



Appeal Decision

Site visit made on 11 July 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20.10.2023

Appeal Ref: APP/Y1110/W/23/3315079

47 Union Road, Exeter EX4 6HU

- 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 Startup of Graduation Properties against the decision of Exeter City Council.
 - The application Ref 22/0397/FUL, dated 20 March 2022, was refused by notice dated 9 December 2022.
 - The development proposed is creation of purpose-built student accommodation, for 10 rooms.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal upon (i) the character and appearance of the area; and (ii) the living conditions of potential future occupiers and neighbouring occupiers with particular regard to sunlight, outlook and privacy.

Reasons

Character and appearance

3. The appeal site lies within a residential street that is characterised by its varied vernacular of terraced, semi-detached and detached properties of 2 and 3 storeys. Properties on the side of the road the appeal site lies within include generous and lengthy rear gardens, some with trees of landscape value, that slope away in a southerly direction. There are nearby developments to the rear of Nos 51 and 55 Union Road that reduce their garden length, though, unlike the appeal site, these have active frontages facing Culverland Close. Additionally, these properties do not erode the traditional street scene found on Union Road. Furthermore, from the evidence provided and my observations on site, the bulk, massing and pitched roof designs of these single residential units are of a substantially smaller scale than the proposed development.
4. Public views into the site would be glimpsed and the development would be set into the slope. It would have a sloping roof and would be subservient in height to the host property. Despite these mitigating features, the development would nevertheless result in a significantly large, tall and unbroken block of built form in very close proximity to the host property. Consequently, the development would not appear secondary in scale as suggested by the appellant. Rather, it would be uncharacteristically prominent, bulky and of a density and massing

that would be incompatible with the immediate and surrounding townscape setting. Furthermore, it would not add to the overall quality of the area.

5. There are well established trees on either side of the appeal site which are not subjected to any statutory protection, and regular pruning of these trees by existing or potential future occupiers would be possible regardless of whether the appeal is allowed. Given the proposed windowless eastern flank of the development would face the neighbouring boundary, it is unlikely that existing trees or their possible future growth would generate harmful overshadowing or a loss of sunlight for potential future occupiers.
6. The Council's Trees in Relation to Development Supplementary Planning Document (SPD) says, amongst other things, that 90% of tree roots are usually located within the top 1m of soil. It adds that when work is absolutely necessary within the root protection area (RPA) of retained trees, proposals will only be considered if supported by an agreed robust and realistic Arboricultural Method Statement. Furthermore, it advises that under exceptional circumstances where excavation may be justified, hand digging will be required.
7. In this respect, the appellant's submitted Arboricultural Site Appraisal advises that there are no proposed changes to levels within the RPA of neighbouring property retained trees, which are also shown to have a good degree of life expectancy. However, this statement does not seem to be supported by the submitted plans and details which indicate a proposed ground floor level substantially lower than the existing sloped garden level. Even if the matter of excavation could be resolved by an appropriately worded condition to the effect that it would comply with Policy EN5 of the Exeter St James Neighbourhood Plan March 2013 (NDP) and the Council's SPD, the development would still be unacceptable in respect of the harm I have identified above.
8. I therefore conclude on this main issue that the proposal would significantly harm the character and appearance of the area. It would be contrary to policies CP4 and CP17 of the Exeter City Council Core Strategy February 2012 (CS); policies H5, DG1 and DG4 of the Exeter Local Plan First Review March 2005 (LP); policies EN4, EN5, D1 and C2 of the NDP; and the advice contained within the Council's SPD. Collectively, and in respect of this main issue, these policies and guidance seek to ensure developments are of an appropriate scale, density, height, respecting the character and quality of the local environment. There would also be conflict with paragraph 130 of the Framework.
9. As I have concluded that an appropriately worded condition could achieve a sustainably designed and constructed building, there is no substantive evidence that demonstrates there would be conflict with Policy CP15 of the CS or Policy SD4 of the NDP in this respect.

Living conditions

10. Sunlight reaching the garden of No 45 would be restricted in the early mornings, though the appellant's submitted solar study shows that afternoon and evening sunlight levels at this property would be largely unaffected by the development. Therefore, this would be unlikely to lead to unacceptable loss of sunlight or overshadowing at No 45.

11. However, although the neighbouring garden at No 49 contains tall and established trees that generate shade along sections of its boundary with the appeal site, the solar study shows that the development would significantly reduce the late afternoon and early evening summer sun reaching this garden when occupiers would be likely to be more inclined to use their private outdoor space. Additionally, given the raised height of the proposed external steps, substantial additional screening would also be required to prevent any potential overlooking into the patio area of No 49. This additional screening would be likely to generate further reduced sunlight reaching the rear garden of No 49.
12. Whilst I recognise that the development would not severely restrict sunlight reaching the neighbouring garden at No 45 or gardens either side of the appeal site at certain times of the year, for the above reasons, the development would nevertheless harmfully reduce sunlight reaching the private rear garden of No 49.
13. As highlighted above, the development would require additional screening adjacent to the proposed first floor stepped entrance and in addition, would be substantially taller than the existing 2m high fencing abutting No 49. Even though the garden trees at No 49 are tall, the development would still introduce a particularly tall, lengthy, and imposing hard landscaped boundary feature that would consequently have a dominating and enclosing effect on the outlook of the occupiers of No 49.
14. Potential overlooking into the private rear garden space of No 49 could be controlled via condition by the introduction of landscaping. Additionally, the proposed omission of windows on the eastern flank and angled windows would not direct views into neighbouring gardens. Furthermore, the separation distance between the proposed rear elevation and the nearest neighbouring property to the south of the appeal site would meet expected separation standards.
15. Drawing these matters together, although the development would not generate unacceptable harm in respect of privacy or sunlight for potential future occupiers at the appeal site, this would not alter the harm I have identified in relation to sunlight and outlook on neighbouring occupiers.
16. For the above reasons, the development would result in unacceptable harm to the living condition of neighbouring occupiers with particular regard to daylight and outlook. As such, the proposal would be in conflict with Policy CP4 of the CS and policies H5 and DG4 of the LP, which, amongst other things, support developments that ensure a quality of amenity which allows residents to feel at ease within their gardens, and that do not unacceptably reduce amenity levels of neighbouring occupiers. There would also be conflict with paragraph 130 of the Framework which says that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

17. I am satisfied that the Council's reason for refusal in respect of sustainable design and construction methods could be dealt with via an appropriately worded condition. However, any such beneficial features would not outweigh the harm I have identified above.

18. The benefits associated with the need for student housing including the appellant's reference to research about purpose built student accommodation in comparison with houses in multiple occupation are recognised. Furthermore, their reference to other appeal decisions, including Beach Hill House and Lower Albert Street are not contested by the main parties. However, any such benefits do not outweigh the harm set out in the main issues.
19. I have had regard to third party representations raised in relation to the concentration of student accommodation at the appeal site and in the area. However, as I am dismissing the appeal on the main issues for the reasons given above, I have not pursued these matters further. Furthermore, I have taken into account representations including issues of noise, parking, access, waste storage, land stability, flooding and the Article 4 Direction, but these matters do not affect my findings on the main issues.
20. I note the appellant's comments in relation to the processing of the planning application, however these have no bearing on my decision which is based on the planning merits of the development.

Planning Balance

21. In the context of the development plan, I have found that the proposal would be in conflict with policies CP4 and CP17 of the CS; policies H5, DG1 and DG4 of the LP; and policies EN4, EN5, D1 and C2 of the NDP. In this respect, I have found these policies to be generally consistent with the relevant aims of the Framework, in the main issues above.
22. The proposed new accommodation would make a modest yet meaningful contribution towards a shortfall in housing supply and this is not disputed by either main party. In this respect, I have attached moderate weight in favour of the proposal. The proposal would occupy an accessible location and would comprise accommodation for particular groups in the community, which in turn would generate employment opportunities during construction, and through the employment of local services for the upkeep and maintenance of the accommodation when they were occupied, which weighs moderately in favour. Additionally, the development could be sustainably constructed, which are benefits that weight moderately in favour. However, I have found conflict with a number of policies in the CS, LP and NDP and, although it may comply with other policies, that means the proposal would not accord with the development plan when considered as a whole.
23. The Council does not dispute the appellant's assertion that they cannot presently demonstrate a five-year housing supply. I have no reason to disagree with the appellant. Therefore, the presumption in favour of sustainable development set out within paragraph 11 of the Framework applies. I have already found that there would be modest economic and social benefits through a contribution to a shortfall in housing supply and the construction and occupation of the development.
24. However, against these benefits I need to balance the adverse impacts. I have concluded above that the proposed development would conflict with the Framework in relation to the character and appearance of the area and the living conditions of neighbouring occupiers. Consequently, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken

as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

25. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations, including the provisions of the Framework that individually or cumulatively outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR

