
Appeal Decision

Site visit made on 13 February 2017

by B Bowker Mplan MRTPI

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

Decision date: 15 March 2017

Appeal Ref: APP/T3725/W/16/3163849

15 Morton Street, Leamington Spa, Warwickshire CV32 5SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Stella Brotherston against the decision of Warwick District Council.
 - The application Ref W/16/0515, dated 22 March 2016, was refused by notice dated 24 May 2016.
 - The application sought planning permission for detached rear annexe to provide family accommodation ancillary to the main dwelling without complying with a condition attached to planning permission Ref W/14/0999, dated 26 August 2014.
 - The condition in dispute is No 9 which states that:
The development hereby permitted shall only be used as accommodation ancillary to the main dwellinghouse at 16 Beauchamp Avenue and shall at no time be occupied as a separate self contained dwellinghouse.
 - The reasons given for the condition is:
Since there is insufficient parking and amenity space for a separate dwelling, and to help satisfy the objectives of Policies DP1, DP2 and DP8 of the Warwick District Local Plan 1996-2011.
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Application for costs

1. An application for costs was made by Mrs Stella Brotherston against Warwick District Council. This application is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for a detached rear annexe to provide family accommodation ancillary to the main dwelling, at 15 Morton Street, Leamington Spa, Warwickshire CV32 5SY in accordance with application Ref W/16/0515, dated 22 March 2016, without compliance with condition No 9 previously imposed on planning permission Ref W/14/0999, dated 26 August 2014, but subject to the attached schedule of conditions.

Background and procedural matters

3. The appeal seeks to remove the above noted planning condition which in effect would allow the detached rear annexe to be occupied as a separate dwelling. No concerns are raised regarding the existing use of the building being in compliance with this condition.
 4. The Council raise no concern regarding the amount of amenity space available for occupants of the rear annexe. Consequently, my determination of the
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appeal is based against the other reason given to justify condition no 9 which relates to parking availability.

5. During my visit, I observed the site from No 14 Beauchamp Avenue. However, as condition no 9 was imposed owing to insufficient nearby parking availability, concerns regarding the effect of the development on the Conservation Area and on neighbouring living conditions with reference to noise, disturbance, outlook and privacy do not form part of my consideration of the appeal. Accordingly, taking into account the Council's concern regarding parking stress and the amenity of other road users, the main issue is as below.

Main Issue

6. The main issue is the whether the condition is reasonable and necessary in the interests of the safety and convenience of users of the adjacent highway network.

Reasons

7. As the annexe retains two parking spaces for No 16 Beauchamp Avenue, the Council consider that the present situation meets the requirements of its Vehicular Parking Standards Supplementary Planning Document (SPD). The Council identify that the use of the rear annexe as a separate dwelling would result in conflict with the parking requirements outlined in the SPD. However I agree with the appellant's consideration of the SPD in the context of the National Planning Policy Framework and the Written Ministerial Statement made on 25 March 2015. Consequently, the weight I afford to the SPD is limited.
8. This aside, the Council's case is based on the additional parking demand associated with the proposal and the effect it would have on parking stress and the amenity of other road users; particularly in an area that they consider already has a high level of parking demand. During my site visit I saw that Morton Street is predominantly restricted along its length by double yellow lines. Beauchamp Avenue and Morrell Street are similarly restricted and parking in the immediate area is subject to a residents parking permit regime which allow 3 permits per household. This includes No 16, which currently has three parking permits, an entitlement which would remain irrespective of the outcome of this appeal. Non-permit holders are subject to 2 hour parking restriction with no return allowed for 4 hours.
9. At the time of my early afternoon site visit, I saw that a number of vacant parking spaces were available along Beauchamp Avenue which is a short walk from No 15. A number of nearby vacant parking spaces were also available at Morton Street, Morrell Street and Arlington Avenue. Further afield, spaces were also available at Trinity Street and Clarendon Avenue. However, I appreciate that the timing of my site visit provides a snap shot of parking availability in the vicinity.
10. Based on the appellant's photographs of available parking spaces at Beauchamp Avenue taken during different times of the day, it appears likely parking capacity exists throughout the day. However, photographs of the surrounding area showing a lack of parking availability have also been submitted by a third party. In addition, responses from local residents differ on whether the surrounding area has sufficient parking capacity.

11. That said, I note that the Highway Authority have raised no objection to the proposal on highway safety grounds and consider that there are opportunities for on street parking within a short walking distance of the site. Furthermore, as the annexe is a modest two bedroom building, its likely resultant demand for parking spaces would be limited and the need for a vehicle would be reduced taking into account the short walking distance of the town centre which contains a number of facilities and services. Moreover, the evidence before me does not indicate that as a result of allowing the appeal, on street parking would occur to an extent that would cause significant inconvenience for road users or harm to highway safety.
12. In reaching this decision, I have also considered the proximity of the entrance at No 15 Morton Street to the entrance serving Nos 4-12 Morton Street. However, both accesses are already in place and no evidence of related highway safety incidents are before me. In addition, double yellow line restrictions along Morton Street would help prevent congestion and the potential for highway safety issues. I also note a recent appeal decision¹ at Nos 7 and 9 Beauchamp Avenue referred to by the appellant. The appeal involved the demolition and replacement of garages with four dwellings close to the site to which the Highway Authority raised no objection. This matter reinforces my findings above regarding parking availability in the immediate vicinity. It therefore follows that the proposal would not lead to parking stress, inconvenience or highway safety issues for nearby road users.
13. Therefore, I conclude that the condition is not reasonable or necessary in the interests of the safety and convenience of users of the adjacent highway network. Consequently, the proposed change to the condition would meet the requirements of Local Plan Policies DP1, DP2 and DP8. Insofar as they relate to this matter, these policies require development components such as parking to be well related and ensure no adverse impact on the amenity of nearby uses nor on-street parking detrimental to highway safety.

Conclusion

14. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permissions, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. For the reasons given above I conclude that the appeal should succeed. As a result I will vary the planning permission by deleting the disputed condition.

B Bowker

INSPECTOR

Attached – schedule of conditions.

¹ APP/T3725/W/16/3153778

Schedule of conditions

- 1) The development hereby permitted shall be carried out strictly in accordance with the details shown on the application form, site location plan and approved drawing(s) 3548/22 & 3548/24, and specification contained therein, submitted on 1 July 2014 unless first agreed otherwise in writing by the District Planning Authority.
- 2) The roofing material for the pitched roof parts of the development hereby permitted shall be natural slate, a sample of which has been submitted to and approved in writing by the District Planning Authority. The bricks for the development hereby permitted shall be acid cleaned reclaimed bricks, a sample of which has been submitted to and approved in writing by the District Planning Authority. The development shall be carried out in accordance with the approved details.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking and re-enacting that Order with or without modification), the garaging shown on the plans hereby approved shall be retained and kept available for such purposes and shall not be altered either internally or externally.
- 4) All windows and doors shall be constructed in timber and shall be painted and not stained.