

## **PLANNING COMMITTEE**

Monday 4 September 2023

### Present:-

Councillor Paul Knott (Chair)

Councillors Asvachin, Bennett, Jobson, Ketchin, Mitchell, M, Sheridan, Wardle, Warwick and Williams, M

### Apologies for absence

These were received from Councillors Branston, Hannaford, Lights and Miller

### Also Present

Service Lead City Development, Principal Project Manager, (Development Management) (CC), Planning Solicitor and Democratic Services Officer (HB)

Councillors Moore and Pearce attended under Standing Order No 44.

62

### **MINUTES**

The minutes of the meeting held on 31 July 2023 were taken as read, approved and signed by the Chair as correct.

63

### **DECLARATIONS OF INTEREST**

Councillor M. Mitchell declared an interest in Min. No. 64 and did not participate in the debate or vote on this matter. He spoke on this matter from the floor as a member of the public.

64

### **PLANNING APPLICATION NO. 23/0583/OUT - 68-72 HOWELL ROAD, EXETER**

Councillor M. Mitchell declared an interest and did not participate in the debate or vote on this matter. He spoke on this matter from the floor as a member of the public.

The Principal Project Manager (Development Management) (CC) presented the application for outline permission for block of flats following the demolition of the garage workshop (all matters reserved).

Members were provided with a description of the site location through a site plan, site photos, an aerial view, an indicative site plan, indicative elevations and parameter plans, the report also setting out the following key elements:-

- the principle of development;
- description changes, site history and outline consent;
- heritage, design and amenity;
- highway considerations
- contamination and ecology;
- sustainability;

- waste audit; and
- financial considerations.

The Principal Project Manager (Development Management) (CC) provided further detail of the application:-

- the current lawful use was as a MOT station and garage, although it had ceased operations;
- there had been a recent refusal at Planning Committee for redevelopment for Purpose Built Student Accommodation (PBSA), which had been refused solely on the grounds of community imbalance and an appeal had been submitted against it;
- the outline application was for a maximum of nine market flats with all matters reserved;
- due to the previous refusal reason being community imbalance because of student occupation and the current application being for market housing, it was not considered that any approval of this scheme would weaken the Council's position in reference to the appeal;
- there had been 19 objections and four mixed comments on the proposal, with the majority of these relating to the use of the property by students, parking issues and community imbalance;
- the principle of redevelopment of this site was acceptable for the following reasons:-
  - the site was not allocated for development and was considered to be a windfall site. The delivery of flats on this previously developed land would therefore meet Policies H1 and H2 of the Local Plan and CP1 of the Core Strategy;
  - the St. James Neighbourhood Forum Policy SD3 supported proposals on windfall sites providing affordable homes for local people and good quality private residential development;
  - the application was below the 10 dwelling threshold for affordable housing, but would provide private residential development supporting this policy. Details relating to the final design of it would be at reserved matters stage and would need to be of good quality to meet the policy requirements;
  - the existing site is mentioned in the Longbrook Conservation Area Appraisal as not making a positive contribution;
  - the indicative plans were subject to change. Due to the nature of surrounding built form, two parameter plans were agreed which set out the maximum height and positioning of the new building to ensure that the reserved matters which would have suitable restrictions in place;
  - the Highway Authority had no objection to the proposal. The site was within a sustainable location and within a Controlled Parking Zone that would allow car-free development to occur at this site. Any future dwellings on the site would be excluded from obtaining permits by the County Council;
  - the application was not for PBSA but for market housing and had to be assessed as such. All dwellings would be approved as Class C3 market dwellings and would be suitable for occupation. Once built, if any three or more bedroom flats (Class C4) wanted to have three or more unrelated people in them, then a new planning permission would be required in line with the Article 4 Direction; and
  - preventing students occupying the property was not considered to be a reasonable restriction as there was not a suitable justification due to other planning restrictions on use of the flats as Class C4 shared properties.

In conclusion, Members were advised that, overall it was considered that market housing in this location was acceptable and supported Local Plan, Core Strategy and St James Neighbourhood Plan policies. The restriction on height and positioning were considered to ensure that a suitably scaled scheme could come forward. Reserved matters would consist of appearance, access, landscaping, layout and scale subject to parameter details of maximum height of that of neighbouring properties.

It was considered that redevelopment of this site for open residential use would see a negative aspect of the Conservation Area removed with the potential to create an enhancement. A parameter plan has been agreed to ensure the building design was of an appropriate size and position to prevent dominance of the street scene. It was a windfall site to provide up to nine Class C3 dwellings, which met Local Plan, Core Strategy and Neighbourhood Plan policies.

There were no identified reasons for refusal of this scheme in principle and it was considered that the constraints of the surrounding built form and policy requirements would allow a suitable development to come forward at reserved matters.

The application was recommended for approval, subject to the conditions set out in the report.

The Principal Project Manager (Development Management) (CC), in response to Members' queries, advised that:-

- the flat designs met the national minimum space standards policy and therefore it was not necessary to add a condition to this effect and that an informative was on the decision notice to advise of the requirement at Reserved Matters stage; and
- Section 73 of the Town and Country Planning Act 1990 prevented the amendment of the description.

Councillor Pearce, having given notice under Standing Order No. 44, spoke on the item. He raised the following points:-

- whilst additional badly needed housing was welcome there were concerns that, subject to the applicant winning the appeal on PBSA, the student flats would be built instead. If the applicant was genuine in respect of this application the appeal should be withdrawn;
- the day after the PBSA application was refused by the Committee the site was covered in graffiti creating a negative impact on the area;
- the applicant did not sufficiently engage with the community in bringing forward these applications;
- there were some 30,000 students in the city who required short term accommodation at the expense of the wider population. It was a sustainable location close to shops, places of work and the rail station and is therefore ideal for the latter cohort;
- the application for nine units fell under the requirement to provide affordable housing by one unit; and
- if approved, conditions should be included at reserved matters to control height, massing etc.

Ms Connett, speaking against the application, made the following points:-

- a key remaining concern was the potential for this permission to lead to HMO flats;
- the report implied that Article 4 Direction (A4D) provided the protection needed but this is not the case in Exeter and the recent Futura consultant's Houses in Multiple Occupation (HMO) review document stated that properties of three to five unrelated people were described only as 'private rentals', as distinct from HMOs, a term the review reserves for licensed HMOs of six or more people. This was not in line with planning law which defines an HMO as a shared property let to three or more unrelated people. Those for three to six people comprise Use Class C4. In practice, the City Council has been turning a blind eye since 2012 to C3 to C4 conversions ignoring the protection Article 4 Direction should provide;
- not one enforcement of A4D had ever been carried out in this area despite the growth in unlicensed, exempt properties in A4D streets;
- the applicant was appealing the refusal of the PBSA application and was determined to develop student accommodation. Despite the report's assurance that A4D would prevent C3 to C4 conversion, the applicant was aware that it would be possible to rearrange the flats to let as HMOs. This could lead to a block, housing up to 30 students despite refusal of a 26 bed PBSA;
- as well as investigation of alleged breaches, taking action where appropriate, the National Planning Policy Framework states that a Local Planning Authority's Enforcement Plan should set out how they would monitor the implementation of planning permissions, but this was not mentioned in the Local Plan. Planning Authorities had a statutory responsibility to ensure planning law is upheld; and
- if in the future, the flats became C4, enforcement action must be taken.

She responded as follows to Members' queries:-

- the concern remained that even if permission was granted, occupation by students was still likely and the City Council would be unable to enforce the conditions of the application; and
- she did not object to the design but to the impact on community balance if the units become occupied by students. The St. James Ward could not sustain additional student occupants.

The Service Lead City Development advised that a full time enforcement officer had been recruited, greatly increasing the capacity to respond to breaches of planning conditions. He also referred to an example where enforcement had been undertaken in an Article 4 area and a property being used to accommodate students had been changed back to its lawful use.

Mr Williams, speaking in support of the application, raised the following points:-

- he had been a resident of the area since 1998;
- the site was a blight on the area and would be developed;
- lengthy discussions had been held with planning officers with costs incurred in bringing forward two applications for the site;
- the current application was a residential scheme and not student housing and accepted that any change to accommodate students would lead to enforcement action; and
- other, much larger scale housing schemes, had received planning permission and this is for only nine units on a derelict site close to the city centre.

He responded as follows to Members' queries:-

- even if permission was to be granted, the appeal would not be withdrawn; and
- the appeal could take a number of months and if it is dismissed this scheme for residential homes will proceed instead.

Councillor M. Mitchell, speaking as a member of the public raised the following points:-

- the previous application by the same developer was refused on the basis of Policy H5b in the Local Plan as it created imbalance in the local community as it was a specific type of accommodation;
- the community was concerned about the eventual users of this accommodation. If the units were occupied by one or two unrelated persons they were not a house in multiple occupation and Article 4 would not be applicable;
- if the units were occupied by students, the community would feel let down by the planning authority;
- local authorities had the powers to introduce a policy requiring developers to sell/rent to people who have a local connection;
- policies regarding local connection or principal residence could be included in Local Plans, Neighbourhood Plans or supplementary planning documents. The report stated that, currently there were no powers to restrict this type of accommodation on sites in Exeter;
- the St. James Neighbourhood Plan stated that development of such sites should be for affordable housing for local people or good quality private residential development. The applicant would argue that the development is of good quality; and
- this issue will become urgent as more applications are received for co-living accommodation.

The Service Lead City Development and the Principal Project Manager (Development Management) (CC) responding to further queries raised by Members, advised that:-

- the decision on this application would not have an impact on the appeal; and
- the flats could be occupied by two unrelated people, that is students, which would be lawful.

Members made the following comments:-

- the applicant was unwilling to withdraw the appeal which, if successful, would further impact adversely on an area already accommodating excessive number of students;
- the current application could mean occupation of units by two adults with children, which was a potential for 28 individuals;
- the application design was poor with limited amenity space and should be refused; and
- as residential accommodation was proposed with this application it should be supported.

The recommendation was moved, seconded, voted upon and CARRIED.

**RESOLVED** that the application for outline permission for block of flats following the demolition of the garage workshop (all matters reserved) be **APPROVED**, subject to the conditions as set out in the report.

The Principal Project Manager (Development Management) (CC) presented the application for the variation of Condition 2 (approved drawings) of approval 12/1426/FUL (Alterations and roof level redevelopment to provide 13 flats with associated access and communal facilities) to alter the height and internal layouts.

Members were provided with a description of the location of the site through a site plan, an aerial view, photos of different views including from nearby residential properties, existing and approved elevations, floor plans and 3D visuals, the report also setting out the following key elements:-

- the principle of development;
- details of each floor;
- historic setting and visual impacts; and
- highway considerations.

The Principal Project Manager (Development Management) (CC) provided further detail of the application:-

- the application was for a variation of conditions of a 2012 approval at 130 Fore Street, St. Davids. The 2012 approval was for an upwards extension and conversion of the West Street fronting aspects to residential with the current proposal seeking to vary the approved plans and amend the upper floors through the additional storey and alterations to the basement level (fronting West Street) to provide three commercial units. It was proposed to retain the same number of 13 flats;
- as it was a variation to an existing approval, the assessment was limited to the amendments proposed and their material impacts, rather than the entire scheme;
- there had been 139 objections to the proposal, primarily focussed on the changes to the basement retail unit, currently Crankhouse Coffee, and the impact of the increase in height on properties opposite in terms of daylight and privacy and the impacts on the wider street scene;
- basement levels fronting West Street - this was currently in commercial use but to be removed entirely and three flats created with three commercial units instead at the lower floor levels which would support the wider Fore Street shopping area. There was a dwelling at this level and this would remain as previously approved. There were also bin store alterations, with the creation of a new commercial bin store adjacent to one of the units;
- the ground floor, lower-first floor, upper-first floor and the commercial unit fronting Fore Street were remaining as previously approved;
- there would be three flats on the ground floor, three flats on the lower-first floor and two flats on the upper-first floor and a communal garden;
- the second floor upward extension had been approved as one flat with a private roof terrace which it was proposed to extend to allow two flats on this floor with no separate roof garden;
- the third floor upward extension was a new addition to create a one, two bed dwelling with a private balcony and roof terrace;
- all of the revised flats met the Nationally Described Space Standards;
- the Council's Urban Designer considered that, whilst there would be a level of impact from the proposal, the majority of impacts, such as any overlooking or dominance for properties opposite would be from the previously approved upward extensions and conversions;

- in terms of wider views of the site, the upward extension would not exceed the ridgeline of the existing building fronting 130 Fore Street and has a stepped approach to take into account the downward slope of West Street and the stepping down of buildings. The additional storey would be screened from a lot of views by the surrounding built form;
- the primary impacts on neighbours were from that of the existing approval; and
- the principle of development was established through the previous approval and it was considered that the addition of commercial units at lower ground floor level was a betterment to it. Whilst there were impacts on neighbouring properties it was considered that these were primarily through the existing approved scheme rather than through these proposed amendments.

The application was recommended for approval, subject to the conditions set out in the report.

The Principal Project Manager (Development Management) (CC), in response to Members' queries, advised that:-

- works had started on site within three years of the decision date in relation to a bin store in the basement level which was considered to be enough works to be a formal commencement; and
- if the application was refused, the original application could still proceed although there was no deadline for completion.

Councillor Moore, having given notice under Standing Order No. 44, spoke on the item. She raised the following points:-

- that she was also speaking on behalf of Councillors Read and Sparling as Ward Councillors;
- there would be a significant detriment to the community of this variation to a planning application that residents and local businesses were objecting;
- approval would have significant implications for the community in the Fore Street area which was an important shopping and residential area as set out in Policies S3 of the Local Plan and CP8 of the Core Strategy. Many of the buildings were high and deep, with many flats above shops, along one of Exeter's iconic streets;
- if the application was rejected it would reduce the size of the commercial unit on Fore Street used by Langhams for many years and remove the much valued business units and associated business on West Street;
- a net loss of floor space and smaller units would make the operation of two businesses unviable - a seven square metre loss down to 152.35 square metres;
- there would be an adverse impact on the residential properties on West Street. The second floor would see the southern elevation extended further south than previously approved by 1.25 metres. This was closer to dwellings across the road on West Street which were three stories in height and would directly face towards the ground and lower-first floor elements previously approved;
- the proposals do not have regard to the principle that they should be of similar scale to surrounding buildings and possess an articulated form, which would further break down massing;
- nothing had changed in that area to warrant such a change and there would be an adverse impact on an important Conservation Area with significant Grade I, II\* and II Listed buildings, including St. Mary Steps Church and the House that Moved;

- there would be an impact on the residential properties opposite from loss of light and overlooking. The south side of West Street already bears the negative impact of the student halls that replaced the old Radmore and Tuckers site on Lower Racklose Lane. Despite reassurances during the planning process that privacy would be maintained, residents' properties had been overlooked and were seen by, as well as could see into, every bedroom that faces the rear of West Street;
- there was significant loss of daylight, privacy and other amenity impacts for many residents;
- the new application increases the height and bulk of the property significantly;
- the report on loss of light only considered the properties on West Street but the developers have not considered the neighbours in Fore Street; and
- it was a concern that in a city centre redevelopment that there were no affordable properties proposed as the Affordable Housing SPD is a material consideration in the determination of planning applications.

She responded as follows to Members' queries:-

- Policy CP7 of the Affordable Housing Supplementary Planning Document (SPD) stated that, on sites capable of providing three or more additional dwellings, irrespective of the number of dwellings proposed, 35% of the total housing provision should be made available as affordable housing for households whose housing needs were not met by the market. This SPD had been introduced in 2014 and this application was not a minor non-material amendment but was a significant variation to alter the nature of the development that had been permitted;
- retail space was welcome, but the overall provision had been diminished with a reduction of seven square metres limiting the type of operation such as a training kitchen proposed for the cafe; and
- whilst there was a concern that additional student accommodation would be provided, the provision of luxury flats reduced the ability to provide affordable accommodation greatly.

George Barron, speaking against the application, made the following points:-

- he advised that he had been a resident of Exeter for over 20 years and was the owner of 6 West Street who was representing the voices of the 139 written objections;
- the changes to the existing plan, would have a hugely detrimental effect on this historically interesting part of Exeter. As a resident, his primary concern was the new height of the proposed building to him and his neighbours, which impacted on their privacy by being overlooked, a loss of light and a lack of privacy;
- the site visit to see the effect on the area was welcomed, especially after the development of student accommodation behind West Street when, during the consultation, reassurance were given that residents would not be overlooked. Residents, in fact, were seen by the student occupiers and could see them clearly. Every bedroom that faced the rear of West Street looked into residential properties;
- the proposed plans for the new application did not fit the planning rules of a minimum distance of 22 metres between habitable room windows backing onto one another. The new residential flats would look directly into the ground, first, and second floor of residential properties;
- there would be the loss of three thriving, independent businesses. The proposed new retail units to replace the current ones had substantially reduced square footage and were not fit for purpose. Fore Street and the surrounding area of the West Quarter had smaller retail and office spaces which were

currently unoccupied. Therefore, there was a need to protect these larger retail spaces in this area;

- from a heritage point of view, the scale of the proposed additional building height on West Street would look out of place. The new levels did not align with the current heights of opposite-listed buildings on West Street and would negatively dominate the skyline in one of the most historically interesting parts of Exeter, particularly as this was a Conservation Area;
- other issues were on waste disposal and fly tipping which would be increased by additional properties and the environmental issues this would cause, the lack of parking, no space for loading, the proposed tiny bike store and tiny bin store, and the increase in congestion on such a small one-way street;
- none of these flats would be affordable housing;
- building works would cause disruption in a congested and densely populated area; and
- an alternative outcome was required to retain the thriving local community businesses and protect the iconic and historic Exeter views of West Street and Stepcote Hill.

He responded as follows to Members' queries:-

- the distance from the property to neighbouring residential properties was in some places significantly below the 22 metre standard – and was even 6.3 metres in certain places; and
- the architectural drawings were considered to be misleading and failed to show the true imposing impact of the proposal.

David Burley, speaking in support of the application, raised the following points:-

- the application allowed for the retention of commercial use at West Street level and relocated the two displaced flats to the second floor, with the original inset rooftop flat raised by one storey;
- it made no alteration over that originally approved and West Street commercial use would continue. The objections were a misunderstanding of the application;
- of the buildings opposite the site, only no. 6 West Street was impacted by the proposals - the adjacent West Street/Fore Street shop having blanked upper floor windows and the lower West St residential uses overlapping the existing end building which was unchanged from the extant approval. Due to no 6 facing north, there was no impact on sunlight;
- the extant approval, already caused loss of daylight and privacy. Because of the angle of windows and buildings, the bulk of such impact is from the current, existing building;
- the amendments would not cause any material further losses;
- the proposals would allow commercial activity on West Street to continue whilst the same number of much needed city centre flats as the extant approvals were provided, without material loss of privacy or daylight to adjoin premises; and
- it was a reasonable and overall, beneficial revision to the original approval.

He responded as follows to Members' queries:-

- the property owner had changed since the original planning approval was given, the new owner wished to retain the existing commercial uses;
- the additional floor was put forward largely on economic grounds but commercial uses remained an important part of the equation;
- the property would be retained for rental purposes by the owner; and
- the proposed building would remain lower than the heights of other Fore Street properties and the visual impact from Western Way is minimal.

Members made the following comments:-

- the necessity for an additional floor was not evident and the proposal exacerbated the impact of the original approval on an historical area of Exeter;
- the rear facing properties of Fore Street were also affected as some had terraces and roof gardens on which there would be an adverse visual impact;
- both the original and current applications lead to the disruption of businesses;
- it was not evident that the stepped down nature of the street reduced the impact of the additional floor; and
- the excessive massing impacts adversely on this iconic area of Exeter.

The Service Lead City Development and the Principal Project Manager (Development Management) (CC), in response to Members' queries, advised that:-

- it was not a new full application and there was no requirement for further detail, or to require additional Section 106 obligations unless directly related to the changes;
- a key consideration was that approval had already been granted and that the Council's Urban Designer considered that the additional impact would be minimal and it would be difficult to justify refusal;
- the overall commercial space would increase; and
- the commercial uses would supplement those existing in Fore Street although alternative uses could come forward in the future suitable for this retail area.

A motion to refuse the application on the following grounds was seconded, voted upon and CARRIED:-

- the adverse impact of the scale and massing of the development and on the built character of the area;
- detrimental impact on the amenity of neighbours in residences in close proximity; and
- the adverse impact on the heritage and historical nature of the area.

**RESOLVED** that the application for the variation of Condition 2 (approved drawings) of approval 12/1426/FUL (Alterations and roof level redevelopment to provide 13 flats with associated access and communal facilities) to alter the height and internal layouts be **REFUSED**, for the following reasons:-

- the adverse impact of the scale and massing of the development and on the built character of the area;
- detrimental impact on the amenity of neighbours in residences in close proximity; and
- the adverse impact on the heritage and historical nature of the area.

#### **LIST OF DECISIONS MADE AND WITHDRAWN APPLICATIONS**

The report of the Director City Development was submitted.

**RESOLVED** that the report be noted.

**APPEALS REPORT**

The schedule of appeal decisions and appeals lodged was submitted.

**RESOLVED** that the report be noted.

(The meeting commenced at 5.30 pm and closed at 7.20 pm)

Chair

DRAFT