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## Appeal Decision

Site visit made on 19 November 2019

**by J Gibson BUEP MP**

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

**Decision date: 27 February 2020**

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**Appeal Ref: APP/G4620/W/19/3236107**

**Bowketts Butchers, 686 Wolverhampton Road, Oldbury B68 8DB**

- 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 Harvinder Singh Chall against the decision of Sandwell Metropolitan Borough Council.
  - The application Ref DC/19/62922, dated 15 March 2019, was refused by notice dated 6 June 2019.
  - The development proposed is originally described as a "ground floor side extension, change of use from butchers to bar, HMO at first floor".
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The above description has been taken from the application form. The proposed bar has been further described within the appellants documentation as a "bar and grill", with seating provided for on-site dining on the ground floor and to the front and rear of the building. The side extension is intended to accommodate facilities for the bar and grill, whilst a first floor rear extension is also proposed to establish a small house in multiple occupation (HMO) with three bedrooms. I have determined the appeal on this basis.
3. The development proposal was amended during the application process to show that some car parking spaces could be accommodated on-site. The amendments were made to the proposed site plan, reducing the amount of outdoor seating and showing four parking spaces to the front, of which one space served as an electric charging point subject to a tandem parking space arrangement. These plans formed the basis for Council's final decision. To remove any doubt, I have had regard to the plans listed on the Council's decision notice in my determination of this appeal.
4. The appellant has submitted a Transport Technical Letter (TTL) as part of the appeal process in response to the Council's highway objection. The Council have been given the opportunity to comment on this additional evidence and have provided comments accordingly. I have taken these representations into account in reaching my decision.

## **Main Issues**

5. The main issues are the effect of the proposed development on:
  - a) highway safety, having regard for the demand for on-street parking; and
  - b) the living conditions of existing and future residential occupiers, having regard to noise and disturbance.

## **Reasons**

### *Highway safety*

6. The appeal property is a vacant end of terrace building which previously operated as a butcher's shop. It forms part of a small parade of local shops/services on the corner of Wolverhampton Road, Leahouse Road and Leahouse Gardens, which include a convenience store and hairdresser on neighbouring properties. An informal parking area is located to the front of the premises, serving each individual tenancy, and can be accessed from both Wolverhampton Road and Leahouse Road.
7. Wolverhampton Road is a major arterial road with significant parking restrictions to preserve the free flow of traffic along this strategic route. Leahouse Road forms a T-junction with Wolverhampton Road, and serves as the entrance to the surrounding residential network of streets which are characterised by low traffic movements and on-street parking. Leahouse Gardens is a small residential cul-de-sac to the rear of the appeal site, off Leahouse Road, with limited opportunity for on-street parking. As such, the only opportunities for on-street parking are within the residential streets east of Wolverhampton Road.
8. There is dispute between the parties as to what the likely parking demand for the proposed development would be. The Council's parking policy offers little guidance as to how parking standards are calculated for the proposed development. The Council have determined that approximately 25 parking spaces would be required, based on their experience from similar uses and the surrounding context, but have provided limited justification to support this figure otherwise. The appellant has estimated that the proposal would generate a need for 19 parking spaces, for both the bar and grill and HMO uses, based on criteria extracted from the TRICS database.
9. Irrespective of the likely parking demand generated by the proposed development, only four spaces are shown within the appeal site based on the submitted plans. It is likely that any on-site parking spaces provided would be occupied by residents of the HMO and staff for the bar and grill first. Consequently, customers would be likely to rely upon on-street parking.
10. The sections of Leahouse Road and Leahouse Gardens immediately adjacent to the appeal property are subject to on-street parking restrictions. These include short stay parking restrictions during set hours along Leahouse Road, double yellow lines, and bollards to deter mounted kerb parking. The purpose of these measures is to deter illegal parking, preserve the safe flow of traffic between Wolverhampton Road and Leahouse Road, and to prevent conflict between vehicle and pedestrian movements.

11. Despite these measures there is evidence that illegal on-street parking currently takes place around the appeal site. Significantly, the survey data in the TTL shows that illegal parking predominantly occurred along both sides of Leahouse Road and within Leahouse Gardens. Acknowledging the narrow residential character of these streets, the consequence of such illegal parking is problematic for both traffic and pedestrian movements. The observed illegal parking cannot explicitly be attributed to the existing complex of shops/services. Nevertheless, it is reasonable to conclude that the appeal proposal would be likely to exacerbate these harmful conditions due to the increased scale and intensity of the proposal and the desire of drivers to try and secure the closest available parking space to their destination.
12. The appellant and their submitted TTL aimed to dispel these concerns by undertaking a wider survey of the surrounding residential streets to identify the on-street parking capacity in the area. The TTL appears to demonstrate that there is sufficient on-street parking to cater for the proposal within this wider area. However, given the distances involved, I consider it is more likely that customers would seek opportunities to park closer to their destination with the risk that this could add to the problems of illegal parking.
13. The submitted plans only show four on-site parking spaces to serve the development. The other off-street spaces shown in the TTL fall outside the appeal site and serve the adjoining businesses. If the four spaces proposed prove to be insufficient to address the requirements of the HMO and staff of the bar and grill, this would further increase the demand for on-street spaces. Consequently, I am not satisfied that the surrounding streets could appropriately absorb the likely demand for additional on-street parking without causing unacceptable impacts to highway and pedestrian safety.
14. I note the proximity of the appeal site to local bus services and residential areas provides alternative means of transport to the appeal site. Nevertheless, I am not persuaded that this would result in a significant reduction in the demand for parking given the nature of the proposed use and the out of centre location of the development.
15. Accordingly, the proposal would have an unacceptable impact on highway safety resulting from the additional demand for on-street parking. It would therefore conflict with Policies ENV3 and CEN6 of the Black Country Core Strategy (CS) (adopted February 2011) and Paragraph 110 of the National Planning Policy Framework (the Framework). These policies, amongst other things, seek to ensure that development is appropriately designed to achieve a safe highway network for all users and so that existing facilities which meet day-to-day needs are not undermined. Paragraph 110 of the Framework specifically seeks to create places that are safe and secure by minimising potential conflict between pedestrians, cyclists and vehicles.

#### *Living conditions*

16. The appeal property is out of centre development in an area predominantly characterised by quiet residential streets to the east of Wolverhampton Road. The proposed bar and grill would operate between the hours of 0800-1200 and 1500-2300 seven days a week, including bank holidays. The combination of the hours of operation and the close proximity between dwellings and the bar and grill would be likely to lead to residents experiencing noise and disturbance from the comings and goings of customers.

17. I appreciate that the appellant has demonstrated a willingness to manage noise levels within the premises, as detailed by the noise management plan submitted as part of their application for an alcohol licence over the premises. However, it would not be possible to control the behaviour of customers outside the premises, and who could be parking within the surrounding streets. Consequently, existing occupants would be likely to experience noise and disturbance which could adversely affect their living conditions, most especially late in the evenings. The conditions suggested by the appellant would not address this identified harm.
18. I understand that the butcher could operate late into the evening. However, the comings and goings from the butcher's shop or other retail use are not comparable with those associated with a bar and grill. In particular, customers are likely to stay longer and later than those coming to buy goods from a butcher's shop to take home.
19. Accordingly, the appeal proposal would harm the living conditions of existing and future residential occupiers arising from unacceptable noise and disturbance. It therefore conflicts with Paragraphs 127 and 170 of the Framework. These policies, amongst other things, require development to provide a high standard of amenity for existing and future users, and to prevent existing development being adversely affected by unacceptable levels of noise, respectively.
20. The Council cite Policy ENV3 of the Black Country CS, and Policies EOS9 and H2 of the Sandwell Site Allocations and Delivery Development Plan Document (SADDPD) (adopted December 2012) in their decision notice. However, none of these policies make specific reference to the living conditions of existing residents and are therefore not relevant to my assessment in respect of this issue.

### **Other Matters**

21. The appellant has provided me with limited information about a number of cases where development has been permitted<sup>1</sup>, in support of the appeal proposal. However, as they all appeared to fall within town or larger local centres, I do not consider these cases to be directly comparable to the case before me, which I have assessed on its individual merits.

### **Conclusion**

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

*J Gibson*

INSPECTOR

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<sup>1</sup> Planning permissions DC/15/58701 and DC/18/61816.