



Appeal Decision

Inquiry Held on 14 November 2023

Site visit made on 20 November 2023

by K Ford MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2023

Appeal Ref: APP/U1105/W/23/3324701

Jewson Ltd, Fore Street, Exmouth EX8 1HX

- 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 Churchill Retirement Living against the decision of East Devon District Council.
 - The application Ref 22/2120/MFUL, dated 16 September 2022, was refused by notice dated 20 June 2023.
 - The development proposed is redevelopment for 54 retirement living apartments and 6 retirement living cottages, including communal facilities, access, car parking and landscaping and 178 sqm of commercial use (Class E).
-

Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of 54 retirement living apartments and 6 retirement living cottages, including communal facilities, access, car parking and landscaping and 178 sqm of commercial use (Class E).

Procedural Matters

2. The application was recommended for approval by Planning Officers but on 20 June 2023 it was refused by Members on 3 matters relating to the failure of the development to deliver balanced communities, harm to business and employment opportunities and the failure to deliver sufficient affordable housing.
3. On 26 September 2023 the case was referred back to planning committee where it was resolved to withdraw the reasons for refusal. As a result no evidence has been submitted by the Council to support any of its reasons for refusal.
4. There was no main party at the Inquiry who opposed the development. Nevertheless, I heard from a representative of the Exmouth Town Council and the appellant called witnesses to introduce their evidence and to allow the opportunity for questions.

Main Issues

5. Whilst the Council has withdrawn its reasons for refusal, it is clear from the representations from local residents and interested parties that concern

remains in respect of matters which were the subject of the Council's original refusal.

6. The main issues are therefore whether the proposed development would deliver a balanced community, the effect of the proposed development on business and employment opportunities in the area and other material considerations.

Reasons

Site and Surroundings

7. The appeal site is an irregular shaped and sloping parcel of land that incorporates plateaus. It accommodates a builders merchant with yard which includes the storage of pallets of construction materials. Buildings on the site are used for storage, sales and office accommodation. The site has a commercial character, appearance and function. The appearance and condition of the buildings along with the use of the site means that it does not make a positive contribution to the street scene.
8. The site is located on the edge of the town centre boundary and within walking distance of Exmouth town centre. There is a public carpark to the west of the site with residential properties to the north, south and east. Residential properties include a terrace of Grade II listed buildings at 14-22 Montpellier Road which date from the early-mid nineteenth Century and listed in part due to their architectural interest. The Listed Buildings fall within Exmouth Conservation Area 3 – Albion Street/ Windsor Square, the heritage significance of which derives from the historic, architectural, artistic and archaeological interests associated with the history and development of Exmouth from the Post medieval period onwards.

Employment Opportunities

9. The site currently provides 10 FTE jobs with the planned relocation of existing staff to a nearby site following redevelopment. The appellant made clear that the redevelopment would not lead to any job losses by the company. The proposed development is expected to create 11-17 direct FTE jobs from the 178 sqm of commercial floorspace with 4.4 FTE jobs being generated by the retirement scheme. The development would therefore lead to a net increase in jobs.
10. The Inquiry was presented with evidence that the site is unlikely to be re-used for anything similar to the current use with the existing buildings on site reaching the end of their life. Future alternative uses are likely to be constrained by surrounding residential properties, along with the presence of the Conservation Area and Listed Buildings. Reference was made to the existing use generating local amenity issues such as noise from vehicles early in the morning, traffic and road blockages from heavy goods vehicles on surrounding roads.
11. The Council's Employment Land Review 2021 identifies the west end of the district as the focal point for future development and job creation, in part due to the proximity of this part of the district to Exeter and access to the southwest and to the north. In this context the appeal site is not therefore a priority location for employment within the District.

12. There is currently a supply of more than 103ha of employment land in the district with over 10ha in the Council's adopted and emerging Local Plans. The 0.53ha of the site represents less than 1% of the allocations and consented employment land across the district. This demonstrates that the loss of the site would not harm the supply and availability of employment land in the area.
13. From the evidence before me, the development would not conflict with the part of Policy Strategy 32 of the East Devon Local Plan 2013-2031 (Local Plan) which amongst other things does not permit a change of use of employment land where it would harm business and employment opportunities in the area. As no harm has been identified it is not necessary for me to go on to consider the exceptions listed in the policy.

Delivering a Balanced Community

14. Whilst interested parties identify the availability of older persons property to buy and rent within the district, I agree with the appellant that it is a reflection of market turnover and does not necessarily indicate a lack of need. The appellant's evidence provides an assessment of housing demand for retirement in Exmouth which was not contested by the Council. It demonstrates that there is an existing unmet need for homes for older persons and that for the period up to 2040 more than 6400 additional specialist homes are needed for the older population. There is therefore an existing and projected unmet need for specialist accommodation for older persons in the district.
15. The National Planning Policy Framework (NPPF) identifies that it is important that the needs of groups with specific housing requirements are addressed. In addition, the Planning Policy Guidance (PPG) states that where there is an identified unmet need for specialist housing Councils should take a positive approach to schemes that propose to address this need.
16. Making specific provision for older people has the potential to assist the wider housing market through the release of existing under occupied housing stock. The development would not harm the ability to deliver a balanced community. As such it would not conflict with the part of Strategy 4 of the Local Plan which seeks to ensure age balanced communities.

Other Considerations

Character and Appearance including the effect on the Listed Buildings and Conservation Area

17. The proposed terraced design mirrors other terraced buildings in Fore Street and the drop down roofs reflect the sloping nature of the site. Whilst taller than some other buildings in the vicinity, the recessed areas of the buildings provide some relief in the façade. This along with variety in the proposed materials means the development would be compatible with the surroundings whilst also reducing the impact of the 3 storey building on the street scene. The proposed commercial buildings would provide further variety and activity at the ground floor level.
18. The Heritage Assessment identifies that in its current form the site is considered at best to make a neutral contribution to the setting and significance of the Conservation Area and at worst a negative contribution. This is a consequence of the current appearance and commercial functional character. It identifies that whilst the development would lead to changes in

the appearance of the site this would not harm the ability to understand, experience or appreciate the historic environment of the Conservation Area. I agree.

19. The Heritage Assessment also identifies that the development would not directly effect the Listed Buildings 14-22 Montpellier Road or the elements of the setting that provide meaningful and positive contributions to its heritage significance. Key views from the Listed Buildings principal east elevation would be retained. Changes to the views of the buildings would not negatively impact on or harm the Listed Buildings. Based on the evidence before me I have no reason to take a different view.

Services and Facilities

20. Whilst interested parties have raised concerns regarding the ability of services and facilities to cope with the demands place upon them from the development there is little before me to substantiate this. At the Inquiry the appellant explained that the provision of specialist accommodation is likely to reduce the demand placed on services such as the NHS as a result in the reduced risk of trips and falls. There is little before me to indicate otherwise.

Living Conditions

21. Concern has been raised regarding the impact on the living conditions of neighbouring occupants during construction of the development. However, the impact of construction could be managed through an appropriately worded planning condition requiring a construction and environment management plan.
22. The site currently operates 07.30-17.00 Monday to Friday and 08.00-12.00 on a Saturday morning. It is expected that the proposed redevelopment of the site would overcome the noise and traffic issues currently associated with the existing operation leading to a long term improvement to the living conditions of neighbouring occupants.
23. The proposed cottages would back onto the properties on Montpellier Road in relatively close proximity. However, the height of the proposed dwellings along with the location of windows within the roof plane means harm to the living conditions in the existing and new properties in terms of overlooking and access to light would be avoided.

Highways

24. The proposed redevelopment would remove the large delivery and trade vehicles from the surrounding roads with the Transport Assessment identifying a reduction in trip generation from the site. Concern has been raised regarding the level of proposed car parking at the site. Nevertheless given the location of the proposed development close to the town centre, evidence on expected car ownership levels and location of a public car park adjacent to the site I am satisfied that the proposed level of parking would not generate a risk to highway safety.

Environment

25. The development would lead to the loss of a group of ash trees in the corner of the site. However, they are categorised as being of low amenity value by the appellant's arboriculturalist. Their loss did not raise objection from the Council's

tree officer. There is little before me to indicate that I should take a different view. Similarly although interested parties have made reference to the presence of bats, an ecologist assessment has not identify any evidence of roosting bats at the site.

Special Protection Area

26. The site is located close to the Exe Estuary and Pebblebed Heaths Special Protection Areas. Occupants of residential development are likely to increase visitor pressure on the protected habitat, leading to potential harm. As such an Appropriate Assessment (AA) is required, in line with Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017. Having undertaken an AA I am satisfied that the mitigation payment is required to avoid an adverse effect on the integrity of the SPA. As outlined below, I am satisfied that the mitigation payment can be secured and would be sufficient to enable the delivery of mitigation measures to address the level of harm likely to be caused by the development. As such the development would not lead to adverse effects on the integrity of the habitat either alone or in combination with other plans and projects.

Planning Obligation

27. The submitted S106 agreement commits to providing an off site affordable housing contribution plus an additional affordable housing contribution to secure a share of any potential additional profit towards affordable housing. The contributions have been informed by a viability study and reflect practical difficulties of being able to make provision on site given the nature of the development. It also secures a financial contribution for habitat mitigation for the Exe Estuary and Pebblebed Heaths as a result of increased recreational demands on the area as a result of residential development.
28. Based on the submitted evidence I am of the view that all of the obligations would be necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind.

Planning Balance

29. It is accepted that the Council cannot demonstrate a 5 year housing land supply. Where a Council cannot demonstrate a 5 year supply of deliverable housing sites the policies which are the most important for determining the planning application are deemed out of date for the purposes of paragraph 11 of the NPPF. The presumption in favour of sustainable development therefore applies.
30. For decision making this means granting planning permission unless the application of policies in the NPPF that protect areas or assets of particular importance provide clear reason for refusing the development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
31. I have found no harm with regards the creation of balanced communities or on employment land provision. I have also found there to be no harm to the character and appearance of the area, including to the nearby Conservation Area and Listed Buildings. Similarly there would be no harm to services and facilities, the living conditions of neighbouring occupiers with regards overlooking and light, to highway safety or the Special Protection Area. Such

absences of harm should be expected and not treated as particular benefits in favour of the development.

32. The development would deliver 60 additional dwellings. They would meet an identified need. Given the importance of meeting the needs of older people, identified in the NPPF and PPG, I give the benefit of the delivery of the additional dwellings significant weight. I also give notable weight to the social benefit that would be generated and the associated release of existing housing stock as a result of people downsizing into the specialist housing proposed. I give moderate weight to the provision of affordable housing given that it is not to be provided on site and is not policy compliant in terms of the level of provision, noting the reduced provision has been justified through a viability appraisal.
33. The scheme would deliver economic benefits, both during construction and through the operation of the retirement facility thereafter. There would also be job creation from the commercial space to be provided as part of the development. There would also be economic benefits from the local spend by the residents of the development, particularly given the location of the scheme in close proximity to the town centre. I give this considerable weight.
34. With regards environmental benefits, the development would make efficient use of previously developed land which I give considerable weight.
35. I have not identified any harms that would significantly and demonstrably outweigh the cumulative benefits that have been identified. I have taken into account the objections raised by interested parties, including local residents and the representative of the Town Council. However, the clear benefits of the scheme outweigh the harm.

Conclusion and Planning Conditions

36. For the reasons identified and having regard to all matters raised, I conclude that the appeal should be allowed subject to conditions. In attaching the conditions I have taken into account paragraph 56 of the NPPF which identifies that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.
37. The statutory implementation period has been imposed and the approved plans specified for the avoidance of doubt and in the interests of proper planning (conditions 1, 2). A Construction and Environment Management Plan is necessary to protect living conditions of neighbouring occupiers during construction (condition 3).
38. A remediation strategy to identify, assess and remediate any contaminants found on the site is necessary to ensure that the development does not cause an unacceptable level of water pollution. Any contaminants should be identified and adequately addressed. Similarly, a condition preventing any piling or deep investigation boreholes using penetrative methods is necessary to prevent unacceptable levels of water pollution at the development site (conditions 4, 7, 8).
39. A condition requiring surface water drainage will ensure the development will not cause and increase in flood risk on site, on adjacent land or downstream of the development (condition 5). A condition requiring the preparation of a

Written Scheme of Investigation and subsequent staged programme of historic and archaeological evaluation and mitigation will ensure the identification, recording, analysis and archiving of any heritage matters within the site (condition 6, 17).

40. A number of conditions seek to ensure quality of design. This includes conditions relating to matters such as waste storage and further specification including samples to ensure materials and finishes are appropriate to the appearance of the locality. Good quality hard and soft landscaping will enhance the development and can have a positive impact on the quality of life of occupants. Details of these measures and provisions for their maintenance during the first 5 years are therefore necessary. Similarly, a condition protecting existing trees in line with an arboricultural method statement will ensure such trees are retained and integrated into the development (conditions 9, 12, 13, 16).
41. Conditions requiring a sound mitigation scheme and sound insulation scheme and their implementation are necessary to protect the living condition of future residents and local residents (conditions 10, 11). Compliance with measures detailed in the Ecological Assessment will ensure ecology is protected (condition 14). A condition ensuring the parking and turning areas are surfaced and completed will assist in ensuring highway safety (condition 15). An occupancy condition is necessary to ensure the development is secured for retirement living and therefore delivers what planning permission has been applied for (condition 18).

K Ford

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission and shall be carried out as approved.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

10119EM-PA-LOC	Location Plan 23.09.22
10119EM-PA01 A	Proposed Site Plan 02.03.23
10119EM-PA02 A : lower ground	Proposed Floor Plans 02.03.23
10119EM-PA03 : upper ground	Proposed Floor Plans 23.09.22
10119EM-PA04 : first	Proposed Floor Plans 23.09.22
10119EM-PA05 : second	Proposed Floor Plans 23.09.22
10119EM-PA06 Rev A	Proposed roof plans 19.06.23
10119EM-PA07 Rev A: Sheet 1	Proposed Elevation 24.02.23
10119EM-PA08 Rev A: Sheet 2	Proposed Elevation 05.06.23
10119EM-PA09 : sheet 3	Proposed Elevation 23.09.22
10119EM-PA10 Rev A : Sheet 4	Proposed Elevation 24.02.23
10119EM-PA11 : cottage development	Proposed Combined Plans 23.09.22
10119EM-PA12 :	proposed site Sections 23.09.22

3. A Construction and Environment Management Plan (CEMP) must be submitted and approved by the Local Planning Authority prior to any works commencing on site and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters: Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Any equipment, plant, process or procedure provided or undertaken in pursuance of this development shall be operated and retained in compliance with the approved CEMP. 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 and no high frequency audible reversing alarms used on the site.
4. Site Investigation and Remediation:

No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved, in writing, by the local planning authority:

A. A preliminary risk assessment which has identified:

 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors

- potentially unacceptable risks arising from contamination at the site.

B. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

C. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

D. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (C) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

5. No development hereby permitted shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority:
 - (a) A detailed drainage design based upon the approved Flood Risk Assessment and Drainage Strategy.
 - (b) Detailed proposals for the management of surface water and silt runoff from the site during construction of the development hereby permitted.
 - (c) Proposals for the adoption and maintenance of the permanent surface water drainage system.
 - (d) A plan indicating how exceedance flows will be safely managed at the site.No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (d) above.
6. No development shall take place until the developer has secured the implementation of a programme of (i) historic building recording and (ii) archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority.'
7. No piling or deep investigation boreholes using penetrative methods shall be carried out other than in accordance with a piling method statement that shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
8. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has

submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

9. Before development above foundation level is commenced, a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
10. The specific noise level of any fixed plant or equipment installed and operated on the site must be designed as part of a sound mitigation scheme, which has previously been submitted to and approved in writing by the Local Planning Authority, to operate at a level of 5dB below the detailed daytime (07:00 - 23:00 expressed as LA_{90 1hr}) background sound levels when measured or predicted at the boundary of any noise sensitive property and the detailed night-time (23:00 - 07:00 expressed as LA_{90 15min}) background sound levels when measured or predicted at 3m from the facade of any noise sensitive property. Any measurements and calculations shall be carried out in accordance with 'BS4142+2014 Methods for Rating and Assessing Industrial and Commercial Sound'.
11. No development above foundation level shall take place to create ground floor residential unit no 3 and upper ground floor units 14, 15, 16 and 17 as identified on drawing no's 10119EM-PA02 A: lower ground and 10119EM-PA03: upper ground, until a sound insulation scheme has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be designed to reduce the transmission of noise between the commercial premises and the residential development with the airborne sound insulation performance designed to achieve, as a minimum, a 10dB increase in the minimum requirements of Approved Document E. The standard must be applied to party walls, floors and ceilings shared with the commercial premises. The scheme to be submitted shall also provide for post construction testing certification to demonstrate the sound insulation performance has met the required standard and where necessary set out what further mitigation measures will be employed to achieve the required levels. The sound insulation scheme shall be installed and maintained only in accordance with the details approved by the Local Planning Authority.
12. Notwithstanding the submitted details, no development above foundation level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority; such a scheme to include the planting of

trees, (including species, size, tree pit details, appropriate soil volume, grilles, guards, mulching, staking, guying and watering arrangements), hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatment. The landscaping scheme shall be carried out in the first planting season after commencement of the development unless any alternative phasing of the landscaping is agreed in writing by the Local Planning Authority and the landscaping 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 unless otherwise agreed in writing by the Local Planning Authority.

13. The development hereby approved shall be undertaken in accordance with the recommendations and mitigation measures detailed in the Arboricultural Assessment and Method Statement prepared by Barrell Tree Consultancy and dated 25 August 2022.
14. The development hereby approved shall be undertaken in accordance with the recommendations and mitigation measures detailed in the Ecological Assessment prepared by Tyler Grange and dated 8 September 2022.
15. The development hereby permitted shall not be brought into use until the parking and turning areas shown on the approved plans is surfaced and completed.
16. Prior to the first occupation of the building hereby approved, any waste, bin and buggy storage structures shall be constructed only in accordance with details that shall have previously been submitted to, and approved in writing by, the Local Planning Authority.
17. The development shall not be occupied until the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation referenced in condition 6. The provision made for analysis, publication and dissemination of results, and archive deposition, shall be confirmed in writing to, and approved by, the Local Planning Authority.
18. Each dwelling hereby permitted shall be occupied only by;
 - (i) A person aged 60 years or over;
 - (ii) A person aged 55 years or older living as part of a single household with the above person in (i); or
 - (iii) A person aged 55 years or older who were living as part of a single household with the person identified in (i) who has since died.'

END OF SCHEDULE