

Appeal Decision

Site visit made on 23 October 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/T3725/W/24/3342013

Myton House, 40 Holly Walk, Leamington Spa, Warwickshire CV32 4HY

- 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 and Mrs Garstang against the decision of Warwick District Council.
 - The application Ref is W/24/0066.
 - The development proposed is the change of use from office (Use Class E) to single dwelling (Use Class C3).
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use from office (Use Class E) to single dwelling (Use Class C3) at Myton House, 40 Holly Walk, Leamington Spa, Warwickshire CV32 4HY in accordance with the terms of the application, Ref W/24/0066, subject to the conditions in the attached schedule.

Application for costs

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

Main Issue

3. The main issue is the effect of the proposal having regard to local and national planning policies on existing employment land.

Reason

4. The appeal site lies within Leamington Spa town centre and within a Town Centre Employment Area (TCEA) as defined in the Warwick District Local Plan 2011-2029, September 2017 (LP). There is no dispute that the appeal site, albeit presently vacant, constitutes an office use and that this falls within class E (commercial, business and service use) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order). Moreover, there is consensus between the parties that prior to amendments made to the Order in 2020, the office use was class B1a, but this use class no longer exists.
5. Policy TC12 of the LP stipulates that within the TCEA, the change of use of existing employment land and buildings to non-B class uses will not be

permitted. The supporting text explains that the purpose of the policy is to protect designated employment areas. This is to maintain a continued employment role within the town centre by providing employment opportunities in sustainable locations. Greater flexibility for other uses elsewhere in the town centre is allowed outside of such designated areas.

6. There is no definition of 'existing employment land and buildings' contained in the policy wording or explanatory text. Nevertheless, it can be deduced by the protection given to B class uses, that these would fall within the definition. Therefore, an office use would have fallen within the remit of the policy at the time it was written.
7. Furthermore, in most cases the wider range of uses now permitted under class E of the Order, would provide some employment opportunities. By contrast the proposed residential use (class C3) would be unlikely to do so. It would not, and never has, constituted a B class use under the Order.
8. Accordingly, the displacement of the established office use at the appeal building by a residential one would inhibit it playing a continued employment role, whether as an office, or another commercial, business or service use. Consequently, the proposed development would run counter to the thrust of policy TC12 of the LP.
9. Nevertheless, revisions to the Order and other planning legislation have occurred since the adoption of policy TC12 of the LP, some of which are highly material to my determination. The first has already been alluded to, in that class B1a office use no longer exists in the Order. Instead, it was deliberately incorporated into a wider category, use class E. Amongst other things, class E covers retail, financial or professional services, cafes, restaurants, light industrial processes, health centres and some leisure uses.
10. Coupled with that were changes made to permitted development within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Insofar as is relevant to my determination, these provided for increased changes between use classes without the need for full planning permission, albeit that in some cases prior approval is required. This would allow for the change of use from an office use to residential use subject to certain restrictions. In this instance, as the appeal site concerns a listed building, it would fall outside the development permitted by the GPDO in this respect.
11. Nevertheless, the greater flexibility to change within and between uses reflected part of a less rigid approach at national level which sought to focus on economic growth rather than specific employment land uses. It is reinforced by the encouragement to make effective use of land found in the National Planning Policy Framework (the Framework) and aligns with measures giving priority to using previously developed land¹ and the objective to significantly boost the supply of homes².
12. Cumulatively, these changes mean that the national policy context and supporting legislation has altered significantly since the LP was adopted. Realistically, they severely weaken the ability to implement policy TC12

¹ Paragraph 123

² Paragraph 60

within the TCEA, as fewer relevant developments would need planning permission. Hence, the intended control can no longer be consistently exerted. This is reflected in some of the recent planning history within the TCEA that is brought to my attention, which includes the prior approval³ of a large office building within the TCEA to 56 residential units. In addition, the Council's policy team⁴ acknowledges that policy TC12 has been effectively superseded by national guidance.

13. Moreover, as outlined in the submitted commercial property consultant report⁵, there have been notable changes in the demand for office accommodation and patterns of working since the adoption of the LP. These include increased awareness of the environmental performance of buildings, and the popularity of working from home arrangements which has resulted in greater demand for more flexible, energy efficient buildings. The marketing exercise undertaken revealed no interest in the appeal building from office users owing to its probable poor energy performance and more restrictive cellular floorplan, and limited interest from other class E users. Accordingly, resisting residential accommodation at the appeal building could mean it continues to remain vacant, or attracts a class E user who is less compatible with the floorplan of the historic building.
14. The evidence provided in relation to the availability of town centre office accommodation does not suggest there is a problematic shortage or unmet demand. The Council has not provided evidence to undermine those findings, nor do they suggest that the office uses that have already changed to residential use within the TCEA have harmed the provision of town centre jobs.
15. Overall, given the fundamental nature of the legislative changes and complexity of the context, I am not convinced that tangible harm would result from the residential use proposed. My finding is consistent with an earlier Council decision (reference W/21/0743) whereby an office premises at 3 Euston Place within the TCEA was granted planning permission to change to residential use.
16. Hence, there is some tension between national and local policy in the approach to employment land. Whilst not expressly prohibited, there is little national support for a protectionist policy approach to certain employment sectors. Rather, paragraph 86d) advocates flexibility to accommodate needs not identified for in the plan, to allow for new and flexible working practices, and to enable a rapid response to changes in economic circumstances.
17. Accordingly, having regard to national planning policy, the proposal would not conflict with the approach in the Framework. Nevertheless, although somewhat overtaken by events, the wording of policy TC12 in the LP is unequivocal. The proposed development is not a class B use and, notwithstanding opportunities to work from home, would remove the potential for a use that provides employment opportunities. Overall, I find the change of use would run counter to the thrust of policy TC12 of the LP.

³ Reference W/21/0970

⁴ E-mail comments dated 14.2.24

⁵ Prepared by ehB Reeves

18. Paragraph 225 of the Framework indicates that due weight should be given to development plan policies adopted prior to the Framework according to the degree of consistency with it. It follows that this is pertinent to the degree of weight the conflict with policy TC12 of the LP should be given. This is a matter to which I shall return in the overall planning balance.

Other Matters

19. Myton House is a Grade II listed building and is situated within the Royal Leamington Spa Conservation Area (CA). Accordingly, I have borne in mind my statutory duties in respect of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
20. The CA covers a large proportion of the town, and its significance derives in part, from the quality of the 19th century architecture and townscape that reflects its history as a spa town. Holly Walk became a public thoroughfare in the 1820s and was laid out for building in 1833 as a formal area for promenading. The surviving villas that line the tree lined avenue give an insight into the likely social status and recreational activities of former occupants of this part of the town.
21. Insofar as is relevant to the proposal before me, the special interest of the listed building derives mostly from its architectural and aesthetic interest. Myton House dates from about 1833 and was probably designed by James Morgan. It features painted stucco facades, a hipped slate roof, sash windows, cast-iron veranda and decorative bargeboards that typify 19th century residential villas. It occupies a corner plot location along Holly Walk, and so together with other 19th century buildings makes a positive contribution to the character and appearance of the CA.
22. No external or internal alterations are proposed as part of the appeal scheme. Hence, the effect on the architectural quality and historic fabric embodied in the listed building would be neutral. The change of use to a single residential dwelling would return the building to its original use, and so in that respect, it would be consistent with its architectural purpose, thereby reinforcing the significance of the listed building and this part of the CA.
23. Therefore, the proposal would be consistent with the expectations of the Act and the Framework with regards to conserving and enhancing the historic environment.

Planning balance

24. The Council accepts that following a recent planning appeal decision, it cannot demonstrate a five-year housing land supply. In that case, the Inspector found that there was a supply of 4.01 years⁶.
25. Footnote 8 of the Framework triggers paragraph 11d) in these circumstances. The presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or (ii) that

⁶ Reference APP/T3725/W/23/3319752, paragraph 111

any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. There is nothing before me to show there is a clear reason for refusal under paragraph 11d)(i). Therefore, the balance in paragraph 11d)(ii) of the Framework is engaged.

26. The proposal would provide an additional dwelling that would make a small but positive contribution to the housing supply where there is unmet need. Furthermore, it would be in an accessible location, and would make use of previously developed land by bringing a vacant listed building back into use. This would be likely to secure the future and ongoing maintenance of a designated heritage asset. These benefits attract significant favourable weight.
27. The proposal would effectively remove the potential for an employment use at the appeal site, which the development plan seeks to retain. However, there is disparity in the rigid approach in policy TC12 of the LP and policies in the Framework and legislation which seek to increase flexibility between use classes and significantly boost the supply of homes. Based on the circumstances of this proposal, the conflict with policy TC12 of the LP is given a minor degree of weight.
28. It follows that the presumption in favour of sustainable development applies, which represents a material consideration of significant positive weight.
29. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁷.
30. Overall, I consider that the benefits arising from the proposal and the provisions of the Framework provide sufficient justification to find other than in accordance with the development plan taken as a whole.

Conditions

31. The Council have suggested 4 conditions which I have assessed against the tests in paragraph 56 of the Framework, and advice in Planning Practice Guidance that encourages keeping the number of conditions to a minimum. For the sake of certainty, conditions are imposed setting a period for commencement and requiring the development to comply with the submitted plans.
32. The development plan contains policies that seek to protect air quality and encourage careful water management. On that basis, conditions are imposed to ensure the provision of an electric vehicle charging point and water efficiency measures. However, I have adjusted the wording to be proportionate to the scale of the development.

⁷ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Conclusion

33. For the reasons given above the appeal should be allowed.

Helen O'Connor

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos. 700439-PL-004 Location Plan & Proposed Block Plan; 700439-PL-005-A Proposed Cellar & Ground Floor Plans and 700439-PL-006 Proposed First Floor & Roof Plans.
- 3) Prior to the first use of the dwelling hereby permitted, at least one electric vehicle recharging point shall be installed in accordance with details previously submitted to and approved in writing by the local planning authority. Thereafter, it shall be retained as approved, unless being upgraded.
- 4) Prior to the first use of the dwelling hereby permitted, measures to achieve a water efficiency standard of 110 litres per person per day based on an assumed occupancy rate of 2.4 people per household shall be installed in accordance with a scheme previously submitted to and approved in writing by the local planning authority. Thereafter, the approved water efficiency measures shall be retained and maintained in accordance with the manufacturer's specifications.