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## Appeal Decision

Site visit made on 15 November 2017

**by J Gilbert MA (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 January 2018**

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**Appeal Ref: APP/H2835/W/17/3180300**

**The Lilacs, 39 Church Street, Isham, Kettering NN14 1HD.**

- 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 Edward Little for Hawthorn Leisure Limited against the decision of Borough Council of Wellingborough.
  - The application Ref WP/17/00154/FUL, dated 7 March 2017, was refused by notice dated 11 May 2017.
  - The development proposed is erection of one pair of semi-detached three bedroom houses together with boundary walls, cycle parking, refuse storage and alterations to car park served by improved access from Church Street.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A number of interested parties have made comments regarding the adequacy of the living conditions for the future occupiers of the proposed dwellings due to noise and disturbance from The Lilacs public house. Having had regard to these representations, I consider that this is a substantive matter and shall deal with it as a main issue for the appeal. The appellant has had the opportunity to respond to the comments raised in respect of this issue.
3. Since the application was determined, the appellant has sought to reduce the number of parking spaces in the reconfigured car park to 17 parking spaces including 2 disabled spaces as shown on plan 1701-08 PL 02 dated 15 June 2017 provided with the appeal statement by TPA. This appears to be based on the removal of storage floorspace with an associated reduction in trip generation. As noted at paragraph M.2.1 of the procedural guidance on appeals<sup>1</sup>, if an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. It is necessary to ensure that those who should have been consulted on the changed development are not deprived of an opportunity of consultation. Interested persons have not had the opportunity to comment on these changes and I have therefore not determined this appeal based on the amended plan 1701-08 PL 02 dated 15 June 2017.

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<sup>1</sup> Procedural Guide: Planning appeals – England, 5 August 2016.

## **Main Issues**

4. The main issues in this appeal are the effect of the proposed development on:
- highway safety, with regard to the adequacy of access arrangements and parking provision; and
  - the living conditions of future occupiers of the proposed development, with particular regard to noise and disturbance from The Lilacs public house.

## **Reasons**

### *Background*

5. The appeal site comprises the existing sloping gravelled car park associated with The Lilacs public house, which is located adjacent to the junction of Church Street, Mill Lane, South Street, and Middle Street within the village of Isham. The appeal site is located outside the Isham Conservation Area.
6. The Lilacs has external seating and a small triangular garden next to the road, a covered seating area to the east and a larger garden area with seating to the rear adjacent to the function room. There are two concrete garages adjacent to The Lilacs' rear garden.
7. The Lilacs and its grounds, including the car park, comprise an Asset of Community Value (ACV). The Council's decision notice predates the ACV designation being made on 24 May 2017 and its status does not form part of the reason for refusal.
8. While the appellant asserts that they did not contest the ACV nomination or designation, they consider that the car park represents a maintenance burden, which regularly attracts fly-tipping. The appellant seeks permission for 2 semi-detached houses sited on the eastern portion of the existing car park, and alterations to the remaining car parking for The Lilacs, which would require demolition of the existing garages.

### *Highway Safety*

9. The entrance to the car park is located south-west of The Lilacs off Church Street, which inclines relatively steeply down towards Mill Lane and Millglade beyond. While the surrounding area is predominantly residential, there is a chapel and a horse livery yard to the west along Church Street. The car park lies adjacent to 2 cottages on Mill Lane to the south, detached houses on Millglade to the east, a field to the north, and The Lilacs to the west.
10. The number of car parking spaces would be reduced from approximately 40 unmarked spaces to 18 marked spaces, with one disabled bay. 2 car parking spaces would be provided for each of the proposed houses, which would be accessed via the car park. The access from Church Street would be widened and footways would be provided on both sides of the access.
11. Paragraph 35 of the National Planning Policy Framework (the Framework) confirms that developments should be located and designed where practical to accommodate the efficient delivery of goods and supplies and create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians. The Framework also advises at paragraph 39 that such matters as

the accessibility and type, mix and use of the development, and the availability of and opportunities for public transport should be taken into account in setting local parking standards for residential and non-residential development.

Furthermore, the Government's Written Ministerial Statement (WMS) dated 25 March 2015 confirms that local planning authorities should only impose local parking standards for residential and non-residential development where there is clear and compelling justification that it is necessary to manage their local road network.

12. Policy 8 (b)(i) and (ii) of the North Northamptonshire Joint Core Strategy 2016 (NNJCS) requires development to make safe and pleasant streets and spaces by prioritising the needs of pedestrians, cyclists and public transport users; resists development that would prejudice highway safety; and seeks to ensure a satisfactory means of access and provision for parking, servicing and manoeuvring in accordance with adopted standards.
13. In terms of adopted standards, the County Council has produced the Northamptonshire Highway Development Management Strategy 2013 (NHDMS) and the Northamptonshire Parking Standards 2016 (NPS). These are part of a series of documents supporting the adopted Northamptonshire Transportation Plan (2012). Policy DM15 of the NHDMS restricts the number of dwellings independent of their own direct highway frontage to be served off a shared driveway to no more than 5 units. It is supported by text which confirms that where a private drive is proposed to serve flats or any other non-residential use within a development, they are required to access the public highway directly and not share the private drive with other dwelling types. I consider that this sentence is applicable in this instance. While the NHDMS and the NPS do not form part of the development plan, I give them some weight in this decision.
14. I note that the case officer's recommendation was overturned at Planning Committee and that the appellant questions the County Council's interpretation of policy DM15 of the NHDMS. I also recognise the lack of accident data for roads within 100m of the site and the attempts made to resolve transport issues with the County Council including improvements to the alignment of the access, enhanced pedestrian facilities and improved visibility splays. While the proposed houses would be predicted to provide only limited additional transport movements each day from the appeal site, it is clear that the County Council's concerns still centre on the potential for conflict between residential and non-residential uses of the same vehicular access.
15. While servicing the site with a brewer's dray or other lorry may be technically feasible within the reconfigured car park and would be likely to take place during the daytime Monday to Friday and therefore not coincide with the peak times for The Lilacs, there remains potential conflict with the access to the proposed houses during servicing. The proposed car parking configuration would make it difficult to manoeuvre a lorry along the access to offload. The swept path analysis indicates that a lorry would need to drive into parking spaces and overhang the grassed area beyond the parking space, prior to reversing. If a car was parked poorly or in a space needed for the lorry to manoeuvre, this would result in the lorry offloading on street or on the access route through the car park. Additionally, at peak hours, there remains the risk of conflict in terms of the proposed houses' parking spaces being used by

visitors to The Lilacs, or vehicles blocking access to the proposed houses when the car park is busy.

16. The appellant accepts that the juxtaposition of the parking for the proposed houses off the access route into the reconfigured car park could lead to conflict and has proposed a legal agreement to define rights of access with the future occupiers of the proposed houses and a condition to ensure management and maintenance of the access. No such legal agreement is before me. Despite the measures proposed to address the risk of conflict between lorries, cars and pedestrians within the reconfigured car park, I consider that the constrained access route through the reconfigured car park and its juxtaposition with the proposed houses and their access and parking spaces would be likely to cause harm in respect of highway safety.
17. Though the County Council is actively committed to encouraging modal shifts in transport use, it is recognised that it may not always be possible to use modes other than the private car. The nearest bus services are located on Kettering Road and provide 2 services per hour in either direction, with the last buses leaving prior to 11pm. The parking standards in the NPS are set as a minimum, rather than the maximum standard set by previous guidance in the county. This is in line with the WMS referred to above. The appellant has calculated that 18 parking spaces of 2.5m x 5m would be required based on the NPS minimum requirement of 1 space per 14m<sup>2</sup> gross floorspace and the public house's current floor area of 254m<sup>2</sup>, with one of those spaces as a disabled space. No specific allowance is made for staff parking in the standards.
18. The figure of 18 spaces for the reconfigured car park is to be regarded as a minimum in accordance with the NPS, the Framework and the WMS of 25 March 2015. Furthermore, the NPS requires 10% of the total car parking spaces to be provided as disabled parking spaces. The standards indicate that rounding up should operate for these spaces e.g. provision of 15-20 spaces should result in at least 2 spaces being to mobility standard. For the 2 proposed houses, the standards set out the provision of 2 spaces per dwelling, plus visitor spaces at 1 per dwelling across the development. While 2 spaces per house are proposed, no visitor space would be provided.
19. When I visited the appeal site on a mid-week lunchtime, The Lilacs was closed. At the time, there were 7 vehicles parked in the car park. This would comprise over a third of the parking provision of the reconfigured car park. A number of cars were also parked along the immediately surrounding roads. While the appellant considers that the proposed car parking provision would be sufficient for operational requirements and represents a good use of otherwise under-utilised land, they have provided little evidence on the actual usage levels of the existing larger car park or the future operational requirements of the public house.
20. I understand from residents' objections that it is a common occurrence for people to park in the car park when using the village facilities and attending local events, and that The Lilacs and its car park are an important part of those local events as evidenced by the ACV nomination. Residents have noted that parking on the streets immediately surrounding The Lilacs is not always available, especially when community events are being held. These community events range from annual Witchmen dances, the Isham Scarecrow Festival, the

Christmas Tree Festival, various car and motorcycle events, to walking and cycling group meetings; and pub quizzes.

21. In the event that the car park was reconfigured, I consider that there is a risk that cars would enter the car park to establish if any spaces were available, and when the spaces were all in use, cars would be forced to leave the car park and park on the surrounding narrow roads. While I acknowledge that the car park is privately owned and any parking that occurs there that is not in connection with The Lilacs is at the landowner's discretion, nevertheless, the proposed development would remove parking facilities for public house customers and this would be likely to exacerbate the demand for parking in the surrounding area. Though the appellant considers that visitor parking for the residential development could be on street, it is likely that any visitors would park in the car park, thereby reducing the spaces available for customer use.
22. Given the photographs provided by local residents, objections detailing use of the whole of the existing car park for functions and local events, and my observation of the number of vehicles parked in the closed public house's car park, the information provided by the appellant does not allow me to conclude definitively that a reduction of over half the current parking provision at The Lilacs would not cause harm in terms of overspill parking on street with a consequent effect on highway safety at a complex junction. Though the appellant considers temporary use of the car park for events such as the car and motorcycle rallies would not justify keeping the car park, The Lilacs is currently capable of holding relatively large events given the presence of both its function room and its car park. Limiting the parking provision would potentially render The Lilacs less attractive to future customers and tenants.
23. The Council considers that some of the proposed parking spaces would not be easy to use. I concur with this view in respect of the 2 proposed spaces directly adjacent to the proposed fencing surrounding the rear garden of The Lilacs and the refuse collection hardstanding. Given the tight angles involved and dependent on whether cars entered the spaces in a forward or reverse gear, it would be feasible, but tight to leave both spaces. The complexity of the manoeuvring required may give rise to other cars idling whilst waiting to leave, with consequent effects on the living conditions of neighbouring occupiers in terms of noise and disturbance. The appellant considers that the spaces would not be high turnover spaces, but this indicates that the spaces would not be easy to use.
24. Concluding on this main issue, I consider that the layout of the access within the reconfigured car park and its juxtaposition with the parking and access to serve the proposed houses, and the number of parking spaces retained within the proposed development would not be satisfactory and would cause harm to highway safety, with regard to the adequacy of access arrangements and parking provision. The proposed development would therefore conflict with policy 8 (b)(i) and (ii) of the NNJCS and would fail to comply with paragraph 35 of the Framework.

#### *Living Conditions*

25. Policy 8 (e)(i) of the NNJCS seeks to ensure quality of life and safer and healthier communities by protecting the amenities of future occupiers, neighbouring properties or the wider area with regard to noise, amongst other matters, while policy 8 (e)(ii) states that new development should be

- prevented from contributing to or being adversely affected by unacceptable levels of noise. This is consistent with paragraph 123 of the Framework, which seeks to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.
26. The existing houses close to The Lilacs include cottages at 1 and 3 Mill Lane which have small windows at the rear facing the existing car park, and two-storey detached houses along Millglade.
  27. The proposed houses would be positioned adjacent to the boundary with Millglade properties and would face the rear elevations of 1 and 3 Mill Lane. At the rear, the proposed houses would have patio doors to access their gardens of approximately 19m in depth. No windows or doors would be located on the side elevations of the proposed houses. A stone wall with an acoustic timber fence above totalling 2.1m in height and structural indigenous planting would separate the proposed houses and their gardens from the car park. The proposed houses would lie directly adjacent to the vehicular access for the reconfigured car park serving The Lilacs.
  28. The appellant's planning statement confirms that the proposed houses would be designed with appropriate noise attenuation which could be secured by condition so as to ensure that there are no adverse acoustic impacts due to the proximity to The Lilacs. No noise assessment was submitted as part of the application and no detailed information was provided on the acoustic qualities of the boundary treatment or any other mitigation measures.
  29. As the Council notes, the proposed development would introduce new sensitive receptors close to The Lilacs. The appellant proposes noise attenuation measures in the form of the boundary treatments, no windows in the side elevation facing The Lilacs, and ventilation to the proposed houses without having to open windows. Given the lack of detailed assessment, it is not possible to determine definitively what level of mitigation would be necessary to ensure a reasonable quality of life for future occupiers of the proposed houses.
  30. Previous noise complaints have been made by the Parish Council and a local resident with regard to noise from The Lilacs. These complaints date from 2015 and 2016 and relate in part to increased motorbike noise, with motorbikes revving their engines for periods of time on arrival at and departure from the public house's car park. According to the Council, this took place in the early hours of the morning. Furthermore, the 2015 complaint also referred to live music events on Saturday nights, with music continuing into the early hours of the morning.
  31. The noise source, in terms of the intensity of use of The Lilacs, its external seating areas, car park, and function room, would not be present for most of the time due to less busy times of the day and week, and varying weather conditions. However, the public house would be likely to be busy at peak times, particularly at weekends and in the summer months when people will be sitting outside, when specific local events and live music events are taking place, and cars are arriving and leaving the car park.
  32. The rear gardens of the proposed houses would provide private outdoor space, likely to be well used by the future occupiers when weather conditions make such use more attractive. This is therefore likely to coincide with use of the



external seating area and car park of The Lilacs, particularly at peak times. The boundary treatment proposed would offer some noise reduction, though I have not been provided with any detailed information on the likely level of noise attenuation afforded by it. However, the position of the access route and the parking areas adjacent to the proposed rear gardens would create noise and disturbance from cars or delivery lorries manoeuvring and turning, conversations taking place, and the shutting of vehicle doors. In my view, this would make the noise and disturbance in these gardens particularly noticeable and intrusive.

33. The appellant has made reference to ventilation without opening windows to preclude negative effects from noise. In the event of noise on a summer evening or a weekend afternoon, it would seem unreasonable for future occupiers to not be able to open their windows and doors in a village location. Thus, there would potentially be harm to the living conditions of future occupiers through their reduced ability to enjoy their properties. In the absence of a noise assessment, it is not possible to be certain that there would not be a significant adverse impact on future occupiers of the proposed houses. Although any prospective purchaser of the proposed houses would be aware of the potential for noise and disturbance from The Lilacs and its car park, this does not render an unacceptable relationship acceptable, and the full extent of any noise may not be readily apparent at the time of purchase.
34. Taking into account paragraph 123 of the Framework and the Noise Policy Statement for England (2010), significant adverse impacts should be avoided. I consider that it would not be reasonable to require a noise assessment and mitigation through a planning condition, as advanced by the Council, as it has not been demonstrated that the adverse impacts are less than significant or could actually be effectively mitigated.
35. Moreover, as the Council notes, in an instance such as this, there is always the potential for noise complaints. Such complaints can lead to restrictions on a public house's license and can affect the hours that they can operate, or require the cessation of an activity such as live music, reducing its attractiveness as a venue and thereby affecting its trade. While it is common for houses to be located next to public houses and the appellant claims that the level of noise intrusion would be unlikely to be comparable with a busy urban establishment, this does not prevent the need for adequate assessment and mitigation and each case should be examined on its own merits.
36. I recognise that properties at 1 and 3 Mill Lane are situated closer to The Lilacs than the proposed houses and that these properties may not benefit from any existing noise attenuation measures. Although the occupiers of 1 and 3 Mill Lane do not appear to have objected to the proposed development, and I have no evidence to indicate that they have sought to complain about noise and disturbance in the past, the Mill Lane properties appear to have existed for many years and possibly predate the public house. Their presence does not justify the negative effects that would be experienced by future occupiers of the proposed houses.
37. Concluding on this main issue, the presence of previous noise complaints about The Lilacs, and the absence of adequate assessment and related mitigation measures indicates that it is uncertain whether the proposed development would provide satisfactory living conditions for future occupiers, in terms of

noise and disturbance. Therefore, it would not accord with policy 8(e)(i) and (ii) of the NNJCS. The development would also be contrary to the Framework, which seeks at paragraph 17 a good standard of amenity for all future occupants of land and buildings, and to avoid noise giving rise to significant adverse impacts at paragraph 123.

#### *Other Matters*

38. The appellant asserts that the proposed development would not negatively affect the viability of the public house and that they wish to keep The Lilacs open, with the proposed development financially supporting the maintenance and enhancement of The Lilacs. The Framework acknowledges the need to promote the retention and development of local services and community facilities in villages, such as public houses. I acknowledge that this may require some form of diversification to ensure the continuing viability of a service or facility, but only limited detail has been provided on how monies from the provision of housing would be used. This does not outweigh my earlier findings.
39. Other housing developments are already coming forward at The Sorrels and other sites in the village. While the appellant has noted that the Council has sufficient 5 year housing land supply, the Council has not objected to the proposed development on these grounds or in terms of the effect of the proposed development on the character and appearance of the area. Policy 11 of the NNJCS allows small-scale residential development within villages, while policy G4 of the Borough of Wellingborough Local Plan 1999 (Saved Policies) allows residential development within the village policy lines and subject to environmental concerns about the size, form, character and setting of the village. The proposed development would comply with this requirement and would provide further homes to support the delivery of 3 bedroom family homes within the district. However, these positive aspects of the proposed development would not be sufficient to overcome my concerns regarding highway safety and noise and disturbance.

#### **Conclusion**

40. The proposed development would have a small social and economic benefit in terms of providing additional homes to the general housing supply and bringing additional people into the community. It could also provide short term local economic benefits with regard to its construction through the provision of jobs, and use of contractors and suppliers. However, these factors do not outweigh the unacceptable harm I have found would be caused in respect of highway safety, with regard to the adequacy of access arrangements and parking provision, and the living conditions of the future occupiers of the proposed development with regard to noise and disturbance.
41. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*J Gilbert*

INSPECTOR