



Appeal Decision

Site visit made on 3 April 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2024

Appeal Ref: APP/T3725/W/23/3331840

9 Leicester Street, Leamington Spa, Warwickshire CV32 4TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Gurdeep Matharu against the decision of Warwick District Council.
- The application Ref is W/23/0076.
- The development proposed is for the installation of a separate, self-contained apartment at basement level, the retention of the existing basement windows and the modification of the existing lightwells to an existing House in Multiple Occupation (HMO) (Use Class C4).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to the description of development as "Formation of an independent, self-contained 1 bedroom apartment at basement level, installation of basement windows and modification of lightwells (Part Retrospective Application)". However, there is no evidence before me to demonstrate that a change to the description was agreed. I have therefore used the description as it appears on the planning application form, excluding words that are not acts of development.
3. As part of the appeal, the appellant has submitted two Internal Ambient Noise Surveys dated 19 May 2023¹ and 27 July 2023² (the July NS). Although this represents a change to what was considered by the Council at the application stage, I do not consider that the additional information results in a substantial or fundamental change to result in a different application. Moreover, as both surveys were submitted with the appeal documents the Council had an opportunity to comment. As such, neither main party would be unfairly prejudiced and I, therefore, have had consideration to the July NS in determining this appeal.
4. A revised National Planning Policy Framework (the Framework) came into force on 19 December 2023 with a further change published on 20 December 2023. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the changes, and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

¹ Noise.co.uk Ltd, Internal Ambient Noise Survey, Report No 22522-1, dated 19th May 2023

² Noise.co.uk Ltd, Internal Ambient Noise Survey, Report No 22522-1-R1, dated 27th July 2023

Background and Main Issues

5. From the evidence submitted, and from my site visit, the proposed development has commenced. The basement has been separated from the property above, stairs, lightwells, windows and railings have been installed. However, the appeal proposes alterations to the lightwells. I have, therefore, dealt with the appeal on a part retrospective basis.
6. The proposal is to use the basement of the host property as a self-contained flat. The windows in the basement, the lightwells and the staircase are all part of the proposed use. Although these alterations have already been carried out, they do not have planning permission and as such these alterations also fall to be considered as part of the appeal.
7. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the Royal Leamington Spa Conservation Area;
 - whether or not the proposed development would provide appropriate living conditions for the future occupiers of the property, with regard to internal noise; and
 - whether or not the proposed waste storage arrangements comply with local policy and guidance.

Reasons

Conservation Area

8. The host property, 9 Leicester Street (No. 9), lies within the Royal Leamington Spa Conservation Area (RLSCA). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ('the Act') provides, at section 72(1), that with respect to any buildings or other land, in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character, or appearance of that area.
9. Despite not being a heritage asset on its own merits, due to its location within the Conservation Area the property is within a designated heritage asset, as set out in the Planning Practice Guidance³. I have considered the appeal against Policy HE1 of the Warwick District Local Plan 2011-2029 (LP) as the policy relates to designated heritage assets and their setting. There is nothing within the text of the policy that excludes the consideration of conservation areas. Moreover, paragraph 5.156 of the supporting text of the policy advises that the design of alterations to existing buildings affecting the setting of conservation areas needs careful consideration.
10. The Appellant's Heritage Impact Assessment (HIA) details the historic development of the area and refers to the Royal Leamington Spa Conservation Area Guide to Urban Conservation Areas (the RLSCA Guide). From the evidence before me the appeal site lies within Character Area 26, the Campion Terrace, Princess Street, Duke Street and Leicester Street area. The RLSCA Guide advises that the area is mainly two storey brick terrace houses with strong rhythm which, alongside the variety of good details, contributes towards the significance of the area and the RLSCA as a whole. The RLSCA Guide also

³ Historic Environment chapter, paragraph 023, Reference ID: 18a-023-20190723

advises of the need to maintain detailing, reinstate where possible, and resist modern replacements of detailing.

11. From what I saw on my visit to the area and from the evidence before me, including the submitted HIA, as far as it is relevant to the appeal, I consider that the significance of the conservation area is mainly derived from its surviving historic building stock and the range of buildings ages and sizes. The significance of the area around the appeal site is partly derived from the terrace housing and the strong rhythm created by the houses and the front boundary treatments. These factors contribute positively to the character and appearance of the area.
12. The host property forms part of a continuous built frontage along the northern side of Leicester Street. It is the only double fronted property within the row and the wider area is predominately single bay properties. However, the host property is not significantly different to the other properties within the terrace. Due to the retained features the host property contributes positively to the character and appearance of the RLSCA as a whole.
13. The context of the site and the surrounding street scene is the historic terrace housing and the 1970s flats next to the host property. Although the terrace block is not balanced or symmetrical the widths of the properties, the bay windows, and the small frontages, provide a rhythm to the historic terraces which the 1970s flats respect. The host property does have different features and detailing to the other traditional buildings on the terrace. However, it is not a prominent building within the townscape.
14. The lightwells would span the full depth, from street level to the floor level of the basement, and the full width of the host property with only the access to the host property provided on a street level platform above the lightwell.
15. The proposed timber structure, within the lightwell in front of the bedroom window of the proposed flat, would create a raised platform, albeit topped with slabs. The platform would extend the full width of this side of the lightwell but would not be infilled under the platform and would not infill the full depth, from the back of pavement to the building. Moreover, the space under the platform would still be visible from street level due to the staircase and the access landing to the host building.
16. The proposed reclaimed brickwork wall, to the underside of the staircase, would infill part of the lightwell in front of the living room window of the proposed flat. However, this infill would not be perceived from street level due to the staircase. The lightwell outside the proposed living room would continue to appear at its full depth from the back of the pavement to the building.
17. Taken together, although the proposal includes a platform to one side and a brick wall under the stairs, the lightwell would continue to be read as a large open lightwell that spans most of the full width and depth of the property. It would be an alien and incongruous feature in the street scene and in the wider RLSCA. It would significantly and harmfully alter the appearance of the host property and unbalance the existing street scene.
18. There are various sizes and types of lightwells along Leicester Street and Clarendon Avenue. However, from my observations and the evidence submitted, most of the lightwells are small and each serve a single window in

the basement. Both main parties agree that there are other large lightwells. However, I have not been provided with any substantive evidence of any of the same size as the appeal proposal and, in this regard, I concur with the appeal decision at 18 Clarendon Avenue⁴, referred to by the Council, which noted that none of the other properties in the vicinity have a lightwell in the form proposed at the appeal.

19. The submitted HIA does not provide any evidence that the lightwells would have been to the full width and depth of the front yard of the property, or the full depth of the basement. Moreover, the other lightwells in the area would suggest that smaller ones would have been more likely.
20. The HIA, therefore, does not provide reasoned justification for its conclusions, with regard to the lightwells. It does not provide sufficient evidence that the works carried out, and proposed, would sustain the heritage significance of the conservation area. Neither does the HIA justify that the proposal would have a neutral impact on the historic environment and that the changes would not cause any harm.
21. The lightwell is not justified by any other lightwells in the area or the size of the host property. For the reasons above, the lightwell would not preserve nor enhance the character or appearance of the RLSCA as a whole.
22. From my own observations railings on top of low brick walls, enclosing small front yards, are a common feature in the area. There are a mix of designs and fixings and not all of them are individually fixed into its own socket in a low wall. The proposed railings are simple in detailing and design, painted black and set within a reclaimed brick wall with blue coping on tile crease with matching pillars. In my judgement, the low brick wall, pillars, black painted metal gate and railings proposed would not be out of keeping with other railings in the street scene and would preserve the character and appearance of the RLSCA.
23. The proposed stone-effect landing and the timber treads and risers to the staircase would also be appropriate and reduce the utilitarian appearance of the existing staircase. These elements of the proposal would also preserve the appearance of the RLSCA.
24. However, given the degree of harm that would arise as a result of the lightwell, it is my judgement that there would be less than substantial harm to the significance of the RLSCA overall. In this regard I do not agree with the conclusions of the HIA. This harm, albeit less than substantial, must be attributed great weight within the context of the Framework. The Framework advises that such harm should be weighed against the public benefits of the proposal.
25. Although the other enhancements to the front elevation would be a public benefit, to which I have given moderate weight, I do not consider that the large lightwell is necessary to allow the other enhancements to the front of the host property.
26. The development would provide one additional dwelling close to local services and public transport facilities. However, the public benefit arising from one additional dwelling would be limited. That the lightwell is to provide light for the

⁴ Appeal ref: APP/T3725/A/03/1132368

proposed self-contained flat would be a private benefit. I have not been provided with any substantive evidence to show that the flat could not be occupied with smaller lightwells as provided to other basements in the RLSCA. Overall, the public benefits, taken together, would not outweigh the harm to the Conservation Area.

27. For the reasons given above, although I find no harm from the railings and other works, I find that the lightwells, even as proposed to be amended, would fail to preserve, or enhance the character or appearance of the Royal Leamington Spa Conservation Area. I have had regard to the Act, as detailed above. As such, the proposal is contrary to Policies HE1 & BE1 of the LP which, taken together, require development that leads to less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal, and requires development to positively contribute to the character and quality of its environment.
28. The proposal would also not align with the guidance set out in the Framework which aims for development within Conservation Areas to enhance or better reveal their significance and preserve those elements of the setting that make a positive contribution.
29. The Council, in their Statement of Case, have also included Policy HE2 of the LP. Although Policy HE2 relates to Conservation Areas the proposal would not involve the demolition of the host building. Consequently, I find no conflict with Policy HE2 of the LP.

Living conditions of future occupants

30. The proposed self-contained flat would be single aspect with the only windows at basement level facing towards Leicester Street. The proposed property would, therefore, be at risk from noise from pedestrians and vehicles on the road.
31. The application was not accompanied by a noise assessment. However, the appeal has been supported by the July NS which I have accepted for the reasons given above. The July NS details the results of internal and external noise measurements and shows that the noise climate was dominated by road traffic noise and occasional activity within the property above. The results of the survey show that the internal noise levels would be below the maximums set out in BS8233:2014⁵.
32. The appellant has also provided a copy of correspondence from the Council Environmental Health Officer confirming that, following receipt of the July NS, there would be no objection to the proposed development. I have no substantive evidence before me to counter the submissions from the appellant's acoustic consultant.
33. On the basis of the evidence before me, the noise from pedestrians and traffic on the road would not result in a significant adverse effect on the quality of life of the occupants of the proposed development or be harmful to the living conditions of the future occupants, by reason of noise.
34. For the above reasons, the development would provide appropriate living conditions for the future occupiers of the property, with regard to internal

⁵ BS8233: 2014 "Guidance on sound insulation and noise reduction for buildings"

noise. I, therefore, find no conflict with the requirements of Policy BE3 of the LP which seeks to ensure that development would not have an unacceptable adverse effect on the living conditions of the future occupiers of the proposal.

Waste storage

35. The application proposed the provision of wheeled bins in the bottom of the lightwells and for the occupants of the properties to move the bins up and down the stairs on collection days. The Council determined the application on this basis although the evidence shows that the appellant had agreed that this was not feasible and had suggested two alternative options.
36. With regard to option one, it is not clear how the residents of the basement flat would be able to collect wheelie bins from the rear of 9 Leicester Street without having to go through the existing property. I have not been made aware of external access to the rear of No. 9. Although internal access could be provided, I consider it unlikely that the occupants of the basement flat would want to make the additional movements of taking their waste up to street level in bags or boxes and then going to collect the wheelie bins. The existing residents of No. 9 are able to store their waste in the wheelie bins and then move them to the front on collection days. Furthermore, this option would not comply with the Warwick District Council Refuse and Recycling Storage Requirements – A Guidance Note (the Refuse Guidance Note) in that the waste containers would not be moved along an external route. Consequently, the first option would not provide appropriate waste storage and collection arrangements for the occupants of the proposed flat.
37. In considering the second option, unlike other properties in the area, noted by the Council Contract Operations and Enforcement Officer, the appeal proposal would have a designated space for refuse and recycling outside the property, within the lightwell. This would reduce the risk of fly-tipping or bags being left on the street outside of collection days. Moreover, it would enable the occupants of the property to store their waste outside their property in bags that they would then move to street level on collection day. This would not adversely affect either their living conditions or the living conditions of occupiers of neighbouring properties.
38. The proposed waste storage arrangements would, therefore, comply with local policy and guidance set out in the Refuse Guidance Note and the Warwick District Council Residential Design Guide, May 2018. I, therefore, find no conflict with Policy BE3 of the LP which requires development to not have an unacceptable adverse effect on the living conditions of the occupiers of the development.

Other Matters

39. It is clear from the evidence before me that the Council Conservation Officer was aware of the proposed changes to the lightwells and advised that the changes were not acceptable. I have no evidence that the Conservation Officer was not also aware of the Heritage Impact Assessment (HIA) as the Officer was sent a link to all of the submitted documents. Notwithstanding whether the Council considered the HIA or not, I have taken its contents into account in reaching my decision.

40. The Council determined the application before receiving the Noise Impact Report. However, the Council are entitled to determine the application on the basis of the information submitted to it and there are no requirements for the Council to negotiate on a scheme. Neither is there any requirement for a Council to re-consider an application once it has been determined.
41. Although these matters form a number of the appellant's grounds of appeal, the conduct of the Council during and after the consideration of the application would not affect my findings on the main issues.

Conclusion

42. Notwithstanding my conclusions on the living conditions of the future occupiers of the property and the suitability of the waste storage facilities, the harm to the Royal Leamington Spa Conservation Area brings the scheme into conflict with the development plan as a whole. Moreover, there are no material considerations, including the public benefits of the proposal, which indicate that my decision should be made other than in accordance with the development plan.
43. For the reasons given above the appeal should be dismissed.

K Townsend

INSPECTOR