



Appeal Decision

Site visit made on 19 April 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/C2741/W/22/3313450

10 Usher Lane, Haxby, York YO32 3JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J Hansbro against the decision of City of York Council.
 - The application Ref 21/01769/FUL, dated 21 July 2021, was refused by notice dated 31 October 2022.
 - The application sought planning permission for 'Single storey rear extensions to create a self-contained annex attached to existing dwelling and erection of summer house to rear of garden (resubmission of 18/02042/FUL)' without complying with a condition attached to planning permission Ref 19/00110/FUL, dated 5 June 2019.
 - The condition in dispute is No 4 which states that: The proposed additional accommodation shall only be occupied by direct relatives or non-paying guests of the residential occupants of 10 Usher Lane and shall not be used as a separate residential unit including letting as holiday accommodation.
 - The reason given for the condition is: The site cannot accommodate a separate unit of residential accommodation without detrimental impact on the amenities of adjacent residents through additional activity and car parking requirements and the character and amenity of the area through the creation of a separate curtilage. As such it is considered that any proposal to use the development as an independent residential unit would need to be considered on its own merits with regard to the potential impact on neighbours.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has referred to policies in the emerging City of York Local Plan - Publication Draft (2018) (Regulation 19 Consultation) (the Emerging Plan). However, this document has not been formally adopted as part of the development plan. The Council does not set out the amount of weight that it considers should be afforded to these policies, I have not been provided with information regarding recent progress on the Emerging Plan, and I am not aware of the extent of any unresolved objections to policies in that Plan. Therefore, whilst I have had regard to these policies in my determination of this appeal, in accordance with paragraph 48 of the National Planning Policy Framework (the Framework), I have given them limited weight.

Background and Main Issue

3. A residential annex linked to the rear of 10 Usher Lane was created with the benefit of planning permission (Council Ref. 19/00110/FUL). The same planning

application also sought permission for a summer house which has subsequently been built at the bottom of the rear garden. The appellant is seeking to change a condition of that permission that restricts the occupation of the additional accommodation to relatives of the occupiers of No 10 or non-paying guests. The changes proposed would allow the accommodation to be let for holiday purposes.

4. The planning application states that the appellant sought to change condition No 4 to allow the annexe to be used by paying guests. While condition No 4 attaches to all additional accommodation allowed through planning permission Ref. 19/00110/FUL, no further reference is made in the planning application to the summer house. Accordingly, I have considered the appeal on the basis that the requested change to the condition would relate only to the residential annex. The main issue is the effect that the changes proposed to condition No 4 would have on the living conditions of the occupiers of neighbouring dwellings in respect of noise and disturbance.

Reasons

5. The appeal property is located on a well-established residential road that primarily comprises a mix of detached and semi-detached houses and bungalows. Notwithstanding a handful of low-key small businesses close to the junction of Usher Lane with Station Road, the surrounding area is generally quiet and exhibits a distinctly residential feeling on the edge of a pleasant village centre.
6. The dwellings along Usher Lane are generally set back a short distance from the highway, many having created off-street parking in front gardens, including No 10 which is open to the highway and entirely block-paved.
7. No 10 has a long rear garden similar in length to those at the dwellings to either side. A tall solid timber fence comprising horizontal panels attached to larch lap panels runs along the full length of the boundary with 12 Usher Lane. A tall larch lap fence runs a short distance beyond the residential annex along the boundary with 8 Usher Lane, with the remainder of that boundary comprising evergreen hedging. These rear gardens provide quiet, peaceful and largely secluded outdoor spaces for the occupiers of the neighbouring dwellings.
8. The modification proposed to condition No 4 would introduce a use that would bring activity associated with holidays. People using the annex for holiday purposes would have a higher propensity to socialise in external areas for extended periods. This would result in noise and disturbance over and above that ordinarily experienced in the rear gardens of neighbouring dwellings. The small scale of the holiday-let would limit the numbers socialising, and the appellant suggests a condition limiting occupation of the annex to no more than two people at any one time. Even so, neighbouring occupiers would be aware of this activity which is likely to happen over consecutive days and continue later into the evening than might be the case with a residential annex.
9. This activity would be focussed on the patio areas close to the site boundaries. Tall fencing to the garden boundaries would limit the perception of increased activity to some degree. However, the position of the annex and the external sitting areas around it so close to neighbouring houses and gardens either side would mean that activity around the annex would be clearly discernible. This is

particularly likely in summer months when neighbouring residents would expect to be able to relax in their gardens or would be more likely to have windows open. Boundary fencing, even at a height of 2.2m as is proposed in the appellant's Appeal Statement, would not overcome my concerns regarding harm that would arise through noise and disturbance from the use of the patio.

10. Further, while adequate car parking would be available to serve the proposal, comings and goings would likely result in some noise from vehicle engines, from vehicle doors being closed and from people passing through the narrow gap between No 10 and No 12 leading to the annex. Such activity is likely to be particularly noticeable and disruptive for the occupiers of No 12.
11. While the occupiers of No 10 may be present to exercise some control over activities associated with the proposed holiday use of the annex, this will not always be the case. It would not be practicable or enforceable to impose a condition requiring the occupiers of No 10 to be present at all times the annex would be in use, or to impose a condition creating a curfew limiting the times of either the comings and goings to and from the annex or the use of the associated external areas for socialising. The latter of those conditions suggested by the appellant is also likely to be unreasonable in respect of the expectations associated with the use of holiday accommodation by paying visitors. Limiting the number of days the use could operate would not remove the likelihood of noise and disturbance during those times that the annex would be occupied as holiday accommodation.
12. I conclude that condition No 4 is necessary and reasonable, and it meets the other four tests set out in paragraph 56 of the Framework about which there is no dispute in this case. The changes proposed to condition No 4 would have an unacceptably harmful effect on the living conditions of the occupiers of nearby dwellings in respect of noise and disturbance. Accordingly, the proposal would conflict with Policy ENV2 of the Emerging Plan which seeks to prevent development where existing communities would be subject to significant adverse environmental impacts from noise and requires that proposals will not result in loss of amenity to existing communities. Although I have given this policy only limited weight, the proposal would also be contrary to paragraph 130 f) of the Framework in respect of achieving well-designed places by supporting the creation of places which promote health and well-being, with a high standard of amenity for existing users.
13. The Council's reason for refusal refers to Policy D1 of the Emerging Plan. However, that policy concerns general principles for placemaking and I have not been directed to any wording that addresses the specific issues associated with the effects of noise and disturbance arising from development in residential areas. Accordingly, Policy D1 is not determinative to the main issue in this case.

Conclusion

14. For the reasons given above, having had regard to all relevant material considerations, including the Framework, the appeal is dismissed.

David English

INSPECTOR