



Appeal Decision

Site visit made on 20 February 2025

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 March 2025

Appeal Ref: APP/V2004/W/24/3354883

The New Clarence, 77 - 79 Charles Street, Kingston Upon Hull HU2 8DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Chris Colcomb on behalf of Kingston Apartments (Yorkshire) Ltd against the decision of Hull City Council.
 - The application reference is 24/00129/FULL.
 - The development proposed is the change of use from a drinking establishment with incidental accommodation to a mixed-use development consisting of a drinking establishment at ground floor level, and two, 10-bed houses in multiple occupation (HMO), on the upper floors with external alterations and an extension to the ground floor.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Chris Colcomb on behalf of Kingston Apartments (Yorkshire) Ltd against Hull City Council and this is the subject of a separate decision.

Main Issue

3. The main issue is the effect on the living conditions of future residents of the property with regard to noise.

Reasons

4. The description on the application form was amended by the council and although it is not clear if this was done with the agreement of the applicant, it has been confirmed that the revised description is acceptable and preferable. I have therefore considered the revised description set out above.
5. The single reason for refusal relates to the potential for harm to the living conditions of residents within the HMOs from noise from the beer garden and the area of the street immediately outside the front door of the public house.
6. The application form does not make reference to public house opening hours. However, it is evident that a license was sought for late-night opening but due to wider concerns, this was reduced to an agreed 23:00 hours closure. Live entertainment would not be permitted after 22:45 hours and would be limited to the function room only. The council accepted that subject to a number of requirements

that would be partly guided by further surveys, noise from within the public house could be adequately controlled by conditions.

7. No evidence has been provided as to the noise likely to be generated within the beer garden. This is an existing beer garden and it is close to other residential properties. The proposal would not materially alter any historic impacts on neighbouring properties. It is appropriate however, to assess whether noise from the beer garden would result in harm to the new residential accommodation within this building. The plans show bedrooms on each floor, in close proximity to the beer garden. This outdoor space would represent the only area of the property suitable for smoking and is therefore likely to be well used. The bedrooms would be set back, beyond the ground floor elements of the property. However, it has not been demonstrated that the residents of these bedrooms would not be harmed by the use of the beer garden.
8. There are opportunities to limit noise from travelling towards these windows with regard to the enclosure or screening of the flat roof areas of the single storey built elements. Windows could also be enhanced although these are small rooms and beds are likely to be close to the windows. Mechanical ventilation could be installed although this would not be ideal. The hours of operation of the beer garden could also be restricted. These matters could be controlled by condition. However, in the absence of evidence to the contrary, it has not been demonstrated that the use of the beer garden would not have to cease well before the closing time of the public house in order to protect the living conditions of the residents.
9. If the beer garden were to close before the public house, customers needing to smoke would have to leave the premises. It seems inevitable that they would smoke immediately outside, close to the front door. This would add to the noise generated by customers arriving and leaving the property, on foot or in taxis. Interactions between these groups would add further to the noise environment in this immediate area. The plans indicate that there would be bedroom windows in very close proximity to the front door of the property. This area would also be the likely destination for any smokers, resident within the HMOs.
10. No evidence has been provided to assess the likely noise levels in this area or the impact that this would have on the immediately adjacent bedroom windows, particularly nearing 23:00 hours. Again, whilst it may be possible to control noise levels within the adjacent bedrooms by the provision of enhanced glazing and mechanical ventilation, the positioning of bedrooms, in this location, represents poor design. This is particularly the case as the space within the building appears to offer sufficient flexibility for an alternative design layout whereby the kitchen/living/dining rooms, which would be less sensitive to nighttime noise, could be located in this position.
11. A management condition, in addition to conditions to prevent noise penetration, may assist, but this immediate area would inevitably be the most well used and would be likely to be the focus for taxis picking up and dropping off. Overall, the evidence does not demonstrate that residents of the nearest bedrooms to the public house entrance would not experience unacceptable living conditions as a result of noise and disturbance.
12. The proposal would be contrary to policy 49 of the Hull Local Plan (2017) (LP) as this requires that an acceptable level of amenity must be demonstrated when there

would be sensitive receptors in proximity to noisy uses; and demonstrate that adverse impacts of noise could be mitigated. Whilst it may be possible to demonstrate that the beer garden would not result in harm to the living conditions of the adjacent bedrooms, with the imposition of conditions and mitigation measures, it has not been demonstrated in the submissions.

13. I have greater concerns with regard to the bedrooms adjacent to the front door of the public house and it has also not been demonstrated that conditions, in these rooms, could be made acceptable. Furthermore, it would need to be demonstrated that any measures necessary, would not result in other concerns, particularly the need for permanent mechanical ventilation, especially if such measure could be avoided by a more appropriate design layout.
14. The proposal also conflicts with the National Planning Policy Framework 2024 which seeks a high standard of amenity for existing and future users; and a high standard of design.

Other matters

15. Concerns have been raised about the introduction of large HMOs in this location. This was recently considered with regard to the appeal reference APP/V2004/W/23/3336032 for a 29-bed HMO. I have no reason to take an alternative view to the previous inspector. Whilst the parking demand for this dual use would exceed the parking demand considered above, subject to the conditions proposed, there is no compelling argument to suggest that there would be unacceptable harm to highway safety, with particular regard to parking provision in the area.
16. Concerns have been raised with regard to the loss of the facilities of the original public house. The public house offer would be altered; and views have been expressed that it would be smaller, less flexible and of a lower quality. However, what is proposed appears to be generally comparable, offers a good level of functionality and would result in a number of benefits with regard to being on a single level. I am not persuaded therefore that the proposal would result in the loss of what has clearly been an asset to the local community.
17. The addition of the HMO accommodation in this central and accessible location would offer substantial benefits with regard to the provision of housing and this in itself, would be sufficient to outweigh the concerns put forward with regard to the quality of the public house provision, parking and the other concerns raised regarding the extent of HMO proliferation.
18. The appellant has submitted a number of appeal and application decisions which relate to similar proposals. The main issue in this case is very specific and results from the particular details of this proposal. I am not satisfied that the cases provided are entirely consistent with the details of this proposal in this particular respect and I must, in any event, consider this proposal on its own merits.
19. Despite the findings of the previous inspector, it is still not clear if a contribution towards the open space deficit, as set out in the officer report, has been secured. Whilst LP policy 42 seems clear, there is little evidence in this regard and certainly no copy of an undertaking has been provided. As such, I would be unable to allow the appeal on the basis of the information before me. However, as I am dismissing the appeal, it is not a matter on which the decision would turn.

Conclusion

20. There are many matters that provide considerable weight in favour of returning this public house to a productive use, including the provision of new residential accommodation. Whilst a number of issues, including noise from within the public house, would be reliant on the implementation of a range of conditions, I am satisfied that with these in place, the development would be satisfactory in all respects other than with regard to the main issue.
21. Whilst I appreciate that the council's officers, including the environmental health officer, supported the proposal, I agree with the council's decision overall, that the information provided has not demonstrated that the living conditions of the residents of the new accommodation would be satisfactory with regard to noise, as required by LP policy 49.
22. As it would appear that the proposed layout could be significantly improved by moving bedroom accommodation away from the front door of the public house, the proposal also represents poor design. In these circumstances, I do not accept that the benefits of the proposal can be considered to outweigh the main concern. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR