

REPORT TO: PLANNING COMMITTEE
Date of Meeting: 29 March 2021
Report of: Director
Title: Appeals Report

Is this a Key Decision? No

Is this an Executive or Council Function? No

1. What is the report about?

- 1.1 The report provides Members with information on latest decisions received and new appeals since the last report.

2. Recommendation:

- 2.1 Members are asked to note the report.

3. Appeal Decisions

- 3.1 [20/0332/FUL](#) – 5 Gordon Road, Topsham. This was an application for the construction of an attached dwelling

The application site is located on the corner of the junction of Gordon Road and Haldon Close and is currently part of the garden of a two storey end-of-terrace Cornish unit built during the inter-war period. This scheme proposed to subdivide the plot and add a new two storey attached dwelling. There had been a previous unsuccessful attempt, in 2015 ([15/0570/FUL](#)), to obtain planning permission for a larger dwelling on this site. Across the wider estate, the Council had also taken a consistent approach in the past of refusing consent for schemes that harmed the distinctive layout and character of the area – particularly in relation to protecting existing building lines and open corners.

The Council refused planning permission for this scheme for three reasons. Firstly, it concluded that the proposals would present an unsympathetic and cramped form of development that would undermine the locally distinctive character, appearance, layout and spacious feel of the area created by corner plots in more substantial gardens. Secondly, it considered that the amount of private rear garden space (25 sq.m.) was well below the Council's minimum threshold and therefore would not provide an acceptable quality or quantity of amenity for future residents. It was concerned that this would result in future occupiers wanting to erect high boundary walls or fences around the land to the side to make up for this shortfall, thus compromising further the existing open character of this corner plot. Thirdly, part of the dwelling went beyond the rear building line of No. 5 Gordon Road and it was considered that this would have a looming, overbearing and overshadowing impact on the garden to that property, which would be detrimental to the residential amenities of existing and future occupiers of the adjacent property.

The Inspector noted that "the layout of the estate with the open corners appears deliberate and there is a clear distinction between the urban form, the open frontage and side gardens and the public realm". She concluded that a dwelling in this location, which would be narrower and deeper than No. 5 Gordon Road, would undermine the existing coherent street pattern. "As a separate dwelling of irregular proportions relative to the surrounding dwellings, the proposal would appear contrived and cramped and sited in a manner that would detract from the openness of the garden in its current form". The Inspector added that additional boundary fencing and car parking at the front of the property would result in a cluttered appearance within the street scene. She therefore agreed with the Council on these matters.

In relation to the amount of amenity space, the Inspector noted that there would be around 118 sq.m. within the plot. However, only 25 sq.m of this would be private rear amenity space. The Inspector accepted that as the side garden would be exposed to the public realm, "it would not meaningfully count towards the requirements for a suitable outdoor amenity area." She therefore

concluded that the proposal would fail to provide adequate living conditions for future occupiers owing to the shortfall and limited quality of external amenity space.

The Inspector agreed with the Council that the greater depth (2.5 metres) of the proposed dwelling, compared to its neighbour, would “be unneighbourly, affecting outlook, light and the enjoyment of both internal and external spaces” at No. 5 Gordon Road. Consequently, the scheme would fail to protect the living conditions of neighbouring occupiers.

Finally, the Inspector noted that the proposal would make a contribution to housing supply but this was given “minor weight” and did not outweigh the harm that had been identified. As a result, the appeal was dismissed.

3.2 [20/0367/FUL](#) – **Aprillo, 3 Pinn Lane.** This was an application for the construction of five dwellings.

The application site is a large garden space at the rear of No. 3 Pinn Lane, which is approximately 75 metres deep and 20-25 metres wide. It is currently a grassed area peppered with small trees and shrubs. To the north of the site runs the railway line linking Exeter to London Waterloo. To the south are the rear gardens of dwellings in Rews Meadows. To the east is another residential property known as 15 Rews Park Drive. To the west is No. 3 Pinn Lane, which is immediately behind No. 1, and is reached off an access lane immediately adjacent to the level crossing at Pinhoe Railway Station. This scheme proposed to accommodate five detached two-storey dwellings in this garden space with a new access and consequent revisions to the houses and gardens at Nos. 1 and 3 Pinn Lane.

The Council refused planning permission for 11 reasons, which were grouped under two main headings relating to design and amenity. The headline concern was that the scheme represented an overdevelopment of the site and would create a vehicle-dominated environment. However, in addition to this, the Council identified a significant number of other shortcomings in the proposals – including the impact of the new access and dwellings on neighbouring residential amenities, poor quality garden space, light and outlook for the new dwellings and the spatial relationship between one of the proposed dwellings and existing trees on the north-east boundary. The Council accepted that it did not have a five year housing supply and that this scheme would make a small but beneficial contribution to this. However, it was concluded that the scheme was so poor that any benefits arising from the proposal were significantly outweighed by the identified harm.

In assessing the scheme, the Inspector did not accept that the comings and goings arising from the new access would have a harmful impact on the residential amenities of adjacent properties nor did he agree that the relationship between No. 3 Pinn Lane and the nearest proposed dwelling would be unacceptable. However, on every other point, the Inspector did share the Council’s view. In dismissing the appeal, he stated that the proposal would “read as a poorly-designed vehicle-dominated development with an uncharacteristically stark, dense and incongruous form that would erode the verdant and open nature of the locality.” He gave “moderate weight” to the benefits of the scheme in light of the housing supply shortfall.

There is one additional point of note. The applicant’s agents submitted revised drawings in the appeal, which showed substantial extension and alteration to No. 3 Pinn Lane and altered the colour of the proposed dwellings so as to imply a change in the materials. No explanation was given as to why these drawings were submitted and it was not clear how they clarified or addressed any of the matters raised in the Council’s decision, if indeed they did at all. Instead, the agents argued that there was case law (the ‘Wheatcroft Principles’) to support alterations to a scheme at appeal and that the lack of a five year housing supply was the key reason why permission should be granted. The Inspector concluded that the drawings would “materially alter the nature of the appeal proposal to the extent that it would be different in substance from the scheme determined by the Council and would also necessitate a change to the description of development.” The appeal was therefore determined on the basis of the plans that were considered by the Council.

3.3 [20/1145/FUL](#) – **30 Thompson Road**. This was an application for the construction of new dormer to west elevation.

This end of terrace property at the junction with Wykes Road. The corner location means that it is fairly prominent within the street scene, including the top section of the rear of the building from parts of Wykes Road. The building, constructed from a mix of brick and render elevations, and with a hipped end to the roof, has a combination of features which are reasonably characteristic of the local area. The ridge of no. 30 is set down from the other properties within the terrace, reflecting the topography of the street. Planning approval had previously been granted ([18/0613/FUL](#)) for a single storey extension and loft conversion. The loft conversion included the extension of the roof from hip to gable and raising the ridge in line with the attached property.

This application sought permission to combine the previously approved works with the addition of the construction of a new flat roofed dormer window on the rear elevation of the property finished in hanging tile.

The main issue for this appeal is the effect of the proposed development on the character and appearance of the host dwelling and the area.

The Inspector noted that whilst the permitted changes would have some effect on the character of the dwelling, importantly, the permitted scheme would retain a sloping roof both back and front with a central ridge. The proposed dormer, even clad in materials to match the main dwelling, was considered by the inspector to be a sizeable unsympathetic addition which would dominate the rear roof form. Additionally as a result of the prominent position of the site and its visibility along Wykes Road, the Inspector gave substantial weight to the impact of the dormer on the character of the wider area. Stating that the dormer would not sit comfortably with the general sloping roof forms of other dwellings in the locality.

The agent had argued that a similar sized rear dormer could be constructed under permitted development. However, there was no Certificate of Lawfulness to clearly demonstrate that this would be the case. Even so, the Inspector stated that under a permitted development scheme the ridge would not be raised and therefore such a scheme would not be identical. The retention of the ridge under permitted development was a considerable preference and providing a noticeable difference. Whilst the ridge was not retained in the previously approved scheme, this scheme did not include a dormer and therefore was still considered by the Inspector to be preferable.

The inspector concluded that the combined weight of all the material considerations argued in favour of the proposal would not outweigh the identified harm that would result from the appeal scheme. Therefore the proposal conflicted with Policy CP17 of the Exeter City Council Core Strategy (2012) and saved Policy DG1 of the Exeter Local Plan First Review 1995 to 2011 (2005) which seek, amongst other things, to ensure that the volume and shape of structures relates well to the character and appearance of the adjoining buildings and the surrounding townscape. In line with this conclusion the appeal was dismissed.

3.4 [20/0057/FUL](#) – **22 Bagshot Avenue**. This was an application for a proposed rear and side extension, with construction of basement and internal alterations.

An appeal has been allowed for the construction of single storey side and rear extensions connected by a raised terrace and construction of a basement.

The application site is a semi-detached property located on the junction of Bagshot Avenue, Rivermead Road and Egham Avenue. As a corner plot, the front, rear and side elevations of the property are all publically visible. The two storey red-brick building is typical of the design of dwellings within its locality and features full height bay windows on the front (northeast) and side (southeast) elevations. This application sought permission for the construction of single storey side and rear extensions connected by a raised terrace and the construction of a basement underneath the rear extension. The extensions proposed were contemporary in style with a mono-pitch roof to the rear extension, angular forms and finished in white render, zinc and large sections of glazing.

The Council refused the planning permission as it was considered that the rear and side extensions, by virtue of their form, massing and external finish, would be incongruous additions to the property which would relate poorly to the character of the existing property and lacked justification for the design approach taken. The open character of the corner plots on this junction was also considered important to the character of the street scene, which would be degraded by the introduction of the side extension. The Council accepted the introduction of the basement and raised terrace, as a result of their positions they would not be detrimental to the amenity of adjoining properties.

The Inspector considered that although the side extension would project beyond the common building line within Rivermead Road, as a result of its modest scale, set back from the boundary, similar position to an existing shed and retention of the bay window the side extension would not be harmful and would retain the open character. The Inspector stated that although the rear extension would be visually prominent, it too was not considered to be visually dominant as a result of its modest scale with sufficient set back from the boundaries and side elevation of the property. The mono-pitch and choice of materials was justified by a mix of roof forms and materials within the sites locality. As such the Inspector considered the design neither atypical of the area nor harmful to the existing property. For these reasons the Inspector considered the proposals compliant with Objective 9 and Policy CP17 of the Exeter City Council Core Strategy and Policy DG1 of the Exeter Local Plan First Review and the appeal was allowed.

The Inspector has imposed conditions regarding time limits, details and drawings compliance and submission of materials. In addition the Inspector has imposed a condition regarding construction hours as a result of concerns raised by objectors.

3.5 **19/0952/OUT – Land off Tithebarn Lane.** This was an application for a proposed residential development of 10 homes with new vehicular access to Tithebarn Lane.

This triangular site covers approximately 0,4 ha and is situated between a residential development of 350 dwellings to the west and the M5 boundary vegetation to the east. The site is within the Strategic Allocation of Monkerton.

The main issues are the effect on the character and appearance of the area and the effect on living conditions of future occupiers of the site.

The application was refused because the proposal; is contrary to NPPF section 12, Objectives 9 and Policy CP4 and CP17 of the Exeter Local Development Framework Core Strategy, Policies DG1, DG4, and EN5 of the Exeter Local Plan First Review 1995-2011, and Residential Design SPD; because the proposed number of dwellings would:

- i) result in either a development with detrimental noise levels from the motorway or if mitigated a cramped form development behind a noise barrier with potential overbearing impact from the noise barrier or restricted use of the site;
- ii) be detrimental to the residential amenity of future occupants of the proposed dwelling, including ambient noise levels from the motorway which have not been adequately addressed or mitigated,
- iii) if the noise mitigation is created as proposed in the noise report as a vertical wall, it will have a detrimental impact on the character and appearance of the surrounding area, and an overbearing impact on future occupants of the development;
- ii) have a poor relationship with neighbouring residential dwellings, including impact on boundary vegetation with adverse impacts on the residential amenities;
- iv) be contrary to good design and with respect to the site constraints result in overdevelopment
- v) on a whole not outweigh the detrimental impacts of this development.

The refusal and dismissal of the appeal was taken by recognising both the absence of a 5 year housing supply and that the site is within the Strategic Allocation of Monkerton. The reasons the inspector dismissed the appeal was in line with the arguments presented in officer report.

The inspector writes in his reasons to dismiss the appeal that:

- “An acoustic impact assessment (AIA) indicates that an adequate internal acoustic environment can be achieved through careful design of the dwellings. However, to provide acceptable noise conditions in the external living spaces, further mitigation would be required.”
- “The AIA suggests that this could be provided through a 7m vertical screen or bund along the upper ridge of the site. It may be that other solutions are available following detailed consideration of the layout, but no particular proposals are before me.”
- “It may be that a softer, landscaped bund could be used to provide the mitigation, but it would still be of considerable height and there is no substantive evidence around the required land take or its appearance. In the absence of a detailed scheme, I, therefore, conclude that the necessary noise mitigation would have an adverse effect on the character and appearance of the area ...”
- “In the absence of such evidence, I conclude that the proposal would result in harmful living conditions to future occupiers.”

The inspector states that the proposal is in conflict with the development plan and that no material considerations indicate otherwise than a decision in accordance with it. He therefore concluded that the appeal should be dismissed.

4. New Appeals

4.1 [19/1647/FUL](#) – Land Off Ikea Way, Exeter

Construction of 200 dwellings, means of access, public open space and associated infrastructure (Amended Scheme).

4.2 [20/1036/FUL](#) – 36 Sheppard Road

Construction of 2 bed dwelling house with parking and associated works.

Bindu Arjoon

Director

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

Background papers used in compiling the report:

Letters, application files and appeal documents referred to in report are available for inspection from: City Development, Civic Centre, Paris Street, Exeter

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