



Appeal Decision

Site visit made on 2 July 2024

by B Astley-Serougi BA(Hons) LLM MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th August 2024

Appeal Ref: APP/T3725/W/24/3339648

103 Greenwood Court, Upper Holly Walk, Leamington Spa, Warwickshire, CV32 4JY

- 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 Baljit Paddan against the decision of Warwick District Council.
 - The application Ref is W/23/1631.
 - The development proposed is described as "Change of use from C3 single dwelling to C4 small HMO as requested by Warwick District Council (Ref HMO 1386/20)".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the appeal property is a suitable location for a house in multiple occupancy.

Preliminary Matters

3. The parties do not dispute that 103 Greenwood Court is a house in multiple occupancy (HMO). Furthermore, upon my site visit the property appeared to be in occupation as a HMO.

Reasons

4. 103 Greenwood Court (No.103) is a middle-terraced dwelling in a short series of terraced properties located within an established quiet residential area. There are multiple terraces in close proximity to the appeal site surrounding an open green space.
5. Royal Leamington Spa is covered by an Article 4 Direction which removes permitted development rights for the conversion of a residential dwelling (Use Class C3) into a small HMO (Use Class C4). The removal of permitted development rights does not suggest that all HMOs are inappropriate, only that proposals should be assessed against the development plan and other material considerations.
6. Policy H6 of the Warwick Local District Plan 2011-2029 (WLDP) establishes support for HMOs subject to certain criteria. Policy H6(c) of the WLDP establishes that proposals would not be supported if they result in a non-HMO being 'sandwiched' between two HMOs. The aim of Policy H6 and in particular H6(c) is to ensure a suitable location for an HMO and prevent harm to the non-HMO occupant's living conditions. The parties agree that the development

would result in 105 Greenwood Court (No.105) being 'sandwiched' between two HMOs.

7. The appellant highlights that there have been no complaints as a consequence of the HMO at No 103. However, the existing occupants of No 105 cannot be assumed to live there in perpetuity and consequently the lack of complaints does not result in a development that accords with Policy H6(c).
8. The appellant has drawn my attention to a recent planning application at 115 Brunswick Street for a change of use from a house to an HMO¹. That scheme related to a property that was already located between two HMO's which is substantially different and not comparable to the appeal scheme before me. Even if it were comparable, Policy H6 does not consist of a hierarchy in regard to its criteria. The compliance of the scheme before me with H6(a), (b), (d) and (e), including regarding the concentration of such properties within the locality to maintain a suitable mix of housing, does not overcome the conflict with H6(c).
9. The appellant has also drawn my attention to an HMO which was granted permission at 38 Cobden Avenue (planning reference: W/23/0760). That application is not comparable with the appeal scheme because it complied with all the criteria in Policy H6 and consequently was deemed to be a suitable location for a HMO, including regarding the living conditions of neighbouring occupants.
10. Policy BE3 of the WLDP states that '*Development will not be permitted that has an unacceptable adverse impact on the amenity of nearby uses and residents and/or does not provide acceptable standards of amenity for future users and occupiers of the development*'. Therefore, Policy BE3 and Policy H6 are complimentary, as they both seek to ensure that development does not have an adverse impact on the living conditions of neighbouring occupants. The omission of the policy in the decision notice does not suggest that the development has no effect upon the living conditions of the neighbouring properties.
11. Despite the proposal according with all but one of the criteria in WLDP Policy H6, all its criteria must be met for HMOs to be granted planning permission. Hence, I conclude that 103 Greenwood Court has not been demonstrated to be a suitable location for an HMO. Therefore, it is contrary to WLDP Policy H6 which seeks to ensure that HMOs are in suitable locations and consequently prevent harm to the living conditions of neighbouring occupants.

Other Matters

12. The appellant has stated that 103 Greenwood Court has been occupied continuously as an HMO since 2012 and therefore can be considered permitted development. There is no evidence before me in regard to the period of time it has been in use as a HMO and therefore, I have determined this appeal on the evidence submitted with the original application.
13. The appellant argues that the link between HMOs and poor living conditions and as a result the formation of policies like Policy H6 could result in discrimination in regard to age, which is a protected characteristic. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149

¹ Planning and Appeal Refs: W/19/1981 and APP/T3725/C/20/3252367 and 3247874.

of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. There is no evidence before me that my decision has the potential to affect persons with a protected characteristic for the purposes of the PSED.

Conclusion

14. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

B Astley-Serougi

INSPECTOR