Your Ref: Application 19/1556/FUL

Dear Councillors and Planning Officer,

Development of a Co-Living (Sui Generis) accommodation block and a hotel (Class C1) including bar and restaurant, following demolition of existing shopping centre and pedestrian bridge, change of use of upper floors of 21-22 Queen Street to Co-Living (Sui Generis), and all associated works including parking, landscaping, amenity areas, public realm improvements, new pedestrian bridge and provision of heritage interpretation kiosk. (Revised)

The Harlequin Centre, Paul Street, Exeter, Devon, EX4 3TT

Introduction

I refer to the above noted planning application and would invite you to defer determining the application until such time as the material flaws in the officer's Planning Committee Report are satisfactorily addressed.

The Committee Report appears to be very generous to the applicant in setting aside material conflicts with the Council's own adopted planning policies and also national planning guidance in favour of recommending conditional approval to the present unsound proposal.

The application has attracted numerous well founded objections and the proposed mitigation of the deficiencies of the present proposal relies on conditions that in themselves are not fit for purpose and do not meet the required tests for the imposition of sound conditions.

Substantive Policy Objections

The Agenda Report relies heavily on the so called 'tilted balance' in arriving at the view that given a shortfall in the Council's 5 Year Housing Land Supply (5YHLS) the provision of co-living units would meaningfully address this need.

This is a flawed argument as 'co-living' units are *sui generis* and may not be relied upon as contributing to a strategic housing requirement. This view is consistent, for example, with student housing which 'co-living' units are most directly comparable to and which are defined as 'specialist housing' and are reasonably excluded from the 5YHLS calculation. Similarly, the proposed hotel would not of course contribute towards any such 5YHLS argument.

Specifically, as the proposed co-living schemes are 'sui generis' (rather than within a residential use class for planning purposes) and is not accepted as a suitable form of affordable housing. This means that co-living schemes are unable to provide conventional on-site affordable accommodation due to space standards (see below).

Reviewing experience from other local planning authorities, it is understood that the London Plan, as well as a small number of London authorities, have sought to address the above weakness with co-living schemes by adopting specific policies requiring co-living developments to pay a financial contribution towards affordable housing.

For example, guidance in this particular respect can be found with Policy H18 of the London Plan which sets out the contribution co-living proposals are expected to make towards affordable housing, namely that they should provide a contribution towards new C3 off-site affordable housing as either an upfront cash in lieu payment to the local authority, or an in perpetuity annual payment to the local authority.

This means that the present development would be expected to provide a contribution that is equivalent to 35 per cent of the units on the present application site as required by Policy CP7.

The present proposal, even if found to be acceptable on planning grounds, (which it is not in this instance), must therefore be properly examined to ensure that it fully funds the delivery of conventional (off-site) affordable housing.

At present it fails to do so as set out below.

Affordable Housing Contribution

Policy CP7 of the adopted Exeter City Plan requires 35% of the total housing provision on sites capable of providing 3 or more additional dwellings as affordable housing. The Agenda Report confirms that the requirement for affordable housing set out in Policy CP7 applies to the proposal but then for no explicable reason goes on to conclude that in this case 20% affordable housing should be provided as opposed to 35% as set out in Policy CP7.

There is no sound planning reason for permitting such a substantial shortfall in affordable housing provision, particularly when what is being provided is so far short of recently published national space standards.

The Agenda Report is unfortunately unclear in this important respect but as will be appreciated by all committee members the present application falls to be determined having regard to prevailing planning policy and this starts with Policy CP7 and a requirement for 35% affordable housing.

Size of units

Concerns over the undue weight placed on the contribution of such units to the 5YHLS as well as disregarding the Council's policy based expectation of securing the delivery of 35% conventional affordable housing are exacerbated by the further important consideration that the size of the co-living units is well below the nationally prescribed national space standard for a 1 bed 1 person dwelling of 37 sq m.

Whilst accepting a degree of shared amenity space, the room sizes of the studios vary between 18 and 24 sq m. which equate, for example, to a segregated individual living area measuring just 4.00 x 4.50 metres or at the largest measuring less than 5 metres by 5 metres.

Such regressive sizes do not provide acceptable accommodation in their own right and are of course in conflict with the guidance set out in the Government's recently published 'Technical housing standards – nationally described space standards' (DCLG, March 2015) which very clearly states in its opening paragraph:

1. *This standard deals with internal space within new dwellings and is suitable for application across all tenures*.

Paragraph 7 further states:

7. *Minimum floor areas and room widths for bedrooms and minimum floor areas for storage are also an integral part of the space standard. They cannot be used in isolation from other parts of the design standard or removed from it*.

In other words, disaggregating the different uses to justify departures from these minimum standards is not a legitimate option; the application of this advice to the present co-living is clear.

In other words, the above evidence based advice contradicts the officer report to Committee which advises Members that "*Officers do not consider that the local or national space standards should be applied to co-living housing schemes, as they are not standard dwelling types"*.

Reading through Section 6 of the Agenda Report, it appears that the 26 cluster flats and 94 studios (251 bedspaces) will have access to a total of 667 square metres of 'shared amenity spaces'. This equates to 2.65 square metres of shared amenity space for each occupant based on 251 bed spaces and so may be added to the 18 or the 24 square metres of individual living areas; this still falls far short of the above noted nationally prescribed space standards and remains fundamentally deficient in providing satisfactory accommodation for intended occupants.

Car Parking

Policy T11 of the Exeter Plan states that permission for development in the City Centre will be subject to ensuring that there is no significant change in the number of public off street parking spaces though there will be a shift from long stay to short stay provision.

In this respect, the Agenda Report confirms that *'The amount of car parking on the site will be reduced from 91 spaces within the public car park to 44 spaces*' but once again concedes this concern in concluding that this loss is not significant in terms of the overall number of 4,300 street parking spaces in the City Centre.

With due respect, such an approach makes no sense; it is of course the case that the loss of 47 spaces is not particularly significant compared to 4,300 spaces but looking at the application on its own merits such a loss is very significant when properly compared to what the site presently contributes. The resultant 52% loss of car parking spaces from the site is not acceptable and the officer's unusual logic if applied to all other cases throughout the city centre would of course eventually result in a long term loss across the city and sets a very dangerous precedent if supported by Planning Committee.

The present proposal is clearly contrary to Policy T11.

Conditions

Government guidance states in the above noted National Planning Policy Framework:

54. *Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*.

55. *Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification*.

Reviewing this particular issue, it is noted that the Agenda Report advises '*The Local Highway Authority has recommended a condition for a car sharing club facility on site*'. Such a requirement cannot however be conditioned as it would not meet the requirements for such conditions as set out in the above noted Framework as no such provision is before the Local Planning Authority to consider and it therefore neither precise or enforceable.

Furthermore. The Agenda Report recommends a condition to secure details of how pick-up/drop-off and move in/move out arrangements will be managed; again any such details need to be submitted and agreed **before** any resolution to grant permission as they go to the heart of the acceptability of the scheme in terms of highway safety.

Again, the Agenda Report notes that the Local Highway Authority has '*raised concerns with the ease of access to the integral cycle store through two narrow doors*' but then advises '*the details of which can be addressed at condition stage*'. How is this at all realistic?; again the Local Planning Authority must be satisfied over the acceptability of such access arrangements particularly in the context that reliance on cycle use is the more important given the loss of more than half of the present car parking spaces from the application site. In this respect, the objections of the Exeter Cycling Campaign are relevant.

Again, the above requirements must be addressed and agreed before any resolution to approve the present application which is after all a FULL application and it follows that rather than being considered as merely 'technical details' they are important to the acceptability or otherwise of the present proposal.

Heritage Assets

Members will be aware of the duty imposed by legislation on decision-takers to safeguard heritage assets; specifically, the Council is required to comply with its statutory duty under s66 of the Planning (Listed Building and Conservation Areas) Act 1990.

The application is located within a designated conservation area and adjoins a second designated conservation area. In addition, there are numerous listed buildings as well as scheduled ancient monuments and also non-designated heritage assets in the immediate vicinity, a number of which but not all are itemised in section 5 of the Agenda Report. These assets are further elaborated in the consultation response of the Council's Heritage Officer in section 10 of the Agenda Report.

As noted in Section 7 of the Agenda Report, the present proposal causes harm to a wide range of heritage assets. The required tests set out in the Framework and interpreted by case law are clear that when considering whether to allow a development that would cause 'less than substantial harm' to a designated heritage asset that harm alone gives rise to a strong presumption against the grant of planning permission.

The duty to have 'special regard' to the desirability of preserving the setting of designated heritage assets requires a decision maker to consider if the adverse impacts of granting consent would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. The second test is whether there are specific policies in the NPPF that

would mean development should be restricted. It will be important for any environmental impact assessment, heritage statement and planning statement to ensure that the test is fully and correctly applied and then this is transposed robustly by the decision maker."

It is a matter of planning judgment as to the extent of the "*great weight"* to be given to the significance of any affected heritage asset, but the fact of the matter is that if there is some harm, be it minimal or negligible, the local planning authority should take this into consideration when determining the planning application.

In this important respect, the Agenda Report concludes "*Whilst it is important to seek to preserve the setting of listed buildings and the character or appearance of conservation areas in accordance with the statutory duties, the public benefits listed above are considered to outweigh the level of harm to the designated heritage assets when applying a non-weighted balance. None of the listed buildings will be physically affected by the proposed development*".

Although Section 7 gives a list of 'public benefits' associated with the scheme, these are all arguable, whilst a number are based on assumptions such as anticipated visitor and resident spend and others may be dismissed for the reasons set out above (notably, the 'delivery of affordable housing' as the policy compliant 35% is not being delivered) and the reliance on addressing in any meaningful manner the 5YHLS, whilst others are a necessary requirement of any redevelopment proposal (for example, replacement of existing buildings, changes to public views and remediation of contaminated land).

An objective and carefully balanced assessment must be able to show that the necessary tests have been transparently and objectively applied. This is particularly the case given the circumstance that Exeter City Council is the land freeholder.

In this instance there is clear conflict with heritage policies (which are not otherwise detailed but are instead overlooked in the Agenda Report) and the public benefits are not considered such as to outweigh the identified harm to heritage assets.

Conclusion

Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

In this instance, the present proposal raises material conflict with several policies of the Council's adopted development plan. A number of potential adverse impacts are furthermore identified as being capable of being addressed though conditions that are in themselves and do not meet the tests for the use of conditions in planning permissions.

Section 11 of the Agenda Report acknowledges the 379 formal objections to the scheme; the scheme attracted only three letters of support; the Georgian Society object to the scheme, as do the Friends of RAMM and also the Exeter Civic Society. There is little public support for the present submission and given the clear conflict with policy and absence of material considerations that would indicate a decision contrary to policy it is difficult to arrive at a view that the scheme represents sustainable development that should be supported.

The material considerations that are listed in Section 15 are very limited in scope and ambition and again appear to be simply listed irrespective of whether they may be accorded any weight in the decision making process; for example, it again refers to 20% affordable dwellings although policy requires 35%; the financial contributions are as would normally be required according to the

Council's infrastructure levies to offset the impact of the development and in this correct context should not be considered as such as to outweigh conflict with adopted policy.

In the above circumstances significant further work is required on the present submission in order to make it acceptable and the only sensible option is to either refuse the present proposal having regard to its clear conflict with the development plan or as a second best option to defer the present submission for further consideration and public involvement.

As the Committee would expect, legal advice has been sought and contingencies planned for.

Thank you for your consideration of the above comments.

Yours faithfully,

Gavin Hall