

REPORT TO: PLANNING COMMITTEE
Date of Meeting: 25th July 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 [21/1892/LPD](#) – **42 Hoopern Street** – *Certificate of lawfulness of proposed use as 3 bed HMO.*

The Council concluded the change from 2 bedroom mid-terrace dwelling, to 3 bedroom HMO was not considered lawful. The Council considered the applicant has not provided sufficient evidence to justify on the balance that the work would not result in an intensified use of the property. The Council considered the additional resident would change the property so it would become a different character, and would constitute a material change of use. The application site is within an article four area which removes the permitted development right for change of use from C3 use to C4 use.

The Inspector considered whether an additional person was a material change of use. If the change of use between uses is not material, then it is not development within the meaning of s55(1). The Council considered the proposal would result in an intensified use of the property such that an additional resident would change the property to a different character and thereby lead to a material change of use. The Inspector stated the Council provided little clarity in respect of how one additional person would lead to this. Whilst an additional person would lead to additional pressure on existing facilities it does not follow that this would necessarily be so detrimental to the living conditions of the residents to contribute to a material change of use of the property. Little weight was attached to this aspect of the Council's case.

While a third resident may well lead to additional comings and goings, The Inspector said the Council failed to quantify them or to direct attention to specific adverse effects of increasing the number of occupants by one person in any level of detail to support their judgement that the proposal would lead to a change in the character of the area. The character of the area will remain as a terraced residential area with little change to the housing stock or its occupation as a result. They said whilst the Article 4 Direction was introduced with a clear purpose of limiting the effects of community imbalance, the proposal would not, in their view, materially affect that purpose. Accordingly, the appeal was allowed.

- 3.2 [21/1638/FUL](#) – **16-18 Sidwell Street** – *Change of use to HMO for 6 residents.*

The application was refused because of the effect of the proposal on the character and community balance of the area; on future occupiers privacy; and the lack of cycle parking.

The appeal site is within the city centre. The Inspector noted whilst there are some residential uses locally, for instance above shops, the area character is predominantly commercial, consisting mainly of high street stores and associated uses, including on the appeal site's ground floors. The area's character, mix and balance are therefore already very different from the residential areas of the St James neighbourhood that the Council's policy framework seeks to protect. In this context, the effect of the proposed development would be small and would not undermine the area's commercial character, or the mix or balance of residential uses. They concluded that the proposal would not harm the character, mix or balance of the local community and the proposal does not conflict with policy.

A degree of intervisibility is to be expected in urban locations. As the proposed new windows would be perpendicular to those of the adjacent flats, neighbours' privacy would be maintained. A proposed fire door which would give access to a flat roof area was also considered to not raise privacy issues.

The proposal would provide no additional cycle parking spaces for future occupiers. Given the city centre location, with access to public transport, and the practical difficulties of providing cycle storage given the limited space within the building, and noting the Transport SPD states specifically that its cycle parking requirements may be more difficult to achieve with conversions, rather than new-build development, the Inspector concluded the proposal was acceptable despite conflict with policy and the site's accessible location would promote and maximise sustainable transport for future occupiers. Accordingly, the appeal was allowed.

3.3 [20/1158/FUL](#) – **141 Salters Road** – *Proposed new two-bedroom dwelling.*

The development description on the planning application form refers to a two-bedroom dwelling. However, prior to the Council refusing planning permission the scheme was revised to a one-bedroom dwelling.

The site is within influence of the Exe Estuary Special Protection Area (the SPA) and the Pebblebed Heaths Special Protection Area and Special Area of Conservation (the SPA/SAC). These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017.

The main issues were ,the effect of the proposal on the integrity of the SPA and the SPA/SAC, the effect of the proposal on the character and appearance of the area, and, whether adequate living conditions would be created for future occupiers of the dwelling and 141 Salters Road, with reference to outside space.

The appeal was dismissed for the following reasons;

The Habitats Regulations require that permission may only be granted for a development where the competent authority has ascertained that it will not adversely affect the integrity of the European Designated Site(s).

These sites are also important recreational resources, and it is likely that occupants of the dwelling would visit them. There is no dispute between the main parties, nor Natural England, that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would therefore have significant effects on the features of interest of the SPA and the SPA/SAC due to increased recreational use.

It is also agreed that this could be mitigated by a financial contribution made pursuant to the South-east Devon European Site Mitigation Strategy.

No habitats contribution or assessment was given by the applicant in this regard the potential harm cannot be assessed and therefore the appeal is dismissed on the basis of lack of information in this respect.

In regards to the other reasons for refusal such as design in regards to impact to street scene and impact of amenity provision.

In regards to design, No 141 is a modest end of terrace dwelling with a side garden occupying an elevated position at the street corner. However, open corners are not a particular characteristic of the surrounding street scene nor are houses always set back from the road. Whilst the decking to the side of the dwelling would have to be enclosed, I consider that this could be achieved with a suitable, lightweight and unimposing balustrading arrangement. As such, the proposal would have an acceptable effect on the character and appearance of the area. It would accord with the relevant aims of Objective 9 and Policies CP4 and CP17 of the CS, saved Policies H2, DG1 and DG6 of the Exeter Local Plan First Review 1995-2011 (ELP) and the Framework.

Saved Policy DG4 of the ELP, amongst other things, states that proposals should be at the maximum feasible density taking into account site constraints, and that proposals should also ensure a quality of amenity which allows residents to feel at ease within their gardens. Its supporting text elucidates that private garden spaces should not normally be smaller than 55 sq. metres, but the orientation and scale of buildings will be taken into account, and less space may be adequate for smaller houses. No 141's side garden slopes steeply in places so as to make it of limited practical use, and its small front garden is not private. Thus, the subdivision of its grounds in the manner proposed would create usable, private garden spaces for the new dwelling and No 141 which would respectively fall below the spatial standards set out within the Residential Design Supplementary Planning Document (adopted 2010) (the SPD). Nonetheless, the principal garden space for the new dwelling, formed to its side by decking, would offer an elevated position with excellent outlook and would have access to high levels of sunlight.

4. New Appeals

- 4.1 [21/0020/OUT](#) – **Land Off Pendragon Road** – *Outline planning application for a residential development of up to 100 dwellings and associated infrastructure (All matters reserved except access).*
- 4.2 [21/0894/OUT](#) – **Land On The West Side Of Clyst Road, Topsham** - *Outline planning application for the construction of up to 100 dwellings and associated infrastructure (Means of access to be determined with scale, layout, appearance and landscaping reserved for future consideration).*
- 4.3 [21/1032/TPO](#) – **Play Area, Vernon Crescent** - *T32 Plane (Platanus x hispanica) - Crown reduction.*
- 4.4 [21/1770/FUL](#) – **18 Friars Walk** - *First floor extension to existing bungalow and new external material finishes.*
- 4.5 [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.*

- 4.6 [21/0805/FUL](#) – **The Plot Of Land Between Dwellings 39-41 Toronto Road** - *Demolition of 11 garages and construction of three, 2-storey, 3-bedroom dwellinghouses, with integral garages, private amenity space and first floor balcony to rear.*
- 4.7 [21/1023/TPO](#) – **Gable House, Exwick Manor, 237 Exwick Road** - *Tree 1: American Red Oak - Fell and root removal for proposed garage application. Tree 2: Sycamore - Fell and root removal for proposed garage application.*
- 4.8 [21/1513/FUL](#) – **2 Baring Crescent** – *Two storey side extension.*
- 4.9 [21/1864/FUL](#) – **Former Exeter Royal Academy For Deaf Education, 50 Topsham Road** – *Redevelopment for retirement living accommodation (60 years old and/or partner over 55 years old) comprising 84 retirement apartments including communal facilities, access, car parking and landscaping.*
- 4.10 [22/0045/LED](#) – **13 Devonshire Place** – *Change of use from HMO for 6 residents to HMO for 7 residents.*
- 4.11 [22/0279/ADV](#) – **14 Trusham Road, Marsh Barton Trading Estate** – *Pair of illuminated 48-sheet digital poster displays.*
- 4.12 [22/0346/LED](#) – **2A Blackboy Road** - *Certificate of lawfulness sought for existing use: small 4 bedroom House in Multiple Occupation (C4 Use Class).*
- 4.13 [21/1666/FUL](#) – **Fernleigh Nurseries, Ludwell Lane** - *Conversion of existing nursery buildings/garage to single dwelling (Resubmission of Refused Planning Application Ref: [20/1678/FUL](#)).*
- 4.14 [21/1834/FUL](#) – **The Headland, Woodwater Lane** - *Retention of extension to and conversion of existing garage to ancillary, residential annexe (Retrospective Application).*
- 4.15 [22/0159/FUL](#) – **30 Quarry Park** - *First floor side extension.*

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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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