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# Appeal Decision

Site visit made on 23 April 2024

**by L C Hughes BA (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16<sup>th</sup> May 2024**

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**Appeal Ref: APP/H1033/W/23/3334831**

**92 High Street, New Mills, Derbyshire SK22 4BR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
  - The appeal is made by Mr James Rimmer against the decision of High Peak Borough Council.
  - The application Ref HPK/2023/0234 was approved on 10 November 2023 and planning permission was granted subject to conditions.
  - The development permitted is use of existing dwelling as holiday accommodation incorporating minor elevational changes (amended scheme to previous consent ref HPK/2021/0083 dated 8 October 2021).
  - The condition in dispute is No 5 which states that: No hot tubs shall be installed within the external areas of the application site at any time.
  - The reason given for the condition is: in the interests of amenity in accordance with LP Policy EQ6 and paragraph 130 of the NPPF.
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## Decision

1. The appeal is allowed and the planning permission Ref HPK/2023/0234 for use of existing dwelling as holiday accommodation incorporating minor elevational changes (amended scheme to previous consent ref HPK/2021/0083 dated 8 October 2021) for 92 High Street, New Mills, Derbyshire SK22 4BR granted on 10 November 2023 by High Peak Borough Council, is varied by deleting condition No 5.

## Preliminary Matter

2. The decision notice was issued in November 2023. In December 2023 the National Planning Policy Framework (the Framework) was updated. The paragraph number quoted in the reason for the condition is now paragraph 135. The wording of the paragraph has not been altered as a result of the update. I have used the updated paragraph number.

## Background

3. Planning permission was granted in October 2021<sup>1</sup> for the use of the existing single dwelling as holiday accommodation. A further permission was granted on 10 November 2023<sup>2</sup>, seeking amendments to the scheme to incorporate minor elevational changes. One of the conditions imposed as part of this more recent approval requires that no hot tubs shall be installed within the external areas of the appeal site at any time.

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<sup>1</sup> Application ref: HPK/2021/0083

<sup>2</sup> Application ref: HPK/2023/0234

4. The reason given for the imposition of condition 5 was explained in the Council's appeal statement of case, which raised concerns regarding the potential for a hot tub to result in unacceptable noise and disturbance, and given its proposed location, the potential of overlooking and privacy issues for users of the hot tub from the public highway.

### **Main Issues**

5. The main issues are therefore whether the condition in dispute is reasonable and necessary, in order to safeguard:
  - a) the living conditions of neighbouring occupiers and the general public, having regard to noise and disturbance; and
  - b) the living conditions of future occupiers of the property, having regard to overlooking and privacy.

### **Reasons**

#### *Noise and disturbance*

6. The appeal property (No 92) comprises a detached three-storey split level dwelling constructed of stone with a tiled roof. It lies in a prominent location on a corner with High Street, Dye House Lane and Hyde Bank Road, within the built-up area boundary of New Mills. The surrounding area is attractive, with a river running close by. The lower ground floor of No 92 and the parking area sits at consistent level with Hyde Bank Road, whilst the ground floor level sits commensurate with High Street which rises with the topography. The closest residential dwellings are adjacent and across the road on High Street.
7. During the course of the 2023 application the Council raised concerns regarding noise that could be associated with a proposed hot tub, particularly in the evenings. The appellant subsequently submitted amended plans, omitting a hot tub from the scheme. I recognise that holiday makers may be more exuberant and may stay up late socialising outside, creating more noise than would usually be generated by residents in a private dwelling. However, No 92 has planning permission for a decking area, and the approved plans indicatively demonstrate how outside furniture could be arranged on it. It is probable that noise would be generated from general holiday activities such as dining, eating, or drinking outside and from congregating and socialising in the outside space without a hot tub.
8. Accordingly, the installation of a hot tub would not necessarily exacerbate or create more outside noise over and above what might reasonably be expected to occur with a property in use as holiday accommodation.
9. Nevertheless, I am mindful that, before it was omitted, the hot tub was shown next to a tall retaining wall. Due to the topography of the area, No 92's private outdoor space would be set behind this wall and at a lower level than the dwellings situated to the opposite side of High Street. It would also be located at a lower level than 88 High Street which is situated further up the hill. As No 92 sits on a plot with public highways to two sides and a river to another, and with a noticeable gap between other residential properties, any potential noise disturbance to neighbouring occupiers is likely to be limited. Furthermore, hot tubs are not uncommon features in residential areas. I consider that the noise likely to be generated by the use of a hot tub at the property is unlikely to

harm members of the general public who may be passing by, any more than general noise that is usual in residential areas.

10. For these reasons, I conclude that the disputed condition is not reasonable or necessary to protect the living conditions of neighbouring occupiers and the general public, having regard to noise and disturbance. As such, I find no conflict with High Peak Local Plan 2016 (LP) Policy EQ6 which requires development not to cause unacceptable effects on amenity by reason of noise. Nor would there be any conflict with paragraph 135 of the Framework, which requires development to provide a high standard of amenity, be well designed and respond positively to its environment.

### *Privacy*

11. I noted from my site visit that views of the outdoor decking area would be possible from the opposite side of the river, along Hyde Bank Road. However, the approved plans show a 2m close board timber fence would be erected along the site's eastern boundary. This would shield the area from views from this direction. Furthermore, a hot tub would not be visible from Dye House Lane as views to it would be obscured by No 92 itself.
12. Whilst to some extent the outdoor decking area is screened by the high retaining wall along High Street, due to its low-level position, views of the hot tub would be possible from people walking down High Street. Moreover, it would be more apparent during winter months when there would be less screening from trees and foliage, but it would be visible to some degree all year round.
13. Nevertheless, users of the outside area would be visible regardless of the presence of a hot tub. Intervisibility between properties and gardens is not unusual in residential areas, and it is therefore not wholly uncommon for people using hot tubs to be visible to people outside the boundaries of their own property. Furthermore, views from passers-by would be fleeting and only possible for a short distance along the side of the appeal site.
14. On this basis, I conclude that the disputed condition is not reasonable or necessary to protect the living conditions of future occupiers with regard to overlooking and privacy. As such, I find no conflict with LP Policy EQ6 which requires development not to cause unacceptable effects by reason of overlooking or other adverse impacts on amenity. Nor would there be any conflict with paragraph 135 of the Framework, which requires development to provide a high standard of amenity for existing and future users.

### **Other Matters**

15. The appeal property lies within the New Mills Conservation Area (CA). In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of the CA derives partly from its topography and supply of fast flowing waters that led to its development as a thriving mill town and important centre for the textile industry.
16. The inclusion of a hot tub within the outdoor decking area would be a low rise, temporary structure, within a domestic setting and would involve no alterations to the fabric of the appeal property.

17. Accordingly, I conclude that the proposal would preserve the character and appearance of the CA and would meet the requirements of Section 72(1) of the Act. As such, it would not harm the significance of this designated heritage asset.

**Conclusion**

18. For the reasons detailed above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

*L C Hughes*

INSPECTOR