



Appeal Decision

Site visit made on 22 November 2023

by C Billings BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th January 2024

Appeal Ref: APP/T3725/W/23/3320938

Third floor flat, 28 Clarendon Square, Leamington Spa, Warwickshire 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 David Ramsey against the decision of Warwick District Council.
 - The application Ref W/22/0928, dated 30 May 2022, was refused by notice dated 10 November 2022.
 - The development proposed is change of use from a 3 bed flat (Use Class C3) to a 4 bed House in Multiple Occupation (HMO) (Use Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a 3 bed flat (Use Class C3) to a 4 bed House in Multiple Occupation (HMO) (Use Class C4) at third floor flat, 28 Clarendon Square, Leamington Spa, Warwickshire CV32 5QX in accordance with the terms of the application, Ref W/22/0928, dated 30 May 2022, subject to conditions set out in the schedule below.

Applications for costs

2. An application for costs has been made by Mr David Ramsey against Warwick District Council. This is subject to a separate decision.

Preliminary Matters

3. I have referred to the description of development set out in the appeal form rather than that stated on the application form. This more appropriately describes the proposed development having regard to the proposed plans and appellant's statement of case.
4. The address of the site above and as set out on the application form refers to the third floor flat. However, I note from the proposed plans and the appellant's statement of case that the proposed change of use relates to the second, third and fourth floors of 28 Clarendon Square.
5. During the consideration of the planning application, the proposal was amended from a 5-bedroom to a 4-bedroom HMO. Also, the appellants have explained in their statement of case that the property has already been converted into a 4-bed HMO.

Main Issue

6. The main issue is whether the proposed development would be an appropriate use in its location, having regard to Policy H6 of the Warwick District Local Plan, including the effect of the proposal on the living conditions of nearby residents.

Reasons

7. The proposal is for the change of use of the property only and no internal or external alterations are proposed to the building. The appeal building previously had been subdivided into apartments and is currently in use as part HMO (as proposed) and part apartments, but this has not altered the external character and appearance of the property, as the only evidence of its subdivision are door entrance buzzers at the main entrance to the building.
8. Policy H6 of the Warwick District Local Plan (WDLP) relates to houses in multiple occupation (HMOs) and student accommodation. It sets out that planning permission will only be granted for such uses where certain criteria are satisfied. The explanation text of Policy H6 notes that the purpose of the policy is to prevent unacceptable adverse impacts on amenity and to control the location of new HMOs and student accommodation, in order to prevent these uses from either exacerbating existing or creating new concentrations.
9. Having regard to the Council's committee report, it is noted that within 100 metres radius of the appeal property there is a current concentration of HMOs at 6.6%, which would rise to 7.1% with the addition of the proposed HMO. This is below the maximum 10% requirement of criterion a) of Policy H6 of the WDLP and so, this criterion is met. Criterion b) of Policy H6 is satisfied, as the property is within 400 metres walking distance of a bus stop located in Binswood Street. Also, criterion c) of Policy H6 is met, as the appeal proposal would not cause a non-HMO property to be sandwiched between two HMOs.
10. Criterion d) of Policy H6 requires that a proposal would not result in a continuous frontage of three or more HMOs. The evidence provided notes that 25-27 Clarendon Square inclusive have been converted to apartments and that each of these properties has an HMO within the ground floor apartments. The appeal proposal is however to convert the upper floor apartment to an HMO, which occupies the second, third and fourth floors of the property and therefore, the basement, ground and first floors of the appeal property would remain in non-HMO use.
11. I do not consider the definition of what constitutes a continuous frontage is clear or unambiguous within Policy H6. It is therefore for the decision-maker to decide and interpret the policy, having regard to the justification for it. Having regard to the purposes of the policy, the effects of the proposal, the proportion of the frontage it and the adjoining HMOs at Nos 25-27 occupy, together with their arrangement at different levels, I consider that they do not amount to a continuous frontage for the purposes of Policy H6, criterion d).
12. The explanatory text of Policy H6 explains that the purpose of the policy is to protect the standards of amenity experienced by residents in parts of the town where HMOs have concentrated. The policy explanation further sets out that such issues caused by HMOs include anti-social behaviour in the early hours,

noise, poor attendance to waste storage, increased burglaries, increased street parking and poor property maintenance.

13. In considering these matters, I note that the appeal property is located close to a main road which is on a bus route and, is within walking distance of the town centre and other local amenities in Binswood Street. There also appears to be a high concentration of apartments within the surrounding area, therefore the appeal property is not within a particularly quiet residential area. Whilst nearby residents have raised concerns regarding the intensification of existing problems related to noise, disturbance and anti-social behaviour, I do not have any substantive evidence to show that the addition of a further 4-bedroom HMO in this location, would cause significant harm to the living conditions of local residents, particularly as all of the criteria within Policy H6 would be met in this instance.
14. In regard to waste, at the time of my visit, it appeared that all properties within the terrace leave rubbish bags within the street for collection and do not have waste bins. Also, I have no evidence to suggest that the proposed 4-bed HMO would produce more waste or additional waste-related concerns than that of the previous 3-bed apartment.
15. Whilst parking is not a main concern raised in respect of this appeal, I acknowledge that there is shared on-street parking provision and that the proposal would not create additional parking provision. The proposed 4-bed HMO may place additional need for parking within the area, however this is unlikely to be significant compared to the previous 3-bed apartment, particularly as it is noted that the parking standard requirements for a 3-bed apartment and a 4-bed HMO is the same (2 spaces), as set out in the Council's committee report.
16. In addition, I do not have any substantive evidence to show that there is a high level of anti-social behaviour and a high level of burglaries in the immediate surrounding area, nor that the appeal property is poorly maintained.
17. Having regard to the above, I conclude that the proposed development would be an appropriate use in its location, which meets the criteria of Policy H6 of the WDLP and, there would be no likely harmful effects caused by the development to the living conditions of nearby residents.

Other Matters

18. Whilst not a main issue of concern in relation to the appeal, as the appeal property is a grade II listed building and set within the Royal Leamington Spa Conservation Area (RLSCA), it is necessary to have special regard to Section 66(1) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in reaching my decision.
19. The appeal property is part of an attractive terrace of a distinctive architectural type renowned in Royal Leamington Spa and retains its original attractive character and detailing. It sits within the wider Clarendon Square, which comprises a series of tall-terraced blocks fronting onto the Square, containing formal planted areas, pathways, and trees.
20. The RLSCA covers a large part of the central area of Royal Leamington Spa, which includes a mix of residential and commercial properties. The part of the RLSCA surrounding the appeal site is predominately residential and typified by

a strong cross-grid street network, tall-terraced blocks in wide streets, with pockets of green spaces.

21. As the proposal is to change the use of the upper floors of the property and no external or internal alterations are proposed to the building, the significance of the listed building would not be harmed. Additionally, as the appeal property has already been previously sub-divided into apartments, the change of use of one of its apartments into a HMO would not cause the significant intensification of the property, so as to harm the significance of the setting of the RLSCA. Therefore, the proposed development would preserve the setting of the listed building and the character and appearance of this part of the RLSCA.
22. The HMO standards referred to by local residents appear to relate to recommended standards of the Council provided within a guide to landlords, rather than within standards required by any planning policy. Notwithstanding this, I note that the amended proposal, which reduced the number of bedrooms from five to four and includes a communal living room for the HMO residents, appears to meet these standards referred to, based on the evidence provided.
23. There may be a number of other HMO and student accommodation nearby, including across the Square and a dominance of short-term accommodation within the local area, however, I am satisfied that there is evidence to show the criteria of Policy H6 of the WDLP would be met in this instance. Whilst permanent resident housing stock may be lost as a result of the proposed development, this would not weigh significantly against the proposal, in view of its compliance with Policy H6.
24. Concern raised by local residents about creating a potential fire hazard, due to increased rubbish and the age of the property is noted. However, I do not have any substantive evidence that this would likely occur and therefore this matter does not weigh against the proposal.
25. I also acknowledge the concerns raised by local residents that there would be insufficient cycle parking provision and that there was a unilateral undertaking agreement to prevent the previous apartment from having a parking permit. However, I have not been provided with any substantive evidence in regard to such matters and furthermore, these are not concerns raised by the Council. Accordingly, these matters do not weigh significantly against the proposal.
26. Local residents have referred to a previous planning decision at 55 Henley Road, which they consider is not consistent with the recommendation made by the Council's officers to approve the proposed development. Whilst I have not been provided with details of this other decision to allow me to compare such, I have however had regard to the individual merits of the appeal proposal in reaching my decision. I have found that the proposal meets the relevant criteria of Policy H6 of the WDLP and that, no other harm would be caused, nor are there any other material considerations which weigh against the proposal.

Conditions

27. In respect of the conditions suggested by the Council should I be minded to allow the appeal, I have had regard to the advice contained within the national Planning Practice Guidance and the National Planning Policy Framework.
28. It is necessary for the avoidance of doubt and in the interests of certainty to define the plans with which the scheme should accord.

29. To ensure suitable living conditions for the occupiers of the HMO, including the provision of a shared living space within the property and to ensure satisfactory provision of off-street parking is provided in association with the HMO, it is appropriate and necessary to restrict the number of bedrooms within the proposed HMO to no more than four.
30. As the development is retrospective and already occupied as an HMO, a standard implementation condition is not necessary.

Conclusion

31. For the reasons given above, I find that the proposed development does not conflict with the development plan and that there are no other material considerations which would indicate the appeal should be determined other than in accordance with it.
32. Accordingly, I conclude that the appeal should succeed and grant planning permission.

C Billings
INSPECTOR

Conditions schedule

1. The development hereby permitted shall be carried out in accordance with the details shown on the site location plan (Buy A Plan, Flat 4, 28 Clarendon Square, Leamington Square, Warwickshire, CV32 5QX) and the proposed floor plans, submitted to the Council on 30th September 2022.
2. The total number of bedrooms within the House of Multiple Occupation (HMO) hereby approved shall not exceed four.