



Appeal Decision

Hearing Held on 26 October 2021

Site visit made on 26 October 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/T3725/W/21/3271757

27 Upper Cape, The Cape, Warwick CV34 5DS

- 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 Hamble Associates Limited against the decision of Warwick District Council.
 - The application Ref W/20/1392, dated 10 August 2020, was refused by notice dated 25 February 2021.
 - The development proposed is demolition of existing dwelling and erection of 15 no. residential apartments and associated parking and amenity areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was amended before the Council made its determination and so the description used on the original application form is now inaccurate. The parties at the hearing agreed to the description of development in the header and this forms the basis for my assessment.
3. A completed deed of agreement under section 106 of the Town and Country Planning Act 1990 (the s106 agreement) forms part of the appeal submissions. This includes planning obligations that relate to the provision of affordable housing as well as financial contributions towards outdoor and indoor sports facilities, public open space, off-site amenity areas, grass pitches, a sustainable travel pack, rights of way and road safety initiatives. I have had regard to these planning obligations in my assessment.

Main Issues

4. The main issues are (i) whether the proposal would provide acceptable living conditions for its occupants having regard to the effects of noise, noise mitigation measures and artificial lighting, (ii) whether the development would integrate effectively with the adjacent Maxi haulage depot premises, and (iii) the aforementioned planning obligations.

Reasons

Living conditions

5. The appeal site is close to the road junction of Upper Cape/Cape Road and Wedgnoek Lane. The Maxi haulage depot and an associated vehicular entrance

- adjoin the site. The appellant and the Council agree the site is noisy due to road traffic and haulage depot activities. As such, there is a risk the occupiers of the proposal would be exposed to excessive noise levels.
6. The development would incorporate measures aimed to reduce the effect of noise on occupiers. These would include heavy ceilings to provide enhanced sound insulation, acoustic fencing on parts of the site boundary as well as double-glazed and non-opening windows on the elevations that face the Maxi site. Nonetheless, at the hearing the appellant's representatives acknowledged that at times and when windows were open, residents would be exposed to noise in excess of recommended internal noise level guidance.
 7. A proposed mechanical ventilation system would provide an alternative to opening windows for air circulation and I am referred to no advice that precludes such a system in a residential development. However, I am unconvinced the ventilation system would fully remove the need or desire to open windows, particularly for the purposes of heat and odour dispersal.
 8. At the hearing, the appellant's acoustic consultant indicated that the ventilation system was required as a comfort and there would be no need for it to operate all the time. Nonetheless, its incorporation as part of the scheme suggests the system would need to be relied upon by residents to a reasonable degree if appropriate noise levels internally are to be maintained. I am satisfied that this reliance would not be excessively onerous. However, the trade-off between opening windows and acceptable noise levels means the proposal would not reach the high standard of amenity for users as advocated under paragraph 130 of the National Planning Policy Framework (the Framework).
 9. I am referred to an appeal decision¹ in support of the proposed noise mitigation measures. However, this does not endorse mechanical ventilation as the Inspector describes such a system as not an ideal solution.
 10. The appellant suggests that in most periods a reasonable acoustic comfort would be achieved having regard to the development's urban location. However, the planning policy aim to ensure a high standard of living accommodation applies to all schemes including those in urban areas. Moreover, there is no convincing evidence that demonstrates the proposal would be subject to noise levels that are typical of an urban area. Given the proximity of the site to the haulage depot and road junction, it is reasonable to expect the scheme would be subject to higher noise levels compared to residences further along Upper Cape.
 11. Residents of the development would be subject to a quieter internal environment compared to occupants of the existing dwelling. However, this factor fails to address the identified shortcomings of the proposal and it does not fully override the harm as the scheme would lead to an additional 14 units.
 12. The opportunity for residents to visit the nearby Saltisford Common play area would only offset the effects of noise on the external parts of the scheme. It would not adequately compensate for unacceptable internal noise levels or residents' reliance on mechanical ventilation.
 13. When turned on, floodlights at the haulage depot appear bright from the appeal property. The appellant's lighting report indicates that associated vertical

¹ Appeal reference number APP/T3725/A/12/2186381.

illuminance may have an unacceptable impact on the living conditions provided by the proposal. However, the windows on the elevations facing the Maxi site would be high level and small. Although some of these would serve rooms that may be used for sleeping, inappropriate levels of luminance could be addressed through the provision of blinds. As such, I conclude the proposal would provide acceptable living conditions in terms of light intrusion.

14. However, for the above reasons, I conclude the proposal would not provide acceptable living conditions for occupants having regard to the effects of noise and the proposed noise mitigation measures. In these respects, it would not accord with policy BE3 of the Warwick District Local Plan 2017 and the aim of the Framework to ensure a high standard of amenity for occupiers of property.

Maxi haulage depot

15. The Framework seeks to ensure new development can be integrated effectively with existing businesses so that there is no need for unreasonable restrictions to be placed on them once established. The Planning Practice Guidance² states that an applicant should clearly identify the effects of existing businesses that may cause a nuisance. Regard should be given to permissible operations even if they are not occurring at the time of the application.
16. The appellant contends that the depot would not generate noise levels to cause a conflict of uses, particularly in light of the design aspects of the proposal that would mitigate noise effects. However, even if I was to accept the appellant's contentions in these regards, the submitted noise assessments focus on past or current activities at the depot. There is limited evidence to show that additional activities that are permitted at the Maxi site have been considered in the design of the development and noise mitigation.
17. This is a notable omission as there is little evidence of any planning restrictions that affect the depot site. As such, it seems a significant change in the nature and level of haulage operations would be lawful. Without any evidence to the contrary, it is reasonable to assume that parts of the depot adjacent to the appeal site could be used for additional lorry parking, vehicle washing or repair, external storage and movement of items or other potentially noisy activities. The appellant's evidence takes no account of such permissible changes in operations and so it fails to show the haulage depot activities would avoid a noise nuisance to occupants of the proposal.
18. For these reasons, I conclude the development would not integrate effectively with the adjacent Maxi haulage depot. In these regards, it would not accord with the provisions of the Framework.

Planning obligations

19. There is no dispute between the parties that the planning obligations in the s106 agreement are fair, reasonable and necessary to ensure the proposal is acceptable in planning terms. I find no reason to arrive at a different view on this matter. Also, I am satisfied the s106 agreement is worded so as to effectively secure the planning obligations.
20. As such, I conclude the development would include a suitable level of affordable housing, would provide for the maintenance and improvement of

² Planning Practice Guidance – Noise, Paragraph: 009 Reference ID: 30-009-20190722, revision date 22 07 2019.

sport and recreation facilities and would appropriately contribute towards measures to mitigate its impact. In these regards, the proposal would accord with LP policies H2, HS4 and DM1.

Other considerations and planning balance

21. The site lies in the Canal Conservation Area (the CA). This seems to gain its significance from the interest of the nearby canal as a historically important transport route. The mature trees and garden on the site form a visual buffer between the canal and the nearby commercial development and so it makes a positive contribution towards the significance of the CA. The proposed building would be larger than the existing house and so it would result in a loss of openness. However, a reasonable amount of boundary vegetation would be retained and to a degree the development would reflect a wharf building that is appropriate to its context. At the hearing, the appellant's representative accepted the scheme would preserve rather than enhance the character and appearance of the CA. This is a neutral factor in my assessment of the appeal.
22. The development would be located in a settlement with good access to facilities and public transport links. However, for the reasons as set out under the main issues, the site is unsuitable for housing. Moreover, at the hearing the appellant's representative acknowledged the appeal property does not represent previously developed land. Therefore, the scheme does not attract the substantial positive weight to be given to the use of suitable brownfield land for homes as referred to in paragraph 120 c) of the Framework.
23. Nonetheless, the proposal would contribute towards the housing stock and would provide affordable as well as open market units. These benefits attract positive weight, even though there is no dispute the Council can demonstrate more than a five year supply of housing land. Also, the development would create construction jobs which weighs in support of the scheme.
24. However, the harm identified in respect of the first main issue means the proposal would not accord with development plan policies when read as a whole. Moreover, the scheme would conflict with the Framework in terms of the second main issue. The benefits and other factors are of insufficient weight to justify granting planning permission contrary to the development plan.

Other Matter

25. Ecological information indicates that further surveys are required to establish whether the existing house is used as a bat roost. I am mindful of the advice in the Office of the Deputy Prime Minister Circular 06/2005 that it is essential to ascertain the presence or otherwise of protected species before granting planning permission. However, I need not consider this point further as the appeal has failed. If the scheme was found to be acceptable in this regard, such a finding would not have affected my conclusion.

Conclusion

26. For the above reasons, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Whitehouse MRICS	Planning Agent
David Trevor-Jones FIOA	Acoustic Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Helena Obremski	Principal Planning Officer
Matthew Shirley	Environmental Health Officer

INTERESTED PARTIES

Constanze Bell	Barrister acting on behalf of Maxi Haulage
Paul Gray	Acoustic Consultant acting on behalf of Maxi Haulage
Alan Miles	Managing Director of Maxi Haulage

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

1. Letter dated 25 October 2021 from Alan Miles, Managing Director of Maxi Haulage with enclosed photographs of the Maxi Haulage site.
2. Acoustics Ventilation and Overheating Residential Design Guide Version 1.1 January 2020.
3. Copy of Draft Addendum to Statement of Common Ground including tracked changes made by Maxi Haulage.