



Appeal Decisions

Site visit made on 7 July 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal A Ref: APP/V4630/X/21/3284276

59 Sneyd Lane, Essington WV11 2DU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Sarah Noad against the decision of Walsall Metropolitan Borough Council.
 - The application ref 21/0794, dated 20 May 2021, was refused by notice dated 13 September 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is hairdressing micro business.
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Appeal B Ref: APP/V4630/W/21/3284261

59 Sneyd Lane, Essington WV11 2DU

- 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 Mrs S. Noad against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 20/1307, dated 9 November 2020, was refused by notice dated 10 September 2021.
 - The development proposed is front bay window and change of use of garage to working salon.
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Decision: Appeal A

1. The appeal is dismissed.

Decision: Appeal B

2. The appeal is dismissed.

Applications for costs

3. An application for costs has been made by Mrs Sarah Noad against Walsall Metropolitan Borough Council. This is the subject of a separate decision.

Preliminary Matters

4. The Council refused the LDC application on the basis that the proposed front extension would constitute development forward of a principal elevation. Although this formed part of the planning application the appellant has confirmed it did not form part of the LDC application. I shall therefore consider Appeal A on the basis of the proposed use as a hairdressing micro business only.

Appeal A: Reasons

5. An application under section 192(1)(a) of the Act seeks to establish whether any proposed use of buildings or other land would be lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
6. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This will turn on whether or not a material change of use would occur and if so, whether that use would be incidental to the enjoyment of the dwellinghouse. In an LDC appeal, the onus is firmly on the appellant to make out their case, on the balance of probabilities. Planning merits form no part of the assessment of an application for a LDC under section 192 of the Act. The proposed development must be considered in the light of the facts and the law.
7. The main thrust of the appellant's case is that the proposed use would be *de minimis* and would not result in a material change of use. The appellant has referred me to paragraph 14 of the Planning Practice Guidance which provided advice regarding whether planning permission is required to home work or run a business from home. However, the advice is guidance and the paragraph in question has now been removed.
8. Section 55 (1) of the Act sets out that development includes the making of any material change in the use of land. Section 55(2)(d) of the Act states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, does not involve development of the land for the purposes of the Act.
9. Whether or not a use is incidental for the purposes of section 55(2)(d) must be considered with regard to the primary residential use and the type and size of the dwellinghouse and its curtilage, as well as the scale and nature of the claimed incidental activity. Case law has established the functional relationship between a primary use and incidental use should be one that is normally found and not based on the personal choice of the user.
10. The appeal site comprises a detached house located in a generally residential area comprising detached dwellings with generous frontages, set back from the highway. The appellant has submitted proposed plans which show that the garage would be used as a salon. An entrance to the salon is shown behind the garage door. Although this does not form part of the LDC application, it seems likely the garage door would need to be raised to provide access to clients and to allow natural light into the garage.
11. Although the details provided are limited, the plan shows that a sink would be installed in the 'salon' and part of the utility room would be subdivided to create a toilet which, given the availability of an alternative downstairs toilet off the hall, seems likely would be used primarily by visitors to the salon. The appellant proposes to operate the business over 5 days of the week, Tuesdays to Saturdays from 10am to 5pm, with the exception of Thursdays when she would close at 7pm. While this is a proposed use, the appellant has previously undertaken her business from another address and has provided a breakdown

which shows bookings over February and March 2020. The appellant saw up to four appointments a day, with a daily average of 2.16 appointments.

12. The appellant suggests that the number of visitors would not be unusual for a private dwellinghouse. However, occupants of the dwellinghouse are likely to still receive visitors for other purposes, such as visits by family and friends and delivery services, and so the number of visitors generated by the proposed use are likely to be additional. The comings and goings that could be generated by the proposed use may cause noise and disturbance to neighbours and are uncharacteristic of a residential use.
13. Furthermore, the number of appointments could change. The time it takes to attend to a client depends upon the specific service they require. An individual requiring a wash, cut blow-dry and highlights would take significantly longer than an individual requiring a shave or a beard trim, for example. It may therefore be possible for the appellant to see a number of different customers per hour.
14. Although some visitors to the salon may choose to walk or use public transport, given the location of the appeal site towards the edge of the urban area, I consider it likely that some would choose to use private car. Since the garage would no longer be used to park vehicles, occupants of the appeal site would need to park their vehicles to the front of the property, which would limit the availability of parking for visitors to the residential property or the salon.
15. While there is likely to be sufficient space for 4 vehicles to park and enter and exit in forward gear, this would require individuals to park in a certain way, as shown on the proposed plans. The provision of markings would be uncharacteristic of the area and without clear markings, visitors to the site may not always choose to park in a way which enables other users of the site to enter and exit in a forward gear. Moreover, some visitors may simply choose to park on the highway, which would affect the free-flow of traffic.
16. The appellant suggests that the Council could have negotiated some level of the proposed use that is *de minimis* with the appellant. However, since an LDC cannot be subject to conditions, the application must relate to a specific use. It is not open to an applicant to pose a general enquiry as to what might be lawful.
17. For the reasons give above, I am not persuaded on the evidence provided that a material change of use would not occur. The provision of a dedicated room, which would be laid out for a commercial use and which would be used by visiting members of the public, is not, to my mind, of a nature or scale that can reasonably be described as incidental to the enjoyment of the dwellinghouse as such. Thus, the appellant has failed to provide sufficient evidence to demonstrate, on the balance of probabilities, that planning permission would not be required for the proposed use. Consequently, the appeal must fail.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a hairdressing micro business was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B: Main Issues

19. The main issues of are the effect of the appeal scheme on:

- The vitality and viability of nearby centres, including Coppice Farm; and
- The character and appearance of the area; and
- The living conditions of neighbouring occupants.

Reasons

Vitality and viability

20. The appeal site is located in a generally residential area and is not in a town centre or edge of centre location. There are a number of retail units off Coppice Farm Way, which is located around 1km from the appeal site, which includes a hairdressers.
21. Policy CEN7 of the Black Country Core Strategy (BCCS)(2011) states that there is a clear presumption in favour of focusing development in town centres. Proposals for out-of-centre development will have to demonstrate that development cannot be provided in-centre or at edge-of-centre locations of existing Centres appropriate to the hierarchy.
22. Policy S7 of the Walsall Unitary Development Plan (UDP)(2005) supports proposals for the establishment of town centre uses in out-of-centre locations where there is evidence to demonstrate the need for the facility, where there are no more centrally located sites, buildings or opportunities which could be used to serve the catchment area of the proposed use and where it is not likely to have an adverse economic impact upon the vitality and viability of any existing town, district or local centre.
23. Paragraph 87 of the National Planning Policy Framework ('the Framework')(2021) states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
24. Although the UDP and BCCS are a number of years old, policies CEN7, S6 and S7 appear broadly consistent with the Framework, which seeks to support the role that town centres play.
25. The Planning Practice Guidance (PPG) advises that it is for the applicant to demonstrate compliance with the sequential test. The appellant suggests a single person running a home micro business should not be subject to such policies. However, while the PPG suggests that the application of the test will need to be proportionate and appropriate for the given proposal, this does not mean that it should not be applied in such a case.
26. The appellant has drawn my attention to APP/P1750/W/21/3267182, which concerned a S78 appeal in Aldershot for minor works to facilitate the change of use of a building to a hair salon. Although the Inspector considered similar issues to the matters before me, the appeal site is located in a different local planning authority area and so different local plan policies apply. Furthermore,

the appeal site was a commercial fishery site and was formerly used as an ancillary retail shop. It is therefore not comparable to the appeal scheme before me.

27. With regards to the sequential test, the Inspector considered the implications of the Framework and whether sequential tests should be applied. Paragraph 89 of the Framework states that the sequential approach should not be applied to applications for small scale rural offices or other small scale rural development. Whilst this may have been relevant to that appeal, paragraph 89 is not, in my view, relevant to the appeal site before me, which is located in a substantial urban area.
28. Although policy S6 of the UDP supports out of centre development to meet specific local needs, this is subject to certain requirements being met, including I. The proposal is of a scale and kind to meet a local need for improved facilities; II The local need cannot be better met by investment in a nearby centre. III There will be no likelihood of an adverse impact on the vitality and viability of any established centre.
29. The appellant asserts that no units of an appropriate size for a one-person hair salon are available to buy or rent and it is uncertain whether renting alternative premises would be economically viable at this stage of the business. However, I have no substantive evidence to support these assertions. Although the appellant has considered availability at Coppice Farm, these are not the only retail units in the area. Furthermore, policy S6 of the UDP requires consideration of 'local need' rather than the needs of the business.
30. The closure of units can have an adverse effect on centres, even where an anchor store, such as Aldi is present. It is therefore not only proposals which would potentially adversely impact the Aldi supermarket which have the potential to threaten the viability and vitality of this and other centres. In my view, the policies identified above are of relevance to the appeal scheme before me, since even relatively small-scale operations can divert business from town and district centres, affecting the viability and as a consequence the vitality of those centres.
31. Although the appeal site would be more conveniently located for those who live along Snyed Lane, because of its location towards the edge of the urban area, facilities at Coppice Farm Way are, in my view, better located to serve the surrounding area. Locating the salon on the edge of the urban area may actually encourage its users to use private car to access services and could divert business from both the nearby Coppice Farm centre, as well as centres further away.
32. Consequently, I consider there would be harm to the vitality and viability of town, district and local centres, contrary to Paragraph 87 of the National Planning Policy Framework and Policy CEN7 of the BCCS and saved policies S6 and S7 of the UDP, the requirements of which are set out above.

Character and appearance of the area

33. Dwellings along Snyed Lane vary in style and design and although the appeal dwelling comprises a number of houses which share design features, I saw that a number of these have already been modified in various ways, including the provision of extensions to the front.

34. The proposal is to extend the building ground floor level to create a bay window with a porch above and to convert the garage to a salon. The appellant has submitted a plan to show the proposed front elevation. Although the plan was submitted after the Council's determination of the planning application, since the submitted plans show a wall and a door behind the garage door, I consider there is no substantial difference to the plans submitted as part of the planning application and shall consider them accordingly.
35. During my visit I saw that works to extend the building have been carried out. The Council advise in its statement of case that application 21/1344 was granted on 16 December 2021 for the new front bay window and canopy roof, subject to conditions. However, the appeal scheme also includes the creation of a second entrance to the garage. I consider it highly likely that the garage door would remain open during opening hours of the salon, so that the second door can be seen from the public domain, which is uncharacteristic of the area.
36. Although the appellant is not proposing signage or other advertising, planning permission runs with the land. I consider it highly likely that future users of the premises would choose to erect advertisements, which would give the premises a commercial appearance. It would not be reasonable to prevent the display of advertisements on the site by condition, since these are subject to advertisement control.
37. The appellant suggests the inclusion of a condition to limit the scale and intensity of the use and proposes the wording 'The premises will only be operated for the purposes of an F2a) hairdressers by the owner/occupier of (the application premises) and shall not be leased or conveyed separately to the main dwelling. No more than one hairdressers (chair/station/whatever) shall be operated from the f2a) class hairdressing business hereby consented'.
38. The proposed wording limiting the use to one hairdresser is not sufficiently precise, nor would it pass the test of reasonableness. Furthermore, although the appellant proposes to see a modest number of customers during the day, as set out above, even with an individual hairdresser, this could increase significantly, depending on the type of hairdressing services offered.
39. I do not consider it would be reasonable or enforceable to limit the number of clients that could visit the premises per day. Furthermore, while the appellant appears to space out appointments, it would not be possible to require this by condition, which could lead to customers waiting at the site. The creation of a second entrance for customers, together with the comings and goings of customers, is uncharacteristic of the residential area.
40. In my view, the proposed use would fall under Class E(c)(iii) which is use, or part use...(c) for the provision of ...services principally to visiting members of the public (iii) any other services which it is appropriate to provide in a commercial, business or service locality and not Class F2(a), which concerns use as a shop mostly selling essential goods, including food, to visiting members of the public. While it would be possible to impose a condition to withdraw permitted development rights, it is the proposed use which is uncharacteristic of the area.
41. Thus, for the reasons given above, I find the appeal scheme would harm the character and appearance of the area, contrary to policy ENV3 of the BCCS which seeks high quality design, policies ENV32 of the UDP and ENV2 of the

BCCS which both seek to protect the character of an area and policy GP2 of the Walsall Unitary Development Plan (UDP) which seeks to ensure that developments make a positive contribution to the quality of the environment, taking into account visual appearance, amongst other things.

Living conditions

42. The appeal site currently comprises a residential dwelling with attached garage. While the appellant is also the occupant of the dwelling, were I to grant planning permission for the proposed use, it would be possible for someone other than the occupant of the dwelling to operate the salon.
43. The proposed use would result in an increase in the comings and goings to the site. Although it would be possible to restrict hours of operation to daytime hours, which would help limit noise and disturbance for neighbouring occupants, it is proposed that potential clients would use the area to the front of the dwelling for parking. Customers using the frontage would generate noise and disturbance which occupants of the dwelling, particularly those using the lounge, are likely to find intrusive.
44. The appellant suggests limiting the operation of the salon to the owner/occupant of the dwellinghouse by condition. However, the PPG advises that planning permission usually runs with the land and it is rarely appropriate to provide otherwise. While the appeal scheme would provide employment for the appellant, I am not persuaded that there is an exceptional need for such a condition in this case.
45. I acknowledge that a number of individuals have written in support of the appellant's proposals. However, while neighbouring occupants may not be concerned about the effect of the appeal scheme on their living conditions, I consider the appeal scheme would harm the living conditions of future occupants of the appeal dwelling, contrary to policy GP2 of the UDP, which seeks to development which makes a positive contribution to the quality of the environment.

Conclusion

46. Thus, I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan. For the reasons given above I conclude that the appeal should be dismissed.

M Savage

INSPECTOR