

**ITEM NO. 5****COMMITTEE DATE:** 05/12/2016

**APPLICATION NO:** 16/0864/03 FULL PLANNING PERMISSION  
**APPLICANT:** Enterprise Inns  
**PROPOSAL:** Four new dwellings  
**LOCATION:** Land to rear of Crawford Hotel, Alphington Road, Exeter,  
EX2 8JD  
**REGISTRATION DATE:** 11/07/2016  
**EXPIRY DATE:** 05/09/2016

*This is a copy of the report presented to the Planning Committee on 31 October 2016. At that meeting, Members deferred making a decision and requested that further work was carried out into seeking to provide the access to the proposed development from Retail Park Close rather than from Percy Road. The applicant has subsequently confirmed, through its agent, that it will not entertain an access from Percy Road and has requested that the application be determined as submitted. It is pointed out that the applicant intends to sell the land to a developer and that in future that developer may be interested in acquiring the additional land owned by Exeter City Council and submitting a revised application.*

**HISTORY OF SITE**

15/0185/03 - Proposed development of four dwellings (three REF 14/07/2015  
terrace units and one detached).  
Appeal dismissed 04/02/16

**DESCRIPTION OF SITE/PROPOSAL**

This application seeks planning permission for four dwellings (three in a terrace and one detached) on land to the rear of the former Crawford Hotel, a locally listed building that has recently been converted to a retail unit on the ground floor and flats on the upper floors. The site is within Flood Zone 3 and therefore has a high probability of flooding. The site, a former beer garden, has been separated from the Crawford Hotel by a timber fence and largely consists of a small number of redundant outbuildings and overgrown grassed areas and brambles. On the north-east boundary of the site is a 2-3 metre high wall fronting Percy Road, a residential cul-de-sac consisting of terraced dwellings with on-street parking. To the south-east is Meridian House on Retail Park Close, an office block on the Marsh Barton Trading Estate. An existing pedestrian gateway leads from the site onto Retail Park Close. To the south-west are the rear elevations of terraced residential properties fronting Alphington Road.

An application for a similar scheme to this one was submitted to the Council in February 2015. It was presented to the Planning Committee on 29 June 2015 where it was resolved that planning permission would be refused. The decision was issued on 14 July 2015. Subsequently, the applicant appealed the decision and made an application for costs against the Council. The Planning Inspector both dismissed the appeal and did not make a costs award. This application seeks to address the Planning Inspector's findings, which now form a material consideration in assessing and determining this application. Further details are provided in the Observations section of this report.

**SUPPORTING INFORMATION SUPPLIED BY APPLICANT**

Flood Risk Assessment: the site is located in Flood Zone 3a. The site does not lie within 500m of any flood defences. Exeter's Flood Relief Channels lie within 800m and provides a level of defence against flooding. The last recorded incident of flooding in the area was in 1960, prior to the installation of the flood relief scheme. The National Planning Policy Framework states that minor developments should not be subject to the Sequential or

Exception Tests for flood risk; this would apply in this case. A SUDS scheme will be utilised to minimise surface water runoff. As a precautionary measure, flood resilient construction techniques are recommended to reduce the potential of flood water ingress and damage. Finished floor levels should be set at 7.45m AOD. Future occupants are recommended to sign up to the EAs Flood Warning Service.

Design and Access Statement: providing an assessment of the existing site and evolution of the proposed scheme.

Planning Statement: this document explains how this scheme responds to the findings of the Planning Inspector in the recent appeal. It also points out that the Council does not have a Five Year Supply and therefore that this application should be approved without delay unless the Council can demonstrate a significant adverse impact.

Transport Statement: demonstrating the connectivity of the site, range of facilities in the local vicinity and the sustainable location of the site.

Standard Commercial Drainage and Water Search: a detailed question and answer analysis is provided.

Ecological Appraisal: the site has historically been improved and managed. There are opportunities to provide wildlife / habitat protection by including two 'sparrow terraces' and a detailed landscape design for the communal area to enhance wildlife and plant species.

## **REPRESENTATIONS**

6 objections have been received. The main points raised are:

- loss of on-street parking spaces in Percy Road
- the new access onto Percy Road will have poor visibility and will be dangerous
- Percy Road is already difficult for delivery vans and refuse collectors; this development will make matters worse

## **CONSULTATIONS**

Environment Agency: The application should not be determined until the Local Planning Authority is content that both the flood risk sequential and exception tests, as set out in the National Planning Policy Framework, have been satisfied. However, the Agency confirms that the Flood Risk Assessment is acceptable and would meet the requirements of the second part of the Exception Test, to demonstrate that the development would be safe over the course of its lifetime.

Local Highway Authority, Devon County Council: The Authority did not object to the proposals previously and notes that the Inspector agreed with its view. The Authority again offers no objections to the scheme but recommends two conditions to ensure the properties are not occupied until the following have been provided - new access onto Percy Road, pedestrian/cycle connection to Retail Park Close, on site layout, footpaths, car and cycle parking facilities.

Environmental Health, Exeter City Council: Approve subject to conditions relating to noise and land contamination.

RSPB: Swift bricks should be installed in the building to provide "nesting opportunities and landscaping opportunities".

## **PLANNING POLICIES / POLICY GUIDANCE**

## **National Planning Policy Framework**

Core Planning Principles 3, 4, 5, 6, 8, 10 and 11  
Sections 6, 7, 10 and 12

## **Local Development Framework Core Strategy**

Objectives 1, 3, 5, 8 and 9

CP4 - Density

CP12 - Flood Risk

CP15 - Sustainable Construction

CP16 - Green Infrastructure

CP17 - Design and Local Distinctiveness

## **Exeter Local Plan First Review 1995-2011**

H1 - Search Sequence

H2 - Location Priorities

T1 - Hierarchy of Modes

T2 - Accessibility Criteria

T3 - Encouraging Use of Sustainable Modes

C3 - Buildings of Local Importance

EN4 - Flood Risk

DG1 - Objectives of Urban Design

DG4 - Residential Layout and Amenity

Residential Design Supplementary Planning Document

## **OBSERVATIONS**

Planning permission was refused on the previously submitted scheme (Ref. 15/0185/03) for two reasons relating to highway and design matters. There were no objections to the principle of residential development on this site and therefore it is considered that the Council regards the site as suitable for housing.

That said, the Environment Agency emphasises that in order to comply with the requirements of the National Planning Policy Framework (specifically paragraphs 101 and 102), the Council must be content that the sequential and exception tests have been met. In essence, the sequential test seeks to steer new development towards areas with the lowest probability of flooding. For the exception test to be passed, the wider sustainability benefits of the development must outweigh the flood risk and a Flood Risk Assessment needs to be submitted demonstrating that the development will be safe for its lifetime. In considering these tests, the Council would respond as follows. The site is located within an existing residential area and as such the provision of an additional residential development is acceptable in principle. The Exeter Local Plan, Exeter Core Strategy and the Publication Version of the Development Delivery Development Plan Document identify that sites within the urban area have the potential to meet the housing requirement in the City and therefore are appropriate. This site's location is close to existing shops and public transport routes and therefore offers a sustainable location for development. Overall, the Council is satisfied that the sustainability benefits of the development outweigh the flood risk. In addition, the Environment Agency has confirmed that the Flood Risk Assessment is acceptable and would provide a safe development, so long as the scheme is built in accordance with the Assessment. On this basis, the Council considers that the tests are satisfied.

In assessing this application, the main focus has to be on the three matters that prevented the scheme from obtaining permission in 2015. One of these can be set aside straightforwardly. At the time that the planning application was being considered by the Council, the Government had, through a Written Ministerial Statement on 28 November 2014, introduced a national threshold of more than 10 dwellings for affordable housing contributions. However, on 31 July 2015, the High Court judged that this action was unlawful and therefore by the time of the appeal, the Council's threshold of 3 applied, as set out in

Policy CP7 of the Core Strategy. Because no completed and executed Planning Obligation making provision for affordable housing was provided, the Inspector dismissed the appeal partly on these grounds. In May 2016, the Court of Appeal allowed an appeal by the Government, which effectively reinstated the aforementioned national threshold. Consequently, the applicant is no longer required to provide affordable housing on this site.

The Council's main concern previously related to highway matters. In particular, the Planning Committee considered that the proposed access onto Percy Road would have a detrimental impact on the amenity of neighbouring residents, the character and quality of the local environment and the safety of local roads. In coming to this conclusion, the Committee came to a judgement based on a range of material considerations including the views expressed by objectors, the potential availability of an alternative access onto Retail Park Close and the absence of any objection from the Local Highway Authority at Devon County Council. The alternative access onto Retail Park Close was explored with the applicant but ultimately did not progress. The Local Highway Authority advised that Retail Park Close would provide a better access for construction traffic but was not as suitable as a permanent residential access.

In considering these issues at appeal, the Inspector did not agree with the Council's conclusions. He said:-

*"In my experience the presence of parked cars and the resulting narrowing of the carriageway is nevertheless likely to reduce vehicle speeds, as drivers exercise a cautious approach to encountering oncoming vehicles or pedestrians emerging from or between vehicles."*

*"I saw nothing inherent in the width and alignment of Percy Road, or that of adjacent streets and road junctions, to suggest that they are unsuitable to serve the limited number of dwellings proposed without causing an unacceptable risk to highway safety."*

*"The reduction in on-street parking capacity that would occur as a result of the access would be minimal."*

*"I have also taken the lack of any objection to the proposed development from the Highway Authority into consideration."*

*"Overall I find that the proposed development would not be harmful to highway safety conditions on Percy Road and surrounding streets and it would therefore accord with saved ELP Policy DG1, which at (a) also requires development to connect effectively with existing routes and spaces. It would be consistent with paragraph 32 of the Framework, which seeks to achieve safe and suitable access, only preventing development on transport grounds where the residual cumulative impacts are severe."*

The Inspector's findings are a significant new material consideration in assessing this application. Given his considerable disagreement with the Council's position, and the continued lack of any objection from the Local Highway Authority, it would seem difficult for the Council to continue to pursue its previous objection to the scheme. Furthermore, there is an increased chance of costs being awarded against the Council if another appeal were to follow the determination of this application on similar grounds.

The Council refused planning permission previously on one further ground. This related to the proposed design of the buildings. The key points were that the use of painted render was not considered to be a high quality material finish and that the window fenestration was discordant. The Council concluded that the design did not promote local distinctiveness or contribute positively to the visual richness and amenity of the area. The Inspector who considered the previous appeal agreed with the Council's view on these matters to a certain extent and cited it as a reason for dismissing the appeal. Nonetheless, his emphases were slightly different. For example, he noted that, the Crawford Hotel aside, brick is the

predominant building material of the surrounding area. However, he only objected to "the extensive use of render", which, in his view, "would have the effect that the proposed dwellings would appear rather alien in their surroundings and would not integrate successfully with the pattern of local development". The applicant has observed that the Inspector did not object to the use of render in principle, only to its "extensive" use. Consequently, in response to this, the scheme has been amended so that the proposed dwellings would now be half rendered and half brick. This is described in the applicant's Planning Statement as "a progression of the architectural styles of the terraces in the area". Given the comments made by the Inspector, it would be difficult for the Council to object to this revision.

In respect of the elevational design, the Council's main objections were two-fold. The windows on the rear of the detached dwelling were considered to be unacceptable because they were different sizes creating a discordant elevation that lacked any visual rhythm or harmony. In respect of the front elevation of the terrace, the main concern was that some windows were disproportionately small to the elevation. It was also noted that there were different cill heights on both floors. The Inspector agreed with these findings. He said:-

*"The window treatments to the north-east elevation of the terrace and the south-east elevation of the detached dwelling utilise a number of small windows with differing cill heights. As well as these windows appearing quite diminutive in comparison with the overall scale of the buildings, it would give a somewhat 'busy' appearance to the elevation. This is entirely at odds with the sense of balance and restraint apparent in the design of the adjoining terraces and in my view, it would be harmful to the character and appearance of the area."*

In response to these comments, the elevational treatment of the dwellings has been altered. The rear of the detached dwelling now has just two different sizes of windows that are arranged symmetrically to provide visual rhythm. The size of windows on the front elevation of the terrace have also either been widened or lengthened to create a better balance between solid and void. It remains the case that there would be some difference in cill heights. However, the addition of brick on the elevation would help to make this less striking and therefore it is considered to be acceptable.

In terms of residential amenities, the applicant's agent notes that the garden to Plot No. 3 would be overlooked by Meridian House. The Design and Access Statement proposes some tree planting to try to address this matter. As a result, the Council did not object to this previously. There were also no objections cited to the relationship between the rear of the proposed terrace and the rear of properties in Alphington Road where the distances between properties were considered to be within acceptable limits.

No concerns were raised previously about the scheme's impact on the setting of the Crawford Hotel, a locally listed building.

Policy CP16 of the Core Strategy requires that an appropriate assessment needs to be undertaken in respect of any plan or project which is (a) likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and (b) not directly connected with or necessary to the management of the site. The City Council's submitted Core Strategy Habitats Regulation Assessment, which is in effect a City wide appropriate assessment, has concluded that additional housing will result in extra recreational impact on the Exe Estuary, Dawlish Warren and Pebblebed Heaths which are all designated European sites. The Council intends to mitigate the impacts of additional housing using money it collects from its Community Infrastructure Levy (CIL), which was adopted in December 2013 and is chargeable on all residential developments. This scheme would be liable for CIL payments should permission be granted and works commence.

The Planning Statement that has been submitted with this application draws attention to the Planning Inspectorate's conclusion, on an appeal by Waddeton Park Ltd for a site north of

Exeter Road (Refs. 14/2066/01 and APP/Y1110/W/15/3005030), that the Council does not have a five year housing supply. It seeks to argue that the lack of a five year supply means that this application should be approved without delay. This refers to Paragraph 14 of the National Planning Policy Framework, which sets out how decisions should be made including in circumstances where the development plan is absent, silent or relevant policies are out of date. When the latter applies, which would be the case where there is no five year housing supply, permission should be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits." It is certainly the case that a housing shortfall weighs in favour of housing proposals. However, the scale of the development, and the contribution it makes to addressing a housing shortfall, is also important. This was underlined by the Inspector in granting consent at Exeter Road and is also clearly stated in the previous appeal decision on this site. Writing before the Exeter Road appeal, the Inspector said that even if the lack of a 5 year supply applied, "the development is of relatively modest scale. When assessed against the Framework as a whole, any economic or social benefits offered by increasing the supply of new housing to the limited extent represented by the proposal, would be significantly and demonstrably outweighed by the adverse environmental and social impacts identified in the main issues. Therefore, whether the Council has a five-year land supply would not affect my findings in that respect." In other words, the five year supply argument weighs more favourably on larger scale schemes where a significant contribution to the housing shortfall can be provided.

In conclusion, taking into account the findings of the Planning Inspector on the previous appeal and the amendments that have been made to the proposal, it is considered that the scheme is now acceptable. Therefore, it is recommended that planning permission be granted.

### **DELEGATION BRIEFING - 27 SEPTEMBER 2016**

The Case Officer advised that as the Inspector had dismissed the concerns of the Planning Committee on highway matters and as the Government had subsequently formally changed the regulations on the threshold for affordable housing contributions, it effectively left only design issues as the remaining consideration. The Case Officer considered that sufficient amendments had been made to the design to meet the concerns set out by the Inspector. It was reported that 5 objections had been received re-iterating the highway concerns. However, the Local Highway Authority once again did not object to the scheme.

Members noted the position but considered that the application should go before the Planning Committee.

### **RECOMMENDATION**

**APPROVE** subject to the following conditions:

- 1) C05 - Time Limit - Commencement
- 2) The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 11 July 2016 (dwg. nos. 0-0002 Revision A and 1-0003 Revision B, and Design and Access Statement) and 10 October 2016 (dwg. no. 0-0001 Rev. A), as modified by other conditions of this consent.  
**Reason:** In order to ensure compliance with the approved details.
- 3) C17 - Submission of Materials
- 4) Any individual dwelling hereby approved shall achieve Code for Sustainable Homes Level 5 (Zero Carbon) in accordance with the requirements of the Code for Sustainable Homes 2006, the Code for Sustainable Homes Technical Guide November 2010 and the Code Addendum May 2014 (or such equivalent standard

that maybe approved in writing by the Local Planning Authority) and Exeter Core Strategy Policy CP15.

**Reason:** In the interests of sustainable development.

- 5) Prior to commencement of any dwelling the developer shall submit to the Local Planning Authority a Design Stage Code for Sustainable Homes (CSH) assessment including the score expected to be achieved and which standard this relates to. Where this does not meet the minimum required standard in relation to the energy elements the developer must provide details of what changes will be made to the development to achieve the minimum standard in respect of those elements of the code, and thereafter implement those changes. Unless otherwise agreed in writing by the Local Planning Authority, no dwelling shall be occupied until an application for a Final Code Certificate has been made seeking certification that the required Code Level has been achieved and within one year of occupation of any dwelling the developer shall submit to the Local Planning Authority a Final Code Certificate to demonstrate that a Final Code Level of 4 in respect of the energy elements has been achieved as required above.  
**Reason:** To ensure that the proposal complies with Policy CP15 of Council's Adopted Core Strategy and in the interests of delivering sustainable development.
- 6) Unless otherwise agreed with the Local Planning Authority, the development shall be carried out in line with the recommendations contained in submitted Ecological Appraisal and the Flood Risk Assessment.  
**Reason:** To ensure that opportunities for wildlife enhancements are maximised and in the interests of minimising flood risk over the lifetime of the development.
- 7) A detailed scheme for landscaping, including the planting of trees and/or shrubs, the use of surface materials and boundary screen walls and fences shall be submitted to the Local Planning Authority and no development shall take place until the Local Planning Authority have approved a scheme; such 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 in accordance with the agreed programme.  
**Reason:** In the interests of amenity.
- 8) In the event of failure of any trees or shrubs, planted in accordance with any scheme approved by the Local Planning Authority, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees or shrubs shall be replaced with such live specimens of such species of such size and in such number as may be approved by the Local Planning Authority.  
**Reason:** In the interests of amenity.
- 9) Construction/demolition work shall not take place outside the following times: 8am to 6pm (Mondays to Fridays); 8am to 1pm (Saturdays); nor at any time on Sundays, Bank or Public Holidays.  
**Reason:** To protect neighbouring residential amenities.
- 10) The applicant shall undertake a noise assessment to determine whether noise from plant, equipment and deliveries at the adjacent retail store would be likely to cause disturbance and annoyance to residents of this site. The assessment shall be submitted for approval in writing by the Local Planning Authority prior to commencement of the development. If, following the above assessment, the Local Planning Authority concludes that noise mitigation measures are required, the applicant shall then submit a scheme for protecting the proposed development from noise from the adjacent store. This shall be based on the results of the above assessment and shall be submitted to and approved by the Local Planning Authority

before development commences. All works that form part of the scheme shall be completed before any of the approved development is occupied.

**Reason:** To protect the residential amenities of future occupants of the dwellings.

- 11) No development shall take place on site 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 agreed in writing by the Local Planning Authority. The buildings shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to 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.

**Reason:** To protect the health and safety of future occupants of the dwellings.

- 12) No part of the development hereby approved shall be occupied until the amendments to Percy Road boundary wall, dropped kerb vehicular access, on site layout, footpaths, car and cycle parking facilities, as outlined in Drawing 1-0003 Revision B, have been provided and retained for that purpose at all times.

**Reason:** To ensure that adequate facilities are available for the traffic attracted to the site

- 13) No more than three of the dwellings hereby approved shall be occupied until a shared use pedestrian/cycle connection to the eastern boundary of the site with Retail Park Close, as indicated on drawing 1-0003 Revision B, has been provided and made available for public use in accordance with details to be approved by the Local Planning Authority and maintained for this purpose at all times.

**Reason:** To provide adequate facilities to promote the use of sustainable modes, in accordance with Section 4 of the National Planning Policy Framework.

- 14) The development shall incorporate into the fabric of the buildings nesting opportunities for swifts. Details of how this shall be achieved must be submitted to, and approved by, the Local Planning Authority. The development shall thereafter be built in accordance with these approved details.

**Reason:** In the interests of providing biodiversity enhancements on the site.

Local Government (Access to Information) 1985 (as amended).

Background papers used in compiling the report:

Files of planning applications available for inspection from the Customer Service Centre, Civic Centre, Paris Street, Exeter: Telephone 01392 265223