
Appeal Decisions

Site visit made on 13 February 2017

by D H Brier BA MA MRTPI

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

Decision date: 01 March 2017

4b Lenton Avenue, Nottingham NG7 1DY

Appeals made by Mrs S Holmes

Appeal A Ref: APP/Q3060/C/16/3152205

- 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 against an enforcement notice issued by the City of Nottingham Council.
- The enforcement notice was issued on 17 May 2016.
- The breach of planning control as alleged in the notice is the change of use from a dwellinghouse to a House in Multiple Occupation (HMO) by not more than 6 persons within Use Class C4.
- The requirement of the notice is cease the use of the land as a HMO.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld.

Appeal B Ref: APP/Q3060/W/16/3152197

- 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 against the decision of the City of Nottingham Council.
- The application Ref 15/03024/PFUL, dated 15 November 2015, was refused by notice dated 8 February 2016.
- The development proposed is change of use of property from C3 to C4.

Summary of Decision: The appeal is dismissed.

Background

1. The appeal property lies in an established residential area that forms part of The Park Conservation Area. The area is covered by a Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995. The effect of the Direction is that planning permission is required for the development in question.

Planning Policy

2. Planning policies for the area are contained in the Council's Local Plan (NLP) and the Aligned Core Strategy (ACS), adopted in 2005 and 2014 respectively. NLP Policy ST1 seeks to ensure that all development contributes to the creation and maintenance of sustainable communities. In a similar vein, ACS Policy 8
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states that residential development should maintain, provide and contribute to a mix of housing tenures, types and sizes in order to create sustainable, inclusive and mixed communities.

3. NLP Policy H2, which addresses the density of residential development, contains criteria, including compatibility with the characteristics of the site and its surroundings, and the need to safeguard living conditions. And although NLP Policy NE9 is headed 'Pollution', the supporting text makes it clear that this includes noise – the policy indicates that planning permission will not be granted for development which would generate pollutants that would cause significant detriment to users of the adjoining land. In addition, one of the criteria for assessing development set out in ACS Policy 10 is the impact on the amenity of nearby residents or occupiers. NLP Policy H6, which is expressly directed at student housing also refers, amongst other things, to the living conditions of neighbouring residents being safeguarded.
4. The Council also refer to their Supplementary Planning Document (SPD). 'Building Balanced Communities' (SPD), reissued in 2007. It seeks to avoid further concentrations of student households where this will prejudice the creation and maintenance of sustainable communities. Having read that the SPD was adopted following consultation, I attach weight to it accordingly.

Main Issues

5. I consider there are 2 main issues. Firstly, whether the development in question prejudices the policy objective of providing sustainable and balanced communities. And, secondly, whether the living conditions of the neighbours would be adversely affected.
6. Neither the reasons for issuing the enforcement notice, nor those concerning the refusal of planning permission, refer to the effect of the development on the conservation area. My view is that insofar as the physical fabric of the area is concerned, the effect is essentially neutral, in which case its special quality would be preserved.

Reasons

7. On the first issue, the approach taken in the development plan and the SPD is consistent with the National Planning Policy Framework (The Framework) wherein the creation of sustainable, inclusive and mixed communities is advocated¹. Both multiple occupancy and family housing are components of this mix – the key factor as I see it is securing a satisfactory balance of different types of occupancy, something that the SPD seeks to achieve by applying a 25% threshold to student housing. I have read that the appeal property has been marketed to professional people and the appellant does not wish to let it as student accommodation. However, as this is effectively down to personal choice at the moment, this is not a matter to which I attach great weight as the possibility that things could change in the future cannot be discounted. I therefore regard the SPD and NLP Policy H6 as relevant considerations.
8. To my mind, an excessively high concentration of multiple occupancy within a relatively small area - whether it be professional people or students - is likely to impart a high degree of imbalance into the local pattern of occupancy. It is

¹ National Planning Policy Framework paragraph 50

something that, in turn, can destabilise the community to the extent that it damages the character of the area and makes the area a less pleasant place in which to live for the more settled householders.

9. In this instance though, while the Council indicate that the percentage of student households in the census output area is 16.5%, no indication of the overall proportion of HMOs in Lenton Avenue and its immediate surrounds has been put forward. Moreover, the 16.5% figure is well below the 25% 'threshold' for student housing referred to in the SPD.
10. From the representations made by local residents and those who represent them, the question of the conversion of properties to HMOs in the area is clearly something that has given rise to a good deal of concern. It is not a matter I set aside lightly. However, in the apparent absence of clear evidence regarding the extent of multiple occupancy in the vicinity of the appeal property, I am not satisfied that it has been demonstrated that there is an excessive concentration of HMOs here, or that the development in question would unacceptably affect the balance of tenure in the area.
11. It may be that conversions to HMOs on the western fringe of The Park represent a 'threat' as the Council put it, but I do not consider this provides a sound basis for concluding that the development in question is unacceptable. The circumstances of this case are such that I am not satisfied that the development in question prejudices the policy objective of providing sustainable and balanced communities, or that it is contrary to the relevant planning policies in this respect.
12. Turning to the second issue, the west side of Lenton Avenue, where No.4b is located, is characterised by a fairly tight-knit pattern of housing. As a result, activity associated with the use of the appeal property, such as comings and goings by tenants and visitors, together with parking, could well be apparent to, and affect, the occupiers of the houses nearby, as well as the neighbours on either side of No.4b.
13. Having seen that there is only a very modest amount of outdoor space attached to the appeal property, I accept it may not prove attractive to all families. Equally, though, it is not inconceivable that others may attach more weight to factors such as the amenities of The Park and the opportunity to live in a pleasant location not far from the City Centre and its attractions. I am not inclined to attach much weight therefore to the proposition that the appeal property is not suitable for family accommodation. Indeed, that was how the property appeared to be occupied when I visited the site. Moreover, I have read that it was occupied in this manner in the past.
14. I acknowledge that ordinary families are capable of generating a good deal of activity. Be that as it may, in my experience a HMO is more likely to involve several unrelated individuals whose pattern of life and associated comings and goings may well be very different from the lifestyles pursued by most families. Furthermore, such activity may well occur at times when most residents ought reasonably to be able to expect periods of relative peace and quiet.
15. I have been advised that the tenancy agreement stipulates that tenants must refrain from action that could cause disturbance to the neighbours. However, the evidence contained in the representations from an immediate neighbour, which has not been challenged, points to several instances of unneighbourly

behaviour. Although these events described appear to have been linked to a previous tenancy, they strongly suggest that the Council's concern in this respect is well-founded.

16. In my view, good neighbourliness is an important yardstick for assessing development such as this. In the light of the foregoing, I consider the use in question is likely to have an unacceptably adverse effect upon the living conditions of nearby residents. As such, I find it contrary to NLP Policies H2 and NE9 and ACS Policy 10. I do not consider my concern could be overcome by conditions, including those suggested by the parties. I note that the appellant has indicated a willingness to enter into an agreement with the Council to limit the occupation of the property. However, as no such agreement has been put before me, I attach little weight to this.
17. I have had regard to the appeal decision at 213 Castle Boulevard² referred to by the appellant. But, as each case falls to be considered on its merits, and having driven along this road en route to the site inspection, my impression was that the site specific circumstances there are very different from those appertaining in this instance. I therefore do not attach great weight to the decision cited.
18. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.
19. Notwithstanding my conclusion on the first issue, the appeals fail and planning permission will not be granted on the deemed application.

Formal Decisions

Section 174 Appeal A Ref: APP/Q3060/C/16/3152205

20. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Section 78 Appeal B Ref: APP/Q3060/W/16/3152197

21. I dismiss the appeal.

D H Brier

Inspector

² Appeal Decision ref APP/Q3060/W/15/3002624 dated 8 May 2015.