



Appeal Decision

Site visit made on 13 September 2022

by C Megginson BA(hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th October 2022

Appeal Ref: APP/C2741/W/22/3293998

Mallard House, 75 The Mount, York, North Yorks YO24 1AX

- 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 & Mrs Brittenden against the decision of City of York Council.
 - The application Ref 20/02348/FUL, dated 13 April 2021, was refused by notice dated 22 December 2021.
 - The development is described as change of Use from Class C3 (Dwellinghouses) to Sui Generis (Serviced Hotel/Apartment).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of development from the planning application form. The decision notice description of development includes the installation of a new door to the basement level. There is no further evidence in this regard, and it is not a matter in dispute, therefore, I have not considered this matter any further.
3. The Council has not referred to a conflict with the adopted City of York Development Control Local Plan (2005) but has detailed policies relevant to the main issue in their officer report and provided copies of these policies along with their questionnaire. In so far as it relates to the main issue in this appeal, the aims of Policy ENV2 of the 2018 Publication Draft Plan appear to be consistent with the adopted Local Plan policies and the National Planning Policy Framework (the Framework).
4. From my site visit and from the evidence before me, the change of use has taken place and therefore the appeal seeks permission retrospectively.

Main Issue

5. The main issue is the effect of the development on the living conditions of neighbouring occupiers, with specific regard to noise and disturbance.

Reasons

6. The appeal property is a large three and a half storey end of terrace dwelling with a basement level. It takes both pedestrian and vehicular access from Park Street and shares its vehicular access with its immediate neighbour. The Mount to the front of the property is a busy road, close to the town centre, that includes a mix of uses, including a public house and restaurants. To the side of the appeal property across Park Street is a large hotel, with the remainder of

Park Street being residential. The terrace of which the appeal property forms a part, is predominantly residential and despite the busy road frontage, to the rear, the long gardens give the area a quiet residential feel.

7. The appeal proposal includes the change of use of the property to a holiday let for up to 14 people, including a resident concierge for lets of up to 14 days. The property includes a hot tub on the patio outside of the basement level and a cleaning and laundry service. The nature of the use will attract larger groups and encourage congregation in the main living and outdoor areas, where such groups are likely to want to socialise and maximise enjoyment of each other's company for the relatively short spells that they are together. In addition, there will be a regular turnover of occupants associated with the short-term holiday let.
8. There is no policy distinction between permanent and temporary users of a property. However, it is reasonable to assume that the activity generated by the holiday let, the use of the hot tub and the attendant comings and goings would lead to a level that would be considerably and noticeably more marked and intensive than that which could reasonably be expected to be associated with a single house, even one occupied by a large family. This would give rise to a general level of noise and disturbance at an intensity that would be disruptive, particularly to the occupiers of the neighbouring properties.
9. The proximity of neighbouring properties and gardens, particularly that which directly adjoins the appeal property and shares the boundary which runs the entire length of the rear garden, creates a sensitive relationship. This means that occupiers are likely to experience noise and disturbance when guests congregate in the living areas or use the hot tub and wider garden area as a group, resulting in subsequent harm to their living conditions. The hot tub is at a lower basement level against a high brick wall, nevertheless, the level of noise generated by a group of people congregating and talking over the noise of the water is likely to be significant.
10. Whilst the presence of a live in concierge may assist in controlling excessive noise, the everyday level of noise generated by up to 14 guests would nevertheless remain disruptive. Similarly, the use of a 24-hour security company may provide a deterrent but would likely only be brought into use once a disturbance has already occurred.
11. Noise levels could be controlled through measures such as asking guests to keep noise to a minimum and restricting the consumption of alcohol, the playing of music and the hours of use of the hot tub and outdoor areas to between 7am and 10pm. The appellant has provided a noise management plan document and welcome file outlining such rules and provided signage in the hot tub and garden areas to reinforce the rules. The intention behind such measures is laudable but, it would be challenging to say the least to curb natural human behaviour and therefore I am not convinced that it could be effectively enforced.
12. I appreciate that the appeal property fronts a busy road, which includes a mix of uses, that will give rise to noise and disturbance. In addition, there will be occasional noise associated with people travelling to and from events at the nearby racecourse. However, as previously noted, the area to the rear of the appeal property and neighbouring residential properties is much quieter in

character and therefore the concentration of noise and disturbance from the appeal proposal will be noticeably disruptive.

13. There are two hotels located to the south of the appeal property. Whilst the adjacent hotel has 94 rooms, the main hotel entrance is off The Mount and guests using their hotel rooms will be self-contained and will not congregate in the same way as a holiday let aimed at large groups. The appellant has highlighted that hotel staff and guests gather at the rear night entrance to smoke and that laundry and catering deliveries take place in the rear car park, directly opposite the appeal site. This will give rise to some noise and disturbance; however, this area is under cover, is not directly adjacent to a residential property and laundry collection and deliveries and waste collection will take place during working hours. In addition, the area around the night entrance is restricted in size and contains the waste bins so is unlikely to attract a large number of people to gather or to linger for very long in this location.
14. The appeal scheme is therefore contrary to Policies GP1 and V1 of the adopted City of York Development Control Local Plan (2005), Policy ENV2 of the Publication Draft City of York Plan (2018) and the Framework which seek to protect the amenity of existing residents.

Other Matters

15. The appeal site is a Grade II listed building, within the boundary of the Central Historic Core Conservation Area. The development does not include any external works and the Council do not object on the basis of any harm to the significance of the heritage assets. As I am dismissing for other reasons, I have not considered this matter any further.
16. The appellant notes the socio-economic benefit of the development to the surrounding area. Whilst there will be an economic benefit from guests staying in the appeal property and utilising local facilities, this is not sufficient to outweigh the harm identified.

Conclusion

17. The appeal scheme would conflict with the development plan. There are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

C Megginson

INSPECTOR