



Appeal Decision

Site visit made on 23 May 2023

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/Y1110/W/22/3311068

52A Church Road, St. Thomas, Exeter, Devon EX2 9BQ

- 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 OTP Building Services Ltd (Mr Jon Whiley) against the decision of Exeter City Council.
 - The application Ref 22/0415/FUL, dated 21 March 2022, was refused by notice dated 7 October 2022.
 - The development proposed is the change of use of a redundant commercial tea room in urgent need of environmental improvements to a residential dwelling. The proposals include the reconfiguration of the property into a low energy 3 bedroom residential dwelling with external courtyard amenity space, bicycle store, bin store and access from Church Road.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by OTP Building Services Limited (Mr Jon Whiley) against Exeter City Council. This application will be the subject of a separate decision.

Preliminary Matters

3. The description of development in the Council's decision notice is different to that on the application form. The appellant's statement sets out that this change was not agreed. I have therefore used the description from the application form.

Main Issues

4. The main issues are: i) whether the proposed development would be safe from flooding; ii) the effect of the proposed development on the character or appearance of the Cowick Street Conservation Area; iii) the effect of the proposed development on the living conditions of future occupiers, with particular regard to private outdoor space.

Reasons

Flooding

5. The fact that the appeal site is located within Flood Zone 3 does not appear to be a matter in dispute. The Council's decision notice sets out that the appellant has not demonstrated that the requirements of the sequential test have been met. Paragraph 168 of the National Planning Policy Framework

(the Framework) sets out that proposals for changes of use do not need to be subject to the sequential or exception tests.

6. However, Paragraph 168 and Footnote 55 of the Framework does require that a site-specific flood risk assessment (FRA) be provided for all development in Flood Zones 2 and 3, including changes of use. The relevant part of the National Planning Practice Guidance¹ reiterates this and notes that changes of use can increase the vulnerability of the development, as set out within Annex 3 (Flood risk and vulnerability classification) of the Framework. In this instance, the proposed development would see a tea room, classified as a less vulnerable use, converted to a residential dwelling, which is a more vulnerable use.
7. An adequate site-specific FRA has not been prepared for this proposal, and therefore it has not been demonstrated that the proposed use would be safe. During the course of the appeal, the appellant has provided further information on flood risk, including some potential mitigation measures. This is in addition to the information provided in the appellant's statement. The Environment Agency (EA) has objected to the proposed development due to the lack of a suitable FRA and has noted that the proposed mitigation measures are unlikely to be suitable. In particular, consideration has not been given to the structural loading of the building, and the ability to raise floor levels has not been properly addressed. The appellant has referenced an FRA that was prepared in relation to development on an adjacent site. However, as set out by the EA, this was for a different form of development and is no longer up to date.
8. The EA has provided wording for a suggested condition should this appeal be allowed, and the appellant has noted this could be imposed to address this matter. However, the condition requires the preparation of information that should have been produced at the application stage. I note the appellant's frustration that this was not raised by the Council during the application process. However, the requirement for a site-specific FRA is clearly set out within national policy. Without that information I cannot be certain that the proposed development would be safe from flooding. The EA has recommended dismissing the appeal on flood risk grounds, and there is no substantive evidence before me that leads me to disagree.
9. As a result, the proposal conflicts with Policy EN4 of the Exeter Local Plan First Review, 1995 – 2011 (LP) and Policy CP12 of the Core Strategy, adopted February 2012 (CS). Taken together, these policies seek to ensure that new development is safe from flooding. It also conflicts with Paragraph 168, and Footnote 55, of the Framework which require the preparation of site specific FRA's.

Character and appearance

10. The appeal site is located within the Cowick Street Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
11. The buildings within the Conservation Area are largely two and three storeys in height. They have varied styles, architectural detailing and rooflines and are therefore not homogenous. The urban form of the area is reasonably dense and

¹ Paragraph: 052 Reference ID: 7-052-20220825

tight knit, albeit this is broken up by the presence of St Thomas Park. A number of the buildings, particularly on Cowick Street itself, are of a historic appearance with retail space at ground floor level and residential accommodation above. It therefore has the appearance of a historic town centre, and it is this that provides the significance of the Conservation Area.

12. The former tea room is a two storey building, situated behind No. 52 Church Road. With its featureless rendered exterior, flat roof and derelict appearance, it does not contribute positively to the significance of the Conservation Area. The proposed development would bring the building back into use as a residential dwelling. It would have an attractive contemporary appearance with wooden cladding above ground floor level, metal framed windows and a split level pitched roofline. As a result, the appearance of the building would be greatly enhanced. While the modern design would be quite different to the majority of other buildings nearby, this in itself does not lead to harm. Indeed, the variety of styles within the Conservation Area means that the proposed dwelling would not look out of keeping or unusual.
13. The proposed dwelling would be situated within a relatively small space, in close proximity to several buildings. Being situated behind No. 52 it would also form a backland style of development, which is relatively uncommon in the immediate area. However, the urban form in this area is reasonably dense and tight knit, with many properties having fairly small rear gardens. The area therefore has a fairly crowded and dense feel and there is no uniform pattern of development. As a result, the proposed dwelling would not stand out as being particularly cramped or crowded when seen in the context of its surroundings or seem incongruous with the local character. Furthermore, given that the building already exists, it is difficult to see how its conversion to residential use could cause additional harm in this regard. The Council's officer report points to a previous appeal decision as part of its justification for refusal. I don't have the full details of that case before me. However, that site appears to be located in a very different part of the city and, as part of their decision, the Inspector noted that the spaciousness of the area was key to its character. I have set out why that is not the case in this instance.
14. The proposal would therefore preserve and enhance the character and appearance of the Conservation Area, and its setting and significance would not be harmed, thus satisfying the requirements of the Act. For these reasons, I conclude that the development proposal is in accordance with CS Objective 9 and Policy CP17, LP Policies DG1 and H2 and the overarching aims of the Residential Design Supplementary Planning Document, September 2010 (RD SPD). Taken together, the relevant aspects of these policies seek to ensure that new development is well designed and respects existing character and appearance.
15. There is no conflict with Section 7 of the National Planning Policy Framework which concerns the vitality of town centres.

Living conditions

16. The amended plans demonstrate that the proposed development would provide private outdoor garden space which would be split between an L-shaped courtyard area and a first floor balcony. There is no dispute between the main parties that the proposed amount of outdoor space would exceed the minimum

standard of 55 square metres, as set out within the supporting text of LP Policy DG4.

17. While the courtyard area would be an unusual shape, being wrapped around the southwest corner of the proposed dwelling, it would still be a coherent and easily accessible space. I am satisfied that the layout of the garden would not prevent there being plenty of space for a table and chairs and other garden paraphernalia. As a result, it would be of a suitable size to perform its function as an adequate outdoor recreation space. The proposed dwelling and garden would be situated very close to other buildings. However, this would not be unexpected in a dense urban area such as this and therefore would not feel overly crowded in that context. Moreover, the orientation of the garden would mean that it would likely receive sufficient sunlight at different times of the day, despite the presence of a large block of flats to the south of the proposed dwelling.
18. As a result, I conclude that the proposed development would not harm the living conditions of future occupiers, with particular regard to private outdoor space. It therefore conforms with LP Policy DG4(b) and CS Objective 3, as well as Chapter 7 of the RD SPD. Taken together, the relevant aspects of these policies require that proposed developments are of suitable size and design, including providing an appropriate amount of good quality private garden space.

Other Matters

19. While not given as a reason for refusal on the decision notice, the Council's officer report mentions the lack of remaining garden space for the occupiers of the flats within the existing building at No. 52. Their communal outdoor space would be reduced, and it is likely that this would be below the standards set out in policy. However, there would still be an adequately sized garden area that could comfortably accommodate a table and chairs. In addition, the occupiers of No. 52 have very easy access to good quality public open spaces at St Thomas Park and the riverside. In combination, these factors ensure that no harm would be caused to the living conditions of the occupiers of No. 52.
20. The proposed development would provide one new dwelling, along with the associated economic benefits. However, given the small scale of the proposal, these benefits are very limited and do not overcome the conflict with the development plan that I have identified.

Conclusion

21. I have found that the appeal proposal would cause harm in relation to flood risk. Consequently, the proposal would conflict with the development plan taken as a whole, notwithstanding that I have found no harm to character and appearance and living conditions. There are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. The appeal is therefore dismissed.

C Butcher

INSPECTOR