



Appeal Decision

Site visit made on 7 January 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th February 2025

Appeal Ref: APP/L3245/W/24/3351748

Former Phoenix Garage, Paul Atkins Farm Services, Great Hales Street, Market Drayton, Shropshire TF9 1JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Frontier Estates Ltd against the decision of Shropshire Council.
 - The application Ref is 24/00461/FUL.
 - The development proposed is redevelopment of the 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.

Main Issue

2. The main issue is whether or not the proposed development would provide adequate living conditions for future occupiers with particular regard to noise.

Reasons

3. The appeal site is located to the north of Great Hales Street in Market Drayton. It was formerly occupied by Phoenix Garage and consists largely of hardstanding with a drop in level in the north east part of the site. The surrounding area contains a mix of uses including commercial and residential properties. To the western boundary of the site is the Red Lion Public House and Joules Brewery. Residential properties are to the south west and north east, as well as on the opposite side of Great Hales Street.
4. This appeal is the second made for a scheme of the same description which was dismissed¹ in November 2023. There are no material differences between the exterior of the appeal scheme and the previous one. The fundamental changes have been to the internal layout of the proposed building resulting in a reduction of the number of bedrooms requiring mechanical ventilation on the north west façade of the proposed building from 34 to 23 bedrooms. No bedroom windows on the north west elevation would be fixed shut.
5. The appellant has submitted a Noise Assessment (the NA)² which assesses the noise sources and recommend mitigation measures. Venta Acoustics has reviewed the NA and agree with its findings. The NA finds that the appeal site is affected by several noise sources including traffic noise, noise associated with the deliveries and operation of Joules Brewery and noise emitted from the Red Lion

¹ Ref APP/L3245/W/23/3323546.

² By Hawkins Environmental, Report No. H4068-NV-v2, dated 2 February 2024

Public House, including those relating to a kitchen air extraction, the car park, a modelled outdoor concert, and an indoor live music event. The most significant noise levels are associated with deliveries to the brewery which could affect 23 bedrooms on the north west elevation of the proposed building. Some of these rooms could also be affected by noise associated with the kitchen extract of the pub during the day and evening.

6. It is not disputed that the noise risk of the site is 'medium', with the effect level between the Lowest and Significant Observed Adverse Effect Levels.³ Overall, the main parties agree that there would be a significant adverse noise impact resulting in unacceptable internal noise levels within the proposed development which would require mitigation. I see no reason to reach any different conclusions on the evidence before me.
7. The appellant has put forward a scheme of mitigation involving an acoustic barrier on the north west boundary of the site, high specification glazing and mechanical ventilation to the rooms on the north west elevation of the building.
8. The acoustic barrier would be constructed at a height of 3 metres and is stated to reduce noise levels by around 9dB for ground floor rooms and 12.5 dB for lower ground floor rooms. Therefore, the external daytime noise level at the proposed development site during deliveries to the brewery would be 63-64 bB $L_{Aeq,1hour}$ at the ground floor level windows and lower at lower ground floor level windows. However, in terms of the first floor and second floor room windows, the barrier would be less effective.
9. With the acoustic barrier, appropriate glazing and mechanical ventilation, a 5 dB betterment of the internal standards of BS8233 for all 23 affected bedrooms would be achieved. However, it would require windows to be closed during delivery times and other various times in the day and evening due to the noise from the general operation of the brewery and pub. When windows are open, bedroom internal noise levels could exceed the recommended maximums. Therefore, to achieve ventilation and prevent overheating, mechanical ventilation would be required to all 23 bedrooms on the north west elevation of the building.
10. The Planning Practice Guidance (PPG) advises that 'for noise sensitive developments, mitigation measures can include avoiding noisy locations in the first place; designing the development to reduce the impact of noise from adjoining activities or the local environment; incorporating noise barriers; and optimising the sound insulation provided by the building envelope.' The appellant explains that the design and layout of the building has been reviewed since the previous appeal.
11. An Acoustic Design Statement (ADS), which is within the NA, has been prepared following guidance in the Planning and Noise Professional Practice Guidance (May 2017) (ProPPG) and PPG regarding acoustic design. The ADS indicates that the façade of the building facing the pub and brewery would need to be located 33 metres from the boundary of the site to avoid the need for noise mitigation entirely. Given that the site is approximately 42 metres wide at its widest part, this would leave limited land for development and would not be an efficient use of land.
12. The ADS indicates that a single aspect design was considered with no bedrooms on the north west elevation facing the pub and brewery, which would significantly

³ Planning and Noise Professional Practice Guidance (May 2017) and Noise Policy Statement for England (March 2010)

reduce the number of bedrooms. While I appreciate that the previous Inspector noted that a single aspect building with no rooms on the north western elevation would mean losing up to 34 bedrooms and result in that scheme being unviable, there is no substantive evidence before me relating to the physical and financial implications of a single aspect design to the appeal scheme. I am therefore unconvinced that the proposal presents the minimum possible or otherwise acceptable number of bedrooms on the north west elevation for a viable scheme.

13. While the appellant argues that the proposed scheme is already at the lower limit of financial viability, there is a notable lack of reliable evidence to demonstrate that the proposal would be unviable with less than 60 bedrooms. Equally, there is limited evidence to suggest that care homes with fewer than 60 beds are difficult to manage or inefficient in their operation. Reference has been made to the Care Quality Commission standards which are stated to require that facilities are delivered on a 'per floor level.' However, these standards have not been provided so it is unclear how they would affect the number of bedrooms proposed in relation to the viability of a care home at the site.
14. I appreciate that the appeal site has various constraints, requiring the design to respond to its context. The Council, as do I, have no issues relating to the design and appearance of the proposal. However, the appellant has not adequately demonstrated that viable options have been sufficiently explored to reduce the impact of noise from adjoining activities or the local environment as required by the PPG.
15. While hearing is shown to deteriorate with age, the Acoustic Ventilation and Overheating Residential Design Guide (January 2020) suggests that quieter noise standards may be necessary for care homes where conditions for daytime resting are known to be of particular importance. Furthermore, the PPG indicates that new noise sensitive development includes residential accommodation, hospitals and schools.
16. While there would be communal areas for residents to enjoy on the quieter south east elevation, some may wish to rest or reside in their bedrooms, particularly if they are unwell or seek a quieter or more private environment. Indeed, considering bedrooms would be the only private spaces for residents, it is likely they will often spend daytime hours doing so.
17. It is possible that many future residents could have severely reduced mobility so that opening and closing a window may be beyond their capability. However, this does not mean that they may not wish for a window to be open or closed but would be dependent on staff to do so. Moreover, there is little to show the affected bedrooms would likely only be occupied by people with such reduced mobility and there is no mechanism before me to control the occupancy of future residents to end-of-life care. I am therefore unconvinced that future residents will be largely bedbound or generally have a length of stay of 20 to 22 months.
18. The NA recommends that the care home operator have management procedures in place to ensure windows are closed and mechanical ventilation is used at the necessary times. While a management plan could be put in place to achieve this, and ensure 'fresh air' is provided, there is no certainty that it would be followed. A planning condition requiring such strict operational controls would neither be

enforceable or reasonable and would therefore not meet the Framework tests for a planning condition.

19. I appreciate that the care home would be staffed 24 hours a day, so staff could provide assistance to residents wanting to open or close a window. Staff could also help to reduce any possible noise complaints by closing windows at times of noise. However, staff may not always be able to provide timely assistance, particularly given the number of bedrooms that would be adversely affected by noise and other duties that they would have to undertake.
20. I acknowledge that the PPG advises that to help mitigate the risk of a statutory nuisance being found, development should be used as designed, for example, by keeping windows closed. However, it also states that where noise would cause a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during the periods when noise is present, it is undesirable for such exposure to be caused. While the number of bedrooms requiring mechanical ventilation has been reduced to 23 since the previous appeal, the proposal relies heavily on a considerable number of windows being closed at times of noise. This would include during morning delivery times and various times in the day and evening due to the noise from the general operation of the brewery and pub. Opening and closing of windows would represent a material change from expected behaviour.
21. I have been referred to a number of historic planning decisions concerning the site and other care homes permitted by the Council⁴. I have not been provided with the full details of all those decisions, but on the information before me I note significant differences between them and the proposal. The 2007 consent for residential development at the site was approved before the consent for the brewery so the noise environment was different. The 2 dwellings consented to the rear of the site are shielded by the existing buildings located in the east part of the site. In terms of the retirement apartments at Stafford Street, significantly less bedrooms require mechanical ventilation compared to the proposal. In the Oswestry example, the majority of the noise impacts were from traffic which is noise without a specific character.⁵ The adjacent dental surgery is a materially different use to a care home which is more vulnerable to adverse effects from noise. These other planning decisions do not therefore lead me to find the proposal acceptable in respect of the main issue in this appeal. In any event, I have determined the appeal on its own individual planning merits.
22. Although mechanical ventilation has been used in several schemes in Shropshire and nationally, 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.
23. While I am advised that the operations of the adjacent brewery have not given rise to noise complaints, this does not confirm that noise is not a current issue. Indeed, the various detailed noise assessments confirm it would be a significant issue affecting future residents, even though the hours of operation of the adjacent pub and brewery are controlled by condition.

⁴ Ref NS/07/00460/FUL, 10/00968/FUL, 11/00973/FUL, 19/02964/FUL, 21/02720/FUL, 22/05070/FUL.

⁵ BS8233:2014 states 'occupants are more tolerant of noise without specific character'.

24. Given the number of bedrooms affected and the duration and frequency that windows would have to be closed to maintain suitable internal noise levels, in this instance, the proposal would not provide an appropriate internal environment for future occupiers.
25. For the reasons given, the proposed development would not provide adequate living conditions for future occupiers with particular regard to noise. The magnitude of this harm would be significant in this context and cannot be mitigated in an appropriate manner. It would conflict with Policy CS6 of the Shropshire Local Development Framework: Adopted Core Strategy (March 2011) (the CS) and Policy MD2 of the Site Allocations and Management Development Plan (December 2015) (SAMDev). Amongst other matters, these policies seek to achieve sustainable design and safeguard residential amenity. It would also be contrary to the Framework where it states proposals should create a high standard of amenity for future users.

Other Matters

26. The appeal site is located within Market Drayton Conservation Area (CA) and is proximate to several Grade II listed buildings. While 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 areas) Act 1990 (as amended). The Council raised no concerns regarding the CA or any listed buildings, and I do not disagree for the following reasons.
27. The significance of the CA is derived from its rich architectural, historical and cultural heritage reflecting the town's origins as a medieval market town. The CA contains a diverse range of buildings dating from the 15th to 21st Century in a tightly mixed urban layout. Great Hales Street contain two and three storey residential buildings set close to the road creating a continuous built frontage. The appeal site is partially vacant and currently does not contribute positively to the character or appearance of the CA. The design, form and scale of the proposed development would respect and complement the surrounding townscape. Overall, the character and appearance of the CA as whole would be preserved.
28. The appeal site lies opposite to 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 and serve as fine examples of traditional Georgian residences with the exception of Forge House which was constructed in the early to mid-19th century. While there would be intervisibility between the appeal site and the listed buildings, given the location and design of the appeal scheme, it would preserve the setting of the listed buildings, the significance of which would not be harmed.
29. No. 9 Great Hales Street and the Red Lion pub, to the east of the appeal site, are Grade II listed buildings of early 19th Century and late 18th Century respectively. Currently there is no boundary feature between the site and No 9. The appeal scheme includes a boundary wall which would separate the heritage asset from the proposed development, benefiting the understanding of its curtilage without affecting its setting. Its significance would therefore be preserved. The proposed scale and massing of the appeal scheme would also preserve the setting of the Red Lion pub and the contribution it makes to its significance.

30. To the west of the appeal site are Nos. 19-21 Great Hales Street. They are Grade II listed mid-17th Century timber framed houses. The appeal scheme would involve the demolition of the existing disused garage. An external boundary wall of the garage is attached to the listed building and would therefore need to be removed. The proposed development would be set away from the listed dwelling which would create a greater separation distance from the historic asset. Overall, the setting of the listed building would be preserved.
31. The appellant has referred to 'Policy DP1 Residential Mix' and 'DP Policy: Housing for older people and those with disabilities and special needs' of the Draft Shropshire Local Plan 2016-2038. The plan has been found unsound, although the Council has been given the opportunity to set out a programme of work to rectify the deficiencies. Nevertheless, in the circumstances, I only afford it little weight.

Planning Balance and Conclusion

32. The appeal scheme would address a need for this type of residential accommodation in the Market Drayton area. The provision of a care home would have wider benefits including improved quality of life for most future residents and reduced pressure on, and associated cost savings for, health and social care services. The proposal would contribute to the overall supply of housing in the area within a location that is highly accessible by public transport and to a wide range of services and facilities. The scheme would utilise a brownfield site and make efficient use of land. It would also provide employment and contribute to the local economy during construction and in subsequent occupation directly and indirectly. In these regards, I note the Framework supports the development of small and medium sized sites in sustainable locations to make efficient use of previously developed land and significantly boost the supply of a mix of homes. Due to the scale of the scheme, I give these factors moderate cumulative weight in favour of the proposal.
33. Compliance with the development plan in relation to heritage, character and appearance, landscaping, the intrinsic architectural design of the proposed building, amenity of neighbouring occupiers, internal amenity space, parking, access, servicing, flooding, drainage, and ventilation are expectations for all development. These weigh neither for nor against the proposal and are therefore considered neutral in the planning balance.
34. The proposal would not provide adequate living conditions for future occupiers with regard to noise. In this case, this is a matter of significant weight. Accordingly, the significant adverse impacts of the proposal outweigh the moderate benefits of the scheme. The proposal would conflict with the development plan when considered as a whole.
35. The material considerations do not indicate that the appeal should be decided other than in accordance the development plan. For the reasons given above, the appeal should be dismissed.

U P Han

INSPECTOR