
Appeal Decisions

Hearing held on 24 November 2020

Site visit made on 26 November 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th December 2020

Appeal A: APP/T3725/C/19/3243858

89 Shrubland Street, Leamington Spa CV31 2AR

- 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 Ms Jagir Gill against an enforcement notice issued by Warwick District Council.
- The enforcement notice, numbered ACT/386/19, was issued on 29 November 2019.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use from a dwellinghouse (Class C3) to a 7-bedroom House in Multiple Occupation (Sui Generis).
- The requirements of the notice are (1) Permanently cease the use of the land as a 7-bedroom House in Multiple Occupation (Sui Generis) and for any other multiple occupation use; and (2) Reinstate the land to its former use as a single dwellinghouse (Class C3).
- The period for compliance with the requirements is 6 months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/T3725/W/19/3242712

89 Shrubland Street, Leamington Spa CV31 2AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Ms Jagir Gill against Warwick District Council.
- The application Ref W/19/1197, is dated 16 July 2019.
- The development proposed is use of building for House in Multiple Occupation.

Summary of decision: The appeal is dismissed.

Application for costs

1. An application for costs made by Ms Jagir Gill against Warwick District Council in respect of Appeal B is the subject of a separate Decision.

Preliminary matter

2. Appeal B seeks planning permission for development already carried out. The Council used an alternative description of "change of use from dwelling (Use

Class C3) to 7 bed House in Multiple Occupation (Use Class sui-generis) (retrospective)". I shall consider the appeal on the understanding that the development is "change of use from dwelling to 7-bedroom House in Multiple Occupation (HMO)", which is consistent with the breach of planning control alleged in the notice the subject of Appeal A.

Appeals A and B – the appeal on ground (a) and the s78 appeal

3. The main issues in these appeals are:

- The effect of the change of use on the housing mix in the area.
- The effect of the change of use on living conditions.

Reasons

Housing mix

4. The appeal site is located on the corner of Shrubland Street and Grove Place, within a sustainable and densely occupied residential part of Leamington Spa with good access to the town centre. It is within part of the town subject to a Direction¹ preventing the change of use of a dwellinghouse to an HMO within Use Class C4 under permitted development rights. The Direction does not apply to the 7-bedroom HMO in this case because a Class C4 HMO is defined by being occupied by not more than 6 residents. However, it reflects the significant incidence of HMOs within the town, largely due to the proximity of Warwick University.
5. Policy H6 of the Warwick District Plan 2011-2029 (the WDP) sets criteria for regulating HMOs, including student accommodation, in areas where their concentration may adversely affect community cohesion. This may be evident through conflicting lifestyles, a lower standard of upkeep of property, and a loss of a sense of belonging within the community. The building appears well maintained and evidence of a reduction in community cohesion attributable to its use as an HMO has not been presented. However, the policy is concerned with the cumulative effect of HMOs within a given area and it is unlikely that any HMO would have an appreciable effect on community cohesion alone.
6. Although the policy may serve to restrict the number of HMOs in places where they are already concentrated, the explanatory text indicates that it is not intended to curtail their growth in other locations. While the policy does not address the size, type and tenure of housing needed by different groups, including students, it has not been shown that other policies of the plan do not perform that role.
7. Under criterion a) of the policy, an HMO will only be approved if the proportion of dwelling units in HMO use, including the proposal, within a 100m radius of the site will not exceed 10%. The Council had indicated an intention to refuse planning permission because the development had increased the proportion of HMOs calculated in this way from 50 to 51 out of 182 dwelling units, or from 27% to 28%.
8. Where the 100m radius included only part of a dwelling unit, the line was adjusted to include that property entirely. This methodology was applied to all

¹ Under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015

- affected dwelling units, whether HMOs or not, and there is no evidence that it had a significant effect on the outcome of the calculation.
9. A major difference centres on whether HMOs without planning permission or a lawful development certificate (LDC) should be included in the calculation. The appellant's concern that she has been penalised for applying for planning permission was largely expressed in respect of this issue. However, the wording of the policy and its explanatory text do not suggest that such HMOs should be excluded. Furthermore, it was not explained why the absence of planning permission or an LDC should alter any property's contribution to the cumulative effect of a concentration of HMOs at a local or neighbourhood level.
 10. At the Hearing the Council advised that, following further research, it had excluded HMOs without planning permission or which it considers unlikely to be lawful. As a result, it had reduced the number of HMOs within the 100m radius, including the appeal site, to 36 units, or 19.8% of total dwelling units. I was told this change in approach had been made in response to a recent appeal decision and while I indicated that I was minded to accept that decision as late evidence, it was not presented. Accordingly, the justification for the change in approach is not fully explained. Nevertheless, at 19.8%, the adjusted proportion of HMOs is significantly above the 10% threshold of criterion a), beyond which further HMOs are normally resisted.
 11. An exception to criterion a) can be made for an HMO on a main thoroughfare in a mixed-use area. I saw that Shrubland Street is pedestrianised outside No 89. This, and traffic control measures in nearby streets, will have had some effect on vehicle movements, including a likely increase in numbers passing the site on Grove Place. However, apart from Brunswick Street, which leads towards the town centre and carries bus routes, the roads in the immediate vicinity of the appeal site are relatively quiet and do not have the appearance of main thoroughfares.
 12. While it is agreed that the appeal site is within a residential area, a number of nearby non-residential uses have been identified, which I saw on my visit. These include Shrubland Street Primary School, diagonally opposite the appeal site, and the Brunswick Hub, a community facility further west on Shrubland Street, across Brunswick Street. I also saw the Jet public house nearby on Brunswick Street, a convenience store on the corner of Brunswick Street and Shrubland Street and others further west on Shrubland Street, and on Eagle Street and Brunswick Street. However, these non-residential uses are secondary to, and clearly exist to support, housing in the local area, which has a predominantly residential character. Accordingly, it has not been demonstrated that the appeal site is on a main thoroughfare or within a mixed-use area to which the exception to criterion a) applies.
 13. Planning permission was granted on appeal in 2014² for the change of use of 12 Grove Place from a 5-bedroom flat to a 6-person HMO. In that case, the Council's calculation that 21% of all dwelling units within a 100m radius would be HMOs if the development went ahead was challenged. The appellant's alternative calculation of 10.4%, marginally above the policy threshold, was not refuted. The reasoning for this is not recorded but I was told it turned on

² APP/T3725/A/13/2209145, allowed 23 July 2014

whether a building partly within the 100m radius contained one or 17 HMOs and whether the whole building should be counted.

14. 12 Grove Place comprises the upper floors of accommodation facing Brunswick Street, where that road includes a parade of shops. The entire eastern side of Grove Place opposite No 12 is occupied by industrial premises. As noted earlier, Brunswick Street has the character of a main thoroughfare and the non-residential uses close by mean that No 12 is in an area that may reasonably be described as having a mix of uses. Furthermore, that appeal decision pre-dated the adoption of the WDP and while, as described, the Council's approach to HMOs at that time is similar to policy H6, it did not form part of an adopted development plan. Accordingly, I do not afford significant weight to the Grove Place decision in the determination of this appeal.
15. The foregoing evidence indicates that the change of use would result in the proportion of HMOs, including student housing, within a 100m radius of the appeal site exceeding 10% by a significant margin. Even when other HMOs that do not have planning permission or an LDC are discounted, the proportion would be significantly above the policy threshold. Furthermore, the exception to the threshold that may be made for HMOs on main thoroughfares in mixed use areas cannot apply to the appeal site. Accordingly, the change of use would add to a concentration of HMOs in the area that already exceeds the threshold. It would therefore undermine community cohesion, despite the building being well maintained, contrary to WDC policy H6 and Part 8 of the Framework.

Living conditions

16. WDC policy BE3 seeks to ensure that development does not have an unacceptable adverse impact on the amenity of nearby uses and residents and is cited in the reasons for issuing the enforcement notice. However, it is not cited in the reasons for refusing planning permission and it is agreed in the Statement of Common Ground that there is no conflict with this policy. Nevertheless, letters of objection to the planning application refer to noise disturbance, especially at night, and anti-social behaviour, although these concerns are expressed in general terms and without specific reference to the use of No 89.
17. The HMO licence requires that tenancy agreements and licences must include a clause about not causing nuisance or anti-social behaviour and provisions for ending tenancies or licences on grounds of anti-social behaviour. The licence sets an expectation that the management of the HMO will include taking all reasonable and practicable steps when dealing with complaints about anti-social behaviour, including legal action.
18. Objections to the planning application also suggest No 89 is not suitable for occupation by 7 people, although the Council's Private Sector Housing Team confirms it meets relevant standards and is therefore licensed as an HMO.
19. For these reasons, it has not been demonstrated that the use of No 89 as an HMO has, of itself, caused direct harm to the living standards of nearby residents or occupiers of the HMO and consequently there is no conflict with policy BE3.

Other matters

20. While the Highway Authority did not raise any concerns, several objections to the planning application refer to parking congestion and danger to highway users, although no incidents relating to No 89 are identified. I saw that very few houses in the vicinity have off-street parking and that pedestrianisation of some roads, including Shrubland Street outside No 89, has reduced on-street parking capacity. However, I also saw that parking spaces would be available on Shrubland Street outside the Primary School during evenings and at weekends, when the demand for residents' parking is likely to be highest.
21. While objections to the planning application mention problems with refuse and recycling, none that are specific to the appeal site are identified and the Council's Neighbourhood Services team did not object to the application. The bins were stored in the small front garden area on the day of my visit and not in the yard as shown on drawing 01. However, I saw other instances of storage at the front of properties in the area, so it is not uncharacteristic, and there is evidently adequate space for refuse storage at the site.
22. As noted, the property is well maintained, and the evidence indicates it has been responsibly managed by the appellant. No concerns regarding the living conditions of nearby residents have been identified as specific to No 89. I heard that some student occupiers had lived there for the duration of their studies and had therefore integrated into the community. While this may be so, a grant of planning permission would go with the land and future changes in ownership and occupation could alter these aspects. Consequently, I afford only limited weight to how the property has been run and the conduct of occupiers to date and these matters do not alter or outweigh my findings on the main issues.

Appeals A and B – Conclusions

23. For the reasons given above, I conclude that the appeals should not succeed. I shall therefore dismiss the appeals, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
24. Compliance with the first requirement of the enforcement notice, to cease the HMO use and any other multi occupation use, would resolve the breach of planning control alleged in the notice. However desirable it may be, the second requirement, to reinstate the land to its former use as a single dwellinghouse, seeks a further step to be taken and is therefore excessive. Varying the notice to delete the second requirement would allow the breach of planning control to be resolved without injustice to the appellant.
25. In the Hearing it was agreed between the parties that varying the period for compliance with the requirements of the notice to align with the end of the current academic year at the end of June 2021 would minimise disruption to the current occupiers. As this variation would not shorten the period for compliance, it can be made without injustice.

Appeal A – Formal Decision

26. It is directed that the notice be varied in section 5 by the deletion of 5 [ii].
27. It is further directed that the notice be varied in section 6 by the deletion of the words "6 months" and the substitution of the words "7 months".

28. Subject to the variations above the appeal is dismissed, 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.

Appeal B – Formal Decision

29. The appeal is dismissed.

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Pearce	Managing Director, Avon Planning Services
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FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Compton	Planning Officer, Warwick District Council
Sandip Sahota	Business Manager Development Management, Warwick District Council
Kalvan Birk	Planning Enforcement Officer, Warwick District Council