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## Appeal Decision

Site visit made on 17 June 2019

**by Ben Plenty BSc (Hons) DipTP MRTPI**

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

**Decision date: 30 July 2019**

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**Appeal Ref: APP/P1805/W/19/3224313**

**All Saints Garage, 127-137 Birmingham Road, Bromsgrove B61 0DN**

- 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 Eamon Thompson, on behalf of Bromsgrove District Housing Trust, against the decision of Bromsgrove District Council.
  - The application Ref 18/01123/FUL, dated 4 September 2018, was refused by notice dated 10 January 2019.
  - The development proposed is the provision of 19 no. 1 bedroom apartments, car parking, external works and landscaping.
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### Decision

1. The appeal is allowed. Planning permission is granted for the provision of 19 no. 1 bedroom apartments, car parking, external works and landscaping, at All Saints Garage, 127-137 Birmingham Road, Bromsgrove B61 0DN, in accordance with the terms of the application 18/01123/FUL dated 4 September 2018, and subject to the CIL compliant elements of the submitted Unilateral Agreement and the attached schedule of conditions.

### Application for costs

2. An application for costs was made by Bromsgrove District Housing Trust against Bromsgrove District Council. This application is the subject of a separate Decision.

### Procedure Matters

3. The appellant requested that this appeal be dealt with by way of an informal hearing. However, Annex K of the procedural guide<sup>1</sup>, identifies that an appeal would be appropriate for the Written Representation procedure if the grounds of appeal can be clearly understood and are not complex, and only a hearing if it is likely to need to test the evidence by questioning or to clarify matters. I am therefore content that an informal hearing is not necessary in this case.
4. A S106 Unilateral Planning Obligation<sup>2</sup> has been submitted in support of the appeal. This makes provision for the delivery of affordable housing (including 12 social rented units and 7 shared ownership units), a sum towards sports and play facilities and for recycling facilities.
5. I have adjusted the address from that used on the application form to the one used within the decision notice for clarity.

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<sup>1</sup> The Planning Inspectorate Procedural Guide March 2019

<sup>2</sup> Unilateral Undertaking, Shoosmiths 10 June 2019

## Main Issues

6. The main issues are:

- the effect of the proposed apartment development on the character and appearance of the area and street-scene, with particular regard to the setting of the designated heritage assets, and
- the effect of the proposal on highway safety, especially with regard to on-street parking.

## Reasons

### *Character and appearance*

7. The site is currently in use as a car dealership. The plot is arranged with car parking within its forecourt and associated single and two storey commercial buildings located behind. It is a corner site and adjacent to a roundabout. Two of the adjacent corners are occupied by All Saints Church and the Crabmill Inn public house. Birmingham Road includes several three storey buildings, including No's 111 to 123, being modern terraced housing. Birmingham Road also includes several commercial properties, the wider area is otherwise mostly residential in character. All Saints Road generally consists of two-storey detached and semi-detached properties. The site has a neutral impact on the character and appearance of the area.
8. The proposal would consist of a two and three-storey development with an 'L-shape' footprint around the corner. The proposal would include a car parking area behind the building, within limited private external space. The Council's concerns of over-development require consideration of the proposed density, scale and design.
9. In terms of density, policy BDP.7 of the Bromsgrove District Plan 2017 (BDP) seeks to respect the local character and make the most efficient use of land. The density would be 121 dwellings per hectare, which is high, but high density is not in itself necessarily harmful. The explanatory text of policy BDP.19 states that density is 'only an outcome of the design process rather than an indicator of quality'<sup>3</sup>, as such density should not be determinative in isolation. Rather, harm to the character and appearance would result from high density if the proposal failed to complement the local character in terms of scale or design.
10. Therefore, regarding scale, the proposed three-storey part of the building would address Birmingham Road. This would complement adjacent and nearby three-storey development, including the Crabmill Inn opposite the site and the terraced row including No 123. Moreover, the two-storey element allows the building to step down to respect the scale of development on All Saints' Road. Although, there are many two-storey buildings on Birmingham Road the character clearly includes a significant number of three-storey buildings. Consequently, the scale is appropriate to the local context and would not be out of character with the street-scene.
11. In respect of design, the proposal is a contemporary solution with forward facing balconies, enclosed in a white render surround. It also includes brick elements and pitched roofs. The materials and general form would thus

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<sup>3</sup> BDP, paragraph 8.203

complement the local vernacular with a modern interpretation. It would make a positive contribution to the corner providing a landmark feature. As a result, the proposal would successfully integrate into the local area. Occupiers would have access to balconies or covered areas providing adequate external amenity space. The proposal would arrange a building on the perimeter of the site adjacent to the highway. This is consistent with the local character. In contrast, the existing commercial building is set back with car parking in front contributing less successfully to the street-scene. Furthermore, the proposal would promote a safe design with limited hidden areas for criminal or anti-social activity. The proposal therefore would not represent over-development as it would be of an appropriate density, scale and design.

12. Under section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, I have a statutory duty to have special regard to the desirability to preserve the setting of a listed building. Two Grade II Listed Buildings and a Grade II war memorial are within close proximity of the appeal site; The Crabmill Inn and All Saint's Church, including Bromsgrove All Saint's War Memorial within its graveyard. The significance of the Crabmill Inn relates to its decorative style, age and generally intact state. The significance of All Saint's Church derives from its consistent decorative style and having been designed by John Cotton, a noteworthy local architect. The Memorial has historic and architectural interest. The Framework identifies significance as 'the value of a heritage asset to this and future generations' and is derived 'not only from its physical presence, but also its setting'. It explains that elements of a setting may make a positive or negative contribution to its significance or may be neutral. Therefore, the question is whether change within their wider 'setting' would result in a loss of (or degrading to) their 'significance' as a heritage asset.
13. The setting of the Crabmill Inn would be partly affected as viewed from All Saints' Road with a narrowing of the view. However, the key view is from Birmingham Road and this would remain largely unaffected. Consequently, whilst being a new intervention in the street, the proposal would make a neutral impact on the setting of the Crabmill Inn. Also, the church is set back and behind a screen of trees meaning that its setting would be affected by a negligible extent. Subsequently, given the limited change the proposal would have a neutral effect. As such, I do not find harm to the identified heritage assets. Consequently, the change to the setting of these buildings would not result in a loss of significance to either setting. This would therefore preserve the significance of the Crabmill Inn, All Saints' Church and the memorial.
14. In summary and taking all of the above into account, the proposed development would make a positive contribution to the character and appearance of the area and the street-scene.
15. Consequently, the proposal would accord with Policies BDP.7 and BDP.19 of the BDP which seek, amongst other things, to respect local character and to enhance the character and distinctiveness of an area respectively. Furthermore, the proposal would also comply with policies BDP.20.2 and 20.3 of the BDP, which seek development to sustain and enhance the significance of designated heritage assets and not have a detrimental impact on the character, appearance or significance of heritage assets.

*On-street parking*

16. The appeal site is located on the junction of Birmingham Road and All Saints' Road. There are parking restrictions adjacent to All Saints' Road, enabling parking on only the north side of the highway. On my visit in the daytime, I saw many on-street parking opportunities on local roads. However, I understand through representations that parking pressure in the morning, evening and weekends is significantly greater.
17. The proposal includes the provision of 19 car parking spaces and 19 cycle racks. The Council's parking policy BDP16.1 requires that the development meets the Worcestershire County Council's policies, design guides and car parking standards. The Streetscape Design Guide 2018 (SDG) requires one parking space for each one-bedroom unit. It acknowledges that visitor parking can be provided on-street unless parking restrictions prevent this. If required on-site, the SDG would require 4 visitor parking spaces. As such, the proposed parking provision would be compliant for resident parking but would not provide for visitor parking.
18. Representations to the planning application describe existing on-street parking pressure and traffic congestion. I sympathise with residents who suffer parking, congestion and road rage problems in this area. It is also evident that many residents currently park on the garage site out of hours, and its loss would displace parking onto the highway. However, this benefit to residents could cease at any time irrespective of the outcome of the appeal. Furthermore, the National Planning Policy Framework (The Framework) requires that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe<sup>4</sup>.
19. Some of the existing parking on All Saints' Road is associated with the existing garage, as there is limited on-site parking for non-sales vehicles. This would be replaced by a proposal that would accommodate a substantial proportion of its parking demand on site. Furthermore, car borne visitors would be able to find short-term parking in the area, even if some distance from the site. There is on-street visitor parking on Burcot Lane. Also, Birmingham Road has some capacity for the limited number of on-street parking spaces required by the proposal. The parking beat survey<sup>5</sup> also confirms the availability of on-street parking on Birmingham Road and Burcot Road. These findings are not countermanded by the Council's evidence. Furthermore, Birmingham Road provides good access to public transport which would provide alternative transport methods to visitors other than the private car. As such, there would be a negligible impact from additional parking on the highway with no significant harm identified to highway safety.
20. Consequently, the proposal would accord with Policy BDP16 of the BDP, which seeks development to meet the SDG and provide adequate resident parking. I concur with the Council that the appellant's offered condition, regarding car park allocation management, is unnecessary and would be unenforceable. This condition would therefore not pass the tests in the Framework.

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<sup>4</sup> National Planning Policy Framework paragraph 109

<sup>5</sup> Hydrock Parking Beat Survey March 2019

### *Unilateral undertaking*

21. Paragraph 56 of the Framework and the CIL Regulations<sup>6</sup> require planning obligations to be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. The Unilateral Undertaking seeks to secure affordable housing and make financial contributions towards public open space improvements and recycling facilities.
22. The Council's Affordable Housing Policy derives from policy BDP.8 which requires all sites for development of over 10 dwellings to provide 30% as affordable. The proposal offers 7 shared ownership units and 12 social rented units. This is greater than required by policy, which would require 7 units. The Council has not explained why 100% provision is essential or how it would be policy compliant. The public open space sum is required by SPG11 2004<sup>7</sup> and policies RAT 5 and RAT 6 of the 2004 Bromsgrove District Plan which was superseded by the current BDP. The Council has not explained whether any policies in the current plan require a public open space sum. Therefore, the need for the sum is unconvincing. However, the recycling sum is based on the requirements of policy WCS17 of the Worcestershire Waste Core Strategy 2012. This policy requires development to include facilities for separate storage for recycling and recovery from general waste. It requires an off-site contribution where an on-site provision would be inappropriate. As such I find this requirement to be reasonable in this case.
23. In summary, it is not persuasive that the Council's development plan requires the provision of 12 of the 19 affordable units or the public open space sum. Consequently, these requirements do not meet the tests of the regulations as being necessary. I am however satisfied that the 7 shared ownership units and recycling sum are severable from the remaining elements of the Unilateral Undertaking and are necessary.

### **Other matters**

24. I have considered the effect of the proposal on the living conditions of adjacent residents. In terms of effect on outlook, the proposal would remove the workshop bays from the side of the rear garden of 92 All Saints' Road (No 92), opening the rear aspect. The proposal would also improve the relationship with the front aspect of 123 Birmingham Road and street-scene generally by being set back into the site further than the existing building. Although built form would be closer to dwellings opposite the site on All Saints' Road, this would be over some distance and would mostly consist of a two-storey relationship.
25. In terms of privacy, most overlooking from proposed rear windows would be across the communal rear car park. The private neighbouring garden most affected would be to the rear of No 92. However, the separation distance would be substantial and as a result the degree of overlooking and effect on privacy would be limited. In regard to noise disturbance, the extent of noise would be limited and no greater than usual from existing residential properties. In regard to effect on sunlight, the proposal would most likely affect direct sunlight to the rear of No 92. However, the existing building shades a large part of this garden in the early hours which would be replaced by the open car park with a consequently reduced effect. Dwellings opposite the site on All Saints' Road

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<sup>6</sup> Community Infrastructure Levy Regulations 2010, Regulation 122(2)

<sup>7</sup> Outdoor Play Space in the District of Bromsgrove, Supplementary Planning Guidance Note 11, 2004

- may experience a slight reduction in mid-day winter sun. Consequently, the proposal would not be significantly harmful to the living conditions of adjacent neighbours through outlook, privacy or loss of sunlight.
26. Representations have raised concerns that the identified contamination would not be adequately remediated, and construction noise and disturbance would be significant. I have applied two conditions to my decision as being necessary to address these issues. These have also been suggested by the Council.
27. Representations have suggested that the proposal should contribute towards road improvements. However, I do not find any justification for a financial contribution to this as the effect of the proposal on local road capacity would be either negligible or reduced.
28. I have taken into account representations in respect of drainage, litter, the effect on local infrastructure, the effect on the value of local properties and the locational appropriateness of social housing, but these matters do not affect my findings on the main issues. Furthermore, concerns in regard to the loss of the employment use of the site are not in evidence and the Council has not identified a policy position on this.
29. Both parties agree that the Council does not have a 5-year housing land supply. However, as I have found no conflict with the development plan, arguments advanced in regard to housing land supply and the tilted balance are not relevant.

### **Conditions**

30. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance. This requires conditions to be necessary and reasonable<sup>8</sup>. I shall impose most of the Council's suggested conditions. I have joined suggested conditions 8 and 9 for simplicity. I have also removed suggested condition 10, seeking improvements to the footway, as this would not meet the tests as being necessary.
31. Worcester Regulatory Services identified that part of the site was formerly a petrol filling station. Furthermore, the appellant's Site Investigation Report<sup>9</sup> concluded that asbestos may be within the buildings, and that there is lead contamination, hydrocarbons and hazardous waste in parts of the site. Therefore, a pre-commencement condition is required for a quantitative risk assessment. Furthermore, Worcestershire Archive and Archaeological Service (WAAS) has requested a pre-commencement condition for an archaeological assessment, as the site is adjacent to a Roman road with a high potential for below ground remains. I am satisfied that these matters require to be resolved at a pre-commencement stage and would meet the appropriate tests in the Framework. The appellant has agreed to the use of these two pre-commencement conditions as required by the Act<sup>10</sup>.
32. I have therefore applied the following conditions in the interests of certainty and to define the approval [1 and 2], in the interests of the character and appearance of the local area [3], to meet sustainability measures and satisfy the SDG [4], to meet highway safety requirements [5, 6 and 8], to meet

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<sup>8</sup> National Planning Policy Framework, Paragraph 55

<sup>9</sup> AsI, Site Investigation report July 2018

<sup>10</sup> Town and Country Planning Act 1990, sections 100ZA(4-6)

sustainable travel requirements of the development [7 and 9], in the interests of the living conditions of neighbours [10], to satisfy the requirements of WAAS and protect potential heritage assets [11] and to ensure the site is safely and fully decontaminated for residential use [12].

### **Planning balance and conclusion**

33. The Framework seeks to significantly boost the supply of housing. The proposal would result in the redevelopment of previously developed land, within an urban environment, with good access to public transport. It would not be harmful to significance of the setting of three adjacent listed buildings. It would therefore make a positive contribution to the area and street-scene.
34. The proposal would not provide on-site parking for visitors in an area that suffers congestion and parking pressures. However, visitors if travelling by car would find local on-street parking spaces even if it is some distance from the site. Moreover, this minor inconvenience does not weigh heavily against allowing the appeal when set against the substantial benefits of the proposal. These include the addition of 19 dwellings, including 7 affordable dwellings.
35. For the above reasons, and having taken into account all matters raised, I conclude that the proposal complies with the development plan as a whole, and so the appeal is allowed, and planning permission given.

*Ben Plenty*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings: Location Plan 201745-06, Floor plans 201745-08A, Landscaping Layout ADL 238, Elevations 201745-09A and Site plan 201745-07E.
- 3) Prior to their first installation, details of the form, colour and finish of the materials to be used externally on the walls and roofs shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 4) The development hereby permitted, shall not be occupied until details of an electric vehicle charging point to serve the development has been submitted to and agreed in writing by the local planning authority. The charging point shall then be installed and be operational prior to the occupation of the approved use. Once provided it shall be retained and maintained in perpetuity.
- 5) The development hereby approved shall not be occupied until pedestrian visibility splays of 2m x 2m, measured perpendicularly back from the back of footway, have been provided on both sides of the access. The pedestrian splays shall thereafter be maintained free of obstruction exceeding a height of 0.6m above the adjacent ground level.
- 6) The development hereby approved shall not be occupied until the first 5 metres of the access into the development, measured from the edge of the carriageway, has been surfaced in a bound material.
- 7) Prior to the occupation of the development, details of sheltered and secure cycle parking shall be submitted and approved in writing by the local planning authority. The approved details shall be fully implemented prior to the first occupation and shall then be maintained for the parking of bicycles thereafter.
- 8) The development hereby approved shall not be occupied until the access, parking, turning facilities and visibility splays have been provided as shown on drawing Site plan 201745-07E.
- 9) The development hereby approved shall not be occupied until the applicant has submitted a travel plan in writing to the Local Planning Authority that promotes sustainable forms of access to the development site and this has been approved in writing by the local planning authority. This plan will thereafter be implemented and updated in agreement with Worcestershire County Council's Travel plan co-ordinator and thereafter implemented as updated.
- 10) During the course of any site clearance and development, the hours of work for all on-site workers, contractors and sub-contractors shall be limited to between; 0800 to 1800 hours Monday to Friday (apart from on Bank Holidays or Public Holidays where no work shall take place) and 0900 to 1200 hours Saturdays.

- 11) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and: a) The programme and methodology of site investigation and recording; b) The programme for post investigation assessment; c) Provision to be made for analysis of the site investigation and recording; d) Provision to be made for publication and dissemination of the analysis and records of the site investigation; e) Provision to be made for archive deposition of the analysis and records of the site investigation; and f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. The development shall not be occupied until the site investigation and post investigation mitigation has been completed in accordance with the programme set out in the Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 12) No development shall take place until a preliminary risk assessment has been submitted to and approved in writing by the local planning authority. This assessment shall include a Phase I desk study, site walkover and the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. It shall also include a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required.

Where an unacceptable risk is identified, a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The investigation and risk assessment scheme must be fully implemented in accordance with the approved details and a written report of the findings produced. Where identified as necessary through the site investigation and risk assessment, a detailed remediation scheme shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The approved remediation scheme shall then be carried out in accordance with its terms prior to the commencement of development, other than works required to carry out the agreed remediation. Following the completion of the measures identified in the approved remediation scheme, a validation report that demonstrates the effectiveness of the remediation carried out must be produced. This shall be subject to the approval of the Local Planning Authority prior to the occupation of the building.

In the event that any previously unidentified contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must then be undertaken and where necessary a remediation scheme must be prepared, and subject to the approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the Local Planning Authority prior to the occupation of any buildings.

## **End of Conditions**