



## Appeal Decision

Site visit made on 11 October 2023

**by T Gethin BA (Hons), MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 November 2023**

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**Appeal Ref: APP/Y1110/W/23/3320777**

**Land adjacent to Gras Lawn and Fleming Way, Gras Lawn, Exeter, Devon EX2 4TP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr Matthew Macan against Exeter City Council.
  - The application Ref 22/1177/FUL, dated 31 December 2022.
  - The development proposed is described as Construction of two 1B/2P houses.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of two 1-bedroom 2-person houses at Land adjacent to Gras Lawn and Fleming Way, Gras Lawn, Exeter, Devon EX2 4TP in accordance with the terms of the application, Ref 22/1177/FUL, dated 31 December 2022, and subject to the conditions set out in the schedule to this decision.

### Application for costs

2. An application for costs was made by Mr Matthew Macan against Exeter City Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. With no site address in the application or appeal forms, I have used the address provided by the Council.
4. The description of development in the banner heading above has been taken from the planning application form. However, I have for the sake of clarity amended the description of development in my decision.

### Background and Main Issue

5. The appeal is against a failure of the Council to give notice of its decision on the planning application Ref 22/1177/FUL within the prescribed period. As such, there is no formal decision notice. However, the minutes of the Council's Planning Committee meeting of 24 April 2023 set out the Council's concerns with the proposed development and include the reason for refusal that it would have provided had it made a formal decision.
6. Accordingly, I consider the main issue is the effect of the proposed development on the character and appearance of the surrounding area.

## Reasons

7. The appeal site is a narrow, unused privately-owned parcel of land situated between the planned but distinct housing estates of Gras Lawn and Fleming Way. Fronting the highway and adjacent to a footway and shared path, it is in a prominent position and visible in public views. Although located at the end of a linear space containing grass and mature preserved trees, the site is not publicly accessible. The two different estates provide the surrounding area with a residential character and ordered, suburban appearance with a strong sense of place. Whilst modern housing is the defining characteristic of the area, the line of trees and the presence of various hedges (including adjoining the site's northern boundary), gardens and soft landscaping also gives the locality a relatively green nature. Although open, the small site's unusual and neglected state, including some bricks/rubble and overgrown vegetation, stands in contrast to the ordered surroundings and means that it neither positively contributes to its residential setting nor forms an important part of the area's verdant elements, including the tree lined avenue.
8. With its limited openings, distinctive angular design, flat roof and atypical siting, the proposed development would be clearly different and an obvious departure from the formal, designed housing estates it would sit between. However, rather than attempting to imitate the differing external appearance of the two estates, the proposed building would read as a tailored response to its setting. Combined with its simple detailing, external materials suitably contrasting with the render and brick of surrounding housing, and architectural features (such as window reveals, downpipes and vertical cladding) adding visual interest, the appeal proposal would therefore appear as an acceptable, congruous – albeit diverse – addition to the residential area. The timber cladding would also sympathetically reflect the presence of the nearby trees.
9. Whilst its distinctiveness would add visual interest to the surrounding built environment, the different design and limited number of windows would also draw attention to the building, which would be highly visible in numerous views. As such, full details of proposed external materials need to be secured by planning condition to ensure a high-quality, unobtrusive finish. In coming to this view, I have taken account of the functional nature of the solar panel structure and the likely weathering of the timber cladding.
10. Although set back from either side of the site, the proposed building would extend across much of the site's narrow depth. However, along with the existing hedge on adjoining land, there would be sufficient space for planting along much of the northern and southern elevations of the building and site boundaries. The proposed garden areas would also provide space for additional trees and other planting. The appeal proposal would therefore incorporate sufficient soft landscaping to maintain and contribute to the area's green nature and the site's link with the grass and treed-lined corridor. With a lower height than surrounding properties and not taking up the entire plot, the scale, mass and position of the building would be acceptable and not constitute overdevelopment. Combined with soft landscaping of the site and open space either side of the building, it would also not appear as a dominating or shoe-horned feature. The boundary treatment proposed as part of the development and the findings of the previous appeal regarding a fence do not lead me to a different conclusion.

11. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area. I therefore find that it accords with Policies CP4, CP17 and Objective 9 of the Exeter City Council Core Strategy and Policy DG1 of the Exeter Local Plan First Review. Amongst other aspects, these seek to create and reinforce local distinctiveness by requiring: proposals to be compatible with and relate well to their surroundings and palette of materials in the locality; the grain and density of development to be appropriate and promote the city's urban character; and a high standard design that promotes local distinctiveness, contributes to the townscape and complements or enhances Exeter's character. The proposal would also be consistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places and the guidance in the National Design Guide including regarding the components for good design.
12. Although the Council also alleges a conflict with chapter 7 of its Residential Design Supplementary Planning Document (SPD), that chapter's focus on 'residential amenity' is not relevant to this main issue. Whilst the guidance in that chapter has therefore not been determinative in my decision on this matter, third parties have drawn my attention to more relevant parts of the document, including for example the design objectives. However, given my findings above, I am satisfied that the proposal would also be broadly consistent with the relevant parts of those objectives and the SPD's aim for high-quality, well-designed development.

### **Other matters**

13. Surrounded by a number of properties, the proposal has the potential to harm the living conditions of existing occupiers, particularly in relation to privacy and sunlight. However, boundary treatment would prevent overlooking from the proposed ground-floor windows and gardens, whilst the first-floor windows in the building's northern and southern elevations would be relatively small and/or narrow and either serve non-habitable rooms or be secondary windows. Furthermore, I observed on my site visit that there would a reasonable degree of separation between the building and surrounding properties, whilst existing boundary treatment and soft landscaping would provide some screening. This is also a residential area with several dwellings located in relatively close proximity. As such, a certain degree of mutual overlooking would not be unusual and any loss of privacy for occupiers of surrounding houses and flats arising from the proposed development would not be significant.
14. The position of the proposed development and its height means that, although it would not significantly affect levels of daylight or outlook for surrounding properties, it would likely increase the extent of overshadowing of nearby land, particularly to the north. However, the position of the proposed building in relation to the closest residential properties to the north (33 and 68 Fleming Way) and the degree of separation means that no significant additional overshadowing would arise. In coming to this view, I have taken into account all the submitted shadow models and the 'extension' at No 33 not being included in them.
15. Accordingly, the proposed development would not harm the living conditions of adjoining occupiers. Given my above findings, including the space available for boundary treatment (including soft landscaping) and the building's set back

from the site's southern boundary, the proposed building would also not be overbearing from the adjoining well-used public paths or neighbouring properties, and the future occupiers would have sufficient privacy. On this basis, I find that the appeal proposal would be consistent with the relevant guidance on residential amenity in the Council's Residential Design SPD.

16. I note the concerns about the potential effect of the appeal proposal on wildlife, including protected birds and other species, particularly given the site's overgrown state and that it (and the adjoining hedge) connects with the wildlife corridor provided by the avenue of trees and grass. The Council's Ecology Officer identifies that corridor as likely having an ecological function for hedgehog and possibly other species, with the proposed development decreasing connectivity and reducing its functionality. Confirming this, the ecological assessment – completed by surveyors with bat licences from an independent ecological consultancy – identifies the site's main service for wildlife is its function as part of a habitat network and some roosting opportunities (albeit no nests or remnants were found), along with some use of the brambles by local wildlife. Signs of use by birds were also found.
17. As part of the development, the site's encroaching vegetation would be cleared and the adjoining hedge cut back to the boundary. However, there is little substantive evidence that the adjoining hedge would be significantly damaged or lost due to the construction or resulting presence of the proposed development, or that existing vegetation on the site, although used by various species, provides important habitat for species protected by legislation such as the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981. In coming to this view, I have taken into account that the ecological assessment was carried out in winter and its caveat that it cannot completely eliminate the possibility of important ecological features being found through further surveys for example. In terms of mitigation, the assessment highlights the appellant's intention to retain the adjoining hedge during and post construction and identifies: putting measures in place to protect the hedge and avoid disturbing nesting birds during construction; the provision of new species-rich hedges, wildlife access points and bird boxes; and the potential for additional planting to supplement the adjoining hedge. The submitted plans also show some trees in both gardens. On this basis, and subject to conditions securing compliance with the assessment's recommendations, full landscaping details and the provision of nest boxes, I am satisfied that the appeal proposal would not harm protected wildlife (including birds, bats and other species) and would provide sufficient replacement habitat and opportunities for local wildlife to transit through and beside the site as part of the wildlife corridor.
18. A number of other matters have been raised by interested parties and I have taken them all into account. Those related to planning include: the living conditions of future occupiers, including in relation to internal and external space, daylight, sunlight, outlook, disturbance, wellbeing, access (including for disabled people) and safety; the energy demand of the proposed dwellings; the effect of the proposed development on views, wellbeing and mental health; the effect of the proposal on preserved trees; loss of green space; solar panel glare; noise disturbance; the need for development to provide net gain; not complying with various other parts of the guidance in the Residential Design SPD; the safety of walkers and cyclists, and the lack of need for natural surveillance of the adjoining path; councillors on the planning committee

unanimously voting against the proposal, and numerous objections having been submitted including from local residents and the Gras Lawn Residents Association; the RSPB comments on the scheme not equating to support; the accuracy of plans, drawings and photos; the two dwellings being open market housing and not secured as affordable housing or for key workers; lack of on-site parking being contrary to local policy and adding to local on-street parking demand, congestion and access and safety issues; lack of storage for other modes of transport; lack of details regarding deliveries and waste collection; safety, disruption and disturbance from construction works; the restrictions on alterations and other development for surrounding properties; precedent setting; and local residents wishing to landscape the site for the benefit of the community and wildlife.

19. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different conclusion that the appeal should be allowed. Some of the issues raised, such as regarding construction works and wildlife, can also be covered by planning conditions.

### **Conditions**

20. I have had regard to the various suggested planning conditions. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, for clarity and consistency, and to ensure that details are submitted for the Council's approval where relevant.
21. In addition to the standard time limit condition, I have imposed a condition requiring the carrying out of the development in accordance with the approved plans in the interests of certainty. Given the site's position and constrained nature, a pre-commencement condition securing a construction method statement is necessary and reasonable in the interests of the safe and efficient operation of the highway and the living conditions of existing residents. On the basis that the site has previously been used and given the proposed residential use, a pre-commencement condition covering land contamination is also necessary. However, while Environmental Health set out that a contamination report would ideally be completed prior to determination, securing the details prior to commencement would be sufficient in this instance.
22. A condition relating to energy performance of the development is necessary in the interests of energy efficiency and reducing greenhouse gas emissions. I have imposed a condition relating to the external materials of the proposed development in the interests of the character and appearance of the surrounding area. A condition relating to noise levels of the proposed heat pumps is necessary to protect the living conditions of existing and future occupiers. However, it is not necessary for such details to be provided prior to commencement of development.
23. I have imposed a condition relating to surface water drainage in the interests of flooding. A condition covering the provision of bicycle parking facilities is necessary to ensure that future occupiers have sufficient space to securely store bicycles. A condition covering landscaping is necessary in the interests of wildlife and the character and appearance of the surrounding area. For the sake of brevity, I have however combined the Council's two suggested landscaping

conditions. I have imposed a condition requiring the provision of bird nesting boxes in the interests of biodiversity, as well as an additional condition requiring compliance with the recommendations of the ecological assessment.

24. A condition removing certain permitted development rights is in this instance necessary and reasonable given the constrained nature of the site and in the interest of the character and appearance of the area and wildlife. However, the Council's suggested condition relating to the type of glazing in the first-floor windows on the south elevation and preventing new openings is not necessary given my above findings and because the condition removing certain permitted development rights means that any new openings would require a planning permission in any event. I have therefore declined to impose it.

### **Conclusion**

25. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan as a whole and the Framework. The appeal is therefore allowed.

*T Gethin BA (Hons), MSc, MRTPI*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site and ground floor plan (Drawing No GL DD - 101 rev A); First floor and roof plans (Drawing No GL DD - 102 rev A); South elevation (Drawing No GL DD - 103 rev A); North elevation (Drawing No GL DD - 104 rev A); East and west elevations (Drawing No GL DD - 105 rev A); Sections x1 and x2 (Drawing No GL DD - 106 rev A); Section Y1 (Drawing No GL DD - 107 rev A); Section Y2 (Drawing No GL DD - 108 rev A); Drainage plans (Drawing No GL DD - 109); Soil, waste and FW drainage 3D (Drawing No GL DD - 110); House 1 - surface water drainage 3D (Drawing No GL DD - 111 rev A); and House 2 - Surface water drainage 3D (Drawing No GL DD - 112 rev A).
- 3) No development (including ground works or vegetation clearance works) shall take place until a Construction Method and Environmental Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for: the site access point(s) of all vehicles to the site during the construction phase; the parking of vehicles of site operatives and visitors; the areas for loading and unloading plant and materials; storage areas of plant and materials used in constructing the development; the erection and maintenance of securing hoarding if appropriate; wheel washing facilities if appropriate; measures to monitor and control the emission of dust and dirt during construction; no burning on site during construction or site preparation works; measures to monitor and minimise noise/vibration nuisance to neighbours from plant and machinery; construction working hours and deliveries from 8:00 to 18:00 hours Monday to Friday, 8:00 to 13:00 hours on



Saturdays and at no time on Sundays or Public/Bank Holidays; no driven piling without prior consent from the LPA; hours during which no construction traffic will be present at the site; the means of enclosure of the site during construction works; details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site; the proposed route of all construction traffic exceeding 7.5 tonnes; any road closure; photographic evidence of the condition of adjacent public highway prior to commencement of any work. The approved Statement shall be strictly adhered to throughout the construction period of the development.

- 4) No development shall take place until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and the results, together with any remedial works necessary, have been submitted to and approved in writing by the local planning authority. If remedial works are found to be necessary, the dwellings hereby permitted shall not be occupied until such works have been implemented and a remediation statement has been submitted to and approved in writing by the local planning authority detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.
- 5) Prior to the construction of the foundations of the development hereby permitted, the Design SAP calculations of the dwellings shall be submitted to and approved in writing by the local planning authority. The calculations shall demonstrate that the dwellings will either achieve a 19% reduction in CO2 emissions in relation to the level required to meet the 2013 Building Regulations or, if the dwellings are constructed to the 2022 Building Regulations, that a reduction in CO2 emissions at the levels (or higher) set out in Part L of the 2022 Building Regulations will be achieved. The measures necessary to achieve this CO2 saving shall thereafter be implemented. No dwelling shall be occupied until the As-Built SAP calculations of the dwellings have been submitted to and approved in writing by the local planning authority to confirm that the CO2 reduction has been achieved.
- 6) Prior to their installation, samples of all externally facing materials to be used in the construction of the dwellings hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 7) Prior to their installation, an assessment of noise from the proposed heat pumps, along with any mitigation necessary to avoid their operation harming the living conditions of adjoining occupiers, shall be submitted to and approved in writing by the local planning authority. The heat pumps shall be installed and thereafter maintained in accordance with the approved details.
- 8) The development hereby permitted shall not be occupied until a detailed scheme for landscaping, including the planting of trees and/or shrubs, provision of wildlife access points, hard surface materials and boundary treatments, has been submitted to and approved in writing by the local planning authority. The 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 and the wildlife access points maintained and retained. Any trees or plants which within a period of five years

from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

- 9) The development hereby permitted shall not be occupied until provision for the disposal of surface water within the site has been provided in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The approved system shall be retained and maintained thereafter in accordance with the approved details.
- 10) The development hereby permitted shall not be occupied until secure lockable bicycle parking facilities have been provided in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The facilities shall thereafter be retained as approved and kept available for the parking of bicycles.
- 11) The development hereby permitted shall not be occupied until four bird nesting boxes have been installed in accordance with the details received by the local planning authority on 17 February 2023. The nest boxes shall thereafter be retained as approved.
- 12) The development hereby permitted shall be carried out in accordance with the recommendations contained within the submitted ecological assessment (Report detailing the ecological assessment of a plot of land located at Gras Lawn, Exeter EX2 4SB and proposed for development, by Kestrel Wildlife Consultants Ltd, dated 28 February 2023).
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A, B, C, D, E and F of Part 1 of Schedule 2 to the said Order shall be carried out, other than those expressly authorised by this permission, on the dwellings hereby approved without an express grant of planning permission, namely: the enlargement, improvement or other alteration of the dwellinghouse; additions etc to the roof of a dwellinghouse; other alterations to the roof of a dwellinghouse; porches; buildings etc incidental to the enjoyment of a dwellinghouse; and hard surfaces incidental to the enjoyment of a dwellinghouse.

## **END OF SCHEDULE**