



Appeal Decision

Site visit made on 23 March 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2021

Appeal Ref: APP/Q3060/W/20/3264187

36 Colborn Street, Nottingham, Nottinghamshire NG3 3AW

- 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 Dr Thafer Sulaiman against the decision of Nottingham City Council.
 - The application Ref 20/01145/PFUL3 (PP-08778049), dated 11 May 2020, was refused by notice dated 23 November 2020.
 - The development proposed is described as Change the use of the property from a family dwelling to a House in multiple occupation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal form states the appellant is Dr Thafer Sulaiman of Parahome LTD. However, only the original applicant has the right to appeal. Therefore, noting the clarification of the applicant's name, this appeal proceeds in the name of Dr Thafer Sulaiman.
3. The appeal form states this appeal is against a refused permission to vary or remove a condition. However, there are no details of any existing planning permission before me. The application form is for a full planning application. It has been assessed as such by the Council, so I have considered the appeal on the basis it is for a full application.
4. The application form states the House in Multiple Occupation (a HMO) use commenced in 2017, and I have considered the appeal on this basis.

Main Issues

5. The main issues are the effect of the development upon:
 - the availability of dwellings suitable for family occupation and the creation and maintenance of a sustainable and balanced community; and,
 - the living conditions of the occupiers of neighbouring properties and the character of the area.

Reasons

Family dwellings

6. Policy 8 of the Aligned Core Strategies Part 1 Local Plan (2014) (the ACS) places an emphasis on providing family housing. The approach to protecting dwellings suitable for family occupation is set out in Policies HO1 and HO2 of the Land and Planning Policies Development Plan Document Local Plan Part 2 (2020) (the LPP2). Policy HO1 encourages family housing where sites are capable of and suitable for accommodating it. The supporting text explains there is a particularly low proportion of suitable family homes compared to the wider area and national average, exacerbated by HMOs, resulting in less sustainable and balanced communities with consequential impacts upon a range of services and facilities.
7. The supporting text states the Council is seeking to secure more family housing, particularly larger family homes. It defines these as being likely to be up to three storeys, with three or more bedrooms (four for larger homes) with two capable of double occupancy, and a private enclosed garden. Based on the plans provided, at least one of the four bedrooms is suitable for double occupancy, and there is a private enclosed garden. Therefore, the appeal site has a good level of accommodation suitable for providing family housing. Therefore, this development conflicts with Policy HO1 of the LPP2.
8. Policy HO2 sets out a presumption against the loss of dwellings suitable for family occupation. Exceptions to this include where evidence indicates an alternative mix of housing is appropriate. There does not appear to be any other HMOs within the same postcode or street. However, this relates to a small area. The evidence does not demonstrate there is not a significant need in the wider community and this area of the city, or that an alternative mix of housing is appropriate. Therefore, it does not merit a departure from the presumption against the loss of family housing. Therefore, the development also conflicts with Policy HO2.
9. The planning and licencing regimes are subject to different legislation and requirements. The grant of previous licences does not justify departing from the approach set out in the adopted development plan, which includes recently adopted policies.
10. For the reasons set out above the development results in a harmful effect upon the availability of family housing, prejudicing the creation and maintenance of a balanced and sustainable community. Therefore, it conflicts with Policies HO1 and HO2 of the LPP2, and the intentions of Policy 8 of the ACS. In combination and amongst other things these policies seek to provide and retain family sized dwellings and to create and maintain a sustainable and balanced community.
11. The Council's first reason for refusal refers to Policy 10 of the ACS. The policy refers to a sense of place and local characteristics in the context of design attributes. Therefore, it is of limited relevance to this main issue.

Living conditions and character of the area

12. The most recent HMO licence provided was for a maximum of four occupiers. I have no reason to believe the dwelling would be occupied by a greater number, and in this instance it has not been put to me by the Council that there would be difficulty enforcing a planning condition of this nature.

13. Use by four occupiers is not likely to result in an increased density of occupation. It might result in some increased car parking demand above that of a typical family occupancy. However, there is a single off-road parking space on the site, and it seems there is reasonable access to bus services and some local facilities, so it is unlikely it would be necessary for occupiers to own a car. Parking on Colborn Street is restricted on Mondays – Saturdays. Even if tenants were able to gain a permit, while my visit can only represent a brief snapshot in time, there was plenty of spaces available on the street and surrounding roads. I have not been provided with substantive evidence of parking stress to the contrary or conflict with Policy TR1. Therefore, this development is not likely to result in a level of parking that would result in harmful effects to the living conditions of neighbouring occupiers, or harmfully affect the character of the area.
14. Being inhabited by unrelated occupiers might result in some limited increase in comings and goings associated with different lifestyles and living patterns compared to a family dwelling. There may also be a limited increase in visitors or socialising within the lounge, and outside areas during warmer months. However, this is not likely to be significantly greater than would occur through the use as a family dwelling. Given the generously sized lounge and separation of the dwelling from those neighbouring, it is not likely to result in harmful effects upon the living conditions of neighbouring occupiers, or the character of the area. Furthermore, the site has been used as a HMO for some time and there is no evidence of complaints, or objections to this proposal.
15. The appeal site has adequate space to ensure refuse can be stored in a satisfactory manner on the property. There is no substantive evidence that would lead me to believe this development would result in a source of unsatisfactory living conditions for neighbouring occupiers or result in harmful effects to the character of the area due to waste storage or disposal.
16. The appeal site is a relatively modern brickwork double glazed property, which was maintained in good state of overall repair. Sizeable parts of the front and rear of the plot comprise hardstanding, requiring little maintenance. I see no reason why this development would result in harmful effects to the character of the area or neighbouring occupiers through lack of maintenance. While I note the effects outlined in Policy HO6, these mainly relate to areas with high concentrations of HMOs, which is not the case for this immediate area. The use may result in a higher turnover of occupiers but there is no substantive evidence that this in itself would result in harmful effects.
17. For the reasons set out above the development would not result in harmful effects to the living conditions of neighbouring occupiers or on the character of the area as a consequence of noise and disturbance, waste disposal, property upkeep, on-street parking or a higher turn-over of occupiers. Therefore, the development does not conflict with Policy 10 of the ACS and Policies DE1 or HO6 of the LPP2. Amongst other things these seek to ensure development does not result in harmful living conditions to neighbouring occupiers and does not result in harm to the character of the area.
18. The Council's second reason for refusal refers to Policy HO2 of the LPP2. However, none of the criteria in the policy make a direct reference to the living conditions of neighbouring occupiers or the character of the area.

Other Matters

19. The Council has concluded the internal accommodation and facilities are satisfactory and compliant with the relevant policies, and I see no reason to disagree. This development might result in some increase in the value of the appeal site property, but there is no evidence demonstrating allowing this appeal would increase the value of neighbouring properties. Having regard to the current conditions as a result of the Covid-19 pandemic, there is no evidence to demonstrate that dismissing this appeal would significantly prejudice the appellant's business or wider HMO businesses in general. Therefore, these matters attract only a small amount of weight.
20. The appellant has expressed dissatisfaction with advice provided by the Council. However, this is a matter to be pursued with the Council, and my consideration of the appeal development relates to its planning merits only.

Planning Balance & Conclusion

21. At my visit the property appeared to be occupied. I have not been provided with confirmation as to whether this is the occupiers primary or only residence. Dismissing this appeal and any future enforcement notice would put the occupation of the dwelling by the tenants at risk. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998.
22. Dismissing this appeal may result in the tenants needing to find new accommodation. However, there is no evidence of a shortage of suitable properties, or that the tenants have requirements that result in needing to reside at this property. Having regard to the legitimate, justified, and established planning policy aims to maintain and increase the supply of family sized dwellings and the creation and maintenance of a sustainable and balanced community, in this case the greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the tenants.
23. The development would not result in harmful living conditions of appeal site or neighbouring occupiers, or harmful effects to the character of the area. Compliance with policies in this regard are neutral matters that attract neutral weight. The financial effects of the development attract a small amount of weight. However, the policy compliance and benefits do not outweigh the harm to the availability of family sized dwellings and the creation and maintenance of a sustainable and balanced community, which is a matter that attracts significant weight against the scheme.
24. The development conflicts with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR