



Appeal Decision

Site visit made on 5 September 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/E2734/C/22/3305930

The Old Dairy, Church Street, Goldsborough, Knaresborough, North Yorkshire HG5 8NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Mark Oglesby of Goldsborough Limited against an enforcement notice issued by Harrogate Borough Council.
 - The notice was issued on 20 July 2022.
 - The breach of planning control as alleged in the notice is the material change of use of the land to a commercial short-term holiday let accommodation.
 - The requirements of the notice are to permanently cease the use of The Old Dairy for short-term let visitor accommodation for stays of less than 90 days in duration.
 - The period for compliance with the requirement is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 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 Act.
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Decision

1. 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.

Application for costs

2. An application for costs was made by Mr Mark Oglesby of Goldsborough Limited against Harrogate Borough Council. This application is the subject of a separate Decision.

The appeal on ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
4. There is no dispute that the lawful use of the property is as a dwellinghouse falling within Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). The appellant's case is that there has been no breach of planning control because the use of the property for holiday letting is not materially different in character from the lawful use as a dwellinghouse.
5. In determining whether what has taken place constitutes a material change of use, it is necessary to compare the character of the current use with that of the actual previous lawful use. I have not been provided evidence in relation to the

- last actual use as a dwellinghouse, albeit based on a third-party representation it appears to have been occupied by a family.
6. Both parties refer to the Court of Appeal decision in *Sheila Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202. From that case it is clear that whether a material change of use has occurred in a case such as this is a matter of fact and degree. It would be wrong to take the view that a property used for short term lets would always be a C3 dwellinghouse, or that it could never be one; whether it is, will depend on the details of the individual case.
 7. Goldsborough is a relatively small rural village and at the time of my visit which took place in the late morning, background noise levels seemed low and there is no evidence to demonstrate that is not the case later in the day.
 8. The Old Dairy is a dwellinghouse formed from the conversion of former ancillary outbuildings to the nearby Goldsborough Hall. It has four bedrooms and occupies an end of terrace position at right angles to the road and adjoining dwelling, Hessle Cottage. There is no direct access from or windows overlooking Church Street and the garden and parking is located behind a relatively tall wall, screened from Hessle Cottage by The Old Dairy itself. Access to The Old Dairy, including the garden and parking area, is taken from a driveway off the access to the car park for Goldsborough Hall.
 9. The Old Dairy physically adjoins its neighbour Hessle Cottage at the broadly northeast corner of the property by the kitchen, where there is a flying freehold, consisting of a first-floor bedroom over the pantry and snug area of The Old Dairy. Consequently, those properties have an unusually intimate relationship.
 10. The Old Dairy was purchased by the appellant in February 2022 and has been used for short-term holiday lettings since April 2022. In their submissions, the appellant stated that during the first six months of use the property has had 69 nights of bookings with 30 nights of future bookings due in the first year to April 2023. However, this is unsurprising since the property was at the time the appeal was made, relatively new to the lettings market and there is no suggestion that the property is not available throughout the year.
 11. The submitted visitor log shows that stays have been generally for short periods, and although the appellant stated that they only accept bookings for family holidays, that is not apparent from the log. There appears to be a largely transient pattern of occupancy, compared to the more consistent pattern of occupancy that would normally be associated with that of a dwellinghouse.
 12. From what I have read, from occupiers of nearby dwellings, and as is apparent from the visitor log, numerous different groups have visited the property for various reasons. There are evidently those who come for countryside holiday activities, but it appears that there are also many who come for weddings at Goldsborough Hall, and celebrations of one sort or another.
 13. The neighbour at Hessle Cottage has kept and provided a log of events and their impact. Whilst there is dispute between them and the appellant regarding when such events took place and the seriousness of any noise and disturbance, it is evident that incidents have occurred and caused significant levels of

disturbance and stress to the occupier of Hessle Cottage. Such concerns are reinforced by other residents who have noted excessive noise in particular from use of the garden and hot tub.

14. I acknowledge that occupation of the property as a dwellinghouse by a single household could generate activity and associated noise and disturbance. However, the turnover of guests appears to have resulted in a higher incidence of noisy socialising and party type activities, than would be expected if the property were occupied on a longer-term basis. Moreover, the turnover of guests must hinder the neighbours in any attempt to complain and resolve matters.
15. Such a use in a busy town or city may go largely unnoticed. However, as already noted the property is located in what appears to be a relatively quiet rural village and as acknowledged by the appellant, has an intimate connection with Hessle Cottage.
16. Notwithstanding the noise monitor and that guests appear to be informed about issues surrounding noise and disturbance, the size of groups (up to eight people at times), the largely transient pattern of occupation and nature of the stays, has, more likely than not, resulted in an increase in general disturbance to neighbours.
17. In conclusion, I find as a matter of fact and degree, that the character of the use as a short-term holiday let is materially different from use as a dwellinghouse. The new use therefore amounts to development as there has been a material change in the use of the property. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

18. The main issue is the effect of the use on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.
19. The Old Dairy is located in a relatively small village which is distinctly rural in character. As noted above, at my visit I observed that background noise levels were low albeit I acknowledge that at other times the background noise level may be different.
20. Website details provided by the Council indicate that the property can accommodate eight plus four however, the appellant stated that they now only take bookings from family groups, or from people living together as a single household which do not exceed six in number. However, in my view even a family of only four or five are more likely to occupy a dwelling in a different manner when they are on holiday than when at home, with a greater potential for noisy socialising at anti-social hours, including in the outside space.
21. The appellant has evidently undertaken measures in an attempt to minimise disruption including cushioning doors, so they close quietly, silencing the door knocker and the designation of a quiet zone in the area closest to the neighbour's bedroom. Moreover, it seems that the hot tub is not available for use after 2100, although it is not clear how this is enforced.

22. Whilst it appears that bookings are screened to ensure they meet the criteria and wording is included on the website to advise guests to be respectful in terms of noise and disturbance, and I acknowledge there are staff at the nearby Goldsborough Hall, there is no-one on site to control or manage the guests to ensure compliance.
23. A Minut noise monitoring sensor has been installed adjacent to the party wall by the snug of The Old Dairy to capture noise levels immediately adjacent to Hesse Cottage. The sensor monitors the noise and movement levels within The Old Dairy and allows the user to view historic noise level logs via an app and has been in operation since the property was first rented.
24. The appellant provided a noise report and sound logs from the system. Whilst I acknowledge the results and conclusions, as set out in the report, these are based upon the separating wall and floor meeting the performance requirements of Approved Document E to the Building Regulations (ADE 2003). However, there is no evidence to demonstrate that they meet those standards.
25. Furthermore, noise and disturbance can also be generated by general activities that take place outside of the property, such as those associated with the coming and goings of guests and the use of outdoor space, indeed representations from a neighbour and other third parties have identified noise from use of the hot tub as a source of disturbance. Whilst it is stated that there is no reason why the noise impact of use of the outdoor areas by short-term occupiers would be materially worse than that from long-term occupiers, there is no substantive evidence which supports this.
26. In my view the transient pattern of occupancy would tend to mean that occupiers have little connection to the local area and hence may be less inclined to respect the surrounding area and existing residents, meaning they have fewer concerns or realisation of causing noise and disturbance.
27. In this case, the impact of the development upon the occupier of a neighbouring property is intensified by the close proximity. Even if specific noise and disturbance issues highlighted by that person are not supported by the sound logs, or constitute a statutory nuisance, this does not necessarily mean that the reported problems should be disregarded or should carry little weight.
28. Moreover, as noted above, there seems to be no limit placed on the use of the property for rentals, which could easily expand to be all week every week, particularly during the summer. Whilst the appellant clearly strives to ensure there is minimal disturbance to neighbours, he has not been completely successful and may be less likely in the future, if the use were to expand.
29. Accordingly, I conclude that the pattern and nature of the occupation, in this village location, at such close proximity to neighbouring dwellings is, more than likely, materially harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. The development is therefore contrary to Policies EC7 and HP4 of Harrogate District Local Plan 2014 – 2035 which together, amongst other things, require that visitor accommodation does not cause unacceptable adverse impacts on the amenities of neighbouring occupiers, including through noise and other disturbance. It also conflicts with the aims of the National Planning Policy Framework which seeks a high standard of amenity for existing and future users.

30. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are the most relevant to the main issue in this appeal.
31. The appellant suggested a condition restricting the number of occupiers to no more than eight adults however, since I have found that a lesser number could still cause unacceptable noise and disturbance, this would not overcome the harm. Moreover, as bookings are likely to be made online it would be difficult to enforce a maximum number of guests that stay within the property or indeed that they are a family or single household.
32. Conditions ensuring the pantry remains locked, those windows on the boundary with Hesse Cottage to be obscurely glazed and fixed shut and the Minut sound system to be retained, would not overcome the identified harm, since these measures are already in place and harm has occurred.

Other matters

33. The Old Dairy is located within the historic core of the village, within the Goldsborough Conservation Area, the significance of which, seems to be derived in part from its association with the Goldsborough Hall estate. In the absence of contrary evidence, I consider the appeal development has a neutral impact on and therefore preserves the character and appearance of the Conservation Area.
34. Comments regarding community participation, in relation to schools and libraries, have no bearing on my assessment.

Conclusion on ground (a) and the deemed planning application

35. Considering the above, the development is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
36. For the reasons given, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The appeal on ground (g)

37. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant has suggested a period of six months on the basis that this would enable them to honour existing bookings, which they stated are normally received 12 months in advance.
38. The period given for compliance within the enforcement notice is to allow for the use to cease.
39. The use enforced against is causing harm to the living conditions of nearby residents in respect of noise and disturbance and weight must be attached to this harm. Such harm should not be permitted to continue for any longer than necessary.
40. In the absence of substantive evidence regarding the extent of future bookings or the terms of agreement in respect of such bookings, I consider two months is a reasonable and proportionate period for compliance. The appeal on ground (g) therefore fails.

Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed. I shall 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.

Felicity Thompson

INSPECTOR