

Appeal Decision

Site visit made on 29 July 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/C2741/C/24/3338729

land known as 7 Peckitt Street, York YO1 9SF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Chris Bird against an enforcement notice issued by City of York Council.
- The notice was issued on 11 January 2024.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use from a dwelling house class C3 to class sui generis (short term holiday / letting).
- The requirements of the notice are to:
Cease the use of the Land for short term lettings of under 3 months.
- The period for compliance with the requirement is:
6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out in the Formal Decision.

Formal 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.

Preliminary Matters

2. The City of York Local Plan – Public Draft (Regulation 19 Consultation) (DLP) was submitted for examination in 2018. I have not been advised that the DLP has been formally adopted and note instead that the notice and the submissions of both parties continue to refer to the DLP as the emerging local plan. As a consequence, I cannot yet give it full weight but it is a material consideration that I have had regard to in reaching my decision.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. Prior to that, the Framework had last been revised in September 2023. In setting out the reasons for issuing the notice, the Council refer to paragraphs 92 and 130 of the Framework but the notice does not make it clear to which iteration these paragraph numbers refer.

4. Although the notice was issued after the publication of both the September and December 2023 revisions to the Framework, the Council's officer report regarding the alleged breach of planning control refers instead to the 2021 version of the Framework. It is clear however, having considered in full the Council's reasons for issuing the notice, that the Council's concerns relate to the effects of the alleged breach of planning control upon the living conditions of occupiers of nearby residential properties. I am satisfied that the Policies of the DLP referred to in the notice confirm this.
5. The content of paragraphs 92 and 130 of the 2021 Framework is not materially different to that of the corresponding paragraph numbers of the September 2023 Framework. Nor is the content materially different from that of the December 2023 iteration, other than changes to the paragraph numbers such that paragraph 92 becomes paragraph 96, and 130 becomes 135. For the avoidance of doubt, references to the Framework hereafter refer to the December 2023 Framework and I have determined the appeal accordingly.
6. It is noted that whilst the notice refers to DLP Policy W7, the development plan extracts that I have been supplied with and the Council's Statement of Case both refer to DLP Policy HW7: Healthy Places. I am satisfied that the policy referred to on the notice is the result of a typographical error and it is to DLP Policy HW7 to which I refer within this decision. I am satisfied that in doing so neither party would be disadvantaged.

The appeal on ground (a)

Main Issue

7. The main issue is the effect of the use of the appeal property as a short-term holiday let on the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

8. The appeal site is located centrally within the city on Peckitt Street which, despite its location between the busy tourist areas around Clifford's Tower and the riverside along the River Ouse, was relatively quiet at the time of my visit to the site. Whilst there appear to be some non-residential uses located along the street in the form of solicitor's offices, Peckitt Street is essentially residential in its character. The properties immediately adjoining and surrounding the appeal property are also principally residential in character. Even if I were to accept that the limited number of office premises on Peckitt Street created a mixed, rather than largely residential, character those offices are unlikely to result in increased (if indeed, any) comings and goings, particularly later in the evening, that would cause significant or material disruption to the occupants of the residential properties.
9. The appeal property is a substantial, end of terrace, townhouse. Accommodation is provided over 3 floors, with two bedrooms located on each of the first and second floors. Although the notice refers to the property as being advertised as offering 5 bedrooms and accommodation for up to 16 guests, my observations during the site visit supported the appellant's layout plan and submissions that the property has 4, rather than 5, bedrooms. That

it can accommodate up to 16 guests is not disputed, albeit that the evidence before me indicates that the maximum number of guests accommodated in a particular stay over that period¹ is 15.

10. The appellant has not appealed on grounds (b) or (c), nor can a hidden appeal on those grounds be adduced from the evidence before me. Nevertheless, it is worth noting the leading authority in relation to schemes for the material change of use from a dwelling to a sui generis holiday let. In Moore², the Court of Appeal noted that cases must be considered on their own merits but that there can be a number of distinct differences between a dwellinghouse use and a sui generis holiday let use. Thus, the pattern of arrivals and departures, with associated traffic movements; the likelihood (or otherwise) of being occupied by single family groups; the size and numbers of guests of the visiting groups; the frequency, nature and timings of comings and goings and the likelihood and frequency of party and social events can all be quite different.
11. The appeal property is a large building capable of accommodating large groups of guests. Indeed, the evidence¹ shows a predominance of larger (6+ guests) groups, with many of those rising to double figures. The submitted promotional extracts highlight the property's capacity to accommodate large groups and even if occupied by a larger family as could be expected for a 4-bedroomed dwelling, the number of people resident at any one time are likely to be greater as a short-term holiday let property than as an albeit large dwellinghouse.
12. Thus, comings and goings at the property are likely to be materially different, and materially greater, as a consequence than as a dwelling. Whilst such patterns of movement may in themselves result in noticeably different and increase comings and goings, and potential for disturbance to nearby residents, the nature of short-term lettings are such that change-overs are also particularly frequent.
13. The appellant's evidence demonstrates the extent of single and two-night stays across the documented period. It may be that check-in times are regulated to avoid particularly late evening arrivals, but I am conscious that the check-in time is such to encourage the 'lead' guest or the first arrival to arrive between those times. I am not aware that the appellant has any mechanism in place by which to ensure that all guests have arrived within that period. Nor am I persuaded that such an arrangement could realistically be put in place given the sizes of the guest groups that the property is capable of accommodating, the sizes of which would also suggest that some would be travelling, and thus arriving, independently of each other. I suspect that, even if the arrival times for the purposes of 'check-in' / key collection fell within the specified times which, at up to 22:00, extend relatively late into the evening in any event, not all guests would necessarily arrive within this period. Such patterns of movement would differ materially from those of a single household dwelling, even a large one.
14. And, even if I were to accept that the check-in time ensured that all arrivals in a particular guest party were limited to those hours, the very nature of a

¹ Between 01/12/2022 and 09/02/2024 – Appendix C, Appellants 'Appeal Statement' February 2024

² Moore v SSCLG & Suffolk Coastal DC [2012] EWCA Civ 1202

large property offering extensive accommodation to large groups close to the night-time attractions of York is likely to generate later evening comings and goings on a basis that would be unlikely for a single dwellinghouse, even as a large dwellinghouse. Despite the appeal property's relative proximity to the centre of York's night-time economy, Peckitt Street itself strikes me as being slightly off-the-beaten-track in terms of evening and night-time attractions. All-male groups may very well be discouraged, but other single-sex and large groups aren't. Whilst disruptive behaviour from any group is not necessarily a given, large groups on short-term stays close to the leisure and evening economy attractions of York city centre are likely to be more frequent, boisterous and exuberant than those reasonably expected to be associated with a dwelling in single household occupation, even if it is a large dwelling. Thus, late night comings-and-goings associated with a short term holiday let of this nature can also reasonably be expected to be greater than those associated with a single dwelling. That Peckitt Street itself is relatively quiet in comparison to the more commercially orientated areas of York merely serves to accentuate the differences, and thus the effect of the comings and goings of large groups to the appeal property.

15. The policies to which the Council refer to in the notice do not specifically address the provision of tourist facilities within the city. However, DLP Policy ENV2 states that development will not be permitted where, amongst other things, existing communities would be subject to significant adverse environmental effects such as noise whilst DLP Policy DP3 seeks to ensure that new development addresses overarching development principles including ensuring balanced communities through provision of an appropriate range of housing. For the reasons I have set out therefore, the appeal scheme is in conflict with DLP Policies DP3, ENV2 and HW7, and with the provisions of paragraphs 96 and 135 of the Framework which together seek to secure high standards of living conditions for existing and future occupiers/
16. The outside areas associated with the appeal property are limited to small areas of patio and enclosed yard areas. Although these areas are heavily enclosed by surrounding yard walls, and the appeal building itself, such structures and hard surfaces have the capacity to bounce noise the local environment, to the detriment of the living conditions of nearby neighbours.
17. I noted during my visit however that access from the property's internal areas to the outside yard is restricted by locked door and gate and is not available to guests. In the event that the appeal may be successful, I am satisfied that such arrangements could be formalised by way of planning condition to ensure that access to the outside space is not possible for guests, and that any access is for maintenance purposes only. Such steps would be sufficient to avoid harm to living conditions and would align with the aims and provisions of DLP Policies DP3 and ENV2 but does not overcome the overall harm to living conditions I have identified above.

Other Matters

18. The appellant cites benefits arising from the use of the appeal property as a sui generis short term holiday let. As the property would be occupied by guests, generally on a short term basis rather than permanently, and

potentially with gaps between bookings, the extent of exposure of residents to the risk of river flooding would be reduced when compared with permanent residential occupation.

19. However, even if I were to conclude that would be the case, guest residents would be likely to be less familiar with the manner in which the River Ouse rises and falls in flood events than permanent residents. This matter therefore weighs neither in support of, nor against, the development for which planning permission is sought in the appeal under ground (a).
20. The operation of the appeal property supports the employment of three people locally, although it is not explained what form that employment takes. The appellant also refers to the use of a 'holiday let support and security services company' in assisting with dealing with disruptive guest behaviour. These factors, together with the contribution that guests would make to the local economy, are factors that carry weight, albeit limited, in support of the proposal. They are, however, insufficient to outweigh the harm I have outlined above.

Conclusion on ground (a)

21. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should fail.

The appeal on ground (f)

22. Rather than accept the Council's notion, as set out by the notice's requirement, that lettings of less than 3 months would largely avoid the worst of the areas of concern that underpin the Council's reasons for issuing the notice, the appellant identifies a minimum let period of between 3 and 7 nights as an alternative. Furthermore, that minimum let period would be for only up to 6 people.
23. Whilst groups of up to 6 people may be more closely related to a 'family group' in terms of its size, the suggested period of let would, in my judgement, be sufficiently short so as to encourage many of the aspects of short-term holiday let occupancy that have the capability of causing harm to the living conditions of nearby residents to still occur. Thus, a group of 6 could conceivably be 3 couples, or a group of 6 individuals or some combination thereof, and a three night stay a long weekend (Friday night to Sunday night). I am not therefore persuaded that the steps required to be taken exceed what is necessary to remedy the breach of planning control. Thus, the appeal on ground (f) should fail.

Conclusion

24. 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).

G Robbie

INSPECTOR