



Appeal Decision

Site visits made on 27 and 28 June 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/T3725/W/23/3314654

28 Clarendon Square, Leamington Spa CV32 5QX

- 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 C Innocent, Innocent Group Ltd against the decision of Warwick District Council.
 - The application Ref W22/0892, dated 24 May 2022, was refused by notice dated 10 November 2022.
 - The development proposed is demolition of existing outbuildings and erection of a two-storey coach house fronting onto Trinity Street.
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Decision

1. The appeal is allowed and planning permission is granted for proposed demolition of existing outbuildings and erection of a two-storey coach house fronting onto Trinity Street, at 28 Clarendon Square, Leamington Spa CV32 5QX in accordance with the terms of the application, Ref W22/0892, dated 24 May 2022, subject to the conditions in the Schedule to this decision below.

Preliminary Matters

2. I have used the description of the proposal as set out in the Council's Decision Notice, which is more concise than that used in the planning application form. The appellant has used this revised description in the appeal form. As such, I am satisfied that no parties have been prejudiced by my using this description.
3. I had planned to visit the appeal site and the neighbouring property, 163 Trinity Street (No 163), on 28 June. However, I was given notice that access would not be available on that day. Instead, I visited the site on 27 June and No 163 on 28 June. I am satisfied that no parties would be prejudiced as a result.

Main Issues

4. The main issues are the effect of the proposal on the living conditions of the occupiers of No 163, having regard to light, outlook and privacy; and whether the proposal would provide adequate living conditions for its future occupiers, having regard to outlook and privacy.

Reasons

Living Conditions of No 163

5. The site forms part of the long rear garden of 28 Clarendon Square (No 28), a four-storey Regency building that is divided into flats. It is one of a terrace of similar dwellings, is Grade II listed and lies within the Royal Leamington Spa

Conservation Area (CA). The proposal seeks to subdivide the garden and replace a now-demolished garage building with a two-storey mews dwelling. The proposed dwelling would face onto Trinity Street, which runs parallel to Clarendon Square.

6. No 163 is a dwelling that adjoins the appeal site and fronts onto Trinity Street. Its main living rooms are at first floor level with their light and outlook provided by side windows. These windows, and an outdoor side terrace area, face onto the appeal site. The terrace provides the main usable amenity space to No 163. The proposal would erect ground and first floor accommodation that would be adjacent to it.
7. At first floor level, two windows are proposed to serve Bedroom 1 and would face to the rear of the site. One of these would be obscure glazed, as would a window serving a stairwell. However, the second (westernmost) window to Bedroom 1 would be clear glazed and would need to remain so, to provide adequate outlook to its occupiers.
8. From this second window, it is possible that views would be obtainable into the very end part of the terrace of No 163 and vice versa. However, the window would be furthest from the terrace and perpendicular to it. As such, any views to or from it would only be at an oblique angle, with no direct facing views into the terrace or from it. Any line of sight from the window would also be considerably restricted by the chunky proposed chimney breast alongside it.
9. Furthermore, I saw that there are already views into the terrace from the rear upper floor windows of properties in Clarendon Square. There would be no views at first floor into the dwelling itself at No 163 from the proposal, nor at ground floor where its courtyard is screened by tall walls. For these reasons, the proposal would not result in an unacceptable loss of privacy to No 163.
10. The proposal would result in a blank wall being erected in front of a first-floor side window of No 163, serving its lounge. The proposal would breach the 45-degree line from that window which the Council's Residential Design Guide Supplementary Planning Document (SPD), May 2018, uses to ensure adequate amenity to neighbours. However, it makes clear that this does not apply to the sides of dwellings.
11. Furthermore, the other first floor windows to No 163 would retain a reasonably open aspect and so would provide sufficient light and outlook to occupiers of the property following development of the proposal. This is also true of other windows serving No 163. Any effect on an acquired right of light is a private matter, separate from the planning system.
12. For the above reasons, the proposal would not have an unduly harmful effect on the living conditions of the occupiers of No 163, having regard to light, outlook and privacy. It would therefore comply with the requirement of Policy BE3 of the Warwick District Local Plan 2011-2029 (WDLP), adopted September 2017, that development has an acceptable impact on the amenity of nearby residents.

Living Conditions of Future Occupiers

13. No 28 has rear windows, including at ground and first floor levels, serving kitchens and bedrooms that would face towards the proposal and its garden. To ensure privacy for occupiers, the SPD requires a separation distance of 32

metres between the windows of a two-storey dwelling and a three-storey building with upper floors comprising rooms such as those at the rear of No 28.

14. No 28 is taller than three storeys and the Council calculates that its back-to-back separation distance from the proposal would be well below the distance advised by the SPD. Given the position of No 28, there would be views from its upper floor windows down into the proposal, including its garden and the first-floor bedroom window, which would not be glazed with obscured glass.
15. However, the SPD makes clear that within a CA, whilst overlooking amongst other things will be taken into account, the provisions of its guidance will not be directly applied. It also advises that ground levels and other physical constraints are relevant. The proposed ground floor living room would be at a similar level to the basement of No 28, meaning that measures including the proposed garden wall and brise soleil would restrict the overlooking effects of No 28 to future occupiers of the proposal.
16. The separation distances would still be long, even if below the SPD's figure. Moreover, in densely built-up and historic areas such as the appeal site, a degree of mutual overlooking is expected and anticipated by future occupiers. In this context, separation distances similar to those proposed here are not uncommon. In light of the SPD's advice in respect of Conservation Areas, this provides further support for the proposed arrangement. I have already found that the degree of intervisibility between No 163 and occupiers of the proposal would not be unacceptable.
17. For the reasons given above, the proposal would not conflict with the SPD or result in an unduly harmful outlook or degree of overlooking for future occupiers of the proposal. It would therefore provide adequate living conditions for them, having regard to outlook and privacy. As such, it would comply with WDLP Policy BE3, and its requirement for acceptable standards of amenity for future occupiers.

Other Matters

18. The Council's Report also refers to adverse effects to 164 Trinity Street (No 164). However, this property is on the opposite side of the Street and away from the proposal. There is no other reference to No 164 including in the refusal reasons, and so it appears to be erroneous. In any case, I am satisfied that the proposal would not harm the living conditions of the occupiers of this property. Local residents have raised concerns about car parking, but the evidence before me is that there is sufficient capacity to absorb the additional demand generated by the proposal.
19. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving listed buildings or their settings, or any features of special architectural or historic interest. There is no dispute that the proposal would have no adverse effect on No 28 or any other listed building, or their settings. I share this view. Similarly, I agree with the main parties that the proposal would at least preserve the character or appearance of the CA.

Conditions

20. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the Planning Practice

Guidance. As well as the standard time limit for commencement, a condition requiring adherence to the approved plans is necessary for certainty.

21. To ensure that adequate drainage facilities are available, a Surface Water Drainage Scheme is required. A pre-commencement condition is necessary because drainage works are likely to take place at an early stage of construction. Details of measures to adapt to climate change are necessary to ensure a well-designed and sustainable building. A pre-commencement condition is required because such measures may affect construction.
22. It is also necessary to require details and samples of external materials, including windows to ensure that they are sympathetic to the character and appearance of the area and CA. In the interests of the privacy of the occupants of No 163, a condition is necessary requiring some of the first-floor rear windows to be obscure glazed.
23. For highway safety and the amenities of the occupiers of nearby properties, the free flow of traffic and the visual amenities of the locality, it is necessary that development takes place in accordance with the Council's Construction Guidelines, including hours of working. Details of bicycle parking facilities are required to encourage the use of sustainable modes of transport.
24. To mitigate against air quality impacts, details of a scheme to meet the Council's Air Quality Supplementary Planning Document are necessary. Details of water efficiency measures are also necessary to ensure a well-designed, sustainable building. To ensure the living conditions of nearby occupiers, details of waste and recycling storage and its use are necessary. To ensure adequate privacy and the character and appearance of the area, details of boundary treatments should be provided. To safeguard health, safety and the environment, it is necessary to impose a condition dealing with unexpected contamination.

Conclusion

25. For the reasons given above, I conclude that the appeal should be allowed.

O Marigold

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 21718-21-01; 1065-C01; 1065-C02 Rev B; 1065-C03 Rev E; 1065-C04 Rev B; 1065-C05 Rev A; 220805.1, 220805.2, 220805.3, 220805.4, 220805.5.
- 3) No development other than demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

- 4) No development other than demolition shall take place until a scheme for the development to be resilient and adapt to climate change has been submitted to and approved in writing by the Local Planning Authority. The dwelling shall be constructed in accordance with the approved scheme.
- 5) No development shall be carried out above slab level unless and until samples of the external facing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.
- 6) No development shall be carried out above slab level unless and until large scale details of windows (including a section showing the window reveal, heads and cil details) have been submitted to and approved by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.
- 7) The development hereby permitted shall not be occupied until the two easternmost windows in the rear elevation at first floor level have been fitted with obscured glazing, as shown on drawing 1065-C03 Rev E, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the windows are installed. The glazing shall be installed as approved and shall thereafter be retained.
- 8) The development hereby permitted shall be carried out in full accordance with Warwick District Council's Construction Guidelines, version 2.0 dated November 2019.
- 9) The development hereby permitted shall not be occupied until details of bicycle parking facilities for the dwelling (1 space per bedroom) have been submitted to and approved in writing by the Local Planning Authority. Thereafter those facilities shall be retained.
- 10) The development hereby permitted shall not be occupied until a scheme which satisfies the requirements set out in the Council's adopted Air Quality Planning Supplementary Planning Document (January 2019) has been submitted to and approved in writing by the Local Planning Authority and implemented in full accordance with the approved details. The approved scheme shall be retained and maintained as such at thereafter.
- 11) The development hereby permitted shall not be occupied until a scheme showing how a water efficiency standard of 110 litres per person per day based on an assumed occupancy rate of 2.4 people per household will be achieved has been submitted to and approved in writing by the Local Planning Authority. The dwelling shall not be first occupied until the works have been implemented in full accordance with the approved details. The approved scheme shall be retained and maintained as such thereafter.
- 12) The development hereby permitted shall not be occupied until details of refuse and recycling storage areas for the development have been submitted to and approved in writing by the Local Planning Authority and they have been provided as approved. Thereafter those areas shall be

kept free of obstruction and be available at all times. Refuse and recycling storage containers must be stored within the refuse and recycling storage area shown on the approved plans, unless when being presented on street for collection.

- 13) The dwelling hereby permitted shall not be occupied until details of the siting, height, design and materials of the treatment of all boundaries have been submitted to and approved in writing by the Local Planning Authority. The screening as approved shall be constructed prior to the first occupation of the development and shall be retained as such thereafter.
- 14) Any contamination that is found during the course of construction of the approved development shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and not resumed until a risk assessment has been carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.

End of Conditions