
Appeal Decision

Site visit made on 27 July 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2021

Appeal Ref: APP/Q3060/W/21/3268703

3 Rob Roy Avenue, Nottingham NG7 2ER

- 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 Alan Wright against the decision of City of Nottingham Council.
 - The application Ref: 20/01447/PFUL3, dated 15 July 2020, was refused by notice dated 25 November 2020.
 - The development is described as a use as an HMO within Use Class C4.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. The appeal property has been used since the 1990s for the letting out to students as shared residential accommodation. It contains 4 bedrooms. The Council subsequently introduced an Article 4 direction which removed the right to change from a Use Class C3 Dwellinghouses to Use Class C4 HMO Houses in Multiple Occupation (HMO) without the benefit of planning permission.
3. After the introduction of the Article 4 direction, there has been at times a reduction in the occupancy below 3 persons at the appeal property, which is of relevance with regard to what is considered an HMO under the Housing Act 2004, which is referred to in the Use Class. The Council are of the view that such time periods have not been *de minimis* and, as a consequence, consider that the property falls into Use Class C3. The Council also have no record of the property been used as an HMO previously, although this is disputed by the appellant. The Council advised the appellant that an application be made to enable a permanent HMO licence to be issued.
4. An application for a Certificate of Lawfulness of Existing Use¹ (CLEUD) was then submitted. This was subsequently refused by the Council on the grounds that there was insufficient evidence to demonstrate a continuous Use Class C4 use for the relevant 4 year period. A planning application was then submitted to the Council that is the subject of this appeal and was refused on matters related to housing mix and living conditions.
5. Accordingly, I have considered the appeal on the basis of such a change of use. Whilst I am not unsympathetic of the particular regulatory circumstances that

¹ Council ref: 20/01003/PCLE

the appellant has faced, it falls for the development to be considered on the basis of the matters of dispute that are set out in the Council's reasons for refusal. Matters in relation to HMO licensing also do not fetter how a development is to be considered through the planning system.

6. Similarly, it 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 as to whether a material change of use has taken place and if the Council's views on this matter are correct, including on the implication of the time periods when the occupancy has fallen below 3 persons. That would have been a matter for the CLEUD. The appellant has not appealed that determination. Given that it is not in dispute that the application that relates to this appeal sought to regularise the use of the property as Use Class C4 and no alterations to the internal layout are proposed, I have dealt with the appeal on a retrospective basis.
7. The revised National Planning Policy Framework has also been published during the course of the appeal. In the interests of fairness, the appellant and the Council were also given the opportunity to comment on this matter.

Main Issues

8. The main issues are the effect of the development on (i) the provision of family accommodation as part of the housing mix; and (ii) the living conditions of the occupiers of the adjoining residential properties and, more broadly, the residents in the area, with regard to noise and disturbance, property maintenance, waste disposal, parking and occupancy matters.

Reasons

Housing Mix

9. The appeal property is a 2 storey semi-detached house that is located at the end of Rob Roy Avenue. It contains an enclosed rear yard area that is accessed down the side of the property and a smaller frontage area that is defined by a low wall and extends towards the side boundary with an adjacent Royal Naval Association club. There is no vehicular access or off-street car parking. The property is accessed via a footway known as Rob Roy Avenue. This connects to Gregory Avenue, where there is restricted on-street car parking.
10. There are a variety of house types in the vicinity of the site, including a fairly dense arrangement of terraces and a large newer housing development. There are also commercial properties on nearby Lenton Boulevard, as well as the neighbouring club. The Council has referred to the high concentration of student accommodation and HMOs in the area and this has not been disputed. There is student accommodation elsewhere on Rob Roy Avenue and in the vicinity.
11. Policy 8 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (2014) (ACS) states that residential development should maintain, provide and contribute to a mix of housing tenure, types and sizes in order to create sustainable, inclusive and mixed communities. It puts a particular emphasis on providing family accommodation, including larger family homes.

12. Policies HO1 and HO2 of the Council's Local Plan Part 2 – Land and Planning Policies (2020) (LAPP) also place an importance on family housing, as part of the housing mix. The supporting text to Policy HO1 also refers to the evidence that justifies such an approach, including for larger families. The use of family homes as HMOs is said to have exacerbated the low provision. Policy HO2 sets out a presumption against the loss of dwellinghouses (Use Class C3) for family accommodation, including conversion to Use Class C4. Policy HO6 largely defers to Policies HO1 and HO2 on this matter.
13. The appellant considers that the amount of student accommodation in the area does not make it an attractive location for families. This however runs counter to the intentions of the development plan policies to provide for a mix of housing, including family homes. As the development reinforces the concentration of HMO accommodation, it is contrary to the stance of the development plan in this regard.
14. The proximity to other student accommodation is also not in itself a reason to discourage family occupation. If it was, it would seemingly deter families from living in areas where there are large concentrations of students.
15. In terms of the property itself, there is also some outside space for family usage and this offers some benefit in terms of privacy and seclusion. As Rob Roy Avenue only offers access to a small number of properties, this may also prove attractive for families, especially as it is located at the end of the footpath. With regard to the proximity to the club, the boundary is well enclosed by a high brick wall and the facing openings on the side of the appeal property do not relate to habitable rooms. The internal layout also does not preclude family accommodation with the 4 bedrooms, a separate lounge and other facilities, based on the submitted plans. In taking these matters together, there is not a compelling reason why the property is not suitable and attractive for families.
16. The historical usage of the property has a limited bearing for the reasons that I have already set out procedurally earlier in my decision. Not granting permission may not in itself lead directly to family occupation, but permitting an HMO use would make it less likely. I also note the appellant's concerns over the restrictive nature of planning policy, but this is a consequence of the housing mix which is being sought against a backdrop of low provision of family housing and the number of HMOs. It is not a position without justification, not least as it is development plan based.
17. I conclude that the development has an unacceptable effect on the provision of family accommodation as part of the housing mix. As such, it does not comply with Policy 8 of the ACS and with Policies HO1, HO2 and HO6 of the LAPP where they are concerned with inclusive and mixed communities, the provision of family housing as part of the housing mix and protecting such houses that are suitable for family occupation.

Living Conditions

18. Aside from the other semi-detached property at 1 Rob Roy Avenue, the nearest neighbouring residential properties are on the opposite side of the footpath and on Gregory Avenue.

19. There is a greater intensification in the use of the appeal property as an HMO compared to a family dwelling as the nature of an HMO use is that it permits the rooms in the property to be occupied by unrelated adults. However, as the number of bedrooms permits occupancy at moderate levels, the resultant effects are likely limited. Thus, undue noise and disturbance to either its attached neighbour or the other nearest properties is not a result of the nature of the occupation.
20. Untoward cumulative effects on living conditions also does not cause unacceptable effects because of the likely number of occupants. There is adequate space for refuse storage in relation to waste disposal and at the time of my visit bins were ably stored in the part of the site frontage which extends towards the side boundary wall. As the property is located in close proximity to a range of local services, the reliance on on-street parking is not pivotal.
21. With regard to issues arising from the nature of occupancy turnover and the behavioural patterns of the occupants, these seem largely related to the individuals concerned and so carry limited weight. The property also appeared externally well maintained in terms of upkeep at the time of my site visit. Reference has also been made to such effects resulting from the extension of the property or conversion of the roof space. This does not form part of the development before me and so it is not for my consideration.
22. I conclude that the development does not have an unacceptable effect on the living conditions of the occupiers of the adjoining residential properties and, more broadly, the residents in the area, with regard to noise and disturbance, property maintenance, waste disposal, parking and occupancy matters. Therefore, it complies with Policy 10 of the ACS and with Policy DE1 of the LAPP where they are concerned with living conditions matters, including the impact on the amenity of nearby residents or occupiers, noise and nuisance, amongst other considerations. Policy H01 does not concern itself with living conditions and so has a limited bearing on this issue.

Other Matters

23. I am mindful of that the appellant is an accredited landlord, as well as of the letting procedures and the general management policies that I have been made aware of. I also acknowledge the letters of support and the reported lack of complaint and enforcement action. Such matters do not though address or outweigh the harm that arises by way of housing mix, in particular with the emphasis that the development plan places on family accommodation provision. Competition for student accommodation is not for my consideration.
24. In relation to the Grove Road appeal decision² that I have been referred to, I note that property was 2 bedroomed. It was also located close to a large roundabout and a busy arterial route. The development that is for my consideration is 4 bedroomed and so is better suited for a family and is located in a more private location which also favours family occupancy. I am satisfied that the site circumstances are sufficiently different so as not to alter my conclusion.

² Appeal ref: APP/Q3060/W/20/3264015

Conclusion

25. The effect on the housing mix of the area is unacceptable and is decisive. Accordingly, I conclude that the development conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR