



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: 27 April 2023

Appeal Ref: APP/Y1110/W/22/3302181

Land South of 15 The Fairway, Exeter, Devon EX4 5DW

- 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 Graham Street of Firmploot Ltd against the decision of Exeter City Council.
 - The application Ref 22/0153/FUL, dated 8 February 2022, was refused by notice dated 23 June 2022.
 - The development proposed is Erection of new dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of new dwelling at Land South of 15 The Fairway, Exeter, Devon EX4 5DW in accordance with the terms of the application, Ref 22/0153/FUL, dated 8 February 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. As noted in paragraph 6.3.3 of the appellant's statement, the first floor plan¹ submitted with the application incorrectly shows the width of the car port roof extending sideways beyond the ground floor patio and first floor balcony. This error was also shown on the proposed Location Plan/Site Plan². However, the proposed south-east and north-east elevations shows that the roof of the car port would be cantilevered over the car port. Revised plans were submitted during the appeal which corrected this error³.
3. With regard to the 'Wheatcroft Principles' established under *Bernard Wheatcroft Ltd v SSE* 1982, I am content that no parties would be unfairly disadvantaged by my acceptance of the revised drawings. It has simply corrected an error on the plans rather than fundamentally changing the development. Furthermore, the Council were given the opportunity to comment on the revisions. I have therefore considered the appeal on the basis of the revised plans.
4. The main parties have set out the relevant planning history related to the site, which includes a previous appeal decision⁴. This earlier appeal decision related to the erection of a 2 storey, 2 bedroom dwelling and was dismissed. I have had regard to this appeal decision insofar as it is relevant to the development before me now.

¹ 283:1:02 Revision C

² 283:1:01 Revision B

³ 283:1:01 Revision C and 283:1:02 Revision D

⁴ APP/Y1110/W/21/3282595 Decision Date 20 January 2022

Main Issues

5. The main issues are:

- the effect of the proposal upon the living conditions of the existing occupants of 43 and 45 Widecombe Way and 15 The Fairway, with respect to privacy;
- whether the proposed development would provide acceptable living conditions for the future occupants, with respect to outlook, natural light and external amenity space; and
- the effect of the proposal on the Exe Estuary Special Protection Area.

Reasons

Living conditions of the existing occupants of 43 and 45 Widecombe Way and 15 The Fairway

6. The appeal site consists of an irregular plot of land situated at the eastern end of The Fairway, a residential cul-de-sac. To the north of the appeal site is 15 The Fairway, a detached bungalow with living accommodation at the lower level, taking advantage of the site level difference in the cul-de-sac. The residential cul-de-sac of Widecombe Way, most notably 43 and 45 Widecombe Way, lie to the north-east and are positioned at a lower level than the appeal site. Consequently, the appeal site slopes northwards down towards both No 15 and Nos 43 and 45.
7. An access road runs to the southern boundary which provides vehicular access to 4 further dwellings which have been recently built. The appeal site is enclosed with a low flint wall to the western boundary, a post and rail fence along the access road and a 2m close boarded fence around the remainder of the site.
8. Due to the distance and position of the windows closest to Nos 43 and 45, there would only be a very acute angle of overlooking possible from the proposed house. The section through the garden shows that with an appropriate boundary treatment, the proposal would not result in overlooking towards Nos 43 and 45 from the proposed garden area. Therefore, the proposal would not result in a material loss of privacy due to overlooking to Nos 43 and 45.
9. In regard to the impact on No 15, there would be an access door to the car port, which would be accessed via some steps from the rear garden. It would face towards the shared boundary with No 15. Whilst it would be at a slightly higher elevation than No 15, given that this door would be solid and would serve a car port, not a habitable room, it is considered that this would minimise the level of overlooking. Furthermore, it would only overlook a small proportion of No 15's private amenity space. The degree of overlooking that would result would not be materially harmful.
10. The Council's delegated planning report comments that the proposal would 'represent intrinsic overdevelopment at this location, bringing its form unreasonably close to number 15 and 16 The Fairway'. Whilst this area of concern has not formed part of the reason for refusal, it is considered that on

the basis of the siting, form and careful design, the proposal would not be significantly overbearing to neither No 15 nor No 16.

11. In view of the above, the proposal would not harm the living conditions of the existing occupants of 43 and 45 Widecombe Way and 15 The Fairway, with respect to privacy. It would be in accordance with Policy CP17 of the Exeter Core Strategy (February 2012) (Core Strategy) and Policies DG1 and DG4 of the Exeter Local Plan First Review (adopted March 2005) (Local Plan). These policies, in combination, seek to ensure that residents enjoy a quality of internal and external amenity to allow them to feel at ease within their home and gardens.

Living Conditions for the future occupants

12. The proposed dwelling would have its principal aspect and outlook to the southeast elevation. The living room would be served by large floor to ceiling double doors, opening out on to the external amenity space. Based on the revised plans submitted, I am satisfied that the ground floor living room would be served by sufficient natural light. Although the outlook from the window would not be completely unrestricted due to the presence of the side wall of the car port adjacent, it would still allow for a reasonable view over the garden from the living room. On balance, I do not consider that the outlook from the property or the natural light received would result in material harm to the living conditions of future occupiers.
13. The external amenity space would measure 54sqm which would meet the recommended minimum size of 45sqm for a one bedroom property set out by the Residential Design Guide Supplementary Planning Document (2010) (SPD). Based on the section through the garden provided, I am satisfied that whilst a small area of the garden would be on a slight slope, the majority would be at a shallow enough gradient, to allow for the garden area to be useable.
14. I note the previous Inspector had concerns that the garden would 'comprise a bank and the space would be quite sunken and hemmed in'⁵. However, based on the plans before me now, whilst the garden would be positioned slightly below street level, it would not be as sunken as the scheme considered by the earlier appeal. Whilst the privacy of the external amenity space would depend on the provision of screen planting along the road, it is considered that a suitably worded condition would ensure that an appropriate boundary hedge would be secured. I note the Council's suggested landscaping condition covers planting, boundary screen walls and fences. The submission of these details would ensure that the garden would be afforded with an adequate level of privacy. Consequently, I am satisfied that the proposal would provide future occupants with adequate external amenity space.
15. I note the Council states that the slope of the land has been reduced from that shown as part of the previous appeal. Based on the evidence before me, the main difference seems to be that the proposal before me now does not require as much cutting into the slope as the previous scheme, due to the changes in the design of the proposal. Nevertheless, I have considered the appeal based on the information before me now and have found no material harm to the living conditions of future occupants.

⁵ Paragraph 7, APP/Y1110/W/21/3282595

16. The proposal would therefore provide acceptable living conditions for the future occupants, with respect to outlook, natural light and external amenity space. The development would be in accordance with Policy DG4 of the Local Plan and Chapter 7 of the SPD, which, in combination, seek to ensure that residents should be able to enjoy a good quality of amenity, natural light and outlook.

Exe Estuary Special Protection Area

17. The appeal site lies within 10km of the Exe Estuary Special Protection Area (SPA). The Exe Estuary is also listed as a Ramsar site. They comprise habitat sites which are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Policy CP16 of the Core Strategy also seeks to prevent harm to these sites.
18. The Exe Estuary SPA is internationally important mainly due to its overwintering populations of Avocet and Slavonian Grebe, migratory species over winter such as Dark-bellied Brent Goose, Dunlin, Oystercatcher, Black-tailed Godwit and Grey Plover. It also regularly supports an assemblage of at least 20,000 wintering waterfowl.
19. The South East Devon European Site Mitigation Strategy (SEDESMS), and associated visitor survey data, identifies that the vast majority of visitors to the European Sites come from within a 10 km radius. It identifies that visitors to the European Site are likely, through their presence and actions, to have an adverse impact on the achievement of the conservation objectives for the sites. As the SEDESMS highlights, a range of recreational activities within the Exe Estuary SPA can result in birds taking flight due to disturbance. A disturbance study found that most flight events were caused by dog walkers, particularly when dogs are off their leads, but walking in general in certain other areas also caused disruption.
20. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA. The evidence before me is clear that the proposal, particularly when combined with other development in the area, would have a likely significant effect on the SPA due to an increased disturbance through recreational activity from future occupiers of the dwelling.
21. To mitigate this effect, table 26 of the SEDESMS sets out a range of measures. This includes Suitable Alternative Natural Greenspace (SANG) to divert visitors from sensitive sites and includes enhancing some existing parks within the local area. It also includes Strategic Access Management and Monitoring (SAMM) which involves, amongst other things, creating exclusion zones and fencing, providing dedicated dog exercise areas, and wardens to communicate with users of the sites. The SANG and SAMM require monetary contributions from residential developments in order to mitigate impacts. The Council confirms that they utilise the Community Infrastructure Levy (CIL) for this purpose where development is liable, by top slicing CIL receipts for habitat contributions. This is based on a set amount per dwelling and has been factored into the overall CIL charging schedule.
22. Natural England (NE) have been consulted accordingly. They are content that the measures set out in table 26 of the SEDESMS are sufficient to ensure that an adverse impact on the integrity of the Exe Estuary SPA and its relevant features can be avoided. NE also confirms that it is content that the

mechanisms in place to secure the mitigation measures by way of monies collected through the CIL would be adequate to secure the deliverability of the measures. I have no reason to take a different view.

23. In view of the above, I am satisfied that the mitigation measures set out in the SEDESMS can be appropriately secured by CIL and would be sufficient to address the level of harm likely to be caused by the development. Therefore, the proposal would not lead to adverse effects on the integrity of the habitat sites either alone or in-combination with other plans and projects. The proposal would comply with Policy CP16 of the Core Strategy in this respect, which requires that European Sites are protected.

Other Matters

24. I note that the decision notice also mentions that 'the scheme would not raise the quality of urban living through excellence in design'. As I have found no material harm on the main issues, I have no reason to believe that the proposal would not raise the quality of urban living for the reasons given above.
25. Local residents have raised concerns in regard to the design of the proposal. I note the Council did not object to the proposal on the grounds of design. After consideration of the proposal, I have no reason to come to a different conclusion on this matter.

Conditions

26. A condition setting a time limit for commencement of the development is required by statute. It is appropriate that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty. A condition regarding further details or samples of the materials to be used externally is necessary to safeguard the character and appearance of the area. I have amended the suggested condition provided by the Council for clarity purposes.
27. The Council's suggested condition regarding the Design SAP Calculations does not appear to achieve anything other than that which would already be covered by Building Regulations. Therefore, a condition covering the issue is not considered necessary. In order to minimise disruption to surrounding residents, a condition to limit demolition, the operation of site machinery, and construction to acceptable hours has been attached.
28. A landscape condition, which requires a detailed scheme for landscaping, details of surface materials and details of any boundary walls and fences, is necessary in the interests of the character and appearance of the area, to provide acceptable living conditions to both existing and future occupants, and in the interests of reducing surface water run-off. I have amended it slightly for clarity purposes. A condition which requires the replacement of any trees or shrubs planted as part of the approved landscaping scheme to be replaced should they fail within five years is also considered necessary in the interests of the character and appearance of the area.
29. To ensure the satisfactory drainage of the development, a condition requiring details of a sustainable urban drainage scheme is considered both necessary and reasonable.

30. In order to encourage the use of more sustainable modes of transport and to ensure that convenient arrangements are made for refuse and recycling storage, details of bicycle and bin storage facilities are required prior to the occupation of the development. I have amended it slightly for clarity purposes.
31. Finally, in the interests of preservation and enhancement of biodiversity in the locality, details of the biodiversity enhancements to be incorporated into the development shall be submitted and approved by the Council.

Conclusion

32. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Laura Cuthbert

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: drawing numbers 283:1:01 Rev. C and 283:1:02 Rev. D.
3. No development above slab level shall commence on site until samples of external materials to be used, specifically roof slates, natural stone, cladding and any paving and boundary treatment materials, have been submitted to and approved in writing by the local planning authority. The development shall be carried out and thereafter maintained in accordance with the details so approved.
4. No site machinery or plant shall be operated, no process shall be carried out and no demolition or construction related deliveries received or dispatched from the site except between the hours of 8 am to 6pm Monday to Friday, 8am to 1pm Saturday and at no time on Sundays, Bank or Public Holidays.
5. No dwelling or building shall be occupied until a detailed scheme for landscaping, including the planting of trees and or shrubs, the use of surface materials and boundary screen walls and fences shall be submitted to, and approved in writing by the local planning authority. Such a scheme shall specify materials, species, tree and plant sizes, numbers and planting densities, and any earthworks required together with the timing of the implementation of the scheme. The landscaping shall thereafter be implemented in accordance with the approved scheme in accordance with the agreed programme.
6. In the event of failure of any trees or shrubs, planted in accordance with any scheme approved in writing 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 such live specimens of such species of such size and in such number as may be approved by the local planning authority.

7. 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 in writing 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 which shall include the 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.
8. The dwelling shall not be occupied until the bicycle and bin storage facilities have been provided on site. Full details of the design of the bicycle and bin store shall first be submitted to, and approved in writing by, the local planning authority. Thereafter, the bicycle and bin storage facilities shall be constructed, maintained and retained in accordance with the approved details.
9. Prior to the occupation of the development hereby approved, biodiversity enhancements shall have been incorporated into the development and installed on site. Details of such enhancements shall first be submitted to, and approved in writing by, the local planning authority. Thereafter, the enhancements shall be installed, maintained and retained in accordance with the approved details.