Planning Committee: 20 May 2021 **Item Number: 6**

Application No: W 20 / 2035

Registration Date: 07/12/20
Town/Parish Council: Leamington Spa **Expiry Date:** 01/02/21
Case Officer: Emma Booker
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9 Camberwell Terrace, Leamington Spa, CV31 1LP
Formation of front lightwell and erection of low brick wall (retrospective application) FOR Mr J Pangli

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This application is being presented to Planning Committee due to the number of objections received.

RECOMMENDATION

Planning Committee is recommended to grant planning permission, subject to the conditions listed at the end of this report.

DETAILS OF THE DEVELOPMENT

Retention of lightwell to the front of the property and erection of low brick wall.

The lightwell completed at the site is irregular in shape and surrounds the front and side of the bay feature. It is covered by a metal grate and white UPVC windows have been fitted in the window apertures. For safety, a metal gate has been fitted to separate the main access into the property and bin storage area from the lightwell.
The front wall was demolished without planning permission prior to the determination of the previous application ref: W/20/0980. It has now been reinstated with new materials to give a similar visual appearance to the original wall.

THE SITE AND ITS LOCATION

9 Camberwell Terrace is a two storey mid-terraced dwelling located within the Royal Leamington Spa Conservation Area. The streetscene is relatively uniform and comprises of terraces of Victorian dwellings similar in character. The front boundary treatments predominantly comprise low brick walls and slightly higher brick piers. Generally, bins are stored at the front of the dwellings. Parking for the properties is accommodated within the highway as there is insufficient space to the front of the dwellings for off-street parking.

The character of the application property as observed from the street comprises red Warwickshire facing brickwork laid in a Flemish bond, slate roof tiles and white upvc windows. The low red brick wall at the front boundary comprises red facing brickwork laid in a stretcher bond, sandstone pyramidal coping stones on the brick piers and grey capping stones along the lower section of the wall.

The property is a licensed HMO and the works are required to maintain occupation by 5 individuals.

The development has already been completed at the site. At the time of the site visit the basement was locked. The Case Officer was provided access into the basement by the applicant and was advised that the tenants would not be provided with a key.

PLANNING HISTORY

W/20/0980 **-** Construction of two lightwells to the front of the property – Refused and subsequently dismissed at appeal (ref: APP/T3725/D/20/3258629).

The appeal was dismissed on the basis that the Inspector considered that inadequate outlook would be afforded to the basement by the windows installed within the bay and lightwell due to the boundary wall and shallow depth of the lightwell. The windows did not provide sufficient natural light, occupiers would be reliant on artificial light when using the room. This impact would be exacerbated by grille covers over the lightwell. The effect of the poor light and outlook on those using the room is exacerbated by the existing low ceiling, and overall results in an oppressive room which would not be pleasant to use.

The Council's other two reasons for refusal, namely inadequate external refuse storage space and harm to the conservation area were not upheld by the Inspector. As such, the main issue in the consideration of the current application is limited to residential amenity.

The lawful use of the subject property is a C4 House in Multiple Occupation. This use predates 2011 when the Council's Article 4 Direction came into place to restrict changes of use from C3 to C4 without needing planning permission. This was verified by the Council's Enforcement Department in 2019 by using council tax records.

RELEVANT POLICIES

- National Planning Policy Framework
- Warwick District Local Plan 2011-2029
- H6 - Houses in Multiple Occupation and Student Accommodation
- BE1 - Layout and Design
- BE3 - Amenity
- TR3 - Parking (Warwick District Local Plan - 2011-2029)
- HE1 - Protection of Statutory Heritage Assets
- HE2 - Protection of Conservation Areas
- NE2 - Protecting Designated Biodiversity and Geodiversity Assets
- Guidance Documents
- Parking Standards (Supplementary Planning Document)
- Residential Design Guide (Supplementary Planning Document- May 2018)

Royal Leamington Spa Neighbourhood Plan (2019-2029)

- Officer Note - While this is not yet formally made (as it has not yet been through a referendum) the above document has been through its final examination and as such is afforded substantial weight in the decision making process.

- RLS3 - Conservation Area

SUMMARY OF REPRESENTATIONS

Private Sector Housing - No objection to this application on the assumption that the use of the basement will be restricted to storage. A single lightwell currently exists rather than two lightwells.

Public Response - 8 objections received on the following grounds;

- the lightwell should be refused as the cellar is not fit for use as living space
- the basement is already being used for living space and is not provided with a satisfactory fire escape.
- in the interests of future tenants' and neighbours' amenity, all possible steps must be taken to restrict the use of the basement and occupancy of the house restricted to no more than 4 individuals. Neighbours request a suitable planning condition to be imposed.
- one neighbour considers that the application should be refused because a condition to restrict the use of the basement to storage would not be sufficient to protect the amenity of the occupiers, this opinion is based on the fact that it cannot be guaranteed that the space will not be used for living accommodation and relies on the cooperation of the tenants and the landlord. It is suggested that the use of the basement be fully prohibited by tenants and the basement should not be mentioned in any future marketing of the property.
- planning history reveals that the majority of the houses in the street would not support a lightwell of this nature due to the distance between them and the street, reference is made to application ref: W/08/0930. The neighbours request that consideration is given to this decision in the assessment of this application. If approved, the permission will give the 'green-light' for further lightwells in the street. The lightwells are considered to result in harm to the Conservation area.
- there is a history of non-compliance with the legislative requirements at this site, neighbours have listed a number of instances where the terms of the HMO licence have been breached and development has been carried out without planning permission. Neighbours consider that the landlord is highly unlikely to ensure compliance with the Planning Inspector's decision (restricting the use of the basement to storage) and therefore this application should be rejected.
- concerns raised in relation to noise and anti-social behaviour which could be generated from within the basement.
- it is considered that there has been no substantive change to the situation at the property between the previous application being refused and the

lodging of this new planning application, therefore there is no reason for a different decision to be made this time around.

- the floor plans have consistently been inaccurate for the lightwells, causing much confusion for the public.

- the appeal was refused and the applicant should be required to reinstate the property to its original condition.

- the original intention was for the basement to be used as a bedroom and then a communal living space.

ASSESSMENT

Design and impact on the character of the Conservation Area

Policy BE1 of the Local Plan states that new development will be permitted where it positively contributes to the character and quality of its environment through good layout and design. Development proposals should demonstrate that they harmonise with, or enhance, the existing settlement in terms of physical form so that the established character of the streetscene is respected. Policy BE1 states that in order to do this the development should adopt appropriate materials and details and respect the surrounding buildings in terms of scale, height, form and massing.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to have special regard to the desirability of preserving a Conservation Area or its setting when considering whether to grant a planning permission which affects a Conservation Area or its setting.

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 asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Policy HE1 of the Warwick District Local Plan 2011-2029 states that development will not be permitted if it would lead to substantial harm to or total loss of the significance of a designated heritage asset, unless it is demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. The policy also states that where 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, including securing its optimum viable use.

Policy HE2 of the Warwick District Local Plan 2011-2029 seeks to retain the integrity and form of unlisted buildings in the Conservation Area and resist

alterations and demolitions to these buildings where this would have an adverse effect upon the overall character of the Conservation Area.

Policy RLS3 of the Royal Leamington Spa Neighbourhood Plan requires proposals to demonstrate that they harmonise with the existing character of the area in terms of design, scale and external facing materials. The policy supports the retention, restoration and reinstatement of period details e.g. decoration, ornamentation, ironwork.

Objections have been received from neighbours with concerns that the lightwell results in harm to the character of the street and the conservation area. Neighbours have drawn attention to the Officer's report for application ref: W/08/0930 where permission was granted for a front lightwell at No.13 Camberwell Terrace. Neighbours have made reference to the following paragraph from the Officer's for that application: '*There are no lightwells to any of the other properties within this terrace and it is questionable whether these houses were ever intended to have basement lightwells. However, given the size of front garden to this property in relation to the others in the street, this is the only property where one could be accommodated.* This is duly noted. However, significant weight must be given to the very recent appeal decision associated with the LPA's refusal of the previous application (ref: W/20/0980) at the application property for the construction of two lightwells. The application was refused by the LPA on the grounds that the lightwells resulted in harm to the character and significance of the conservation area. In the appeal decision, the Inspector stated that he did not agree with the LPA's view that the lightwell would appear as an incongruous feature in the streetscene and result in harm to the character and significance of the conservation area and the application property. Instead, the Inspector considered that the lightwells would have an acceptable impact due to being concealed from view by the boundary wall. The Inspector concluded that the street scene would be effectively unaltered by the development and '*although not an original feature, the windows and lightwell do not harm the legibility of the original dwelling or its architectural interest, which form part of the historic importance and significance of the LSCA*.'

The proposal submitted with this current application differs from the appeal proposal, rather than two lightwells the applicant has constructed a single larger lightwell that surrounds just the front and side face of the bay feature. The lightwell as constructed at the site is no more visible from the street than the lightwells detailed in drawings assessed at appeal. Officers therefore consider that it would be unreasonable to conclude that the works completed at the site are more harmful than the previous scheme. When compared with the previous scheme, the larger lightwell, grille and window are considered to have a similar impact on the character of the property and allow the original form of the property to be read. Officers consider that the lightwell has been constructed with appropriate materials.

The brick wall has been reinstated to have a similar appearance to the original wall and Officers are satisfied that this development has not resulted in harm to the character and significance of the conservation or to the Camberwell Terrace streetscene.

Neighbours suggest that approval of this application could encourage applications for similar lightwells at other properties in the street to be submitted in the future. While this may be the case, however any application would have to be judged on its own merits and given that the development subject of the current application is deemed acceptable, this is not reasonable grounds to refuse this application.

In light of the above, Officers consider that the lightwells respect the character and appearance of the street scene and preserves the character and appearance of the conservation area. As such the development complies with Policies BE1, HE1 and HE2 of the Warwick District Local Plan and Policy RLS3 of the emerging Royal Leamington Spa Neighbourhood Plan.

Amenity impacts

Warwick District Local Plan Policy BE3 states that development will not be permitted that has an unacceptable adverse impact on the amenity of nearby uses and residents and/or does not provide acceptable standards of amenity for future users and occupiers of the development.

Numerous objections have been received from the public on the grounds that the basement does not provide adequate living conditions for use as a habitable space. Neighbours have reported to the Case Officer that the basement is in use. The planning statement submitted with the application states that the applicant intends for the space to be used as storage, not as a shared/ communal room. During a visit to the site the Case Officer was granted access to the basement by the applicant whom unlocked the door and advised that the tenants would not be provided with a key. The application must be assessed on this basis.

Private Sector Housing have been consulted and have confirmed that they raise no objection to the proposal, subject to the use of the basement being restricted to storage. Officers agree that the basement does not provide acceptable living conditions for use as a habitable room; the room has a low ceiling height, the windows do provide sufficient natural daylight or an acceptable level of outlook. The grille is considered to further constrain the outlook and light to the space.

These conclusions reflect the Inspector's findings on this issue. The notable difference between the current application and the proposal dismissed at appeal is that the basement is proposed for storage. Officers consider that the use of the basement for this purpose would be acceptable, however, it is considered that a condition is necessary to limit the use of the basement 'non-habitable' use only. One objector considers that the recommended condition is not sufficient to protect the amenity of the occupiers because it cannot be guaranteed that the landlord and tenants will comply. They acknowledge that the condition relies on the cooperation of the tenants and the landlord, and that there is a risk that if the lightwells are retained, the space will be used for living accommodation in the future. Instead, this neighbour considers that the approval should prohibit the use of the basement entirely and the basement should not be mentioned in any future marketing of the property. Whilst it is acknowledged that there is a history of complaints, breaches of planning and the licence conditions associated with this property, Officers consider that it would be unreasonable to prohibit the use of the basement entirely by way of a planning condition. There are also powers within

housing legislation which offer sufficient powers to intervene and regulate the use of the basement if necessary.

Neighbours have also requested that a condition be imposed to restrict the occupancy of the HMO to 4. Given that the development subject of this application does not impact on the use of the property as a HMO, as permission is not sought to increase or decrease the occupancy, this matter is not relevant to this case and the condition would not meet the tests of necessity and reasonableness. Matters such as this are dealt with by the Private Sector Housing department.

With regard to outlook, light and privacy, the proposed development is not considered to have an adverse impact on the amenity of the neighbours. Objectors to the applicant raised concerns with the potential for the space to be used for parties and to encourage anti-social behaviour. With the imposition of the recommended condition, the basement will not be permitted to be used as a habitable space where such gatherings could take place. The development is therefore considered to sufficiently protect neighbour amenity.

The application is considered to satisfy the criteria of Policy BE3.

Parking

Warwick District Local Plan Policy TR3 states that development will only be permitted that makes provision for parking which does not result in on-street car parking detrimental to highway safety. Development will be expected to comply with the parking standards set out in the most recent Parking SPD.

As the development does not create additional bedrooms, Officers are satisfied that the development will not result in increased demand for on-street parking that would be detrimental to highway safety. The development is therefore considered to comply with policy TR3.

Waste Management

Policy H6 of the Local Plan states that planning permission will only be granted for Houses in Multiple Occupation where adequate provision is made for the storage of refuse containers where by 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. The purpose of this policy is to prevent unacceptable adverse impacts on amenity.

Policy BE1 states that development must make sufficient provision for sustainable waste management (including facilities for kerbside collection, waste separation and minimisation where appropriate) without adverse impact on the street scene, the local landscape or the amenities of neighbours.

One of the LPA's reasons for refusal in application ref: W/20/0980 was due to inadequate refuse storage space being available as a result of the lightwells. The Inspector assessing the appeal disagreed with this and considered that there was sufficient space for waste to be stored. He commented that '*while prior to the lightwell there would have been more space for the bins, it is likely that they would have been stored in a largely similar fashion as at the time of my visit. I*

nevertheless find that the reduced storage area would keep the bins together creating a tidier appearance for the frontage'.

The LPA are required to give significant weight to the appeal decision and given that there has not been a material change in circumstances at the site since the appeal decision was published, it would be unreasonable for Officers to come to a different view. The scheme is therefore considered to provide sufficient space for storage which is in keeping with the character of the streetscene and thus the application complies with Policies H6 and BE1 of the Local Plan.

Other matters

Neighbours have raised concerns regarding fire safety and the means of escape via the lightwell. Fire safety and egress are not material planning considerations and are instead matters dealt with as part of an application for building regulations and the HMO licence. This matter has therefore not been taken into consideration when assessing the proposed development.

Summary/Conclusion

The development at the property is considered to constitute good quality design which has an acceptable impact on the character of the streetscene and the conservation area. The lightwell is considered to appear sufficiently subservient and the wall is of a similar appearance to the original wall. The scheme of works is considered to preserve the character and appearance of the conservation area.

With the imposition of the recommended condition, the development has an acceptable impact on amenity.

The application is recommended for approval on the basis that it complies with all of the aforementioned Local Plan Policies, the relevant sections of the NPPF and Planning Act 1990 and policy RLS3 of the Royal Leamington Spa Neighbourhood Plan.

CONDITIONS

1 The development hereby permitted shall be carried out strictly in accordance with the details shown on the site location plan and approved drawing(s) and specification contained therein, 200515 P01 R7 and 200515 P03 R7 submitted on 7th December 2020, and 200515_P02_R8 submitted 25th March 2021. **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 The basement conversion facilitated by the lightwell hereby permitted shall not be used as a 'habitable room', which includes dining room, lounge, kitchen, study and bedroom. **Reason:** To ensure adequate amenity is provided for current and future occupiers of the application property and to satisfy the requirements of Policy BE3 of the Warwick District Local Plan 2011-2029.