



Appeal Decision

Site visit made on 6 October 2022

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2023

Appeal Ref: APP/V0510/W/22/3292567

Ground floor, 17 Broad Street, Ely, CB7 4AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Dr Peter Dawe (Dawe Developments Ltd.) against East Cambridgeshire District Council.
 - The application Ref 21/01766/FUL is dated 3 December 2021.
 - The development proposed is described on the application form as "Change of use from Sui Generis (Shop and Office) to C1 Hotel".
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from Sui Generis (Shop and Office) to C1 Hotel at the ground floor, 17 Broad Street, Ely, CB7 4AJ in accordance with the terms of the application, Ref 21/01766/FUL dated 3 December 2021, subject to the conditions set out in the attached schedule.

Procedural matters

2. The Use Classes Order¹ defines Class C1 'as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided'. The development description reveals that the scheme being applied for is a Class C1 hotel use only, and not that of a boarding or guest house. The accompanying plans and information reveal that the hotel use is to be comprised of 5 guest suite units.
3. The Council states that the scheme would not provide genuine hotel accommodation insofar as:- (1) the proposed floorplans appear to show a layout of five 1-bedroom flats, each with their own private external access door, open plan lounge/kitchen, bedroom and bathroom; (2) interconnecting doors are provided between each of the said flats which would allow guests to enter each other's private space; (3) there is no main reception; and (4) the Council's Building Control Team has received a Building Regulation application for the conversion of the building to 4 residential flats and a bedsit.
4. At my site visit, I conducted a thorough inspection of all internal areas of the appeal building and also noted that each guest suite unit has its own consumer unit/fuse board. The internal conversion works appeared to be complete and to a high standard.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

5. On the basis of the above evidence and my observations on the ground, I do not consider it unreasonable of the Council to have formed the view that the intended purpose of the scheme was for 5 residential flats and not hotel accommodation.
6. However, despite the above evidence, the appellant asserts that not all hotels offer accommodation based on a one-room format and the scheme is therefore capable of functioning for the use applied for. Although there are no examples of such accommodation before me, I see no reason why some hotels would not offer larger guest suite accommodation with facilities such as a lounge/kitchen to accommodate an extended stay. As a consequence, I am satisfied that hotels are capable of operating in many formats and not just that of individual rooms. However, it is important to note that even if some hotels do offer larger guest suite facilities, it does not automatically follow that the resulting format and/or planning unit concerned will always fall within Class C1;- whether they do is a matter of fact and degree for the decision-maker.
7. The appellant further states that the proposed hotel use would be linked to a local wedding venue and that the scheme should be considered an annexe. I see no reason why the scheme could not be used in this manner in conjunction with another Class C1 hotel use elsewhere (which could include the said wedding venue if this is a hotel) and as a consequence, I am satisfied that the development before me is, at the very least, capable of falling within the scope of a Class C1 hotel use.
8. However, in view of the floorplan layout and accommodation characteristics described above, I do recognise that it would be easy for the subsequent use of the 5 hotel guest suite units to stray outside of the lawfully permitted use into that of 5 residential flats. As a consequence, and for the avoidance of doubt, this decision should not be interpreted by the main parties as allowing any of the proposed hotel guest suite units to be occupied as permanent residential flat accommodation. In the event that the appellant is uncertain about this, it is open for them to apply to have the matter determined under Sections 191 or 192 of the Town and Country Planning Act 1990 (as amended) or for the Council to take enforcement action if it considers the subsequent use of the land to be unlawful. Any such application or enforcement action would be unaffected by my determination of this appeal.
9. In light of the above, I have concluded that there is insufficient information for me to determine conclusively that the scheme could not operate and function as a hotel within the scope of a Class C1 hotel use. I have as a consequence determined the appeal on the basis of the use applied for in the development description.

Main issue

10. The Council has confirmed that if the appellant had not appealed against non-determination, it would have refused the development for the reason set out in its appeal statement. Set against this context and the evidence in this case, the main issue is whether the development would result in the loss of a community facility.

Reasons

11. The appeal site falls within the Ely Conservation Area and consists of the ground floor of a post-WWII 2-storey detached building constructed of buff brick. The surrounding area is primarily residential in character, interspersed with occasional small commercial businesses and retail shops.
12. The evidence before me reveals the last known use of the appeal site to be that of a ceramics workshop with pottery painting & firing ('the pottery business') and offices. According to the Council, this constitutes a sui generis use (a use in a class of its own).
13. Paragraph 7.4.1 of the Local Plan² states that community facilities include, amongst other things, local shops. Paragraph 7.4.3 goes on to state that permission will only be granted for a change of use to residential or non-community uses if the applicant can demonstrate the facility or an alternative community facility is not viable.
14. Although the Council considers the previous pottery business to be a commercial community use, there is insufficient information and evidence before me as to how much of the planning unit was dedicated to pottery sales, painting and firing (as opposed to the office use) and the duration it was open for. As a consequence, I am unable to conclude that the pottery business amounted to a commercial community use and therefore find the scheme does not conflict with Policy COM3 of the Local Plan which seeks to retain community uses.
15. However, even if there had been a significant pottery business at some point in the past that amounted to a commercial community use and no efforts had been made to subsequently market the property for 12 months, I would still have allowed the appeal on the basis of other material considerations, namely;- (1) the significant length of time the unit had remained vacant; and (2) the absence of any objections from local residents or the City of Ely Council to the loss of the shop as a community facility. On this basis, I am satisfied that its loss has not resulted in any harm to the quality of life for local people and that if the pottery shop or an alternative community retail use been viable, the unit would not have been vacant since 2016 as stated by the appellant³.

Other matters

16. The City of Ely Council and a neighbour have raised concerns in respect of the amount of off-road parking provided, road access, traffic generation and loading/turning facilities. However, the local highway authority has not objected in respect of this on the basis that it is unlikely to result in a material intensification beyond existing usage and I see no reason to take a different view.
17. A neighbour has raised concerns over the level of noise generated by future hotel users. However, I am satisfied that this would be consistent with the surrounding residential area and that any significant disturbance could be suitably controlled under environmental protection legislation.

² East Cambridgeshire Local Plan, April 2015.

³ Aside from the offices which were used intermittently.

18. The scheme before me is for a change of use of the appeal site and not for additional built form or any physical alterations to the external appearance of the building. I am therefore satisfied that its visual appearance will not have any impact on the character of the conservation area or any Listed buildings nearby and neither will it result in any harmful overlooking of neighbouring properties.

Conditions

19. A condition has been imposed to ensure the scheme is carried out in accordance with the submitted plans. I have amended the condition proposed by the Council in respect of the use as it not necessary to restrict the hotel from being used for permanent residential accommodation as this would constitute a change of use requiring planning permission. Neither is it reasonable for the condition to refer to holiday accommodation as some occupants may need to stay in the area for business purposes.
20. I also do not consider it reasonable for the condition to require a register of lettings for inspection by the Council as I would expect this to be standard accounting practice for any hotel business and in the event of a suspected enforcement breach it would be possible for the Council to access this information via a planning contravention notice. However, given the constrained nature of the site and its close proximity to neighbouring buildings, I do consider it necessary to restrict the use of the building to a Class C1 hotel use only to enable the Council to retain control over any alternative uses.

Conclusion

21. In view of the above, having had regard to all other matters raised, I conclude that the appeal should be allowed.

Robert Fallon

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:- Drawing nos. 001, 002, 003, 004A, 004B, 005, 006A and 006B.
- 3) The premises shall be used for hotel purposes and for no other purpose (including any other purpose in Class C1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

End of schedule