



**Report to: Planning Committee, 21<sup>st</sup> February 2019**

**Report of: Deputy Director - Economic Development and Planning**

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**Subject: APPLICATION P18K0466: PROPOSED ERECTION OF A SINGLE STOREY REAR EXTENSION TO AN EXISTING 5 BED HMO TO FORM 6 BED HMO USE CLASS C4, 23 BOZWARD STREET**

**1. Recommendation**

**1.1 The Deputy Director - Economic Development and Planning recommends that the Planning Committee grant planning permission, subject to the conditions set out in the plans list.**

**2. Background**

- 2.1 The application was reported to planning committee on the 24<sup>th</sup> January 2018 at which it was deferred, minded to refuse, on grounds that the proposal would result in an increase in demand for roadside parking on Bozward Street and adjacent streets that currently experience problems of congestion and would lead to inconvenience for local residents and exacerbate the difficulties they face in parking their vehicles. The previous report is attached as **Appendix 1**.
- 2.2 As the Planning Committee is minded to make a decision that is contrary to Officer's recommendation the appropriate procedure to be followed is as detailed in paragraph 11 of the Council's Good Practice Protocol for Planning Matters, contained in Part 12 of the Council's Constitution.
- 2.3 In accordance with paragraph 11.1 the Planning Committee cited the reasons on which it was minded to refuse planning permission. In accordance with paragraph 11.4 the application was therefore deferred to a future meeting of the Planning Committee. This procedure was formally agreed by the Planning Committee at the meeting on 21st July 2008 and further endorsed by the Planning Committee at the meeting on 19<sup>th</sup> April 2018 to allow Officers to consider the matters that were confirmed by the Planning Committee as grounds to be minded to refuse planning permission and to provide a professional opinion on the likelihood of being able to defend an appeal.

**3. Comments of the Deputy Director - Economic Development and Planning**

- 3.1 With regard to the concerns expressed by members relating to car parking, the parking standards are set out in the adopted Houses in Multiple Occupation SPD (October 2014). These are based on the adopted standards for residential development set out in the former City of Worcester Local Plan, which has been superseded by the South Worcestershire Development Plan 2016, and relate to three parking zones. In this regard, the site is located within Zone 2 wherein a total of two parking spaces are required for both 5 and 6 bedroom HMOs.

- 3.2 The Worcestershire County Council Streetscape Design Guide is also a material planning consideration and requires both five and six bedroom HMOs to provide a total of three parking spaces and six cycle spaces.
- 3.3 The existing property currently has a hard surfaced forecourt. However, it does not meet the size requirements for a parking space set out in either the adopted Houses in Multiple Occupation SPD or the Streetscape Design Guide, which requires a minimum area of 2.4m by 4.8m to accommodate a parking space. As the existing forecourt does not meet this requirement it has been discounted as a parking space (as it would result in a car overhanging the adjacent footpath). As such, there is no provision within the existing site for car parking to serve the property, nor is there any capacity within the site to accommodate the provision of any off road car parking.
- 3.4 Paragraph 5.17 of the HMO SPD states that:
- 'Notwithstanding the parking provisions in Table 6, it is important for each planning application to be assessed on an individual basis, especially in relation to on-street parking. For example, on-street parking may be permissible on a wide and quiet street, but this may not be the case on a narrow street that already incurs problems with on-street parking. Tandem parking will not be acceptable due to the potential of fellow occupants not being available for the removal of obstructing vehicles, giving rise to on-street parking for convenience.'*
- 3.5 The first sentence here is important. The second simply provides an example into how and where on-street parking may be convenient, but ultimately the views of the Highway Authority are important in the final decision for each individual application on its own merits. The parking standards are in the SPD to help guide decisions on planning applications, but paragraph 5.17 demonstrates that there may be cases where an element of discretion is needed.
- 3.6 Paragraph 109 of The National Planning Policy Framework 2018 states that:
- 'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'*
- 3.7 The Highway Authority has been consulted on the application and has commented stating that it has no objections to the proposals as there is a parking equivalence. Their comments, as set out in my previous report, are as follows:
- 'The existing dwelling is a 5no. bedroom HMO which requires 3 parking spaces in line with County parking standards and 2 spaces for a 5no bedroom HMO in zone (2) in accordance with the Worcester City SPD. The proposed dwelling is a 6no. bedroom HMO which requires 3 parking spaces in line with County parking standards and 2 spaces in accordance with the Worcester City SPD. Therefore there is a parking equivalence and no further objection to raise.'*
- 3.8 As such, whilst it is considered that the proposed additional bedroom may result in an increased demand for roadside parking, nevertheless there is no requirement for provision to be made, even if there was capacity within the site to accommodate any off road parking to serve the existing HMO.

- 3.9 Furthermore, given the authorised use of the property as a small HMO (Use Class C4) I note that it has the same permitted development rights as a Use Class C3 dwellinghouse under the provisions of Part 1, Class A of the General Permitted Development Order. As such, the applicant could construct an extension of up to 3 metres in length from the original rear wall of the dwellinghouse and up to 4 metres in height as permitted development to accommodate the proposed bedroom without the need for a planning application. (Subject to a neighbour consultation, the applicant could also seek Prior Approval for an extension of up to 6 metres in length under the Larger Homes Extension Scheme).
- 3.10 I consider that this is a material consideration in the determination of this application. Existing site conditions are normally thought of as physical attributes, but planning permissions or development rights related to land may also be viewed as material considerations which have an important input to decision making. Such considerations are normally known as "fallback", and failure to take into account development which could take place even if a current planning application were refused or an appeal dismissed, has been a matter upon which the courts have ruled on several occasions.
- 3.11 The fall-back factor is normally regarded as an important element in decision making which must be rationalised, although the weight to be given depends on the real likelihood of any fall-back actually being exercised in the event of refusal. Several cases demonstrate this point. In particular, in the case of *Burge v SOS & Chelmsford BC* 14/7/1987, the court held that the inspector should have considered the fall back situation if this was a real likelihood. In order for this argument to succeed it has to be shown that there is a reasonable likelihood of the fallback development being implemented if permission is denied.
- 3.12 In my opinion, there is a reasonable likelihood that the applicant will exercise these permitted development rights to construct an extension to provide the additional accommodation if this application is refused.
- 3.13 The Highway Authority has assessed that a refusal based on a lack of provision could not be substantiated given that there would be no increase in demand for car parking between the existing and proposed number of bedrooms at the property. For these reasons I do not consider there would be cogent grounds to substantiate an objection on grounds relating to inadequate car parking to serve the proposed development.
- 3.14 On balance, I am satisfied that the proposal accords with the expectations of SWDP 21 as well as the guidance set down in the HMO SPD and the National Planning Policy Framework and I do not consider that the submitted proposal will result in harm to the highway network through either an increase in trip generation or demand for roadside car parking in comparison with the existing authorised use of the property as a 5 bedroom HMO.
- 3.15 However, notwithstanding the above and without prejudice to my recommendation, in the event that Members resolve that they are minded to refuse the application, contrary to my recommendation and wish to defend any appeal against non-determination the following comments are made for Members' consideration with regard to putative reason/s for refusal.

3.16 Members are perfectly entitled to reach a different decision to that recommended by Officers. However, in relation to planning determinations generally, whether the relevant decision-maker is a local planning authority or an Inspector on behalf of the Secretary of State on appeal, the following should be borne in mind:

- i) Section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990, provides that, in dealing with an application for planning permission, a decision-maker must have regard to the provisions of "the development plan", as well as "any other material consideration";
- ii) "The development plan" sets out the local planning policy for an area, and is defined by section 38 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") to include adopted local plans. Section 70(2) of the 1990 Act makes clear that the development plan is a material consideration; but it is more than that, because section 38(6) of the 2004 Act gives it a particular status:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

That requires the proposed development to be in accordance with the development plan looked at as a whole, rather than with every policy in the plan, which may well pull in different directions and some of which may be more relevant to a particular application than others (R v Rochdale Metropolitan Borough Council (2001) and R (Hampton Bishop Parish Council) v Herefordshire Council (2014)). Section 38(6) thus raises a presumption that planning decisions will be taken in accordance with the development plan, looked at as a whole; but that presumption is rebuttable by other material considerations. If a proposed development is not in accordance with the development plan read as a whole, with a focus on its relevant objectives and the policies which give effect to those objectives, then there is a presumption against approval (R (TW Logistics Limited) v Tendring District Council (2013), and Crane v Secretary of State for Communities and Local Government (2015));

- iii) "Material considerations" in this context include statements of central government policy which are now largely set out in the NPPF as supplemented by the Secretary of State's web-based Planning Practice Guidance ("the PPG"), launched on 6 March 2014, which replaced a plethora of earlier guidance documents and which is regularly updated;
- iv) Whilst all material considerations must be taken into account, the weight to be given to such considerations is exclusively a matter of planning judgment for the decision-maker, who is entitled to give a material consideration whatever weight, if any, he/she considers appropriate, subject only to his/her decision not being irrational in the sense of 'Wednesbury' unreasonable (Tesco Stores Ltd v Secretary of State for the Environment (1995));
- v) A decision-maker must interpret policy properly. The true interpretation of such policy, including the NPPF, is a matter of law for the court to be

considered objectively on the basis of the relevant policy documents as they stand, the subjective view of the author being irrelevant (*Tesco Stores Ltd v Dundee City Council* (2012), *Europa Oil & Gas Limited v Secretary of State for Communities and Local Government* (2014)). Where a decision-maker has misunderstood or misapplied a plan or other policy, that may justify a challenge to his/her decision, if it is material, i.e. if his/her decision would or might have been different if he/she had properly understood and applied the guidance. However, if the misunderstanding or misapplication is immaterial – because the decision would inevitably have been the same despite the identified error(s) – then the courts have a discretion not to quash the decision (*Simplex GE (Holdings Limited) v Secretary of State for the Environment* (1989));

- vi) An inspector's decision letter cannot be subjected to the same degree of interpretation that might be appropriate for a statute or a deed. It must be read as a whole, and in a practical, flexible and common sense way, in the knowledge that it is addressed to the parties who will be well aware of the issues and the arguments deployed at the inspector's inquiry, so that it is not necessary to rehearse every argument but only the principal controversial issues. The reasons for an inspector's decision must be intelligible and adequate to enable an informed observer to understand why he/she decided the appeal as he/she did, including his/her conclusions on the principal important controversial issues. They must not give rise to any substantial doubt that he/she proceeded in accordance with the law, e.g. in his/her understanding the relevant policies (*Seddon Properties v Secretary of State for the Environment* (1981); *South Somerset District Council v Secretary of State for the Environment* (1993), and; *South Bucks District Council v Porter (No 2)* (2004), and;
- vii) Because the exercise of discretion involves a series of planning judgments, in respect of which an inspector or other planning decision-maker has particular experience and expertise, *"The court must be astute to ensure that such challenges are not used for what is, in truth, a rerun of the arguments on the planning merits"* (*Newsmith v Secretary of State for the Environment, Transport and the Regions* (2001)).

### **Reason for Refusal**

- 3.17 Without prejudice to my recommendation, in the event that Members resolve to refuse the application the following reason is suggested, albeit it remains my opinion that this reason is not sufficiently robust:

**The site comprises a two storey terraced dwelling within an established residential area that is characterised by predominantly two storey Victorian terraced houses that are broadly similar in original design, layout and appearance. A common characteristic of these properties is also the high incidence of roadside parking throughout the day and evening hours on Bozward Street and the surrounding streets, where the high density of development limits the opportunity for off-road parking. Consequently, the streets are dominated by parked cars.**

**Policy SWDP 21 of the South Worcestershire Development Plan 2016 requires all development, inter alia, to have regard to the amenities of neighbouring residents in terms of traffic generation and the provision of car parking facilities. This is reflected in the Council's adopted Supplementary Planning Document - Houses in Multiple Occupation (2014) which includes parking standards for HMO's to ensure that adequate provision for off street parking is made available in the interests of the amenity of nearby properties. Whilst the HMO SPD recognises that there may be circumstances in which on-street parking may be permissible, nevertheless this may not be the case in circumstances where there is insufficient capacity to accommodate on-site car parking in an acceptable manner on streets that already incur problems with on-street parking.**

**In the opinion of the Local Planning Authority, the proposal would lead to increased pressure for roadside parking on Bozward Street and adjacent streets that currently experience problems of congestion and would lead to inconvenience for local residents and exacerbate the difficulties they face in parking their vehicles throughout the day and evening hours. The proposal would thereby also be contrary to the aims and interests that Policy SWDP 21 of the South Worcestershire Development Plan 2016 and the Council's adopted Supplementary Planning Document - Houses in Multiple Occupation (2014) seek to protect and promote in this regard.**

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<b>Background Papers:</b>	<b>Application P18K0466</b>