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## Appeal Decision

Site visit made on 16 September 2020

**by E Griffin LLB Hons**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 September 2020**

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### **Appeal A Ref: APP/T3725/C/20/3252367**

#### **115 Brunswick Street, Leamington Spa CV31 2EF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by L Vraitch against an enforcement notice issued by Warwick District Council.
  - The enforcement notice was issued on 24 April 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission, the change of use from a dwellinghouse (C3) to a House in Multiple Occupation (Class 4)
  - The requirements of the notice are
    - (i) Permanently cease the use of the Land as House in Multiple Occupation (Class C4) and for any other multiple occupation
    - (ii) Reinststate the Land to its former use as a single dwelling house (Class C3)
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act
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### **Appeal B Ref: APP/T3725/W/20/3247874**

#### **115 Brunswick Street, Leamington Spa CV31 2EF**

- 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 L Vraitch against the decision of Warwick District Council.
  - The application Ref W/19/1981 dated 4 November 2019 and amended on the 5 December 2019 was refused by notice dated 30 January 2020.
  - The development proposed is change of use from a house to C4 HMO (HMO licence already given)
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### **Decision**

1. It is directed that the enforcement notice be corrected by deleting the requirements in full and replacing them with "Cease the use of the Land as a House in Multiple Occupation(Class 4)."
2. Subject to this correction, Appeal A and Appeal B are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Procedural Matters**

3. As drafted, the notice contains some superfluous wording. The alleged breach is "Without planning permission, the change of use from a dwellinghouse (C3) to a House in Multiple Occupation(Class 4). The requirements of the notice need to flow from the alleged breach. The first requirement states "Permanently cease the use of the Land as House in Multiple Occupation (Class C4) and for any other multiple occupation."
4. The inclusion of the word "permanently" is not necessary when the notice runs with the land. Further, the requirement also refers to any other multiple occupation ceasing. However, any form of multiple occupation other than HMO (Class 4) would not relate to the alleged breach which refers specifically to HMO (Class C4) use. The second requirement of the notice is "Reinstate the Land to its former use as a single dwelling house (Class C3)." However, the notice already requires the HMO use to cease and to require a former use to resume would be beyond what is required to remedy the breach.
5. I shall delete the existing requirements and replace them with "Cease the use of the Land as a House in Multiple Occupation (Class C4)" which flows from the alleged breach. I do not consider injustice would be caused to any party by amending the notice in this manner.
6. There is an Article 4 Direction in force for the area which means that express planning permission is required for a change of use from dwellinghouse (C3) use to HMO (C4).

### **Background Matter**

7. Two appeals are before me for determination; Appeal A is made against the Council's decision to issue an enforcement notice and Appeal B is made against its decision to refuse to grant planning permission. Appeal A is made on ground (a) alone and a ground (a) appeal is made on the basis that planning permission should be granted for what is alleged in the notice. Thus, the issues in relation to both appeals are identical as both seek planning permission for the use of the property as a small House in Multiple Occupation (HMO) falling within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). Consequently, I have determined both appeals within this single decision letter and my reasoning applies equally to both. The reason for refusal and the stated reasons for issuing the enforcement notice are essentially the same.

### **Main Issue**

8. The main issues for determination of the appeals are (i) whether the development represents an over-concentration of HMOs within the local area to a degree that has had, or is likely to have, harmful effects on the living conditions of neighbouring residents and (ii) whether the development causes harm to the living conditions of occupiers with regard to outlook.

### **Reasons**

#### *Living conditions of neighbouring residents*

9. Policy H6 of the Warwick District Local Plan 2011-2029 (the Local Plan) seeks to manage the number of HMOs and avoid the potential noise, disturbance

and anti-social behaviour often associated with an over concentration of HMOs. The purpose of this policy is to control the location of new HMOs in order to prevent these uses from either exacerbating existing concentrations or leading to new concentrations. The harm attributed to HMOs is identified within the justification for the policy. To support the assessment of proposals, the policy outlines a number of criteria against which proposals are to be assessed.

10. Policy H6 of the Local Plan states that planning permission will only be granted for HMOs where:
  - (a) the proportion of dwelling units in multiple occupation (including the proposal) within a 100 metre radius of the application site does not exceed 10% of total dwelling units;
  - (b) the application site is within 400 metres walking distance of a bus stop;
  - (c) the proposal does not result in a non-HMO dwelling being sandwiched between 2 HMOs;
  - (d) the proposal does not lead to a continuous frontage of 3 or more HMOs; and
  - (e) adequate provision is made for the storage of refuse containers whereby - the containers are not visible from an area accessible by the general public, and the containers can be moved to the collection point along an external route
11. The parties do not dispute that the appeal property meets criteria b) and e) of the Policy. With regard to criteria a) the Council indicates that within a 100 metre radius there are 23 other HMOs out of 120 residential units within this radius, with the current concentration of 19% being in excess of the policy figure of 10%.
12. Policy H6 of the Local Plan allows for exceptions to criteria a) if the site is located on a main thoroughfare in a mixed use area where the proposal would not lead to an increase in activity along nearby residential streets. The appellant seeks to rely upon this exception. However, the explanatory text for Policy H6 at paragraph 4.65 states that mixed use areas are defined as those with a pre-dominance of non-residential uses and refers to the exception allowing HMOs in locations where residential areas would not be affected. However, there is no evidence before me to indicate non- residential uses in the area as Brunswick Street is predominantly residential with either single family dwellings or HMOs. The development is not therefore an exception to the need to comply with criteria (a) of Policy H6 of the Local Plan.
13. If planning permission is refused for the change of use, then a breach of Policy H6 (c) of the Local Plan occurs as the appeal dwelling would be a non-HMO dwelling sandwiched between 2 HMOs. However, the grant of HMO use would be in breach of Policy H6 (d) of the Local Plan as it would lead to a continuous frontage of three or more HMOs. As well as the properties either side of the appeal property being in HMO use, No 111 is also on the list of HMOs provided by the Council so that granting the change of use would result in a continuous frontage of 4 properties in HMO use.
14. The problems associated with having over concentrations of HMOs in one area such as noise, disturbance and anti-social behaviour have been documented

by the Council and led to the issue of the Article 4 Direction. The aim of Policy H6 is to protect the living conditions of local residents from the cumulative effects of an overconcentration of HMOs in an area. For those reasons, and having regard to the policy as a whole, I do find that the development is in conflict with the Policy H6 of the Local Plan.

#### *Living conditions of occupiers*

15. The ground floor of the appeal property has 2 bedrooms and a sitting room, a shared kitchen and a shower room off the hall. There are 3 bedrooms and a shared bathroom on the first floor. There is an outdoor amenity area to the rear. The layout submitted for the planning application corresponds with my observations at my site visit. I was able to access all rooms as the appeal property is currently empty apart from some furniture such as beds.
16. The front downstairs bedroom has natural light from the bay window to the front of the house and similarly there are patio doors providing light to the rear bedroom. The sitting room is sandwiched between the two downstairs bedrooms. There is one modest rectangular high level non-opening window between the sitting room and the rear bedroom with a similar shaped but longer non-opening high level window divided into two between the living room and the front bedroom. The Council considers that the sitting room therefore has borrowed light. I share the Council's view that the lack of natural light and outlook does harm the living conditions of occupiers particularly when the sitting room is the only shared communal space for the occupiers apart from the kitchen.
17. The appellant considers that living conditions are a matter for the Council's Private Sector Housing Department as they deal with the issue of HMO licences. It is not disputed that the appeal property has the benefit of a HMO licence since 2018 and the appellant indicates that the appeal property has been in HMO use since 2014. However, compliance with the planning and licensing regime are separate requirements and the existence of a current HMO licence does not remove the need to comply with the policy requirements of Policy BE3 of the Local Plan.
18. The development does therefore conflict with Policy BE3 of the Local Plan which amongst other things, states that development will not be permitted unless it provides acceptable standards of amenity for occupiers.

#### **Other Matters**

19. The appellant refers to the HMO use being in existence since 2014 as a reason to approve the development. However, the development still has to be assessed against the existing policies and the current concentration of HMOs in the area.

#### **Conclusion**

20. For the reasons given, I conclude that Appeals A and B should not succeed. I shall therefore uphold the enforcement notice as corrected.

*E Griffin*

INSPECTOR