



Appeal Decision

Site visit made on 23 December 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2020

Appeal Ref: APP/T3725/W/19/3238805

21-23 Clemens Street, Leamington Spa CV31 2DW

- 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 YP Tara against the decision of Warwick District Council.
 - The application Ref W/19/0509, dated 26 March 2019, was refused by notice dated 20 August 2019.
 - The development proposed is for external and internal alterations to allow for the change of use from offices to 2 No residential flats on first and second floors of Nos 21-23 Clemens Street, Leamington Spa.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant has submitted a sound insulation test result¹ in his final comments. This provides additional detail in support of the appeal, rather than making a material change to it. Accordingly, I have taken this into account. I do not consider any party would be prejudiced by my doing so.
3. I observed on site that the internal work is well advanced and limited further work appeared to be required to complete the conversion. The work undertaken appeared to align with the proposed plans although bedroom 3 of flat 2 has two rooflights, whereas the plan shows it having one. However, I will take into account the arrangement set out on the proposed plans as this was the subject to the refusal.

Main Issues

4. The main issues are:
 - the effect of the proposal on the living conditions of future occupiers, with particular regard to noise, air quality, odour, outlook, sunlight and daylight, and
 - the effect of the proposed dwellings on highway safety, with respect to on-street parking.

¹ SITMA Certificate of sample testing results 26/09/19

Reasons

Living conditions

5. The appeal site consists of two floors above an existing estate agent premises in a high street location. The adjacent property, of 25 Clemens Street (No 25), has a three-storey rear return. This presents a blank side elevation towards the side of the appeal site.
6. In regard to outlook, the second bedroom of flat 1 would face a side wall of No 25 over a short distance. The second and third bedrooms for flat 2 would only have rooflights. These rooflights are set at a low level and thus allow an occupant to view horizontally out of them. Consequently, the second bedroom of flat 2 would have a relatively open and uncompromised view. However, the outlook for the third bedroom of flat 2, and second bedroom of flat 1, would be substantially restricted by the neighbouring return wall. This would result in a significantly poor outlook from these windows.
7. With respect to sunlight and daylight, the two identified bedrooms with a poor outlook would also have limited access to direct sunlight. Although south facing, access to sunlight would be compromised due to the proximity and height of No 25. Daylight would be less affected but would nevertheless also be reduced due to the proximity of the adjacent building. The living conditions of future residents would therefore also be harmed due to the limited access to daylight and sunlight to bedroom 3 of flat 2 and bedroom 2 of flat 1.
8. In regard to noise impact, the site overlooks a high street to the front and a car park and elevated railway line to the rear. The Council has requested a Noise Assessment, to determine whether the layout would be suitable, principally due to the road traffic noise. The Council has not had an opportunity to comment on the SITMA Sound Insulation Report² submitted by the appellant in final comments. However, the report has not been submitted with companion commentary to explain the results or defines the implications for mitigation. As such, without a full noise assessment, the test result fails to illustrate that future occupiers would not be affected by external noise at anti-social times. As I am dismissing the appeal for other reasons, I have not explored this matter further.
9. The site is within an Air Quality Management Area (AQMA). This is deemed to be a poor air quality area where future occupiers could be exposed to air pollutants. The Council's Supplementary Planning Document³ explains that an air quality assessment should be submitted with development proposing dwellings in such areas. This would enable the proposer assessment of its impacts and design suitable mitigation. The mechanical ventilation system should not intake air from the front of the site due to the identified high pollution levels. An air quality assessment and mitigation strategy to address air quality is therefore an important requirement. I am subsequently unconvinced that this has been adequately addressed in evidence. Accordingly, without adequate resolution the proposal has the strong likelihood to result in harm to future occupiers from air pollution.

² Sound Insulation Testing and Measurement Association 26/9/19

³ Warwick District Council Air Quality and Planning 2019

10. Furthermore, in regard to odour, flat 2 would include rooflights that overlook 19 Clemens Street (No 19). The ground floor hot food takeaway includes a rear extractor vent that terminates around one metre below the rooflights and a restrictive cowl. On my visit the neighbouring business was closed, and I could detect no odour. However, I anticipate that this vent would cause significant smell nuisance to future occupiers when in use. The appellant states that he owns the neighbouring property and details of a revised extractor could be secured by condition. However, he has not proven ownership and the plot is not delineated with a blue-line on the site plan. It is also likely that a revised flue would need to be taller. This may conflict with the Council's conservation and design policies especially being on a publicly visible elevation due to the carpark and highway to the rear. Consequently, it is unconvincing that this matter could be resolved by the imposition of a Grampian condition as there is not a likely prospect that such a condition could be readily satisfied.
11. Therefore, whilst the principle of residential use is likely to be acceptable, the layout of the flats and location of windows and a ventilation system are intrinsically linked and may dictate the final layout. As such, a noise and ventilation strategy are essential prior to the imposition of any mitigating conditions. In summary, the proposal would create poor living conditions for future occupiers in regard to noise, air quality, outlook, sunlight and daylight.
12. Accordingly, the proposal would be contrary to policies BE3 and NE5 of the Warwick District Local Plan 2011-2029 (LP)(2017), which seek to resist development that would not provide acceptable standards of amenity for future occupiers and to protect the district's natural resources.

Car parking provision

13. The National Planning Policy Framework (The Framework) requires parking standards to take into account the accessibility of development, the availability of public transport and the type of development. The proposal does not include parking provision. Policy TR3 of the LP, requires development to make provision for parking taking into account the location and accessibility of the site. The policy also seeks to prevent development that would result in on-street parking to the detriment of highway safety. The Council's car parking guidance⁴ requires that two parking spaces be provided for each flat. The guidance also explains that reduced parking could be acceptable if it is proven through a parking survey, that the parking requirement is not reasonably possible. The appropriate methodology, set out in Appendix A, enables any off-street or public car parks within 200m of the site to be taken into account.
14. The appellant's parking survey, for a nearby proposal, identifies that the public car park to the rear of the site has a general availability of spaces. However, the survey has not been provided in full. It also does not include survey results of evening and night-time parking levels on local roads. Clemens Street is subject to parking restrictions limiting daytime parking (excluding Sundays) to 30 minutes. The public car park to the rear includes charges for its use, day and night. During my visit I observed that around half of the spaces were occupied in the daytime. Consequently, there appears to be a lack of local unrestricted or free parking. The Council has identified local parking stress. Having observed the extent of local permit controlled resident parking areas

⁴ Warwick District Council Parking Standards- Supplementary Planning Document 2018

and parking levels generally, I conclude that on-street parking concerns are warranted.

15. The site is a short walk from the railway station and the high street is served by bus services. However, the proposal would be likely to create parking demand that could not readily be accommodated locally. It is not shown where an occupier would park locally without incurring parking charges.
16. Furthermore, although the existing use would attract a parking requirement similar in number to the proposal, this demand would be likely to be for daytime use only. Consequently, without the submission of a parking survey it cannot be concluded that the parking needs of the proposal could be accommodated locally without detriment to highway safety. This would both illustrate the availability of on-street parking. This would also create the context to consider a reduced parking requirement, advocated by the Framework, for sites in more accessible locations.
17. Accordingly, the proposal would not accord with Policy TR3 of the LP, which seeks development to not result in on-street car parking that is detrimental to highway safety.

Other matters

18. The site is within the Royal Leamington Spa Conservation Area (CA). The statutory requirements⁵ entail that special attention is paid to the desirability of preserving or enhancing the character and appearance of a conservation area. The proposed replacement roof lantern would be of a similar style as the existing feature. Details for this could be secured by condition if I was minded to allow the appeal. Consequently, the extent of external change would be limited and as such this would have a neutral impact on the CA.
19. An appeal decision at 170 Emscote Road⁶ found rooflights to be acceptable to service a living room. However, the outlook described would not have severely restricted views. Although I do not have the full details of that case, it consequently describes a different context to that of the proposal before me. Furthermore, an appeal decision for William Street⁷ concluded that the previous commercial use generated a greater need for on-street parking than the proposed use. The Inspector also found an availability of on-street parking with no parking restrictions outside the appeal site. Each case must be judged on its own merits, however having observed a lack of local unregulated parking, I am not convinced that these are comparable cases.

Conclusion

20. The benefits of reusing the first and second floors, with a use that appears to be acceptable in principle, do not outweigh the harm identified to future occupier's living conditions or to highway safety. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR

⁵ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁶ Appeal Decision Reference: APP/T3725/W/19/3221800

⁷ Appeal Decision Reference: APP/T3725/W/18/3193793