

Planning Committee Report 20/1200/FUL

1.0 Application Number: 20/1200/FUL

Applicant name: RBL Homes (SW) Ltd

Proposal: Construction of two storey building containing four flats

Site address: Flying Horse, Dryden Road, Exeter, EX2 5BS

Registration Date: 21/09/2020

Link to application, drawings/plans:

<http://publicaccess.exeter.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QH0ANWHBJKY00>

Case Officer: Leigh Powell

Ward Members: Cllr Amal Ghusain, Cllr Alys Martin and Cllr Tony Wardle

REASON APPLICATION IS GOING TO COMMITTEE – to obtain authorisation to proceed with a Section 106 Agreement involving a sum greater than £10,000.

2.0 Summary of Recommendation:

Grant planning permission subject to conditions

3.0 Reason for the recommendation: As set out in Section 18 at end

In the absence of a five year supply, the Council concludes that the modest benefits of adding 4 additional residential units to the Council's housing stock are not outweighed by the relatively few, and minor, negative aspects of the scheme.

4.0 Table of key planning issues

Principle of Residential Use /Development	This has already been accepted under planning permission Ref. 17/0670/FUL. Whilst the site is part of the former public house and therefore a community facility, no community uses came forward during a lengthy period of marketing.
Five Year Housing Supply	The Council does not have a Five Year Housing Supply. This proposal would make a modest contribution to housing supply in the city.
Sustainability	Through the use of appropriate conditions, the Council can ensure that the development meets required standards on energy efficiency and implements a sustainable drainage system. The proposal would be liable to pay Community Infrastructure Levy, a proportion of which would be used to mitigate the impact on additional housing on protected habitats within 10km of the site. A bicycle storage area would help to encourage sustainable forms of travel. Further details of the

	precise design of this store would be required by condition.
Layout, Scale, Character and Appearance	In terms of the height, scale, design and external appearance of the building, and the wider layout of the scheme, it is considered that the proposal would not have any significant harmful impacts on the existing local townscape.
Residential Amenity	The proposals would meet national internal space standards and local standards for external amenity space. Overall, it is considered the development would provide a good quality of residential amenity for future occupiers. No significant adverse harm is identified to the residential amenities of existing adjacent properties.
Contaminated Land	A condition is proposed to ensure that a full investigation of the site is undertaken, prior to the commencement of any construction works, to ensure that any contamination of the land is identified and remediated.
Economic benefits	A contribution of £14,235 towards secondary education, which would be secured through a Section 106.

5.0 Description of Site

The application relates to a rectangle of land that was formerly an informal outside seating and play area associated with The Flying Horse public house. It was until more recently given over to grass and contained a small outbuilding known as The Bunker. Now, this building has been removed and the ground levels have been altered to create a flat gravel surface. There is a new wall and timber fence around the perimeter of the site with some shrubs planted above the wall. For the record, these works have been carried out without planning permission.

The site is accessed from Dryden Road, alongside the former pub building. To the north, west and south, are residential properties in Malvern Gardens, Bovemoors Lane and Dryden Road respectively.

6.0 Description of Development

The development comprises a two storey block, in contemporary design, containing 4 self-contained flats. A communal amenity space is provided at the rear as well as private spaces for each of the flats. Car parking spaces and storage areas for bins and bicycles are also incorporated into the scheme. The proposal would be accessed using the existing access from Dryden Road.

7.0 Supporting information provided by applicant

Aside from drawings of the proposed development, no additional information was provided with the initial submission. Subsequently, however, the developer has confirmed a willingness to pay the contribution towards secondary schooling outlined in Section 10.0.

8.0 Relevant Planning History

In December 2017, planning permission was obtained for two semi-detached dwellings on the site (Ref. [17/0670/FUL](#)).

In September 2020, planning permission was refused for a three storey block containing 6 flats (Ref. [19/1333/FUL](#)). It was considered that the scheme represented an overdevelopment of the site with specific concerns relating to the overall size and height of the building, the impact on neighbouring residential amenities and the quality of amenity for future occupiers of the development.

9.0 List of Constraints

None

10.0 Consultations

All consultee responses can be viewed in full on the Council's website.

The Children's Service at Devon County Council identifies that there is sufficient spare primary school capacity to accommodate the number of pupils expected to be generated by the scheme. However, secondary schooling is at capacity and therefore a contribution of £14,235 is sought to be put towards new secondary provision in south-west Exeter. This would release capacity at existing secondary schools across the city. Devon County Council would also seek to recover legal costs incurred as a result of the preparation and completion of the Agreement.

The Local Highway Authority at Devon County Council has no objections to the proposals but suggests two conditions are added to any approval – one to secure the on-site vehicular spaces and turning area prior to occupation and another to clarify details of bicycle storage provision.

The Council's Environmental Health team suggests 2 conditions are added to any approval relating to land contamination and the need to provide a Construction Method Statement (or CEMP) to ensure good management of the site during the construction phase.

11.0 Representations

None received.

12.0 Relevant Policies

Development Plan

Central Government Guidance

National Planning Policy Framework – Paragraph 11 and Sections 5, 8, 9, 11 and 12

Exeter Local Development Framework Core Strategy

Objectives 3 and 9

CP1 – Spatial Approach

CP4 – Density

CP5 – Housing Mix

CP10 – Meeting Community Needs

CP12 – Flood Risk

CP15 – Sustainable Construction

CP16 – Green Infrastructure

CP17 – Design and Local Distinctiveness

CP18 – Developer Contributions

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

T10 – Car Parking Standards

EN2 – Contaminated Land

DG1 – Objectives of Urban Design

DG4 – Residential Layout and Amenity

Other material considerations

Technical Housing Standards – Nationally Described Space Standards March 2015

Residential Design Supplementary Planning Document

Sustainable Transport Supplementary Planning Document

Net Zero Exeter 2030 Plan

South East Devon European Site Mitigation Strategy

13.0 Human rights

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property

The consideration of the application in accordance with Council procedures will ensure that the views of all those interested are considered. All comments from interested parties have been considered and reported within this report in summary with full text available via the Council's website.

Any interference with property rights is in the public interest and in accordance with the Town and Country Planning Act 1990 regime for controlling the development of land. This recommendation is based on the consideration of the proposal against adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

14.0 Public Sector Equalities Duty

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by, or under, the Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular to the need to:

- a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of other persons who do not share it; and
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have "regard to" and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has had due regard to the matters set out in section 149 of the Equalities Act 2010.

15.0 Financial Issues

The requirement to set out the financial benefits arising from a planning application is set out in s155 of the Housing and Planning Act 2016. This requires that local planning authorities include financial benefits in each report which is:-

- a) made by an officer or agent of the authority for the purposes of a non-delegated determination of an application for planning permission; and
- b) contains a recommendation as to how the authority should determine the application in accordance with section 70(2) of the Town and Country Planning Act 1990.

The information or financial benefits must include a list of local financial considerations or benefits of a development which officers consider are likely to be obtained by the authority if the development is carried out, including their value if known, and should include whether the officer considers these to be material or not material.

Material considerations

A contribution towards secondary education of £14,235.

Non material considerations

CIL contributions

The adopted CIL charging schedule applies a levy on proposals that create additional new floor space over and above what is already on a site. This proposal is CIL liable.

The rate at which CIL is charged for this development is £118.93 per square metre, plus new index linking. Confirmation of the final CIL charge will be provided to the applicant in a CIL liability notice issued prior to the commencement of the development. All liability notices will be adjusted in accordance with the national All-in-Tender Price Index of construction costs published by the Building Cost Information Service (BCIS) of the Royal Institute of Chartered Surveyors for the year when planning permission is granted for the development. Full details of current charges are on the Council's website.

The proposal will generate Council Tax.

16.0 Planning Assessment

Principle of Residential Use/Development

The Council has previously accepted the principle of this site being redeveloped for residential uses. In December 2017, planning permission was granted for the construction of a pair of two storey dwellings, each with three bedrooms (Ref. 17/0670/FUL).

As a former beer garden to The Flying Horse, the site's existing lawful use is as a public house. Paragraph 92 of the National Planning Policy Framework and Policy CP10 of the Core Strategy seek to protect community facilities, which would include public houses. However, The Flying Horse has been marketed for significant periods

of time over the past decade and it is apparent that there is no interest from any party in continued use of the pub. Furthermore, based on a series of public consultations on planning applications for this site in recent years, there has not been any support for this expressed amongst the local community either. Other community uses have also not come forward. The Council, therefore, does not seek to reconsider here the appropriateness of residential uses on this particular site.

Five Year Housing Supply

The Council is committed to boosting the supply of housing in its area and to that extent Policy CP1 of its Core Strategy plans for an additional 12000 houses within Exeter during the Plan period from 2006 to 2026. That said, the Council accepts that it does not currently have a five year supply of deliverable housing. Consequently, this decision must have regard to Paragraph 11 of the National Planning Policy Framework, which refers to the presumption in favour of sustainable development. This states that where relevant policies are out of date (in this case the Council's housing policies) 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.

The most notable benefit of the scheme would be the addition of 4 residential units to the city's housing stock. However, this contribution would be relatively modest and would not provide a significant boost to supply. That said, as demonstrated in subsequent sections of this report, no significant adverse impacts are identified in this scheme that would outweigh the benefits. Consequently, the planning balance is clearly tipped in favour of granting consent.

Sustainability

On 23 July 2019, Exeter City Council unanimously agreed to declare a climate emergency and made the commitment to make Exeter a carbon neutral (or net-zero carbon) city by 2030. The Net Zero Exeter 2030 Plan has been produced in response to this and the Council formally adopted the Plan on 21 July 2020. It is therefore now Council policy to inform all policy documents, plans and corporate decision making in response to the Climate Emergency and in pursuance of the goal to make Exeter a carbon neutral city by 2030. The Council's adopted development plan had already set out policies and objectives that were broadly in line with these aims. Both The Vision and Objective 1 of the Core Strategy, as well as Policy CP17, require developments to make the fullest contribution possible to the mitigation of, and adaptation to, climate change and the transition to a low carbon economy. Policy CP12 requires that developments mitigate against flood risk utilising SUDS (a sustainable drainage system) where feasible and practical.

In order to ensure that sustainable development is achieved, the Council requires new development to go over and above existing building regulations on energy.

Despite the ending of the Code for Sustainable Homes, the Council can still pursue an ambitious energy approach because it retains a relevant energy policy in its development plan (namely CP15 of the Core Strategy). Although this submission contains no details on these matters, the Council will use a condition to ensure that this development achieves a 19% reduction in CO2 emissions over that necessary to meet the requirements of the 2013 Building Regulations. It will also require details of a workable SUDS scheme to deal with surface water run off on the site.

The proposed development is on a site within 10km of the Exe Estuary Special Protection Area and the East Devon Pebblebed Heaths Special Protection Area and Special Area of Conservation. The South East Devon European Site Mitigation Strategy identifies that the cumulative impact of additional housing places increased pressures on these protected sites through rising numbers of visitors. These are likely to have an adverse impact on the achievement of the conservation objectives for these sites. To mitigate this impact, a financial contribution is sought from the development. In this case, a proportion of the Community Infrastructure Levy (CIL) payment will be used as the scheme is CIL liable.

The Council's development plan also contains a number of policies designed to promote sustainable forms of transport. These are themes that are reinforced at the national level by Sections 2 and 9, particularly Paragraph 108, of the National Planning Policy Framework. Whilst this development does provide 1 car parking space for each of the flats, it should be noted that the site is outside of the development plan's Housing Core Area where car-free developments are encouraged. However, a bicycle store has also been designed into the scheme, sufficient to accommodate 8 bicycles. This exceeds the minimum requirements set out in the Council's Sustainable Transport SPD and so are welcomed. However, further details will be required by condition to ensure that the design is secure and in sympathy with the rest of the development.

Layout, Scale, Character and Appearance

Paragraph 127 of the National Planning Policy Framework states that developments should add to the overall quality of the area, be visually attractive as a result of good architecture and layout and be sympathetic to the local character and history, including the surrounding built environment. Objective 9 and Policy CP17 of the Core Strategy and Saved Policy DG1 of the Exeter Local Plan First Review 1995-2011 also have similar requirements around ensuring proposals are in keeping with the surrounding townscape and reinforce local distinctiveness. Policy CP4 of the Core Strategy and Policy H2 of the Exeter Local Plan seek to ensure highest appropriate densities without harm to local character and amenity.

The most striking aspect of the surrounding townscape to this site is that it is modest in scale. Adjacent buildings are all two storeys and have a relatively simple form and design. Given the contemporary design, this proposal would be something of a

departure from the existing local character. Nonetheless, it is difficult to identify any significant harm arising from the development. For a start, the building would also be two storeys and would occupy a relatively discreet, almost 'backland', location. Furthermore, the overall design approach is considered to be acceptable with variation in the use of building lines, materials and size of windows (set in deep reveals) helping to break up the overall massing of the structure and give it some visual interest. It is not considered that the size of the building would dominate the area or be harmful to the local townscape.

The existing entrance and driveway leading onto Dryden Road will be used for access. The Local Highway Authority has no objection to this and expects the level of traffic generation from the site to be modest.

Policy DG6 of the Exeter Local Plan seeks to avoid new developments being dominated by the vehicles. Whilst four car parking spaces would be provided at the front of the proposed property, the spaces would be incorporated into the overall design, placing them under a first floor overhang, which would help to reduce their presence. Given the limitations on space, this is considered a reasonable design solution.

The rear of the site would be given over to a series of private and communal garden areas. There would be opportunities here to soften the impact of the development through appropriate landscaping. This would help to reduce the somewhat looming presence of the existing high boundary fences. Over time, the boundary planting already on site should mature and also contribute towards this.

Residential Amenity

Paragraph 127 of the National Planning Policy Framework says that developments should create places that have a high standard of amenity for future users. Objective 9 of the Exeter Local Development Framework Core Strategy aspires to raise the quality of urban living through excellence in design. Saved Policy DG4 of the Exeter Local Plan First Review 1995-2011 states that residential development should ensure a quality of amenity that allows residents to feel at ease in their homes and gardens.

In respect of the standards of residential amenity offered to future occupiers of the proposed scheme, the Council would raise no objections on the quantum of internal or external space provided in the scheme. The internal spaces would accord with the Government's minimum standards set out in the 'Technical Housing Standards – Nationally Described Space Standards' document and the external spaces would comply with the requirements of the Council's Residential Design Supplementary Planning Document. A bin store is also provided.

Overall the standard of residential amenity is considered to be good. There are two bedrooms, to Flats 2 and 4, on the northern side of the building where light and

outlook would be somewhat compromised compared to other rooms but this is not considered so harmful to residential amenity as to warrant refusing planning permission. In respect of the ground floor bedroom to Flat 2, a glazed roof feature has been proposed to try to ensure the room is not overly gloomy.

A landscaping condition is recommended to ensure that the rear garden area would be appropriately planted. This would also help to clarify precisely how the private garden spaces to the ground floor flats would be demarcated from the communal space without resulting in imposing barriers creating an overly enclosed feel to the entire area. The proposal to provide low level shrubs rather than fences is welcome but further details are required.

In terms of the impact of the proposal on existing neighbouring properties, no significant harm is identified. The overall height and massing of the building is such that it would not have an overbearing impact on adjacent gardens. The first floor rear balconies would be screened by walls from the gardens in Dryden Road whilst being some distance away from those in Bovemoors Lane. Any first floor side windows would be either bathroom windows with obscure glazing or above eye-level and there only to provide additional light to rooms lit by other doors/windows.

Contaminated Land

In line with the advice from the Council's Environmental Health team, and to address Policy EN2 of the Exeter Local Plan, a condition is proposed to ensure that a full investigation of the site is undertaken, prior to the commencement of any construction works, to ensure that any contamination of the land is identified and remediated.

17.0 Conclusion

For the reasons given above, it is recommended that, subject to the satisfactory completion of a Section 106 Agreement to secure the developer contributions towards secondary education, planning permission be granted for the proposed scheme.

18.0 RECOMMENDATION

DELEGATE TO THE SERVICE LEAD (CITY DEVELOPMENT) TO GRANT PERMISSION SUBJECT TO THE COMPLETION OF A LEGAL AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), TO SECURE A FINANCIAL CONTRIBUTION TOWARDS SECONDARY EDUCATION, AND THE FOLLOWING CONDITIONS:-

1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: To ensure compliance with sections 91 and 92 of the Town and Country Planning Act 1990.

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 09 December 2020 (including dwg. nos. 267:1:01 Rev. H, 267:1:02 Rev. C, 267:1:03 Rev. B and 267:4:01 Rev. C) as modified by other conditions of this consent.

Reason: In order to ensure compliance with the approved details.

3) **Pre-Commencement Condition:** No development (including ground works) or vegetation clearance works shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The Statement shall provide for:

- a) The site access point(s) of all vehicles to the site during the construction phase;
- b) The parking of vehicles of site operatives and visitors;
- c) The areas for loading and unloading plant and materials;
- d) Storage areas of plant and materials used in constructing the development;
- e) The erection and maintenance of securing hoarding, if appropriate;
- f) Wheel washing facilities;
- g) Measures to control the emission of dust and dirt during construction;
- h) No burning on site during construction or site preparation works;
- i) Measures to minimise noise nuisance to neighbours from plant and machinery;
- j) Construction working hours and deliveries from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays; and
- k) No driven piling without prior consent from the Local Planning Authority.

The approved Statement shall be strictly adhered to throughout the construction period of the development.

Reason for pre-commencement condition: In the interest of the environment of the site and surrounding areas and to ensure the construction phase is managed in a way that reduces any harmful impacts on the locality.

4) **Pre-commencement condition:** 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 for pre-commencement condition: In the interests of the amenity of the occupants of the buildings hereby approved. This information is required before development commences to ensure that any remedial works are properly considered and addressed at the appropriate stage.

5) **Pre-commencement condition:** No development shall take place until details of the implementation, maintenance and management of a sustainable urban drainage scheme have been submitted to, and approved by, the Local Planning Authority. The scheme shall be implemented, and thereafter managed and maintained, in accordance with the approved details. Those details shall include:

- i. a timetable for its implementation, and
- ii. a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable urban drainage scheme throughout its lifetime.

Reason for pre-commencement condition: To ensure the satisfactory drainage of the development. This information is required before development commences to ensure that any drainage scheme is properly designed and implemented at the appropriate stage.

6) A detailed scheme for landscaping, including the planting of trees and or shrubs and the use of surface materials, shall be submitted to the Local Planning Authority and no flat shall be occupied until the Local Planning Authority has 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: Insufficient information has been submitted with the application and in the interests of visual and residential amenity.

7) In the event of failure of any trees or shrubs, planted in accordance with the landscaping 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 visual and residential amenity.

8) The flats shall not be occupied until full details of the bicycle store have been submitted to, and approved by, the Local Planning Authority. Thereafter, the bicycle store shall be constructed, maintained and retained in accordance with the approved details.

Reason: To ensure that safe and secure bicycle storage is provided in order to encourage sustainable forms of travel.

9) Prior to the installation of windows into the buildings, full details of the design/depth of the reveals shall be submitted to, and approved by, the Local

Planning Authority. The windows shall thereafter be inserted in accordance with the approved details.

Reason: In the interests of ensuring that design details result in a high quality finish and appearance to the building.

10) No part of the development hereby approved shall be brought into its intended use until the vehicular spaces and turning area, shown on Drawing Number 267:1:01 Rev G (received by the Council on 25 November 2020), have been provided in accordance with the approved details and thereafter maintained and retained for that purpose at all times.

Reason: To provide a safe and suitable access, in accordance with Paragraph 108 of the National Planning Policy Framework.

11) Prior to their use on site, samples of the brick and cladding materials shall be submitted to, and approved, by the Local Planning Authority. The development shall thereafter be constructed using these approved materials where relevant in the approved plans.

Reason: In the interests of visual amenity and ensuring good quality materials are used.

INFORMATIVES

1) In accordance with Chapters 1 and 2 of the Conservation of Habitats and Species Regulations 2017, this development has been screened in respect of the need for an Appropriate Assessment (AA). Given the nature of the development, it has been concluded that an AA is required in relation to potential impact on the relevant Special Protection Areas (SPA), the Exe Estuary and East Devon Pebblebed Heaths, which are designated European sites. This AA has been carried out and concludes that the development is such that it could have an impact primarily associated with recreational activity of future occupants of the development. This impact will be mitigated in line with the South East Devon European Site Mitigation Strategy prepared by Footprint Ecology on behalf of East Devon and Teignbridge District Councils and Exeter City Council (with particular reference to Table 26), which is being funded through a proportion of the Community Infrastructure Levy (CIL) collected in respect of the development being allocated to fund the mitigation strategy. Or, if the development is not liable to pay CIL, to pay the appropriate habitats mitigation contribution through another mechanism (this is likely to be either an undertaking in accordance with s111 of the Local Government Act 1972 or a Unilateral Undertaking).

2) In accordance with Paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.