
Appeal Decision

Site visit made on 14 December 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/Q3060/C/21/3278840

Land at 112 Radford Boulevard, Nottingham NG7 3BN

- 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 Gurdev Shoker against an enforcement notice issued by City of Nottingham Council.
- The enforcement notice was issued on 30 June 2021.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the land from a dwellinghouse within Use Class C3 to a house in multiple occupation within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the Order").
- The requirements of the notice are to cease the use of the land as a house in multiple occupation within Use Class C4 and revert to use as a dwellinghouse use within Use Class C3.
- The period for compliance with the requirements is within 4 calendar months of the notice taking effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of decision: The appeal is dismissed 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 Act.

Main Issues

1. The main issues in this appeal are the effect of the change of use to a house in multiple occupation (HMO) on:
 - The housing mix in the area.
 - Living conditions.

Reasons

Housing mix

2. The appeal relates to a 3-storey terraced house in a predominantly residential part of Nottingham. There is a city-wide Direction¹ preventing the change of use of a dwellinghouse to an HMO within Use Class C4 under permitted development rights. The Direction aligns with development plan policies that encourage family housing and resist the loss of dwellinghouses.

¹ Under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015

3. Development plan policies seek to restrict new HMOs in areas where they and student households account for at least 10% of all households, defined as a significant concentration. The Council calculates the concentration of HMOs and/or other student households in the local area to be between 22.2% and 50.4% of the total housing stock, depending on how the area is defined. While the appellant does not provide an alternative calculation, he refers to the methodology in the development plan² and concedes that the area has a high concentration of student housing.
4. The house is not located within a site allocated for non-family housing or proposed for main town centre uses and there is no evidence that use as an HMO would fulfil a regeneration aspiration or meet a local housing priority. Neither is there any local evidence of housing need and demand to indicate non-family housing is appropriate to the area.
5. There is a single step from the pavement and 3 shallow steps leading to the front door. The house has relatively steep staircases and limited private amenity space to the front and rear. An alley at the rear gives access to 7 houses on Radford Boulevard, including the appeal premises, and has a lockable gate at its access onto Warner Street. The appellant contends these features, and safety concerns regarding the alley, make the house unsuitable for family occupation, justifying an exception to the normal policy approaches to housing mix and HMOs.
6. These characteristics of the building and its immediate locality may not prove attractive to some families. However, it has not been shown that they make the house unsuitable for family occupation, for example through evidence of unsuccessful attempts to sell or let it for family occupation.
7. The change of use has occurred in an area where the proportion of HMOs and/or other student households exceeds the policy threshold of 10% by a significant margin. The characteristics of the building and the locality are such that the identified exceptions to the normal policy approach do not apply. Accordingly, the change of use undermines sustainable, inclusive, and mixed communities and adds to the shortage of homes that are suitable for and attractive to families. This is contrary to policy 8 of the Greater Nottingham Aligned Core Strategies (the ACS), policies HO1, HO2 and HO6 of the Nottingham City Land and Planning Policies Development Plan Document (the LPP) and Part 8 of the National Planning Policy Framework (the Framework).

Living conditions

8. Use as an HMO tends to be more intensive than family occupation, in terms of numbers of residents and comings and goings. These factors may result in a loss of amenity for occupiers of neighbouring properties arising from HMO use.
9. In this case, the Council's concerns are expressed in general terms and without evidence specific to the use of this house as an HMO. Furthermore, no representations have been received from any nearby occupier. Consequently, it has not been demonstrated that the use as an HMO has, of itself, adversely affected the living conditions of nearby residents or the amenity of the area. Therefore, while the potential for conflict with policy 10 of the ACS and policies DE1 and HO6 of the LPP cannot be discounted, no such conflict has been

² Appendix 6 of the Nottingham City Land and Planning Policies Development Plan Document

demonstrated. However, the absence of harm in this respect is neutral in the planning balance and it therefore cannot outweigh, or alter, my finding on the first main issue.

Conclusion

10. For the reasons given, the use as an HMO does not comply with the development plan in terms of maintaining sustainable, inclusive, and mixed communities and an exception has not been justified. I therefore conclude that the appeal should not succeed.
11. While an appeal was not made on ground (f)³, the second part of the notice's requirement, to revert to use as a dwellinghouse, is excessive, no matter how desirable it may be. That is because compliance with the first part, to cease the use of the land as an HMO, would resolve the breach of planning control. The notice can be varied by the deletion of the second part without injustice.
12. Subject to that variation, I shall uphold the notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

13. It is directed that the enforcement notice be varied by the deletion of the words "and revert to use as a dwellinghouse use within Use Class C3" in section 5.
14. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Mark Harbottle

INSPECTOR

³ That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by (the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.