



Appeal Decision

Site visit made on 5 September 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16.10.2023

Appeal Ref: APP/Y1110/W/23/3319123

Kinnerton Court, Kinnerton Way, Exeter, Devon EX4 2EZ

- 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 S Cooper, Hollisgreen Enterprises Ltd against the decision of Exeter City Council.
 - The application Ref 22/0401/FUL, dated 11 March 2022, was refused by notice dated 11 October 2022.
 - The development proposed is change of use of void area in existing residential apartment block to create one residential flat.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of void area in existing residential apartment block to create one residential flat at Kinnerton Court, Killerton Way, Exeter, Devon EX4 2EZ in accordance with the terms of the application, Ref 22/0401/FUL, dated 11 March 2022, subject to the following 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 Number P01 Site Location Plan, Drawing Number P02 North Elevation, Drawing Number P03 South Elevation, and Drawing Number P05 Flat 27 Proposed Floor Plan.
 - 3) The residential unit hereby approved shall not be occupied until full details of bin and bicycle storage facilities have been submitted to, and approved by, the Local Planning Authority. These facilities shall thereafter be provided, and retained, in accordance with these approved details.

Preliminary Matter

2. The appeal site falls within the 10km catchment area for the Exe Estuary Special Protection Area (SPA). This is a matter I will return to below.

Main Issues

3. The main issues are:
 - whether the living conditions of future occupiers of the proposed development would be acceptable with particular regard to outlook; and
 - the effect of the development on nationally and internationally protected sites.

Reasons

Living Conditions

4. The appeal proposal seeks the change of use of the building to a one-bed dwelling. The site is located within a predominately residential area forming part of a large block of 3-storey flats.
5. The floorspace forming part of the appeal is currently accessed from one of the main front entrances to the block and is served by patio doors and a window to the rear elevation that faces onto, and has access to, a small rear private amenity area. Beyond the amenity area is a retaining wall with railings above, with a rising grassed bank behind. Beyond this is a further retaining wall with a fence above that partly encloses a parking area.
6. The open outlook from within the proposed dwelling would be partly restricted by the location and height of the rear retaining walls, grassed slope and fence. However, there would be outlook above these with the relationship not too dissimilar to the outlook from flat No's 15 and 16 that have a similar outlook. In light of this and given the distance to the walls, bank and fence from the rear of the appeal property, the relationship is such that they would not be significantly overbearing and be similar to the established relationships allowing for a suitable level of outlook. The size and south facing nature of the patio doors and window ensure that an adequate amount of light would enter the proposed dwelling.
7. I acknowledge the appeal decision from 2003¹. However, given that the outlook would be very similar to that from flats 15 and 16 consented subsequent to that appeal², and given that the previous Inspector was particularly concerned with regard to the effect on the western most units in the block closest to No. 6 Howard Close, I do not find that the proposed relationship for the appeal property would be significantly harmful to future occupiers or be inappropriate in the locality.
8. Although not forming part of the reason for refusal, the Council's Delegated Planning Report states that the proposed floor area falls below the minimum threshold for a 1 person 1 bedroom flat as detailed within the Government's Technical Housing Standards – nationally described space standards. However, the failure to meet the technical requirements does not necessarily mean that living accommodation would be unacceptable or sub-standard. The dwelling would benefit from a kitchen/lounge area, utility, cupboard, bedroom and separate bathroom and is similar in size to the other four dwellings approved within the block in 2003². This would provide adequate facilities for a likely single occupier with the proposed plans demonstrating that adequate space would be provided to meet basic furniture needs and provide suitable circulation space.
9. For the above reasons, I conclude that the living conditions of future occupiers of the proposed development would be acceptable with particular regard to outlook. Accordingly, the proposal would not conflict with policy DG4 of the Exeter Local Plan First Review (March 2005) (LP) which, amongst other things, seeks to ensure a quality of amenity which allows residents to feel at ease within their homes and gardens.

¹ APP/Y1110/A/02/1105469

² 03/1816/FUL

10. The Council's decision notice references Objectives 3 and 9 and policies CP1 and CP3 of the Exeter Core Strategy (February 2012) and policies H1, H2 and DG1 of the LP. The Objectives are not planning policies determinative in this appeal and are in any case reflected within the relevant policies. Policies CP1, CP3, H1 and H2 relate to the number and location of dwellings. Given that the location for the proposed residential unit is not in dispute, and from the evidence before me I have no reason to disagree, there is no conflict with these policies. Policy DG1 of the LP relates to the external design and appearance of buildings which is not a matter for consideration for this application for a change of use only and is not therefore determinative in relation to this appeal.

Effect on nationally and internationally protected sites

11. The site falls within the 10km zone of influence around the Exe Estuary SPA.
12. The SPA includes the estuary waters, foreshore, saltmarsh and the sand dunes and spit of Dawlish Warren, and extends to Exeter at the top (northern part) of the estuary. The SPA includes a range of intertidal habitats, including mudflats, sandflats, eelgrass *Zostera* sp. beds, mussel *Mytilus edulis* beds and saltmarsh. It is designated in order to safeguard ecology and the habitat upon which various species are reliant, notably the area supports overwintering birds including the Pied Avocet and Slavonian Grebe, Dark-bellied Brent Goose, Dunlin, Eurasian Oystercatcher, Black-tailed Godwit, Grey Plover, Lapwing, Red-breasted Merganser, Wigeon, Cormorant and Whimbrel.
13. The SPA is protected via the Habitats Directive, which is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). I am statutorily required to take appropriate steps to conserve biodiversity.
14. Ecology can be disturbed by recreational activities, predation from domestic pets, and from habitats being unavailable from time to time by consequence. Whilst not a precise correlation, the potential for adverse effects increases with the number of dwellings nearby, including within a wide zone of influence (and therefore the aggregate, or in-combination, implications of a number of smaller developments may be significant). Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. I have sought to apply that requirement reasonably and proportionately relative to the nature and context of the development proposed.
15. The South-east Devon European Site Mitigation Strategy (SMS) indicates the approach that it establishes towards ecological mitigation. It outlines that the avoidance or mitigation of effects resulting from increased residential development would be achieved by the provision of alternative greenspace, to redirect those who would have made use of the SPA recreationally, and via associated monitoring and management arrangements. The contributions that individual schemes within Exeter City Council are expected to make in that context are established at a strategic level, such that a proportionate contribution is made in each instance funded by Community Infrastructure Levy (CIL) receipts. I have consulted with Natural England which has confirmed that the payment is sufficient to avoid adverse impacts on the SPA. As CIL receipts are collected via payment under the CIL Regulations, there is no need for a legal agreement to secure payment as part of this appeal.

16. Consequently, subject to appropriate financial contributions being made via CIL, I am satisfied that likely significant effects to the ecological integrity of the SPA would be avoided.
17. In conclusion, I am satisfied that with the proposed avoidance and mitigation measures in place, secured through the CIL receipts, the development would not have an adverse effect on nationally and internationally protected sites. The development would therefore comply with the Conservation of Habitats and Species Regulations 2017. It would also accord with the SMS which, amongst other things, seeks to ensure that development within 10km of protected European and internationally protected sites provide mitigation and avoid harm arising on the Exe Estuary SPA.

Conditions

18. I have had regard to the tests in the National Planning Policy Framework in relation to conditions, and the planning conditions suggested by the Council. In addition to the standard time condition, it is necessary for a condition to confirm the approved plans in the interests of certainty and for a condition to secure details of bin and cycle storage facilities. These are required in the interests of protecting the character and appearance of the area and living conditions of nearby occupiers and to promote sustainable forms of transport.
19. The Council have suggested further conditions restricting the hours of construction and to achieving a reduction in CO2 emissions. However, as the proposal is for a change of use with no associated external alterations, I do not find these conditions to be reasonable or necessary.

Conclusion

20. For the reasons given I conclude that the appeal should succeed.

C Rose

INSPECTOR