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## Appeal Decision

Site visit made on 18 March 2019

**by Alexander Walker MPlan MRTPI**

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

**Decision date: 4<sup>th</sup> April 2019**

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**Appeal Ref: APP/G4620/W/18/3210002**

**90 Waterfall Lane, Cradley Heath, West Midlands B64 6RJ**

- 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 Zaireb Hussain against the decision of Sandwell Metropolitan Borough Council.
  - The application Ref DC/18/61916, dated 20 May 2018, was refused by notice dated 1 August 2018.
  - The development proposed is tyre sales and fitting in addition to current site use of car valeting.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. At the time of my site visit the proposed use had already commenced. I have determined the appeal on this basis.

### Main Issues

3. The main issues are the effect of the development on the Council's housing strategy; the effect of the development on the living conditions of neighbouring residents, with regard to noise and disturbance; and, the effect of the development on highway safety.

### Reasons

#### *Housing Strategy*

4. The appeal site comprises a commercial building with a forecourt accessed directly off Waterfall Lane. It is located within a mixed commercial/industrial/residential use area.
5. There is no dispute between the parties that the site is allocated for housing in the Sandwell Metropolitan Borough Council Site Allocations and Delivery Development Plan Document (SADDP) 2012. Policy SAD H1 of the SADDP states that 'other ancillary uses appropriate for residential areas, such as health facilities, community facilities and local shops, may be acceptable where there is a gap in service provision and where they can be integrated successfully into the residential environment. Other uses will not be acceptable on these sites.' Accordingly, as the proposed use is not an ancillary use for residential areas it therefore conflicts with Policy SAD H1.

6. I have had regard to the Inspector's Report on the examination into the SADDP, in particular paragraphs 25 and 26, as referred to me by the appellant. Whilst concerns were made regarding the loss of employment land to housing, the Inspector also noted that the re-use of employment areas provides the only realistic way to meet future housing needs. As a housing allocation, the appeal site makes an important contribution to the Council's housing strategy and the ability to meet housing needs.
7. The National Planning Policy Framework (the Framework) seeks to achieve sustainable development and support economic growth. The proposal provides jobs for three people and therefore makes a small, but positive, contribution to the local economy. However, the Framework also states that 'to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed.'<sup>1</sup>
8. I note that the Black Country Urban Capacity Review 2018 identifies that there is emerging evidence that there is a need to increase employment land due to such land being given over for housing. However, the status of the review is not before me and therefore I do not consider that it attracts greater weight than the SADDP.
9. Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for the decision and its primacy in the determination of planning applications. I find no conflict between the objectives of the Framework and the SADDP and there is no evidence presented to me to demonstrate that the most important policies for determining the proposal are out-of-date.
10. I find therefore that as a result of being in conflict with Policy SAD H1 of the SADDP the proposal would unacceptably undermine the Council's housing strategy.

#### *Living Conditions*

11. The appeal site is within proximity of residential properties to the north east of the site and therefore the residents of these properties would be sensitive to noise generated from the proposed use.
12. The appellant confirms that the compressor unit used for tyre changing would be housed within the building to minimise noise levels. However, there is no substantive evidence before me that this would adequately reduce any potential harmful disturbance to the neighbouring residents. Moreover, the removal of the wheels from cars would likely involve the use of power tools. There is no indication of how noise generated by these would be mitigated.
13. I have had regard to the condition suggested that would restrict all tyre fitting activities to within the building. However, if doors are left open, which is a reasonable proposition, particularly in the summer, then this would negate the mitigating effect of containing the activities within the building. Accordingly, I am not satisfied that such a condition would be reasonable.

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<sup>1</sup> Paragraph 59

14. I acknowledge that there is a boundary fence that would provide some mitigation. However, I am not satisfied that this would be sufficiently effective at reducing the effect of noise on the neighbouring residents.
15. I have also had regard to comments received regarding a residential development that is about to commence which abuts three sides of the appeal site. Whilst the details of this scheme are not before me, based on the evidence before me, there is a reasonable likelihood that noise generated by the proposal would significantly harm the living conditions of the future residents of these dwellings.
16. I find therefore that the proposal would significantly harm the living conditions of neighbouring residents with regard to noise and disturbance. In their reasons for refusal, the Council have not cited any development plan policies. However, the proposal would be contrary to the objectives of the Framework, which seek to protect residential amenity.

#### *Highway Safety*

17. The drawings submitted do not indicate any designated parking areas for staff or customers. The appellant states that cars being valeted park within the valeting area on site next to the building and cars for tyre changes are parked within the building.
18. The current valeting use operates on a contracting basis with a local business and only one car is valeted at any one time. Nevertheless, there is nothing preventing the general public from using the valeting services. I have considered the proposal on this basis.
19. There is no indication as to where customers that are waiting for either of these services park. The Council state that the car wash element should provide 5 spaces for waiting and that this is already the maximum capacity for the site. There would be no additional space for cars waiting for tyre fitting services. Consequently, it is likely that on-street parking would be required.
20. Waterfall Lane a relatively straight road with good visibility. There are no parking restrictions outside the appeal site and at the time of my site visit there did not appear to be any demand for on-street parking. Therefore, should the need arise for additional parking provision than what is available on site, I am satisfied that the small number of cars that would park on-street for what would likely be a short period of time would not cause any significantly harmful effect on highway safety.
21. I therefore find that the proposal would not significantly harm highway safety. In their reasons for refusal, the Council have not cited any development plan policies. However, the proposal would comply with the Framework, which seeks to ensure that development does not have an unacceptable impact on highway safety.

#### **Other Matters**

22. There is an extensive planning history to the appeal site and the appellant contends that the existing lawful use is for a hand car wash and jet wash facility. However, this has had very little bearing on my consideration of the proposal before me.

**Conclusion**

23. I have found that the proposal would not result in any significant harm to highway safety. However, this is a neutral effect and does not outweigh the harm it would have with regard to the Council's housing strategy and the living conditions of neighbouring residents.

24. For the reasons given above, the appeal is dismissed.

*Alexander Walker*

INSPECTOR