

## COMMITTEE REPORT

**Date:** 8 December 2022      **Ward:** Guildhall  
**Team:** East Area      **Parish:** Guildhall Planning Panel

**Reference:** 22/01236/FUL  
**Application at:** 2 Ascot Mews Emerald Street York YO31 8LT  
**For:** Change of use from dwelling house (use class C3) to short-term letting holiday accommodation (sui-generis)  
**By:** Mr Nicolas Tait  
**Application Type:** Full Application  
**Target Date:** 12 December 2022  
**Recommendation:** Refuse

### 1.0 PROPOSAL

1.1 The proposal is a retrospective planning application to use 2 Ascot Mews, Emerald Street as short-term holiday let accommodation. No external changes to the site or building are proposed. The applicant has stated that the property will sleep a maximum of 6 people. There is also a concurrent retrospective planning application (22/01235/FUL) to use the attached property, 1 Ascot Mews, as a short-term holiday let to sleep a maximum of 6 people. It is understood that 3 Ascot Mews is also in use as a short term let.

1.2 Ascot Mews is an 'L' shaped courtyard that contains 3 two-storey properties. They have no rear gardens. The homes were created from the conversion of buildings that had previously been used mainly for non-domestic purposes including a workshop, however, it is understood that a small dwelling has existed within the site for a considerable time. The 2004 planning permission (04/02274/FUL) granted consent to convert the workshop buildings to create two new flats in addition to the existing house. In 2007 (07/00897/FUL) planning permission was granted for a modified scheme that upgraded the existing dwelling and created 2 two-storey dwellings. This was implemented. Each of the three dwellings were designed with pedestrian access from the courtyard. Four car parking spaces (two for number 1 and two for 2 Ascot Mews are contained within the courtyard). The block plans show one car parked in a 'tandem' manner. The parking space for number 3 is located on private land between the building and Emerald Street. Number 1 and 2 are within the same ownership. Number 3 is in separate ownership.

1.3 Emerald Street is a relatively narrow street in The Groves containing terraced homes. It is not a through route for cars. The application property is at the far end of the terrace with the highway immediately to the front containing double yellow lines. There are two pedestrian-only routes running close by the site. One leads north to Huntington Road and the other south-west towards Grove Terrace Lane. The property is around 800 metres walk from the junction of Monkgate and Lord Mayors Walk.

1.4 The property is not located in an area at high risk of flooding. The Heworth/East Parade and Huntington Road Conservation area runs along the eastern boundary of the site, though the site itself is not in the Conservation Area.

1.5 The application has been called into committee at the request of Cllr Fitzpatrick. The reasons given relate to the loss of amenity to neighbours, over-development, safety concerns and the change in nature from a quiet, residential family cul-de-sac into a transient "party culture" area.

## **2.0 POLICY CONTEXT**

### Publication Draft City of York Local Plan (2018)

EC4 Tourism

D4 Conservation Areas

ENV2 Managing Environmental Quality

### Development Control Local Plan incorporating 4<sup>th</sup> set of changes (2005)

GP1 Design

HE3 Conservation Areas

V1 Visitor Related Development.

H9 Loss of Dwellings or Housing Land

## **3.0 CONSULTATIONS**

### CYC Public Protection

3.1 Do not object providing the property is let out to family groups rather than same sex groups.

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3.2 Object - Would prefer to see both these buildings in this location in a quiet residential street used as long term lets or owner occupied dwelling

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## 4.0 REPRESENTATIONS

### Neighbour Notification and Publicity

4.1 Objections were received from the occupants of 8 homes. The reasons that were raised are summarised below:

- Groups of up to 25 or more men have occupied the two properties. It equates to a hotel.
- There is excessive noise from the afternoon when people arrive as well as into early mornings - particularly when people are drunk, playing music or disposing of bottles. Noise travels beyond Emerald Street and also relates to travel to and from the house. Also, excessive noise associated with wheely trollies, taxis, and food deliveries. Vehicles associated with cleaning and maintenance are also intrusive. Too many cars park on the site – is advertised as two cars per home. Overlooking towards homes on Huntington Road when windows are open.
- There is often lewd behaviour associated with stag and hen-do's and bad language at a high volume. People congregate in the courtyard. Children are forced to stay indoors in the day. Sleep is impacted and windows need to be kept closed even during hot weather. It creates an unsettled atmosphere and feeling of dread. There is no management on site and not able to control who is there.
- The street was once one of the quietest in the area and popular with families. It is close to primary schools. The area is becoming more transient and changes are harming community cohesion. People are being priced out of the homes along with the shortage of availability.
- Number 3 Ascot Mews is also a holiday let.
- Groups of men are staying at the house despite the intention to change the letting arrangements.
- A number of planning appeals relating to holiday lets were submitted as well as information on the most recent High Court judgement relating to Holiday lets (Moore 2012). Reference was also made to local and national planning policy and the restrictive approach taken by some other Local Planning Authorities, including Oxford and Cambridge. This information sought to illustrate that the regular use of homes for self-contained holiday lets needs planning permission, the numerous issues that are material to the assessment of such applications and the view that the loss of residential accommodation is in itself a reason to refuse the planning application.

## 5.0 APPRAISAL

### 5.1 Main Issues:

- Principle of development.
- Impact on Neighbour Amenity.
- Parking and Highways
- Impact on designated heritage assets (character and appearance of the conservation area)
- Other Issues

## POLICY CONTEXT

### National Planning Policy Framework

5.2 The revised National Planning Policy Framework 2021 (NPPF) sets out the government's planning policies for England and how these are expected to be applied. The NPPF is a material planning consideration in the determination of this application.

5.3 The planning system should contribute to the achievement of sustainable development (Paragraph 7). To achieve sustainable development, the planning system has three overarching objectives; economic, social and environmental objectives.

5.4 Paragraph 11 states planning decisions should apply a presumption in favour of sustainable development and that for decision taking this means where there are no relevant development plan policies, granting permission unless:

- i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

### PUBLICATION DRAFT LOCAL PLAN (DLP 2018)

5.5 The DLP 2018 was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the Local Plan took place in December 2019.

Phase 2 of the hearings concluded in May 2022. Phase 3 of the hearings took place in July 2022 and Phase 4 of the hearings took place in September 2022. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (N.B: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

### 2005 Development Control Local Plan

5.6 The Development Control Local Plan (DCLP) was approved for development management purposes in April 2005. Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF albeit with very limited weight.

### Principle of development

5.7 The application property has been let on occasions in association with number 1 Ascot Mews for large groups (the two properties combined were previously advertised for parties of up to 25). This has included groups coming to York for stag and hen weekends. The applicant has stated that this has now stopped and it is his intention for each property to house a maximum of 6 people and to not allow the two properties to be let together by one large party.

5.8 There is no planning use class for short-term holiday lets. Such a use can fall within its own use class (sui generis). It is a question of fact and degree when assessing whether a dwelling that is let out for short breaks still remains in Use Class C3 (Dwelling House). It may be possible for a home to be used for short-term letting purposes without the use necessarily amounting to a material change of use. In the case of 2 Ascot Mews, it is understood that the property is let out year-round on a wholly commercial basis. No evidence has been submitted indicating that the

owner is resident in the property at any time of the year or that visitor stays cover periods of several weeks. Significant neighbour amenity impacts resulting from the use of the property as a holiday let have been drawn to the Council's attention. It is considered that the proposal is a material change of use of the property and that the essential character of the use is as a holiday let. It is considered that this assessment is consistent with the principles in the most recent High Court judgment on the matter - *Moore vs Secretary of State for Communities and Local Government [2012] EWCA Civ 1202 (18 September 2012)*.

5.9 The proposal is for visitor accommodation. Policy EC4 of the 2018 Draft Local Plan relates to Tourism including visitor accommodation. It states that proposals that maintain and improve the choice and quality of visitor accommodation to encourage overnight stays, particularly by higher spending visitors will be supported. Policy V1 of the 2005 DCLP (Visitor Related Development) is similar in content and is supportive of new visitor facilities subject to an assessment of local impacts.

5.10 The proposal will lead to the loss of a dwelling. The 2018 Draft Local Plan has no specific policies relating to the protection of residential accommodation. The DCLP 2005 contains policy H9 which relates to the 'Loss of Dwellings or Housing Land'. In respect to the loss of individual dwellings it states that the loss of individual residential properties will need to be considered in light of individual site circumstances and the character of and desired uses, in the surrounding area. The purpose of the policy is to maintain York's housing stock but also has some flexibility to consider the benefits of particular change of use proposals. It is considered that the gains from approving holiday let accommodation in the out of city centre location would not be such to justify approval when assessed against this policy. It should be noted, however, that the weight that can be attached to the DCLP 2005 is very limited and alone it is not considered that this policy would justify refusal of the application. It is not considered that the NPPF provides a clear policy in respect to how the loss of an individual house should be balanced against the economic benefits from people managing visitor accommodation and the spend from visitors to the city.

5.11 On balance it is considered that there are not sufficient local or national policy grounds to refuse the application based purely on the principle of the loss of a dwelling for residential accommodation. Accordingly, it is considered that the principle of the proposal is acceptable subject to the assessment of the local impacts.

#### Impact on neighbour amenity

5.12 The application property has previously been used intensively in association with number 1 to accommodate stag and hen parties. It is understood that marketing of the property was previously focussed on attracting such groups. It would seem clear that the accommodation of a property or properties in a quiet terraced street in close proximity to other homes for such a use would be likely to harm neighbours living conditions. The applicant has stated that the properties no longer operate on this model. He has stated that he would be amenable to a planning condition restricting occupancy of each home to 6 people and a condition that the two homes are not let together for occupancy by a single large group. Furthermore, he has stated that he would agree a temporary consent of 6 or 12 months so that the impacts of such a proposal could be assessed.

5.13 It is considered reasonable to assess the proposal on the basis that the application property would not accommodate more than 6 people. It is considered that a guest occupancy number restriction is capable of being monitored and enforced. However, it would be difficult to use a planning condition to ensure that the people who book the two immediately adjacent homes that share a courtyard are not known to each other. This would be extremely hard to control. The owner may try to take action against people who book the two properties 'as one', however, this would be after problems come to light.

5.14 If the two properties function as one it is considered that the impacts on neighbour amenity would be greater. However, even if they are occupied independently of each other the specific location of the site raises particular concerns. It is located at the end of a quiet road in a wholly residential area and it has a walled courtyard open to the street. Furthermore, the courtyard is in close proximity to neighbouring homes – particularly 37 Emerald Street. This home has two first floor side bedroom windows that directly overlook the courtyard. Disturbance from the regular turnover of guests and associated use of the homes and associated courtyard would have the real potential to cause significant harm to the living conditions of this property. Although visitors would typically not intend to be inconsiderate to neighbours it is likely that people on holiday would normally be more active and exhibit more boisterous behaviour than a 'typical' permanent resident.

5.15 It is considered that the specific characteristic of the site along with the potential association with number 1 are such that the proposal raises unacceptable neighbour amenity concerns. Policy ENV2 of the Draft Local Plan 2018 states in

respect to such matters that development will not be permitted where future or existing communities would be subject to significant environmental impacts including noise. Policy GP1 (Design) of the DCLP 2005 is similar in intent. Furthermore Paragraph 130 of the NPPF states that planning decisions should ensure that developments function well and add to the quality of an area, and also create places that promote health and well-being, with a high standard of amenity for existing and future users. It is considered that the regular use of the property for holiday let accommodation would give rise to serious concerns that the proposal would be harmful to the overall amenity and general wellbeing of nearby residents.

### Parking and Highway Issues

5.16 The application property has two off-street car parking spaces. There is space within the site to accommodate bin storage and cycle parking. It is not considered that the use as a holiday let would put a significantly greater pressure on such elements than its use as dwelling house. It is recognised that on occasions visitors to the property may have more than two cars, however, this could be the case with resident occupiers and their visitors. It is noted that cleaning and maintaining the property can create additional activity, however, it is not considered that in the particular location activity associated with this would have a significant impact on neighbour's amenity.

### Impact on designated heritage assets (character and appearance of the conservation area)

5.17 The approach to the assessment on Heritage Assets is set out in section 16 of the NPPF. Relevant to this case is the following approach:

- Identify and assess the particular significance of any heritage asset that may be affected by a proposal and take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal (paragraph 195).
- When considering the impact on significance, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be) (199).
- Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits (202).

5.18 The application property is located outside the Conservation Area. The Conservation area that is located to the east and south of the Ascot Mews development largely relates to the long gardens of the properties that front Huntington Road. Emerald Street itself is not within the conservation area and the street and other similar streets nearby have a very different character from land associated with the properties on Huntington Road.

5.19 The application does not propose any material alterations to the site or building that will impact on the appearance of the conservation area. It is the case that noise from activities associated with the planning application (depending on its level) could be heard from sections of the Conservation Area, however, it is considered that in the context of the application it is an issue that relates to neighbour amenity rather than a specific characteristic of the Conservation Area. It is considered as such that the proposal would not cause harm to the appearance or character of the nearby Conservation Area.

### Other Issues

5.20 Objections have raised issues regarding the concentration of holiday let uses. The Local Planning Authority have policy and guidance that can be used to restrict the percentage of Houses in Multiple Occupation in a street or wider neighbourhood, however, no such policy or guidance currently exists for holiday lets. It is the case, however, that where a concentration of such uses is creating local harm through for example, noise or parking it is considered that the cumulative nature of such impacts would be material to assessing planning applications for a change of use.

## **6.0 CONCLUSION**

6.1 The application relates to the retrospective change of use of 2 Ascot Mews to holiday accommodation. Although the property has been used previously as accommodation for stag and hen parties the applicant has stated that he is now restricting occupancy to 6 people. He has also stated that the property is no longer let with the adjacent house (number 1).

6.2 It is considered that the site specific circumstances are such that additional noise and activity that can often be associated with holiday accommodation has the real potential to create harm. This relates principally to the property's position at the end of a quiet street, the shared use of the front courtyard and the very close proximity of the courtyard to an upstairs side facing bedroom. Furthermore, the

application is submitted in association with a retrospective application for a 6 person short term let at the adjacent property (number 1) which shares the same external space. Although the applicant has stated he would seek to ensure that groups who let the two homes were not part of a single group, it is difficult to envisage how this could be controlled and monitored. It is considered the ability of large groups to rent the two properties together (or two groups to subsequently mix) creates particular concerns regarding the use of the homes for 'party' type gatherings with shared use of the communal courtyard.

6.3 Accordingly, it is considered that the proposal conflicts with national and local policy regarding the need to maintain a high standard of amenity for nearby neighbours and is therefore recommended for refusal. It is not considered that the economic benefits from the proposal outweigh the impacts of this harm.

## **7.0 RECOMMENDATION: Refuse**

1 The proposed change of use of 2 Ascot Mews to holiday accommodation would independently and in association with 1 Ascot Mews have an unacceptable impact on neighbours' living conditions through the likelihood that the use of the property for such purposes would create unacceptable noise levels from comings and goings and also from the recreational use of the courtyard, including at times that people would normally be sleeping. Concerns relate particularly to the location of the property within a communal courtyard at the end of a quiet 'cul-de-sac' in very close proximity to other dwellings, including family accommodation. It is not considered that the economic benefits that would result from permission being granted would be such to outweigh these concerns. It is considered therefore, that the proposal conflicts with policies GP1 (a) and (i) and V1 (e) and H9 of the City of Development Control Local Plan 2005, Policy ENV2 of the Publication Draft City of York Local Plan (2018) and paragraph 130 criterion a and f of the National Planning Policy Framework.

## **8.0 INFORMATIVES: Notes to Applicant**

### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in an attempt to achieve a positive outcome:

Considered the ability to operate the property in such a way that unacceptable harm would not be caused to neighbours' living conditions.

Notwithstanding the above, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated.

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