



Appeal Decisions

Site visit made on 7 December 2020

by Nigel Harrison BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2020

Appeal A: Ref: APP/T3725/W/20/3259362
28 Kenilworth Road, Leamington Spa, CV32 6JE

- 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 Shalbinder Malle against the decision of Warwick District Council.
 - The application Ref: W/20/0716, dated 13 May 2020, was refused by notice dated 21 July 2020.
 - The development proposed is: Two-storey extension to existing HMO creating 2 No two-bedroom apartments at the rear of the property.
-

Appeal B: Ref: APP/T3725/Y/20/3259364
28 Kenilworth Road, Leamington Spa, CV32 6JE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Shalbinder Malle against the decision of Warwick District Council.
 - The application Ref: W/20/0717/LB, dated 13 May 2020, was refused by notice dated 21 July 2020.
 - The works proposed are: Two-storey extension to existing HMO creating 2 No two-bedroom apartments at the rear of the property.
-

Decision: Appeal A

1. The appeal is dismissed.

Decision: Appeal B

2. The appeal is dismissed, and listed building consent is refused for a two-storey extension to existing HMO creating 2 No two-bedroom apartments at the rear of the property.

Procedural Matter

3. The plans were amended during the course of the application in an attempt to address officers' concerns. However, the appellant subsequently confirmed that he wished the original scheme to be considered. These show a full height extension (corresponding to the ridge height of the existing rear wing), with a projection of 8.5m beyond the exiting rear elevation. I have considered the appeal on the basis of those plans.

Main Issues

4. The main issues for Appeal A are:

- i) The effect of the proposed development on the special architectural and historic interest of the Grade II listed building, and on the character and appearance of the Leamington Spa Conservation Area.
 - ii) The effect of the proposed development on the amenity value and life expectancy of the adjacent Wellingtonia tree.
 - iii) Whether the proposed development would provide acceptable living conditions for the existing occupiers of the building with regard to light and outlook.
- 5. The main issue for Appeal B is:
 - i) Whether the proposal would preserve the special architectural and historic significance of the Grade II listed building.

Reasons

The listed building and conservation area issue (Appeals A and B)

- 6. The appeals relate to a handsome Grade II listed stuccoed early 19th century villa, now used as an HMO. From the details available to me, which include the listing description, I consider the significance of the building is largely derived from its age, architectural features, and importance as a component element of this largely homogenous group of detached villas on both sides of this section of Kenilworth Road laid out in 1834-1838.
- 7. The building is located within the Leamington Spa Conservation Area (CA), the significance of which derives from the impressive Regency period and later planned development of terraces and villas, of which those along Kenilworth Road form an important component. Many (including No 28) have since been converted into other uses such as flats, care homes, and HMOs, but this does not detract from their significance.
- 8. At the statutory level the *Planning (Listed Buildings and Conservation Areas) Act 1990* (the Act) requires special regard to be given to the desirability of preserving a listed building and any features of architectural or historic interest it possesses, and for special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 9. Policy BE1 of the *Warwick District Local Plan 2011-2029* (LP) reflects the statutory duty and requirements of the Framework. I have also been referred to the *Royal Leamington Spa Neighbourhood Plan 2019-2029* (NP). Although not formally made, this has been through the public examination process and attracts substantial weight. NP Policy RLS3 says the impact of proposals on heritage significance must be considered, and attention given to the height, scale and rooflines of a development.
- 10. The appeal building, in common with most of the nearby villas, has a long two-storey service wing to the rear. The proposed extension would almost double the depth of the existing rear wing, with an eaves and ridge height matching the existing. There would be no visual differentiation between what is the currently the 'service' wing and what would be the extension, with walls and roof planes 'run through' on the same plane and alignment. Further, the historic end gable would be completely obscured. As such, there would be no degree of subservience at all to the main building, contrary to the advice in the *Residential Design Guide Supplementary Planning Guidance* (SPG) which says extensions should not compete with or dominate existing buildings.

11. Overall, I consider the extension would be disproportionate in terms of its scale, bulk, and massing, and would dilute and confuse the building's historic origins.
12. I also have concerns regarding the somewhat diagrammatic nature of the submitted plans, which lack the full details that would be expected in any scheme affecting a listed building. Although not detailed in any way, most of the proposed new window openings would have a horizontal emphasis, completely at odds with the vertical proportions of those in the existing main building and service wing. Nor do I have any details of whether or not the existing rear gable windows would be removed and bricked over, retained as internal features, or even if the outer wall would be demolished and rebuilt to facilitate the extension. This lack of information concerning the effect of the proposal on historic fabric is a serious shortcoming of the scheme.
13. I appreciate that many of the villas on Kenilworth Road have been extended beyond the original extent of their service wings to various degrees. Whilst some of these examples may be historic (pre-dating the Council's 1974 database of records), it is clear that some have been permitted in recent years. However, the site-specific and other circumstances will vary in each case, and I have not been provided with evidence of these developments by either party. Therefore, I cannot draw any meaningful comparisons with the appeal scheme, or infer that any kind of precedent has been set. In any event, each application and appeal falls to be considered on its own merits.
14. Paragraph 193 of the *National Planning Policy Framework* (the Framework) makes it clear that when considering the impact of a proposal on the significance of a designated heritage asset (which includes conservation areas), great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. As heritage assets are irreplaceable, any harm should require clear and convincing justification.
15. For the reasons given above, I consider the proposal would result in harm being caused to the significance of this Grade II listed building. However, I am satisfied in this case that the degree of harm caused would be less than substantial. Paragraph 196 of the Framework says where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing the asset's optimum use.
16. I recognise that the provision of two small residential units may be beneficial in housing supply terms, although no public benefits have been advanced by the appellant. Nor has it been shown that the continued use of No 28 is in any way dependant on the proposal, and in any event an alternative more sympathetic and modest solution may be possible. With that in mind, I conclude that any benefits do not come close to outweighing the harm that would be caused to the significance of the listed building. For the reasons above it would also fail to preserve the character and appearance of the Conservation Area. There is conflict with LP Policy BE1, emerging NP Policy RLS3, and the Framework.

Wellingtonia Tree (Appeal A)

17. The proposed extension would be located in close proximity to a large and mature Wellingtonia tree within the rear garden of No 30, close to the common boundary. This tree, by reason of its fine form and maturity has considerable

amenity value and makes a positive contribution to the setting of the listed building and the character and appearance of the CA.

18. It is not disputed that the extension would be likely to encroach on the roof protection area of the tree, as is confirmed by the submitted an Arboricultural Impact Assessment¹. This states that the impact of conventional strip foundations would be likely to damage the tree and recommends that a 'pile and beam' foundation methodology is used to safeguard the tree's roots and ensure that any damage is minimised.
19. However, the Assessment contains no suggestion that any investigations have been carried out such as the digging of trial pits, soil analysis, or the identification of any specific roots which may lie beneath the site of the proposed extension. If such roots were found I have concerns that the development could potentially threaten the tree's future health and longevity.
20. The Assessment says pressure for tree removal should not increase as a result of the proposed development. However, the tree would be very close to the extension, and some limbs would overhang the roof in some places. Indeed, the Assessment says the canopy will need to be reduced by 2m where it overhangs the site to provide clearance for the building, and may need to be crown-lifted in the future. Such measures would seriously compromise the tree's amenity value.
21. Furthermore, apart from the recommendation of pile foundations, no mitigation measures have been indicated to show how the tree would be protected during construction works and beyond. I therefore conclude on this issue that the proposal would potentially harm the future and life expectancy of the Wellingtonia tree. As such, it would conflict with the aims of LP Policy NE4.

Living Conditions (Appeal A)

22. Whilst the proposed apartments would provide future occupiers with acceptable living conditions, the extension would totally block two windows in the existing rear gable elevation. Consequently, two rooms within the HMO served by those windows would be totally deprived of outlook and natural light. The appellant says this deficiency could be rectified by forming new windows in the side elevation. Whilst this may be so, no such windows are shown on the submitted plans. In the absence of such information I conclude on this issue that the proposal would provide unacceptable living conditions for some of the existing occupiers. It would conflict with LP Policy BE3 which says development will not be permitted where there is an unacceptable impact on the amenity of nearby uses and residents, and with advice in the SPG which aims to prevent any unreasonable effects by reason of loss of daylight or sunlight.

Conclusion (both appeals)

23. To summarise, I consider the proposed development and works would cause less than substantial harm to the significance of this grade II listed building, and would not preserve its special architectural or historic interest.
24. In summary, I conclude that the proposal would cause harm to the significance of this Grade II listed building and would not preserve its special architectural or historic interest. For the same reasons it would fail to preserve the character

¹ Eden Arboriculture

and appearance of the Leamington Spa Conservation Area. It has not been shown that public benefits would outweigh this harm, and so the proposal would conflict with LP with LP Policy BE1, emerging NP Policy RLS3, and National planning policy in the Framework.

25. Furthermore, the proposed development would potentially harm the amenity value and life expectancy of the adjacent Wellingtonia tree, and would fail to provide acceptable living conditions for some existing occupiers.
26. Therefore, for the reasons given above, I conclude that both appeals should be dismissed.

Nigel Harrison

INSPECTOR