
Appeal Decisions

Site visit made on 4 August 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal A: APP/Q0505/C/20/3246600

Land at 146 Mowbray Road, Cambridge, Cambridgeshire CB1 7TG

- 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 Mehmet Degirmenci against an enforcement notice issued by Cambridge City Council.
- The enforcement notice, numbered EN/0189/18, was issued on 6 February 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of the premises at the Land from a residential dwellinghouse to a mix of dwellinghouse and short-term visitor accommodation.
- The requirements of the notice are (1) Permanently cease the use of the premises for short-term let visitor accommodation provided for paying occupants; and (2) Permanently cease and remove all forms of advertising the entire premises for let in relation to the short-term let visitor accommodation use.
- The period for compliance with the requirements is 3 months from the date the notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal succeeds in part on ground (f) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/Q0505/W/20/3246595

146 Mowbray Road, Cambridge CB1 7TG

- 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 Mr Mehmet Degirmenci against the decision of Cambridge City Council.
- The application Ref 19/0268/FUL, dated 20 May 2019, was refused by notice dated 10 January 2020.
- The development proposed is demolish covered verandah, erect single storey rear extension to create 2 double bedrooms and change of use from a residential unit to short-term stay visitor accommodation with landlords.

Summary of decision: The appeal is dismissed.

Preliminary matter

1. In respect of Appeal B, I have included demolition of the verandah in an amended description of development, which is based on that in the revised application form dated 28 October 2019.

Appeal A – the appeal on ground (b)

2. The appellant does not dispute that the change of use alleged in the notice has occurred. Instead he contends that it has not had the effects cited in the Council's reasons for issuing the notice. This aspect of his case relates to the planning merits of the change of use and I shall therefore consider it in the appeal on ground (a), that planning permission ought to be granted.
3. The appellant stated on 20 February 2019, in response to a planning contravention notice, that he and 2 family members lived at the property and that 6 rooms were being advertised and used as short-term visitor accommodation. I saw 6 visitor rooms on my visit. All the evidence therefore indicates that the property included short-term visitor accommodation in the period leading up to the issue of the notice and on the date of issue.
4. For these reasons, the appeal on ground (b) must fail.

Appeal A – the appeal on ground (a) and Appeal B

5. The deemed planning application in Appeal A is the change of use from a residential dwellinghouse to a mix of dwellinghouse and short-term visitor accommodation, being the breach of planning control alleged in the notice.
6. Appeal B seeks planning permission for the change of use from a dwellinghouse to short-term visitor accommodation and an extension to provide additional short-term visitor accommodation.
7. I shall consider the deemed planning application for the mixed use of Appeal A and then consider the proposed short-term visitor accommodation use and the proposed extension of Appeal B.

Appeal A – the appeal on ground (a)

8. The main issues in this ground of appeal are:
 - The effect of the mixed use on the availability of housing stock within Cambridge and whether exceptional circumstances justify any such loss.
 - The effect of the mixed use on the living conditions of neighbours in terms of activity and noise.

The availability of housing stock

9. Policy 3 of the Cambridge Local Plan 2018 (the Local Plan) sets out the Council's spatial strategy for the location of residential development and seeks to focus housing growth within the urban area of Cambridge. To support this, the policy states that changes of use of housing to other uses will only be supported in exceptional circumstances.
10. The introduction of 6 visitor rooms into what was previously a family dwelling has caused a reduction, albeit small, in the capacity of the city's housing stock. However, this differs from the Richmond Road appeal decision¹ identified by the Council. That decision concerned a change of use from dwellinghouse to short-term visitor accommodation rather than to a mixed use as in this case. Nevertheless, I saw that the 2 rooms occupied by the appellant and his family did not include kitchen areas and therefore the main activities of day-to-day

¹ APP/Q0505/C/18/3193261

domestic existence can only be carried out by making use of facilities shared with users of the short-term visitor accommodation.

11. It has not been suggested, and it appears highly unlikely, that the occupation of 2 rooms with use of shared facilities would appeal to a residential occupier who was not also operating the visitor accommodation. Viewed in this way, the accommodation occupied by the appellant and his family is no longer part of the general housing stock, which has therefore been reduced.
12. The Local Plan does not include a policy expressly concerned with short-term visitor accommodation. However, the Council considers that whether exceptional circumstances justify the change of use, as required by policy 3, should be determined having regard to the criteria of policy 77. That policy provides support for high quality visitor accommodation in city centre locations and around railway stations.
13. The appeal site is on a main road frontage with bus routes passing, factors relevant to whether a location is appropriate for visitor accommodation under policy 77. However, this is within the context of the policy's clear focus on locations within the city centre or near railway stations. The site is distant from both and the change of use is therefore not consistent with the policy.
14. Policy 40 of the Local Plan recognises the role of Addenbrooke's Hospital in the expansion and diversification of the local economy. However, this policy only provides support for new offices, research and development and research facilities, and not for short-term visitor accommodation.
15. For these reasons I find that the change of use has not maintained housing provision and that an exceptional justification for the loss of housing stock has not been provided. Accordingly, the introduction of short-term visitor accommodation in the change of use is contrary to policy 3 of the Local Plan, harmful to the planning strategy for the area, and therefore unacceptable.

Living conditions

16. The change in the character of the use through the creation of short-term visitor accommodation has the potential to harm the living conditions of neighbours. This is primarily due to the increased frequency of people coming and going, not only on arrival and departure, but also in the evening, when visitors may go out to eat or seek entertainment. Some external activity will occur when neighbours expect relative peace and quiet and any noise arising from it cannot be mitigated by acoustic insulation.
17. The appellant suggests that occupancy by a greater number of people would be less intensive than the previous residential use if it were spread over fewer days each year, 180 days being suggested. However, this does not take account of continued year-round occupation by the appellant's family and there is no evidence that visitor rooms would be under-occupied to the extent suggested.
18. The absence of objections or complaints from neighbours citing noise supports the appellant's view that the professional nature of visitors, their chosen mode of travel, and his management of the premises have avoided such problems to date. However, the evidence presented does not sufficiently show that noise disturbance can be minimised in perpetuity by reduction or mitigation measures.

19. While I note that the appellant is willing to undertake further measures to prevent noise or disturbance, no such measures have been identified. Consequently, the requirements of Local Plan policy 35 have not been met and the unauthorised change of use carries an unacceptable risk of noise disturbance to nearby residents.

Other matters

20. Other properties in Cambridge advertise short-term visitor accommodation online. However, in the absence of information on their planning status I am unable to afford them weight in my decision.

Conclusion on ground (a)

21. For the reasons given above the use is contrary to the provisions of the development plan and no other considerations to outweigh this conflict have been identified. Accordingly, the deemed planning application should be refused and the appeal on ground (a) should not succeed.

Appeal B

22. The main issues in this Appeal are:

- The effect of the development on the availability of housing stock within Cambridge and whether exceptional circumstances justify any such loss.
- The effect of the development on the living conditions of neighbours in terms of outlook, activity and noise.
- The effect of the proposed extension on the character and appearance of the building.

The availability of housing stock

23. As noted in the appeal on ground (a) in Appeal A, there has already been a loss of housing stock, without exceptional justification, contrary to Local Plan policy 3. The submitted plans show that the property was previously a 5-bedroom house and granting planning permission would bring about a reduction in the city's housing stock.
24. Accordingly, the change of use to short-term visitor accommodation with landlord's accommodation is contrary to policy 3 of the Local Plan, harmful to the planning strategy for the area, and therefore unacceptable.

Living conditions

25. Two potential effects on the living conditions of neighbours have been identified. The first of these is noise and disturbance arising from activity associated with visitors entering and leaving the premises. Although appropriate acoustic insulation of the proposed extension would avoid giving rise to additional noise transmission from within the building, the additional visitor rooms would increase the frequency of comings and goings. As already noted in the appeal on ground (a) in Appeal A, in the absence of a noise impact assessment to demonstrate appropriate reduction or mitigation measures, the risk of noise disturbance is unacceptable and contrary to Local Plan policy 35.
26. The second potential effect is a sense of enclosure resulting from the depth of the rear extension and its proximity to shared boundaries. The property has

previously been extended and the Council indicates that it already projects some 3.5 - 4m beyond the original rear wall. It indicates that the proposed further extension would increase this to 10m, and the application drawings confirm that it would span the full width of the plot.

27. I saw that the verandah projects beyond the original rear wall of 144 Mowbray Road, and slightly further than the single storey rear extensions added to that property, with a fence approximately 1.5m high separating the gardens. The depth of projection beyond the rear wall of No 148, which forms a semi-detached pair with the appeal premises, would be more significant.
28. The Council indicates that the extension would be 3m high and the appellant contends that it would not cause light loss, which I accept. However, I noted that the verandah is level with the main ground floor and is raised above the garden. The drawings show that the extension would not step down from the main ground floor and it would therefore also be raised above the garden. As a result, the perceived height of the extension would be greater when viewed from the adjacent back gardens. In view of this, the depth of projection, and as the extension would abut both shared boundaries, it would have an unacceptable overbearing effect and be harmful to the living conditions of the occupiers of both neighbouring houses. It would thus be contrary to policy 58 of the Local plan, which seeks to avoid extensions that unacceptably overshadow or visually dominate neighbouring properties.

Character and appearance

29. New built development should respond to its context in a positive manner. The plain form of the proposed rear extension, including a large flat roof area, has little in common with the features of the original dwelling, although the same may be said of previous extensions, which have altered the proportions of the building and the roof profile. However, they also limit the opportunities for public views of the proposed extension and the building would still have the appearance of a dwelling when viewed from the road.
30. I have seen that large rear extensions and outbuildings may be found in the area. However, I have no information on their planning status or the relevant development plan policies in existence when they were built. Accordingly, I cannot afford them weight.
31. Nevertheless, and while the effect of the proposed extension would be limited, it would not reflect, or successfully contrast with, the existing building form, its materials and architectural detailing. The design of the proposed extension therefore fails to respond to the context and the form of the original building, contrary to Local Plan policies 55 and 58.

Other matters

32. A neighbour has commented on car parking for guests and staff, a road accident involving a guest and a fire in the front fence. No details have been presented and I note the Highway Authority had no comment on the application. Accordingly, I do not afford weight to these matters.

Conclusion on Appeal B

33. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should not succeed.

Appeal A – the appeal on ground (f)

34. For the appeal to succeed on this ground, it should be demonstrated that the steps required by the notice exceed what is necessary to remedy the breach of planning control it alleges.
35. As noted in the appeal on ground (a), the appellant is willing to undertake measures to prevent noise or disturbance. However, while such measures might mitigate the effects of the breach of planning control, they would not resolve it, because the unauthorised use would remain.
36. An enforcement notice may only be directed against development requiring planning permission on the land subject of the notice. Requirement (ii) of the notice is to “permanently cease and remove all forms of advertising” but no advertisements on the land are included in the alleged breach of planning control. While the Council refers to online advertising, that is not development.
37. For these reasons, requirement (ii) is excessive and the appeal on ground (f) succeeds to the extent that the notice should be varied to remove it.

Conclusions – Appeal A

38. For the reasons given above, I conclude that the appeals on grounds (b) and (a) should not succeed and the appeal on ground (f) should succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A - Formal Decision

39. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied in section 5 by the deletion of “(ii) Permanently cease and remove all forms of advertising the entire premises for let in relation to the short-term let visitor accommodation use”.
40. Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - Formal Decision

41. The appeal is dismissed.

Mark Harbottle

INSPECTOR