



Appeal Decisions

Site visit made on 6 July 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th August 2022

Appeal A Ref: APP/D1835/W/22/3296458

Pitmaston House, Malvern Road, Worcester WR2 4LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J Jenner against the decision of Worcester City Council.
- The application Ref 21/00699/FUL, dated 27 July 2021, was refused by notice dated 19 January 2022.
- The development was described as "Proposed change of use from residential dwelling to mixed use residential & holiday accommodation let."

Summary of Decision: The appeal is dismissed

Appeal B Ref: APP/D1835/C/22/3296896

Pitmaston House, Malvern Road, Worcester WR2 4LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J Jenner against an enforcement notice issued by Worcester City Council.
- The notice was issued on 17 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from a residential dwelling to a mixed use as a residential dwelling and holiday let accommodation.
- The requirement of the notice is: Stop using any part of the land and premises for holiday lets or guest accommodation.
- The period for compliance with the requirement is 7 days
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (the 1990 Act) as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary of Decision: Subject to variations to the enforcement notice, the appeal is dismissed and the notice is upheld.

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. It is directed that the enforcement notice is varied by:
 - i) The deletion of the requirement contained in Paragraph 5 of the Notice in full and substitution with "Cease the mixed use of the land as a residential dwelling and holiday let accommodation."
 - ii) The deletion of "7 days" as the period of compliance and substitution with "2 months."

3. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and Procedural Matters

4. An appeal against the refusal of a retrospective planning application (the previous appeal decision) for the same change of use was dismissed on the 12 July 2021.¹ A further planning application which proposed modifications to the development was refused on the 19 January 2022.
5. The refusal of that planning application is the subject of Appeal A. Appeal B is an appeal against the enforcement notice served following the refusal of the second planning application. The Council declined to determine a further planning application on the 25 March 2022 under Section 70A of the Act.
6. The arguments advanced under ground (a) for the enforcement appeal are the same as those for the planning appeal. I therefore consider that it is appropriate to deal with ground (a) of Appeal B and Appeal A together. As the appeals before me relate to the same site and the same change to a mixed use of residential and holiday lets, the previous appeal decision is a material consideration and the main issue remains the same.

Appeal A and B – the Section 78 planning appeal and the deemed planning application under ground (a)

Main Issue

7. The main issue is therefore the effect of the development on the living conditions of the occupiers of neighbouring properties in respect of noise and disturbance.

Reasons

8. Pitmaston House is Grade II listed building. It is a substantial three storey property which consist of a seven bedroomed house and six separate self-contained flats. The appeal relates to the use of the seven bedroomed family home together with outdoor space to the rear. The family home is let out for 4 months of the year and occupied by the appellant and his family for the rest of the time. Pitmaston Park is to the south with Pitmaston Primary School to the rear of the appeal building as well as to the north where gardens of dwellings on Winchester Avenue back onto the school.
9. The previous Inspector dismissed the planning appeal and concluded that “*The use by guests was therefore considered to be materially different to use by permanent residents and was likely to harm the living conditions of neighbouring residents with particular regard to noise and disturbance*”.
10. The previous appeal decision describes in detail the nature of the use and in particular the spacious outdoor space which has a number of features to provide for outdoor entertaining. Whilst some of the more portable outdoor features may now have been removed, the outdoor space still retains features such as an extensive seating area, a hot tub, a table tennis table, a pizza oven and a BBQ.

¹ APP/D1835/C/22/3273021

11. The appellant questions whether holiday use causes material harm as compared to residential use. However, there is no ground (b) or (c) appeal under Appeal B which alleges that the breach of planning control has not occurred as a matter of fact or that planning permission is not required. In any event, I do share the previous Inspector's view that issues such as late night use, more concentrated use of outdoor facilities over a short period of time by groups of guests as compared to use by permanent residents all contribute to a materially different mixed use which does result in noise and disturbance to nearby residents. I therefore have to consider whether the conditions proposed by the appellant as part of the second planning application to overcome the findings of the previous appeal decision are sufficient to mitigate that harm.
12. The appellant proposes to construct the covered outdoor swimming pool that was approved by the Council on the 18 September 2020² within 6 months. The construction of the covered swimming pool would reduce the overall amount of available outside space for entertainment. However, the addition of a covered swimming pool is an attractive feature which is likely to result in guests spending more time outside of the appeal building. There would be comings and goings to the pool with doors being open and shut and doors are not necessarily going to be closed when the pool is in use. The fact that the swimming pool is covered may also extend the period of the year when there are comings and goings to the outside space. Equally, during the summer months, guests are more likely to stay outside before or after using the pool.
13. The appellant states that the remaining outside entertainment area would be removed and replaced with soft landscaping although limited details are provided. The pool plan provided states " Landscaping shown is indicative only. Existing built in barbeque would be removed. A new landscaping scheme would be prepared involving some removal of hard paved areas and replacement with soft landscaping." However, any remaining hard paved areas are likely to be used by groups of guests who want to spend time socialising outside and to be close to the swimming pool. Restricting use of any residual outside space and the use of the pool would be difficult to enforce both by management and by condition.
14. In addition, the appellant proposes that the existing noise monitoring system and noise management plan will be maintained and enforced by way of condition. A Noise Complaints Policy was considered as part of the mitigation measures by the previous Inspector. The Noise Complaints Policy itself is brief and provides for guests to be warned and ultimately asked to leave in the event of noise continuing. However, these are reactive measures that do not prevent noise occurring in the first place. In addition, it is also likely to be difficult for the appellant to ask a large group of guests to vacate before the end of their break.
15. The appellant states that further details can be requested by way of a condition over and above the noise monitoring system and the Noise Complaints Policy. However, it is for the appellant to show that noise can be controlled by a suitably worded condition that meets the relevant tests set out in the Planning Practice Guidance. Third parties refer to the difficulty of

² 20/00176/FUL and 20/00169/LB

lodging complaints and a lack of acknowledgement that noise has occurred. The nature of third party comments are consistent and the measures imposed to date have not addressed those noise and disturbance issues. I do not therefore consider that the conditions proposed by the appellant relating to the pool and noise monitoring are sufficient to mitigate harm arising from noise and disturbance.

Other Matters

16. Noise data has been provided for a period of 24 hours from midnight on Saturday until midnight on Sunday from June to August 2021. However, in the absence of any supporting explanation, it is not clear what the data is intended to show or why 75 decibels is considered to be significant in the context of the surroundings of the appeal site.
17. Neither party has indicated that there have been any changes in policy since the issue of the previous appeal decision and the Development Plan is still the South Worcestershire Development Plan (SWDP) (Adopted 2016). There are policies within the development plan to support tourism and conserving heritage assets. However, the previous Inspector considered the benefits to tourism to be limited and there was no evidence to demonstrate that the development was necessary for the upkeep of the listed building.
18. The previous Inspector also considered that a two year temporary permission to allow the appellant's Noise Complaints Policy to be tested was not likely to satisfactorily control noise. The appellant has not provided any further information which would lead me to reach a different conclusion to the previous Inspector on these matters either individually or collectively.

Appeal A and Appeal B -Conclusion on ground (a)

19. For the reasons given, the development does cause harm to the living conditions of nearby residents in respect of noise and disturbance. It is therefore in conflict with Policy SWDP 21 which states that development will need to integrate effectively with its surroundings in term of form and function. The development conflicts with the development plan as a whole and there are no material considerations to indicate a decision should be made other than in accordance with the development plan. The appeal under ground (a) fails.

An appeal under ground (f)

20. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are to remedy the breach of planning control or to remedy any injury to amenity. Whilst the wording of the requirement suggests remedying the breach, the wording lacks clarity in its current form as what is required to remedy the breach is to cease the mixed use.
21. There is no dispute that the lawful use of Pitmaston House is C3 (dwelling house use). The requirement currently states "Stop using any part of the land and premises for holiday lets or guest accommodation". The wording of any requirement should match the allegation. A requirement to "Cease the mixed use of the land as a residential dwelling and holiday let accommodation" would match the allegation and provide more clarity. It would also remedy the breach in requiring the mixed use to cease. Upon

compliance with the requirement, Pitmaston House reverts to its lawful C3 use. It is then a matter for the appellant to ensure that any occupation is ancillary to the lawful use.

22. The appellant is not prevented from having discussions with the Council with regard to future use as a result of the notice being upheld. The appeal under ground (f) succeeds to the extent that the requirement will be varied to require the mixed use to cease and I will amend the notice accordingly.

An appeal under ground (g)

23. An appeal under ground (g) is that the period of compliance is too short. The period for compliance is 7 days. The appellant has asked for 6 months on the basis that he has continued to accept bookings, although the email exchange in February 2022 between the parties indicates that the appellant stopped taking bookings after the appeal decision was issued.
24. However, the appellant does state that some bookings had been re-arranged as a result of the Covid 19 pandemic with the last to take place in August this year. The commercial terms upon which the appellant has made any bookings is a matter for him and I have no evidence of significant financial loss which will impact upon his ability to maintain the listed building.
25. Nevertheless, where an appeal is made on grounds in addition to ground (g) the appellant is entitled to assume success on those grounds. In the circumstances, I consider that a period of 2 months is an appropriate balance between the appellant's arguments and the public interest to secure compliance. The appeal under ground (g) therefore succeeds to that limited extent and I will vary the notice accordingly.

Conclusion

26. For the reasons given above, I conclude that both appeals should not succeed. I shall vary and then uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR