



Appeal Decision

Site visit made on 17 September 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2024

Appeal Ref: APP/J0540/W/24/3344265

23-35 Burghley Road, Peterborough PE1 2QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Tom Barrett against the decision of Peterborough City Council.
 - The application Ref 24/00196/FUL was approved on 17 April 2024 and planning permission was granted subject to conditions.
 - The development permitted is change of use from Hotel (C1) to Residential Dwelling House (C3).
 - The condition in dispute is No 4 which states that: *The application site shall be used only as a C3 Dwellinghouse and for no other purpose (including any other purpose in Class C4 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).*
 - The reason given for the condition is: *A further assessment would be necessary to ascertain whether any alternative use would be acceptable in this location, in accordance with Policies LP13, LP16 and LP17 of the Peterborough Local Plan (2019).*
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Decision

1. The appeal is allowed and the planning permission Ref 24/00196/FUL for the change of use from Hotel (C1) to Residential Dwelling House (C3) at 35 Burghley Road, Peterborough PE1 2QA granted on 17 April 2024 by Peterborough City Council, is varied by deleting condition No 4.

Preliminary Matters

2. The address in the banner heading above is taken from the planning application form. As the application site boundary relates to 35 Burghley Road only, I have used this as the address in my formal decision notice. It is also the same address as that on the Council decision notice.

Background and Main Issue

3. The original permission allowed for the application property to be converted from a hotel into a dwellinghouse. Condition 4 of the permission sought to restrict that the property be used as a dwellinghouse only and remove permitted development rights to prevent it from being used as a house in multiple occupation for 3-6 residents, without the granting of planning permission.
4. To summarise, the appellant seeks the removal of Condition 4, arguing that the condition does not set out the permitted development rights that have been removed and that no justification has been provided by the Council.
5. The main issue is therefore whether Condition 4 is precise, necessary and reasonable in all other respects.

Reasons

6. The Planning Practice Guidance (PPG) advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"), so that it is clear exactly which rights have been limited or withdrawn.
7. The National Planning Policy Framework (the Framework) is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In accordance with the Framework and PPG, clear justification for removing permitted development rights based on the circumstances and individual merits of the particular case is necessary.
8. Condition 4 does not precisely define the relevant provisions of the GPDO, and it is not clear which class of permitted development rights have been withdrawn. The condition is therefore not precise.
9. The delegated report outlines that officers were minded to include a condition to remove permitted development rights to restrict a change of use to Use Class C4. This was because intensification of the use of the appeal building as a house in multiple occupation would not be supported by Policy LP53 of the Peterborough Local Plan 2016 to 2036, adopted July 2019 (the Local Plan).
10. Policy LP53 of the Local Plan restricts the intensification of residential use, including the creation of houses of multiple occupation, in this area. However, the reason given for Condition 4 in the decision notice does not refer to this development plan policy. I have not been presented with any sufficient evidence that leads me to conclude that the removal of permitted development rights is justified. Condition 4 is therefore not reasonable.
11. The delegated report does not explain why a further assessment would be necessary to ascertain whether any alternative use would be acceptable in this location in respect of Policies LP13, LP16 and LP17 of the Local Plan, and why an alternative use in this location would cause harm.
12. In the absence of clear justification, the removal of permitted development rights to restrict the use of the property is therefore not necessary to secure compliance with Policies LP13, LP16 and LP17 of the Local Plan, which amongst other things, seek to ensure that development proposals make appropriate provision for the transport needs, positively contribute to character and local distinctiveness, and do not result in an unacceptable impact on the amenity of existing occupiers.
13. I therefore conclude that Condition 4 is not precise, necessary or reasonable in all other respects.

Conclusion

14. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting condition No 4.

L Reid

INSPECTOR