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## Appeal Decision

Site visit made on 25 November 2024

**by C Rose BA (Hons) BTP MRTPI**

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

**Decision date: 21 February 2025**

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**Appeal Ref: APP/Y1110/W/24/3339991**

**130 Fore Street, St Davids, Exeter, Devon EX4 3JQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Tim Gashi, Cela Enterprises Ltd against the decision of Exeter City Council.
  - The application Ref is 23/0631/VOC.
  - The application sought planning permission for alterations and roof level redevelopment to provide 13 flats with associated access and communal facilities without complying with a condition attached to planning permission Ref 12/1426/03, dated 09 October 2012.
  - The condition in dispute is No.2 which states that:  
*The development hereby approved shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 9 October 2012 (dwg nos. 1598 3.0A; 1598 3.1.1A; 1598 3.1.2A; 1598 3.2A; 1598 3.2A; 1598 3.3A, 1598 3.3.3A & 1598 3.9.1B) 21 December 2012 (dwg nos. 1598 3.5.1D; 1598 3.8.1D & 1598 3.8.2d) and 11 January 2013 (dwg nos. 1598 3.5.2E & 1598 3.9.2E) As modified by other conditions of this consent.*
  - The reason given for the condition is:  
*In order to ensure compliance with the approved drawings.*
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. As the proposal is in a conservation area and relates to listed buildings, I have had special regard to sections 66(1) 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. During the course of the appeal an updated version of The National Planning Policy Framework (the Framework) was published on the 12 December 2024. In light of this, the main parties were given the opportunity to comment on any implications for the appeal. I have taken the responses into account.

### Background and Main Issues

4. Planning permission was granted in 2012 (the extant consent) for alterations to the building to provide 13 flats. There is no dispute between the main parties that the consent has been commenced and I have no reason to disagree. This extant consent therefore forms a significant material consideration as there is a greater than theoretical possibility of this 'fallback' being developed in full.

5. During the course of the appeal a completed Section 106 Unilateral Undertaking was submitted securing the payment of a financial contribution for mitigation in the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation. Although this matter does not form a reason for refusal, as the competent authority in relation to this appeal, I am required to consider this matter and the related duties under the Conservation of Habitats and Species Regulations 2017. I will therefore deal with this as a main issue.
6. The proposal seeks to vary the extant consent by virtue of amending the plans approved under Condition No.2. The changes mainly comprise the retention of the existing lower ground floor in commercial use and to provide compensatory residential accommodation at second floor level through the introduction of a new floor. This would maintain the number of dwellings at 13.
7. In light of the above, the main issues are:
  - the effect of the proposal on the integrity of European, nationally, and internationally protected sites;
  - whether the proposal would preserve the setting of the Grade II listed buildings comprising No's 2-24 West Street and the Grade I Listed St Mary Steps Church, and whether it would preserve or enhance the character or appearance of the Central Conservation Area (CCA); and,
  - the effect of the proposal on the living conditions of the occupiers of No.6 West Street and No's 128-129 Fore Street with particular regard to outlook.

## **Reasons**

### *Integrity of protected sites*

8. The appeal site is located within 10 kilometres of the Dawlish Warren SAC and the Exe Estuary SPA and Ramsar site.
9. The qualifying features of the SPA include avocet, Slovenian grebe, dark-bellied brent goose, dunlin, oystercatcher, black-tailed godwit, grey plover, and the overwintering assemblage of over 20,000 migratory waterfowl. The sites' conservation objectives seek to ensure that their integrity is maintained or restored as appropriate, with the SPA and Ramsar site contributing to the aims of the Wild Birds Directive and the SAC contributing to achieving favourable conservation status of its qualifying features. In summary, this includes maintaining or restoring the population and distribution of both sites' qualifying species/features; and the extent, distribution, structure, function and supporting processes of the habitats which qualify in their own right and which the qualifying species rely. The SAC qualifies owing to its habitats and non-avian species of European importance. Qualifying features are its dune habitats and population of liverwort petalwort.
10. The SPA and SAC 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 statutorily required to take appropriate steps to conserve biodiversity. 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.

11. The available evidence indicates that without mitigation it would not be possible to ascertain that the proposed development would not adversely affect the integrity of the designated sites through the effects of increased recreational impacts on the sites' qualifying features. However, the effects of development can be mitigated by developers providing a financial contribution towards mitigation measures – ranging from on-site management, education and enforcement to the creation of alternative recreation space – delivered by the South East Devon Habitat Regulations Partnership.
12. 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 and SAC 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.
13. The evidence before me indicates that the securing of the necessary financial contribution would be sufficient to mitigate the effects of the development on the designated sites. In this instance, the appellant has provided a financial contribution to the Council during the course of the appeal.
14. However, the contribution provided is from a financial contribution rate set in 2012, index linked to the present. The contribution falls significantly short of the level of current financial contribution required by the Council to mitigate the effect of new development. While I have had regard to the extant consent and to the financial contribution paid in relation to it, as the result of any successful appeal would be the grant of a new planning permission, I am required to undertake a new Appropriate Assessment.
15. The evidence before me indicates that the current required level of financial contribution far exceeds the index linked 2012 rate which has been paid. Furthermore, the on-site mitigation required as a result of the 2012 consent has not been provided. Moreover, following consultation with Natural England, it has confirmed that the payment made is insufficient to acceptably mitigate adverse impacts on the SPA and SAC. Consequently, the financial contribution would not adequately mitigate the adverse effects on the integrity of the protected site through increased recreational disturbance.
16. In conclusion, for the reasons above, I conclude that the proposal would have a significant adverse effect on the integrity of European, nationally and internationally protected sites. The development would therefore be contrary to the Conservation of Habitats and Species Regulations 2017. It would also be contrary to 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 SPA and SAC.
17. It follows that the scheme would also fail to comply with the biodiversity aims of Policy CP16 of the Core Strategy (2012) (CS) and the Framework.

### *Heritage Assets*

18. The buildings forming No's 2, 4-8, 10, 12, 14-18, 20-22 West Street<sup>1</sup> are Grade II listed for their group value as terrace properties dating from c. 1800's. They are of render, plaster, or red brick at three storeys with glazed bar sash window and slate roofs, some with commercial ground floor frontage windows.
19. No.24 West Street (also known as 'The House That Moved') is a Grade II listed building<sup>2</sup> comprising exposed timber framing with plaster infill and a side wall corbelled forward at each level. The property was moved to its present position in 1961 and as well as forming a group with No's 2-22 West Street, it forms another group with the Church of St Mary Steps, No's 5 and 7 West Street and listed buildings in Stepcote Hill.
20. The Church of St Mary Steps is a Grade I listed small late medieval church<sup>3</sup> on a steeply falling site constructed just within the walls of medieval city. It comprises an unbuttressed tower with windows, clock, and figures. It is mainly constructed in Red Heavitree stone in large blocks with limestone dressing under a slate roof.
21. In relation to this appeal, the significance of the listed buildings is their age, including original historic fabric, their special historic and architectural features, and the coherence of the groups, particularly in terms of their scale and form of the principal façades facing towards West Street demonstrating the historic evolution of the City.
22. The appeal site is also located within the CCA that itself lies within the City Walls. Insofar as it relates to the appeal, the special qualities, and thus significance of the CCA is the glimpse it gives of the historic character of the area with West Street an important survival of the areas architectural gems. This built development took the form of densely packed houses and tenements in one of the poorer parts of the city but now form a picturesque group at the bottom of Stepcote Hill. From here, the appeal site is not highly visible, being screened by the Church and other built form on West Street. The appeal site is however in a prominent position at the junction of the top of West Street with Fore Street with views down towards the Church.
23. The Central Conservation Area Appraisal (the Appraisal) identifies No.130 Fore Street as a 'pale imitation of the ornate Victorian building that it replaced'. Therefore, and while the CCA is to be experienced as a whole, the appeal site's contribution to the CCA is neutral and limited to it forming part of the arrangement of densely built development addressing the narrow street.
24. The appeal proposal would be little different from the extant scheme in terms of its overall modern design concept, appearance, and siting. The main differences would be the retention of commercial units at lower ground floor, provision of an additional floor and its overall form as a result of the changes.
25. The extant consent would introduce an additional floor to the rear of the existing building fronting Fore Street but would retain its stepped nature following the falling level of West Street. By reason of the additional height, it would also make No.130 taller than the properties on the opposite side of West

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<sup>1</sup> List Entry Numbers 1266892, 1224264, 1224265, 1224266, 1224267, 1224268 and 1224300

<sup>2</sup> List Entry Number 1266908

<sup>3</sup> List Entry Number 1224263

- Street. Although the proposal would introduce this additional floor and height, by reason of the setting back of the upper floor and lack of increased height to the southeastern most element of the building, it would present a suitable massing to West Street. As a result, I do not consider that this overall increased height would be highly perceptible when seen in context with neighbouring buildings. It would provide a suitable density of building addressing the street, retaining the appearance of the building stepping down following the steep nature of West Street. It would also enhance the appearance of the building and wider character and appearance of the CA through modernisation of the buildings appearance.
26. The increased bulk of the building would be more noticeable from private views obtainable from adjoining properties to the north and east of the site. However, the rear of the building would be difficult to view in the context of the street scene given the dense nature of the surrounding development. Thus, whilst there would be additional bulk to the building when compared with the extant consent, this would not be experienced in the street scene, would be viewed from the north and south in association with existing development of a dense nature, and would not therefore harm the character or appearance of the CA.
27. The existing building is clearly of a different character and appearance to the historic fabric and architectural features of the group of listed buildings on West Street. The appeal proposal would be very similar in design and appearance to the extant consent but with additional bulk and height. Nonetheless, the additional bulk and height would not alter the historic fabric or architectural features of the listed group. Moreover, it would retain the densely developed nature of the street and retain the glimpse that the listed buildings on West Street give to the historic character of the area.
28. In addition, the bulk of the building would not obscure views of the Church of St Mary from the top of West Street. When viewed from the bottom of West Street in association with the Church and No.24 West Street, the bulk of building would be suitably subservient and screened by the Church and existing built form such that it would not detract from or impose on the setting of the listed buildings or harm the picturesque group at the bottom of Stepcote Hill.
29. It follows from the above, that when considered in context with the extant consent, the appeal proposal would preserve the setting of the Grade II listed buildings comprising No's 2-24 West Street, the Grade I Listed St Mary Steps Church, and preserve the character and appearance of the Central Conservation Area, thus preserving the significance of these heritage assets. It would therefore comply with, policies DG1(f), (g) and (h), C1, C2 and H5 of the Exeter Local Plan First Review 1995-2011 (LP), and CS policies CP4 and CP17. Amongst other things, these seek to ensure that development is appropriate and relates well to and does not harm the character and appearance of adjoining buildings, townscape and locality, ensure that designs promote local distinctiveness and contribute positively to the townscape, and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area and setting of listed buildings.
30. For the same reasons, the proposal would comply with Chapter 16 of the Framework that seeks to conserve and enhance the historic environment.
31. The Council's Reason for Refusal also references the Residential Design Guide Supplementary Planning Document September 2010 (SPD). However, the

Council's evidence does not identify conflict with any particular part of the SPD. Given this, and as I have no reason to find that the proposal would not adequately meet the objectives identified in the SPD, I find no conflict with it.

*Living conditions*

32. At present, the ground, first and second floor windows to properties facing the appeal site on the opposite side of West Street face the ground, lower-first and upper first floors of the appeal building. As such, there are existing windows directly facing each other with the outlook from the properties on the opposite side of West Street already dominated by the existing building.
33. The outlook from No's 4 and 6 West Street in particular would be altered as a result of the extant consent introducing additional floors and associated balconies. In light of this, and given the small separation distance between the buildings, the restricted upward outlook from the first and second floor windows towards the sky would be minimal following completion of the extant consent. Furthermore, given the existing outlook facing No.130 Fore Street, any additional floor over and above those granted by the extant consent would not be highly noticeable. This is the case even acknowledging that the properties on West Street also have built form in close proximity to the rear.
34. While the introduction of an additional floor would further restrict any remaining views of the sky, given the very limited extent of sky that would be visible following the completion of the extant consent, any further loss would not be highly perceptible or detrimental to an extent that would justify dismissing the appeal.
35. Given the north facing nature of windows to No's 4 and 6 West Street, sunlight to the rooms is already limited and with the proposal on the opposite side of the road roughly to the north, it will not result in overshadowing of No's 4 or 6 or justify the need for a lighting assessment.
36. I acknowledge that the proposal would introduce more windows and includes balconies facing towards properties on West Street. However, given the high number of windows introduced through the extant consent, and given the number of existing windows, I do not find their introduction harmful in a location where development is of a tight-knit form with closely facing windows.
37. By reason of the provision of an additional floor in comparison to the extant consent, the appeal proposal would result in an additional bulk of built form projecting along the boundary with No. 129 Fore Street and close to the rear of No.128 Fore Street. Although the additional bulk would be visible from the rear of these properties, this area comprises a tight-knit form of dense development characterised by a variety of rear projections at differing heights covering the majority of the respective plots. In light of this and given the remaining outlook to the rear of No's 128 and 129, there would be no greater detrimental harm to the living conditions of the occupiers of these properties.
38. Given that the main alterations with regard to the extended height of the building are to the rear such that the frontage with Fore Street would remain virtually unchanged and given the distance to the properties on the opposite side of Fore Street, there would be no detrimental harm to the living conditions of the occupiers of these properties including number 41B New Bridge Street.

39. In conclusion, the proposal would not harm the living conditions of the occupiers of No.6 West Street or No's 128-129 Fore Street with particular regard to outlook. As such, it complies with LP Policy H5(a) and CS Policy CP4. Amongst other things, these only permit housing provided that it will not cause an unacceptable reduction in the amenity of neighbouring occupiers and achieve the highest appropriate density compatible with the protection of local amenities, the character and quality of the local environment.

### **Other Considerations**

40. It is clear from the Council's reason for refusal that the principle of dwellings in this location is acceptable. I also acknowledge that the proposal would provide much needed housing, boost, and add to the supply and mix of housing, make an efficient use of land, and benefit the local economy from construction works and occupiers using local services and facilities. These benefits, and related support from paragraphs 110, 115 and 129 of the Framework seeking the efficient use of land and the location of development served by a range of services and facilities, weigh in favour of the proposal. However, in light of the extant consent and the proposal not proposing any additional residential units, I only give limited weight to these benefits.

41. In contrast, I have found that the appeal proposal would cause significant harm to the integrity of protected sites. The relevant policies in this regard are largely consistent with the Framework where it states that planning decisions should conserve and enhance the natural environment, reflect the character of an area and safeguard the environment. Therefore, the proposed development is contrary to the development plan as a whole and I give significant weight to the conflict with these policies.

42. The Council have confirmed that it cannot currently demonstrate a five-year supply of deliverable housing sites. I have no reason to disagree. However, I have found above that the proposal would cause harm to the integrity of protected sites. This is contrary to the provisions in Chapter 15 of The Framework that protect such habitats. Given footnote 7 to Paragraph 11 d) i. of The Framework, and the harm I have identified to assets of particular importance, this provides a strong reason for refusing the development proposed. As such, there is no need for me to carry out the assessment in Paragraph 11. d) ii. of the Framework.

### **Conclusion**

43. Although I have found no harm to heritage assets or to the living conditions of neighbouring occupiers, I have found significant harm to the integrity of protected sites. In my view, this is the prevailing consideration, and the proposal should be regarded as being in conflict with the development plan, when read as a whole.

44. Material considerations, including the Framework do not indicate that the proposal should be determined other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude the appeal should be dismissed.

*C Rose*

INSPECTOR