

**Planning Committee:** 10 October 2017

**Item Number: 6**

**Application No:** [W 17 / 0218](#)

**Town/Parish Council:** Leamington Spa  
**Case Officer:** Lucy Hammond

**Registration Date:** 08/02/17  
**Expiry Date:** 05/04/17

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**4a Wise Terrace, Leamington Spa, CV31 3AS**

Erection of a four and a half storey building to accommodate 4No. flats in multiple occupation (retrospective) FOR GSP Construction Limited

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This application is being presented to Committee due to the number of letters of support received.

**RECOMMENDATION**

That planning permission be refused for the reasons set out at the end of this report.

**DETAILS OF THE DEVELOPMENT**

Retrospective planning permission is sought for the erection of a four and a half storey building to provide 4no. flats internally, each to be used as a house in multiple occupation (HMO). The total number of bedrooms across the four flats is 27.

Externally, no changes are sought to the design and appearance of the building previously granted permission under an earlier planning application (ref. W/11/0955). However, this permission approved the building as 4no. flats to be used as HMO's but with a total number of bedrooms of 14. Since the building has been completed with a fundamentally different internal layout, which provides an additional 13 bedrooms, retrospective permission is now sought for the whole development.

**THE SITE AND ITS LOCATION**

The application site lies towards the southern end of Leamington Spa town centre, in Wise Terrace, a small cul-de-sac located to the west of Wise Street, which is another no-through road to the south of High Street. The site was previously occupied by a dilapidated building, originally granted permission to be demolished and replaced with a new building to provide 4 apartments in 2008. The site was subsequently cleared and works began on the 2008 permission, which was never completed, instead being replaced by the later 2011 permission for a similar scale of development that sought to provide HMO's rather than market apartments.

The majority of Wise Terrace and Wise Street (to the east of the site) has been regenerated from commercial to residential uses. Wise Terrace is predominantly in residential use although there is an existing scrap yard and a substation to the east of the site (in Wise Street). Vehicle access to the site is gained via Wise Street.

The Grand Union Canal and towpath adjoin the southern boundary of the site, while the building's position has a dual frontage, not only facing Wise Terrace to the north but also the Tachbrook Road which the western elevation of the building looks onto.

Although the building sits entirely outside the Leamington Spa Conservation Area, its boundary adjoins the north and west boundaries of the application site, i.e. along the Wise Terrace and the Tachbrook Road frontages.

The building was substantially completed some time after the approval of the 2011 permission and has been occupied as a 27 bed HMO for approximately the last year.

### **PLANNING HISTORY**

**W/11/0955** - Construction of 4 new apartments in multiple occupation (3 x 3 bed 1 x 5 bed) and provision of 4 parking spaces (amendment to W/08/1208) – Approved 31.01.2012

**W/08/1208** - Demolition of existing workshop and storage building and construction of 4 new apartments and 4 car parking spaces – Approved 18.12.2008

Relevant to the planning history at this site is the fact that although the applicant submits that both schemes above were implemented, it is officers' opinion that the latter permission, approved in 2012, was not implemented. This is because of the extent to which the completed development varies from that approved as well as the non-discharge of a pre-commencement condition. With this in mind, officers consider that the development, as built, is therefore unauthorised and the permission, approved in 2012 has since lapsed (January 2015). The development currently before Members should therefore be considered as a new application for the whole development, i.e. the building and the total number of bedrooms (27) rather than just the additional 13 bedrooms which have since been provided internally.

### **RELEVANT POLICIES**

- The National Planning Policy Framework
- DS3 - Supporting Sustainable Communities (Warwick District Local Plan 2011-2029)
- DS5 - Presumption in Favour of Sustainable Development (Warwick District Local Plan 2011-2029)
- H0 - Housing (Warwick District Local Plan 2011-2029)

- H6 - Houses in Multiple Occupation and Student Accommodation (Warwick District Local Plan 2011-2029)
- SC0 - Sustainable Communities (Warwick District Local Plan 2011-2029)
- BE1 - Layout and Design (Warwick District Local Plan 2011-2029)
- BE3 - Amenity (Warwick District Local Plan 2011-2029)
- TR1 - Access and Choice (Warwick District Local Plan 2011-2029)
- TR4 - Parking (Warwick District Local Plan 2011-2029)
- HS1 - Healthy, Safe and Inclusive Communities (Warwick District Local Plan 2011-2029)
- HS4 - Improvements to Open Space, Sport and Recreation Facilities (Warwick District Local Plan 2011-2029)
- HS6 - Creating Healthy Communities (Warwick District Local Plan 2011-2029)
- HS7 - Crime Prevention (Warwick District Local Plan 2011-2029)
- CC1 - Planning for Climate Change Adaptation (Warwick District Local Plan 2011-2029)
- HE2 - Protection of Conservation Areas (Warwick District Local Plan 2011-2029)
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets (Warwick District Local Plan 2011-2029)
- NE3 - Biodiversity (Warwick District Local Plan 2011-2029)
- NE5 - Protection of Natural Resources (Warwick District Local Plan 2011-2029)

#### Guidance Documents

- Sustainable Buildings (Supplementary Planning Document - December 2008)
- Vehicle Parking Standards (Supplementary Planning Document)
- Residential Design Guide (Supplementary Planning Guidance - April 2008)

### **SUMMARY OF REPRESENTATIONS**

**Leamington Spa Town Council:** Objection for the following reasons:-

- If granted, the percentage of HMO's would be 33.19% which is significantly in excess of the 10% required by Policy H6
- The contribution made by a 27 bed HMO to noise, rubbish and anti-social behaviour would not be insignificant, particularly as there appears to be no provision made for on-site management
- The building is overdevelopment of the site
- Non-compliance with the original planning permission granted (W/11/0955) which approved a 14 bed development
- There appears to be no outlined provision for bin storage on a site where nearly double the number of people would be living than originally planned
- The development is not on a main thoroughfare and lacks the requisite amount of parking

**Councillor Davison:** Objection for the following reasons:-

- This development is in excess of the 10% requirement in Policy H6 of the Local Plan
- There is concern about parking and management of the site

**Councillor Naimo:** Objection for the following reasons:-

- The development is contrary to Policy H6
- There is insufficient car parking for the development
- There would be a harmful impact on residential amenity of nearby properties

**WCC Highways:** Objection for the following reasons:-

- The development proposes a level of car parking which is substandard and not in accordance with the adopted car parking standards
- There is insufficient information submitted with the application to demonstrate that the increased number of bedrooms would not exacerbate the demand for on-street parking within the vicinity of the site
- With a number of parking spaces proposed which is deficient a parking survey is required to assess the demand for parking in this area. One has not been forthcoming to date during the course of the application
- Additional justification and information received by the applicant does not address the original concerns of the Highways Authority nor does it negate the requirement for a parking survey; the initial objection therefore still stands

**Health and Community Protection (Environmental Sustainability and Safer Communities):**

Objection for the following reasons:-

- Concern about noise resulting from the proximity of habitable room windows to the Tachbrook Road which is one of the main thoroughfares into and through the town
- The development is on potentially contaminated land and no evidence has been presented of any investigative work that has been carried out
- Regarding air pollution, the applicant has not put forward any proposals to prevent or offset the incremental increase in traffic fumes arising from the development

**WCC Ecology:** Some clarification sought but no objections overall

**Green Space team:** No objection subject to condition

**Private Sector Housing:** No objection

**Waste Management:** No objection

**Canal & River Trust:** No objection

**Warwickshire Police:** No observations to make

**WCC Archaeology:** No observations to make

**Public Response:**

28 letters of objection received raising the following concerns:-

- The development is contrary to Policy H6

- There is insufficient car parking provision
- Harmful impacts on residential amenity
- There is no evidence presented by the applicant to demonstrate why the additional number of bedrooms would not cause any greater impacts on the character of the area / amenity of residents
- Wise Terrace is not a main thoroughfare
- The development would exacerbate existing parking problems on-street in the vicinity
- It would appear there is a poor standard of amenity for future occupiers of the building if it was originally approved with 14 bedrooms and that has now been almost doubled, by providing 27
- Concerns about waste management
- Existing noise impacts would be exacerbated
- Existing anti-social behaviour would be exacerbated
- This area is predominantly residential
- Wise Terrace/Street lead out onto an already very congested stretch of road which this additional number of bedrooms would exacerbate

21 letters of support received (15no. from 6 addresses, together with 6no. from members of the security team who look after Station House and 19 Tachbrook Road.4a Wise Terrace). These letters make the following comments:-

- There have been no complaints or incidents of anti-social behaviour or noise associated with the residents
- There is no problem with car parking at the site
- The development has improved the character and appearance of the area which was previously dilapidated

## **ASSESSMENT**

The main issues relevant to the consideration of this application are as follows:

- Principle of Development
- Impact on the character and appearance of the area
- Impact on the setting of the adjacent conservation area
- Impact on the living conditions of nearby dwellings
- Car parking and highway safety
- Environmental Health considerations (noise and contaminated land)
- Ecological impact
- Other matters

### **The Principle of the Development**

Retrospective permission is sought for the erection of a four and a half storey building to provide 4no. flats to be used as HMO's which cumulatively provide 27no. bedrooms. The planning history at the site is relevant to the principle of development and this is briefly summarised below:-

In 2008 permission was granted for the redevelopment of the site with the erection of a new building to provide 4no. apartments. Records suggest that this permission was lawfully implemented but the development was never completed

and in 2011, a new scheme was submitted to replace the original permission. This proposed a new building, broadly similar in visual terms as the original, but intended to provide 4no. flats as HMO's, providing a total of 14 bedrooms. This was granted but not built in accordance with the approved plans because during the course of construction the internal configuration was re-worked to provide a total of 27 bedrooms, an additional 13 over and above the permitted scheme. Notwithstanding the external appearance of the building being in accordance with the approved elevation plans, the development, as built, represents a fundamentally different scheme to the one given approval under the 2011 reference and accordingly this application now seeks retrospective permission for the whole development, i.e. the building and its use as 4no. flats as HMO's totalling 27 bedrooms.

To that end, the 2011 permission, which lapsed in January 2015 is not capable of being implemented but officers consider the 2008 permission, which was lawfully implemented, is extant and could, in theory be completed. It should be noted however that the approval of the 2011 scheme, is nevertheless a material consideration. It does however carry limited weight particularly in light of the key material change in policy terms, i.e. the adoption of the New Local Plan and full weight which can now be given to Policy H6 which is the key determining principle policy for a development of this nature. This would not have been a determining factor in the consideration of the 2011 scheme.

The principle of development is assessed against Policy H6 of the Local Plan which relates to houses in multiple occupation and student accommodation. The policy states that planning permission will only be granted for HMO's where:-

- a) the proportion of dwelling units in multiple occupation (including the proposal) within a 100m radius of the application site does not exceed 10% of the total dwelling units;
- b) the application site is within 400m walking distance of a bus stop;
- c) the proposal does not result in a non-HMO being sandwiched between 2 HMO's;
- d) the proposal does not lead to a continuous frontage of 3 or more HMO's; 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.

Although the development satisfies points b) - e) above, it does not accord with the first point which relates to the concentration of HMO's within a 100m radius. Given the existing number of HMO's already within the vicinity of the application site the development and the 4no. HMO's this provides would result in a concentration percentage which would stand at 33.19%. This is significantly over the 10% identified by Policy H6 rendering the principle of development unacceptable.

The policy sets out that exceptions to a) may be made where the application site is located:

- i) on the campus of the University of Warwick or Warwickshire College or;

ii) on a main thorough fare in a mixed use area where the proposal would not lead to an increase in activity along nearby residential streets.

The site is not on the campus of either the University or the College nor is it on a main thorough fare. While the building has a dual aspect with one of its elevations fronting the Tachbrook Road, which is a main thorough fare, officers do not consider that this part of Tachbrook Road is in a mixed use area since almost all of the neighbouring buildings are in a residential use (either C3 or C4). Since the proposal is therefore contrary to the provisions of Policy H6 and there are no exceptions that can be applied to this development, the starting point would therefore be to refuse planning permission unless other material considerations indicate otherwise.

An assessment of those other relevant material considerations is set out in the remaining sections of this report, including reference to any possible benefits and disbenefits/material harm that may result from the development.

### **The impact on the character and appearance of the area**

In visual terms, the design, layout and external appearance of the building is broadly similar to the extant 2008 scheme, the key differences mostly relating to fenestration alterations, particularly on the southern elevation of the building which fronts the canal. Officers consider the external appearance of the building represents a significant improvement over the former condition and derelict nature of the site. The building, externally, enhances the overall character of the area and the appearance of the street scene in which it sits and with its proximity to the Grand Union Canal which adjoins the southern site boundary, it is considered that the development represents a significant improvement to this important canal-side frontage. The overall scale of the building is broadly comparable with other buildings in the surrounding locality, for example, buildings on the opposite side of the Tachbrook Road, and officers consider that the development overall is acceptable in visual terms. The development therefore accords with Policies DS3 and BE1 of the Local Plan.

### **The impact on the setting of the adjacent conservation area**

For the same reasons considered above, officers consider that the redevelopment of the former vacant site with the current development respects the setting of the adjacent Leamington Spa Conservation Area, as well as respecting important views both into and out of it. Furthermore the external appearance of the development is considered to preserve and enhance the setting of the adjacent conservation area. The development therefore accords with Policy HE2 of the Local Plan.

### **The impact on the living conditions of nearby dwellings**

With regard to the physical building, it is not considered this would result in any demonstrable harm to the amenity of nearby residential properties, by reason of overbearing, loss of light or loss of privacy. The development approved by the 2008 permission was of a broadly similar scale, mass and bulk and was in fact

greater at roof level, proposing additional fourth storey accommodation whereas this development sets the top floor in from the Tachbrook Road elevation to provide a roof terrace. The 2008 scheme was deemed acceptable in terms of the physical impacts on neighbouring amenity and there are no material changes since the approval of that permission that would lead officers to reach a different conclusion in this regard.

The development does however now seek permission for a different use, i.e. 4 HMO's with a total of 27 bedrooms as opposed to the originally approved 4 apartments and it is acknowledged that within the context of the number of HMOs in the surrounding area and the absence of any substantive management plan seeking to address such issues, this intensification of the use of the building could have an impact on the amenity of nearby residential properties in terms of increased noise and disturbance arising from that proportion of such uses to an unacceptable degree.

### **Car Parking and highway safety**

While the development proposes 4 flats (as HMO's) the total number of bedrooms is 27. The parking standards require 1 space per 2 bedrooms for HMO's so this scale of development requires a total of 14 spaces. The development makes provision for a total of 8 parking spaces though it is noted these are laid out as 4x tandem spaces. This is substantially deficient, compounded further by the fact the parking spaces are tandem which results in an unworkable layout for an HMO, whether it is to be occupied as general or student accommodation.

The Highways Authority has raised objection to the development and despite additional information being submitted by the applicant during the life of the application, has continued to maintain this objection. The key concerns relate to the substandard number and layout of the parking spaces for a development of this scale and the knock on effect this would likely have on existing on-street parking in the vicinity of the application site. The Highways Authority, in their initial response, acknowledged the 2011 permission as a material consideration and therefore based their comments on the additional number of bedrooms proposed (i.e. 13). However, since officers have concluded that the 2011 permission is not extant and could not be implemented, the development, in its entirety must be considered, i.e. 27 bedrooms, for which 8 spaces are provided. The applicant has advised that the development is for occupation by students and therefore the parking standards allow greater flexibility for the parking arrangement to be determined on a case by case basis. In the event permission were forthcoming for this development and even if that were subject to an occupancy restriction to ensure the HMO's were only occupied by students, this still does not resolve the issue that 8 spaces represents not only a significant shortfall, but also an impractical and un-workable layout that could not easily be managed as all of the parking spaces cannot operate independently.

In accordance with the adopted parking standards, in order to consider parking which is below the stipulated requirements, there are five criteria of which one or more must be met. Of most relevance to this development are:-



- there must be sufficient capacity for on-street parking without detrimentally affecting the safety and convenience of other residents and occupiers,
- there is no on-street parking permitted in the vicinity of the development,
- the development meets other planning objectives and would not unacceptably worsen the parking situation.

The way to determine the above criteria is through the undertaking of a parking survey. In the absence of such a survey being carried out the applicant has not demonstrated that the lack of parking for the development will not further exacerbate the existing situation.

The applicant has submitted there is no policy requirement for a parking survey to be carried out, however, the Highways Authority has since confirmed it requests parking surveys as a matter of course within any areas of Leamington Spa which are subject to a high demand for parking in order to determine the parking stress and any capacity that may enable overspill parking to be accommodated. Without a parking survey, the potential for any additional demand on parking to be accommodated is unknown. Whilst this may only impact on the amenity of residents, which is a material consideration for the Local Planning Authority, the Highway Authority also needs to be able to determine whether there would be a potential highway safety implication.

Ultimately, there is insufficient information submitted with the application to fully assess the potential impact of the development. The concerns of the Highways Authority are that the scale of development would further exacerbate the existing demand for on-street parking. If on-street parking cannot be accommodated within a reasonable proximity of the development this could lead to unsafe parking practices occurring which could lead to the obstruction of footways, accesses, visibility splays at junctions and access by the emergency services to the detriment of highway safety.

For these reasons officers are not satisfied that the applicant has adequately demonstrated that the development would not be detrimental to highway safety and accordingly it is considered the development is contrary to the provisions of Policies TR1 and TR4 of the Local Plan.

### **Environmental Health considerations**

The comments from the Environmental Health Officer are noted; these relate to noise, contaminated land and air quality. In respect of the first two, officers consider these matters have already been satisfactorily addressed through the 2008 permission insofar as the position of bedrooms within the internal configuration now is broadly similar to the original approved scheme so it would be unreasonable to require further survey work to be undertaken in this regard. In respect of contaminated land, the relevant records suggest that a contaminated land survey was undertaken and submitted in pursuance of condition 5 that was imposed on the 2008 permission. Since the survey and recommendations within it were deemed acceptable this particular condition was not carried forward to the subsequent 2011 permission. As such, it would be unreasonable to require further survey work in this regard.

In respect of the latter point regarding air quality, in the event that permission were forthcoming for this development it would be subject to a standard condition requiring a low emissions strategy, in accordance with Policy NE5 of the Local Plan. Such a strategy would, for example, include vehicle charging points to be provided for electric vehicles.

Overall, the development is considered to be acceptable in respect of the relevant environmental health considerations and therefore accords with Policies BE3 and NE5 of the Local Plan.

### **Ecological Impact**

The County Ecologist originally sought clarification over the condition of the site, i.e. if the former building had been demolished some time ago there is a likelihood the site could have become overgrown in the following time. However, it is understood, that following the approval of the original 2008 permission, the building was demolished and works commenced soon thereafter on the first permission. Despite the fact this was never built out it is unlikely that there would have been a long period of time in which the site was allowed to become overgrown. Owing to the retrospective nature of the development it is not considered reasonable or necessary to impose any precautionary notes at this time, in the event permission were to be forthcoming. Overall, the development is considered to be in accordance with Policies NE2 and NE3 of the Local Plan.

### **Other Matters**

#### Standards of amenity for future occupiers

Concerns from neighbouring residents are noted about the level of amenity and standards of living space for future occupiers of the building. However, the Private Sector Housing team has been consulted on the development and provided comments advising that each of the four flats have acceptable layouts and facilities. Overall, there are no objections raised to the development in this regard and accordingly, it is considered that the development accords with Policy BE3 of the Local Plan.

#### Open Space

In the event planning permission were to be forthcoming for this development, the Open Space team has advised there are no objections subject to the imposition of a standard condition which would secure a scheme for the provision or improvement of open space within the catchment area of the application site. Should permission be granted for this development, it would be subject to such a condition. The development therefore accords with Policy HS4 of the Local Plan.

#### Waste Management

The site plan shows the position of the bin storage area, which is on the Wise Terrace frontage of the site; space is shown for the storage of 8no. recycling bins as well as a commercial sized waste bin. These would be accessed by the refuse collection vehicle via Wise Terrace.

The Waste Management team have raised no objections to the development and provided some standard advice for the management of waste, including the provision of appropriate bin storage facilities and collection arrangements. Officers consider this aspect of the development is acceptable.

### **SUMMARY/CONCLUSION**

Retrospective permission is sought for the erection of a four and a half storey building to provide 4no. flats to be used as HMO's providing a total of 27 bedrooms. The principle of development is considered unacceptable in accordance with Policy H6 of the Local Plan and with an outstanding objection from the Highways Authority that has not been resolved, there are fundamental concerns regarding the level of car parking provision for the development. Officers are therefore not satisfied that the development would not be detrimental to highway safety nor is there any evidence to demonstrate that this scale of development would not exacerbate existing on-street parking problems in the local area. The development is therefore considered to be contrary to the provisions of Policies H6, TR1 and TR4 of the Local Plan.

Notwithstanding these objections to the development, the visual appearance is considered to be acceptable and the development would not give rise to any harm to the setting of the adjacent Leamington Spa Conservation Area. Similarly, the development is considered to be acceptable with regard to the general impacts on neighbouring amenity. While officers recognise that the potential use of the building as HMO's on this scale might bring with it some economic benefits to the town centre of Leamington Spa and whilst also recognising the site's position and close walking distance to public transport links, shops and other services, these do not amount to significant benefits such that they would over-ride the in-principle objection and furthermore the objection from the Highways Authority. For these reasons it is recommended that planning permission be refused for the two reasons set out below.

### **Reasons for Refusal**

The application site is located within an area where there is a high demand for on street parking and where the concentration of existing houses in multiple occupation (HMOs) is contrary to policy H6 of the emerging Warwick District Local Plan 2011 - 2029 and consequently where there is an increased likelihood of that existing concentration of HMOs having a detrimental impact on residential amenities within the immediately surrounding area.

1. The proposed development by reason of the intensity of the use which is characterised by the number of proposed bedrooms would further intensify HMO capacity within that area thereby increasing the risk of further reducing those amenities for residential occupiers in the locality to an unacceptable level.
2. The proposed development does not make sufficient or appropriate provision for the parking of vehicles within the application site

which would therefore exacerbate existing demand for on street parking within the locality and result in the increased potential for unsafe vehicle movements to the detriment of both highway safety and the amenities of residential occupiers in the locality. Insufficient information has been provided by the applicant to demonstrate that this would not be the case.

The development is therefore contrary to the National Planning Policy Framework and to the following Development Plan policies:-

The Warwick District Local Plan 2011 - 2029

- Policy H6: Houses in Multiple Occupation and Student Accommodation
  - Policy BE3: Amenity
  - Policy TR1: Access and Choice
  - Policy TR4: Parking
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