

Appeal Decision

Site visit made on 29 August 2024

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11TH SEPTEMBER 2024

Appeal Ref: APP/Z2505/C/22/3312583

Bay Hall, Hall Lane, Benington, Boston, PE22 0DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Karl Emanuelsson against an enforcement notice issued by Boston Borough Council.
 - The notice was issued on 10 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property from dwellinghouse within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to holiday let accommodation (sui generis use)
 - The requirement of the notice is to cease the use of the property as a holiday let.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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 allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the use as holiday let accommodation at Bay Hall, Hall Lane, Benington, PE22 0DX as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Ground (a) and the deemed planning application

2. The main issue is the effect of the development on the living conditions of the occupiers of other houses in the area.
3. The main parties accept that the previous use of the appeal site was as C3 dwellinghouse, and that there has been a material change of use to that of a sui generis holiday let accommodation. I also accept that whilst the holiday let use is predominantly a residential use it is materially different in nature from that of a single dwellinghouse falling within class C3, due to the short term lets, likely number of people staying there regularly and reasons for the occupation (e.g. holidays, events, retreats etc). On the evidence before me, I consider the use of the property on occasion for catered retreats is ancillary to

the residential and holiday use described in the notice, and therefore the deemed planning application.

4. The building is Grade 2* listed but the notice does not target any operational development, only the change of use. The Council are not alleging that the development would require listed building consent and I am also satisfied that it does not affect the listed building or its setting, or any features of special architectural or historic interest.
5. The main effects of the development on the living conditions of the occupiers of nearby properties relates to noise coming from the appeal site and its vicinity, caused by people and activities taking place there, and from the comings and goings of vehicles.
6. Policy 2 of the South East Lincolnshire Local Plan 2011 – 2036 ("the SELLP") relates to Development Management. It advises that proposals for development will be permitted provided that sustainable development considerations are met including in relation to impact on the amenity, character and appearance of the area. Policy 2 specifically refers to the impact of the development upon neighbouring land uses by reason of noise and disturbance which are clearly relevant in this case.
7. The appeal property has 7 bedrooms, and the evidence provided by the appellant is that there has been between 6 and 15 staying there at any one time. The property has its own vehicular and pedestrian accesses from the highway which are not shared with any neighbouring properties. Any dwellinghouse will have associated comings and goings, and the timings of these will clearly depend on who the occupiers are and what they do (e.g. their ages and occupation). There will clearly be people arriving and subsequently leaving the property at the end of their stay but these vehicular movements are not in themselves necessarily more disruptive than those which could be caused by permanent residents. And whilst it can be expected that some of the people staying in the house may wish to go out on an evening, and some to Boston or other places which they would not be able to walk to, it is also likely that some guests would not go out at all during an evening (e.g. possibly families with younger children).
8. Hall Lane links to the A52 and provides a direct route to other residential roads (including Bede Crescent) as well as the park and garden centre. It is also used by farm vehicles to gain access to the adjoining fields. The highways authority have not objected to the development in terms of the suitability of the road, and neither have I been provided with any cogent evidence to show that there would be a marked increase in the vehicular comings and goings to the house which would cause unacceptable harm to other houses in the area. Indeed, the neighbours in the property nearest to the appeal site, and who could therefore be expected to be most likely affected by increased vehicle traffic state that they have not suffered from noise disturbance.
9. The Council identifies concerns about disturbance caused by the material change of use, and some of the representations received from interested parties echo this concern. The rear boundary of the appeal property adjoins a flat, open field which is adjacent to houses on Bede Crescent to the north. Some of the residents of these house have stated that they have been

disturbed by the noise of music and drunken behaviour at the appeal property, including late at night.

10. The rear boundary consists of mature trees with a well-established hedgerow and other vegetation at the lower levels, and I understand that this is more established overall than it was when the use started. Whilst I accept that the site visit was undertaken in August when the leaf cover was at its greatest, the density of the growth, along with the mix of trees and other vegetation, mean that the boundary will provide a visual screen throughout the year which would also help to reduce the noise coming from the property.
11. The appellant accepts that there had been some instances of noise and disturbance caused by occupiers of the development but states that these occurred during the initial period in which the property was let. He states that there are now various procedures to both prevent any further such occurrences and also to deal with any problems promptly should issues arise. These measures include a Code of Conduct contract which guests are made aware of in advance of staying which prohibits the playing of amplified music outside of the main building and use of the hot tub after 9pm. There is also a local caretaker employed to meet the guests on arrival to explain this as well as living in locality to being able to monitor and supervise the site if any issues arise.
12. Whilst I am sympathetic to the complaints regarding disturbance to the occupiers of neighbouring properties, there is evidence that the appellant has put measures in place to address these issues, and this is corroborated by some of the other representations received during the course of the appeal. Comments have been received from some of the people living close to the appeal property which support the appellant by saying that the initial noise problems have not continued, and that they would be aware if there was ongoing external noise as they immediately adjoin Bay Hall. It was also evident from the site visit that there is accommodation on site for a caretaker to stay over if required.
13. I am therefore satisfied that the development can be made acceptable in terms of the effect that it has on neighbouring properties through the imposition of a condition to require the approval and implementation of a night time noise management scheme. This will formalise and regulate the measures and enforcement, and will allow for the effective monitoring of the situation by the Council. It should mean that any potential disruption in the future can be dealt with quickly and effectively.
14. With the appropriate conditions, as set out in detail below, the development will not cause harm to the living conditions of the occupiers of neighbouring properties, and will not be in conflict with Policy 2.

Other Matters

15. The development is in accordance with Policy 9 of the SELLP. This states that proposals for tourism which utilise and enrich the natural and built environment and existing attractions of South East Lincolnshire to the benefit of the local economy, visitors and local communities will be supported within the boundaries of settlements, which includes Benington. The development is within the existing Bay Hall, and provides some employment in terms of the

caretaking and other staff involved in its upkeep. It also supports the local economy in the wider area including in Boston and further afield within South East Lincolnshire as is evident from some of the letters received in support of the development from people who have stayed in it.

16. The appeal site lies within Flood Zone 3, as does much of the land in the district. Policy 4 of the SELLP states that the change of use of existing buildings will be supported providing they do not pose an increase in risk to people. As the bedroom accommodation remains on the upper floors in the development, there is no change to the risk in terms of flooding or safety when compared to the former residential use. It is not therefore in conflict with Policy 4, notwithstanding that the NPPF, which is a material consideration, requires a site-specific flood-risk assessment for every development. I am satisfied that as the risk has not increased in this case there is no need for further details to be submitted.
17. The planning system is not punitive and allows for retrospective applications for development to be made, including by a deemed planning application as part of an enforcement appeal. The appellant accepts that the development requires planning permission and has made the necessary deemed application with the ground (a) appeal. As such, the appellant is seeking to regularise the planning position and this also allows for the required conditions to be imposed on the use to regulate it.
18. The other appeal decisions provided relate to other instances of holiday accommodation. However, each case turns on its own facts particularly in relation to the appeal site and its location, and I do not have the full details in relation to these developments.
19. Concerns were raised regarding litter and damage to the nearby park, farm land and churchyard, but it is far from clear that this was all caused by people staying on the appeal property. In any event, the night time noise management plan is likely to impact positively on the behaviour of guests overall. The bins are now stored within the appeal site which will ensure that the spread of rubbish off the site is less likely to occur. It is also unreasonable to suggest that people who do not live locally should not be walking along public roads.
20. Issues relating to fire safety and letting regulations are covered by a separate regulatory framework.

Conclusion on ground (a) and the deemed planning application

21. For the reasons I have set out above, I have not found that the development causes harm that cannot be overcome by the imposition of conditions, and it is therefore not in conflict with the development plan as a whole. There are no material considerations to indicate that the decision should be taken other than in accordance with the development plan and ground (a) of the appeal succeeds, and permission should be granted under the deemed planning application, subject to the conditions set out in this decision.

Conditions

22. It is reasonable and necessary to impose Condition 1 to ensure that the development to provide certainty and continuity regarding the living accommodation and site layout.
23. Condition 2 is required to ensure that the number of people staying in the rented accommodation does not exceed the current levels to help to ensure that the potential for future disturbance does not increase.
24. Condition 3 is imposed to ensure that night time noise management plan is submitted, approved and implemented so as to make the development acceptable in planning terms. Such a plan is required to ensure that the use of the property is properly regulated going forward and to deal with any potential disturbance to the occupiers of neighbouring properties.
25. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the noise management plan before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

26. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected. The enforcement notice will be quashed.
27. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

Zoë Franks

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be retained in accordance with the following approved plans:
Drawing No. 05-02937-622 Rev C (Site Location Plan)
Drawing No. 05-02940-622 Rev A (Block Plan)
Drawing No. 05-02936-622 Rev D (Floor Plan)
Drawing No. 05-02941-622 Rev A (Outbuilding Plan)
- 2) No more than 15 persons to be permitted to occupy the development at any one time. This number does not include any caretaker on the site.
- 3) Unless within 3 months of the date of this decision a scheme for the night time noise management plan (to include details of measures to limit night time noise and the hours those measures would apply, details of where the plan would be displayed and how occupants would be made aware of the contents, details of how compliance with the management plan would be enforced on site and details of a process by which neighbours can raise breaches of those measures and a process for responding to and resolving these issues, including keeping a log of breaches and remedies which would be made available to the LPA on request), is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 11 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.