



Appeal Decision

Hearing held on 25 and 26 October 2011

Site visit made on 26 October 2011

by David Saul BSc DMS MSc CEnv FRICS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2011

Appeal Ref: APP/Y3940/A/11/2156113

Former Gasholder Site, Land adjacent the Wharf, Devizes

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against Wiltshire Council.
 - The application Ref E/11/0057/FUL, is dated 17 December 2010.
 - The development proposed is redevelopment to form 39 Retirement Apartments for older people including communal facilities, car parking and associated landscaping.
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Decision

1. The appeal is dismissed and planning permission for redevelopment to form 39 Retirement Apartments for older people including communal facilities, car parking and associated landscaping is refused.

Procedural matters

2. Notwithstanding the Council's earlier concerns over procedure, it was agreed at the Hearing that the appeal should address the failure to give notice of a decision. Also, a S106 obligation was provided in a multiple counterpart format which is inconsistent with Planning Inspectorate advice¹. It was suggested at the Hearing that this inconstancy might be overcome by reformatting the obligations into a single document but, having dismissed the appeal, it is not necessary to pursue this suggestion.
3. Whilst account has been taken of the Draft National Planning Policy Framework, this document is still in draft form and subject to change so that little weight can be attached to its policies which are yet to be finalised. Also, the Draft Supplementary Planning Document, Devizes Wharf Planning Brief has not been adopted and so can be attributed little weight. In addition, the limited postal address reflects the absence of any post code for the site.

Main Issues

4. The two main issues are (i) whether or not the proposal would fail to preserve or enhance the character or appearance of the Conservation Area (CA) as well as the effect on the character and appearance of the setting of the canal, having particular regard to matters of design, scale, bulk, height and massing

¹ The Planning Inspectorate Good Practice Advice Note 16 - Submitting Planning Obligations

(ii) the effect on future residential occupiers of noise emanating from neighbouring commercial premises.

Reasons

5. The appeal site lies on the edge of the town centre immediately abutting an industrial scale brewery complex, a canal and a large public car park containing an attractive canal-side warehouse used as a theatre. The Crown Pub is situated alongside the car park entrance. The site itself is a former gasworks storage facility which has remained disused since the 1950s, despite limited clearance and decontamination some twenty years ago. The adopted Devizes Town Centre Design Code (2007) recognises that the site is an underused asset which needs redevelopment. Furthermore, the Devizes CA statement also identifies the development opportunity whilst recognising that the theatre building is a key element of the canal and wharf area of the CA.

Character and appearance

6. The eastern elevation of the proposed eastern block would be close to and directly facing the car park so as to appear particularly prominent when viewed from the public car park as well as from the theatre area, the canal and some associated public walks. In contrast to the industrial scale setting to the west, nearby buildings to the east have a relatively domestic scale characterised by the limited height of the theatre building as well as housing and other modest scale canal-side structures. I accept that the two and half storey height of the eastern block would not in itself breach the Design Code and nor would the eaves height appear excessive in the setting. However, the roof structure itself would be strikingly tall with a high ridgeline and tall, bulky, roof form. Furthermore, the relatively elevated position would increase the apparent height of the roof especially in relation to the smaller theatre building. Therefore, despite the separation from the theatre, the roof of the prominent elevated eastern elevation would appear incongruously tall against the adjoining modest scale setting, particularly when compared to the theatre.
7. The apparent length of the long southern and northern elevations would be successfully broken up by the insertion of balcony structures and glazed sections with breaks in the ridgeline. Indeed, the clear variation in materials and roof lines would ensure that the visual breaks were not significantly diminished by the relatively heavy weight structures, obstructions or lack of complete transparency through the buildings. Nor would the western or central blocks appear excessively tall in the context of the large scale brewery complex to the west. In addition, there would only be limited public views of the relatively featureless western elevations.
8. The proposed building would have a generally low-key contemporary design, using traditional materials, which would respond well to the traditional canal-side industrial setting. The structures would beneficially create a sense of enclosure improving the current poorly defined edges to the open car park area. The stark form, height, as well as positioning of the projecting balcony structures and high level linking corridors would add interest and contribute to the industrial flavour of the design. Also, the complexity of the main roof structure would not be particularly apparent to public view. In addition, the relatively open surroundings would ensure that the relatively limited separation from the boundaries would not appear cramped.

9. For the reasons set out above, the canal wharf feel of the proposed building would generally respond well to the setting and the size would successfully match the industrial scale of the brewery to the west. However, the roof height of the eastern element would be out of keeping with the scale of the adjoining canal-side setting to the east. I accept that the roof height has already been lowered compared with earlier proposals and neither English Heritage nor Council officers objected to the current scheme. Nevertheless, in my assessment, the currently proposed tall prominent roof of the eastern block would harm the character and appearance of this important setting in the CA.

Noise

10. Notwithstanding the Council's concerns over the noise surveys, it has clearly been shown that the level, timing and type of noise emanating from night club activity at the Crown as well as the operational activity at the brewery (particularly the movement of barrels) have the potential to cause nuisance to future occupiers. Both sources of noise are owned by the brewery which is a major local employer and makes an important contribution to the local economy. The Council are concerned that if the scheme were to go ahead then the business could be undermined by enforcement action to limit noise. Furthermore, the Ministerial Statement, Planning for Growth, attaches significant weight to the need to secure economic growth and employment whilst PPS4² sets out the Government's overarching objective of sustainable economic development.
11. However, the proposed design had clearly addressed noise from the brewery, as required by PPG24³, with corridors separating apartments from the main noise source and limited openings in the most exposed external elevations. Furthermore the layout and ventilation had enabled the permanent closure of windows facing the brewery without harm to the living conditions of future occupiers. Indeed, as suggested, the lounge windows closest to the brewery within the north elevation of apartments Nos 22 and 36 could also be sealed shut without harm. Also, acoustic glazing and associated ventilation systems could be fitted throughout the building whilst acoustic screens could shield those balconies sited close to the loading bays. In addition, acoustic fences could be fitted to the length of both boundaries against the brewery. Furthermore, I see no reason to question the suggested requirement that the external fabric of the building could be so protected against noise as to achieve an internal L_{MAX} of 35dB within all units at any time. All of these measures could be achieved by the imposition of suitable conditions, such as those submitted following discussion between the parties at the Hearing, thereby ensuring that the risk of nuisance from the main operation of the brewery would be limited to an acceptable level.
12. Whilst acoustic protection could also largely address the noise emanating from the Crown, this would only be fully effective when windows were closed and it would not be viable to permanently seal the large number of windows exposed to noise from this source. There would therefore be some risk that future occupiers might leave windows open and thereby suffer from noise which might lead to enforcement action against the Crown. However, the night club noise is far from continuous, only occurring on certain nights when there would be some realistic prospect that residents might respond by closing windows.

² Planning Policy Statement 4 (PPS4): Planning for Sustainable Economic Growth

³ Planning Policy Guidance 24 (PPG24): Planning and Noise

13. Given the existing housing nearby and the clear potential for further residential development identified within the Design Guide, the issue of noise from the Crown is unlikely to be confined to occupiers of the current scheme. Indeed, any residential proposal at or near the site would need to address and overcome noise. The appeal proposal has included very significant measures to address these concerns and it is not clear to me what further measures could be taken without, in my view, unacceptably prejudicing the living conditions of future occupiers by the extensive sealing of habitable windows.
14. Also, enforcement action could lead to mitigation measures and limitations on activity which might carry some cost but there was little compelling evidence that such measures would strike at the viability of the clearly successful night club. Furthermore, notwithstanding the brewery use of catering and rooms at the Crown, the noisy night club activity does not appear to be central to the main brewery business. Indeed, the Crown is one of many pubs owned by the brewery and despite the financial returns from the night club it was not clear that any action to restrict noise from the night club would place the main brewery business at risk.
15. For the above reasons, subject to condition, the proposed design would adequately address the risk of noise from the Brewery operations and, although I have some concerns over risks arising from night-club noise at the Crown, such risks would not be so great as to justify refusal.

Overall conclusion in respect of main issues

16. In conclusion, subject to suitable conditions, the effects from noise would be of concern but would not be so great as to amount to harm or conflict with the aims of Kennet District Local Plan (LP) Policy PD1 (B.10) or PPG24 or PPS4. However, although other aspects of the design would be acceptable, the excessive height of the eastern block roof would appear incongruous, harming the character and appearance of the canal setting, whilst failing to preserve or enhance the character or appearance of the CA. In this respect only, the proposal would conflict with the aims of LP Policy PD1, the Supplementary Planning Guidance set out in the Devizes CA Statement and the Devizes Town Centre Design Code as well as PPS1 and Policy HE7 of PPS5.
17. Significant benefits from the scheme would include provision of needed housing for the elderly, an affordable housing contribution, utilisation of a long unused contaminated Brownfield site, economic and environmental benefits as well as potential public paths. Nevertheless, Government policy makes it clear that design which is inappropriate in its context should not be accepted and, given the sensitivity of the site within the CA, on balance the appeal should be dismissed. In reaching this conclusion, I accept the evidence that other alternative uses for the site are unlikely to be viable but I am not convinced that it had been shown that the viability of the retirement flat use would be dependent on the inclusion of the harmfully tall roof for the eastern block.

S106 obligation

18. Having dismissed the appeal there is no need for me to address the content of the S106 undertaking in great detail. Nevertheless, the obligation to provide acoustic glazing to a certain minimum specified standard would not conflict with any higher standards imposed by condition. Also, the obligation would usefully go some way to protect the potential for a pedestrian canal side route.

Furthermore, the Council provided appropriate, specific, evidence to justify the contributions sought in respect of affordable housing as well as wildlife enhancement and demonstrated that these elements would satisfy the legal tests set out in the CIL⁴ Regulations.

19. The SPG⁵ states that contributions for adult sports and pitches should reflect the age and recreational needs of new residents aged over 55. However, the anticipated age profile and levels of dependency envisaged amongst future occupiers of these flats would be likely to limit their use of a recreational facility located some distance away. Also there was little compelling evidence that improvements to the public realm would amount to the type of adult recreational facilities envisaged by the SPG. I could not therefore be certain that contributions for the recreational facility would be directly related to the development or that works to the public realm would be necessary to make the development acceptable in planning terms. It has not therefore been shown that the contribution towards recreational facilities would satisfy the legal tests and so only limited weight should be given to this element of the obligation.

Other matters

20. Having dismissed the appeal on other grounds there is no need to address the legitimacy of a water efficiency condition. Also, despite increasing numbers of elderly women drivers, given the views of the Highways Authority, the sustainable central location and the levels of car ownership amongst occupiers of similar schemes, I was not persuaded that the car parking provision would be inadequate. All other matters raised, including inadequacies in the local infrastructure, have been taken into account but do not, either individually or collectively, outweigh the main conclusions reached in this decision.

Conclusion

21. For the reasons given above I conclude that the appeal should be dismissed.

David Saul

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D Manley QC	Instructed by McCarthy & Stone Retirement Lifestyles Ltd
Mr M Shellum BA Hons Dip TP MRTPI	Principal Planning Associate, Planning Bureau Ltd
Mr A Ward BA Hons Dip Arch Dip UD DipTP RIBA	Director, NEW Master Planning Ltd
Mr P Davies Dip Arch Hons RIBA	South West Regional Design Director, Planning Bureau Ltd
Mr J Sim MIOA	Associate, AAD

⁴ The Community Infrastructure Levy Regulations 2010

⁵ Supplementary Planning Guidance (SPG) Devizes Strategic Development Brief 2004

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Parker BSc Hons Dip TP MRTPI	Area Team Leader, Wiltshire Council
Cllr N Carter CEnv MIEMA	Ward Member
Ms H Gardside BA Hons MSc IHBC	Principal Conservation Officer
Mr G Tomsett BSc Hons CEHP	Team Manager, East Protection Team
Ms Helen Pinchen BSc Hons CIEH	Environmental Health Officer

INTERESTED PERSONS:

Mr E Clarke BEng Hons MIOA	Technical Director, Alan Saunders Associates, acting for Wadworth & Co Brewery
Mr B Yorston	Head Brewer, Wadworth & Co Brewery
Cllr P Evans	Member, Devizes Town Council
Mr T Sedgewick	Trustee, Trust for Devizes
Mr J Lynch (at site visit only)	Manager, The Crown, Wadworth & Co Brewery

DOCUMENTS

- 1 Alan Saunders Associates' statement
- 2 S106 obligation
- 3 S106 obligation (counterpart)
- 4 Mr Sedgewick's statement
- 5 Multiple e-mails regarding S106 ecological contribution
- 6 Second bundle of e-mails
- 7 SPG - Community benefits from planning
- 8 Draft noise condition
- 9 Committee minutes
- 10 Set of draft conditions