

**REPORT TO: PLANNING COMMITTEE**  
**Date of Meeting: 19<sup>th</sup> February, 2024**  
**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 (16/01/2024).

**2. Recommendation:**

2.1 Members are asked to note the report.

**3. Appeal Decisions**

3.1 [23/0438/FUL](#) **95 St Katherine's Road, Mincinglake.** *Construction of rear dormer and retention of cladding to bay window (Retrospective Application).*

This application relates to a mid-20th century brick-and-render terraced dwelling (C3 Land Use Class), on a corner plot in a residential area around 100m below the southern tip of the Mincinglake Valley Park. The proposal entails an L-shaped box dormer extension spanning across the rear roof planes of the property partly finished with composite cladding (facing Latimer Road) and cladding of the double bay window at the front (facing St Katherines Road); the proposed development is already complete and the application was retrospective.

The property possesses permitted development rights for rear dormers and replacement finishes but in order to achieve compliance the exterior materials used must be similar in appearance to those used on the existing dwelling. The dark grey horizontal cladding (front and rear) and windows used are not similar in appearance to the red-brown roof tiles, white windows and render of the main house – this means the development is not permitted and requires householder planning consent to be considered lawful.

The application was refused by the Council because the combined size, shape, colour and cladded finish of the dormer and cladding of the bay window appear highly unsympathetic and incongruous with the architecture of the existing house and thereby cause undue harm to the character of the property and wider street scene.

The Inspector found the main issue of this planning appeal was the effect of the development on the character and appearance of the host dwelling and surrounding area. It was acknowledged that the properties in each affected street share a common age, design and appearance with repeating pattern of terraces, bay windows and brick facades and very few alterations undertaken to date – this “results in a consistent and attractive form of development”. The consistency of brick, render and tiled roof finishes of existing properties in the area was also

identified and the host property was considered to make a positive contribution to the character of the area prior to the proposed works being implemented. The Inspector agreed the as-built box dormer is excessive in size and inappropriate by material finish; its proportions and appearance do not harmonise with the existing property and accentuate its unsightly appearance in the street. The cladding of the bay window is relatively small in coverage but highly visible and distinctly inappropriate. It was concluded that the proposal fails to satisfy several principles in the Householder's Guide to Extension Design SPD, Objectives 8 and 9 and Adopted Policies CP17 and DG1 of the local plan and Paragraph 130 of the NPPF.

The appeal was dismissed accordingly – For the Decision, see:

**[Reference: APP/Y1110/D/23/3326666 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/app/y1110/d/23/3326666)**

**3.2 21/1564/OUT Former Police Station and Magistrates' Court, Heavitree.**

*Outline planning application with all matters considered in detail except landscaping, for the demolition of the existing buildings and construction of mixed-use development comprising Purpose-Built Student Accommodation (Sui Generis) and Co-Living (Sui Generis) with associated infrastructure. (Further revised plans received Jan 2023)*

The application was refused at Planning Committee in February 2023 for the following reasons:

1. Harm to the character of the area, including the streetscenes along Heavitree Road and Gladstone Road, and the setting of the locally listed St Luke's College buildings, by virtue of the heights and massing of the two buildings, which would be of a far greater scale than the majority of buildings in the area, and their siting in close proximity to the streets making them feel even more imposing on their surroundings.

2. Impact on amenity, privacy and outlook of adjacent residential properties, particular Higher Summerlands, due to the height, scale and massing of the proposed buildings on the site and their siting in close proximity to the properties taking into account their designs.

3. The proposed development would have a limited amount of external amenity space for use by the high number of residents of the two buildings and the external amenity space proposed in the form of the internal courtyards would be poor quality with a sense of feeling enclosed and with reduced levels of daylight due to the scale of the surrounding buildings. It is also considered that the proposed development would provide a poor living environment for residents that would have a negative impact on their health and well-being.

4. Notwithstanding S106 obligations, the proposed development would have a negative impact on public spaces in the locality of the site, in particular Belmont Park approximately 400 metres north of the site, due to the additional use and demand of these spaces by residents of the proposed development and limited amount of on-site external amenity space provision.

5. The proposed development would result in the loss of a significant number of trees on the site including several category A and B trees which contribute to the amenity of the locality and biodiversity of the site. Without a detailed landscaping scheme as part of the application, there is a lack of certainty that the loss of these trees will be adequately and appropriately compensated for to maintain or enhance the amenity and biodiversity value of the site.

6. Absence of a signed S106 legal agreement.

In regard to Reason 2, this allowed consideration of all neighbouring properties; however, following further assessment of daylight/sunlight levels, it was found that the primary impact was on Higher Summerlands and this became the sole focus of this reason.

In regard to Reason 3, this reason was removed following the submission of additional information during the appeal process.

In regard to Reason 4, this reason was removed upon the advice of counsel, due to a lack of evidence that Belmont Park would exceed its capacity as a result of the proposed development. The Public and Green Space team raised no objection at application stage, subject to S106 financial contribution, and were unable to provide evidence.

In regard to Reason 5, this reason was removed during the appeal process, as 'landscaping' was a reserved matter and additional information was provided by the appellant showing the retention of trees along Heavitree Road.

A public inquiry was held in December 2023. The appeal was dismissed by the Inspector on 2 February 2024.

The Inspector concluded that the proposal would not harm the settings of the nearby conservation areas (Mont Le Grand, Lower Summerlands and St Leonards) and would not harm the setting of the locally listed St Lukes College buildings. In addition, it would not harm the outlook or privacy of the neighbouring dwellings in Higher Summerlands. However, the scale and mass of the proposed buildings would be out of keeping with the character and appearance of the surrounding area. Consequently, the proposal does not accord with Policy CP17 of the Core Strategy, saved Policies H5 and DG1 of the Local Plan First Review, or with paragraph 135 of the NPPF.

The 'tilted balance' set out in paragraph 11 of the NPPF was not engaged, as the Council has a 4-year supply of deliverable housing sites. The Inspector gave significant weight to the provision of market and affordable housing, however this was still outweighed by the harm to the character and appearance of the area. The Inspector considered the proposal to be overly-assertive and incongruous, and would not satisfactorily integrate into the local area.

No costs were awarded against either party.

The appeal was dismissed accordingly – For the Decision, see:

3.3 **21/0020/OUT Land Off Pendragon Road, Mincinglake.** *Outline planning application for a residential development of up to 100 dwellings and associated infrastructure (All matters reserved except access) - Revised plans and additional information received.*

The application was refused at Planning Committee in March 2022 for the following reasons:

1. Harm to the character and local distinctiveness of the hills to the north of Exeter, and the landscape setting of the City by breaching the natural boundary feature (the tree'd hedgebank north of Pendragon Road) that forms the clear edge to the urban area and being an incongruous, piecemeal development into the rural hinterland of the City on a greenfield site that has a strong rural character contributing significantly to the character and local distinctiveness of the hills to the north of the City.
2. Loss of open space, with the current site fulfilling a valuable recreational, community, ecological and amenity role to local residents and visitors and its loss would harm the character of the area
3. Harm to the Site of Nature Conservation Interest that connects Mincinglake Plantation County Wildlife Site to the west and Savoy Hill County Wildlife Site to the east along the southern edge of the site, through the removal of sections of hedgebank and trees, and lighting from the development.
4. Harm to the character of the area and sense of place through new access roads into the site along the southern boundary of the site that would not integrate into the existing landscape of the City including its natural features and ecology.
5. Absence of a signed S106 legal agreement.

The Inspector concluded that the proposal conflicted with Policy CP16 of the Core Strategy, saved Policies LS1 and DG1 of the Local Plan First Review, and Chapter 12, in particular paragraph 130c, and paragraph 174ab of the NPPF, as it will harm the character and appearance of the site and the wider landscape setting. However, the Inspector considered this was only to a limited degree, as the site in their view is not prominent, being lower down the slope, and heavily screened to all sides making it feel self-contained.

The Inspector acknowledged there would be some views of the site from the adjacent County Wildlife Sites, Mile Lane and nearby housing, but these views would be largely screened.

Matters regarding refusal reason 3 (ecological impacts) were addressed through the informal hearing process with new information considered and a new hedgerow connection to be protected to the north of the site.

Given the Council's lack of a 5 year housing supply, the Inspector gave substantial weight to the market and affordable housing, and very substantial weight to the 15% affordable housing secured above the policy compliant level of

35% (50% was proposed overall). This outweighed the minimal harm to the landscape setting of the city. There were no other material considerations to justify refusal of the application.

Whilst the Inspector accepted that the site was private agricultural land with no formal rights of access, they agreed that it does provide open space and that is well used by the public. However, the proposal was considered to comply with saved Policy L3 of the LPFR and paragraph 99 of the NPPF, due to the replacement open space that will be secured as part of the scheme, which the Inspector considered would be of greater quantity and quality.

The appeal was allowed subject to a Unilateral Undertaking securing 50% affordable housing, open space, play area and financial contributions to mitigate impacts on local infrastructure, as well as conditions.

No costs were awarded against either party.

The appeal was allowed with conditions – For the Decision, see:

**[Reference: APP/Y1110/W/22/3298452 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/app/y1110/w/22/3298452)**

#### 3.4 **22/1756/LED 11 Abbots Road, Pennsylvania.**

An appeal against a refusal to grant a certificate of lawful use for a small house in multiple occupation (HMO) (Use Class C4), limited to three occupants at 11 Abbots Road has been dismissed.

The application was refused as it is within an area covered by an Article 4 Direction, which removes the permitted change of use of properties from a Class C3 (dwellinghouse) to Class C4 (HMO), and it was also considered to be a material change of use.

The Inspector said, in a lawful development certificate such as this, the assessment is whether the use of the property from a C3 dwelling house by two occupants to a C4 HMO use, limited to three occupants, results in a material change of use. Consequently, if the change of use is not 'material', then it cannot be considered development under s.55 of the 1990 Act. In this context, the limitations applied by the article four direction, and the permitted changes allowed via the GPDO, would be irrelevant.

The Inspector said detailed information on the previous and existing use would need to be provided to allow the decision maker to carry out an assessment. They said little information has been submitted regarding the previous use as a dwellinghouse by two occupants. For instance, I do not know whether it was a couple living as partners or two family members sharing with independent lives. The appellant's submissions do not confirm who is currently living in the property, but the neighbour representations indicate students. The occupation of a house by students, or just unrelated people as an HMO, can be used in a variety of ways, which may or may not be materially different to the occupation by a couple or people living together as a single household. The Inspector said they had no substantive detail on the composition of the group of three, or whether they occupy the house as a group or if they are independently renting.

Further, they had no information on whether they are responsible for the whole house or just their individual bedrooms, or, if one left, who would be responsible for securing another tenant. Without details of how the existing or previous uses operate, they had no solid evidential basis upon which to make an accurate comparison between the two. As the onus rests with the appellant to make out their case, the Inspector concluded the burden of submitting sufficient information had not been met, as they did not have the necessary evidence to make a reasoned decision one way or the other.

The appeal was dismissed. For the Decision, see:

**[APP/Y1110/X/23/3330550 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/applications/decisions/APP/Y1110/X/23/3330550)**

#### 4. New Appeals

- 4.1 [22/1405/LBC](#) Trees Court Studio, Victoria Road, Topsham. *Proposed change from window to window and external door.*

[Reference: APP/Y1110/Y/23/3324303 \(planninginspectorate.gov.uk\)](#)

- 4.2 [23/0185/FUL](#) Carmel, Beech Avenue, Pennsylvania. *Demolition of bungalow and construction of new dwelling.*

[Reference: APP/Y1110/W/23/3333754 \(planninginspectorate.gov.uk\)](#)

- 4.3 [23/0515/FUL](#) 20 Bonhay Road, St David's. *Loft conversion with dormer and external access stairs.*

[Reference: APP/Y1110/D/23/3336113 \(planninginspectorate.gov.uk\)](#)

Ian Collinson  
**Director of City Development**

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