



Appeal Decision

Site visit made on 28 January 2025

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/T3725/W/24/3354020

Flat 3, 62 Bath Street, Leamington Spa, Warwickshire CV31 3AE

- 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 Jagtar Gill (JRG Properties) against the decision of Warwick District Council.
 - The application Ref is W/24/0044.
 - The development proposed is described as “3 bedroom HMO flat”.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a 3 bedroom dwelling (C3) to a 3 bedroom HMO (C4) at Flat 3, 62 Bath Street, Leamington Spa, Warwickshire CV31 3AE in accordance with the terms of the application, Ref W/24/0044, subject to the following conditions:-
 - 1) The development hereby permitted shall be carried out in accordance with drawing nos 23/038/P01 and 23/038/P02.
 - 2) No more than 3 bedrooms shall be provided in the HMO hereby permitted. Also, at any one time no more than 3 people shall occupy the HMO hereby permitted as their primary residence.

Preliminary Matters

2. The description of development in the header is taken from the application form. However, this fails to include an act of development and so in my decision I have used the description included on the Council's decision notice and the appeal form. I have omitted reference to the development being retrospective as this is superfluous. No injustice would be caused to any party by taking this approach. HMO stands for house in multiple occupation.
3. The application form states the change of use has already started. I have assessed the appeal on this basis.
4. Since the Council's decision a revised version of the National Planning Policy Framework (the Framework) has been issued. However, the amendments do not affect the parts of the Framework most pertinent to this appeal and so I find no reason to seek the main parties' views on the matter.

Main Issues

5. The main issues are whether the development includes appropriate space for the storage of refuse bins and if not whether there are other factors that justify allowing the appeal.

Reasons

6. Policy H6 of the Warwick District Local Plan 2017 (the LP) sets out circumstances when planning permission will be granted for HMOs. Part (e) of the policy requires adequate provision for the storage of waste refuse containers so they are not visible to the general public and they can be moved to the collection point along an external route.
7. The HMO is on the second and third floors of the appeal property. There is no private external area for use by the HMO's occupants and the plans fail to show any internal space dedicated to refuse storage. The HMO does not accord with part (e) of LP policy H6 as there is no suitable storage space for refuse bins.
8. Website advice from the Council explains that home owners at properties without space for bin storage are allowed to put rubbish out for collection in sacks. As such, the lack of bin storage space at the HMO does not prevent refuse collection.
9. Prior to the introduction of the HMO, the part of the appeal property affected by the development was used as a residential flat. It is evident that the occupants of the flat also had no storage space for waste collection bins. Therefore, it is fair to assume the residents would have needed to store waste internally and to have put out refuse for collection in sacks rather than bins. I envisage waste from the HMO is managed and disposed of in the same manner.
10. I am referred to the Council's Refuse and Recycling Storage Requirements – A Guidance Note (hereafter referred to as the Guidelines). The Council contend that this shows the change of use to a HMO increases the size of refuse containers required, so suggesting the development will generate more waste than the previous residential flat. However, I am taken to no particular part of the Guidelines in support of this claim. Instead, I note the tables under section 4.2 of the Guidelines indicate that a HMO with 1 to 3 occupants would require a single 180 litre bin as well as a box and bag for recycling. For a flat there is a similar requirement for a single 180 litre bin plus advice to contact the Council to discuss further any need for recycling containers. As such, I am unconvinced the Guidelines illustrate that the 3 bedroom HMO use subject of this appeal is bound to generate more waste compared to the previous residential flat.
11. The Council's Contract and Performance Officer identifies a problem on Bath Street of fly-tipping of domestic waste on the day before collection day. The Council's website advises that refuse sacks put out before 7pm on the day before collection may be considered as fly-tipping. However, it is inappropriate to assume the residents of the HMO will act contrary to the Council's advice or that they are more likely to carry out fly-tipping compared to residents of a flat.
12. In summary, I conclude the development would not include appropriate space for the storage of refuse bins and in these regards, it would be contrary to part (e) of LP policy H6. However, the development would have little meaningful effect in terms of waste generation, storage and collection associated with the appeal property and so I attribute limited weight to the harm caused by this policy conflict.

Other concerns raised.

13. Interested parties have raised other concerns with the appeal scheme. The development means the proportion of HMOs within 100 metres radius of the site is

24.5% of the total dwelling units. This figure is above the maximum of 10% set out in part (a) of LP policy H6. However, the appeal site is on a main thoroughfare as Bath Street is a classified road. Also, I see no reason why the HMO is likely to lead to an increase in activity or noise along nearby residential streets compared to the previous flat. Therefore, an exception to part (a) is permitted under LP policy H6 when read as a whole.

14. Concerns are raised over whether the HMO provides suitable living conditions having regard to the effects of air pollution and noise from road traffic and a nearby railway. However, there is little evidence to indicate such effects significantly affect the living environment at the appeal property and it is noteworthy that the Council does not raise objections on these matters. No parking spaces or cycle storage is provided to serve the HMO but the new use requires no additional facilities compared to the previous authorised use as a dwelling.
15. The concerns raised do not provide reason to dismiss the appeal. As such, they fail to affect my overall conclusion.

Other factors and planning balance.

16. The appeal property is designated as a grade II listed building. It originates from the late Georgian period and gains its significance from its age and the retention of original architectural features. Also, the site lies within the Royal Leamington Spa Conservation Area (the CA). The appeal building contributes positively to the character and appearance of the CA by virtue of its historic interest as well as its obvious, attractive presence within the street. The appeal development is simply a change of use and it involves no alterations to the external appearance or the physical fabric of the building. The change to a HMO has caused no harm to the significance, visual qualities or character of the listed building or the CA.
17. At paragraph 125(d), the Framework states planning decisions should promote and support the development of under-utilised land and buildings. Converting the space above shops is given as an example of how this could be achieved. A decision to grant planning permission would be in line with this advice as it would promote an effective use of the appeal property in meeting the need for homes. Moreover, as the property is a listed building, I am mindful of the advice at paragraph 210(a) of the Framework to take account of the desirability of putting heritage assets to viable uses consistent with their conservation. The development meets this aim.
18. The policy conflict I have identified in respect of the first main issue means the development does not accord fully with the LP. However, the benefits of the scheme identified above are of sufficient weight to override the limited harm I attach to the lack of appropriate bin storage. As such, material factors justify granting planning permission contrary to the development plan.

Conditions

19. I have had regard to the planning conditions as suggested by the Council in light of the advice on conditions as set out in the Framework. In the interests of clarity, I attach a condition that requires the development to be carried out in accordance with the approved drawings. I also include a condition that limits the number of bedrooms in the HMO and the number of occupiers to ensure satisfactory living

conditions are provided and to prevent excessive waste generation and associated ill-effects on the character and appearance of the area.

20. The Council raises concern that a condition which limits the number of occupants would be unenforceable as it would require internal inspections. However, investigations of any potential breach of such a condition would be similar to those associated with the condition on the number of bedrooms as suggested by the Council. I am also mindful that planning contravention notices provide a method of obtaining information from any owner or occupant of the HMO without the need for internal investigations. Therefore, I am satisfied the proposed condition would be enforceable.

Conclusion

21. The development conflicts with the LP when read as a whole but material considerations indicate that a decision should be made other than in accordance with it. Therefore, I conclude the appeal should be allowed.

Jonathan Edwards

INSPECTOR