



Appeal Decision

Site visit made on 27 October 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal Ref: APP/T3725/W/20/3252655

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 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 Mr David Dickinson of Sureway Property Services Group against the decision of Warwick District Council.
 - The application Ref W/19/2006, dated 26 November 2019, was refused by notice dated 5 March 2020.
 - The application sought planning permission for a 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 without complying with a condition attached to planning permission Ref W/15/2154, dated 30 December 2016.
 - The condition in dispute is No.15 which states that: "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."
 - The reason given for the condition is: "A condition (15) restricts the development to use as a students' residence to reflect the on-site parking provision made."
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matter

3. My attention has been drawn to the emerging Leamington Spa Neighbourhood Plan which has been through an independent Examination. The Plan has yet to go to a referendum having been delayed owing to the Covid-19 Pandemic. That said, it is common ground that the proposal would not conflict with the emerging plan and I have no reason to disagree with that view. Nevertheless, I have taken the Plan into account in my decision.

Main Issue

4. The main issue is whether or not condition 15 is necessary and reasonable, having particular regard to the living conditions of the occupiers of the residential properties in the area with particular regard to parking stress.

Reasons

5. The appeal site is located on Moss Street which is a short road off Althorpe Road between Radford Road and the railway line. Althorpe Road, and roads off it to the south of the railway, consist of a mixed-use industrial estate. To the north of the railway line there is a residential emphasis albeit with some commercial uses.
6. From the evidence before me the original development was granted on appeal in December 2016¹. The disputed condition was imposed as the level of car parking provided for the development was below that required to accord with the relevant development plan policies. My attention has also been drawn to an application to remove the disputed condition which has been dismissed at appeal².
7. The current appeal proposal still seeks to remove condition 15 albeit with the submitted plans indicate an extra three parking spaces would be provided on the site, one in the internal courtyard and two between the building and the railway line in a tandem fashion.
8. When compared to the requirements of the Council's Parking Standards Supplementary Planning Document (PSSPD) there is currently a shortfall of 15 spaces for the overall site (taking into account both phases of the development). The Council has set out that the size of the additional parking spaces would not meet the design standard from the PSSPD. Whilst this may well be the case, the spaces appear to be the same size as those already on site. To that end, I consider that this is not a significant factor in my decision.
9. With that in mind, the current proposal would reduce the extent of the parking deficit. However, two of these spaces would not be readily accessible owing to their tandem nature which, particularly for this type of development, is not an appropriate parking arrangement. Even if that was not the case, there would still be a shortfall of 12 parking spaces.
10. From what I understand, one of the key factors why the original development was allowed on appeal was that car ownership amongst students was likely to be lower and that the relative accessibility to services and facilities would mean that there would not be an unacceptable adverse impact on the amenity of local residents as a result of parking stress. In my view, the same principles which applied then equally apply today.
11. There have been various parking surveys which include those submitted with the original development proposal in 2015 through to those dated November 2019. However, the early ones of these are now somewhat dated and as the Council have noted some of the later survey work was undertaken outside of university term time when parking demand would not be at the same level as term time. That said, I acknowledge that the latest parking survey was undertaken at an appropriate time of year.
12. However, this survey concentrated on Farley Street and Leam Terrace which are not especially close to the appeal site or where residents of the appeal development would be likely to seek to park. This is particularly relevant given the unrestricted parking areas closer to the site. To my mind, this limits the

¹ References W/15/2154 & APP/T3725/W/16/3155217

² References W/18/2212 & APP/T3725/W/19/3224012

- usefulness of the latest survey in determining the availability of parking spaces in the area where occupiers of the development would be likely to seek to park.
13. At my site visit I observed very high demand for parking spaces in the immediate vicinity of the site and on nearby streets where very few available spaces existed. Whilst my visit was only a snapshot in time, the evidence before me indicates that this situation is typical of the parking characteristics in the area.
 14. The Appellant has indicated that the tenancy agreements would be able to control that the occupants do not have a vehicle. Whilst this may well assist in controlling the number of vehicles on site, it would be almost impossible to determine whether the occupants have brought cars into the wider area. As such, I find that this would not be a suitable mechanism to control the number of vehicles which would be generated by the development.
 15. Reference is also made to the availability of parking spaces overnight in two car parks in the area. Whilst the evidence indicates that there is capacity overnight in the car parks, it is unclear what availability there is during the daytime. Furthermore, there is no guarantee that these spaces would be available at all times to the occupiers of the development, or that a suitable mechanism is in place to ensure that is the case in the context of any planning permission.
 16. Taking all of the above into account, I consider that condition 15 still performs a useful planning purpose in that it helps to minimise the amount of traffic generated by the proposal to reflect the limited parking available on site and in the surrounding area. The removal of the condition would be likely to result in increased parking stress to the detriment of the living conditions of the occupiers of other residential properties in the area.
 17. Both main parties have referred to a Unilateral Undertaking which, if I understand it correctly, would restrict the occupiers of the development from applying for parking permits in the area. Whilst it was suggested that such an undertaking would be provided as part of the appeal process, no such agreement was submitted. Notwithstanding that, even if such an agreement had been submitted it would not have the effect of reducing the overall parking demand as a result of the proposal or provide additional parking capacity in the area where it would be needed. Indeed, such a restriction may result in further parking stress on nearby streets which are not controlled by residents parking permits.
 18. Whilst I understand the desire to allow for the occupation of the HMO by persons other than students, such as employees of Jaguar Land Rover, this should not be at the expense of the occupiers of nearby residential properties through increased parking stress. I have also had regard to the comment that the area is saturated with students and that the appeal proposal could result in a reduction of the number of students in the area. Whilst this may well be the case, it does not justify the proposal before me.
 19. Concern has also been raised over the extent of non-student occupation even though the application details indicate that 50% of it would be occupied by others. With that in mind, if I were minded to allow the appeal, it would be possible to impose a condition which restricted the level of non-student occupation. This could be on the basis that no more than 50% of the HMO is

occupied by non-students as per the application submission. Whilst this would help to minimise the additional parking demand, on the basis of the evidence before me, this would not overcome the harm I have found.

20. In addition to all of the above, I have considered the potential benefits in allowing the electric charging points to be used by vehicles not associated with the HMO. Whilst the ability for others to utilise this facility would be beneficial, it would no doubt exacerbate the parking issues I have already identified. Therefore, the wider benefits of allowing such general use of the electric charging points are more than outweighed by the additional displaced parking.
21. Finally, the current Covid-19 pandemic has no doubt had implications for the occupation of the HMO units. However, I consider that a temporary permission would still result in an unacceptable level of harm to the extent that it would not be appropriate to allow the occupation of the HMO by non-students even on a temporary basis.
22. For the above reasons, and in the absence of sufficient evidence to conclude that there is sufficient parking capacity within the surrounding area, the proposal would result in increased levels of parking stress to the detriment of the occupiers of other residential properties in the area. It would also be in conflict with Policy BE3 of the Warwick District Local Plan 2011-2029 (2017) which amongst other matters seeks to ensure that proposals do not have an unacceptable impact on the amenity of residents and nearby uses.

Conclusion

23. Taking all matters into consideration, including the letters in support of the proposal, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR