over any future works to the tree to ensure that its long-term amenity value would be protected. I have found that the proposal would provide adequate external amenity space for the future occupiers, with the lime tree in situ. There is no reason to suggest that permitting development on this site as proposed would unduly increase the call for the tree to be removed.
26. Should I have been minded to allow the appeal, a detailed tree protection plan and arboricultural method statement could be secured by condition, which would safeguard the tree. This would include, amongst others, careful controls in terms of protecting the RPA, including 2 temporary 'landings' to store the construction materials, the bracing of scaffolding outside of the RPA, the use of 'screw pile foundations to hold the external staircases, and any other protective measures.
27. I note a previous planning appeal decision² on the site, which was, in part, dismissed on the basis of the lack of evidence to establish the extent of the root system of the lime tree. I do not have full details of what was considered as part of this earlier scheme. However, I am satisfied that based on the evidence before me now, in part due to the appropriate siting and design of the proposal, the wellbeing of the lime tree would be safeguarded.
28. Consequently, the proposal would not have an adverse impact on the lime tree and the contribution it makes to the character and appearance of the area and the CA would not be harmed. It would accord with Policy DG1 of the Local Plan which requires development to work with existing contours, to conserve important natural features and to ensure a good spatial relationship between development and trees. It would also accord with the relevant elements of the Council's Supplementary Planning Document 'Trees in relation to Development' (adopted 2009), the overall objective of which is to ensure that good quality trees are retained and successfully incorporated into development as appropriate.

Crime and Anti-Social Behaviour

29. The design of the proposal would involve the introduction of recessed entrances to serve each of the 3 dwellings, to allow for a porch and the storage of bins. The Council have not provided any evidence that there are high levels of crime in the area. There are streetlights in the immediate vicinity of the appeal site and there are also existing dwellings immediately opposite which would look

² APP/Y1110/W/17/3167274

towards the proposal. These measures would help to go towards deterring potential crime or anti-social behaviour.

30. Therefore, whilst I have concerns regarding the design implications of the recessed entrances as already outlined, the development, based on the evidence before me, would not increase opportunities for crime and anti-social behaviour in the local area. It would be in accordance with Policy DG7 of the Local Plan which requires development to achieve a safe and secure environment, including, amongst others, ensuring that the fear of crime is not raised.

Other Matters

31. I note the feedback given by the Council as part of both the pre-application advice in October 2019 and more recently in November 2021. I also acknowledge that the design of the proposal was amended during the course of the application following comments from the Council. Whilst this is not binding, it is clearly unfortunate if proposals are adjusted to suit but then the final outcome is an adverse one. Nevertheless, at appeal the proposal is considered afresh and any positive feedback received as part of these discussions would not warrant allowing the appeal, given the harm that I have identified above.

Planning and Heritage Balance

32. The harm that I have found would be caused to the significance of the CA as a designated heritage asset would be localised. Accordingly, the harm would be less than substantial. I afford considerable importance and weight to that harm. As required by paragraph 202 of the Framework, this harm must be weighed against the public benefits of the proposal.
33. There is contradictory evidence before me regarding housing land supply. For the purpose of this appeal, I shall adopt the position of the appellant, and the lower figure within the Council's latest 'Five Year Housing Land Supply Statement' published in August 2022. That should not be interpreted as any indication that I necessarily agree with that position. I simply adopt the lower figure as a worst case scenario in order to carry out the planning and heritage balance. Such a level of shortfall would mean that the provision of 3 houses, in an accessible location would attract significant weight in the balance.
34. Furthermore, the proposal would have economic benefits in employment during the construction phase and support for local businesses. These benefits would however be limited by the scale of the appeal scheme. Accordingly, they would attract modest weight.
35. I also acknowledge that the appeal site falls within the definition of Previously Developed Land (PDL), as set out in the Glossary of the Framework, and the substantial weight that the Framework states should be applied to the value of using brownfield land for homes. The incorporation of ecological mitigation and enhancement measures would be beneficial but attract limited weight on their own. I also note the appellant is a charity organisation who provide low-cost accommodation for people in need in the local parishes, albeit they acknowledge that this would not fall under the definition of affordable housing.
36. Taking all the above into consideration, I am of the view that taken together, the public benefits do not outweigh the harm I have found to the heritage asset. Given that I have found that the Framework paragraph 202 balance is

not satisfactorily achieved, even if I were to find that the Council has no five-year housing land supply and therefore paragraph 11 (d) of the Framework is engaged, in accordance with paragraph 11 (d) (i), the application of policies in the Framework provides a clear reason to refuse permission.

37. Overall, although acceptable in some regards, I have identified that there would be conflict with the development plan as a whole, as there would be less than substantial harm to the significance of a heritage asset which latter harm is not outweighed by public benefits. Neither would the proposal accord with policies regarding the character and appearance of the area. Considered in total, the material considerations referred to above do not outweigh the conflict with the development plan. The appeal should therefore be dismissed.

Laura Cuthbert

INSPECTOR