

Mr Iestyn John  
Bell Cornwell LLP  
Regus  
1 Emperor Way  
Exeter Business Park  
Exeter  
EX1 3QS

C/O Agent

## **Town and Country Planning Act 1990 and its orders**

### **FULL PLANNING PERMISSION REFUSED**

**LOCATION:** Repair Garage And 81 Victoria Street, Exeter, Devon, EX4 6JG

**PROPOSAL:** Demolition of existing buildings and dwelling and redevelopment of site to provide 89-bed co-living accommodation with associated accesses/egresses, landscaping and other external works

**APPLICATION NUMBER:** 23/0949/FUL

The Local Planning Authority refuses planning permission for the above development for the following reasons:-

#### **1) Refusal: Neighbour Amenity**

The height, massing and positioning of the proposed development will create unacceptable amenity impacts to neighbouring properties, with particular reference to the overbearing presence and dominance on rear gardens serving dwellings on Prospect Place and overbearing presence and privacy impacts on 77-80 Victoria Street, contrary to Exeter Local Plan First Review 1995-2011 saved policy DG4(b), St James Neighbourhood Plan policy SD3 Chapter 7 of the Residential Design Guide SPD and Paragraph 135(f) of the National Planning Policy Framework (December 2023).

#### **2) Refusal: Harm to Character**

The proposed development would harm the character of the area by virtue of the height, scale, positioning and massing, which are not in keeping with the fine urban grain of the surrounding area. The proposed development is therefore contrary to Core Strategy policies CP4 and CP17, Exeter Local Plan First Review 1995-2011 saved policies H5 and DG1, St James Neighbourhood Plan policies D1 and SD3 and paragraph 135 of the National Planning Policy Framework (December 2023).

#### **3) Refusal: Occupant Amenity**

The development is considered to provide inadequate amenity space for occupants both internally and externally due to disjointed layout, conflicting information on private spaces and access, sunlight/daylight provision to internal and external areas, unacceptable outlook from ground/first floor south-east facing and ground floor central element rooms, poor natural light

and ventilation in corridors and internal amenity spaces and conflict on emergency escape routes. The proposal is therefore contrary to Exeter Local Plan First Review 1995-2011 saved policies DG4(b), DG7(a)(b) and T3, Core Strategy policy CP4, St James Neighbourhood Plan policy D1(f), Chapter 7 of the Residential Design Guide SPD and paragraph 135(f) of the National Planning Policy Framework (December 2023).

#### **4) Refusal: External Lighting Impacts**

Insufficient information has been submitted to demonstrate that external lighting emitting from the development which, alongside the removal of on-site trees, will not create significant harm to the lesser horseshoe bat pass running along the south-eastern boundary of the site. In addition, insufficient information has been submitted to demonstrate the impact of external lighting from the development on the amenity of neighbouring properties, in particular 77-80 Victoria Street. The proposal is therefore contrary to Exeter Local Plan First Review 1995-2011 policies DG4(b)(c) and LS4, St James Neighbourhood Plan policy SD3 and Paragraphs 135(f) and 186 of the National Planning Policy Framework (December 2023).

#### **5) Absence of S106 Agreement**

In the absence of a completed planning obligation (Section 106 of the Town and Country Planning Act 1990 (as amended) in terms that are satisfactory to the Local Planning Authority which makes provision for the following matters; GP surgeries contribution, off-site play provision, affordable housing, and highways improvement works contributions, the proposal is contrary to Exeter Local Development Framework Core Strategy 2012 policies CP7, CP9, CP10, CP18, Exeter Local Plan First Review 1995-2011 saved policies AP1, T1, T3 and DG5, and Exeter City Council Affordable Housing Supplementary Planning Document 2014.

#### **Informative: Refusal**

In accordance with Paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way with the Applicant and has looked for solutions to enable the grant of planning permission. However the proposal remains contrary to the planning policies set out in the reasons for refusal and was not therefore considered to be sustainable development.

#### **Informative: Appropriate Assessment**

In accordance with Chapters 1 and 2 of the Conservation of Habitats and Species Regulations 2017, this development has been screened in respect of the need for an Appropriate Assessment (AA). Given the nature of the development, it has been concluded that an AA is required in relation to potential impact on the relevant Special Protection Area (SPA), the Exe Estuary, which is a designated European site. This AA has been carried out and concludes that the development is such that it could have an impact primarily associated with recreational activity of future occupants of the development. This impact will be mitigated in line with the South East Devon European Site Mitigation Strategy prepared by Footprint Ecology on behalf of East Devon and Teignbridge District Councils and Exeter City Council (with particular reference to Table 26), which is being funded through a proportion of the Community Infrastructure Levy (CIL) collected in respect of the development being allocated to fund the mitigation strategy. Or, if the development is not liable to pay CIL, to pay the appropriate habitats mitigation contribution through another mechanism (this is likely to be either an undertaking in accordance with s111 of the Local Government Act 1972 or a Unilateral Undertaking).

#### **Informative: CIL Liable**

The Local Planning Authority considers that this development would have been CIL (Community Infrastructure Levy) liable if approved.

Payment will become due following commencement of development. Accordingly your attention is drawn to the need to complete and submit an 'Assumption of Liability' notice to the Local Planning Authority as soon as possible. A copy is available on the Exeter City Council website.

It is also drawn to your attention that where a chargeable development is commenced before the Local Authority has received a valid commencement notice (ie where pre-commencement conditions have not been discharged) the Local Authority may impose a surcharge, and the ability to claim any form of relief from the payment of the Levy will be foregone. You must apply for any relief and receive confirmation from the Council before commencing development. For further information please see [www.exeter.gov.uk/cil](http://www.exeter.gov.uk/cil).

### **Biodiversity Net Gain Exemption**

Statutory Exemptions and Transitional Arrangements in respect of the Biodiversity Gain Plan:

1. The application for planning permission was made before 12 February 2024.
  2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
  3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
    - (i) the original planning permission to which the section 73 planning permission relates\* was granted before 12 February 2024; or
    - (ii) the application for the original planning permission\* to which the section 73 planning permission relates was made before 12 February 2024.
  4. The permission which has been granted is for development which is exempt being:
    - 4.1 Development which is not 'major development' (within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:
      - i) the application for planning permission was made before 2 April 2024;
      - ii) planning permission is granted which has effect before 2 April 2024; or
      - iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates\* was exempt by virtue of (i) or (ii).
    - 4.2 Development below the de minimis threshold, meaning development which:
      - i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
      - ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).
    - 4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A "householder application" means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.
    - 4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).
    - 4.5 Self and Custom Build Development, meaning development which:
      - i) consists of no more than 9 dwellings;
      - ii) is carried out on a site which has an area no larger than 0.5 hectares; and
      - iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).
    - 4.6 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.
- \* "original planning permission means the permission to which the section 73 planning permission relates" means a planning permission which is the first in a sequence of two or more

planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Signed

A handwritten signature in black ink, reading "Roger Clotworthy". The signature is written in a cursive style. Below the signature is a horizontal line.

Roger Clotworthy  
**Exeter City Council**  
**Service Lead- City Development**  
**Date:** 4th October 2024

**Notification where planning permission refused or granted subject to conditions  
Town and Country Planning Act 1990**

**Article 35(3) of The Town and Country Planning (Development Management Procedure)  
(England) Order 2015 (as amended)**

**Appeal**

If you are aggrieved by the decision of the Local Planning Authority to either refuse planning permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990. Only the person who made the application can appeal.

To submit an appeal, via the link below:  
<https://www.gov.uk/appeal-planning-decision>

Appeals must be made using a form, which can either be completed and submitted online or can be sent to you in the post by the Planning Inspectorate. To request a form, please contact the Planning Inspectorate using their contact details below:

The Planning Inspectorate  
Room 3/13  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

Planning Inspectorate customer support team  
0303 444 5000  
[enquiries@planninginspectorate.gov.uk](mailto:enquiries@planninginspectorate.gov.uk)

A copy of the completed form and all supporting plans and documents must also be sent to the Local Planning Authority. The Planning Inspectorate will be able to advise you on the best way to do this. Please use the Council's contact details at the top of the decision notice.

If you want to make an appeal you must do so within **6 months** of the date of this notice, unless it is a **householder appeal** in which case you must do so within **12 weeks** of the date of this notice. The date is at the bottom of the decision notice. Please note that if you intend to submit an appeal which you would like examined by inquiry then you must notify us and the Planning Inspectorate at least 10 days before submitting the appeal ([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)). Further details are on GOV.UK (<https://www.gov.uk/government/collections/casework-dealt-with-by-inquiries>)

If an enforcement notice has been served relating to the same or substantially the same land and development as in your application, and you want to appeal against the Local Planning Authority's decision on your application, then you must do so within **28 days** of the date of this notice.

If an enforcement notice is served relating to the same or substantially the same land and development as in your application, and you want to appeal against the Local Planning Authority's decision on your application, then you must do so within whichever period expires earlier out of the following:

- 28 days of the date of service of the enforcement notice, or
- 6 months of the date of this notice, unless it is a householder appeal in which case 12 weeks of the date of this notice.

Most appeals are determined by Planning Inspectors on behalf of the Secretary of State. Guidance on planning appeals is available on the Planning Practice Guidance website: <http://planningguidance.communities.gov.uk/blog/guidance/appeals/>

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by the Secretary of State.

### **Purchase Notices**

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase the owner's interest in the land in accordance with the provisions of Chapter 1 of Part 6 of the Town and Country Planning Act 1990.