



Appeal Decision

Hearing held on 8 November 2023

Site visit made on 8 November 2023

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2023

Appeal Ref: APP/L3245/W/23/3323546

Former Phoenix Garage, Great Hales Street, Market Drayton, TF9 1JW

- 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 Frontier Estates Ltd against the decision of Shropshire Council.
 - The application Ref 22/01176/FUL, dated 7 March 2022, was refused by notice dated 6 December 2022.
 - The development proposed is redevelopment of site to provide a circa 60 Bed care home (use class C2) including access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council refused planning permission for four reasons relating to the impact of noise and odours from the adjacent brewery and public house on the living conditions of future residents, the protection of groundwater resources, ecology and the provision of open space. During the appeal process, the appellant provided additional information on the issues of groundwater protection and ecology. These matters have been resolved so that they are no longer in dispute. I do not therefore address these issues in my decision.
3. On the 19 December 2023 a revised National Planning Policy Framework (the Framework) was published. The changes do not relate to the issues raised in this appeal. References to the Framework in my decision relate to the paragraphs in this new document.
4. The appeal site is located within Market Drayton Conservation Area (CA) and is also adjacent to several Grade II listed buildings. Whilst not forming a reason for refusal, I must consider this matter in light of my duties under section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation area) Act 1990.

Main Issues

5. The main issues in this case are :
 - Whether the proposed development provides satisfactory living conditions for future residents with particular regard to noise, odour and outdoor amenity space.

- Whether the proposed development would protect or enhance the character and appearance of the Market Drayton Conservation Area and whether it would affect the setting of nearby listed buildings.

Reasons

Background

6. The appeal site is located to the north of Great Hales Street in Market Drayton. It is an irregular shaped piece of land, formerly occupied by Phoenix Garage. The site drops in level to the north with the rear of the site being approximately 3 metres lower than the rest of the site.
7. The site lies in a mixed-use area with both commercial and residential properties. To the western boundary of the site lies the Red Lion Public House and Joules Brewery. Residential properties lie to the south west and north east as well as on the opposite side of Great Hales Street. The site lies within Market Drayton CA and there are a number of Grade II listed buildings in the vicinity including the Red Lion public house and No. 9 Great Hales Street to the west, 19/21 Great Hales Street to the east, and No's 14,16 and 16a Great Hales Street to the south.
8. The appeal proposes the redevelopment of the site to provide a 60-bed care home (Use Class C2), including access, parking and landscaping. The main parties agree that the principle of the development within the settlement is appropriate in compliance with Shropshire Core Strategy Policy CS3. I have no reason to disagree.

Living Conditions

The impact of noise

9. The appeal site is affected by several sources of noise emanating from the activities at the adjacent public house and brewery as well as traffic noise from the adjoining road. The proposed building would be around 8 metres from the western boundary of the site with the commercial uses and 13 metres from the public house building. The appellant has prepared an Acoustic Report to assess the noise sources and recommend appropriate mitigation measures.
10. The report concluded that in terms of traffic noise, the daytime noise level (LAeq16hr) was measured to be 59 dB(A) and the night time (LAeq8hr) noise level noted to be 53 dB(A). In line with the Planning and Noise Professional Practice Guidance (ProPPG), which provides a recommended approach to dealing with noise in the planning process, the site has a low to medium noise risk, with the effect level between the Lowest and Significant Observed Adverse Effect Levels. This means that there could be an adverse effect due to traffic noise, and mitigation to reduce noise levels for future residents would be necessary.
11. In terms of entertainment noise, the report found that noise levels from live music from a 17-piece band within the building, on the Saturday night surveyed, were generally below background noise. This assessment was one night only and I accept that a large number of musicians, could generate more noise than other performances such as solo artists or duets. However, I am advised this performance did not involve amplified music which could exceed background noise.

12. The assessment did not survey noise from music being played outside the premises, which I understand can take place on a weekly basis in the summer and extend up to 11pm. I acknowledge that the pub building itself may act as a barrier to sound, however I have no evidence before me to demonstrate the extent to which outside entertainment noise would impact on the amenity of occupants of the proposed care home.
13. Noise from the pub car park and brewery yard was found to be infrequent and of short duration. However, most notably, noise from deliveries was found to be significant with LAmax levels regularly above 60 dB, the level at which sleep disturbance could be caused, and peak levels up to 87 dB being recorded. I understand that the brewery has a single incoming delivery each week with goods being dispatched two to three times a day. Most deliveries take place in the morning and can last around 10 minutes, though some can take up to 50 minutes.
14. Plant noise from the kitchen extract at the pub, which operates from late morning to approximately 9.30pm, was found to exceed background noise by +3 dB in the daytime and +7 dB in the evening. If left unmitigated, this would result in an adverse impact on amenity for the occupants of the care home.
15. With regard to noise in the external amenity areas, BS8233 advises that it is desirable that external noise levels do not exceed 50 dB with an upper guideline value of 55 dB. The Acoustic Report estimates that with the shielding effect of the building, noise levels within external amenity areas would be below the upper limit of 55 dB. Recognising the existing background noise levels emanating from traffic noise, this would just be acceptable.
16. I acknowledge that the nature of some of the noise sources described above, makes it difficult to assess their impact and that in this case, it is the cumulative noise impact that needs to be considered. All parties agree that there would be a significant adverse noise impact resulting in unacceptable internal noise levels which would require mitigation to maintain the amenity of the future residents of the care home. Based on the evidence before me I agree with this position.
17. The appellant has put forward a scheme of mitigation which has three elements. Firstly, an acoustic barrier on the north western site boundary, secondly a high specification of glazing and thirdly the provision of mechanical ventilation to the rooms on the north west elevation of the building.
18. It is proposed that the acoustic barrier be constructed at a height of 3 metres. I am advised that a barrier of this height would reduce noise levels by around 9dB for ground floor rooms and 12.5dB for lower ground floor rooms. However, in terms of first floor and second floor rooms, the barrier would be less effective.
19. The provision of glazing in line with the specification suggested in the Acoustic Report would achieve noise levels of 5 dB below the minimum requirements for bedrooms set out in BS8233. It is acknowledged that the measures proposed would achieve an acceptable level of noise for the occupants of the rooms affected, however this would only be if the windows were closed. When windows were open, internal noise levels could exceed recommended maximums. Therefore, to achieve ventilation and prevent overheating, mechanical ventilation would be required to rooms on the north west elevation

- of the building. With 34 rooms facing the noise source, this means that just over half of the rooms proposed in the care home, would require mitigation.
20. The question is whether in terms of acoustic design, the provision of mechanical ventilation to so many rooms is acceptable. Planning Practice Guidance advises that for noise sensitive developments, mitigation measures may include avoiding noisy locations altogether or designing the development to reduce noise impacts from adjoining activities. Mitigation measures should only be considered where it is not possible to resolve the issues by other design solutions.
 21. The appellant has explained that the orientation and layout of the building has been designed with noise in mind and that the optimum layout has been put forward in terms of acoustic design.
 22. The building would have to be sited approximately 33 metres from the site boundary with the pub and brewery to avoid the need for noise mitigation. This would leave very little of the site available for development and would not be an efficient use of land. An alternative would be for a single aspect building with no rooms on the north western elevation, however, this would mean losing up to 34 bedrooms and result in the scheme being unviable.
 23. Whilst I accept the appellant has looked at other design solutions, there is little evidence before me that other changes to the internal layout have been explored. For example, communal areas with mechanical ventilation could be located on the north west elevation facing the commercial uses with fewer bedrooms on that elevation.
 24. A care home is a particular noise sensitive use, with the impact of daytime noise being greater than in a normal residential property. The communal lounges and dining rooms are to be located on the quieter south east elevation, not facing the brewery and pub. I accept that some residents will be in the communal areas during the day, where there may be noise from talking or the television which would assist to mask any perceptible external noise. However, it is also likely that other residents may be resting in their rooms during the day, particularly if they are unwell, and require a quiet environment.
 25. The appellant brought my attention to other schemes where mechanical ventilation has been accepted by the Council. The McCarthy and Stone development to the north of the appeal site, also raised issues relating to noise, this time from the adjacent supermarket delivery yard and the brewery yard. The scheme was re-designed to significantly reduce the number of bedrooms overlooking the commercial use and therefore requiring mechanical ventilation. I understand in that case, the rooms were around 30 metres from the brewery yard, a much greater distance than the rooms in the appeal scheme. This proposal therefore has limited comparability.
 26. The appellant also highlighted another scheme approved by the Council in Oswestry, again close to a supermarket where noise from early morning deliveries was an issue. That proposal also relied on the provision of mechanical ventilation for mitigation in certain rooms. I accept that mechanical ventilation has been used in several schemes in Shropshire, but each development should be considered in terms of its context, the type and frequency of the noise source and the necessary mitigation required to achieve

acceptable amenity for occupiers. In the appeal case, a high number of rooms would be potentially affected by noise resulting in a need for mitigation.

27. It is important to consider the frequency at which windows may need to be closed. In this case it would not just be for the morning delivery times but would also be at various times in the day and evening due to the noise from the general operation of the brewery and public house. It is likely that future residents would prefer to have open windows to get fresh air and cool down a room. Having to close a window to achieve acceptable living conditions would represent a material change in behaviour.
28. I am mindful that an occupant would be more tolerant of a noise without a specific character such as traffic noise. However, in this case, significant noise impacts would occur from adjacent commercial operations e.g. from deliveries, fork lift trucks, plant noise etc. There would therefore be a risk that opening a window could lead to a complaint which may affect the operation of the adjacent brewery and pub.
29. Given the above, I conclude that the noise impacts from the adjacent uses and the necessary mitigation measures, would result in unacceptable living conditions for future residents.

Odour

30. The main source of odour would be from the extract to the pub kitchen located close to the north west site boundary, approximately 18 metres from the proposed care home building. The appellant's odour assessment predicts that odours from the kitchen extract would be discernible at a distance up to 4.5 metres. This would affect the car park area only.
31. Whilst the Council have no concerns about the methodology employed in the odour assessment, they still have concerns that odours could be unacceptable, particularly as the extract has no odour abatement installed. Additionally, odours could be trapped by a building of the height and location proposed and would not be able to disperse effectively. The appellant has used a dispersion model to determine that the proposed building would have a small impact on odour dispersion. However, modelling has shown that the limit of detection of odours associated with the pub under average conditions is still likely to be some distance from the facade of the proposed building.
32. Based on the evidence before me, I have no reason to doubt that odours would not be an issue within the building. The Council also agreed at the hearing that odours would be unlikely to be observed in the external amenity areas. On this basis, whilst I accept that odours may be perceptible in the car park for those visiting the care home, they would in my view be minimal. I therefore conclude that odours would not adversely affect the amenity of future residents.

External Amenity Space

33. Policy MD2 of the Site Allocations and Management of Development (SAMDev) Plan 2015 concerns amongst other things, the design of landscaping and open space as part of a development. It requires open space of at least 30 square metres (sqm) per person to meet the local needs in terms of function and quality. The Council calculates that the appeal scheme would provide around 18 sqm per resident. This figure excludes the terraced areas proposed in the

building. If these are included the open space per resident increases to approximately 19 sqm per resident.

34. The appellant has brought to my attention a High Court Challenge, *R (Fraser) v Shropshire Council* [2021] EWHC 31 (Admin), which related to the application of Policy MD2. The Court held that a scheme which does not provide the required 30 sqm of amenity space per person can nonetheless fully comply with the policy. The overarching test is whether the scheme provides a suitable amount of amenity space, and this involves a planning judgment to be made.
35. The amount of open space provided in the appeal scheme must take account of the nature of the use. Residents would not generally be seeking active open space but rather areas of social space which can provide places to sit, enjoy the sun and fresh air and have some interaction with staff, other residents and visitors. Many would need assistance to access external areas. In this context, it is reasonable to conclude that a lower level of outdoor space would be acceptable. The Council conceded at the hearing that they had accepted around 21 sqm per resident in a care home scheme in Oswestry. The appeal scheme is providing only a little below this figure.
36. The appellant brought my attention to the fact that the Care Quality Commission requirement is for 4.1 sqm of amenity space per resident, well below the Council's requirement. The appellant also highlighted that in other schemes they had provided, open space was on average 17 sqm per resident, and that due to the high quality of development, design awards had been achieved.
37. On balance, I am of the view that, bearing in mind the nature of the residential use, the amount of amenity space being provided in the scheme is acceptable to provide adequate living conditions for future residents.

Conclusion on Living Conditions

38. I have found that whilst the appeal scheme would provide acceptable living conditions for future residents in terms of odour and the provision of outdoor amenity space, it would not do so with regard to noise impacts from adjacent land uses and the extent of the mitigation required. Accordingly, the proposal would fail to comply with paragraph 135 of the Framework, Policy CS6 of the Shropshire Local Development Framework Core Strategy 2011 and Policy MD2 of the SAMDev. These policies seek to achieve sustainable design and amongst other things, safeguard amenity for existing and future users.

Heritage matters.

39. The appeal scheme lies within Market Drayton Conservation Area (CA) and is also adjacent to a number of Grade II listed buildings. I must therefore assess whether the proposal would preserve or enhance the character or appearance of the CA and whether it would harm the setting of the listed buildings.
40. The character and appearance of Market Drayton CA derives from its past as a market town. Two and three storey buildings, dating from the 15th to the 21st Century are evident fronting the highway along narrow streets. The buildings are constructed in brick or are timber fronted with plain tiled pitch roofs. The significance of the CA derives from its tightly mixed urban form and mix of architectural styles with the retention of timber framing, red brick and tiled pitch roofs.

41. The part of the CA in which the appeal site is located, Great Hales Street, consists of two and three storey residential buildings set close to the road, forming a continuous built form. The design and form of the proposed development would be in keeping with the surrounding townscape. In terms of scale, it is proposed that the building be two storeys high to the east and three storeys to the west reflecting that of the buildings in the vicinity. Whilst more modern elements are included with larger areas of glazing, their framing respects the adjacent built form and local character. The proposed materials, brick and render, connect the development to the surrounding area. The site is partially vacant and currently does not contribute to the character and appearance of the CA. Overall I find the proposal would be a positive addition, preserving the character and appearance of the CA.
42. There are a number of listed buildings in close proximity to the appeal site. I assess those closest to the site whose setting may be impacted by the proposal.
43. The appeal site lies across the road from Nos. 14, 16 and 16a Great Hales Street, Hesketh House and St Mary's and St Martha's Cottages. It is also to the east of Forge House. These are all Grade II listed buildings.
44. Nos. 14, 16 and 16a were constructed in the early 18th century and form good examples of early Georgian town houses. These factors contribute to significance. Hesketh House is a mid-18th century Georgian townhouse with three even bays of three storeys with plain tiled gables roof and dentilled brickwork running along the eaves. It is significant as a good example of a Georgian residence incorporating many traditional architectural features. St Mary's Cottage and St Martha's Cottage form two storey residences constructed towards the end of the 18th century. Their significance lies in their traditional exteriors with their materials in keeping with the surrounding area. Forge House forms an early to mid-19th century cottage built of brick which has been painted, with an adjoining one and half storey garage bay. Its significance derives from it being a good example of an early to mid 19th century house retaining many historic features.
45. The appeal proposal would impact on the setting of the above buildings. However due to the quality of design of the appeal scheme, retaining the historic character of the CA, their setting and significance would be preserved.
46. No 9 Great Hales Street lies immediately to the east of the appeal site and is currently being renovated to form a dentist surgery. It lies next to the Red Lion pub which is also listed Grade II. Currently there is no boundary feature between the site and No.9. The scheme provides a boundary wall which will serve to separate the heritage asset from the proposed development, benefiting the understanding of its curtilage and improving its setting. Its significance would therefore be preserved.
47. With regard the Red Lion pub itself, the proposed scale and massing of the appeal scheme, which I have found to be appropriate, preserving the character of the CA, would not in my view diminish the significance of this asset.
48. West of the appeal site lies 19-21 Great Hale Street, which forms a mid 17th century timber framed house. It has two storeys and a basement and is sited on a brick plinth. Its significance lies in it being a good example of a property of its age.

49. The appeal scheme involves the demolition of the disused garage on the site. An external boundary wall of this building is attached to the listed building and will therefore need to be removed. The proposed development would be set away from the listed dwelling which would allow an increased appreciation of the building and a separation between the historic asset and the more modern development proposal. This however must be balanced against the scale of the proposal, with the building wrapping around the side and rear of the dwelling. Overall, I find that the setting of the nearby listed building would be preserved.
50. For the above reasons, the proposed development would preserve the character and appearance of the Market Drayton CA as a whole and the setting of the nearby Grade II listed buildings. It would therefore accord with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and with section 16 of the Framework. As a result, there would be no conflict with Core Strategy Policy C6 and SAMDev Policy MD13 which amongst other things, aim to protect, conserve, restore and enhance the built and historic environment.

Other Matters

51. Concern has been raised about the impact of the proposal on the living conditions of nearby residents in particular with regard to outlook and overlooking. The building would be sited close to the rear boundary of residential properties in Great Hale Street. Most of the scheme achieves a separation distance of around 21 metres which is generally accepted to be sufficient to maintain privacy to habitable rooms. The proposed terrace area would have a 1.6-metre-high screen which would prevent overlooking. Additionally, as the building would be north of the residential properties, it would not block sunlight to the rear gardens and rooms on the rear elevations. I accept that a building of the height proposed would result in a significant change in outlook for occupants of properties bounding the site. However, I am of the view that this would not be so detrimental to amenity, as to render the scheme unacceptable in this regard.
52. Concern has also been expressed about car parking for the proposal particularly as there is limited on street parking in the vicinity. The scheme includes an 18 space car park. The site is in a sustainable location close to the town centre and public transport. Visitors could make use of nearby town centre car parks if necessary. Additionally cycle parking is provided in the scheme. Given the above, I consider that the proposal would not cause parking or highway safety issues. The scheme would therefore comply with SAMDev Policy C6 which amongst other things, requires a proposal to be located in an accessible location where opportunities for walking, cycling and the use of public transport can be maximised.
53. I acknowledge that the appeal scheme will address a need for this type of residential accommodation in the Market Drayton area. It would also provide employment and contribute to the local economy during the construction phase. Whilst these factors provide support to the scheme, they do not outweigh my concerns about the living conditions for future residents.

Conclusion

54. Whilst the scheme would preserve the character and appearance of the CA and have no adverse impacts on the setting of nearby listed buildings, it would result in unacceptable living conditions for future residents due to noise

impacts and the mitigation required. Accordingly, the proposal would not comply with the development plan and material considerations do not indicate that a decision should be made other than in accordance with it.

55. For the reasons given above, and having had regard to all other matters raised, the appeal is dismissed.

Helen Hockenhull BA (Hons) B.Pl MRTPI

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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INTERESTED PARTIES:

Steve Nuttall
Cllr Byron Chapman

Managing Director Joules Brewery
Deputy Mayor and Chair of the Market
Drayton Town Planning Committee

Documents submitted at the event.

1. Application ref 21/02720/FUL, Development Management Report, Proposed Nursing Care Home, Victoria Road, Oswestry

Documents submitted after the event.

1. Covering Letter from appellant dated 5 June 2023 enclosing:
2. R(Fraser) v Shropshire Council [2021] EWHC 31 (Admin)
2. Revised schedule of conditions