



Appeal Decision

Site visit made on 20 January 2025

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal Ref: APP/C2741/W/24/3351531

70 Walmgate, York, YO1 9TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by 1Voyage Ltd against the decision of City of York Council.
 - The application Ref: 24/00928/FUL, dated 21 May 2024, was refused by notice dated 16 July 2024.
 - The application sought planning permission for change of use from shop to residential dwelling including demolition of rear outshot and external staircase, construction of single storey rear extension, removal of shopfront and construction of single storey rear extension, removal of shopfront and construction of new brick frontage with door and windows and new rooflights to rear without complying with a condition attached to planning permission Ref: 21/00908/FUL, dated 29 October 2021.
 - The condition in dispute is No 7 which states that: All residential accommodation shall be constructed so as to achieve internal noise levels in habitable rooms of no greater than 35dB LAeq (16 hour) during the day (07:00-23:00 hrs) and 30 dB LAeq (8 hour) and LAF Max level during the night (23:00-07:00 hours) should not exceed 45dB(A) on more than 10 occasions in any night time period in bedrooms and should not regularly exceed 55dB(A). These noise levels shall be observed with all windows open in the habitable rooms or if necessary, windows closed and other means of ventilation provided. These noise levels are in accordance with BS8233:2014; Guidance on sound insulation and noise reduction for buildings.
 - The reason given for the condition is: In the interests of protecting the amenities of the occupants.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from shop to residential dwelling including demolition of rear outshot and external staircase, construction of single storey rear extension, removal of shopfront and construction of single storey rear extension, removal of shopfront and construction of new brick frontage with door and windows and new rooflights to rear at 70 Walmgate, York, YO1 9TL in accordance with the application Ref: 24/00928, without compliance with condition number 7 previously imposed on planning permission Ref: 21/00908/FUL dated 29 October 2021.

Costs Application

2. An application is made by the appellant for an award of costs against the Council. This is the subject of a separate decision.

Preliminary Matters

3. It appears from the evidence before me that all of the other conditions on the original planning permission have been complied with and are no longer necessary. I have dealt with the appeal on this basis.

Main Issue

4. The main issue is whether the planning condition in question meets the tests set out in paragraph 57 of the Framework.

Reasons

5. 70 Walmgate is a Grade II* listed building located in York Central Historic Core Conservation Area (CA). It was originally constructed in the early 18th century as a high status, single dwelling. It was later converted into commercial premises and has had a number of commercial uses over many years. Prior to the current conversion the building was occupied by Age UK as a charity shop and offices.
6. Planning permission was granted in 2021 for the conversion of the building which has resulted in the sympathetic restoration and extension of the building, turning it back into a single dwelling. Indeed, the appellant was awarded a York Design Award for Conservation because of the quality of the restoration work. It is currently used as a short-term rental property.
7. The change of use and associated works have been completed without compliance with condition No 7 which is set out above. It concerns the habitable windows in the residential accommodation. The Council now say this just relates to the bedrooms although this is not clear from the wording of the condition. The windows in the 2 double bedroom windows on the first floor, at the front of the property, are single glazed as the Council would not grant listed building consent for double glazed units to be fitted in these windows. The windows at the side and rear are however fitted with double glazed units and because these windows are away from the road, noise and disturbance from the street is likely to be greatly reduced in any event.
8. Sound attenuation of the level required by the condition could only be achieved in the windows in the front elevation using secondary glazing. Given that this would prevent the windows from opening, the appellant says that mechanical ventilation would be required in conjunction with the secondary glazing. The Council will not allow mechanical ventilation to be installed in this Grade II* listed building. I agree that mechanical ventilation would be likely to result in harm to the fabric of the listed building and would therefore not be acceptable.
9. The appellant's acoustic report that was submitted at the time of the original planning application advised on the installation of 6.4mm single glazed Pilkington Optiphon with secondary glazing. It seems that if this was combined with the use of Titan trickle vents for ventilation purposes it would provide the necessary sound attenuation. This design it seems was shown on a drawing submitted during the planning application process. The proposed Titan acoustic trickle vent would be attached to the inner lining of the sash box and then cut through the secondary glazing with a vent fixed over it.
10. However, the windows that were approved as part of condition No 3 which required the submission of large scale details of the new windows to be approved in writing by the Local Planning Authority prior to the commencement of the development did not contain trickle vents, nor the specialist glass. Nevertheless, the Council discharged condition No 3 and thus approved the windows that have been fitted. The absence of trickle vents in the windows in the front elevation where the windows contain single glazing means that the addition of secondary glazing now

would be likely to require mechanical ventilation. It is unclear whether the specialist trickle vents could be fitted to the sash windows retrospectively.

11. Errors on the part of the appellant in submitting windows that were not in accordance with details designed by their architect and acoustic consultant combined with the error of the Council in approving the windows without these important details as part of condition 3 has resulted in a difficult situation.
12. I shall deal with each of the tests set out in paragraph 57 of the Framework in turn, dealing first with whether the condition is necessary. The reason for imposing the condition was to protect living conditions in the habitable rooms (bedrooms) and in particular noise and disturbance as the property abuts the pavement outside. Walmgate runs out from the city centre and at this point it contains a mix of dwellings and businesses such as shops and restaurants. The narrow street is not heavily trafficked, but I saw when I visited the site a bus picks up and drops off outside of the dwelling which is likely to cause some noise and disturbance in the bedrooms at the front of the property.
13. Given the location of the building on the edge of the city centre, I can see why the Council considered such a condition necessary, particularly in relation to the potential noise in the evenings which could affect the occupants of the front bedrooms. I note that the appellant says that she has had no complaints about noise from customers, but they are there for short periods of time compared to if the dwelling were occupied on a permanent basis in the future. I am also mindful that many listed buildings in residential use in York and other historic cities will be fitted with single glazing in their windows and not therefore provide ideal sleeping conditions for residents.
14. Often with the renovation of listed buildings there is a balance to be struck between sensitive and sympathetic renovation, it being in a viable use and other matters such as the one before me. In this case the building has undergone extensive sympathetic renovation to restore it to its original use. The resultant front elevation appears vastly improved because of the removal of the unsightly shopfront and the reinstatement of the front elevation to how it would have appeared originally.
15. This has a significant positive effect on the character and appearance of the CA and the conservation and viable use of the grade II* listed building. On balance I find that the condition is not necessary as future occupants of the dwelling will be aware when purchasing it that it is a grade II* listed building with single glazing in the front windows and of its location in relation to cafes, restaurants and the street and the likely noise because of this, particularly in the evening.
16. Turning to whether the condition is relevant to planning and to the development permitted. This is not a matter that is in dispute, and I agree it meets this test. In terms of whether it is enforceable, firstly it would require the installation of noise monitoring equipment inside multiple rooms of this residential property, over a period of a few days I would suggest. This in my experience is unlikely to happen, especially as it would require the agreement of the owner who in any event is unlikely to be reporting non-compliance with the planning condition.
17. Secondly, if the noise levels could be obtained and were found to exceed those set out in condition No 7, it seems that the remedy would be the installation of secondary glazing and mechanical ventilation or the installation of trickle vents in the existing windows and in new secondary glazing. It is not clear from the

information before me if trickle vents could be installed in windows retrospectively. If not, it would require the construction and installation of new windows at significant cost to the appellant and a waste of the new windows. Moreover, the windows would not then accord with the drawing discharged under condition No 3. On balance I find that the condition is not enforceable. Clearly there is some ambiguity and confusion in relation to the condition and hence the current situation. As such I find that the condition is not precise nor reasonable in all other respects for the reasons I have already set out.

18. For the reasons I have set out above I find that the condition should be removed from the original planning permission as it conflicts with the advice set out in paragraph 57 of the Framework. The appellant advises that all of the other conditions on the planning permission have been discharged, and this is not disputed by the Council. Therefore, there is no need for me to reimpose the other conditions on the original planning permission.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition.

Louise Crosby

INSPECTOR