

130 FORE ST, EXETER. EX4 3JQ

PROPOSED VARIATIONS TO EXTANT APPROVAL 12/1426/03 – Condition 2.

**Variation of Condition 2 (approved drawings) of approval 12/1426/03
(Alterations and roof level redevelopment to provide 13 flats with associated
access and communal facilities) to alter the height and internal layouts.**

The submitted description was more fully : USE OF 3 BAYS AT LGF AS RETAIL/OFFICE USE, IN LIEU OF 2 RESIDENTIAL UNITS AND REFUSE AREA. RELOCATION OF REFUSE STORE TO ADJ MAIN ENTREANCE. PROVISION OF ADDITIONAL REFUSE AREA IN UNDER PAVEMENT AREA. PROVISION OF REPLACEMENT 2 RESIDENTIAL UNITS AT ADDITIONAL SF LEVEL, MAINTAINING PREVIOUSLY APPROVED 13 FLATS. MODIFICATION OF TF FLAT DESIGN.

**EXETER CITY COUNCIL REFUSAL OF APPLICATION NUMBER 23/0631/VOC
GROUNDS OF APPEAL**

1.0 GROUNDS FOR APPEAL

For the purposes of brevity, I will not repeat information contained in the original submission Design and Access Statement (DAS) and will just cross reference to that document.

The appeal relates to the refusal of an amendment of a 2013 approval via a section 73 Variation of Condition application.

2.0 THE SITE

The site is located in Fore St on the western fringe of the main retail area of the city, which has in recent years been subject to planning policy and improvements. The site has an area of 0.03 Ha.

The description and photographs of the site and context is contained in the DAS.

3.0 PROPOSAL

To amend the extant approval to retain the existing LGF in a commercial use, similar to existing (Retail/Office) and provide compensatory residential accommodation at SF level, maintaining the overall residential development at 13 units of approval 12/1426/02. A full description of the proposals is contained in the DAS.

4.1 PLANNING HISTORY

Planning approval for redevelopment of the rear premises for 13 flats application number 12/1426/03 was granted in 2013. Pre commencement conditions were discharged under 14/1741/32 dated 22.01.15. The approval was confirmed as commenced by ECC's case officer P Jeffery by email on 18.02.2015. Approval has not been able to be continued until now due to long leases granted on the retail premises. ECC do not contest that the approval is Extant.

Whilst the original approval was subject to no objections, the amendment application to which this appeal relates received 139, which following discussions with key objectors, was confirmed to be predominately orchestrated.

Despite a categorical officer recommendation for approval, the number of objections resulted in the application being brought before the ECC Full Planning and Development Committee on 4.09.23.

Despite both the presenting Case and Chief Officer's reinforcement of the basis of the officer recommendation, after presentations by objectors and ward member, the application was refused on a vote 5-2 with 3 abstentions.

Following the vote, the chief officer asked the elected members on what basis they wanted to refuse and after a debate, he was directed to draft a refusal notice *on conservation grounds*.

On reflection, member's rejection of the proposal appears to have originated from a political reaction to 139 objectors and a ward member opposing the application, but also a retrospective reassessment of the previously approved extant scheme and the viewing of the proposals as a whole, rather than merely assessing the revised section relating to the application. None of these are legitimate planning grounds for refusal.

4.2 PLANNING POLICY BASIS

Is set out in the DAS.

5.0 REASONS FOR REFUSAL

The ECC Notice of Determination dated 6 September 2023 stated:

"1) The proposal, by virtue of the increased height, massing and scale will create an unacceptable impact on local character, the Central Conservation Area and nearby listed buildings and in addition the increased height, scale and massing will impact on the amenity of neighbouring dwellings by creating a dominance in contrast to the previously open skyline.

The application is therefore considered to be contrary to Exeter Local Plan First Review 1995-2011 policies DG1(f), (g) and (h), C1, C2 and H5(a), Exeter Local Development Framework Core Strategy policies CP4 and CP17, the Residential Design Guide Supplementary Planning Document and Section 12 of the National Planning Policy Framework 2021."

6.0 APPEAL GROUNDS

The appellant case is that the DAS clearly establishes that the proposal is compliant with ECC LP policy – see "Planning Policy Basis". This position is underscored by ECC's own Case Officer Report which makes a very considered assessment and categorically recommended the application for approval.

The appellant considers that the professional officer report is objective, carries significant weight and cites this in preference to extended arguments from the applicant, that might be considered partisan or unsubstantiated.

In respect of the key issue, the impact of the revised proposals on the conservation area and nearby listed buildings, the officers report clearly states

"The retention of the commercial units is welcomed to support Fore Street and the additional height, due to the topography and surrounding built form, is not considered to generate any significant visual or heritage impacts. Whilst concerns have been raised in relation to privacy and light it is considered that the primary privacy and massing impacts will be from the already approved scheme which will face directly towards properties on West Street. The revisions to the second floor level and the additional third floor are not considered to generate any significant amenity impacts on neighbouring properties that would warrant a refusal on those grounds. It is therefore concluded that the proposed variations to the approved plans are acceptable."

"Historic Setting and Visual Impacts Design The existing property of 130 Fore Street is noted in the Central Conservation Area Appraisal and Management Plan (CAAMP) as being a 'pale imitation of the ornate

Victoria Building that it replaced' with the garage buildings below (the appeal site) as 'an eyesore ripe for development'. "

"Historic Setting and Visual Impacts The site is within the Central Conservation Area and there are a number of listed buildings in the surrounding area. The site is obscured by a lot of the surrounding built form, however there are still key views from the east and west. It is visible from Bartholomew Street West, however it follows the built form and the majority of the massing is as previously approved. Whilst there will be an addition to the skyline it is not considered to generate significant visual harm. To the east there is a key viewpoint looking east along West Street, however the scheme follows the built form and steps down with the topography of the street and will not create a dominance that sits above The House That Moved or St Marys Steps Church and is not considered to detract from their positioning, the wider area or the Conservation Area."

The appellant believes this categorically establishes that the main part of the refusal has no basis.

In respect of the refusals reference to impact on neighbouring properties and the alleged "dominance in contrast to the previously open skyline".

"The Council's Urban Designer was consulted on the proposal and raised no objections to this additional storey. The additional height increase is considered to be acceptable in the city centre context, with the ridgeline of the retained building to west being maintained as the tallest part of the development and providing a level of screening of the new when viewed from the west. From the east the additional storey will not be highly visible, being partially obscured by 'The House That Moved' and St Mary Church. The second and third floor elements are also set in from the eastern site boundary (due to the shared roof terrace at upper-first floor level), limiting the dominance in this direction. There is not considered to be any significant loss of daylight, privacy or other amenity impacts, with these coming from the lower floors of the extant approval."

"Second Floor - The original approval was for a single flat, however this has been extended to create 2 flats in this location. The flats meet the space standards. Whilst the extension will bring the building closer to neighbouring properties on Fore Street it is considered that the dominance occurs at ground and first floor levels and the proposed extension will not significant alter the dominance, privacy or amenity impacts generated by the original proposal."

The appellant believes this clearly supports the proposals and that this aspect of the refusal has no planning justification.

In conclusion the Officer's Report asserted :

"Conclusion This proposal will see an additional storey added to the existing approval alongside retention of commercial units at lower-ground floor levels. The retention of the commercial units is welcomed to support Fore Street and the additional height, due to the topography and surrounding built form, is not considered to generate any significant visual or heritage impacts. Whilst concerns have been raised in relation to privacy and light it is considered that the primary privacy and massing impacts will be from the already approved scheme which will face directly towards properties on West Street. The revisions to the second floor level and the additional third floor are not considered to generate any significant amenity impacts on neighbouring properties that would warrant a refusal on those grounds. It is therefore concluded that the proposed variations to the approved plans are acceptable.

Recommendation GRANT permission...."

In deciding to refuse the application, ECC Elected Members declined to accept the professional opinion of a paid employee of the council (one Member stating - I paraphrase 'I know what the professional advice is, but I am making an unprofessional judgement') to appease the weight of objectors orchestrated opinion and satisfy their own predisposition against a scheme their authority previously approved. Members then post rationalised reasons for refusal, which officers were required to write up in a credible form.

The Appellant believes that the officers categorical assessment that the proposals creates no unacceptable impacts its recommendation for for approval, establishes beyond doubt, that this appeal should be upheld.

To support this position, the appellant would refer the Inspector to the drawings of the approved Extant approval (appendix B) the Appeal proposals (overlaid in red with the Extant approval outline (Appendix C) including sectional drawings showing the relationship with West St properties and an extended street elevation indicating the proposals in context.

These clearly show that the proposals (the additional buildings to the Extant approval)

- Were in scale with surrounding local character, the Conservation Area and nearby Listed Buildings, taking account buildings/topography behind the site, as illustrated on the West St Elevation drg no 2189.4.9.2 and the aerial 3D view from the NW (No 6).
- Did not result in a material change to open skyline and thereby did not dominate neighbouring dwellings (assumed 6-10 West St) as illustrated on daylight and overlooking sections drg nos 2189.8.5.1 and 2.

From the above, the appellant believes it is clear that the Officer Report made an appropriate assessment of the planning issues relating to this application and that Members decision to refuse was, if not malevolent, certainly misguided and that the application should have been approved, in line with the officer recommendation.

7.0 CONCLUSION

We have demonstrated that the appeal proposal was subject to a clear and categorical recommendation for approval which addressed the very issues Members subsequently chose to refuse it upon. We have provided information which highlights the basis of refusal is not justified and that the proposed addition to the Extant approval were both of an appropriate scale relative to the surrounding context and did not materially reduce open skyline/dominate neighbouring dwellings.

Therefore the decision to refuse I and the reasons given for refusal, have no planning grounds.

We would therefore invite the Inspector to uphold this appeal.

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1 March 2024

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APPENDIX/LIST OF DOCUMENTS

App A/Q05a	Documents submitted with application to LPA
App A/Q05b	<p>List of plans/documents submitted with application to LPA</p> <p>Design & Access Statement, Statement of Significance and Heritage Statement 20.05.23.</p> <p>Plans - 2189.4.2, 4.3A, 4.5.1A, 4.5.2A, 4.6, 4.7,</p> <p>Sections - 2189. 4.8.1, 4.8.2, 4.8.3, 4.8.4,</p> <p>Elevations – 2189.4.9.1, 4.9.2A</p>
App B/Q05c	<p>List of plans/documents on which the LPA made their decision</p> <p>Design & Access Statement, Statement of Significance and Heritage Statement 20.05.23.</p> <p>Plans - 2189.4.2, 4.3A, 4.5.1A, 4.5.2A, 4.6, 4.7A</p> <p>Sections - 2189. 4.8.1, 4.8.2, 4.8.3, 4.8.4, 4.8.5.1, 4.8.5.2</p> <p>Elevations – 2189.4.9.1, 4.9.2A</p> <p>2189.4.7A, 4.8.5.1, 4.8.5.2</p> <p>3D Views – 1. from Fore St-Bartholomew St, 2. from Fore St, 3. From West St (west) 4. from West St (east) 5. Aerial view from SW and 6. Aerial view from NE.</p> <p>ACT Acoustic report 25.07.23</p> <p>Email 29.06.23 BP-ECC re objections</p>
App C/Q06a	Documents which did not form part of the original application
App C/Q06b	<p>List of documents which did not form part of the original application</p> <p>Plans 2189.4.7A</p> <p>Sections - 2189. 4.8.5.1, 4.8.5.2</p> <p>3D Views – 1. from Fore St-Bartholomew St, 2. from Fore St, 3. From West St (west) 4. from West St (east) 5. Aerial view from SW and 6. Aerial view from NE. (Files too large for portal – PINS to advise preferred upload method)</p> <p>ACT Acoustic report 25.07.23</p> <p>Email 29.06.23 BP-ECC re objections</p> <p>Extant Approval 12/1426/03</p> <p>Location - 1589.0</p> <p>As Existing</p> <p>Plans – 1598.10, 11, 12A, 13A, 15</p> <p>Sections – 1598.18.1, 18.2A, 18.3A</p> <p>Elevations – 1598.19.1A, 19.2A</p> <p>Proposals</p> <p>Plans – 1598.3.0C, 3.1.1C, 3.1.2A, 3.2A, 3.3A, 3.5.1D, 3.5.2E, 3.7B</p> <p>Sections – 1598.3.8.1D, 3.8.2D, 3.8.3C, 3.8.4C</p> <p>Elevations – 1598.3.9.1C, 3.9.2E</p>

App D/Q09a Plans/documents submitted to the appeal but not previously seen by LPA
App D/Q09b List of plans/documents submitted to the appeal but not previously seen by LPA
Plans - 2189.4.2-PA
Sections - 2189. 4.8.1-PA, 4.8.2-PA, 4.8.3-PA
Elevations – 2189.4.9.1-PA, 4.9.2-PA

Red = Documents added during the application period. Blue = The Extant approval

AppE/Q10 Correspondence with LPA.
Email 29.06.23 BP to ECC Planning re objections