

REPORT TO: PLANNING COMMITTEE
Date of Meeting: 21 February 2022
Report of: City Development Strategic Lead
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 [20/1380/OUT](#) - **Land at Redhills, Exwick Lane** - *Outline planning application for up to 80 dwellings and associated infrastructure (All matters reserved except for access).*

The application for up to 80 dwellings was made in outline with all matters apart from access being reserved. The Inspector treated all details within the site shown in the submitted plans as indicative.

The 4.1 hectare site comprises of open fields currently used for horse grazing and is at the western uppermost end Redhills, between this road and Exwick Lane. An existing footpath is located to the eastern edge of the site, which backs onto properties in Cheltenham Close. The southern boundary of the site is bounded by Newbery scrap yard on the western side; an existing mature wooded area and behind properties in St Peters Mount. The proposed vehicular access to the site would be from a newly constructed one onto Redhills. Pedestrian cycle access points to St. Peters Mount and Exwick Lane are included. Since the original submission, the applicant included highway improvements to Redhills with widening and the provision of a new footway. The creation of the proposed new footway on Redhills would result in the remodelling of an existing bank and removal of existing mature trees.

The scheme proposes a total of 35% affordable housing. This would result in 52 market houses and 28 affordable units being provided, if the full 80 units were approved at the reserved matters stage.

The illustrative layout indicates that there would be a central main road running through the site along the ridge with the sole vehicular access from Redhills. The proposed dwellings would essentially front onto this access road in most instances creating properties with either north facing or south facing gardens. The illustrative layout includes the provision of two Local Areas of Play (LAP) and a Local Equipped Area for Play (LEAP) within the site. In addition, an area of open space is proposed to be located in the southern eastern corner of the site, which will also provide for a storm attenuation basin.

The application was refused for three reasons paraphrased:

- 1) *The development would have a significant impact on the rural character of the area and landscape setting of the city by developing and urbanising a prominent ridgeline that will be visible from surrounding parts of the city. It will have a significant impact on the rural character of Redhills through the creation of an access road and necessary visibility splays, which will detract from the rural approach to the city from the west.*
- 2) *In the absence of a completed planning obligation (Section 106 of the Town and Country Planning Act 1990 (as amended) in terms that are satisfactory to the Local Planning Authority which makes provision for the following matters Affordable housing, Open space provision - play equipment, maintenance arrangements and public access in perpetuity; Off-site play provision contribution; Education contributions; GP facilities contribution; Footway Improvement contribution; Sustainable Travel Planning.*
- 3) *Insufficient ecological mitigation justification has been submitted to outweigh the significant harm to the wildlife and biodiversity as a result of the loss of a substantial section of hedge bank fronting onto Redhills and Exwick Lane and the trees and hedgerows within and along the boundaries located within a Site of Local Interest for Nature Conservation.*

A unilateral undertaking was submitted by the Appellant which overcame the second reason for refusal. The Inspector therefore agreed that the main issues were the effects of the development on: a) the character and appearance of the area, including the landscape setting of Exeter; and b) biodiversity.

a) Character and appearance of the area

It was common ground the site falls within the locally defined landscape setting of Exeter subject of saved Policy LS1 of the Exeter Local Plan First Review 2005 which was subsequently refined for the purposes of the Exeter City Council Core Strategy 2012 and carried forward in Policy CP16, and that saved Policy LS1 should be accorded limited weight and that Policy CP16 is the more recent and up to date and carries greatest weight.

Saved Policy LS1 seeks to tightly restrict development based on type, no such restriction exists within Policy CP16. Therefore, whilst the scheme would directly conflict with saved Policy LS1 given that it would not involve a type of development permitted, the same direct conflict would not arise in relation to Policy CP16.

Policy CP16 is itself applied within the context of the vision and spatial strategy set out within the Core Strategy. These seek to safeguard and to steer development away from the hills to the north and northwest of the city. In this are informed by a 2007 study which indicated limited capacity for development. Whilst the general strategy is therefore to prioritise development of sites outside the landscape setting of the city, development of sites within it is not precluded by Policy CP16. In this regard consideration of the scheme's specific effects on local distinctiveness and character is required in line with Policy CP16. In his assessment of the scheme specific effects the Inspector concluded: The site occupies a position on the suburban/rural fringe. The landscape setting of the city provides a green setting and containment of the developed area, and intrinsic quality. The extent to which these values and functions are realised and fulfilled in large part depends on the ability of the public to experience and perceive them. The Inspector agreed with the appellant and considered that within its context the site forms a small, detached part of the landscape setting described as 'hills to the north and northwest of the city'.

He further considered that the site itself occupies a series of small fields which are unremarkable, and none is publicly accessible. The topography of the site limits the extent and nature of views of it. The perceived prominence of the site, including its presence on the skyline varies by location and he concluded that the site makes no more than a negligible contribution to the backdrop of the city in long views and the effect of development on those views would be negligible, and there is no clear sense that the site provides a definite edge to the developed area of the city.

The Inspector considered that insofar as the site lies within the suburban/rural fringe, some sense of transition is perceived when travelling past it, however the role played by the site itself is modest and in both directions it is likely to be undergo change if a housing scheme on the scrapyard is implemented. Development of the Redhills frontage suggests a typically inward-looking suburban layout, reserved matters can secure a design more responsive to the character and layout of existing housing in Nadderwater. Though the access would remain a pronounced feature, the majority of the roadside hedge would be retained, and a positive response could be achieved. The pavement between the site and St Peter's Mount would provide a stronger physical connection, accepting that clearance of trees is likely to occur along the west side of Redhills whether the appeal is allowed or not, the character of the lane would not be fundamentally changed by works to slightly widen the road, subject to careful handling of the reserved matters and off-site works, a sense of transition, physical separation, and difference in character between St Peters Mount and Nadderwater should remain clearly perceptible. As such a sense of suburban-rural transition could be maintained.

The Inspector considered that Exwick Lane retains a strongly rural character along the section of it bordering the site and that though it is apparent that the site frontage is largely free from development, the site again plays no more than a modest role given that differences in ground level limit views into it. Exwick Lane he concluded would otherwise provide a more meaningful and perceptible edge to the developed area of the city than exists at present. He concluded that change to the site's character would not be unacceptable.

The Inspector did not agree that any loss of tranquillity would occur as most of the immediate context could not be reasonably described as tranquil, nor that development would form a source of artificial light which would increase its visibility at night. Lighting otherwise remains to be considered within the context of the reserved matter of appearance, and would require specification to limit adverse effects on wildlife. The latter would necessarily reduce any broader effects of light spill.

Paragraph 174 of the 2021 NPPF was referenced in the reasons for refusal, it was common ground that the site does not form part of a defined 'valued landscape'. Paragraph 174 otherwise indicates that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. The Inspector concluded he was satisfied that the development would not conflict with paragraph 174.

On the dismissed appeal at Pennsylvania Road he considered that the location and the character of the immediate contexts differed, and given the large area occupied by the landscape setting of the city varies in character, the contribution that individual parts of it make to it do too, and he therefore assessed the appeal scheme on its own merits. On landscape matters the Inspector concluded that the development would not have an unacceptable effect on the character and appearance of the area, including the landscape setting of Exeter and whilst he acknowledged the existence of conflict with saved Policy LS1, the scheme would not in his view conflict with Policy CS16 or be incompatible with the vision and spatial strategy set out within of the Core Strategy.

b) Biodiversity

Part of the site falls within a Site of Local Interest for Nature Conservation (SLINC), protection for which is provided by saved Policy LS4 of the LP. SLINC's are also referenced within the supporting text of Policy CP16, which again overlaps the earlier policy. The Inspector considered that whilst both policies seek to limit harm, saved Policy LS4 sets the overall assessment within the context of 'need' for development. This is not clearly defined and makes the policy somewhat more restrictive in nature than Policy CP16 to which the Inspector attached greater weight based on its more recent date.

The Inspector noted the absence of any up-to-date evidence justifying the SLINC designation, but also that an Ecological Impact Assessment carried out by the appellant has confirmed that the site hosts a breeding population of dormice, which are a European Protected Species. In this regard the hedgerows within the site are of importance as they provide a key habitat. The site additionally provides a general resource for bats and birds and may support reptiles. As such the site clearly holds some ecological value.

The Inspector further noted the appellants proposed mitigation strategy, which crucially includes replacement planting of hedgerows and the provision of buffer zones, alongside additional enhancement works. The Inspector noted Natural England's comments and was satisfied that mitigation can be secured by suitably worded conditions and that being so, the effects of the development on dormice and other wildlife would not be unacceptable. Following the appellant's statement that trees on the verge at Redhills would be removed whether the appeal is allowed or not, he gave weight to that position and noted that those trees had not been identified by Natural England as having high ecological value. In this regard, he considered the implementation of offsite works provides the opportunity for improved planting, thus potentially enhancing the available habitat for dormice and other species.

The likely significant effect on the integrity of the Exe Estuary SPA and Ramsar site and Pebblebed Heaths SPA and Special Area of Conservation requires an Appropriate Assessment and Natural England has confirmed that it raises no objection to the development subject to mitigation being secured in line with the South- East Devon European Site Mitigation Strategy, which applies to all the above European sites. The Inspector concluded in matters of biodiversity that any adverse effects of the development could be satisfactorily addressed, thus meeting the requirements of Policy CP16 also that there would also be no clear conflict with saved Policy LS4 and the proposals would therefore comply with the development plan taken as a whole in this regard.

Obligations

The appellant offered a unilateral undertaking to secure the provision of:

- 35% on-site affordable housing, satisfying the requirements of Policy CP7 of the CS.
- Provision and subsequent management of on-site public open space,
- A contribution towards the cost of upgrading a nearby off-site play area and access to it from the site. Each is in accordance with Policy DG5
- Contributions towards the cost of works to enlarge and provide necessary additional capacity within local GP facilities, in accordance with the provisions of Policy CP18
- Contributions to provide additional secondary school places, in accordance with the provisions of Policy CP18
- A contribution covering the cost of upgrading the existing substandard footway on the east side of the site, again in accordance with Policy CP18

- A contribution is secured to cover the cost of implementing of the scheme travel plan, the latter required in accordance with paragraph 113 of the Framework

The Inspector was satisfied that the obligations above, as contained within the UU, pass the tests set out within Section 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework (the tests).

A contribution was additionally sought by the RD&E NHS Foundation Trust for gap funding of hospital services during the first year of occupation. In considering this case on its merits the Inspector summarised that; the Council considers that the contribution fails the tests, and though the appellant agrees, the UU has nonetheless been drafted to secure payment of the contribution. The Council's concerns include the lack of a clear policy basis for the contribution, lack of certainty and accountability in relation to how it would be spent, and lack of clarity as to why it should be required at all.

The Trust has provided evidence showing that the issue is not exclusive to Devon, and that it has been considered variously at appeal. This includes recently in relation to Ikea Way in Exeter, where on that occasion an Inspector considered that a contribution would pass the tests. He further summarised that the funding is calculated based on the previous year's population and expenditure, meaning that allowance is only made for population growth the following year, this can potentially lead to a shortfall in funding for services as future occupants of the development are likely to visit the local hospital should the need arise, a link can be made between the two.

In reaching a conclusion the Inspector considered that the assumption of a 12 month gap in funding appears generalised, as occupation of dwellings within the development could occur at various points within any given 12 month period. It also remains the case that the contribution would not be used to pay for anything specific, but would be absorbed into the wider budget. Whether the contribution would be fairly and reasonably scaled, as to the relationship between its use and the development are therefore uncertain. That being so, he could not find that the contribution passes the tests, and consequently I could not take it into account. Given that the requirement for the contribution was not endorsed by the Council, this finding make no difference to the Inspectors decision.

Conclusions

The appeal was allowed as the Inspector had concluded that the proposals comply with the development plan taken as a whole, including those policies referenced in the reasons for refusal, and the National Planning Policy Framework.

Given the Inspectors conclusion that the proposals are not in conflict with the policies of the Development Plan he did not consider it necessary to consider whether or not the Council can demonstrate a 5-year supply of deliverable housing sites.

The Inspector stated that in considering the appeal on its own site-specific merits, the suggestion that allowing the appeal will provide a precedent for further development does not attract weight.

The decision is subject to conditions including standard conditions relating to compliance with submitted details, submission of reserved matters and time limits. The Inspector also imposed conditions to safeguard and enhance the ecological value of the site including during construction phase, drainage, construction management plan, waste audit, contamination remediation, energy efficiency. Cycle and car parking and charging, including club car and cycle provision, are secured to be provided in detail at Reserved Matters stage.

The Appeal was allowed as the Inspector did not consider that the proposals conflicted with the Development Plan.

3.2 [20/0596/OUT](#) - **Land at Pennsylvania Road, Exeter** - *Resubmission of outline application for residential development for up to 26 dwellings (All matters reserved except access).*

The key issues were the effect of the proposed development on the character and appearance of the Landscape Setting area, the effect on biodiversity and whether safe access for pedestrians could be provided.

The Inspector concluded that the proposed development would conflict with Policies CP16 and LS1 (in so far as it requires proposals to maintain local distinctiveness and character), as it would encroach into the countryside beyond the belt of trees to the north of Stoke Valley Road, which form a natural boundary and clearly defined limit to the urban area. The site itself has a strong rural character and is visually prominent. The proposed development would have a suburban character and be visible in long distance views from the surrounding countryside. This would cause substantial harm to the rural character of the area, as would removal of 40m of hedgebank along Pennsylvania Road to create the site access. The activity and lighting associated with the proposed development would further add to its intrusive nature and detract from the tranquillity of the area. Introduction of a small housing estate in a SLINC connected to a SNCI would change the natural character of the area in terms of it being of interest for nature conservation.

The Inspector also concluded that the proposed development would conflict with Policies CP16 and LS4, as it would cause significant harm to biodiversity. The hedgerows to the east and west are species-rich and provide habitat for dormice, a protected species. The gap in the mature hedgerow/hedgebank created by the site access would disconnect it from the network of hedgerows in the area, adversely affecting biodiversity. There was a lack of information on how the proposed hedgerow translocation would be carried out, which would appear to require a substantial amount of excavation, due to the levels difference between the site and road. It would not be appropriate to condition this, as the works are fundamental to providing access to the scheme. The proposed hedgerows within the scheme would form the boundaries of houses, so would not compensate for the loss of the existing hedgerow/hedgebank, as their long-term protection cannot be guaranteed. Surveys were not carried out for all potential protected species identified in the Preliminary Ecological Appraisal, therefore an accurate ecological baseline cannot be established to measure biodiversity net gain against and the biodiversity net gain report can be given limited weight accordingly. This report also assumes that the proposed hedgerows will reach moderate condition after 10 years, significantly less than the 20-30 years a hedgerow requires to reach maturity. Lighting and domestic cats would detract from any net gains further. Policy LS4 only permits development that would harm a SLINC if the need of the development is sufficient to outweigh nature conservation considerations, and harm is minimised with appropriate mitigation/compensation measures. This was not demonstrated in this case.

The Inspector also concluded that the proposed development would conflict with Policies CP9 and DG1, as it would not provide safe access to the site for pedestrians. The proposed footway along Pennsylvania Road would narrow to 1.2m for approximately 60m, which would not allow an ambulant person to walk side-by-side with someone in a wheelchair. The same can be said for someone with a child's buggy and another child walking beside them. Given the attraction of Duryard Valley Park, it is likely that people will pass each other on the footway leading to people stepping onto the carriageway which will be unsafe, particularly as the carriageway will need to be narrowed to accommodate the footway and is a well-used route. The alternative route via the bridleway would not provide

suitable or safe access, due to the absence of lighting, which cannot be provided as the bridleway is in third party ownership.

The Inspector disagreed with some of the sites included in the Council's Five Year Housing Supply Statement (September 2021) and concluded that the Council has a modest shortfall of 220 dwellings (this is the equivalent of a supply of 4 years and 8 months). The Inspector disregarded the November Statement submitted as part of the appeal. Despite the 'tilted balance' applying in accordance with the presumption in favour of sustainable development in the NPPF and the sustainability benefits of delivering new housing (albeit a modest amount), the Inspector concluded that these did not outweigh the policy conflicts above which should be afforded substantial weight. The proposal would be contrary to the development plan as a whole.

Costs were awarded to both parties: The appellant did not follow the correct procedure/guidance for preparing the Unilateral Undertaking and the Council submitted further evidence on 5 year housing land supply after the appeal hearing had closed.

The Appeal was dismissed as the Inspector considered that the proposals conflicted with the Development Plan

3.3 [21/0517/LED](#) - 99 Howell Road - *Use of property as House of Multiple Occupation (HMO) (Sui Generis) for up to 12 persons*

The application relates to a detached three/two storey Victorian villa in large grounds, probably built around the 1840s. It is located in the St Davids Conservation Area and within the St James Neighbourhood Plan area. In April 1977, planning permission was granted for the change of use of the building from bedsits to form an ex-prisoners hostel. Three conditions were added, two of which are worth noting. One stated that the building could not be occupied by more than 15 people including the Warden and staff. The other stated that the consent was personal to the Stonham Housing Association Limited (although this company later became Home Group). In 2013, this facility was relocated to a new building leaving these premises empty. The property has not been in use since this date.

The applicant sought to argue that the established lawful use of the property is as a large House of Multiple Occupation (HMO) for up to 12 persons. The evidence provided to support the claim relied heavily on an opinion given by a QC from No. 5 Barristers Chambers. His central argument, based on a description of the hostel in an essay from a 1977 academic journal and various other small pieces of information, was that the building had been used as a series of bedrooms with shared facilities, which in effect was an HMO.

The Council refused to issue a certificate for three reasons:

- It argued that when Stonham Housing Association Limited left the site in 2013 the planning permission fell away and the building was therefore left without a use. This would mean planning permission would be required for any subsequent use of the property. The Planning Inspector accepted this point.
- It pointed out that Paragraph 005 of the Government's Planning Practice Guidance on Lawful Development Certificates states that "an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates." The Council acknowledged that the applicant had sought confirmation that the lawful use of the building is as a large HMO for up to 12 persons. However, the case to support that number had not been made. Whilst a condition on the 1977 consent had limited overall numbers to 15, no information had been provided in this submission on how many occupiers had typically resided in the

building and/or whether these numbers had changed over time between 1977 and 2013. The Council therefore concluded that it had not been clearly established that the existing lawful use of the building was as described. The Inspector accepted the Council's position.

- The Council also highlighted that the building had not been issued with an HMO licence in the past because the premises had been run by a registered social landlord. Schedule 14 of the Housing Act 2004 excludes properties run by registered social landlords from the definition of HMO. In addition, it pointed out that the Council's Environmental Health team had inspected the property as a food business/premises every two years from 1992 until the hostel relocated. It was providing breakfast and cooked evening meals to its residents. It was argued that this was not a feature that would be associated with the general character of "a normal HMO", which was the use sought by the applicant. The Inspector accepted the Council's case stating that whilst there may be some characteristics of the hostel use that were similar to an HMO, that did not in itself demonstrate that the building was in lawful HMO use.

In dismissing the appeal, the Inspector concluded that the Council's refusal to grant a certificate of lawful use had been well-founded.

3.4 [21/0225/FUL](#) – Land Adjacent to 73 Lloyds Crescent - *Change of use of public land to private garden.*

The appeal site concerns an embankment of undeveloped Council-owned land that lies alongside Pinhoe Road 50m SE of its junction with Thackeray Road. The plot of land is bordered by a brick boundary wall on its Pinhoe Road and Lloyds Crescent footpath aspects, and is inaccessible to the public – it contains some trees and shrubs and primarily acts as a landscaped break or buffer zone between a busy highway and residential properties in Lloyds Crescent and beyond.

The proposal was the subject of an extensive pre-application enquiry where the department consulted other services in the Council including the Estates team in addition to local councillors, and advised that if an application was allowed at appeal it would still be unwilling to sell the land in question.

The Council refused the application on the following basis; The proposal is contrary to Objectives 7, 8 and 9 and Policy CP17 of the Exeter Local Development Framework Core Strategy, Policies L3 (a), L3 (b), DG1 (b), DG1 (c), DG1 (h) and DG4 (a) of the Exeter Local Plan First Review because by virtue of its size, position, layout and design the proposed development would:

- (a) result in the loss of public land that fulfils a valuable amenity role;
- (b) reduce public ownership and control of green infrastructure assets alongside a major arterial highway and the Air Quality Management Area (AQMA) of the city; and,
- (c) create a defensive urban environment detrimental to the open landscaped layout, character and appearance of the existing street scene and local area.

The inspector considered the main issue to be the effect of the proposal on the character and appearance of the area. In a brief assessment the proposed scheme was found to retain the soft landscaped aspect of the street scene in Pinhoe Road and therefore to have an acceptable impact on the character and appearance of the area. It was considered necessary to include conditions on the planning permission to clarify the landscaping design/ approach and to remove permitted development rights in order to maintain the undeveloped character and appearance of the land.

Therefore the appeal was allowed and planning permission was granted with conditions.

3.5 [20/0523/FUL](#) – **3 Longbrook Terrace** - *Change of use from small HMO (C4 Use class) to large HMO (Sui Generis), 3 storey rear extension and associated alterations.*

The site consists of a three storey mid-terraced 6 person House in Multiple Occupation (HMO)(C4 Use Class) with small frontage facing the street and an enclosed rear courtyard containing ground floor and two storey tenement extensions. The building is locally listed in the Longbrook Conservation Area and lies in the Article 4 (HMO) Area.

The application ref. 20/0523/FUL was refused by the Council for the following reasons:

- the intensification of House in Multiple Occupation (HMO) land use within this part of the city would further imbalance the social mix of the local community and exacerbate an overconcentration of this property type within the area;
- the width, footprint, external material finishes and overall design of the proposed extensions would be unsympathetic and detrimental to the character and appearance of a locally listed building and the Longbrook Conservation Area;
- the proposed development would not provide satisfactory living conditions for future occupants; and,
- the height, massing and side windows of the proposed extension would together cause detrimental overshadowing, overbearing and overlooking impacts upon adjoining residential properties.

The planning inspector considered the key planning issues of the case to be:

- the suitability of the site for the proposal having regard to the development plan's approach to the supply of Houses in Multiple Occupation (HMOs);
- whether or not the proposal would preserve or enhance the character or appearance of the Longbrook Conservation Area (the CA); and,
- the effect of the proposal on the living conditions of existing, future and neighbouring residents with reference to light, outlook, privacy and space.

On the first issue the inspector recognised the high concentration of HMOs in the Article 4 Area but noted the proposal would not actually increase the amount of HMOs in the area but rather modestly increase the scale and intensity of an already established HMO. In this sense the proposed change of use to create a large HMO with two additional occupiers has an "inconsequential effect on the housing mix and balance of population within the locality" according to the inspector's analysis. It was added that the proposal would not itself prevent the property from being converted back into a dwelling house (C3) in future.

With respect to the three storey rear extension, the inspector argued that whilst the main frontage of Longbrook Terrace contributes positively to the character and appearance of the conservation area with its traditional, uniform and elegant appearance, the rear aspect of the terrace is a "markedly more ad-hoc and utilitarian affair, showing a somewhat disordered range of design and materials, including uPVC". The proposed extension with a pitched roof design was considered more sympathetic than other existing flat-roofed extensions in neighbouring plots, and that given the lack of public view the historic value of the terrace would be maintained.

The proposed extension design with the use of plastic windows was deemed consistent with Policies C1 C3, DG1 and CP17 on this basis. The Inspector made the point that because the proposed use was Sui Generis the Householder's Guide to Extension SPD carries limited relevance.

Lastly the external rear amenity space was seen as small but comparable to others in the terrace and suitable for such HMO usage. The new bedrooms proposed were assessed to provide sufficient space, light and outlook, whilst the addition of two residents was not considered to significantly alter existing levels of security or the potential for crime in the property or locality. The rear of Longbrook Terrace already has high levels of mutual overlooking and whilst the proposed extension would lead to some adverse effects on neighbouring amenity the impacts were deemed acceptable given the “already intrinsically constrained and intimate environment”.

With regards to suggested conditions for the planning consent, the inspector concluded the matching materials condition would not be appropriate whereas the condition restricting construction activity would be in this particular case.

Costs Decision

- The appellant argued the Council behaved unreasonably as the refusal was inconsistent with a decision for a similar proposal at 1 Longbrook Terrace in 2016. Further that the evidence submitted in the application was not fully considered, that the case officer sought to omit Members from the decision-making process, and that the Council failed to comply with Paragraph 38 of the NPPF.
- The inspector argued the Council had explained with detailed reasoning in the officer report why the 2016 decision was flawed and added it should not be tied to previous decisions ‘it demonstrably considers defective’. Furthermore the inspector’s view was that the Council substantiated the reasons for refusal in the report and based on the email correspondence sought to engage proactively with the applicant during the process.
- Accordingly it was concluded that the Council’s decision and the way it was made were not unreasonable and an award for costs is not justified on this basis.

In summary, the appeal was allowed but the application for costs was dismissed.

3.6 [**19/1647/FUL**](#) – **Land Off Ikea Way** - *Construction of 200 dwellings, means of access, public open space and associated infrastructure (Amended Scheme).*

The site comprises part of the Newcourt Strategic Allocation within the Exeter Core Strategy which designates that area for circa 3,500 residential dwellings and 16 hectares of employment land. The 6.7 hectares site is located to the south of the A379, east of the IKEA car park, west of the railway line/Old Rydon Lane and north of existing properties in Bunker Square, Mulligan Drive and Old Rydon Close. The main vehicular access to the site is from Ikea Way to the south of the Ikea car park.

During construction of the adjoining IKEA store, the site was used to store excess ground required for levelling of the IKEA site, inflating the levels across the site. Outline planning permission (with all matters reserved except access) for “the erection of between 180-220 residential units together with associated access, car parking, landscaping and associated works” was approved on the site on 26th November 2014 (ref 13/4524/01). This included provision for a MUGA area and was granted in parallel with the IKEA store. Full planning permission for “boundary treatment, including retaining wall and earthworks comprising the removal of earth and re-profiling of ground levels across the site” (ref 16/1129/FUL) was granted on 2nd December 2016. This included the storing of up to 100,000m³ of excavated material from the IKEA store on the site.

The appeal proposal was for construction of 200 dwellings, means of access, public open space and associated infrastructure. The scheme was amended twice during consideration. At the time the application was refused consent the Council was unable to demonstrate a 5 year housing land supply. The NPPF applies a presumption in favour of sustainable development which would normally 'tilt' the determination towards permission unless other material considerations indicate otherwise. However a clear justification to refuse permission was considered to be warranted as granting permission would "significantly and demonstrably outweigh the benefits". In summary, it was considered that the proposed layout as submitted would have a detrimental impact on the character and appearance of the area particularly in respect of the poor siting of the public open space/MUGA, dominance of parking areas and detrimental impact on existing and future residents. The layout proposed including 200 dwellings appeared overdevelopment and was considered to exceed the maximum feasible density taking into account site constraints and impact on the local area as defined within Local Plan Policy DG4. The scheme was not considered to meet the necessary requirements as set out in the NPPF, National Design Guide, Building for Life, Local Development Plan policies or the Residential Guide SPD. Whilst the number of proposed units was not objectionable in itself the design approach as submitted did not allow sufficient opportunity for the necessary space requirements to achieve a well design scheme as required by the NPPF and associated design guidance both at a national and local level . Whilst the positive benefits of 200 dwelling (including the 35% affordable housing) was clearly recognised as a positive, the negative impact the development would create in terms of the poorly designed layout was considered to "significantly and demonstrably outweigh" the benefits.

The application ref 19/1647/FUL was refused under delegated powers on 4 December 2020 following agreement at Delegation Briefing. The application was refused for three reasons:

1. Design and layout deficiencies
2. Outstanding concerns on technical matters, and
3. Lack of S106 agreement to secure contributions for a number of matters

A Unilateral Undertaking was offered by the applicant ahead of the Hearing to address the third reason for refusal. Additional technical documents were also submitted with the appeal to address some of the technical matters in the second reason for refusal.

The Inspector summarised the 3 main issues as:

- a) Whether the proposal would result in a well-designed place;

In determining the appeal the Inspector considered the six parts of the reason for refusal given in respect of design. The Inspector opens his consideration of Design matters by stating "The National Planning Policy Framework (the Framework) sets out the importance of high quality design in new development. It states that good design is a key aspect of sustainable development and creates better places in which to live and work. Policies and decisions should also aim to achieve healthy, inclusive and safe places which, amongst other things promote social interaction, opportunities for meetings, and provide the social and recreational facilities for community needs. Access to a network of high quality open spaces are stated to be important for the health and well-being of communities."

However the Inspector did not agree with the Councils objections on the grounds that areas of the site would be car dominated or that poor space given to landscaping in streets would fail to alleviate this effect. He did not agree that the lack of enclosure

would result in unacceptable loss of townscape quality as the effect was considered localised. He considered that potentially inadequate landscape buffer could be improved by reducing garden sizes, and did not conclude that the lack of private space for residents of flats was reason to refuse the application. He did not consider that the location of the MUGA, alongside the railway line boundary, was unacceptable. The Inspector did agree with the Council the relation to proposed plots 197-200, which were close to and substantially higher than dwellings on the neighbouring land resulting in an awkward visual relationship. He concluded in this regard that “At this key junction with surrounding development, in a location highly visible in the public realm, the proposal would fail to respect its context ... the proposal would conflict with those aims of LP Policy DG1 that seek to ensure that development is fully integrated into the surrounding townscape, with heights that relate well to adjoining buildings and spaces. This policy, while of some age, sets out criteria to establish how well-designed development should be judged. In that respect, it is consistent with the Framework, insofar as it seeks to create high quality places.”

Whilst the Inspector agreed that the scheme would include more than 10% of the site as open space he agreed with the Council that the proposed spaces either side of the access road did not provide any meaningful opportunities for children’s play or would provide restful places concluding it was questionable that these spaces would be used for sitting out either. He concluded his consideration of design matters in paragraphs 22 and 23 of the decision letter thus:

“For these reasons, the proposal would conflict with those aims of LP Policy DG1 that seek to ensure that development is fully integrated into the surrounding townscape, with heights that relate well to adjoining buildings and spaces. This policy, while of some age, sets out criteria to establish how well-designed development should be judged. In that respect, it is consistent with the Framework, insofar as it seeks to create high quality places.”

Overall, while sufficient quantity of overall space has been provided, there are significant shortcomings in terms of play opportunities for young children, and the quality of the casual recreation opportunities, particularly given the inability of the space at the entrance to link effectively with the adjoining space. Together with the awkward visual appearance where the neighbouring developments would meet, this means that the proposal would not be sympathetic to the surrounding built environment, nor create an inclusive, accessible place. It would not be visually attractive and would fail to promote healthy living and well-being, with a high standard of amenity for future users. It would, therefore, conflict with the design policies of the Framework, and those aims of Policy CP17 of the Exeter Core Strategy (CS) that seek to ensure that development at Newcourt promotes social interaction, inclusion and healthy living.”

The weight given to the Development Plan policies in design matters and confirmation they align with aims of the National Planning Policy Framework is welcome.

- b) Whether there would be adequate mitigation in respect of any impacts upon healthcare and education facilities; and

In determining the appeal the Inspector was satisfied that on the evidence before him in this case that the contributions to the NHS Foundation Trust and for the enlargement of local GPs surgeries were justified. The NHS was represented at the Appeal Hearing.

The Inspector was not satisfied that on the evidence before him in this case that the contributions to new School at SW Exeter and for SEN were justified. The Local Education Authority was not represented at the Appeal Hearing.

- c) Whether the development should provide for improvements to strategic cycle links in the city, specifically the E9 cycle route.

In determining the appeal the Inspector was not satisfied that there was a demonstrable funding shortfall in respect of the E9 cycle route or that such was necessary to make the development acceptable in planning terms or justified as being in scale or kind related to this development. The Local Highway Authority appeared at the appeal Hearing.

In concluding the Inspector considered the planning balance to be applied in this situation where there was a dispute between the Council and the Appellant regarding the five year housing land supply position and whether paragraph 11(d) of the Framework would fall to be considered, he concluded that although no forensic analysis had been carried out, the appellant indicated at the Hearing that the supply was, in their view, likely to be around 4 years and if he were to accept the appellants position, then the benefits associated with the delivery of housing would receive substantial weight. In regards the planning balance he went on to set out his conclusions:

“Nevertheless, the Framework sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. It also indicates that access to a network of high quality open spaces is important for the health and well-being of communities. While the delivery of housing is clearly important and a key aim of the Framework, this guidance is in the context of the need for high quality built environments and it does not indicate that delivery should be at the expense of these fundamental outcomes of development. Whilst I note the appellant’s contentions about the current housing situation, The built environment will exist for many years and must continue to provide high quality healthy living environments for future generations.

The site is constrained and certain elements, such as the location of drainage infrastructure, the points of access and the existing cycleway are, to a large extent fixed. Nevertheless, for the reasons given in consideration of the first main issue, I find that this proposal falls appreciably short of the standards on beauty and quality expected by the Framework. Even if I accept the appellant’s position on the housing supply shortfall, this is a harm that significantly and demonstrably outweighs the benefits in this case when considered against the policies of the Framework, taken as a whole.”

In dismissing the appeal the Inspector concluded that even if the “tilted balance” was engaged the harm considered to be caused through matters of poor design and lack of suitable on-site open space “substantially outweighed” the benefits of housing delivery in this case.

The appellant had advanced an argument that the development was not viable with all the contributions required by the Council and NHS but whilst this occupied a considerable part of the two day Hearing he did not explore the matter in reaching his judgement as it would not have affected his decision on the appeal overall.

In respect of the costs applications he concluded that both parties had in some ways acted unreasonably but that neither party had incurred additional costs and declined both parties' applications for costs.

The appeal was dismissed and applications for costs by both parties were also dismissed.

3.7 [20/0020/FUL](#) – **The Annexe, Melbury House, 4 Queens Crescent** - *Use of annexe as independent residential dwelling (Class C3)*

The application relates to a site that is within the Longbrook Conservation Area. It comprises a 19th century three storey building and a two storey annexe at the rear, which was built in the 1960s primarily for use as a garage. Together, Melbury House and the annexe now form a guest house and ancillary manager's accommodation (although the garage door on the annexe remains on the Leighton Terrace frontage). The recent planning history to this site has been complex and need not be recounted at length here. In essence, there has been a number of attempts to move away from guest house use over the past decade or so. The Appellant's preferred option has been HMO use. Melbury House is, however, within the area covered by the St James Neighbourhood Plan and the Council's Article 4 Direction, which both identify that an existing overconcentration of HMOs in the area has affected the balance of the local community. The Appellant therefore decided to submit this application, effectively to separate the annexe from Melbury House and use it as an independent dwelling.

Part of the argument put forward to support this application was that the Appellant was living in the building and that it was, to all intents and purposes, already in separate dwelling use. The Council had reservations about some aspects of this assertion and the Inspector agreed that the information submitted was "unclear and contradictory". The Inspector therefore made his assessment on the same basis as the Council and treated the annexe as ancillary to the guest house.

The Council refused consent for 3 core reasons. The first related to residential amenity. The Council considered that whilst the informal arrangements between Melbury House and the annexe may work with both buildings in guest house use, a formal separation would create some harm. Primarily, the Council was concerned that, because of its proximity, Melbury House has a looming and overbearing impact on the annexe, which would affect privacy, outlook, light and the ability of future occupiers to feel at ease in their home and garden. The Inspector did not accept all of the points that the Council raised but he did conclude that the two ground floor bedrooms with a single northerly aspect would not have adequate outlook or access to natural light, particularly as they would be in close proximity to Melbury House and a proposed boundary fence. "I do not accept", he wrote, "that bedrooms are less susceptible to these limitations, as they are a private refuge within a home and can serve a number of roles beyond sleeping."

The Council had added some additional points to this reason for refusal relating to the loss of amenity space for Melbury House and the impact that this would have on both the continued use of the guest house, especially as many visitors stayed for a period of weeks or months, and on the future use of the building, which the submission itself admitted remained under review. The Council's argument was that granting consent for this scheme could have a significant impact on some future options for Melbury House. The Inspector chose not to comment on these matters directly observing that the development plan had no policies on the quality of accommodation provided by guest houses and that the future use of Melbury House was a matter of speculation.

The second reason for refusal related to heritage impacts. The Council outlined a number of areas where it considered that the scheme would result in harm to the character, appearance and layout of the Longbrook Conservation Area. Some of these related to layout – primarily that the formal division would result in an overly intensive use of the existing Melbury House plot to the detriment of the character and appearance of the local area. Others were more visual – such as the retention of an existing unauthorised fence at the rear and proposed alterations to the annexe on the Leighton Terrace frontage (which essentially would have replaced a garage door with windows). The Inspector did not conclude that the severance of the Melbury House plot would cause harm to the conservation area. He also considered the impact of the existing fence to be “innocuous”. He did agree, however, that the alterations to the building would be unacceptable. He wrote:

“The Annexe and a nearby garage are identified by the Longbrook Conservation Area Appraisal as having a neutral role in the CA. To my mind, this is because the Annexe looks like a garage, and therefore reads as low in status and subservient in purpose to Melbury House. The conversion of the Annexe would include the infilling of the mock garage opening with render and the insertion of two apertures. In my view, this would lead the building to have a contrived appearance and a confused identity within the public realm, which would lead it to convey a negative presence inside the CA.”

The third reason for refusal was largely a technical one relating to the lack of a financial payment to mitigate the development's impacts on the Exe Estuary Special Protection Area. Where a proposal is unacceptable for other reasons, this matter does present some practical difficulties. The Council requires that habitat's mitigation payments are made prior to a planning permission being issued but there are no obvious reasons to take the payment, and subsequently refund it, if permission is to be refused for other reasons. The Case Officer advised the Appellant's Agent that if an appeal were to be made, then it would be best for the payment to be made immediately so that the Council could confirm that the reason for refusal no longer applied. The Agent chose not to do this but instead to request that the matter be conditioned. A costs application was also submitted, which argued that the Council had been unreasonable in refusing planning permission for this reason. In the Planning decision, the Inspector noted that the Appellant was willing to make the payment. However, in the Costs decision he wrote:-

“It is not at all certain that the SPA issue could have been reasonably left to a condition. This is because, as competent authority, the Council are obliged to adopt the precautionary principle and have a duty under the Habitats Regulations to ascertain that likely significant effects can be ruled out before permission is granted. This process does not lend itself to a reliance on conditions that are to be discharged after permission has already been granted.”

There were other reasons cited by the Appellant to justify an award of costs against the Council. These included citing reasons for refusal that could have been dealt with by condition, refusing consent on heritage grounds without consulting the Council's lead heritage officer and a failure to work proactively to secure a planning consent for the scheme. In its statement, the Council accepted the first point but disputed the other two. It argued that the issues affecting the conservation area were largely ones relating to visual impacts on street scenes and density of development – all matters that are routine considerations for any planning officer at a local planning authority. It also pointed to a long period of engagement with the Appellant to try to resolve planning problems at the site. The Inspector broadly accepted the Council's case and concluded that any criticisms that could

be made were not directly related to the main substance of the dispute between the two parties.

Whilst the Council's case was not supported in its entirety, the Inspector dismissed the Appeal and refused to award costs.

4. New Appeals

- 4.1 [20/1158/FUL](#) – **141 Salters Road** – *Proposed new two-bedroom dwelling.*
- 4.2 [21/0209/FUL](#) – **8 Lower Kings Avenue** – *Construction of porch extension.*
- 4.3 [21/0223/OUT](#) - **Land At Home Farm Between Church Hill And Park Lane** - *Outline planning application for the construction of up to 61 dwellings and associated infrastructure.*
- 4.4 [21/0941/FUL](#) – **66 Tollards Road** - *Two storey side and single storey wraparound extensions.*
- 4.5 [21/0945/FUL](#) - **Land South Of 15 The Fairway** - *New two storey dwelling.*
- 4.6 [21/1216/FUL](#) – **13C St James Road** - *Change of use of building from B1 Office use to a dwelling.*
- 4.7 [21/1638/FUL](#) – **16-18 Sidwell Street** - *Change of use of first and second floor from mixed use (Use Class C3 dwellinghouse and Sui Generis betting office) to House in Multiple Occupation for six residents (Use Class C4).*
- 4.8 [21/1723/FUL](#) – **12 Tokesen Drive** – *Hip to gable attic conversion.*

Bindu Arjoon
Deputy Chief Executive

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

Contact for enquiries: Democratic Services (Committees) - Tel: 01392 265275