

Planning Committee: 29 January 2019

Item Number: 10

Application No: [W 18 / 2002](#)

Town/Parish Council: Leamington Spa
Case Officer: Helena Obremski

Registration Date: 24/10/18
Expiry Date: 19/12/18

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Resubmission of W/17/2413: Retrospective change of use from two dwellings (C3 use) to 10 bed HMO split into two cluster flats (sui generis use). FOR Mr Birdi

This application is being presented to Committee due to the number of objections and an objection from the Town Council having been received.

RECOMMENDATION

Planning Committee are recommended to grant planning permission, subject to the conditions listed in the report and subject to a satisfactory unilateral undertaking for an amendment to the Traffic Regulation Order being completed. Should a satisfactory Unilateral Undertaking not have been completed by 28 February 2019, Planning Committee are recommended to delegate authority to the Head of Development Services to REFUSE planning permission on the grounds that the proposal makes inadequate provision in respect of the issues the subject of that undertaking.

DETAILS OF THE DEVELOPMENT

The proposal seeks retrospective planning permission for the change of use from two dwellings (C3 use) to a 10 bed HMO split into two cluster flats (sui generis use).

The application has been amended to add a window to the plans to the first floor rear bedroom which is existing and was omitted initially from the plans in error. The layout of the ground floor has also been amended to reduce the number of bedrooms by 1 and reposition a window on the rear elevation

THE SITE AND ITS LOCATION

The application property is a three storey townhouse, located within the town centre and Conservation Area. The application property benefits from a small courtyard to the rear, but has no off street parking provision. Planning permission was granted in 2014 for a conversion of the shop and upper floors into 2no. apartments. The applicant states that this was implemented, and that the proposed works have been carried out following on from the conversion of the property.

RELEVANT PLANNING HISTORY

W/13/0370 - application withdrawn for change of use from shop and storage to two residential units with associated alterations.

W/14/0351 - planning permission refused for change of use from shop to 2no. 3no bedroomed flats (Use Class C3). (Resubmission of W/13/0370).

W/14/0754 - planning permission granted for change of use from shop (Use Class A1) to 2no. residential units (Use Class C3). (Resubmission of W/13/0370 & W/14/0351) and associated external alterations.

W/17/2413 - application withdrawn for retrospective change of use from two dwellings (C3 use) to 11 bed HMO split into two cluster flats (sui generis use).

RELEVANT POLICIES

- National Planning Policy Framework

The Current Local Plan

- BE1 - Layout and Design (Warwick District Local Plan 2011-2029)
- BE3 - Amenity (Warwick District Local Plan 2011-2029)
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets (Warwick District Local Plan 2011-2029)
- TR3 - Parking (Warwick District Local Plan - 2011-2029)
- H6 - Houses in Multiple Occupation and Student Accommodation (Warwick District Local Plan 2011-2029)
- HE1 - Protection of Statutory Heritage Assets (Warwick District Local Plan 2011-2029)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029)

Guidance Documents

- Parking Standards (Supplementary Planning Document)

SUMMARY OF REPRESENTATIONS

Royal Leamington Spa Town Council: Objection raising the following issues:-

- The inaccurate parking survey;
- A query regarding the HMO calculation;
- The undersized communal sitting room on the second floor;
- The overdevelopment of the site;
- The detrimental impact on neighbours: noise, anti-social behaviour and parking.

Waste Management: No objection, subject to the provision of adequate waste storage which is accessed from the public highway.

Private Sector Housing: Objection regarding the small living area for the second floor flat.

WCC Highways: No objection, subject to the receipt of a satisfactory unilateral undertaking securing a Traffic Regulation Order.

Public Responses: 5 Objections received on the following grounds:-

- The inadequate living conditions for the occupiers;
- The impact on neighbouring residential amenity: waste storage, noise disturbance, and litter;
- The lack of adequate parking and the inaccurate parking survey provided;
- The proposal doesn't take into account 20+ rooms being constructed on Kenilworth Street.

ASSESSMENT

The main considerations as part of the assessment of this application are as follows:

- The Principle of the Development
- The Design and Impact on the Conservation Area
- The Impact on Neighbouring Residential Amenity and the Living Conditions for the Future Occupiers
- Parking and Highway Safety
- Waste

The Principle of the Development

Whether the proposals would cause a harmful over-concentration of HMOs in this area

Policy H6 of the adopted Local Plan states that planning permission will only be granted for Houses in Multiple Occupation where:-

- a) the proportion of dwelling units in multiple occupation (including the proposal) within a 100 metre radius of the application site does not exceed 10% of total dwelling units;
- b) the application site is within 400 metres walking distance of a bus stop;
- c) the proposal does not result in a non-HMO dwelling being sandwiched between 2 HMOs;
- d) the proposal does not lead to a continuous frontage of 3 or more HMOs; and
- e) adequate provision is made for the storage of refuse containers whereby - the containers are not visible from an area accessible by the general public, and the containers can be moved to the collection point along an external route only.

Assessment

The proposal is assessed as follows:

a) Initially, Officers calculated the percentage of HMOs within a 100 metre radius of the site including the proposed HMOs as 10% which met the requirements of point "a" above. However, concern had been raised that the student flats approved as part of application W/10/1370 along Kenilworth Street which is within 100 metres of the application site have not been included in the calculation because they do not have a HMO licence yet, as they are still being constructed. As the development approved under W/10/1370 is well underway, it was considered appropriate to add these properties into the calculation, which means that the existing percentage of HMOs within a 100 metre radius of the site is 11.83%. Adding the two retrospective HMOs as part of this application would increase this percentage to 12.9% which conflicts with point "a" above.

However, the proposal is considered to meet the exception to point "a" as defined by within Local Plan policy H6. The application site is considered to be positioned on a main thoroughfare in a mixed use area - whilst the immediate neighbouring properties are residential, within close proximity to the site there are also a mixture of commercial sites such as a veterinary surgery, large hotel, insurance services, various retail units, and multiple restaurants. There are also large offices nearby to the site. It is therefore considered that the wider area around the site is in mixed use. Furthermore, the exception to point "a" specifically seeks to resist additional movements between the application site and the town centre. As the application site is already located within the town centre, the change of use is not considered to increase footfall within an area which is predominately residential.

b) The application property is located within 400 metres of a bus stop.

c) The property would not sandwich a non-HMO between another HMO.

d) The change of use would not lead to a continuous frontage of 3 or more HMOs

e) The property benefits from side access to the courtyard where refuse could be stored out of sight of the general public.

Therefore it is considered that the retrospective change of use of the site to 2no. HMO cluster flats is acceptable in this location and meets the requirements of policy H6 of the Local Plan

Design and Impact on the Conservation Area

Section 72 of the Planning (Listed Buildings and Conservation Areas) 1990 imposes a duty when exercising planning functions to pay special attention to the desirability of preserving or enhancing the character of a Conservation Area.

Paragraph 193 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 196 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage assets, the harm should be weighed

against the public benefits of the proposal, including securing its optimum viable use.

Policies BE1 and BE3 of the Warwick District Local Plan 2011 - 2029 state that development will only be permitted which positively contributes to the character and quality of the environment through good layout and design.

Policy HE1 of the Local Plan states that development will not be permitted if it would lead to substantial harm to the significance of a designated heritage asset. Where the development would lead to less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal. The explanatory text for HE1 clarifies that in considering applications relating to Conservation Areas, the Council will require that proposals do not have a detrimental effect upon the integrity and character of the building or its setting, or the Conservation Area. Local Plan policy HE2 supports this and states that it is important that development both within and outside a Conservation Area, including to unlisted buildings, should not adversely affect its setting by impacting on important views and groups of buildings within and beyond the boundary.

A window at the rear of the property is to be repositioned to allow better living conditions for the occupiers of the site. This would not be an additional window and can be conditioned to be constructed from matching materials to those of the existing dwelling. Therefore, it is considered that the development causes no harm to the street scene, or the Conservation Area. It is acknowledged that the Conservation Officer has no objection to the proposal. The development is therefore considered to be in accordance with Local Plan policies BE1, BE3, HE1 and HE2.

Impact on Neighbouring Residential Amenity and the Living Conditions for the Future Occupiers

Warwick District Local Plan policy BE3 requires all development to have an acceptable impact on the amenity of nearby users or residents and to provide acceptable standards of amenity for future users or occupiers of the development. There is a responsibility for development not to cause undue disturbance or intrusion for nearby users in the form of loss of privacy, loss of daylight, or create visual intrusion. The Residential Design Guide provides a framework for policy BE3, which stipulates the minimum requirements for distance separation between properties to ensure adequate levels of outlook and light.

Impact on the Amenity of Neighbouring Residents

There have been objections from members of the public concerning HMOs in the area having led to increased noise, disturbance and anti-social behaviour. Officers have consulted with Environmental Health Officers who have confirmed that they have received no complaints in relation to these matters lodged against the application property.

There are no external alterations proposed which would impact the amenity of neighbouring properties.

Whilst the concerns of neighbours are recognised, as the scheme complies with the Council's policy on the proportion of HMO properties within this area, and as there have been no complaints made regarding the occupants, Officers have no material reason to refuse the application on the grounds of impact on neighbouring amenity.

Living Conditions for the Future Occupiers

There has been an objection from the Town Council and members of the public in relation to inadequate living conditions for the occupants of the property. The Town Council considers that the scheme represents overdevelopment of the site. Officers expressed concerns regarding the fact that the first floor back bedroom had no outlook as it was only served by a rooflight. The agent has amended the plans and informed Officers that this room is already served by a side facing window. Officers have checked that the window is installed and that it accords with the plans which were approved under the 2014 permission for the conversion, which is the case. It was assessed in 2014 that the living conditions for a habitable room with the same living arrangements was acceptable, and therefore it is considered that the use of the rear bedroom, with a side facing window is also acceptable.

Concern was expressed by Officers relating to the layout of the ground floor and living conditions within the bedrooms. The originally submitted plans showed a ground floor bedroom with a side facing outlook immediately onto a shared passageway, and facing towards a window serving another residential property; this was not considered to provide adequate living conditions for the occupiers, which would be potentially overlooked and disturbed within their bedroom. It is noted that this room was approved as a habitable room as part of the 2014 permission for the conversion of the site, however, this was approved as a study to serve a flat rather than a bedroom. As part of the current application, Officers considered however that this arrangement was too constrained for a bedroom serving a HMO where the occupants are likely to spend a considerable amount of time. The first floor bedroom with a side facing window has a much more open outlook and is not positioned directly next to a shared passageway, where passers by could look into the bedroom and create noise disturbance. It was also considered that the ground floor rear bedroom had a very constrained outlook onto the rear boundary wall. Again, although the window serving the proposed rear ground floor bedroom was approved as part of the 2014 permission, this formed part of an open plan living area.

Therefore, the plans were amended to reposition the ground floor rear window and enlarge the size of the room, through the reduction of one bedroom. On balance, it is therefore considered that as the outlook has been improved, the bedroom has been enlarged, has two light and outlook sources and as the space already has been approved as habitable accommodation under the 2014 permission, the living conditions for the occupiers of this room are considered to be acceptable. A condition is proposed to be included to ensure that the

maximum number of bedrooms within the property are 10 to ensure the protection of amenity for the occupiers.

Concern has been expressed by members of the public and the Town Council regarding the size of the rooms, facilities provided for the occupants and size of the communal areas. Private Sector Housing have made an inspection of the property and also share concerns regarding what they consider to be a small living area for the second floor flat. Whilst the concerns are noted, the facilities and size of the living areas are controlled by licensing and cannot be considered as part of this planning application. All of the habitable rooms are provided with windows which provide light and outlook, and all of the rooms are considered to have adequate levels of privacy.

Therefore, it is considered that the development provides adequate living conditions for the occupants of the property and would not have a harmful impact on neighbouring residential amenity. The development is considered to be in accordance with Local Plan policy BE3.

Parking and Highway Safety

There has been an objection from the Town Council and members of the public that the change of use provides inadequate parking and that the parking survey is inaccurate.

There would be no parking provided for the HMOs, however, it should be noted that this was the same arrangement as for the flats which previously obtained planning permission. The previously approved flats required parking for 4 cars, the existing arrangement generates a need for 5 spaces, in accordance with the Council's Vehicle Parking Standards guidance, which is 1 space more than the previous arrangement. WCC Highways previously suggested that the occupants should not be entitled to parking permits for nearby on-street parking because of existing parking stress, which Officers controlled by a condition attached to the application. It should be noted that under the previous application, a parking survey was not provided. WCC Highways have assessed the current application and parking survey and consider that sufficient parking is available within the nearby area to accommodate the required 5 spaces needed which is shown by the parking survey provided. However, they also note that the applicant has submitted a unilateral undertaking to waive the right for the occupants to apply for permits, through the amendment of the existing Traffic Regulation Order. WCC Highways have no objection on this basis.

Complaints have been made by members of the public that the existing residents of the property have obtained parking permits, which is contrary to the requirements of the previous permission, which the applicant contends was implemented. A condition was attached to the previous permission in 2014 requiring that prior to the occupation of the site, a Traffic Regulation Order must be made by the Highway Authority to remove the application property from the existing Traffic Regulation Order thereby securing the removal of the rights of the applicant/ future owner/tenants of the application property to apply for residents parking permits. Clearly, the owner/occupiers are in breach of this

condition, which has been reported to the Council's Planning Enforcement team. In order to better ensure that the amendment to the Traffic Regulation Order is adhered to, the Council now require that a legal agreement is entered into prior to issuing a planning approval. Therefore, subject to the signing of a satisfactory unilateral undertaking to secure the amendment to the Traffic Regulation Order, it is considered that the proposal would not have a harmful impact on the capacity of nearby parking.

It should also be noted that the site is located within a sustainable location with excellent links to buses and Leamington Spa Train Station.

A number of queries have been raised in reference to the parking survey provided. Members of the public have queried the validity of the results provided, the locations and time of the parking survey and why further parking surveys were not carried out. These comments have been relayed to WCC Highways who state that, *"the results of a car parking survey undertaken were provided. Upon reviewing the results of the survey, the Highway Authority was satisfied that there was sufficient spare on-street parking capacity to accommodate the additional parking that could be generated by the development proposals. Appendix A of WDC's Parking Standards (June 2018) indicates that additional surveys may be required for multiple reasons however, in this instance, the parking survey that was carried out was considered to be sufficient. The survey was carried out overnight, which is when demand for on-street parking is likely to be at its highest for residential uses."*

However, notwithstanding the results of the parking survey provided, the applicant proposes to enter into a legal agreement to revoke the rights of the occupiers to apply for parking permits to overcome the concerns expressed by local residents in relation to the impact on permit areas. Therefore, there would be no additional demand on nearby permit parking as a result of the proposed development.

Therefore, the change of use is not considered to cause harm to highway safety or amenity and is in accordance with Local Plan policy TR3.

Waste

There have been concerns raised that the scheme provides inadequate waste storage arrangements and that there has been littering since the change of use to a HMO.

Waste Management have no objection to the proposed development, subject to adequate waste storage arrangements, which can be accessed from the public highway.

There is a communal rear courtyard which can be used for waste storage. This can be accessed from an alleyway which links the site to the public highway from the courtyard. Therefore, adequate waste storage measures are considered to have been provided.

Other Matters

The Council's open space team have requested that a contribution is made towards the improvement of local open spaces. However, as the proposal falls below the threshold of 11 or more dwellings, it would be unreasonable to insist on this.

Members of the public have raised concerns regarding the fact that the 2014 permission for the conversion of the site from a shop to 2no. flats was not implemented and that the site was converted straight into 2no. HMO cluster flats from the shop. Whilst this concern is noted, this has no bearing on the assessment on this application, which is considered on its own merits. It is noted above that the 2014 permission is considered as a precedent, which is still the case even if it was not implemented, because the application was approved and considered by the Council as acceptable.

Conclusion

The retrospective change of use of the site to a 10 bedroom HMO is considered to be acceptable in principle and is not considered to have a harmful impact on neighbouring residential amenity. The proposal is considered to provide acceptable parking arrangements and is considered to provide adequate waste storage arrangements. The change of use should therefore be approved.

CONDITIONS

- 1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved amended drawing 1227-0500-05, and specification contained therein, submitted on 9th January 2019. **REASON** : For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies BE1 and BE3 of the Warwick District Local Plan 2011-2029.
- 2 All window and door frames shall be constructed in timber and shall be painted and not stained. **REASON**: To ensure an appropriate standard of design and appearance within the Conservation Area, and to satisfy Policy HE2 of the Warwick District Local Plan 2011-2029.
- 3 The maximum number of bedrooms within the two HMO cluster flats hereby approved shall be 10. **REASON**: In the interest of the protection of amenity of the occupants of the property in accordance with Warwick District Local Plan policy BE3.