
Appeal Decision

Site visit made on 14 February 2017

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 1st March 2017

Appeal Ref: APP/D4635/W/16/3161479

122 Waterloo Road, Wolverhampton WV1 4QZ

- 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 Mr Nand Singh Brar against the decision of Wolverhampton City Council.
 - The application Ref 16/00412/FUL, dated 20 April 2016, was refused by notice dated 28 June 2016.
 - The development proposed is change of use of 1 No. studio flat to form beautician's studio.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council adopted the Wolverhampton City Centre Area Action Plan in September 2016 (the AAP). As a result the Council has confirmed that Policy CC6 of the Wolverhampton Unitary Development Plan 2006 (the UDP), as referred to on the planning decision notice, is replaced by Policies CC1, CA1 and CA7 of the AAP. I have determined the appeal on this basis.

Main Issues

3. I consider the main issues for this appeal to be:
 - whether the proposal accords with the Council's policies relating to defined centres and the location of commercial units, and if not, whether such policy conflict is outweighed by other considerations;
 - the effect of the proposal on the living conditions of occupants of nearby studio flats, with particular reference to noise and disturbance; and
 - whether satisfactory parking provision would be made, and if not, the effect of the proposed development on the free and safe flow of traffic.

Reasons

Location

4. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise¹. For

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

the purposes of this appeal the development plan comprises the Saved Policies of the UDP; the AAP; and the Black Country Core Strategy 2011 (the BCCS). The National Planning Policy Framework (the Framework) is also a material consideration.

5. The appeal site is on Waterloo Road, an arterial gateway to the City Centre to the south and the nearby Molineux Stadium. Close to the appeal site is the Dunkley Street/Staveley Road junction and a roundabout with an access to an Asda supermarket, car park and petrol filling station. No 122 Waterloo Road is a four storey property on the end of a short row of terraced town houses. Its side boundary adjoins the Asda car park. Further north on Waterloo Road and to the east are residential areas including student housing, terraced houses and houses in multiple occupancy.
6. The appeal site is not within or adjacent to the hierarchy of centres as defined in Policy CEN2 of the BCCS and is not a defined centre in the AAP. The definition of "town centre" in Annex 2 of the Framework states that "*References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in Local Plans, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres*". Accordingly I conclude that the nearby local cluster of Asda, small shops (including one empty unit) and a public house do not comprise a defined centre for the purposes of planning policies. Moreover the Council states that there was no call for the area to be designated as a local centre during the process of adopting the AAP.
7. Whether or not the appellant considers the policy approach to be flawed, Policies CEN1-7 of the BCCS and Policies CC1 and CA1 of the AAP seek to focus retail and commercial uses into identified centres. Paragraph 24 of the Framework also directs town centre uses to town centres.
8. The floor area of the appeal proposal is less than 200 sqm gross. All the criteria in Policy CEN6 of the BCCS need to be met in order to ensure the vitality and viability of the Black Country's many centres is not undermined. Policy CEN6 indicates that new small scale local facilities outside defined centres will be permitted if it can be shown that, amongst other considerations, the proposal is of an appropriate scale and nature to meet the convenient day-to-day need of a local population, local provision could not be better met by investment in a nearby centre; and existing facilities that meet day-to-day needs would not be undermined.
9. The proposed beautician's studio is a type of use that planning policies direct to nearby centres such as Wolverhampton City Centre some 0.82 km away or the Whitmore Reans District Centre (Avion Centre) some 0.76 km away as the most sustainable locations for town centre uses². The appellant has advanced no evidence to suggest that local provision could not be better met by investment in a defined centre, or that existing facilities within a defined centre would not be undermined if planning permission was granted for an additional commercial unit outside centre boundaries.
10. As the appeal site is not in an identified centre and as the requirements of Policy CEN6 of the BCCS are not met in full I conclude that the proposal would

² Paragraph 5.5 of the Council's Statement

not accord with the Council's policies relating to defined centres and the location of commercial units.

Other considerations

11. Policy CA7 of the AAP recognises the Molineux Quarter as having mixed uses and as an important activity node for the city centre. Whilst retail is identified as playing a role in this Quarter the identified development opportunities are to the further side of the Molineux Stadium.
12. Although not referred to on the decision notice Nos 122-130 Waterloo Road are identified as a Historic Landscape Characterisation site and as a Key Frontage in the AAP. The Council has a priority of bringing back into use this row of residential properties which contribute to the local character of this key gateway corridor. The proposal would make use of one studio but this could also be in use as residential.
13. The proposed development would provide a new beautician's studio which would add a facility for those living within walking distance. However, evidence of demonstrable need that would not be satisfied by facilities in the city centre, the Avion Centre or the existing hair and beauty premises on Dunkley Street has not been provided.
14. Taken together I conclude these other considerations do not outweigh the policy conflict identified above. Accordingly the proposal would conflict with those parts of Policies CEN1-7 of the BCCS; Policies CC1 and CA1 of the AAP and those principles of the Framework that seek to direct town centre uses to identified centres.

Living Conditions

15. No 122 is divided into a number of studio flats with self-contained sanitary and cooking facilities. The occupation of these amounts to residential use for planning purposes irrespective of whether they are let on a commercial basis or not. The appeal proposal would change the use of the ground floor studio flat at the front of the building. The rest of the studio flats would remain in residential use.
16. The accommodation at No 122 is arranged over four floors and there would be living accommodation below, above and behind the proposed beautician's studio. Access would be via the existing external steps which rise up beside the front window of the lower ground floor flat.
17. The proposed therapies that would be on offer in the beautician's studio from 8:00 to early evening would include threading, waxing, manicure, pedicure, henna, hair and make-up, haircutting and colouring, eyelash extension, ear piercing and nail extension³. These would be carried out by a trained experienced therapist. Whilst these therapies may not be inherently noisy in themselves, in my experience similar activities are usually accompanied by noise from hair dryers, music and conversation. Moreover there would be likely to be many more comings and goings by customers than would be the case with a studio flat resulting in noise and disturbance from knocking at the door, the opening and closing of doors and the sounds of voices.

³ Design and Access Statement

18. The appellant considers that there would be little experience of noise and disturbance as most tenants of the studio flats would be at work during opening hours and that most residents would use the services that would be on offer. However, neither of these might be the case, particularly at 8:00 in the morning and the early evening, so I give these matters little weight.
19. I have considered whether conditions could address issues of noise and disturbance. Sound insulation may have some ameliorating effect but it would not address the noise and disturbance arising from comings and goings to the premises. Moreover the appellant would wish to operate for longer periods than those proposed by the Council. For these reasons I conclude in this instance planning conditions could not sufficiently overcome the adverse effects I have identified.
20. For the reasons set out above I conclude that the proposed change of use would adversely affect the living conditions of occupants of nearby studio flats to an unacceptable degree. Accordingly the proposal would conflict with those parts of Policies B5 and EP5 of the UDP that seek to protect the living conditions of residents from noise and disturbance.

Parking

21. Waterloo Road is a busy thoroughfare. It has some on street parking which appears well in demand. The appellant has indicated an arrangement with the leaseholder of a nearby public house for customers of the proposed business to use their car park. However, the agreement proposed appears to be informal, would not be legally binding and, if circumstances changed, could be withdrawn. Consequently, the proposal fails to provide adequate parking provision for staff and customers.
22. However, the nearby Asda car park contains facilities for pay-and-display parking. Parking directly outside the premises is prevented by Traffic Regulation Order. On the balance of probabilities I consider it likely that those customers and staff who do not arrive on foot or by public transport would find spaces to park that would not interrupt the free and safe flow of traffic in the area. For these reasons although the proposed development would not provide parking for staff or customers I conclude there would be a harmful effect on the free and safe flow of traffic in the area. Accordingly although there would be conflict with Policy AM12 of the UDP in terms of parking provision there would be no conflict with Policy AM15 of the UDP in respect of the free and safe flow of traffic.

Other matters

23. The Council considers that the grant of planning permission at the appeal premises could set a precedent that would undermine the regeneration strategy of the up-to-date development plan. Each application and appeal should be determined on its own merits. However, in this case there are a number of other studio flats where a change of use could be sought. Allowing this appeal could make it more difficult for the Council to resist other proposals for out of centre uses and cumulatively this could lead to undermining of identified centres and the regeneration strategy for the area.

Conclusion

24. I have found that the proposal would be outside any centre identified in development plan policies and would have an adverse effect on the living conditions of local residents. It would fail to accord with Policies AM12, B5 and EP5 of the UDP. It would not satisfy all the requirements for permitting local facilities outside defined centres as required under Policy CEN6 of the BCCS. It would conflict with Policies CEN1-7 of the BCCS and with Policies CC1 and CA1 of the AAP. In failing to comply with these policies the proposal cannot accord with the development plan taken as a whole.
25. For the reasons set out above and taking into account all relevant matters raised I conclude the appeal should not succeed.

SDHarley

INSPECTOR