



Appeal Decision

Site visit made on 12 October 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/Q3060/W/21/3273835
361 Alferton Road, Nottingham NG7 5LT

- 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 Mrs Nadia Ahmed against the decision of Nottingham City Council.
 - The application Ref 20/01733/PFUL3, dated 1 August 2020, was refused by notice dated 28 October 2020.
 - The development proposed is described as Change of use to ground floor to Class A5 (Hot Takeaway), Dormers added to existing pitched existing roof & loft conversion to allow additional accommodations.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal includes the change of use to an 'A5 (Hot food takeaway)'. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the Town and Country Planning (Use Classes) Order 1987. The amendments included removing the A5 use class, meaning Hot food takeaways do not now fall within any use class. I have had regard to this in considering this appeal.
3. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the proposed use requires permission, as is suggested by the appellant. I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether the use would be lawful, they may make an application under section 192 of the Town & Country Planning Act 1990.
4. The application form states the existing use of the site is as 'accommodation'. While the Council's report suggests the site is lawfully used as a House in Multiple Occupation (HMO) at my visit I saw no evidence it was used as an HMO. The appellant has clarified it is not currently used as an HMO and neither is this proposed. I have considered the appeal on this basis.
5. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have given the Council and the appellant the opportunity to comment upon the implications of this for their respective cases.

6. The Council's reason for refusal and delegated report does not specify which properties it is alleged the development could result harm to in respect of noise and odour. Therefore, I have had regard to my observations from my site visit in setting out that main issue below.

Main Issues

7. The main issues are the effect of the proposed development upon:
- the living conditions of the occupiers of No 361 Alfreton Road with particular reference to internal space provision and outlook;
 - the living conditions of the occupiers of 363, 365 and 367 Alfreton Road and No 56 Wimbourne Road, with particular reference to noise and odour;
 - the vitality and viability of the Alfreton Road Local Centre (ARLC); and,
 - the creation and maintenance of sustainable, mixed, and balanced communities, and the character of the area.

Reasons

Internal space and outlook

8. The appeal site comprises an end of terrace dwelling across three storeys. The proposed configuration would result in the loss of the ground floor from residential use, with a modest kitchen being the only communal space for an 8 bedroom dwelling. I have not been provided with reference to any specific internal space standards by the Council and there is no space standard for an 8 bedroom dwelling in the Nationally Described Space Standard (2015) (NDSS).
9. The residential kitchen area would measure approximately 2.4m x 2.7m, being of an adequate shape and space for kitchen storage, appliances, and some larger household items. However, there would be little room for other furniture such as a reasonably sized dining table while retaining sufficient circulation. Communal living space is of importance for well-being for activities such as informal communal seating, socialising, relaxation, and leisure activities. In the appeal layout, any such activities would be highly restricted and could not be undertaken to the same degree or have the same well-being benefits, in the confined kitchen and bedroom spaces. Consequently, the development would result in harmful living conditions for future occupiers due to inadequate internal living space.
10. The proposed accommodation in the converted loft would create two en-suite bedrooms. Based upon the plans before me, both bedrooms would be served by either a window or a skylight. Having regard to the location, size, and height of these from floor level, these would provide a sufficient degree of outlook for the future occupiers of those rooms. Therefore, the development would provide adequate living conditions for the future occupiers in respect of the outlook from the loft bedrooms. However, this does not overcome the other harm I have found.
11. For the reasons set out above the development would result in harmful living conditions for the future occupiers in respect of inadequate internal space provision. Therefore, it would conflict with the aims of Policy DE1 of the Nottingham City Land and Planning Policies Development Plan Document (2020) (the NLPP) and Policy 10 of the Aligned Core Strategies Part 1 Local

Plan (2014) (the ACS). Amongst other things these aim to ensure development provides convenient and efficient layouts which are functional and fit for purpose for future occupiers.

Noise and odour

12. It is intended the business would not be open to customers for collections and food would be delivered to customers. However, there is no evidence provided by the appellant that indicates the likely frequency of comings and goings of delivery vehicles. Such activity would generate noise, including through frequent manoeuvring, opening and closing of the premises and delivery vehicle doors, or those of carrying receptacles. This could take place directly outside the premises and/or close to the front of neighbouring or nearby dwellings many of which have small or no front gardens to provide a stand-off. Such noise would be highly dependent upon the success of the business and I see no evidence it could be controlled effectively to prevent significant episodes of disturbance.
13. The proposals include the installation of a ventilation system for the new commercial kitchen area. However, there is little other details such as its location, specification, emissions, and likely hours of use. The system would be likely to need to be installed so it vents externally within the appeal site boundary, and be operated around the hours of use of the business which are not specified but could be significant proportions of the day and evening.
14. The nearest residential properties are at 363 – 367 Alfreton Road and No 56 Wimbourne Road, in close proximity to potential locations for the ventilation system. The Council's Environmental Health Officer seeks pre-commencement conditions in respect of a noise assessment, the nature of noise emitted from plant and machinery, noise insulation, an odour risk assessment and odour discharge. Given the proximity to neighbouring dwellings, these matters are fundamental to the acceptability of the appeal proposal. Therefore, I am of the view that such matters should not be left to the planning conditions stage for full consideration. Based upon the evidence provided, I cannot be certain the development could take place without resulting in significantly harmful living conditions to neighbouring occupiers in respect of noise and odour.
15. For the reasons set out above I cannot be certain the development would not result in harmful living conditions to the occupiers of Nos 363, 365 and 367 Alfreton Road and No 56 Wimbourne Road in respect of noise and odour. Therefore, it would conflict with the aims of Policy 10 of the ACS and Policies DE1 and IN2 of the NLPP. In combination and amongst other things these seek to ensure that regard is had to the effects of a development upon the living conditions of neighbouring occupiers, and it is demonstrated it will not contribute to odour nuisance or result in noise to such levels they would be likely to adversely impact upon health or quality of life.

Vitality and viability

16. Policy 6 of the ACS seeks to maintain and enhance the vitality and viability of all designated centres. Policy SH4 of the NLPP states that permission for main town centre uses in edge and out of centre locations will be subject to the sequential test. Proposals will be required to satisfactorily demonstrate there are no sequentially preferable sites available. I consider a hot food takeaway is a main town centre use and the appellant does not dispute this. The appeal

site is located a significant distance outside the ARLC, which appeared to include other premises offering hot food takeaways.

17. No sequential test has been submitted with the application. The Council advises me there is vacant units within the ARLC that could be used for the proposed use. This reflects what I saw on my visit, and I have not been offered substantive evidence that would lead me to an alternative view. There would be limited footfall associated with the business. However, it would have the effect of being likely to direct people away from using the local centre and diluting the number of businesses in the local centre. Consequently, the development would be harmful to the vitality and viability of the Alfreton Road Local Centre. The appellant has also not provided sufficient evidence that trade would not be diverted from other premises within or adjacent to designated centres offering takeaway cuisine, including those at the ARLC, thereby potentially jeopardising their future viability.
18. Therefore, for the reasons set out above the proposed development would have a harmful effect upon the vitality and viability of the ARLC, in conflict with Policy 6 of the ACS and Policy SH4 of the NLPP. In combination and amongst other things these seek to maintain and enhance the vitality and viability of all designated centres, and state that main town centre uses in out of centre locations should demonstrate that there are no sequentially preferable sites available.

Sustainable, mixed, and balanced communities and the character of the area

19. The proposals would result in an increase from 6 to 8 bedroom spaces in the dwelling. As it would be used as a dwelling and not an HMO, the development would not result in an increase in HMOs in the city, or a conflict with the Council's objectives of maintaining sustainable, balanced, and mixed use communities, including with reference to family housing and larger family houses. The Council's second reason for refusal suggests concerns in respect of matters associated with increased noise and anti-social behaviour, poor property maintenance, inappropriate management of waste disposal, a high turnover of occupants and an absence of residents outside of term time.
20. However, the Council has not justified why a dwelling with a greater number of bedrooms would result in an exacerbation of the above issues. There could be an increase in the number of persons living at the property. However, as they would be living as one household, there would be likely to be very limited increases in comings and goings or refuse generation and storage. Based upon the Council's reasoning, I see no reason why this would be such that it would be harmful to the character of the area.
21. A larger household is not likely to result in increased anti-social behaviour or a differing property maintenance regime. I see no reason why this dwelling would be likely to be restricted to term-time only occupation, or why there would be a greater turnover of households using this property. Therefore, in the absence of evidence to the contrary, the provision of two additional bedrooms would not result in any harmful effects to the character of the area.
22. For the reasons set out above the development would not result in harm to the maintenance of sustainable, balanced, and mixed use communities, or the character of the area. Therefore, it would not conflict with the aims of Policy 8 of the ACS or Policy HO6 of the NLPP. Amongst other things these seek to

ensure development maintains and contributes to a mix of housing tenures, types, and sizes in order to create sustainable, inclusive, and mixed communities, that does not harm the character of the area, and maintains and contributes to the aim of providing family and larger family housing.

Planning Balance

23. The development would result in a small economic benefit during its construction. It would bring moderate economic benefits including through employing up to four members of staff. This is consistent with some development plan policy and Framework objectives. However, there would be a conflict with development plan policies in respect of vitality and viability of local centres, to balance against the other economic benefits. There is no evidence of a shortage of outlets offering similar goods and services. I have not been provided with any planning conditions that would secure the healthiness of the cuisine, therefore this matter attracts little weight.
24. The appeal site might be able to accommodate a larger household, which would constitute a small social benefit. I see no substantive evidence demonstrating there would be material benefits in respect of the public realm or inclusive and healthy environments, so this would be more of a neutral matter. Overall, the economic and social benefits would be modest, attracting limited weight.
25. Compliance with policies in respect of sustainable, inclusive, and mixed communities, the character of the area, other living conditions of occupiers not referenced above, fire and safety matters, transportation objectives in relation to local services, and waste management, are neutral matters attracting neutral weight. If I were share the view the development would be compliant with policies in respect of matters such as the character and appearance of the area, climate change and adaptability of the property, these would be neutral matters attracting neutral weight.
26. However, the development would result in harmful living conditions to future occupiers of the appeal site in respect of the internal accommodation, would conflict with the aims of policies in respect of the living conditions of neighbouring occupiers in respect of noise and odour, and it would conflict with the strategy for the location of main town centre uses resulting in harm to the vitality and viability of the ARLC. The magnitude of the harm is such that these matters attract significant weight against the scheme, which significantly outweighs the benefits of the development.

Conclusion

27. For the reasons set out above, the development conflicts with the development plan and the Framework read as a whole. There are no considerations advanced which outweigh these findings. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR