

Appeal Decisions

Site visit made on 12 May 2014

by **David Leeming**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 June 2014

Appeal A Ref: APP/Y1110/A/13/2210766

Portland House, Longbrook Street, Exeter EX4 6AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andrew Parker, Vita Student against the decision of Exeter City Council.
- The application Ref 13/4435/03, dated 17 September 2013, was refused by notice dated 8 November 2013.
- The application sought planning permission for change of use of existing office accommodation and extension at 5/6 floors to provide 153 studio apartments for student accommodation, retail and café/restaurant and associated disabled and cycle parking without complying with a condition attached to planning permission Ref 11/0895/03, dated 16 January 2012.
- The condition in dispute is No.2 which states: The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 23 May 2011 (dwg. nos. L565_P(0)307, 501 and 502, 3 June 2011 (dwg. Nos. L565_P(0)301B, 306B, 401D and 403D), and 21 July 2011 (dwg. Nos. L565_P(0)302C, 303B, 304D, 305E, 402E & 404E), as modified by other conditions of this consent.
- The reason given for the condition is: In order to ensure compliance with the approved drawings.

Appeal B Ref: APP/Y1110/A/14/2213434

Portland House, Longbrook Street, Exeter EX4 6AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andrew Parker, Vita Student against the decision of Exeter City Council.
- The application Ref 13/4843/03, dated 7 November 2013, was refused by notice dated 17 January 2014.
- The application sought planning permission for change of use of existing office accommodation and extension at 5/6 floors to provide 153 studio apartments for student accommodation, retail and café/restaurant and associated disabled and cycle parking without complying with a condition attached to planning permission Ref 11/0895/03, dated 16 January 2012.
- The condition in dispute is No.2 which states: The development hereby permitted shall not be carried out otherwise than in strict accordance with the submitted details received by the Local Planning Authority on 23 May 2011 (dwg. Nos. L565_P(0)307, 501 and 502, 3 June 2011 (dwg. Nos. L565_P(0)301B, 306B, 401D and 403D), and 21 July 2011 (dwg. Nos. L565_P(0)302C, 303B, 304D, 305E, 402E & 404E), as modified by other conditions of this consent.

- The reason given for the condition is: In order to ensure compliance with the approved drawings
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Decisions

Appeal A

1. Planning permission is granted for change of use of office accommodation and extension at 5/6 floors at Portland House, Longbrook Street, Exeter EX4 6AB to provide studio flats [166] without compliance with condition No.2 previously imposed on planning permission 11/0895/03, dated 16 January 2012, but subject to the other conditions imposed on that permission in so far as they are still subsisting and capable of taking effect, and the following replacement condition: The development hereby permitted shall be carried out in accordance with the following approved plans: 3104/GA 501A (Lower Ground Floor), 3104/PA 502A (Ground Floor), 3104/PA 503B (1st-2nd Floors), 3104/PA 504B (3rd and 4th Floors), 3104/PA 505B (5th-6th Floors), 3104/PA 506A (Roof), 3104/PA 510D (Proposed North & West Elevations), 3104/PA 511C (South & East Elevations), all dated October 2013, plus 3104/PA 520 (CGI Longbrook Street Additional Studios) and 3104/PA 521 (CGI High Street Additional Studios), both dated September 2013.
2. In addition, the permission is subject to the following condition: The studio flats hereby permitted shall not be occupied other than by bona fide students, in accordance with the definition and terms specified in the Third Schedule of the Agreement under section 106 of the 1990 Act as amended, dated 11 January 2012, relating to Portland House.

Appeal B

3. Planning permission is granted for change of use of office accommodation and extension at 5/6 floors at Portland house, Longbrook Street, Exeter EX4 6AB to provide studio flats [162] without compliance with condition No.2 previously imposed on planning permission 11/0895/03, dated 16 January 2012, but subject to the other conditions imposed on that permission in so far as they are still subsisting and capable of taking effect, and the following replacement condition: The development hereby permitted shall be carried out in accordance with the following approved plans: 3104/GA 501A (Lower Ground Floor), 3104/PA 502A (Ground Floor), 3104/PA 503B (1st-2nd Floors), 3104/PA 504B (3rd-4th Floors), 3104/PA 505D (5th-6th Floors), 3104/PA 506B (Roof), 3104/PA 510E (Proposed North & West Elevations), 3104/PA 511D (Proposed South & East Elevations), all dated October 2013 and 3104/PA 522 (Context 6 Additional Studios), dated 6 December 2013, 3104/PA 520B (CGI Longbrook Additional Studios), dated November 2013, and L56_P(0)502 (Proposed Section A-A & B-B, provided as supporting information on 17 December 2013), dated March 2011. (Original approved drawing with note added at level 6).
4. In addition, the permission is subject to the following condition: The studio flats hereby permitted shall not be occupied other than by bona fide students, in accordance with the definition and terms specified in the Third Schedule of the Agreement under section 106 of the 1990 Act as amended, dated 11 January 2012, relating to Portland House.

Preliminary Matters

5. The appeals are for alternative proposals relating to the same development site. Planning permission was granted in 2012 for change of use of the then office accommodation and extension at 5/6 floor height to provide, amongst other uses, 153 studio apartments for student accommodation. Appeal A seeks an increase in the number of such apartments to 166 in total and appeal B an increase to 162.
6. Although not given as a reason for refusal, the report of the Council's Planning Officer, who recommended approval of planning permission in relation to appeal A, made reference to the need for a variation of the previous section 106 agreement associated with permission 11/0895/03 so that it applies to this permission and so that the financial contributions reflect the increase in bed spaces pro rata. A similar recommendation was made in respect of appeal B but subject to an appropriate CIL contribution and to the variation of the previous S106 agreement so that it applies to the new permission, and so that any remaining relevant financial contributions reflect the increase in bed spaces pro rata.
7. On the face of it, since the alternative proposals each result in a new planning permission being granted, new s106 agreements are required for each in so far as they are appropriate. However, the s106 agreement relevant to the 2012 permission required various contributions to be made prior to the commencement of development. At the time of the site visit it was noted that development was underway, so the financial contributions required in respect of the permitted development will now have been paid. As a result, to avoid double counting, no further payments would be appropriate unless they directly arose from the additional accommodation being permitted.
8. No fresh s106 agreements have been submitted in relation to the current alternative proposals. However, since the 2012 section 106 agreement was made, the Council have introduced the Community Infrastructure Levy (CIL) in Exeter. I have not been provided with any information about this and I have insufficient information to conclude whether or not any additional payments would now fall to be paid via the CIL or the section 106 route. Neither, significantly, have the Council provided information to enable me to be certain that the additional pro rata payments sought meet the tests set out in paragraph 204 of the National Planning Policy Framework (NPPF). It would therefore not be reasonable to refuse planning permission in the absence of any new or varied s106 agreements relating to financial contributions.
9. In addition to financial contributions, the 2012 section 106 agreement contained obligations regarding the Local Energy Network (LEN) Scheme; to permit only students to occupy the studios; and in respect of highway works. There is no evidence before me that it is essential for these matters to be subject of further obligations to enable the development at appeal to go ahead. In relation to highway works, it is assumed that the appeal development now being permitted will go ahead in tandem with the originally permitted scheme now being built. As to the obligations to the City Council, there is no reason to doubt that the LEN scheme would not similarly be constructed to apply within the development as a whole, including the additional accommodation being approved. However, in relation to the student accommodation, for the

avoidance of any doubt, the new permissions being granted will be subject to a condition ensuring that the accommodation is for students only.

Main Issues

10. The main issues in both appeals are firstly the effect of the proposed provision of additional accommodation at level 6 on the living conditions of occupants of nearby buildings in Longbrook Street and secondly on the character and appearance of the adjacent Longbrook Conservation Area. In relation to the first issue, the Council's concern is that the development would have an unacceptably increased overbearing and overshadowing impact by reason of the increased massing of the building.

Reasons

11. As noted above, the appeals concern alternative proposals for additional studio accommodation for students at 6th floor level. The Council Officer's report advises that in 2013 a number of internal and external alterations were approved as a minor amendment to the approved scheme. These included an amendment to the internal layout on level 6 to provide 5 rather than 3 studios.
12. In scheme A, for a total of 166 studio apartments, it is now proposed to convert the approved 6th floor communal space to 5 studio apartments and to extend this space to provide 10 apartments in total on the 6th floor. The design and materials of this extension would match the approved fifth floor extension. The communal space would be relocated to lower ground floor.
13. Scheme B, for 162 apartments, involves an extension of the 6th floor to provide 6 additional studios rather than 10 at this level.
14. The permitted scheme currently being built includes development at 6th floor level and the proposed additional studios would be no higher than this. The development in scheme A would increase the mass of the building but the top floors (at 5th and 6th floor levels) would be set back from the main façade which would limit the perception of the additional build in views from Longbrook Street. Given the set back and having regard to the approved mass and height of the building, the additional development would have limited impact in views from ground level or from nearby properties in Longbrook Street. The nearest properties are those directly opposite to the east. Owing to the relative heights of the properties opposite to the appeal building there would be no directly facing views of the new 6th floor studios from these properties. The increased height would be about 3 metres above the 5th floor. This would not be so significant as to materially impact on the outlook from or light reaching these properties.
15. As regards the impact on the character and appearance of the adjacent Conservation Area, the new development would blend in seamlessly with the design of the upper floors. The building is located at the southern end of Longbrook Street, in close proximity to a number of other tall buildings. In this context the impact of the limited additional mass created at 6th floor height would be unexceptional. There would be no adverse impact on the character and appearance of the Conservation Area.
16. Similar general considerations apply to the alternative scheme, the subject of appeal B. This would be a reduction of 40% in build at 6th floor level compared with scheme A. The additional impact of this development compared to the

approved scheme on neighbours and on the character and appearance of the Conservation Area would be insignificant.

17. The development therefore represents acceptable design that preserves the character of the Conservation Area and does not harm the living conditions of neighbours. It thus complies with relevant development plan policies, with the Exeter St James Neighbourhood Plan and with the objectives of the NPPF.
18. The third party comments have been taken into account but raise no additional matters not considered above.
19. The Council have suggested a number of conditions in the event of success of one or both appeals. Since the appeals seek removal of one specific condition on the original planning permission, relating to previously approved plans, and its replacement with another referring to revised plans, it is not necessary to set out any of the suggested conditions other than in respect of the plans. Instead, in addition to a replacement for condition 2, each planning permission will simply be subject to the conditions attached to the original permission in so far as they still subsist and are capable of taking effect.
20. As noted above, however, in the absence of any s106 agreements relating specifically to the appeal development, a further condition is being attached, for the avoidance of any doubt, to ensure that the additional accommodation shall only be used as student accommodation.

David Leeming

INSPECTOR