



Appeal Decision

Site visit made on 12 October 2020

by **R Walker BA Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 November 2020

Appeal Ref: APP/F4410/W/20/3256494

5 - 6 Regent Terrace, Doncaster DN1 2EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Balmoral Investments and Development Ltd against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 19/02974/COU, undated application, was approved on 28 May 2020 and planning permission was granted subject to conditions.
 - The development permitted is change of use from offices to 6 self contained apartments, with associated works.
 - The condition in dispute is No 3 which states that: "*The development shall not be commenced until a scheme has been submitted to and approved in writing by the Local Planning Authority, for ensuring, within each apartment, the noise standards below can be met:*
 - Location 07:00 to 23:00 23:00 to 07:00
 - Living room maximum 35 dB LAeq, 16hour —
 - Dining room/area maximum 40 dB LAeq, 16hour —
 - Bedroom maximum 35 dB LAeq, 16hour 30 dB LAeq, 8hour and individual noise events not normally exceed 45 dB max (measured with F time-weighting) with windows closed and alternative ventilation provided.All works which form part of the approved scheme shall be completed and brought into use before the dwelling is occupied and a report submitted to demonstrate compliance."
 - The reason given for the condition is: "*In the interests of the amenity of the occupiers, in accordance with CS14 of the Core Strategy.*"
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Decision

1. The appeal is allowed and the planning permission Ref 19/02974/COU for the change of use from offices to 6 self contained apartments, with associated works at 5 - 6 Regent Terrace, Doncaster DN1 2EE, granted on 28 May 2020 by Doncaster Metropolitan Borough Council is varied, by deleting condition No 3.

Procedural Matters

2. No 5-6 Regents Terrace, along with neighbouring property No 7, form a Grade II group listed building. The property is also within a Conservation Area (CA). While any physical works associated with the approved change of use would also require an approval of listed building consent, no appeal against a condition to any approved listed building consent or otherwise, is before me. For the avoidance of doubt, this appeal relates to the planning permission only, and any listed building consent in place would be unaffected by my determination of this appeal.

Main Issues

3. The main issues are whether the condition is reasonable or necessary in the interests of the living conditions of future occupiers of the development and the effect on heritage assets with particular reference to the Bennetthorpe CA and the appeal building, a grade II listed building.

Reasons

Original Condition

4. Planning permission was initially granted by the Council without the benefit of acoustic evidence. Following completion of technical evidence, the appellant considers that the condition cannot be met without impacting on the development's viability or without harm to the listed building.
5. As such, the appellant seeks to modify the scope of the condition to provide mitigation in the form of acoustic wall vents. The Council agree with this approach and have put forward an alternatively worded condition to secure this mitigation, which the appellant has had the opportunity to comment on. The revised suggested condition is as follows:

Prior to the commencement of the relevant works, details of the ventilation and position of all vents should be submitted to and approved in writing by the Local Planning Authority. There shall be one acoustic wall vent per habitable room and the vents must be rated at least 42 dB Dn, e, w, per 5000mm² effective area in the open position.

6. The appellant's Noise Impact Assessment (NIA) states that internal noise levels in the rear of the appeal building would accord with the requirements of BS8233:2014 Guidance on sound insulation and noise reduction for buildings (the BS). However, to the front, they would be 1dB above the criteria within the BS during the daytime. The Council do not dispute these findings and I have no reason to disagree.
7. Due to the marginal exceedance to the front, in my view, this would be indiscernible. This marginal effect would also only be experienced during the daytime. On this basis, while the BS is exceeded, this would be to a negligible degree. Although with windows open, traffic noise would be greater, given the location of the appeal site along a busy road, future occupants would expect a degree of noise and disturbance from traffic. As such, I do not consider that this would result in unacceptable living conditions to future occupiers.
8. I thus consider that the original condition is not necessary for the protection of the living conditions of future occupants. In this regard, there would be no conflict with Policies CS1 and CS14 of the Doncaster Council Core Strategy (CS). These policies, amongst other things, stipulate that proposals should provide opportunity to have access to good quality housing.

Suggested Revised Condition

9. On the basis of the limited information supplied as part of the appeal, further information was sought from the parties in respect of the acoustic wall vents, required as part of the agreed revised condition. It was confirmed that 7 vents would be required for the front elevation and 6 to the rear, in order to serve all of the habitable rooms in the residential units. These would require a hole

cutting through the masonry for each of the vents which would then have an external and internal grill.

10. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Additionally, section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a CA.
11. No 5, 6 and 7 Regents Terrace are early 19th century properties, which are 3 storeys with basement and attached railings. To their frontage, the properties are in dressed stone Ashlar and brick to the side and rear, with some rendering. No 5 has been rendered and painted to the front. The windows to Nos 5 and 6 comprise of glazing bar sliding sashes, including tripartite bow windows to the ground floor and full height sash windows with bracketed decorative iron balconies and sash windows to the 3rd floor. No 7, has no bow bays, and windows appear to be later 19th century with single panes in plate glass.
12. Whilst there are differences across the terraced row in terms of detailing, there is cohesiveness and a classical elegance to the Regency architecture of the group which forms its special interest. Features such as the dressed stone frontages, ornate iron balconies and sash window detailing also forms part of the architectural significance. The surrounding CA appears to be characterised mostly by formal villas and terrace groups. Nos 5-6 are located prominently within the CA and, forming part of a terrace, make a positive contribution to its significance.
13. There is no dispute that in order to meet the noise standards in the existing condition, the imposition of double glazing or secondary glazing cannot be achieved without harm to the listed building. However, in addition to my findings in respect of the necessity of the original condition, I have significant concerns in terms of the vents which would be required by the agreed revised condition.
14. The frontage would be 'peppered' by the vents across all of the floors and would also result in the loss of historic masonry. Whilst detailing such as their finish and exact position would be subject to agreement, in light of the special interest of the building, I consider that the addition of these, as a general principle, would cause harm to the building and the CA.
15. Moreover, 6 vents would be required by the condition to the rear serving each of the habitable rooms. However, as demonstrated by the NIA, there would not be any exceedance of noise levels to these rear rooms. Moreover, I have already concluded that with open windows, there would still be acceptable living conditions for future occupiers. Such unnecessary works, and loss of historic fabric through the creation of holes in the masonry, would also cause harm.
16. The Council considers that provision in each habitable room would ensure that Building Regulation requirements are met when the windows need to remain closed. It considers that this would provide a suitable acoustic environment, and will help to reduce the likelihood of unacceptable hazards of excess heat and damp & mould which may otherwise be caused, when considering a

Housing Health and Safety Rating System assessment under the Housing Act 2004.

17. However, as I have found above, with particular reference to noise, future occupiers would have acceptable living conditions with the existing window arrangements. Although there would be some benefits from the vents, there would be harm to the listed building, which I must give great weight. For historic buildings, it is common practice that an appropriate balance is achieved between meeting other legislative requirements, such as Building Regulations, and indeed exemptions and special considerations are often allowed for in such circumstances. There is also no evidence that the vents would also be needed in terms of excess heat and moisture. Accordingly, there are no public benefits which would outweigh that harm to the listed building and CA.
18. As such, the agreed revised condition would also not be reasonable or necessary as it would cause harm to the special interest of the listed building and would go beyond what is required in terms of noise mitigation to make the development acceptable. This would conflict with the National Planning Policy Framework, Policies CS1, CS14, and CS15 of the CS and Policy ENV25 of the Doncaster Unitary Development Plan. These policies stipulate, amongst other things, that proposals will be supported which preserve and, where appropriate, enhance the heritage significance and setting of heritage assets.

Conclusion

19. In conclusion, condition 3 is not reasonable or necessary in order to protect the living conditions of future occupants in terms of noise and disturbance. Moreover, while parties had agreed the imposition of an alternative condition requiring details of ventilation vents, this would not be reasonable or necessary due to the resulting harm to heritage assets.
20. I have therefore allowed the appeal by deleting condition 3, however no substitute condition is necessary.

Robert Walker

INSPECTOR