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## Appeal Decision

Hearing Held on 15 January 2019

Site visit made on 15 January 2019

**by R C Kirby BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13<sup>th</sup> February 2019**

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**Appeal Ref: APP/U1105/W/18/3201622**

**Doyle Centre, Norton Place, Exmouth EX8 2ND**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Exmouth Trade Frames Ltd against the decision of East Devon District Council.
  - The application Ref 16/2848/MFUL, dated 25 November 2016, was refused by notice dated 2 November 2017.
  - The development proposed is demolition of building and construction of 10 no. dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of building and construction of 10 no. dwellings at the Doyle Centre, Norton Place, Exmouth EX8 2ND in accordance with the terms of application Ref 16/2848/MFUL, dated 25 November 2016 and subject to the 12 conditions in the attached Schedule.

### Procedural Matters

2. During the course of the appeal a Unilateral Undertaking (UU) dated 7 January 2019 was submitted which contains obligations in respect of an affordable housing contribution; a habitats mitigation contribution and a landscape management plan.
3. Reference has been made to The Exmouth Neighbourhood Plan (ENP) in evidence. This Plan has been examined and the report of the independent examiner has been received. The Plan has not yet proceeded to referendum and does not currently form part of the development plan. Although at an advanced stage the policies contained within the Plan carry only moderate weight in my consideration of the appeal proposal.

### Main Issue

4. The main issue in this case is the effect of the proposal on employment and community opportunities in the locality.

### Reasons

5. The appeal site formerly accommodated a day centre and some office accommodation occupied by social care workers and health service staff. In 2009 the day centre service was relocated to another part of Exmouth. At this

- time the office use continued to operate on the site until the centre closed in 2013. Most of the buildings on the site have been demolished, apart from a building towards the rear of the site. There is no dispute between the main parties that the site is not allocated either for employment or community use within the East Devon Local Plan 2013-2031 (LP) or the ENP.
6. LP Strategy 32 seeks to resist the loss of employment and community sites, whether allocated or not to ensure that local communities remain vibrant and viable and to meet the needs of residents, including job opportunities. It establishes that permission will not be granted for changes of use to non employment or community uses where it would harm social or community gathering and/or business and employment opportunities in the area, unless certain criteria is met. Emerging Policies EE2 and CF1 of the ENP have similar aims.
  7. These policies support the Government's objectives of building a strong, competitive economy and promoting healthy and safe communities, including guarding against the unnecessary loss of valued facilities and services where this would reduce the community's ability to meet its day to day needs.
  8. Having regard to the former use of the site, it is clear that the centre provided opportunities for social and community gathering, providing facilities and support for people with learning difficulties. Furthermore, and having regard to the definition of 'employment uses' within Strategy 32 of the LP, I am in no doubt that the premises provided a number of employment opportunities to people, including providing support and care to the users of the centre, and within the offices in the building.
  9. The proposal to develop the site with housing would be likely to result in the site not being developed in the future for social and community gathering and employment opportunities. However, be that as it may, it is necessary to identify whether or not this would result in harm being caused to social or community gathering and/or business and employment opportunities in the area for the purposes of LP Strategy 32.
  10. The evidence before me indicates that the activities that occurred within the Doyle Centre have been relocated elsewhere in Exmouth, along with the employment opportunities that the use of the site provided. Whilst the services and opportunities that the Doyle Centre offered may be further away from some of the population it served, no evidence has been provided to demonstrate that this has had an adverse effect upon the viability and vibrancy of the local community or upon social or community gathering and/or business and employment opportunities in the area.
  11. Furthermore, since 2013 the appeal site has not been used for community or employment purposes, nor has it been used for any other use. It has remained vacant. It has not therefore contributed to social or community gathering opportunities or provided business or employment opportunities since that time. There is no evidence before me to suggest that this has had an adverse effect upon the viability and vibrancy of the local community or that that the community's day to day needs have not been accommodated as a result.
  12. In light of the foregoing, and in the absence of substantive evidence to demonstrate otherwise, I conclude that the appeal proposal would not result in harm to employment and community opportunities in the locality. There would

be no conflict with LP Strategy 32. Whilst there would be a degree of conflict with the emerging policies within the ENP as set out above, these do not currently form part of the development plan. In any event the ENP recognises where changes of use are supported by other Local Plan policies and guidance they should be allowed<sup>1</sup>, which in this case they are. Furthermore, there is a high probability that the appeal proposal would provide employment opportunities where there are none at present, during the construction of the new dwellings and the support that would be given to the local economy as a result of future occupiers' expenditure. The proposal would also provide opportunity for social and community gathering upon the site, where there is none at present, between the intended future occupiers of the new dwellings and nearby occupiers, including those at Norton Place.

13. Moreover, the proposal would support the development of under-utilised land in this location in accordance with paragraph 118 of the Framework. It would also support the Government's objective of significantly boosting the supply of homes on previously developed land, in a sustainable location close to services and facilities within the town. The proposal would also support the aims of Strategy 22 of the LP in terms of moderate new housing provision in the town. The contribution that the proposal would make to affordable housing provision in the locality<sup>2</sup> would also be likely to support both social and community gathering and employment opportunities in the area.
14. Given this conclusion, it is not necessary for me to assess whether the proposal complies with criteria 1. to 4. of LP Strategy 32, because such justification is only necessary where harm to social or community gathering and/or business and employment opportunities occurs, which in this case, it does not.
15. I have considered the Council's argument that the grant of planning permission would set a precedent for other similar developments. However, whilst reference was made to a site close to the appeal site which is currently at appeal, this is an allocated site and I am not aware of the individual circumstances of that case. Each planning application and appeal must be determined on its merits and a generalised concern of this nature does not justify withholding permission in this case.

### **Other Matters**

16. The appeal site is located within close proximity of the Exe Estuary Special Protection Area (SPA) and the East Devon Pebblebed Heaths SPA. Occupation of the new dwellings would be likely to place a recreational demand on these SPAs, in terms of disturbance to ground-nesting birds on the heaths or roosting or feeding birds on the estuary. In accordance with the South-East Devon European Site Mitigation Strategy and LP Strategy 47, contributions are necessary from the development to secure necessary mitigation works. The appellants has submitted a UU to this effect.
17. The mitigation measures proposed are necessary to make the development acceptable in planning terms and the obligations set out in the UU accord with the Council's adopted Community Infrastructure Levy Charging Schedule (April 2016).

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<sup>1</sup> Paragraph 15 of the ENP

<sup>2</sup> As per the obligation in the Unilateral Undertaking dated 7 January 2019

18. Strategy 32 of the LP requires, amongst other matters, that 25% of the dwellings on residential development schemes in Exmouth are affordable. In this regard the obligation contained within the UU would make a contribution to such provision elsewhere in the town. The Council has raised no concern in respect of the provision being made off-site or in respect of the contribution offered. I have no reason to find differently in this regard.

### **Conditions**

19. The Council has suggested a number of conditions it would wish to see imposed in the event that the appeal was allowed. I have considered the suggested conditions against the advice contained within the Framework and Planning Practice Guidance on conditions and amended some of the suggested wording for clarity.
20. In the interest of the character and appearance of the area conditions are necessary relating to adherence with the approved drawings, providing details of external materials to be used in the development, providing details of landscaping works and tree protection and the removal of certain permitted rights to plots 3 and 4 to protect trees nearby to these plots.
21. To protect the living conditions of nearby occupiers a condition requiring the submission of and adherence to a Construction and Environment Management Plan is necessary, as are ones controlling working hours during construction and relating to investigation work being undertaken in respect of any contamination, along with any remediation work required. To protect the living conditions of the intended future occupiers a condition is necessary requiring an acoustic barrier to be provided along the eastern boundary of the site.
22. In the interests of highway safety a condition requiring that the access, turning and parking is provided is also necessary. To ensure that the site is suitable drained, a condition requiring drainage details to be submitted for approval and implementation is necessary.

### **Conclusion**

23. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

*R C Kirby*

INSPECTOR

**INTERESTED PARTIES**

**FOR THE APPELLANT**

|              |                     |
|--------------|---------------------|
| Mr S Collier | Collier Planning    |
| Mr J Read    | Chesters Commercial |
| Mr M Sansom  | Appellant           |
| Mrs K Sansom | Appellant           |

**FOR THE COUNCIL**

|              |                              |
|--------------|------------------------------|
| Mr P Golding | Senior Planning Officer      |
| Mr G Spiller | Principal Planning Officer   |
| Mr R Murray  | Economic Development Manager |

**INTERESTED PERSONS**

|                    |   |
|--------------------|---|
| Mr P Worts         | Local Resident                                    |
| Mr A Wright        | Westward Housing                                  |
| Mrs A Goltz-Holden | Local Resident                                    |
| Mr R Pryke         | Chairman of the Neighbourhood Plan Steering Group |

**DOCUMENTS SUBMITTED AT THE HEARING**

1. East Devon District Council Response to Chesters Commercial Update Statement
2. Copy of Report on Exmouth Neighbourhood Plan 2018-2031
3. Copy of Committee Report in respect of Housing Monitoring Report to Year Ending 31 March 2018
4. Copy of Delegated Report relating to The Spice Lounge Ref: 18/2393/FUL
5. Copy of Rightmove details in respect of The Doyle Centre
6. Copy of Mr Collier's closing submissions

## **SCHEDULE**

### **CONDITIONS**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 7487-LP; Proposed Site Plan 7487-07-F; Proposed Combined Plans 7487-09 Rev A; Proposed Combined Plans 7487-10 Rev A; Street Scene 7487-11 Rev C; and Street Scene 7487-12 Rev B.
- 3) No development above foundation level shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) A Construction and Environment Management Plan (CEMP) shall be submitted to and approved by the local planning authority prior to any works commencing on site. The CEMP shall be adhered to throughout the construction of the development. The CEMP shall provide for measures to control and monitor the emission of dust and dirt during construction; measures to prevent pollution of air quality, water quality, light pollution and to control noise and vibration.
- 5) Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site.
- 6) No development shall take place until a surface water drainage scheme based on the recommendations of the Surface Water Management Report dated 13/12/2016 has been submitted to and approved in writing by the local planning authority. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The development shall be carried out in accordance with the approved scheme prior to the first occupation of the development.
- 7) Development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1, 2, 3 and 4 of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing, until part 4 has been complied with in relation to that contamination.

1. Site Characterisation - An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written

report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: • human health, • property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, • adjoining land, • groundwaters and surface waters, • ecological systems, • archeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

2. Submission of Remediation Scheme - A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme - The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

4. Reporting of Unexpected Contamination - In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification/validation report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition 3.

5. Long Term Monitoring and Maintenance - A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period to be agreed, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority. This must be

conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 8) Prior to the commencement of any works on site (including demolition and site clearance or tree works), a Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS) for the protection of all retained trees, hedges and shrubs, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. Provision shall be made for the supervision of the tree protection by a suitably qualified and experienced arboriculturalist and details shall be included within the AMS.  
  
The AMS shall provide for the keeping of a monitoring log to record site visits and inspections along with: the reasons for such visits; the findings of the inspection and any necessary actions; all variations or departures from the approved details and any resultant remedial action or mitigation measures. On completion of the development, the completed site monitoring log shall be signed off by the supervising arboriculturalist and submitted to the local planning authority for approval and final discharge of the condition.
- 9) No development above foundation level shall take place until a landscaping scheme and a programme for implementation has been submitted to and approved in writing by the local planning authority. The scheme shall include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed and shall also give details of any proposed walls, fences and other boundary treatment. The landscaping scheme shall be carried out as approved and shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species.
- 10) Prior to the first occupation of plots 1, 8, 9 and 10 details of noise attenuation measures including the provision of an acoustic barrier to the eastern boundary of the site shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwellings on these plots and shall thereafter be retained in perpetuity.
- 11) No part of the development hereby approved shall be occupied until the access, turning spaces, garaging and parking spaces shown on drawing no 7487-07 Rev F have been provided. These shall thereafter be retained and kept available for these purposes at all times.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no works shall be undertaken to plots 3 and 4 within the Schedule 2 Part 1 Classes A or E for the enlargement, improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, or for the provision within the curtilage of any building or enclosure, swimming or other pool (other than any enclosure approved as part of the landscape scheme).