

Appeal Decision

Site visit made on 20 August 2024

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2024

Appeal Ref: APP/T3725/W/24/3338669

Land at Junction of High Street, Lower Avenue, Leamington Spa

- 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 C. Gutteridge (Investry Ltd) against the decision of Warwick District Council.
 - The application Ref; is: W/22/1919.
 - The proposal is the development of purpose-built student accommodation in the form of 85 self-contained studios on ground and four upper floors with ancillary accommodation at ground and basement levels.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Outside of the provided appeal timetable, the appellant submitted further information regarding matters including air quality. However, the purpose of the timetable is to ensure that all have appropriate opportunities to partake and respond to evidence being advanced by other parties. The evidence would result in a notable amendment to the scheme and not all parties have been able to express their opinions and, accordingly, accepting this information would cause prejudice. I have therefore not had regard to this information in my considerations.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the development upon the character and appearance of the area;
 - the effect of the development upon the character and appearance of the nearby Royal Leamington Spa Conservation Area (the CA);
 - the effect of the development upon the setting of the Grade II* Listed Building of All Saints Church;
 - whether appropriate living conditions would be secured for the future occupiers of the development, with particular regard to air quality and noise; and

- whether the effects of the development are such that a legal agreement is required to secure financial mitigation, with specific regards to the provision of outdoors space.

Reasons

Character and appearance

4. The site is located at the junction of High Street; Tachbrook Road; Old Warwick Road; and Lower Avenue. The site contains a few advertisement hoardings on its boundaries. Next to the site's rear boundary are railway arches. The site is adjacent to a car sales business. The surrounding area contains several large-scale buildings that are in use for a combination of purposes such as commercial and residential buildings and a station.
5. Surrounding buildings are typically constructed utilising rendered surfaces and have either flat or pitched roofs. In addition, a notable feature of existing buildings is the lack of relief within front elevations. This means that recessed sections of buildings are not apparent in the surrounding area. In respect of fenestration, windows on the surrounding buildings are typically smaller on the upper storeys.
6. The proposed development would have a mansard roof, which is a form not replicated to any significant degree in the area. Furthermore, as part of this design, the metal cladding of the roof would be extended from the mansard roof onto the corners of the third-floor elevation meaning that the walls would feature a building material not reflective of elsewhere. Moreover, some of the third-floor windows are of a large size and bigger than those utilised on the lower storeys of the proposed building. In addition, the windows serving the stair wells extend across numerous floors. As such, the fenestration pattern would be notably different from the neighbouring buildings.
7. The design features a recessed section at ground floor level. This means the proposal features elevations with substantially greater amounts of relief than the neighbouring buildings. These factors, when combined, create a proposed development with a design that would be substantially divergent from the prevailing character and would, in result, be incongruous. This effect would be heightened by the fact that the site is prominently located close to a road junction, a car park, and the railway line.
8. The site is near to the Grade II Listed Buildings of 10 High Street and the Railway Station. Although these buildings are of large proportions, notable features of these buildings include geometric designs, string courses and a sense of symmetry. Therefore, the use of the mansard roof, irregular shaped windows and lack of symmetrical elements means that the proposed development would appear discordant when viewed alongside the nearby Listed Buildings.
9. By reason of the proportions of the proposed building, views of the railway arches would be obscured. Although such views are relatively limited, they provide an insight into the development of the town and the reasons for it taking place. In result, the loss of these views, which would occur irrespective of the presence of advertisement hoardings at the site, would

prevent the town's development from being readily understood. I understand that advertisement hoardings have been a historic feature in this location. However, without evidence regarding their size, it is not possible to establish whether previous installations prevented views of the railway arches. In consequence, the loss of the existing views would lead to an adverse effect on the area's character.

10. The appeal site is near to the Station House development. I do not have the full information regarding the planning circumstances of this, which means that I can only give it a limited amount of weight. Nonetheless, although this building features a mansard roof, there are several notable differences between the appeal scheme and Station House. The existing building features a palette of materials that is consistent with the surrounding buildings, including those in the in the CA; and have windows conforming with the prevailing existing fenestration pattern. Furthermore, Station House does not feature any recessed elements like buildings in the locality. In consequence, Station House does not give rise to the adverse effects that the appeal scheme would have. The presence of this building therefore does not allow me to forego my previous concerns.
11. I therefore conclude that the development would have an adverse effect upon the character and appearance of the surrounding area. The proposal, in this regard, would conflict with the requirements of Policy BE1 of the Warwick District Local Plan (2017) (the Local Plan). Amongst other matters, this seeks to ensure that new developments positively contribute to the character and quality of its environment through good layout and design.

Effect on Conservation Area

12. The appeal site adjoins the Royal Leamington Spa Conservation Area (the CA). Amongst other matters, the significance of the CA is derived from the traditional designs of buildings and their significant proportions. These buildings portray the development of the settlement from a village to a notable residential area. The style of architecture provides an indication of the time in which this took place. In consequence, the significance of the CA is, in part, derived from its architectural and historical significance.
13. Although the proposal would have a height comparable to some buildings in the CA, the scheme would be viewed alongside the existing buildings. The existing buildings are characterised by their distinctive, high-quality design, and regular proportions. As discussed, the proposal would not feature a palette of materials that is reflective of the wider CA and the building also does not have the degree of symmetry that is commonplace on buildings in the CA. Although I understand that some buildings near to the site have been demolished, those that remain maintain the distinctiveness of the CA.
14. Given the proportions of the proposal, the development would be readily viewed from points in the CA and alongside existing buildings. This would be most notable in the nearby High Street. Therefore, given the widely divergent design of the appeal scheme when compared to the prevailing architectural styles, the proposal would disrupt the traditional form of buildings that is a feature of the CA. In result, the proposed development would have an adverse effect upon the character and appearance of the CA.

15. Although the site has previously been developed, existing buildings are relatively small. In addition, the site is adjacent to a car sales business. Although these existing buildings are different to the traditionally designed buildings elsewhere in the CA, their limited proportions are such that they do not have the same adverse effects upon the character of the CA than the appeal scheme would have.
16. I therefore conclude that the proposed development has an adverse effect upon the character and appearance of the surrounding area. The development, in this regard would conflict with the requirements of Policy HE1 of the Local Plan; and Policy RLS3 of the Royal Leamington Spa Neighbourhood Development Plan (2020) (the Neighbourhood Plan). Amongst other matters, these seeks to ensure that harm should be weighed against its benefits; and consider the relationship with buildings in the CA.

Setting of the All Saints Church

17. A notable building in Leamington Spa is the All Saints Church, which is a Grade II* Listed Building. For the purposes of this appeal, the significance of this building is, in part, derived from its age, architecture and prominence at the centre of the town. This means that the building has a combination of architectural, historical, and cultural importance. The prominence of the building at the centre of the town means that it is a landmark feature irrespective of the varying nearby built form, which emphasises its importance in the development and operation of society in the town. In consequence, the setting of the church contributes to its overall significance.
18. Tachbrook Road slopes upwards from the site and features a bridge over the Grand Union Canal. By reason of the scale and massing of the proposal, views of the church would be lost. This can be evidenced by the photo montage that has been provided by the appellant. Whilst such views are relatively short in scope, they assist in highlighting the importance of the Church as a central feature in the town. Consequently, the development would erode the architectural, historical, and cultural importance of the Church. Therefore, the loss of these views would result in a significant erosion of the Listed Building's setting.
19. Views of the All Saints Church are also possible from Old Warwick Road. Whilst such views are typically glimpsed and over a relatively long distance, they reveal that the Church is of significantly greater proportions than the surrounding buildings in the town centre. This reinforces the importance of the Church and its setting in explaining its significance.
20. Whilst the proposed development would not obscure such glimpsed views, the development would appear to have a height comparable to the Church. In consequence, the scale of the new building is such that it would visually compete with the Church building and direct attention from it. This means that the Church building's role as a key focal point would be eroded and, in consequence, the historical and architectural significance of the Church would be compromised.
21. Although the harm to the setting of the All Saints Church would be less than substantial, the development would have an adverse effect upon the

setting of this Listed Building. The development, in this regard, would conflict with the requirements of Local Plan Policy HE1. Amongst other matters, this requires that development proposals to have appropriate regard to the significance of designated heritage assets.

Living conditions

22. The proposed development would feature 85 bedrooms, with many windows. The surrounding area features several busy roads, which also include traffic controls and bus stops. Furthermore, the site is near to the railway station car park; whilst the railway line, described as being 30m away from the site in the Appellant's Air Quality Assessment, runs to the rear and one side of the site. Nearby is a car sales business and other commercial properties that would be expected to operate during late night periods.
23. Due to the layout of the nearby railway line, it is likely that the noise emanating from passing trains would be audible on at least two façades of the proposed building. On my site visit, I noted regular passing passenger and freight trains. Although my site visit is a single 'snap-shot' in time, should this occur on a regular basis, my concerns regarding the potential noise levels would be heightened. Furthermore, other noise sources in the surrounding area include vehicles passing and waiting at the nearby traffic lights. As these routes lead to the town centre, in addition to other facilities such as the railway station and a large supermarket, it is likely that vehicle usage would be high. Moreover, the movements of vehicles and trains is also likely to take place during all periods of the time, including evening and night-time periods, where residents might expect peace and quiet.
24. The site is also near to several businesses which can be expected to be open during the late-night period. These include a nearby bar and club. In result, there are likely to be notable numbers of people circulating close to the site during periods when background noises are likely to be lower. In addition, the site is near to the railway station car park and a car sales business. It is therefore likely that there would be many vehicles being manoeuvred near to the proposed buildings. Although the levels of noise would likely be lower than the preceding sources, they contribute to an environment where noise would be expected to take place. In consequence, the overall level of noise that would be generated near to the site would prevent acceptable living conditions from being secured. I understand that student accommodation is often found in town centres; however, the individual circumstances of the site lead me to conclude that there would not be appropriate living conditions.
25. In addition, given the proximity of the site to the railway line and the highway network, it is likely that there would be a high number of moving vehicles and trains. This is likely to generate various emissions. Furthermore, vehicle emissions would emanate from the movement of vehicles in the nearby railway station car park and car sales business. These factors, when combined, serve to diminish the overall level of air quality in the vicinity, which would not be conducive to the securing of satisfactory living conditions for future residents. This can be evidenced by

the fact that the Council has identified the area as being an Air Quality Management Area (AQMA).

26. To respond to the prevailing noise environment and the AQMA, the appellant has proposed that mechanical ventilation be provided. This would prevent poor quality air being present in the appeal scheme and noises being harmfully audible in the rooms of the proposed accommodation as windows can be kept shut. However, this would be at the expense of fresh air being available to future occupiers, which would prevent satisfactory living conditions from being secured as some residents may prefer to have windows open to regulate temperature within rooms, or to provide a greater degree of comfort. However, this would expose residents to the prevailing air quality and noise environments.
27. Given that the equipment necessary to provide such ventilation would be mechanical in nature, there is a possibility that this would not be available during periods of maintenance, which would therefore prevent a suitable passage of air around parts of the building, which would be necessary to secure appropriate living conditions. Therefore, the provision of mechanical ventilation would not appropriately mitigate the prevailing air quality and noise conditions.
28. The appellant's Air Quality Assessment is modelled on the basis that the improvements to air quality will take place before the occupation of the development. However, although it is possible that improvements to air quality have occurred, there is no conclusive evidence that these have taken place, or whether such improvements are sustainable. Therefore, this matter does not overcome my previous concerns.
29. I therefore conclude that the proposed development would not provide appropriate living conditions for all the future occupiers. The development, in this regard, would conflict with the requirements of Local Plan Policies BE3 and NE5; and Policy RLS13 of the Neighbourhood Plan. Amongst other matters, these seek to ensure that developments do not give rise to noise or air pollution; provide acceptable standards of amenity; and have regard to the Royal Leamington Spa Air Quality Management Area.

Legal Agreement

30. The proposed development would be used for residential accommodation, with no off-street car parking being provided. The site is near to the town centre, which contains an array of commercial facilities, and the site is in the vicinity of the railway station. Given the nature of the development, it is a necessity where residents have access to the facilities necessary to ensure that the occupiers of the development have satisfactory living conditions.
31. The proposed building would encompass the bulk of the application site, as denoted by the red line as shown on the submitted plans. In result, there is very limited room on the site, which can be utilised for outdoors recreation, or exercise. Moreover, the Council's Statement of Case indicates that the nearest University campus, with sports facilities, is approximately nine miles from the site. In result, there is a need for such outdoors recreation facilities to provide appropriate living conditions for the occupiers of the

development. Alternatively, the lack of suitable open space may encourage recreation in inopportune locations.

32. The Council has suggested that this matter could be overcome through the submissions of a completed legal agreement that would secure a financial contribution for the provision and enhancement of open space in the wider area and has identified locations where this could be utilised. However, whilst I have had regard to the submitted Unilateral Undertaking (UU), this does not include a provision for the provision of such open space enhancements. In result, the UU does not provide certainty that the needed infrastructure would be provided at an appropriate juncture in the development process. Therefore, even if I were to agree that the UU appropriately secures the management of the site as bespoke student accommodation and highway infrastructure, these points would not mitigate the adverse effects that would arise from the lack of open space provision.
33. I am mindful that the Council has adopted the Community Infrastructure Levy (CIL). However, there is no convincing evidence before me that indicates that projects cannot be funded through a combination of CIL and planning obligations. Therefore, as the Council has identified how the planning obligation payment would be utilised and there is a planning policy basis for its requirement, the absence of an obligation would be harmful.
34. I have given consideration as to whether a planning condition could be imposed to secure the provision of off-site open space. However, such a condition is likely to require the payment of a financial sum to the Council. As it is unclear as to the amount of money that would be required to deliver the required space, I cannot be certain that such a condition could be drafted with sufficient precision to be reasonable.
35. I therefore conclude that the proposed development would generate adverse effects arising from the lack of open space and this matter would not be addressed through the submitted UU. The development, in this regard, would conflict with the requirements of Local Plan Policies BE2; BE3; DM1. Amongst other matters, these seek to ensure that developments include measures to directly mitigate its impact; provide acceptable amenity; protect biodiversity; and maintain appropriate open space.

Heritage Balance

36. The harm that would occur to the setting of the All Saints Church Listed Building and the character and appearance of the CA would not be severe and therefore it would be 'less than substantial' within the meaning of the National Planning Policy Framework (the Framework). Paragraph 208 of the Framework requires that such harm to be weighed against the public benefits of the proposal.
37. The proposal would be used as student accommodation. Therefore, the development would contribute towards the local housing supply. However, there is no evidence before me that indicates that the Council does not have a five-year housing land supply and it is apparent that the supply of homes in the area is being significantly boosted. This reduces the amount of weight that I can attribute to these benefits. Nonetheless, the development would provide, in effect, 85 homes and it is suggested that there are no

sequentially preferable locations for this development. Therefore, I attribute the benefits arising from the increase in the local housing supply a moderate amount of weight.

38. In addition, there would be some economic benefits arising from the construction process and the occupation of the development. However, owing to the scale of the proposed development, such benefits are only likely to be of a small scale, particularly as there is no compelling evidence before me that indicates that local businesses and services are struggling to attract sufficient custom. In addition, the benefits arising from the construction process would be time limited in effect. In consequence, they can be attributed a limited amount of weight.
39. The development would result in the reuse of previously developed land. However, given that the site is currently well-screened through its boundary treatment, it does not currently lead to an adverse effect upon the character and appearance of the CA, or the setting of the Listed Building. Therefore, the benefits arising from this matter can only be attributed a limited amount of weight. This means that collectively, the combined public benefits arising from the development can be ascribed a moderate amount of weight.
40. Therefore, when giving great weight to the special attention I must pay to the desirability of preserving or enhancing the setting of the Grade II* Listed Building of the All Saints Church and the character and appearance of the CA, I find that the harm that would arise from the proposal would not be outweighed by its moderate public benefits. Accordingly, there would be a conflict with Paragraph 206 of the Framework as harm to designated heritage assets would not have clear and convincing justification.

Other Matters

41. I understand that in submitting the planning application, the appellant was attempting to overcome the reasons for the previous refusal of permission. However, this does not overcome my findings in respect of the main issues.
42. The site is near to several other Listed Buildings, such as the Railway Station. However, given that I am dismissing the appeal for other reasons, I do not need to give the effect on the setting of these buildings further consideration for there would be no change. For similar reasons, the proposal would not erode the character and appearance of the Canal Conservation Area.

Conclusion

43. The proposed development would conflict with the Development Plan, when taken as a whole. There are no material considerations that indicate that the development should be made other than in accordance with the Development Plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR