
Appeal Decision

Site visit made on 21 November 2016

by Thomas Shields MA DipURP MRTPI

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

Decision date: 24 November 2016

Appeal Ref: APP/Q3060/C/16/3152849
12 Maxwell Close, Nottingham, NG7 1SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ildephonse Rugema against an enforcement notice issued by Nottingham City Council.
 - The enforcement notice was issued on 13 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from a dwelling house falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a House in Multiple Occupation (HMO) by not more than 6 persons within Use Class C4 of that Order.
 - The requirement of the notice is to cease the use of the Land as a House in Multiple Occupation.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act). The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Ground (a)/deemed application for planning permission

2. The main issues are:
 - the effect on the maintenance of a balanced community with regard to the proportion of student housing; and
 - the effect upon the living conditions of occupiers of adjoining residential properties with particular regard to noise, disturbance and parking

Effect on the maintenance of a balanced community

3. 12 Maxwell Close is a four bedroom mid-terrace two storey dwelling house located within a primarily residential area and occupied by students.
4. Taken together, saved Policies ST1 and H6 of the Nottingham Local Plan, 2005 (LP), Policy 8 of the Nottingham Aligned Core Strategies, 2014 (ACS), and the

Council's SPD¹, set out that development proposals resulting in additional student accommodation will not be granted planning permission in areas with a significant concentration of student households, unless the applicant can clearly demonstrate that community balance will not be adversely affected. The SPD identifies that a community is at risk of being unbalanced if the proportion (by percentage) of student households in a specified 'output' area exceeds 25% of the total number of households.

5. In 2012, in pursuit of the above policy objectives, the Council made an Article 4 Direction² removing permitted development rights in certain areas of the city for the change of use of a single dwelling house to a small HMO, for between 3 and 6 people, within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The appeal property falls within the area covered by the Article 4 Direction.
6. The appellant argues that the Council's saved policies and SPD are out of date and pre-date the Framework³.
7. However, one of the three dimensions and roles of sustainable development set out in the Framework (paragraph 7) is the social role which seeks to support strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations. It also sets out (paragraph 50) that to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. It further states that local planning authorities should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand. Given these factors, and with regard to paragraph 215 of the Framework, I consider that the Council's saved policies and SPD are consistent with the overarching aims and objectives of the Framework. Accordingly, I attach due weight to them in reaching my decision.
8. The Council states that No. 12 is located in an output area where the concentration of students is high, with approximately 43% of households being in student occupation. That is based upon November 2015 Council Tax data which I consider to be sufficiently up to date. It is substantially greater than the 25% SPD threshold. It is also an increase on the 2014 percentage (approximately 41%) for the same output area. Being occupied by unrelated persons living together, the use as a HMO also results in the loss of a family house in conflict with LP Policy ST1 which notes that family housing is particularly important to sustain local communities and support local schools as centres of communities.
9. To conclude; the development is significantly harmful to the maintenance of a balanced and sustainable community in conflict with LP Policies ST1 and H6, ACS Policy 8, and the SPD. It thereby also conflicts with the provisions of the Framework to which I have previously referred.

¹ Building Balanced Communities Supplementary Planning Document 2007

² Direction restricting permitted development - Article 4, Town and Country Planning (General Permitted Development) Order 1995 (Amended 2015)

³ National Planning Policy Framework (2012)

Living conditions

10. While I acknowledge that a large number of HMOs in an area have the potential to lead to an increase in anti-social behaviour, or other harmful impacts; that is a generalisation which, without supporting evidence, carries very little weight. Since there are no details before me of complaints to the Council from neighbours, or from Environmental Health, or the Police, in respect of noise, disturbance or parking difficulties, I find that there is no direct evidence of any harm to the living conditions of neighbours in the surrounding area resulting from the use of the property as a HMO. As such, I conclude that there is no conflict with LP Policy NE9 or with ACS Policy 10.
11. However, although I have found in support of the appeal with regard to the effect on living conditions of neighbours, that is outweighed by the significant harm I have previously identified in respect of maintaining a balanced community.
12. The appeal on ground (a) therefore fails.

Ground (g)

13. The ground of appeal is that the period of time for compliance with the notice falls short of what should reasonably be allowed. The compliance period in the notice is 3 months. The appellant seeks a period of 12 months.
14. It is argued for the appellant that the current occupiers benefit from assured shorthold tenancies (AST) under the Housing Act and as such are entitled to two months minimum notice expiring on a rent day. Also, that there are severe difficulties in finding accommodation in Nottingham.
15. However, copies of the ASTs have not been provided and so I cannot ascertain how long individual tenants may have left to run on their ASTs. Nor is there any evidence demonstrating that there are severe difficulties in finding accommodation in Nottingham such as to justify the 12 month period the appellant seeks.
16. Given that the compliance period is one month longer than the minimum two months the appellant asserts is required I conclude that the compliance period does not fall short of what should reasonably be allowed.
17. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR