
Appeal Decision

Site visit made on 24 January 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 16th February 2017

Appeal Ref: APP/Q3060/W/16/3163072
104 Broxtowe Lane, Nottingham NG8 5NJ

- 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 Chandra Sammani against the decision of City of Nottingham Council.
 - The application Ref: 16/01661/PFUL3 (PP-05342217), dated 21 July 2016, was refused by notice dated 6 October 2016.
 - The development proposed is a change of use to two self-contained flats.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use to two self-contained flats at 104 Broxtowe Lane, Nottingham NG8 5NJ in accordance with the terms of the application, Ref: 16/01661/PFUL3 (PP-05342217), dated 21 July 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Drawing Number BL-16-01 (Existing and Proposed Plans).
 - 3) No development shall commence until a scheme for protecting the adjoining dwelling, 106 Broxtowe Lane, from noise transference from the proposed flats shall have been submitted to, and approved in writing by, the local planning authority. The noise attenuation scheme shall be based on a structural survey of the existing building including, but not limited to, the construction of the existing party walls, floors and ceilings and shall include measures to attenuate both airborne and impact noise. All works which form part of the approved scheme shall be completed before any part of the development is occupied and retained thereafter.

Application for costs

2. An application for costs was made by Chandra Sammani against the City of Nottingham Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupiers of the adjoining residential property, number 106 Broxtowe Lane, with particular regard to noise and disturbance.
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Reasons

4. The appeal building is one half of a pair of mid-Twentieth Century, two storey, semi-detached houses built from brick, with a short front garden and a long narrow rear garden. It is common ground between the parties that the principle of sub-dividing the existing dwelling into two flats is not inherently objectionable and that the proposed development would not cause harm to the character and appearance of the area. The sole matter at issue is that of potential noise and disturbance to the occupiers of the adjoining house arising from the proposed development.
5. The National Planning Policy Framework (the Framework) requires that all new development should secure a good standard of amenity for all existing and future occupants of land and buildings. Policy 10 of the Nottingham City Aligned Core Strategy (Part 1 Local Plan) 2014 (Core Strategy) sets out a number of criteria in respect of the design of new development, including that it will be assessed in terms of the impact on the amenity of nearby residents or occupiers. This criterion is repeated in Saved Policy H2 of the Nottingham Local Plan 2005 (Local Plan) in respect of the density of development which seeks to ensure that the new development safeguards living conditions.
6. Local Plan Saved Policy NE9 seeks to restrict development which would generate pollutants that would cause significant detriment to users of adjoining land and the supporting text to the policy makes it clear that noise is considered to be a pollutant.
7. The proposed development would form two flats from the existing dwelling, with one flat on each floor. Whilst the ground floor flat would have a combined kitchen and living room adjacent to the shared wall with the adjoining house at 106 Broxtowe Lane, the ground floor of the neighbouring property will be a mirror image of the appeal building and will, similarly, have a kitchen and living room on this level. However, at first floor level the proposed plans show a combined living room and kitchen adjacent to a bedroom in the adjoining house and a bedroom above the kitchen area of the proposed lower flat.
8. This proposed internal configuration would result in potential noise transference from activities in the living area of the first floor flat to the bedroom of the adjoining house and from the open plan living area of the lower flat to the bedroom of the upper flat. I note from representations received in connection with the planning application and the appeal that the occupier of number 106 currently experiences noise transference through the structure of the building from its current use as a dwelling house, although the similar internal configurations of the houses reduces noise and disturbance from conflicting activities.
9. The pattern and type of activities carried on in living areas is distinctly different from the primary use of bedrooms as places to sleep, and is generally louder due their use for socialising and entertainment or the presence of kitchen appliances. Consequently, the location of the principal living space in the proposed development adjacent to the bedroom of the adjoining house would cause harm to the living conditions of the occupiers of the adjoining property.
10. The appellant suggests that as it is a requirement of the Building Regulations for noise insulation to be installed between the properties to provide reasonable resistance to sound, a condition could be imposed requiring a sound insulation

scheme to be approved and implemented. The use of planning conditions can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development.

11. Ordinarily, a condition relating to matters that are subject to other regulatory requirements would not meet the test of necessity set out in the Framework and the Planning Practice Guidance. However, the Council has contended that in older properties such as the appeal building modern sound proofing may not be effective where there are different uses on opposite sides of a party wall. The Council has drawn my attention to an appeal decision in respect of the subdivision of a house at Radford Bridge Road¹ on Nottingham, where the Inspector found that the efficacy of sound attenuation is reduced where there are different internal uses proposed adjacent to one another.
12. I do not have the full details of that case before me and so cannot be certain that the circumstances are the same. I was able to view the exterior of property which was the subject of the earlier appeal following my visit to the current appeal site, and I saw that that building was of a different age to the appeal building and as a result may have a different internal structure in respect of the party wall between the properties. Consequently, I can give only limited weight to this decision as it does not appear to be directly analogous to the case before me.
13. No substantive evidence has been provided by either party in respect of the construction of the appeal building. The effectiveness of the standard construction detail in the Building Regulations to mitigate sound transference is dependent on the structure of the existing building. In the absence of any details of the existing structure of the building, I am not persuaded that the standard construction detail in the Building Regulations would adequately mitigate the harm that would be caused by the development.
14. However, the appellant has also suggested that a bespoke noise attenuation solution based on a site specific assessment of the building could be installed. Such an assessment would enable the structure of the building to be investigated and appropriate attenuation methods to be used to prevent noise transference through the walls and floors of the building to the neighbouring house. There is no technical evidence before me which would indicate that it is not possible to secure an appropriate level of noise attenuation. Therefore, in my view, a condition requiring a bespoke noise attenuation solution would overcome the concerns in respect of noise transference between the properties and would meet the tests set out in the Framework and the Planning Practice Guidance.
15. Concerns have also been raised in respect of noise arising from the intensification of the use of the garden area by two properties. I saw when I visited the site that the garden area is long and narrow and surrounded by the gardens of other houses. The presence of garden structures and children's play equipment in these adjoining gardens indicates that they are well used. The conversion of a three bedroom house to a one bedroom flat and a two bedroom flat would not increase the theoretical maximum occupancy of the building and I do not consider that the use of the garden area by the occupiers of two relatively small flats would lead to significantly greater levels of noise, either on

¹ Appeal references APP/Q3060/C/15/3133311 and APP/Q3060/W/15/3130163

its own or cumulatively with the surrounding gardens, than that which is likely to occur from occupancy as a single family house.

16. I therefore find that, subject to a condition requiring an appropriate level of sound attenuation to be installed prior to the proposed flats being occupied, the proposed development would not cause harm to the living conditions of the occupiers of the adjoining residential property, number 106 Broxtowe Lane, with particular regard to noise and disturbance. It would comply with the relevant requirements of Core Strategy Policy 10 and Saved Policies H2 and NE9 of the Local Plan which seek to ensure that new development does not adversely affect the living conditions of neighbouring occupiers.

Other Matters

17. Concern has been expressed that there is a shortage of family sized houses in the area that would be exacerbated by the proposed development. However, there is no substantive evidence before me in respect of the composition of the housing stock, or in relation to housing need. I also note that the Council officer's report concludes that the proposal would not prejudice the Council's objective of creating and maintaining balanced and sustainable communities and that this matter has not been raised as an issue by the Council.

Conditions

18. I have had regard to the conditions suggested by the Council and the appellant. In order to provide certainty as to what has been approved I have attached a condition specifying the relevant drawings. In order to address the potential of noise transference between the proposed development and the neighbouring house it is also necessary to impose a condition requiring that a noise attenuation scheme be submitted and implemented. As this is fundamental to the proposal and would need to be installed as part of the conversion of the building, it is necessary for the relevant details to be provided prior to the commencement of the development.

Conclusion

19. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the conditions discussed above.

John Dowsett

INSPECTOR