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## Appeal Decision

Site visit made on 17 January 2017

**by Andrew Owen BA(Hons) MA MRTPI**

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

**Decision date: 3 February 2017**

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**Appeal Ref: APP/D4635/W/16/3160777**

**151 Tettenhall Road, Finchfield, Wolverhampton WV3 9NJ**

- 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 Dr Saba Anatharam of Lyric Ltd against the decision of Wolverhampton City Council.
  - The application Ref 15/01422/FUL, dated 18 December 2015, was refused by notice dated 30 June 2016.
  - The development proposed was originally described as "3 storey of 20 units of 2bed3person apartment units on the vacant land of Halfway House Site".
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of twenty apartments, car parking and amenity space at 151 Tettenhall Road, Finchfield, Wolverhampton WV3 9NJ in accordance with the terms of the application, Ref 15/01422/FUL, dated 18 December 2015, subject to the conditions in the attached Schedule.

### Application for costs

2. An application for costs was made by Dr Saba Anatharam of Lyric Ltd against Wolverhampton City Council. This application is the subject of a separate Decision.

### Procedural matter

3. I have amended the description of the development to that used on the Council's decision as that accurately and more succinctly describes the development.

### Main Issue

4. The main issue is the effect of the proposal on highway safety.

### Reasons

5. The proposed development would be located behind a building known as Halfway House which was previously used as a public house, but currently accommodates a pharmacy and dental practise. The access to the appeal site would utilise the existing access to the car park which serves these two businesses.
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6. Halfway House is located on the corner of Tettenhall Road and Paget Road which is a busy and signalised road junction. The building adjoins the back edge of the pavement of both streets and this, together with the slightly angled alignment of Albert Road, means that visibility to the right along the road for vehicles exiting the appeal site would be poor. Visibility to the left along the road for vehicles exiting the site would be good.
7. The visibility along the pavement in both directions for vehicles exiting the site would be satisfactory and therefore, whilst I note the comments that a high volume of children walk past the site to access the schools along Paget Road, I do not consider the development would present a risk to pedestrian safety.
8. The planning permission granted for the pharmacy at Halfway House<sup>1</sup> also allowed a medical centre to be built on the current appeal site. The Transport Assessment submitted with that planning application estimated that the medical centre alone would generate a total of 30 movements during the morning peak (0800 hours to 0900 hours) and 24 vehicle movements during the evening peak (1700 hours to 1800 hours). The Highway Statement submitted with the current appeal shows that the apartments would in total generate only 5 vehicle movements in both peak hours. Even accounting for the fact that these figures are estimates, it is clear that the proposed use would generate significantly less traffic at peak times than the medical centre would.
9. Consequently although the proposal would represent an increase in traffic above that generated by the current pharmacy and dental practise, it would be demonstrably less than that which could occur were the extant planning permission fully implemented. Therefore, although the visibility from the access is sub-standard, the risk to highway safety would be no greater than that which could arise from the extant planning permission.
10. Due to the proximity of the access to the road junction it would be nearly impossible for cars to exit the site, turn right and position themselves behind the stop line at the traffic lights without obstructing oncoming traffic. It is for this reason that Condition 11 of the existing planning permission required that a scheme of signage and road markings to discourage right turns out of the site be submitted to and approved by the Council. Details of two pole mounted signs and a painted road marking were submitted to the Council and approved by letter dated 4 February 2013. At my site visit I saw that these signs had been provided in accordance with the approved details.
11. There is some anecdotal evidence that the existing directional signs are not being adhered to and that they are not legally enforceable. However I have no conclusive evidence before me that the signs are not being followed. Indeed I consider that due to the busy nature of the junction and the frequency of cars queuing at the traffic lights on Paget Road, it is unlikely that drivers would block traffic approaching from Tettenhall Road or Albert Road as to do so would put themselves at danger.
12. Some local residents have suggested an alternative point of access/egress to the site which they consider would be safer. However I am unable to consider the suitability of an access that is not part of the proposal before me.

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<sup>1</sup> Ref No 12/00596/FUL

13. In summary, whilst visibility onto the road from the existing access is poor, the development would not be likely to cause any greater harm to highway safety than that which could result from the extant planning permission. Therefore the proposal would accord with Policies AM15 and H6 of the Wolverhampton Unitary Development Plan (UDP) and Policy TRAN2 of the Black Country Core Strategy (BCCS) which all require development to provide appropriate access arrangements with acceptable levels of road safety, and Policy TRAN4 of the BCCS which aims to encourage cycling and walking.

### **Other matters**

14. The site is within the Tettenhall Road Conservation Area (TRCA). Section 72(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, with regard to conservation areas, "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."
15. The TRCA is generally characterised by large 19<sup>th</sup> century buildings or terraces fronting Tettenhall Road. The scale of the proposed building would complement that of many of the other nearby buildings in the TRCA and additionally would be largely screened by a row of protected Lime trees on the Tettenhall Road frontage. As such I consider the development would preserve the character and appearance of the TRCA.
16. In respect to the concerns that the development would overdominate the locally listed building, I am satisfied that a sufficient distance exists between the proposed building and Halfway House that the setting of this locally listed building would not be adversely affected. Likewise I consider the development would maintain a sufficient distance from the rear gardens of the properties in Cranmore Road and Paget Road so as to not result in the privacy of the residents of these houses being adversely affected. I also have no evidence before me to suggest the proposal's location behind the adjacent dwellings would impact on their security.
17. The Council's Transport Officer has commented that one parking space for each of the 20 apartments would be sufficient. This is reasonable in light of the proximity of the site to Wolverhampton City centre and local public transport services. The 30 spaces provided by the development would therefore allow some parking for visitors and for customers of the adjacent businesses. For this reason I would not consider it likely that the proposal would result in cars being parked along Paget Road which could interfere with the efficient operation of that road.
18. I acknowledge the concerns regarding the effects of construction and construction traffic on local residents. However any effects would be for a relatively limited period and would not justify withholding planning permission in this case.
19. A completed unilateral undertaking has been submitted with the appeal. It includes obligations relating to public open space, renewable energy, affordable housing, recruitment and training and a management company. I shall consider each in turn below.
20. The public open space contribution would amount to £53,392 and would go towards the provision, enhancement and maintenance of West Park which is a

short distance from the site. Whilst I agree such a contribution would be directly related to the development, I have no evidence, such as a calculation, that shows the scale of the contribution is reasonably related to the development. Moreover, in the absence of a Community Infrastructure Levy regime, I consider the provision, enhancement and maintenance of West Park would be a project for which a limit of five pooled contributions should apply. It has not been suggested to me that less than five contributions have already been made towards West Park. For both these reasons it has not been demonstrated that the contribution is necessary and therefore I am unable to take this obligation into account.

21. I have not been specifically directed to any policy requirement relating to the need for development to incorporate measures for the generation of energy from renewable and low carbon sources sufficient to offset at least 10% of the development's estimated energy demand. As such it has not been demonstrated that this requirement is necessary to make the development acceptable and therefore I have not taken this obligation into account.
22. The Council's Affordable Housing Supplementary Planning Document sets out the basis for the need for contributions to affordable housing. The proportion of the proposed apartments to be affordable is in accordance with this document and the contribution is necessary to make the development acceptable in planning terms. The requirement to provide a scheme, to be approved in writing by the Council, can address finer details such as the management of the affordable units and the reduction in rent from the full market rate. Additionally I am satisfied that, whilst the viability of the development is such that a contribution to affordable housing is not currently viable, a contribution should be required at a future date if it is viable. As such I am able to take this obligation into account.
23. I have no evidence before me to demonstrate that the obligation to maximise local job and training opportunities is necessary to make the development acceptable in planning terms. I have therefore not taken this obligation into account.
24. In Appendix 2 of the UDP it advises that where open space is provided on site, developers will be required to set up a management company to ensure these spaces are managed and maintained appropriately. The development provides only minimal communal amenity space. Whilst it is important that this space is provided and maintained, it is sufficient for this to be ensured by a planning condition relating to landscaping and not by the obligation proposed which also indirectly requires future residents to contribute to and become members of the management company. I therefore do not consider it has been demonstrated that this requirement, as a whole, is necessary to make the development acceptable in planning terms and I am unable to take it into account.

## **Conditions**

25. I have considered those conditions suggested by the Council against the requirements of the Planning Practice Guidance (PPG) and the National Planning Policy Framework (the 'Framework'). Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect this guidance.

26. In accordance with the PPG and the Framework I have imposed the standard condition relating to the commencement of development. I have also attached a condition specifying the relevant plans in order to provide certainty and conditions relating to construction materials, landscaping, tree protection, site levels, and bin store details in the interests of preserving the character and appearance of the area. I have also attached conditions relating to obscure glazing, external lighting, construction hours and a Construction Method Statement in the interest of protecting the living conditions of the nearby residents. The condition relating to drainage would ensure the satisfactory drainage of the site, and the condition relating to car parking is necessary in the interests of highway safety.
27. I have not imposed a condition relating to ecological protection as the submitted Ecological Audit found no evidence of any protected species. Should any such species be subsequently found, their protection is assured by other legislation.
28. Some conditions require compliance prior to the commencement of development so that the effects of the proposal are properly mitigated for in order to make the development acceptable.

### **Conclusion**

29. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed.

*Andrew Owen*

INSPECTOR

### **Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2004-101, 2004-102, 2004-103, 2004-104 Rev A, 2004-105 Rev A, 2004-107 Rev A, 2004-108 Rev A and 2004-109.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include details of all boundary treatment and indications of all existing trees and hedgerows on the land, identifying those to be retained and set out measures for their protection throughout the course of development. The landscaping works shall be carried out in accordance with the approved scheme before any part of the development is first occupied.
- 5) Before the development is first occupied a landscape management/maintenance plan shall be submitted to and approved in writing by the local planning authority. The landscape management/maintenance plan shall be carried out as approved.
- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 8) Construction works shall take place only between 0800 to 1800 Monday to Friday, 0800 to 1300 Saturday and at no time on Sundays or Bank or Public Holidays.
- 9) The building shall not be occupied until space has been laid out within the site in accordance with drawing no. 2004-103 for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear, and that space shall thereafter be kept available at all times for those purposes.
- 10) Development shall not commence until drainage works for the development shall have been carried out in accordance with details which

shall have been submitted to and approved in writing by the local planning authority.

- 11) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 12) The building hereby permitted shall not be occupied until the windows serving the en-suite bathrooms in flats 11, 12, 13 and 19 as shown on drawing no 2004-105 Rev A have been fitted with obscured glazing, and until an obscurely glazed privacy screen has been fitted to the balcony of flat 19. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
- 13) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority details of the proposed bin store and cycle parking as shown on drawing no 2004-103. The works shall be carried out in accordance with the approved details and thereafter maintained.
- 14) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the building is occupied. Development shall be carried out in accordance with the approved details.