
Appeal Decision

Site visit made on 13 July 2020

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Appeal Ref: APP/T3725/D/20/3251489

107 Leicester Street, Leamington Spa CV32 4TB

- 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 A White against the decision of Warwick District Council.
 - The application Ref W/20/0277, dated 18 February 2020, was refused by notice dated 22 April 2020.
 - The development proposed is a side extension.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupiers of the flats at Leicester Court with regard to outlook and levels of natural light.

Reasons

3. No 107 is a semi-detached house on a relatively wide plot parallel to Leicester Street. On its western side is Leicester Court which is a development of flats that is orientated at right angles to the road. As a result, the rear elevation of some of the flats located towards the street face the side elevation of the house at No 107. Owing to the slope of the street the rear elevation of the flats is the equivalent of approximately one storey lower in height than the house on the appeal site.
4. The proposed development consists of a part two storey, part one storey side extension. It is clear from the Council's report that its objection relates to the proximity to the flats of the single storey element of the scheme and that it has no objection to the two storey element. Accordingly, I have determined the appeal on this basis.
5. At present the house is set back from the side boundary with Leicester Court by several metres with only a low flat roofed garage centrally positioned in the intervening space. The proposed development would result in the single storey element of the side extension extending to 1m from the side boundary. Owing to the slope of the site the single storey element of the side extension would be significantly taller than the existing garage in order to be level with the house.
6. In views from the nearest bedroom windows within the rear elevation of the flats at Leicester Court the elevated height of the appeal site would mean that

the single storey extension would have the same effect on living conditions as if it was two storeys tall.

7. Given the limited distance separating the two, the height and width of the side extension would be overbearing in views from the habitable rear facing rooms within two of the nearest flats and unduly enclose the outlook. With a separation distance of 11.14m between the facing elevations this would be contrary to the 12m separation standard that the Council's supplementary planning guidance (SPG) '*Distance Separation*' applies when a two storey gable end faces the main elevation of a residential property. Given the difference in ground levels described I consider that 12m is the appropriate standard to apply in this case. As the SPG was formally adopted following public consultation I attach significant weight to it.
8. I recognise that the separation distance of 11.14m is less than a metre shorter than SPG compliant 12m separation distance for this part of the development achieved in the extant planning permission (ref W/19/2046). However, a point is reached when the proximity of a development is just too close to be acceptable in terms of its effect on residential amenity. Having viewed the plans, the appellant's 3D digital models and the site from in front of the affected flats, in this case, 11.14m is beyond the point at which the development would be acceptable.
9. Under permitted development rights a garage could be erected against the boundary closer to the flats than the single storey element of the appeal proposal. However, as it would be limited in height to 2.5m, and it is evident from the submitted plans that the proposed single storey side extension would be noticeably taller than this, it would have less of an adverse impact on the living conditions than the appeal proposal. Even if this was not the case, for such a development to constitute a valid fallback position there must be a greater than theoretical prospect that it would go ahead if planning permission was refused. Given that a garage does not form part of the appeal scheme, and would not provide the living accommodation which the appellant evidently seeks, I find that it is highly unlikely that a garage would be built if the appeal was to fail.
10. In an extant scheme for a rear extension that falls under permitted development rights (ref W/19/1140), the nearest point of the rear extension to the rear elevation of the flats is 11.28m away. However, as the rear extension is at an angle to the rear of the flats and it is shorter in length its impact would be noticeably less pronounced than the appeal proposal.
11. A lapsed planning permission from 2002 gave consent for a two storey side extension closer to the side boundary than the two storey element of the current scheme. The same SPG applied to extensions then as applies now. Applying the SPG in the same manner as has been applied to this scheme to take account of the difference in site levels should have meant that a separation distance of 16m should have been sought. The approved scheme though fell short as it achieved a separation distance of less than 13m. However, in the absence of further details it is not possible to determine if there were other material considerations that were taken into account that justified departing from the Council's distance standards. In any event, that decision was taken nearly twenty years ago in the context of a different development plan and different national planning policy that applied at that

time. I therefore find that this lapsed planning permission is not a consideration of material weight in favour of the proposal.

12. The appellant has referred me to several other extensions in the wider area where the separation distance is less than that contained within the SPG. These developments are different in design and in location and I do not consider that their existence justifies the appeal scheme. Each appeal must be considered on its merits. The fact that permission was granted for these schemes is therefore a consideration of little weight in favour of the proposal.
13. The extra width achieved by the appeal scheme over the extant permission would allow a downstairs shower to be included to serve the adjacent room. It would also create a larger storage room that could be used to accommodate family bikes and a larger utility room. The provision of the shower would also enhance the standard of facilities if the neighbouring room was used as temporary living accommodation for elderly parents, visitors or other family members. As these though would be private benefits, I am mindful of the advice contained in Planning Practice Guidance¹ that in general planning is concerned with land use in the public interest. For this reason, I find that these factors are not considerations of material weight in favour of the proposal.
14. The proximity of the side extension would not be so close as to harmfully reduce levels of daylight or sunlight and the scheme would otherwise comply with the Council's Residential Design Guide. However, the absence of harm in these regards are matters of neutral rather than positive weight in favour of the scheme.
15. Although neighbours at Leicester Court have not complained, the functions of the planning system include securing good living conditions for existing and future occupants of buildings and in this regard the proposal falls short.
16. The National Planning Policy Framework ('the Framework') supports well designed development that complements its surroundings. In visual terms the proposed extension would succeed in this regard. However, good design consists of more than being aesthetically pleasing. The Framework makes clear in paragraph 117 that new development should ensure healthy living conditions, which is something the proposal would fail to do in relation to two of the flats at Leicester Court.
17. For the reasons given above, I conclude that the effect of the proposed development on the outlook from two of the flats at Leicester Court that directly face the side extension would result in unacceptable harm to living conditions within these units. This would be contrary to policy BE3 of the Warwick District Local Plan which seeks to prevent such harm, as well as the Framework. The factors cited in support of the appeal do not outweigh the conflict with the development plan and the harm that would occur. The appeal should therefore be dismissed.

Ian Radcliffe

Inspector

¹ Paragraph 008 Reference ID: 21b-008-20140306 – 'What is a material planning consideration?'