



Appeal Decision

Site Visit made on 6 July 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2021

Appeal Ref: APP/Q3060/W/21/3272898

105 Rothesay Avenue, Nottingham, NG7 1PW

- 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 Humari Property Ltd against the decision of Nottingham City Council.
 - The application Ref 20/02388/PFUL3, dated 4 November 2020, was refused by notice dated 21 December 2020.
 - The development proposed is the change of use from Use Class C3 (Dwelling House) to Use Class C4 (House in Multiple Occupation).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. A separate appeal¹ has been submitted relating to a change of use from Use Class C3 (Dwelling House) to Use Class C4 (House in Multiple Occupation) that has taken place at 113 Rothesay Avenue, a property that is also under the ownership of the appellant. Whilst the submissions made by the appellant for both the appeal at No 113 and No 105 are the same, a separate decision letter must be issued for each of the appeals.
3. I have not included the full description of development from the appellant's planning application form as it makes reference to the proposal being retrospective and that is not in itself development. However, the property has already been converted and occupied as a House in Multiple Occupation (HMO) and I shall therefore determine the appeal on that basis.
4. The revised National Planning Policy Framework was published on 20th July 2021. This document does not however materially change the approach to the main issues arising from this appeal, when compared to its predecessor, and therefore no further comments have been sought from the parties.

Main Issues

5. The main issues are (i) whether or not the development would contribute to a balanced community and (ii) the effect of the use on the living conditions of the occupants of nearby properties.

¹ APP/Q3060/W/21/3272900

Reasons

Balanced communities

6. Policy 8 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan 2014 (ACS) places an emphasis on providing family housing, including larger family housing, to meet Sustainable Community Strategy and Housing Strategy objectives. It further outlines a need to redress the housing mix within areas of concentration of student households and HMOs.
7. Policy H01 of the Nottingham City Land and Planning Policies Local Plan Part 2 2020 (LAPP) seeks to deliver a mix of housing and encourage the provision of new family housing, Policy H02 aims to protect dwellinghouses (use class C3) suitable for family occupation and Policy H06 sets out the approach to HMOs and purpose built student accommodation (PBSA). If planning permission is to be granted for HMOs and PBSA, Policy H06 advises that this will only be done where there is no conflict with Policies H01 and H02.
8. The appeal development does not satisfy any of criteria a) to e) of Policy H02. Whilst the appeal property has only a limited amount of outdoor space, it adjoins a large area of public open space and is in an urban location close to services and facilities. The size of the yard area available would not therefore be an impediment to occupation by a family and, internally, the space available would meet their reasonable needs. Parking arrangements do not appear to be any different to those commonly experienced at terraced properties and this does not suggest that the property would be unsuitable for family occupation.
9. A letter has been provided from a local property agent setting out that other areas of the city are more popular for family housing, but this correspondence provides no substantive evidence that the appeal property could not ultimately be let or sold for family occupancy. The appeal development does not therefore accord with criterion f) of Policy H02, and consequently with the policy as a whole.
10. By virtue of the fact that the development fails to accord with Policy H02 and there would be an unjustified loss of a dwellinghouse suitable for family occupation, it fails to accord with Policy H06. In any event, the evidence before me is that the concentration of student housing within the core output area is approximately 78% of households and that the average for surrounding output areas (which includes the core output area) is approximately 71%. This far exceeds the 10% figure which is considered by Policy H06 to be a significant concentration.
11. Whilst it is suggested that as the 10% threshold has been exceeded by such a large amount already that another HMO would in effect make no tangible difference, to accept such an argument would incrementally take the situation away from one which the development plan seeks to deliver, and further away from being able to redress the housing mix in the area.
12. Furthermore, the other appeal at 113 Rothesay Avenue advances the same argument, meaning that its acceptance would increase the number of HMOs in the area by two and not one. It also does not address the matter of the loss of a family house and the non-compliance with Policy H02. Therefore, whilst I am mindful of the provision of 2c) of Policy H06 to allow consideration of any evidence of existing HMO provision within the vicinity of the site and its impacts

on the character and amenity of the area, overall, this does not outweigh the other considerations outlined which mean that there is a clear conflict with the aims of Policy H06.

13. For these reasons, I conclude that the development fails to accord with Policy H02 of the LAPP where it seeks to retain dwellinghouses suitable for family occupation and Policy H06 which sets out the basis on which HMOs will be permitted. There is also a failure to accord with the aims of Policy H01 of the LAPP, which relates to housing mix, and with Policy 8 of the ALS which seeks to deliver a mix of housing and to redress the housing mix within areas of concentration of student households and HMOs.

Living conditions

14. The appeal property is located mid-terrace and whilst the change of use that is sought relates to a C4 use which could be occupied by any demographic, given the characteristics of the surrounding area it is highly likely that occupation would be by students. Such occupants would be likely to lead a different lifestyle to others in the community, meaning there would be a greater potential for noise and disturbance during times when others could reasonably expect a more sedate environment. Occupation would be likely to be more transient with occupants changing frequently, and the property may remain vacant during summer months, which makes community cohesion more difficult.
15. A management plan tied to a planning obligation has been provided with the appeal, there is a HMO license in place, a letter from the appointed letting agent has been submitted detailing how the property is managed and a report from Dash Services provides a commendation as to the high standard of accommodation that is provided. However, notwithstanding the regulation that is in place, student occupiers would, within reason, have an expectation to be allowed to live a different lifestyle and keep different hours to their non-student neighbours.
16. Taken alone, a single 5 person HMO might only cause a limited degree of harm to the living conditions of nearby, non-HMO, occupants. However, as has been seen from my consideration of the first main issue, there is a cumulative impact arising from the number of HMOs in the area. Every additional HMO has the potential to exacerbate this situation and the impact on those residing in non-HMOs. Furthermore, the matter of harm to living conditions is intrinsically linked to those considerations that arise from the Council's aim to create balanced communities and to regulate the numbers in which HMOs are present. Again, the same arguments are repeated with respect to the appeal at 113 Rothesay Avenue and therefore to accept them would mean that the impact would be twofold, as opposed to those just arising from a single property.
17. At the time of my visit there were a number of bins present on the pavement, however I have insufficient information to conclude whether or not this is a matter linked directly to occupation as HMOs or to other factors. Likewise, whilst there was a plentiful amount of parking available on Rothesay Avenue, my visit took place during working hours and out of the normal university term time and the evidence before me on the impact that arises at other times is inconclusive. The appeal property appears to be well-maintained, and there is nothing before me to suggest that it would not remain as such.

18. For these reasons, I conclude that the use of the property as a HMO compounds the concentration of HMOs in this area and contributes to the harm to the living conditions of the occupants of nearby properties from noise and disturbance and from matters related to a transient population and property vacancy. Consequently, the development fails to accord with Policy 10 of the ACS and Policies DE1, H06 and IN2 of the LAPP, where they seek to protect living conditions. I cannot however conclude that there would be a conflict with Policy TR1 of the LAPP based on the evidence before me, where it relates to parking considerations.

Other Matters

19. The appellant suggests that the Council currently has a healthy housing land supply position and that there has been an over delivery of housing, including family housing in recent years. Furthermore, it is stated that there is a recognised significant demand, coupled with unmet need, for additional housing which can accommodate students in the city. Policy 4 of the ACS also seeks to encourage the further expansion of the Universities, together with the economic development associated with them. These considerations do not however outweigh the clear conflict with the policies of the development plan that I have identified.
20. My attention has been drawn to a previous appeal² decision in Nottingham. However, this was an appeal against the imposition of a planning condition restricting the occupancy of a property, which the appointed Inspector ultimately found to fail the tests of being precise, reasonable and necessary. Furthermore, this decision predates the current development plan for the area. Therefore, whilst I have had regard to that decision and the decision in Wales³ which relates to a different planning authority and development plan, I must determine the appeal before me primarily upon its own merits and against the development plan that is in place.
21. Reference has been made to the length of time that the property has been occupied as a HMO and not a dwellinghouse. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
22. That there may be an unregulated occupation by students if the appeal is dismissed is not a matter that I can give weight to in my assessment, and this would be a matter for the Council should it occur. It is also suggested that occupation by 2 students may result if the appeal is dismissed, however this would represent a substantially less intensive use and there is no evidence that to let a property of this size on that basis would be a viable or realistic proposition. This consideration therefore carries only limited weight as a fallback position, and it does not outweigh the conflict with the development plan.
23. The appellant has offered that a planning condition could be imposed to make a planning permission personal to themselves only. This would not however overcome the matters I have identified and the subsequent failure to accord

² APP/Q3060/A/11/2165198

³ APP/Z6815/A/20/3266132

with the development plan. Although no objections were received from occupants of properties in the immediate vicinity of the appeal site, this does not justify the development.

Conclusion

24. For the reasons given above, I conclude that the appeal should be dismissed.

Graham Wright

INSPECTOR