



Appeal Decision

Site visit made on 16 July 2024

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

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal Ref: APP/T3725/W/24/3341129

5 Binswood Street, Leamington Spa, Warwickshire, CV32 5RW

- 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 Kyriacou against the decision of Warwick District Council.
 - The application Ref is W/24/0041.
 - The development proposed is described as 'Change of use from a 4 bedroom dwelling (C3) to a 3 bedroom HMO (C4)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form referred to the description of the development as 'Full Planning Application for the change of use of a residential dwelling to an HMO (retrospective).' The parties agreed to a change to the description of development. The agreed description was used in the appeal form and decision notice. Therefore, I have used the agreed description in the banner heading above for clarity.
3. The development is described as 'retrospective' in the application and appeal forms. However, this is not a description of development and I have removed it from the description set out in the banner heading.
4. The application form states that the change of use was completed in January 2018. I saw during my visit that the property is being used as a House in Multiple Occupancy (HMO). This appears to accord with the plans before me. I have therefore considered the appeal on the basis that the development has already taken place, as did the Council.

Main Issue

5. The main issue is whether the appeal property is a suitable location for a HMO.

Reasons

6. 5 Binswood Street (No 5) is currently a mid-terrace residential property situated on a busy road. Opposite the appeal property is a row of small commercial properties, however the locality is predominantly residential in nature.
7. 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.

8. 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 a HMO and prevent harm to the non-HMO occupants living conditions.
9. The appellant has drawn my attention to the Councils reliance upon applying the principles as set out in a previous appeal decision at 21 Staunton Road, Leamington Spa, CV31 2PN¹. The appellant argues that this appeal is not comparable due to the layout of the neighbouring properties differing to the layout in the appeal before me. The previous inspector highlighted that although the appeal properties were separated by a small garden, '*...the short distance over the garden would not prevent any effect on No 19...*'. Therefore, dwellings that have a close relationship with one another can still result in a 'sandwiching' effect. The cramped nature of the layout in the appeal before me results in the side elevation of 2 Binswood Avenue (No 2) directly adjoining a rear elevation of 3 Binswood Street (No 3). Consequently, these properties can be described as immediately adjacent to each other. Therefore, due to the close and significant relationship of Nos 2 and 3 the development at No 5 results in the sandwiching of No 3 between two HMOs.
10. A further application at 6 Princes Court, Princes Street, Leamington Spa, CV32 4TY has been drawn to my attention by the appellant (application reference: W/23/1765). I do not have the full details of the application before me. However, the reasons for refusal relate to the over-concentration of HMOs and consequently it is not directly comparable to the appeal scheme. 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), does not overcome the conflict with H6(c).
11. The appellant highlights that the property has been a HMO for six years and that there have been no complaints. Additionally, a letter of support for the appeal development has been made by the occupants of No 3. However, the existing occupants of No 3 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).
12. Moreover, my attention has been drawn to a previous application concerning 2 Norfolk Street (application reference: W/20/1123). I do not have the full details of the development before me. However, I acknowledge that there was a disagreement between the District Council and Town Council regarding what constitutes 'sandwiching'. Nevertheless, the planning officer report states that '*To allow this HMO would likely impact on the occupiers of 2 Norfolk Street in the same way in which it would do if it were sandwiched at either side in a 'traditional' side-by-side relationship.*' I note the appellant considers that the complaints regarding noise disturbance were the underlying reasons for the sandwiching to be deemed unacceptable in this case rather than solely the layout of the dwellings. The overall

¹ Appeal Reference: APP/T3725/W/17/3175915

aim of policy H6 is to seek to control and limit HMOs due to their impact upon living conditions of neighbouring residents, for example noise disturbance. Therefore, Policy H6(c) supports this overall aim. Consequently, this application demonstrates that both the 'sandwiching' of a dwelling and the consequent adverse noise impacts are interconnected with one another. Therefore, in the appeal before me, given the close relationship I have identified above between the properties on Binswood Street and Binswood Avenue, the lack of complaints from No 3 regarding noise disturbance does not result in a policy compliant development.

13. Despite the appeal scheme 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 5 Binswood Street has not been demonstrated to be a suitable location for a 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

Leamington Spa Conservation Area (the CA)

14. The appeal site is located within the Leamington Spa Conservation Area (CA). I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

The significance of the CA

15. The CA covers most of Royal Leamington Spa. Its significance derives in part from the historical character of circa 19th Century period properties and the towns gridiron layout. 5 Binswood Street is in close proximity to Binswood Avenue which consists of period properties set back from the road with a border of mature trees and is an example of the historic character of the CA.

The effect of the development on the significance of the CA

16. The Council acknowledges that the appeal scheme would not result in any external alterations to the property and consequently the appearance of the CA would be preserved. However, the character of the CA can be derived from the use of buildings. The surrounding area is predominantly residential and although the appeal property is located on a busy road it is still overall a quiet area. The development reduces the number of bedrooms to 3 and consequently would result in a decrease in terms of noise level and activity from the occupants in comparison to the previous use as a 4-bedroom property. Therefore, the development would enhance the character of the CA.
17. For the reasons given above, I conclude that the appeal scheme would enhance the character of the Leamington Spa Conservation Area and therefore not harm the significance of the CA as a designated heritage asset. Therefore, the development would comply with Policies BE1 and HE1 of the Warwick Local District Plan 2011-2029 and Policy RLS3 of the Royal Leamington Spa Neighbourhood Plan 2019-2029. These policies seek, amongst other things, to ensure developments do not harm the character of the CA.

Conclusion

18. Despite my conclusions above with regard to the impact on the CA, the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
19. For the reasons given above the appeal should be dismissed.

B Astley-Serougi

INSPECTOR