



Appeal Decision

Site visit made on 10 July 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2024

Appeal Ref: APP/T3725/W/23/3331869

8 Leam Terrace, Leamington Spa, Warwickshire CV31 1BB

- 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 & Mrs Williams against the decision of Warwick District Council.
 - The application Ref is W/23/0776.
 - The development proposed is the erection of a single dwelling and associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Williams against Warwick District Council. This is the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether the proposal provides suitable living conditions for future occupiers in respect of noise and disturbance, privacy and outdoor private amenity space;
 - whether the proposal would have an acceptable effect on the living conditions of occupiers of neighbouring development in respect of privacy, outlook and daylight;
 - whether the proposal would have an acceptable effect on flood risk;
 - the effect of the development on biodiversity; and
 - whether the proposed parking space would be satisfactory.

Reasons

Living conditions – future occupiers

4. The appeal site comprises a parcel of land to the rear of 8 Leam Terrace which is accessed via New Street. The area is characterised by terraced and mews properties which are typically located close to the pavement.

Noise and disturbance

5. A public house, The Bowling Green, is located to the southeast of the appeal site. This has given rise to noise complaints from local residents. In support of

the appeal, a Residential Noise Assessment has been prepared. The Council's Environmental Health Officer identifies uncertainties in the assessment, in particular, the report is not conclusive in relation to whether amplified music was being played during the period of noise monitoring.

6. In any event the assessment states that the external noise levels at night exceeded those recommended by the Acoustics Ventilation Overheating: Residential Design Guide 2020, for circumstances where windows are often open.
7. Consequently, the report recommends a further assessment to ascertain how frequently windows would have to be open at night to avoid overheating and the implementation of a mitigation strategy including the provision of a ventilation system. This assessment has not yet been carried out and therefore it is not clear how often future residents are likely to be exposed to these noise impacts.
8. It has been suggested that a condition could require further assessments which could inform the design of a mitigation strategy. However, in the absence of such information I am not persuaded that the proposal would not result in unacceptable living conditions for future residents. Mechanical ventilation could theoretically avoid the need to open a window at nighttime. However, there is no certainty that future residents would keep their windows closed at any given time. Future residents would therefore be vulnerable to excessive levels of noise which would interfere with sleep resulting in unsatisfactory living conditions.
9. I acknowledge that the appeal site is located in an established residential area and that a small number of properties have a closer relationship to the public house than the proposed dwelling would. Nevertheless, I do not find this to constitute adequate justification for allowing further harm to occur.

Privacy

10. The property to the north of the appeal site, 8 Leam Terrace has several windows on the rear elevation which look towards the appeal site. The Council estimate that the separation distance between the rear elevations of the existing and proposed building would be approximately 23.5m.
11. The parties agree that the separation distance would be below the 27m recommended by the Residential Design Guide (May 2018) (RDG). The RDG does not indicate that this separation distance would be necessary to avoid overlooking. Rather, it states that the intention of the distance separation guidance is to limit the potential for over-development and to provide a consistent approach to the decision-making process.
12. There is limited evidence before me which demonstrates that the proposal would result in unacceptable overlooking. I find that the separation distance would be achieved would be reasonably generous and would be sufficient to ensure that acceptable levels of privacy would be achieved within the proposed dwelling.
13. Furthermore, elsewhere the RDG also states that within conservation areas its provisions will not be directly applied, although issues including overlooking will continue to be taken into account. The proposal has been designed in order to respond to the character and appearance of the conservation area, and

therefore it would not be incompatible with the RDG to apply the guidelines flexibly in any event

14. I therefore conclude that the proposal would result in acceptable living conditions for future residents in respect of privacy.

Private amenity space

15. The proposed dwelling would benefit from a small rear garden and patio area. The parties quote different measurements for the private amenity space the proposal would provide. The Council contend that it would fall below the 40sqm recommended by the RDG. Even if this were the case, the appeal site is located within a relatively high-density environment where little or no amenity space is not uncommon. The proposed garden area would provide sufficient space to sit out, dry clothes and store bins and bikes. Furthermore, I saw at my site visit that the appeal site is a short walk from high quality public open space near to the river Leam. This would provide residents with opportunities to access more extensive external space. Consequently, in this instance I consider the provision of outdoor private amenity space to be acceptable.
16. My attention has been drawn to an appeal at Nelson Lane¹ where an Inspector found that due to the site-specific circumstances, amenity spaces below the sizes recommended in the RDG were acceptable. Whilst the site and proposal were materially different to that which is before me, I have similarly considered the site-specific circumstances in coming to a finding on this matter. My decision is therefore not inconsistent with the Nelson Lane appeal.

Conclusion

17. I conclude that whilst the proposal would provide adequate outdoor private amenity space and would provide acceptable living conditions in respect of privacy, it would result in the provision of unacceptable living conditions in respect of noise and disturbance. Therefore, the proposal would conflict with Policy BE3 of the Warwick District Local Plan 2011 – 2029 (Adopted September 2017) (LP) insofar as it seeks to ensure that development provides acceptable standards of amenity for future users and occupiers.

Living conditions – neighbouring occupiers

18. The proposed dwelling would contain a bedroom and a bathroom window on the rear elevation at first floor level. These would be located over 23m from the rear elevation of 8 Leam Terrace. Given the limited amount of fenestration proposed on the rear elevation the separation between the buildings would be sufficient to ensure that no loss of privacy would occur to the occupiers of 8 Leam Terrace. Consequently, the proposal would not result in harm to the living conditions of the occupiers of this property.
19. To the northeast of the site is a care home which has a window on the rear elevation. The proposed dwelling would be located such that it would breach a 45 degree line taken from the centre point of this window. However, the 45 degree line would already be breached by the building to the east of the appeal site which is already in very close proximity to this window. In this context the proposed dwelling, which is located a generous distance from the window, would have a negligible effect on the daylight entering it.

¹ APP/T3725/W/20/3251045

20. Furthermore, whilst the proposed dwelling would be visible from this window, the combination of the oblique angle of the dwelling in relation to it, and the distance from it means that the proposal would not have a significant effect on the outlook from this window. Overall, the proposal would not result in harm to the living conditions of the occupier(s) of the room served by this window.
21. I conclude that the proposal would not result in harm to the living conditions of occupiers of neighbouring development in respect of privacy, outlook and daylight. Consequently, there would be no further conflict with Policy BE3 as a result on this issue.

Flood risk

22. According to the submitted Flood Risk Assessment (FRA) the appeal site is located within Flood Zone 2 and therefore at risk of flooding. The FRA highlights the requirement of the Framework for a sequential test for development in Flood Zones 2 and 3 to steer new development to areas with the lowest probability of flooding. Planning Policy Guidance states that even where a flood risk assessment shows that the development can be made safe throughout its lifetime without increasing the risk elsewhere, the sequential test still needs to be satisfied. The Framework at para 174 and footnote 60 states that some forms of development should not be subject to the sequential test, however this does not include new dwellings.
23. The appellant contends that a sequential test was not requested by the Council and was not referenced before their appeal statement. However, both the officer report and the decision notice state that the proposal fails to demonstrate how it complies with the sequential approach to the location of development. Furthermore, this requirement was highlighted by the appellant's advisors in the FRA.
24. My attention has been drawn to an approval at 62 Leam Terrace where a sequential test was not requested. I have limited evidence before me in respect of this approval, however in any event this would not justify setting aside local and national policy in this case. Criterion a) of Policy FW1 refers to flood zone 3, however elsewhere the policy outlines the need for planning applications to be submitted in line with the national approach to meeting the sequential test.
25. In the absence of any information demonstrating that the sequential test has been satisfied I cannot be certain that the development could not be located in a low-risk area. Consequently, it is not possible for me to conclude that the proposal would have an acceptable effect on flood risk.
26. In respect of the surface water drainage strategy, it is proposed to utilise permeable paving and porous surfacing whilst limiting the discharge rate to 1 l/s. Since the determination of the application a CCTV survey of the existing sewer connection has been carried out and copies of correspondence relating to a developer enquiry with Severn Trent Water (STW) have been provided. STW consider this strategy to be acceptable and based on the evidence before me I see no reason to disagree.
27. Whilst the overall strategy is acceptable, a detailed scheme would be required to ensure that the drainage would be appropriately designed and installed in order to ensure the site would drain appropriately and not result in flood risk

elsewhere. Were I to allow the appeal, I am satisfied that these details could be secured through the imposition of an appropriate condition.

28. Overall, although I am satisfied that the surface water drainage strategy is acceptable, I conclude that the proposal would have an unacceptable effect on flood risk as a result of a failure to demonstrate that the sequential test has been carried out. The proposal therefore conflicts with Policy FW1 of the LP which requires that planning applications should comply with the national approach to meeting sequential tests and the requirements of the Framework in respect of meeting the challenge of climate change, flooding and coastal change.

Biodiversity

29. I saw at my site visit that the site comprises primarily bare ground and ruderal vegetation. A Biodiversity Net Gain (BNG) Assessment has been carried out which states that there were no protected species present on the site. I note that the Council's Ecologist did not suggest that it was likely that protected species would be present on the site. Although the application was not accompanied by a detailed survey, given the characteristics of the site, and based on the evidence before me I am satisfied that the proposal would not result in harm to protected species.
30. The BNG assessment concludes that the proposal would result in a 100% loss of habitat units within the site. The appellant suggests that this could be addressed either via a condition requiring on-site mitigation in the form of an Ecological Enhancement Plan (EEP) or a financial contribution. Given the small size of the site and the proposed lawn it is not clear how an EEP could realistically mitigate for the loss of biodiversity which would occur. No suggestion of what could be included in the plan has been made. Whilst it might be possible to mitigate the loss of biodiversity via a financial contribution to the Biodiversity Offsetting Scheme, no mechanism has been put to me which would secure such a contribution.
31. In the absence of a mechanism to secure any mitigation or compensatory measures I conclude the proposal would result in harm to biodiversity. It would therefore conflict with Policy NE3 of the LP which seeks to ensure that proposals lead to no net loss of biodiversity and relevant paragraphs of the Framework which seek to conserve and enhance the natural environment.

Parking

32. The area immediately to the north of the appeal site comprises a private car parking area for the residents of 8 Leam Terrace. Access to the car park would be maintained through the appeal site. Two parking spaces are proposed adjacent to the boundary wall on the western side of the site.
33. The Council contend that the width of the spaces would be below the 3m that the Parking Standards Supplementary Planning Document suggests is required when parking spaces are located adjacent to a wall. The stated shortfall in width would be minimal at 0.2m. The implication of this shortfall would be that vehicles attempting to park in the spaces may project slightly into the access route to the adjacent car park. However, given the generous width of this route this would not interfere with its use to a significant degree.

34. I therefore find that adequate off-street parking would be provided and as a result the proposal would not result in additional on-street parking or any resultant parking stress.
35. I conclude that the proposal would have an acceptable effect on parking demand. It would therefore accord with Policies BE3 and TR3 of the LP insofar as they seek to ensure that development makes suitable provision for parking and does not result in adverse impacts on the amenity of nearby users and residents.

Other Matters

36. The appeal site is within the Leamington Spa Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The CA includes a large part of central Leamington Spa and includes part of the river Leam and nearby green spaces. The CA derives its significance from its history as a spa town, its architecture including many villas, along with later terraced and semi-detached development. Bearing in mind the extent, nature and location of the proposed development, the character and appearance of the CA as a whole would be preserved. I note that the Council raised no objections in this regard either. This lack of harm is a neutral factor in the appeal.

Conclusion

37. The proposal conflicts with the development plan as a whole and there are no material considerations including the Framework which indicate that the appeal should be decided other than in accordance with it.

E Pickernell

INSPECTOR