



Appeal Decision

Site visit made on 26 March 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2024

Appeal Ref: APP/Y1110/W/23/3330079

8 Dryden Road, Exeter, Devon EX2 5BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ian White of RBL Homes Ltd against the decision of Exeter City Council.
 - The application Ref is 22/1028/FUL.
 - The development proposed is erection of 5 flats on 3 storeys.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on (i) the character and appearance of the area; (ii) living conditions of nearby neighbours, with particular reference to privacy, shade, and outlook; and (iii) whether the proposed development would provide acceptable living conditions for future occupants, with regard to privacy.

Reasons

Character and appearance

3. Planning permission was granted under reference 20/1200/FUL for a 2-storey building containing 4 flats. Over the same footprint, the appeal proposal would provide a contemporary designed block of 5 flats and an additional storey. This storey could be added with no alteration to the permitted scheme.
4. The appeal site comprises a flat area of land previously associated with a former public house. That 2-storey public house was converted into flats with the inclusion of dormers in its roof space. The appeal site is surrounded on three sides by a tall combination of block walling with fencing above. It is acknowledged that the city has a diverse character. However, the immediate surrounding area is characterised by small scale, single and 2-storey residential properties with their associated gardens. Such properties are located next to the boundary features of the appeal site. In that context, the additional storey would be added to a restricted site where the height of surrounding developments make it particularly sensitive to change.
5. The proposed 3rd storey would not cover the entire floor area of the 2 storeys below. Additionally, it would be set back from lower storeys on 2 of its elevations. These features would go some way towards reducing the overall massing effect of the additional storey. However, whilst a contemporary design could be supported, 2 of the proposed building's elevations would add a

significant amount of bulk and massing to its frontage and side. In particular, the side elevation would appear uncharacteristically tall and incongruous so close to the adjacent bungalows.

6. Although there are dormers in the roof space of the nearby former public house, they overlook an undeveloped parking area and are a materially different design feature to the scheme proposed. Furthermore, despite limited public visibility of the proposal on undesignated land, the scheme would nevertheless harmfully dominate the space within which it would lie. As such, it has not been demonstrated that the development would be of an appropriate density compatible with the character and quality of the local environment.
7. I therefore conclude on this main issue that the proposal would have a significantly harmful effect on the character and appearance of the area. As such, the proposal would conflict with Objective 9 and policies CP4 and CP17 of the Exeter City Council Core Strategy, February 2012 (CS), policies H2 and DG1 of the Exeter Local Plan First Review, March 2005 (LP) and the Council's Residential Design Supplementary Planning Document, September 2010 (SPD).
8. Collectively in this respect, and amongst other things, these policies and guidance seek to support developments of an appropriate scale and density that are compatible with their surroundings. There would also be conflict with paragraphs 128 and 135 of the National Planning Policy Framework (the Framework) which says that decisions should maintain an areas prevailing character and ensure developments function well and add to the overall quality of the area.

Neighbouring living conditions

9. The proposed 3rd storey bedroom window for flat 5 would be approximately 20m from the windows at the nearby 2 storey terrace. The Council's SPD seeks minimum back-to-back distances of 22m between habitable rooms. It adds that *where buildings of different storey heights back onto one another, or differences in site levels place buildings of the same storey height higher than those they back onto, privacy distances will need to be increased.*
10. Although the proposal would reflect a side to back relationship, the 3rd storey bedroom window would nevertheless be positioned to look down and into rear gardens and windows of the adjoining terrace at Dryden Road, reducing existing privacy levels. As such, even if the proposal would be set on slightly sunken land, residents would be unlikely to feel at ease within their homes and gardens as required by Policy DG4 of the LP. Had I been otherwise minded to allow the appeal, it would not have been appropriate to use a planning condition to obscure glaze the only proposed window for this bedroom.
11. Although the proposal would be built close to the bungalows at Malvern Gardens, I observed that Nos 13 and 14 had no windows in their side elevations that would face the appeal building. As such, the privacy of occupants of these properties would not be compromised by the development.
12. However, as I have already concluded above, the proposed north elevation would be a dominating feature near these bungalows and their gardens. As such, the outlook from these properties would be eroded by the overbearing nature of the development. Additionally, given the excessive height of the development and small enclosed private gardens of Nos 13 and 14, it is likely

that their private outdoor space would be cast under shadow for periods of the day. This would result in an unjustifiably gloomy outdoor private space.

13. For the above reasons, the development would harmfully affect the living conditions of nearby neighbours, with particular reference to privacy, shade, and outlook. As such, there would be conflict with Policy DG4 of the LP. There would also be conflict with paragraph 135 of the Framework, which in this respect says that decisions should ensure developments create places with a high standard of amenity for existing users.

Future living conditions

14. There would be some overlooking from the terraces of the proposed 1st floor flats towards the private garden spaces associated with those on the ground floor. This would mostly affect the living conditions of future occupants of flat 1 rather than flat 2. Nevertheless, privacy levels for future occupants would be compromised. Consequently, there would be conflict with Policy DG4 of the LP.
15. However, the fallback position of the permitted scheme has a realistic prospect of being implemented. As such, it is a material consideration that can be afforded significant weight. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says planning decisions must be made in accordance with the plan unless material considerations indicate otherwise.
16. The permitted scheme would result in a very similar terraced arrangement to that proposed with this appeal. In relation to this specific matter, I do not consider that the proposed development would amount to a substantial variation to the planning permission. It would therefore not result in additional harm. The significant weight afforded to the fallback indicates that Policy DG4 of the LP can be set aside in respect of this matter.
17. Therefore, I conclude on this main issue that the development would provide acceptable living conditions for future occupants, with regard to privacy.

Other Matters

18. I have paid regard to the appellant's comments in respect of the processing of the application. However, these have no bearing on my decision which is based on its planning merits.
19. The Council's Officer report identifies that a financial contribution towards education would be expected, as it was with the permitted scheme. However, no such scheme to secure this funding is before me. As such, had I been minded to allow the appeal, it would have been necessary for me to reach a finding on this matter.
20. *Habitats* - The appeal site is within the zone of influence around the Exe Estuary Special Protection Area (EESPA) and East Devon Pebbled Heaths Special Protection Area (PHSPA).
21. The EESPA 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. It 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.
22. A significant feature of the PHSPA is the diversity of heathland associated communities, related to its large area and the range of substrates and topography. These include dry heath dominated by heather *Calluna vulgaris* with bell heather *Erica cinerea*, western gorse *Ulex gallii* and heathland grasses, grading to wet heath in a series of shallow valleys with mineral rich-flushes on the valley sides, and valley mire in the valley bottoms with cross-leaved heath *Erica tetralix* and a range of characteristic mire and flush species. It is designated in order to safeguard ecology and the habitat upon which various species are reliant. Notably, the area supports s 2.4% of the UK population of breeding nightjar *Caprimulgus europaeus* (as at 1992), and 8% of the UK population of breeding Dartford warbler *Sylvia undata* (as at 1994).
23. The EESPA and PHSPA are 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 required to take appropriate steps to conserve biodiversity.
24. 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.
25. The South East Devon European Site Mitigation Strategy (SMS) sets out an approach 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 SPAs 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. 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.
26. Therefore, subject to appropriate financial contributions being made via CIL, I am satisfied that likely significant effects to the ecological integrity of the EESPA and PHSPA would be avoided.
27. In concluding this matter, 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 EESPA and PHSPA.

Planning Balance and Conclusion

28. It is common ground that the Council is unable to demonstrate a 5 year supply of deliverable housing sites and that current supply is 4 years and 4 months. Paragraph 11 (d) of the Framework indicates that in such circumstances, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. The proposal would provide an additional flat (when compared with the fallback permission) in a sustainable location. The scheme would include accommodation to meet recognised standards. The appellant claims it could be rented to staff at nearby hospitals, though I have been provided with no mechanism to secure this. Additionally, the scheme would bring some limited economic benefits to the construction industry and thereafter through additional consumer spending in the local economy.
30. The social benefits of housing delivery carry significant weight, although these are tempered by the fact that a single additional flat would make a very modest contribution to addressing the housing shortfall. Overall, even when taking into account the benefits of 5 flats, I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The proposal would not constitute a sustainable form of development within the terms of the Framework.
31. Bringing together my conclusions of the main issues, I have found that the fallback represents a material consideration that allows the conflict with Policy DG4 of the LP to be set aside. Notwithstanding my conclusions in favour of the living conditions of future occupants, this does not outweigh the significant harm to the conflict with the development plan, when taken as a whole, in respect of the character and appearance of the area and living conditions of nearby neighbours. Therefore, the appeal is dismissed.

J Hills

INSPECTOR