

Appeal Decision

Site visit made on 4 October 2016

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2016

Appeal Ref: APP/F4410/W/16/3153956

Shelton House, 4 Bennetthorpe, Bennetthorpe, Doncaster DN2 6AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr M M Hattab against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 15/02253/FUL, dated 16 September 2015, was refused by notice dated 2 June 2016.
 - The development proposed is to convert the existing first floor of the doctor's surgery and extend the first floor at the rear to form two one bedroom flats with new windows to the side elevation.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i. whether the proposal is acceptable having regard to the effect of noise and disturbance arising from a nearby source, the Earl of Doncaster Hotel (the Hotel), on the living conditions of future occupants; and
 - ii. whether the proposal would be an impediment to the economic viability of the Hotel.

Reasons

3. The appeal site is a two storey property located on Bennetthorpe and within the Doncaster Bennetthorpe Conservation Area. The property has most recently been used for medical consultation and is currently being redecorated at ground floor level to accommodate a retail use.
 4. Bennetthorpe is a busy road with heavy traffic and is a key route leading to the nearby town centre. There is a range of land uses in the immediate vicinity of the site, including the adjacent large hotel and a three storey block of residential flats. The Hotel office is situated in a single storey building immediately to the rear of the appeal site. A side door entrance into the Hotel's first floor ballroom and its associated external metal fire escape is situated immediately adjacent to the appeal site. There is an outdoor patio / smoking area close to the appeal site to the rear of the hotel.
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5. The proposal is to alter, extend and convert the first floor accommodation to create two flats.

Noise

6. Policy CS1 of the Doncaster Council Core Strategy 2011-2018 Adopted 2012 (the CS) states that proposals will only be supported which contribute to a set of objectives, including being well-designed and fit for purpose.
7. The relationship between the appeal proposal and the Hotel is fundamental in assessing whether the proposed development would be fit for purpose with respect to achieving adequate living conditions for future occupants. The residential accommodation would be located extremely close to the flank wall of the hotel and immediately adjacent to the hotel's very large first floor ball room. The external doors serving the ballroom, which are used to take and remove musical and sound equipment from the building and the external metal access and fire escape staircase are also very close to the proposed flats and Flat No 2, in particular.
8. The proposed layout shows living accommodation, including a kitchen/living space window facing directly towards and very close to the door and the staircase. Consequently, there is a very clear conflict between the proposed residential use and the noise sources at the hotel.
9. I understand that the ballroom is used mainly at weekends and around Christmas for a range of events, including parties, weddings and live music performances. Evidence before me suggests that the external doors are often opened during events, allowing people to leave the venue to smoke outside, sometimes on the external staircase. Even if the door remained closed during events it appears to me likely that noise would be clearly audible at the appeal site. In addition, the side door and stair would be used late at night for moving equipment from the ballroom, generating noise and disturbance to neighbouring residential properties.
10. I understand the appellant's comments with respect to the management of the hotel and ballroom, including ways in which noise levels could be managed in order to protect the living conditions of neighbours. However, the hotel is an existing business and the introduction of such noise sensitive residential use so close presents clear conflict and is therefore inappropriate.
11. I am not aware of any previous noise complaints from other residential accommodation close to the hotel. However, there are none quite as immediately close as the appeal site. Also, I have taken account of the evidence before me that the appeal site was previously used for audiology testing, but on that matter conclude that the likely times of testing are unlikely to be late in the evenings at weekends when noise from the ballroom is most likely. As such, I give this little weight.
12. There are other sources of noise affecting the property, most notably from the street outside. However, it appears to me that there would be much better prospects of addressing such noise through some kind of mitigation such as improvements to glazing, for example. As such, the noise environment is potentially acceptable when the ball room is not being used.
13. The Council's Nuisance Team considers that there will be no effective sound attenuation between the source (the Hotel) and the subject (the proposed

residential flats) due to there being significant noise emissions and the relationship between the Hotel's ballroom. I have taken account of the appellant's suggestion that appropriate and advanced sound attenuation measures could be used to safeguard the amenity of adjacent residents and that an appropriate outcome could be negotiated between relevant parties. However, I have no clear evidence that this would be effective. Moreover, it would require the cooperation of the hotel, which leads me to the view that it could not be part of any requirement imposed by a planning condition.

14. The appellant also suggests that conditions could deal with any concerns with respect to the position of the windows on the eastern elevation of the proposed extension. However, I am required to consider the appeal on the basis of the scheme and plans which were before the local planning authority when it made its decision. The appeal process should not be used to evolve a proposal and changes to the proposed window arrangements or other material revisions to the scheme should be the subject of a fresh planning application.
15. In support of the appeal, my attention has been drawn to other cases elsewhere. However, I do not have the full details of the circumstances of those schemes and so cannot be sure that they represent a direct parallel to this appeal proposal, including with respect to location and noise conditions. Furthermore, they have been determined under different development plan policies. In any case, I have determined the appeal on its own merits.
16. On this issue I therefore conclude that the proposal would not be acceptable having regard to the effect of noise and disturbance arising from a nearby source, the Hotel, on the living conditions of future occupants. Therefore, the proposal is in conflict with the quality of life and amenity requirements of Policy CS1 of the CS and the National Planning Policy Framework (the Framework).

Viability of the adjacent business

17. The adjacent hotel is a large business, part of which is its large ballroom which is used for a range of events. Given the noise and disturbance conflict I have identified above, the relationship between the hotel and the proposed residential development would be highly likely to give rise to noise complaints over a period of time.
18. The hotel provides employment and contributes to the local economy. Those jobs and the economic benefits of the hotel business may be prejudiced if planning permission is granted for the current proposal. The Framework emphasises throughout the importance of economic considerations and jobs. Accordingly, I attach weight to this consideration.
19. On this issue I conclude that the conflict with respect to noise and disturbance could be an impediment to the economic viability of the adjacent business, the Earl of Doncaster Hotel. Therefore there is conflict with the economic growth objectives of the Framework.

Other matters

20. I have noted the appellant's comments with respect to the principle of the proposal, effect on the character and appearance of the Doncaster Bennetthorpe Conservation Area and the quality of the accommodation that would be provided. These are not referred to in the Council's reasons for refusal and are not matters of dispute with respect to the current appeal.

Conclusion

21. Although there is no conflict with the development plan with respect to the principle of converting the upper floor to residential use, the effect on the character and appearance of the conservation area and the quality of accommodation that would be provided, I have found harm with respect to the effect of noise and disturbance from a nearby source on the living conditions of future occupants and the development would be an impediment to the economic viability of the adjacent business. These are the prevailing considerations. Therefore, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Alastair Phillips

INSPECTOR