



Appeal Decision

Site visit made on 6 December 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/L3245/W/22/3304393

Bache Arms, High Street, Highley, Shropshire WV16 6JU

- 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 Simmonds against the decision of Shropshire Council.
 - The application Ref 21/04561/FUL, dated 20 September 2021, was refused by notice dated 8 March 2022.
 - The development proposed is for erection of 2no. detached dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues of the appeal are i) the effect of the proposed development on the Bache Arms Public House as a community facility, and ii) the effect of the proposal on the living conditions of future occupiers with particular regard to noise.

Background

3. Since the application was refused, the appellant has submitted another application¹ to address the reasons for refusal and also submitted a Noise Impact Assessment Report² (NIA). The NIA has also been submitted for this appeal. The Council refused the subsequent application for similar reasons as for the appeal proposal.

Reasons

Effect on a community facility

4. The appeal site comprises land that was used as a 'beer garden' associated with the existing and operating Bache Arms Public House (the 'PH') and part of a former bowling green. The site is to the north side of the PH and backs onto the main road through Highley with a roadside hedge. The PH itself fronts the main road through Highley, a hub settlement, on the corner with Coronation Street from where access to the pub car park is taken. Coronation Street is a residential street of terraced dwellings, some of which directly face or adjoin the existing pub car park. The site also lies within Highley Conservation Area (the 'CA').

¹ LPA application ref: 22/03602/FUL refused 30 September 2022

² Prepared by NoiseAir dated 22 July 2022

5. The proposal would involve erecting 2 no. two-storey detached dwellings with accommodation over three floors. Access to the site would be off Coronation Street and across the pub car park. This would be a shared access with the terrace of 4 dwellings that has been granted permission³ on part of the former bowling green, and which the Council advise is under construction. Each dwelling would have 2 parking spaces. The approved terrace and the proposed two dwellings would face each other, effectively creating a cul-de-sac or close with resident parking and landscaped front gardens. The proposed two dwellings have been designed to have a similar appearance to the terrace to create a cohesive design. The plans also show an indicative layout of parking and some landscaping that would be retained and provided for the pub, but this falls outside the red line development site.
6. Core Strategy Policy CS6 (Sustainable Design and Development Principles) is a broad-brush policy dealing with a range of sustainability issues. Amongst other things, it seeks to resist the loss of existing facilities, services or amenities unless provision is made for equivalent or improved provision, or it can be clearly demonstrated that the existing facility, service or amenity is not viable over the long term.
7. Core Strategy Policy CS8 (Facilities, Services and Infrastructure Provision) seeks to create sustainable, safe and healthy communities. One of the measures to do this is to protect and enhance existing facilities, services and amenities that contribute to the quality of life residents and visitors. The supporting text explains that as a predominantly rural area, the threat to closure or loss of facilities and services such as pubs, post offices, schools, village shops can affect the quality of life of residents.
8. On my visit I saw that security fencing had been erected along the northern edge of the pub car park and part of the bowling green land had been disturbed. The Council advise that the approved terrace is under construction although from my observations works looked nominal. However, I saw that the pub garden was still neatly laid to grass with tables and benches arranged on it.
9. I understand the appellant has sold off the pub garden to address short-term viability issues arising from the pandemic. Outside seating areas were sometimes used by some hospitality venues to provide customer eating/drinking areas during the Covid-19 pandemic when inside drinking was not permitted, to help continue trading. However, not all public houses have outside areas or need to have them in order to trade. No longer using the site or selling the land, does not necessarily mean the use ceases in planning land use terms. However, there would be nothing to stop the PH operator from making the garden unavailable to customers. Bearing in mind the apparently relatively recent sale of the land, and from my observations and from the evidence before me, I do not share the appellant's contention that the pub garden has been 'abandoned', which is a legal concept that would need consideration of evidence and a range of factors to establish.
10. The proposal would see the reduction in outside space available for use by the Bache Arms PH and its customers. What land would remain would principally be a car park with some small areas of nominal landscaping, including the grassed area on the corner of Coronation Street. Whilst the proposal does not involve

³ LPA application ref: 20/02493/FUL approved 28 October 2020

the provision of an equivalent or improved provision of outside amenity space, crucially there would be no loss or closure of the main community facility, namely the Bache Arms PH itself, which occupies an accessible location in the centre of Highley, and which the Council's policies seek to resist. Therefore there would be no conflict with Core Strategy Policies CS6 and CS8 whose aims are outlined above.

11. I note the appellants comments about inconsistent decision making by the Council and reference to examples of residential developments at the Talbot Inn in Ruyton XI Towns nearly 10 years ago, and more recently at The Harry Hotspur in Shrewsbury. I note in both examples the Council does not raise the issue of loss of amenity land for the public houses. In both cases I note the public houses were not to be closed. The example sites are in different settlements in different parts of the District with differing needs and contexts such that they are not directly comparable to the appeal proposal before me. Whilst consistency in decision-making is important, all decisions turn on their own particular circumstances based on the facts before each decision-maker at the time. In any event as I must consider the appeal proposal on its own merits.

Noise and living conditions

12. National Planning Policy Framework (the 'Framework') paragraph 185 states that new development should be appropriate for its location and in doing so avoid, amongst other things, noise giving rise to significant adverse impacts on health and quality of life. Paragraph 187 goes on to state that existing businesses should not have unreasonable restrictions placed on them. Where the operation of an existing business could have significant adverse effects on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development is completed. Core Strategy Policy CS6 seeks, amongst other things, to ensure new development safeguards residential amenity.
13. The Council's Regulatory Services have raised concerns, but no formal objection, about possible conflict with noise from the PH, which is licensed for the sale of alcohol and the performance of live and amplified music until 1am, and that consideration should be made of this. Council's Regulatory Services have not provided any additional commentary in relation to this appeal.
14. There are existing residential properties opposite and adjacent to the pub car park, and bungalows the far side of the appeal site. However, the proposed dwellings would be in much closer proximity to the PH than any of these. I saw that tables and benches had been sited on a small, grassed area adjacent to the boundary fence that would be in close proximity to the side elevation of proposed dwelling Unit 2.
15. The appellant's NIA undertook noise monitoring for 5 days from 1-5 June 2022, with the monitoring point located at the rear of the building. Sound modelling also used proposed receptors on the proposed buildings. The NIA considered noise from road traffic on the road in front of the pub and Coronation Street, the pub garden, the condenser unit at the rear of the pub site, and noise breakout from doors and windows of the PH. During the monitoring some customers were seated nearby using the smoking shelter at the back of the PH. The NIA concluded that at worse case there would be a Medium/High Risk of adverse effect without mitigation.

16. The mitigation measures recommend insulating the dwellings to reduce noise levels. Particular window glazing and acoustic ventilation could also be installed to reduce noise levels to ensure that the required internal daytime and night-time noise limits are achieved. However, when windows are open, fully or partially, noise levels would be increased and exceed guideline levels. Further recommended mitigation would include relocating the amenity spaces for the dwellings away from the north west part of the site where they are currently proposed, but the plans do not show this. In addition, the NIA recommends the erection of a 2.5 metre high acoustic barrier along the roadside boundary to attenuate the noise breakout from the road. This is not shown on the plans as the existing hedge is maintained, but erecting a tall acoustic fence could well have visual amenity issues.
17. Whilst acoustic modelling has been undertaken, there is limited discussion of the live and amplified music at the Bache Arms PH. The NIA does not mention that live or amplified music was playing during the monitoring period, to enable readings and observations to be made. The NIA says that in the absence of noise events, alternative noise sources may be used adopted based on reputable sources. Nonetheless, there is no mention of the frequency, duration and type of music entertainment events, and no first-hand observations were made. Furthermore, there appears to be limited consideration made to the revised layout of amenity space and car parking for the Bache Arms PH and how the remaining spaces, particularly those in close proximity to the proposed dwellings might be used, such as the tables and benches I saw adjacent to the site boundary close to dwelling Unit 2. Whilst the PH may have intentions to install lobbies at all patron entrance and exit doors, the PH is outside the application site and so this cannot be controlled.
18. The NIA was submitted with the subsequent application that was refused. I have been presented with the Officer report for that application. It reports that the Council's Regulatory Services considered the submitted NIA but continued to express their concerns about the proximity of the development with regard to a venue with a licence for late-night music. Concerns were also expressed that any future installation of lobby doors at the PH could not be controlled and that acceptable internal noise levels in noise-sensitive rooms of the proposed dwellings would rely on future residents keeping windows closed.
19. I am therefore not satisfied that it has been sufficiently demonstrated that noise from the Bache Arms PH will not cause unacceptable adverse impacts on the living conditions of future occupiers, who will be in closer proximity than existing residents. The approved terrace of dwellings is further away than the proposed dwellings would be and is not immediately adjacent the PH, its car park and remaining amenity space. Accordingly, the proposal would not accord with Core Strategy Policy CS6 whose aims are outlined above.

Other Matters

20. Highley is identified as a key centre for the focus of development of services and facilities and the site lies within its boundaries. In such locations the Council has confirmed residential development is acceptable in principle. The Council raises no issue with the design of the dwellings or their relation to the street, or to any other technical matters such as access, parking, drainage.

21. I have had regard to the effect the proposed development would have on the CA as a designated heritage asset. The appellant submitted a Heritage Statement with the application that concluded the development would not harm the significance of the CA. The Council also refer to the Bache Arms PH being a non-designated heritage asset. The Council's Conservation Officer has not raised any concerns and the Council is satisfied that the proposal would not cause harm to the setting of the heritage assets. From my site visit observations and from the evidence before me I have no reason to take a different view.

Conclusion

22. Whilst I have found that the proposal would not result in an unacceptable loss of a community facility, it has not been sufficiently demonstrated that there would be not be an unacceptable adverse impact on the living conditions of future occupiers with regard to noise. Accordingly, I conclude the appeal should be dismissed.

K. Stephens
INSPECTOR