
Appeal Decision

Site visit made on 10 June 2020

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2020

Appeal Ref: APP/C3240/W/20/3248046

Doseley Industrial Estate, Frame Lane, Doseley, Telford TF4 3BZ

- 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 Mr A. Smith, Phoenix Mason UK, against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2019/0399, dated 10 May 2019, was refused by notice dated 24 January 2020.
 - The development proposed is the erection of 18 no. dwellings and 9 no. apartments following demolition of existing industrial estate.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr A. Smith, Phoenix Mason UK, against Telford and Wrekin Council. This application is the subject of a separate decision.

Procedural matters

3. The proposals were revised prior to the Council's decision. The amended scheme is reflected in the description of development on the decision notice and appeal form and in the header above.
4. The appellants have submitted a unilateral undertaking (UU) dated 1 June 2020 which seeks to secure obligations under Section 106 of the Planning Act. I return to the UU later in the decision.

Main issues

5. The main issues are:
 - (1) whether the proposal would result in an acceptable living environment for future residents due to noise and disturbance; and,
 - (2) the effect on adjacent employment uses.

Reasons

Living environment

6. The proposal would redevelop about half of the Doseley Industrial Estate. That part of the estate not forming the appeal site is partially vacant and partly in use by a variety of commercial businesses. A building adjoining the western

boundary of the appeal site is being used for vehicle repairs and MOT testing. Another industrial building nearby is currently vacant. Open areas of the estate are either vacant or occupied by rented storage containers and a car sales business. Those buildings or areas of the estate beyond the appeal site that are not being used could be re-occupied by commercial uses.

7. Some of the houses and flats would be sited close to, and have their gardens adjacent with, the boundary with the remaining industrial estate. The flats in particular would be very close to the vehicle repairs use which is likely to generate regular noise. At times the level and type of noise would be likely to be annoying, and disturb the peace and quiet that residents would expect to enjoy. Other uses could start up and cause similar or greater noise and disturbance.
8. The appellant's noise reports indicate that, without mitigation, the vehicle repair use, described as being a 'significant source of sound', would be likely to have a significant adverse impact through annoyance and loss of amenity in living rooms and gardens during the daytime. The reports state that background noise levels are generally low, and this is what I observed when I visited the site and surroundings. In this environment, noise from the workshop would stand out. However, the reports note that, as a result of changes to the layout, the living rooms in the flats and the nearest houses would aspect away from the common boundary. The gardens to the nearest houses would be screened by the houses themselves. A garage block would be sited immediately to the south of the vehicle repair workshop. Acoustic fencing would be provided along the boundary with the industrial estate. The reports conclude that, as a result of this mitigation, there would be an adverse, but not significant, impact on the living environment.
9. That said, other uses could operate on the adjacent land as well as the vehicle repair workshop. I have not been made aware of any operating restrictions that apply to the estate, so these uses could generate noisier activities which may not be confined to daytime or Monday to Saturday periods. Moreover, the private outdoor area for the flats would be right up against the repair workshop and the site of a proposed MOT testing bay, with compressor, and some of the detached houses and their gardens would not be far away.
10. In order to provide a satisfactory noise environment in the flats' west facing bedrooms, windows would need to be non-opening sealed units relying on mechanical ventilation. Whilst this represents a technical solution to keep noise at satisfactory levels for daytime rest and sleep and is accepted by the Council's Environmental Health Officer, non-opening windows with no natural ventilation do not suggest to me a good living environment. The fact that such measures are required reinforces my view that there would be an unsatisfactory relationship between the existing uses and the proposed homes.
11. People would be aware of the adjoining uses when purchasing or renting property. However, it is still appropriate to prevent poor living environments being created. There are other homes bordering the site and nearby. But the existing properties, other than a bungalow, would not be as close as some of the proposed dwelling units.
12. Together, the repair workshop and other uses could result in a significant adverse impact on the living environment of some of the future residents.

13. In conclusion the proposal would result in an unacceptable living environment for future residents due to noise and disturbance. There would be conflict with Policy BE1 of the Local Plan¹ as it has not been demonstrated that there is no significant adverse impact on properties by reason of noise.

Employment uses

14. The industrial estate is not protected for employment uses, but the part that would remain following the proposed development would still provide serviceable buildings and land for existing businesses, including the vehicle repair workshop. Developing new homes in such close proximity could lead to complaints from residents due to noise and other nuisance. This could lead to action under environmental protection legislation which could have the effect of curtailing commercial activities on the site. As a consequence, it may be more difficult for businesses, including the vehicle repair workshop, to operate profitably. Ultimately businesses might need to shed jobs or close as a result.
15. As such the proposal would unacceptably impact on adjacent employment uses. There would be conflict with Policy BE1 of the Local Plan as the new development would prejudice or undermine existing surrounding uses. The proposal would also have the potential to result in unreasonable restrictions placed on existing businesses as a result of development permitted after they were established which would not be consistent with paragraph 182 of the National Planning Policy Framework (the Framework).

Other matters

16. The former St Luke's Church and its graveyard to the south and the railway bridge to the east are Grade II listed buildings. The adjacent Old Vicarage and Old Schoolhouse are non-designated heritage assets. The development would be separated from the heritage assets by substantial tree screens and would preserve their settings.
17. Other matters raised, including those relating to highway safety and contamination, do not affect my findings on the main issues.

Obligations

18. The UU proposes a policy compliant level of affordable housing (25%) and education and open space contributions. In principle these obligations are necessary to make the development acceptable in planning terms. However, I do not have sufficient information to conclude on whether the education and open space contributions are adequate. In addition, the UU imposes obligations on the Council even though, as it is not a party to the UU, it cannot be bound by it. That said, as I intend to dismiss the appeal on the basis of my consideration of the main issues, these potential failings would not change my decision.
19. The appellant also refers to obligations relating to the acquisition of part of the remaining industrial estate and closure of the vehicle repair garage. However, such obligations are not contained within the UU of 1 June. Therefore, I have not taken them into account in this decision.

¹ Telford and Wrekin Local Plan 2011-2031 (adopted January 2018)

Planning balance and conclusions

20. The housing would realise economic and social benefits. In particular the development would provide market and affordable homes, construction and supply chain jobs and increased local spend. That said there is a five-year supply of housing land in the Council area, so it would appear that existing needs are largely being met. There would be some environmental benefits arising from the redevelopment of vacant and rundown industrial buildings and land within an area which is now predominantly residential, albeit these benefits are reduced by the absence of comprehensive proposals for the industrial estate as a whole.
21. However, these benefits would not outweigh the harm, including the conflict with Policy BE1 of the Local Plan. As a result of these conclusions, the development would not be sustainable and would not be supported by Policy SP4 of the Local Plan.
22. Policy SP4 includes the 'tilted balance' now contained within paragraph 11d) of the Framework. However, Policy BE1, which is the most important policy for determining the appeal, is not out-of-date. The last part of Policy SP4 and the tilted balance do not come into play.
23. For the above reasons the appeal should be dismissed.

Mark Dakeyne

INSPECTOR