The Planning Inspectorate

Appeal Decision

Hearing held on 7 December 2016

Site visit made on 7 December 2016

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30th December 2016

Appeal Ref: APP/T3725/W/16/3155217
Unit 1, Moss Street, Leamington Spa, Warwickshire CV31 2DA

- 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 Sureway Property Services Group against the decision of Warwick District Council.
- The application Ref W/15/2154, dated 23 December 2015, was refused by notice dated 29 April 2016.
- The development proposed is 32 bed HMO (in association with 15 bed HMO previously approved under reference W/15/0994 dated 10 August 2015) following demolition of existing commercial buildings on land at the rear of 1-3 Althorpe Street, Royal Leamington Spa.

Decision

1. The appeal is allowed and planning permission is granted for 32 bed HMO (in association with 15 bed HMO previously approved under reference W/15/0994 dated 10 August 2015) following demolition of existing commercial buildings on land at the rear of 1-3 Althorpe Street at Unit 1, Moss Street, Leamington Spa, Warwickshire CV31 2DA, in accordance with the terms of the application, Ref W/15/2154, dated 23 December 2015, subject to the Schedule of conditions attached to this decision.

Application for costs

2. At the Hearing an application for costs was made by Sureway Property Services Group against Warwick District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:

- The effect of the proposal on the living conditions of nearby residents, with particular regard to access to on-street car parking.

- The effect of the proposal on the safety and convenience of users of the surrounding highway network.

- Whether the proposed accommodation would provide acceptable living conditions for future occupiers, with particular regard to outlook.

Reasons

Background

4. The appeal site is located within the Old Town part of south Leamington Spa. It is close to the railway station and situated immediately to the rear of development fronting Radford Road, which is a main thoroughfare leading into the town. The land is tightly bound by a block of more recent housing to the east and a railway bridge of similar height to the south. Moss Street is a short spur road off Althorpe Street serving just this site. Beyond the railway line, and to the south, Althorpe Street serves an area dominated by commercial workshops and industrial development, including car repairs and other engineering activities.

5. The frontage onto Althorpe Street, formerly occupied by a heating engineering business, is currently being redeveloped to provide a three-storey block of 15 student flats. The proposal is to extend this three-storey development on two further sides of the site, alongside the railway bridge and the new housing to the east. An archway would provide access to an internal courtyard, providing on-site car parking, adjacent to the rear of the Radford Road buildings. These additional three-storey blocks, which occupy a part of the site currently used by a builder's merchant, would provide an additional 32 student rooms.

6. The residential area in this part of Leamington Spa contains a high concentration of Houses in Multiple Occupation (HMOs). The larger dwellings suitable to become HMOs are often occupied by students, who form a significant proportion of the population in this area. Most study at the expanding Warwick University, on the edge of Coventry, where Leamington Spa has proved a popular place to live off-campus with the type and amount of housing stock available to meet this demand.

7. Although this student population is of significant benefit to the local economy, the Council is nonetheless concerned over high concentrations of HMOs impacting negatively on the living conditions of the more settled population, in respect of issues like late-night disturbance, property upkeep, waste storage and car parking. In 2012 the Council applied an Article IV Direction to Leamington Spa to remove the automatic permitted development right to change a single dwelling into a small HMO, in order to better control the concentration of these forms of accommodation.

Living conditions of nearby residents

8. The adopted development plan is the Warwick District Local Plan 1996 – 2011 (ALP). The emerging Warwick District Local Plan 2011 – 2029 (ELP) is currently under examination and at an advanced stage, with likely adoption in March 2017. The appeal site is within the designated town centre where there would be no policy objection to the principle of the residential development proposed.

9. The Council seeks to address the effect on living conditions of concentrations of HMOs through ELP Policy H6. This aims to prevent high concentrations by ensuring that within a 100m radius of any new such proposal there would be no more than 10% of dwellings which are HMOs and, at a more local level, there would be no 'sandwiching' of non-HMO dwellings nor a continuous frontage of 3 or more HMOs.

10. Policy H6 is afforded significant weight as it is consistent with the principle of the National Planning Policy Framework (the Framework) to always seek to ensure a good standard of amenity for all existing and future occupants of land and buildings and is subject to no unresolved objections as part of an emerging plan, now at an advanced stage.

11. Within a 100m radius of the appeal site there is an estimated 42% of all dwellings occupied as HMOs; substantially above the 10% limit sought under ELP Policy H6. However, this policy allows exceptions where the site is on a main thoroughfare in a mixed-use area where the proposal would not lead to an increase in activity along nearby residential streets.

12. I have had regard to the concerns expressed by interested parties, including those made at the hearing, that this proposal would add to the general disturbance currently experienced from late night groups of students as parties from this site would still pass through residential areas. However, as this site is within a mainly commercial area and close to the main High Street leading into town, which is the route most pedestrians would take from the appeal site, I am persuaded that this proposal would meet the exemption in Policy H6 and, as a consequence, comply with its terms.

13. Notwithstanding compliance with ELP Policy H6, the Council finds harm to the living conditions of nearby residents due to this proposal making inadequate provision for on-site parking, thereby adding to the competition for on-street parking in surrounding streets. ALP Policy DP2, carried forward as ELP Policy BE3, seeks that development has no unacceptable adverse impact on the amenity of nearby residents in respect of matters such as loss of privacy, loss of sun/daylight and noise disturbance. Although not specifically referred to in the supporting text, the Council confirmed that 'parking stress' would be an amenity issue covered by these policies.

14. ALP Policy DP8, carried forward by ELP Policy TR4, addresses parking. Both seek that developments provide the right amount of on-site parking, to strike the right balance between not discouraging more sustainable forms of travel and avoiding inappropriate use of spaces causing environmental and safety impacts. These policies refer to the Council's Vehicle Parking Standards Supplementary Planning Document of November 2007(VPSSPD).

15. The VPSSPD parking standards for residential development require a maximum of 1 space per 2 bedrooms in the case of HMOs. However, the document states that student parking will need to be considered on a case by case basis and be influenced by the need by staff and residents, the availability of other transport links and other site considerations.

16. The approved 15-bed part of the development provided 2 on-site spaces and the Council considered the shortfall of 6 spaces, assessed against the parking standards for a HMO, would be acceptable and could be accommodated by existing parking in the area. The additional 32-bed accommodation proposed would provide an additional 7 on-site spaces, providing 9 for the development as a whole. A 32-bed HMO would require 16 spaces under the adopted standards leading to a further shortfall of 9 spaces for this part of the development and an overall shortfall of 15 spaces for the combined 47-bed scheme.

17. In considering the demand for car parking arising from this proposal I have given weight to the fact that the appeal site is in a very sustainable location with regard to offering good access to public transport, both rail and buses, with most regularly required services within a short walking distance. The proposal would also replace an existing builder's merchant use which itself generates on-street parking demands from its employees and visitors. It is estimated by the appellant that the employees at this business currently account for the occupation of 8 on-street car parking spaces.

18. I have had regard to the surveys of unoccupied parking spaces carried out by the appellant which seek to show this shortfall can be accommodated in the surrounding area. The nearest on-street parking would be in Althorpe Street which is unrestricted. At the time of my visits on-street parking in Althorpe Street was almost fully occupied. Nevertheless the appellant's surveys show there to be unoccupied parking beyond Althorpe Street, a reasonable walking away, within surrounding streets that would accommodate the shortfall of 15 spaces. Were this proposal to result in the need for the parking of 15 cars to be found off-site, then I consider that the residents would tend to avoid pay-and-display options and seek spaces to park within the unrestricted parts of nearby residential streets, such as along Radford Road and Camberwell Terrace, or failing that slightly further away, such as along Plymouth Place, Russell Terrace and Farley Street.

19. From my site visit, and the evidence provided, there would appear to already be a degree of parking stress in these residential areas, exacerbated by the occasional demands placed by other uses, such as churches. Accommodating a potential further 15 cars in this area would increase the pressure on these spaces.

20. However, the appellant has made it clear that, although originally described as a HMO, this proposal would provide student rooms in collaboration with Warwick University. I have no reason to doubt this to be the case.

21. Warwick University discourages car parking on the campus and so access by students living in Leamington Spa would mainly be by public transport. I accept that the corollary to this might be that students living in Leamington might wish to have their own cars to access destinations other than Warwick University. In such cases, student cars might then be parked throughout the day in Leamington whilst journeys to Warwick University were taken by public transport. However, the accessibility of this site to services, the limited amount of on-site parking provided and the need to reach the University by public transport might also deter students from bringing a car to Leamington during term time.

22. The appellant has referred to the nearby former BT site in Althorpe Street where a hall of residence, purpose-built by Alumno Developments, is under construction which will accommodate 187 students. Here the Council has agreed to 10% parking provision which, if applied to this proposal, would require only 5 on-site spaces which would be more than satisfied by the 9 proposed.

23. The Council explained at the hearing that the Alumno development was the subject of detailed management arrangements regarding car use and was intended to be regulated as a largely car-free development. Whilst this proposal is not the subject of any legally binding undertaking that might control

car use to the same extent as at the Alumno development, the appellant is suggesting an on-site space could provide for a shared 'car-club' electric vehicle and also that some form of on-site management governing car use could be provided.

24. The suggested conditions include restricting occupation to students and prior agreement to an occupational management plan and a Green Travel Plan which would provide a means to secure agreement over the measures the appellant is offering. Although planning conditions might not offer the Council the same level of control as the agreements in place with the Alumno Development, this proposal would provide 30% parking provision, significantly greater than at the former site.

25. Taking into account the general sustainability of this location, the fact the current use of the site generates on-street parking demand and the further control offered by the suggested conditions, this proposal would satisfy the VPSSPD requirements, as assessed on the case by case basis for student accommodation. ALP Policy DP8 and ELP Policy TR4 would therefore be satisfied.

26. The residual increase in the demand for on-street parking would be spread throughout the local area where unrestricted provision was available. This would add to the inconvenience in finding a parking space for local occupiers who rely on unrestricted on-street availability. However, the accommodation will be for students and would involve a relatively low proportion of occupiers requiring car parking and this demand could be actively managed down. The demand for off-site car parking arising from this proposal would not be such as to have an unacceptable adverse impact on the amenity of nearby residents. Consequently, there would be limited conflict with the aims of ALP Policy DP2 and ELP Policy BE3.

Highway safety

27. The Council's concern is that this proposal would displace short-term on-street parking in Althorpe Street leading to short-term parking in less appropriate spaces to the detriment of highway safety. Althorpe Street is a busy commercial road and I noted that during my day-time visit that on-street parking was full, with some double-parking, exacerbated no doubt by construction works taking place both at the appeal site and at the Alumno development. There is pressure on the parking available from vehicles waiting for repair, valeting or collection. The area is no doubt subject to a significant churn of short term on-street parking during business hours.

28. However, Althorpe Street is not a through road and because of this, and the on-street parking associated with activities here, traffic flow and speeds would tend to be relatively low. The County Council has reported that records do not indicate a significant number of personal injury accidents in this street. This development, in providing for student accommodation, would meet the VPSSPD parking requirements as assessed on a case-by-case basis, taking into account the location and accessibility of the site by means other than private car. The level of on-street parking generated would not likely effect the existing operation of Althorpe Street so as to cause material harm to the safety and convenience of users of the surrounding highway network. Paragraph 32 of the Framework requires that development should only be prevented or refused on transport grounds where the residual cumulative impacts would be severe.

There is not the evidence to show this would be the case due to this proposal, or that the additional on-street car parking generated would be detrimental to highway safety. For these reasons ALP Policy DP8 and ELP Policy TR4 would be satisfied.

Living conditions for future occupiers

29. The Council finds that inadequate living conditions for future occupiers would result from 8 of the student rooms, four on each of the ground and first floors, having inadequate outlook from the oriel windows proposed to avoid mutual overlooking, where this has been identified as a potential issue.

30. However, the angled glazed parts of the oriel windows would be as wide as on the conventional windows and a condition could also require the return portion to be obscure glazed to gain more natural daylight to the rooms.

31. The outlook from the oriel windows would be acceptable. Given this, the proposal would generally provide satisfactory living conditions for its future occupiers, and as a consequence comply with ALP Policy DP2 and ELP Policy BE3.

Planning balance

32. Pending adoption of the ELP, the Council is unable through the ALP to provide for a five-year supply of deliverable housing sites and, based on paragraph 48 of the Framework, acknowledges that those policies relevant to the supply of housing are not up-to-date. The Council's latest March 2016 estimate is that it can demonstrate a 4.69 year supply of housing land. The proposed 32 additional rooms would comprise 6 cluster flats of student accommodation which the Warwick Local Plan Windfall Allowance Document counts towards housing supply. ALP policies DP2 and DP8 are relevant to the supply of housing since, as this case shows, they can act as a restraint on this.

33. In such cases, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is invoked. Where relevant development plan policies are out-of-date this would mean granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

34. Paragraph 6 of the Framework establishes that the purpose of the planning system is to contribute to the achievement of sustainable development and paragraphs 18 to 219, taken as a whole, comprise the Government's view as to what this means in practice. Based on the three strands to sustainable development the planning system performs economic, social and environmental roles which the Framework requires to be sought jointly and simultaneously.

35. The proposal would fulfil an economic role through the employment and investment involved in construction and the support provided to local shops and services by the future occupiers.

36. A social role would be supported through the supply of accommodation. The design of the scheme has been the subject of negotiations with the Council and would enhance the character and appearance of the Leamington Spa Conservation Area, thus fulfilling an environmental role. The same would apply

to this proposal making effective use of previously-developed land in a location which would enable the fullest use to be made of public transport, walking and cycling.

37. The effects found to living conditions and in respect of the safety and convenience of users of the surrounding highway network have not been found to result in material harm in this case. Any residual harm would not significantly and demonstrably outweigh the benefits that have been identified. As a consequence, this proposal would gain support through a presumption in favour of sustainable development, as defined in the Framework.

Conditions

38. Consideration has been given to the conditions suggested by the Council following further discussion at the hearing. All are considered necessary apart from that requiring a further bat survey, given the buildings remaining on site appear unsuitable habitat. Some changes and amalgamations are made to provide conciseness.

39. In addition to the standard commencement condition (1), a condition requires the development is built according to the approved plans, including the agreed noise mitigation measures (2), in the interests of certainty. In the interests of appearance, conditions (3 and 4) require that the constructed exterior is built of agreed materials, specifying that joinery be painted timber and rainwater goods metal, and that large-scale plans are produced showing finer points of architectural detail.

40. A condition (5) ensures adequate provision is made for on-site renewable energy or to achieve carbon savings, to accord with the local plan. A condition (6) ensures that the building works proceed in accordance with an agreed Construction Method Statement, in the interests of highway safety. To avoid pollution a condition (7) requires agreement to, and application of, a contamination risk methodology.

41. A condition (8) seeks that a low emission strategy be agreed so that the development mitigates for any air quality impacts. To record, preserve or protect any archaeology uncovered during the construction an appropriate condition is applied (9). A condition (10) requires the cycling and refuse storage areas to be provided before occupation so that these needs are adequately met. Conditions (11 and 12), made in the interests of highway safety, require the details of the footway access crossing to be agreed and constructed, and for the car parking and manoeuvring areas to be marked out and thereafter retained.

42. To ensure the accommodation is operated in the interests of the acceptable living conditions of surrounding occupiers, a condition (13) requires an appropriate management plan to be agreed and adhered to. To promote sustainable travel, a condition (14) requires a Green Travel Plan to be agreed and applied in respect of this development. A condition (15) restricts the development to use as a students' residence to reflect the on-site parking provision made.

Conclusion

43. There is support for this proposal from interested parties whose businesses gain support from the student population in this area, and from those who would welcome the further rented accommodation this proposal might indirectly make available. However, a substantial number of local residents have expressed concerns over this proposal exacerbating the impacts on the settled population of a high concentration of student accommodation. This issue is addressed in ELP Policy H6 dealing with HMOs and student accommodation, which this proposal has not been found contrary too.

44. This proposal would be designed and situated where harm to neighbouring occupiers, arising from noise, disturbance, property up-keep and waste management, has not been found. The location would offer good access to public transport and is within walking distance of most regularly required services. The accommodation would provide acceptable living conditions for future occupiers and its demands for on-street parking are not considered to cause material harm to the living conditions of nearby residents or to the safety and convenience of users of the surrounding highway network.

45. This proposal would gain support through a presumption in favour of sustainable development, as defined in the Framework. As a consequence, having had regard to all other matters raised, I conclude that this appeal should be allowed.

Jonathan Price

INSPECTOR

Schedule of Conditions
Appeal Ref: APP/T3725/W/16/3155217
Unit 1, Moss Street, Leamington Spa, Warwickshire CV31 2DA

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 309-GF-307N, 309-FF-308E, 309-SF-309E, 309-EL-311A, 309-EL-312B, 309-EL-314C, 309-RP-316A and 309-DE-325 and with the noise mitigation measures specified in the Noise Reports by Noise.co.uk (refs. 15826-1 & 15826A).

3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. All window and door frames shall be constructed in timber and shall be painted and not stained. All rainwater goods for the development hereby permitted shall be metal. Development shall be carried out in accordance with the approved details.

4) No development shall be carried out on the site which is the subject of this permission, until large scale details of doors, windows (including a section showing the window reveal, heads and cill details), eaves, verges and rainwater goods at a scale of 1:5 (including details of materials) have been submitted to and approved by the local planning authority. Notwithstanding the details already shown in drawing 309-DE-325 the narrower sections of the oriel windows shall be glazed, using obscure glass. The development shall be carried in accordance with the approved details.

5) The development hereby permitted shall not be commenced unless and until a scheme showing how either a) at least 10% of the predicted energy requirement of the development will be produced on or near to the site from renewable energy resources, or b) a scheme showing how at least 10% of the energy demand of the development and its CO^2 emissions would be reduced through the initial construction methods and materials has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until all the works within the approved scheme have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.

6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
   i) the parking of vehicles of site operatives and visitors;
   ii) loading and unloading of plant and materials;
   iii) storage of plant and materials used in constructing the development;
   iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

v) wheel washing facilities;

vi) measures to control the emission of dust and dirt during construction;

vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

viii) Delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

7) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the District Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

i) A preliminary risk assessment which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the District Planning Authority. The scheme shall be implemented strictly as approved.

8) No development shall commence until a Low Emission Strategy has been submitted to and approved in writing by the local planning authority. The Low Emission Strategy shall thereafter be implemented in strict accordance with the approved details.

9) No development shall take place within the application site, unless and until a programme of archaeological works and investigations has been secured and initiated in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

10) The development hereby permitted shall not be occupied unless and until the cycle parking facilities and external refuse storage areas for the

development have been constructed or laid out, and made available for use by the occupants of the development and thereafter those areas shall be kept free of obstruction and be available at all times for the storage of cycles and refuse associated with the development.

11) The development hereby permitted shall not be occupied until the existing public highway footway crossing to the site has been remodelled in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

12) The development hereby permitted shall not be occupied unless and until the car parking and manoeuvring areas indicated on the approved drawings have been provided and thereafter those areas shall be kept marked out and available for such use at all times.

13) The development hereby permitted shall not be occupied unless and until a Management Plan including the management and maintenance of the buildings, arrangements for the management of occupation and vacation of the premises at the beginning and end of individual tenancies, security, fire safety, the conduct of the occupants during occupancy and community liaison responsibilities and procedures has been submitted to and approved in writing by the Local Planning Authority. Occupation shall only be undertaken in full accordance with the approved Management Plan.

14) Prior to the first occupation of the development hereby permitted, a Green Travel Plan to promote sustainable transport choices to the site, shall be submitted to, and approved in writing by the local planning authority in writing. This plan shall:

    i) specify targets for the proportion of residents travelling to and from the site by foot, cycle, public transport, shared vehicles and other modes of transport which reduce emissions and the use of non-renewable fuels;

    ii) set out measures designed to achieve those targets together with timescales and arrangements for their monitoring, review and continuous improvement;

    iii) explain and justify the targets and measures by reference to the tenancy enforcement policies of the development;

    iv) identify a member of site management staff with overall responsibility for the plan and a scheme for involving residents in tis implementations and development.

15) The building hereby permitted shall be used solely as a student hall of residence and ancillary purposes thereto, being occupied solely by persons enrolled in a full time course of higher education.

---End of Conditions---

APPEARANCES

FOR THE APPELLANT:

David Dickinson	Sureway Property Services Limited
David Richards	The Planning Group Limited
Steve Woods	Woods Ferrer Limited

FOR THE LOCAL PLANNING AUTHORITY:

Rob Young BSc DipTP MRTPI	Senior Planning Officer, Warwick District Council
John Glendinning	Development Management Engineer, Warwickshire County Council
Joanne Archer	Warwickshire County Council

INTERESTED PERSONS:

Councillor Colin Quinney	Warwick District Council
Councillor John Knight	Royal Leamington Spa Town Council
Nick Bond	South Leamington Residents Association/Local Resident
Gordon Fyfe	Local Resident
Andy Stevenson	Local Resident
Mark Attwood	Local Resident