



Appeal Decision

Site visit made on 15 February 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 March 2022

Appeal Ref: APP/W2465/C/21/3286414

Land at 7 Church Avenue, Leicester, LE3 6AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Deepak Johar of Propinvest Glenfield Ltd against an enforcement notice issued by Leicester City Council.
- The notice was issued on 12 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material unauthorised change of use from house to five self-contained flats (5 x studio) at the Property.
- The requirements of the notice are:
 - 5.1 Cease the use of the Property as self-contained flats and cease use of each flat as a separate dwelling
 - 5.2 Remove all fixtures and fittings relating to the unauthorised material change of use as self-contained flats
 - 5.3 Remove all resultant material arising from step 2 above from the Property
 - 5.4 Revert the use of the Property to a dwellinghouse (Class C3)
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. 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 succeeds in part and permission for that part is granted, but otherwise the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Background and procedural matter

1. Applications to convert the property into 5 studio flats¹ and into 3 flats² were refused in March 2021 and January 2022 respectively. The enforcement notice was issued following the refusal of the 5 studio flats scheme.
2. Without prejudice to their substantive case, the appellant provides an alternative scheme for 3 self-contained flats ('the alternative scheme'). The design and layout of the alternative scheme is shown on Drawing Number A1-02 Revision F³. Alterations would be made to the internal layout and arrangement of partitions, but there would be no external alterations. The appellant claims this alternative scheme would address the reasons for issuing the notice at less cost and disruption.
3. The allegation relates to the creation of 5 flats within the existing building and the alternative scheme proposes 3 flats within the existing building. The provision of 3 flats could be regarded as not being substantially different from the development of 5 flats and the deemed planning application could be said

¹ Council reference 20200112

² Council reference 20212399

³ Appendix 3 of the appellant's statement

to encompass the alternative scheme. Given the type, nature and scale of the alterations proposed, it seems to me that this scheme does not go beyond the terms of the notice. The alternative scheme would not give rise to any new planning considerations that are not material to the alleged unauthorised development. Furthermore, there has been no change in planning circumstances since the notice was issued or application 20212399 was refused.

4. The unauthorised development and the alternative scheme have been the subject of consultation. All parties have had an opportunity to consider and comment on the development and alternative scheme. Although internal alterations would need to be made to the as built development, I consider the nature and scale of the alterations are such that the development would not substantially change.
5. Bringing all these points together, I am content that the alternative scheme is part of the matters stated in the enforcement notice. Also, it is not so different in substance that it would deprive those who should have been consulted on the development the opportunity of consultation if planning permission is granted. I shall return to the alternative scheme later.

Matters concerning the notice

6. Rather than confirming which paragraph of s171A(1) of the Act⁴ applies, the notice refers to s172(1). Section 3 of the notice, the breach of planning control, alleges '*without planning permission*', which is a type of development identified in s171A(1)(a). The appeal parties are clear as to what is alleged and therefore which paragraph of s171A(1) applies. No injustice would arise from my correction of the notice in this regard.
7. The inclusion of the words '*unauthorised*' and '*(5 a studio)*' in the allegation are superfluous and shall be deleted.

Appeal on ground (a) and the deemed application for planning permission

8. An appeal on this ground is that planning permission should be granted for the matters alleged, the change of use to five self-contained flats.
9. The **main issues** are:
 - The effect of the development on: (i) residents living conditions; (ii) road safety; and (iii) cycle parking provision; and
 - Whether any other material considerations outweigh any harm arising from the above issues so as to justify a grant of planning permission.

Residents living conditions

10. Each of the flats has a fitted kitchen with appliances for cooking, washing and refrigeration, a shower room and a living/bedroom. Drawing Number A1-01 Revision D shows each flat having a single bed and a table with 2 dining chairs, in addition to the basic amenities of a toilet, personal washing facilities and cooking facilities. While the furniture has no doubt been shown for illustrative purposes only, it demonstrates the constrained nature of the living/sleeping areas. The kitchens and bathrooms are a reasonable size, proportionate to a

⁴ Town and Country Planning Act 1990 as amended

flat likely to be occupied by a single person. However, the small size of the living/ bedrooms, particularly in Flats 1 and 3, would be unduly restrictive in terms of accommodating facilities for day-to-day private domestic existence.

11. The appellant claims that the flats would be occupied by a 'transient population'. No specific details are given as to who would make up this transient population, although students and the elderly are mentioned. Furthermore, no details are given in respect of the residents' period of occupation. While people staying for several nights may be content with having little circulation space and using a bed as a sofa, such arrangements are not conducive for people who may have mobility issues or to people staying for several weeks, months or longer. Even if these details had been provided, restricting occupation to specific sectors of the population and/or their length of stay would be unduly restrictive, putting considerable pressure on the Council's resources in terms of enforcement. The imposition of suitably worded conditions would not therefore meet the reasonable or enforceable tests.
12. It is not uncommon for residents of flats to have no direct access into their outside amenity space or to their waste storage area or cycle parking facilities. Furthermore, in policy terms, the provision of a garden or communal space is desirable but not essential in relation to flat conversions. The provision of cycle parking and waste storage and collection facilities could be located in the front and rear yards and secured by condition. Residents of flats 1, 3, 4 and 5 would have access to these facilities via a shared pedestrian access to the side of the property. This gated route is secure and only accessible by the property's residents and by neighbouring occupiers. I find these existing and proposed arrangements to be satisfactory.
13. Due to the size of the flats, the development fails to provide acceptable living conditions for all residents, contrary to saved policies PS10 and H07 of the Leicester City Local Plan (2006), which seek to deliver quality development and secure a satisfactory living environment for residents, amongst other things.

Road safety

14. The development has the potential to affect the demand for on street parking, in an area where such provision is severely constrained. It also has the potential to affect the frequency of vehicles backing out on to the adjacent public highway as there are no facilities on Church Avenue to turn vehicles in the road. The property is however located within walking/cycling distance of the city centre (approximately 1km). Other facilities to meet the day-to-day needs of residents can be found even nearer. Glenfield Road is a public transport route and bus stops are located within approximately 100 metres of the property. The use of sustainable modes of transport and encouraging a shift away from private car usage is promoted by local and national planning policy.
15. While the development does not comply with local parking provision standards, neither would its lawful use as a dwellinghouse. The property is sustainably located, where reliance on private car usage is not a necessity. The development is also of a type where residents' car ownership is more than likely to be low. Any increased demand for on street parking or vehicles backing out on to Glenfield Road is likely to be indistinguishable from that which would arise from the property's lawful use as a dwelling.

16. For these reasons, the development causes no significant road safety concerns, in compliance with policy CS15 of the Leicester City Core Strategy (July 2014), which aims to manage congestion of the city's roads, amongst other things.

Cycle parking

17. While planning policy requires the provision of storage for 5 cycles, no cycle parking or storage is provided. Details of a secure cycle shed have however been provided⁵ and Drawing Number A1-02 Revision D shows that a secure cycle shed of appropriate dimensions could be accommodated in the rear yard. The rear yard is accessible via the gated side access and the secure cycle shed would therefore be accessible to residents of all the flats. The provision, and retention thereafter, of the secure cycle shed within an appropriate time frame could be secured by the imposition of a suitably worded condition.
18. For this reason, the development does not conflict with policy CS15 of the Leicester City Core Strategy (July 2014), which aims to provide high quality cycle parking, amongst other things.

Other considerations

19. The Council has no objection to the provision of waste storage and collection facilities being located to the front of the property. Such facilities are shown on Drawing Number A1-02 Revision D and could be secured by an appropriately worded condition.

Should planning permission be granted for the alternative scheme?

20. The appellant argues that the alternative scheme (shown on Drawing Number A1-02 Revision F) would achieve an acceptable level of amenity for all future residents, it would have a neutral effect on parking demand and cycle storage facilities can be provided in the rear yard. Under this alternative scheme, flats 1 and 2 on the ground floor would be converted into a single unit, flats 3 and 5 on the first and second floors would be converted into a single unit, and the floor space within flat 4 would be increased through internal alterations.
21. S177(1)(a) of the 1990 Act allows me to grant planning permission in respect of the matters stated in the notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. I have already concluded that the alternative scheme, for 3 flats, would be part of the matters alleged.
22. There would be no external alterations of the property. Internal partitions would be differently located in comparison to the as built scheme. Furthermore, 3 of the kitchens, 3 of the bathrooms and 2 of the flat entrance doors would be in the same positions. The ground floor hallway and both staircases would remain in the same position. The provision of waste storage and collection and cycle parking could still be secured by condition.
23. While there are no adopted minimum space standards for flats, the Technical Housing Standards – Nationally Described Space Standard remains a consideration, although full weight cannot be attributed to it. The alternative scheme would provide 2 x one bedroomed flats, whose gross floor area would

⁵ Appendix 7 of the appellant's Appeal Statement

exceed the relevant nationally described space standard. The third flat would have a shared living/sleeping area with a separate bathroom and separate kitchen accessed from an internal corridor. The nationally described space standards do not apply to residential units of less than one bedroom. The floor layout plan shows the living/sleeping area for this flat to be able to accommodate a single bed, desk, wardrobe and table with 3 dining chairs along with adequate circulation space to allow the free flow of movement.

24. For these reasons, the alternative scheme would secure a satisfactory living environment for all future residents, in accordance with saved policies PS10 and H07 of the Leicester City Local Plan (2006).

Conditions

25. Considering advice found in the PPG, I will impose a commencement condition because building work is required to bring about the alternative scheme. To avoid any doubt, and in the interests of safeguarding the living conditions of future residents, I shall impose conditions requiring the development to be carried out in accordance with the plan found in Appendix 3 of the appellant's appeal statement, and the provision and retention of waste storage and collection facilities. In the interests of proper planning and to safeguard road safety, I shall impose a condition requiring the provision and retention thereafter of a secure cycle shed.

Conclusion on ground (a)

26. Following my findings on the development of 5 self-contained flats and having considered all other matters, I conclude that this part of the ground (a) appeal fails. I will consider the appeal under ground (f) in respect of the 5 self-contained flats. I further conclude that the alternative scheme for 3 self-contained flats would not be significantly detrimental to future residents' living conditions. I shall allow the ground (a) appeal insofar as it relates to the alternative 3 flats scheme subject to conditions.

Appeal on ground (f)

27. From the notice as a whole, it seems to me that the aim is to remedy the breach of planning control (s173(4)(a)). It is necessary to consider whether the steps required by the notice exceed what is necessary to remedy the breach of planning control (s174(2)(f)).
28. The appellant's main argument is that the requirements should be varied so that the alternative scheme can be implemented. The planning merits of that proposal have been evaluated. Considering the positive planning assessment of that scheme, I have concluded that the alternative development would be acceptable in planning terms, subject to conditions. Apart from this planning permission, there is no other lawful fallback position.
29. The requirement to cease the use of the property as self-contained flats and cease the use of each flat as a separate dwelling presents potential problems, given that the alternative scheme is acceptable in planning terms. This requirement needs to be varied to ensure that the use as flats is ceased unless in compliance with the planning permission granted (s177(1)(a)). The appropriate requirement is as follows:

Cease the use of the property as flats other than in full compliance with the planning permission for 3 flats granted pursuant to appeal reference number APP/W2465/C/21/3286414.

30. Such a precise requirement would remedy the breach by making the development comply with the terms of the planning permission granted by me. It is not excessive or more onerous than first issued. It ensures that an unconditional planning permission is not granted by operation of s173(11) for the unauthorised material change of use to 5 flats. In these circumstances, reliance is placed on the operation of s180⁶ of the 1990 Act. Accordingly, the appeal on ground (f) succeeds to this limited extent.

Overall conclusion

31. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for the 3 flats shown in Drawing Number: A1-02 Revision F, but otherwise I will uphold the notice with corrections and variation and refuse to grant planning permission for the 5 self-contained flats. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant, by virtue of s180 of the Act. The requirements will be varied due to the partial success on ground (a).

Formal Decision

32. It is directed that the enforcement notice is corrected by:

In section 1. THIS IS A FORMAL NOTICE, the deletion of 'Section 172(1)' and the substitution of 'Section 171A(1)(a)'.

In section 3. THE BREACH OF PLANNING CONTROL ALLEGED, the deletion of the words 'unauthorised' and '(5 x studio)'.

And varied by:

In section 5. WHAT YOU ARE REQUIRED TO DO, the deletion of all the words in 5.1 and the substitution of the words 'Cease the use of the property as flats other than in full compliance with the planning permission for 3 flats granted pursuant to appeal reference number APP/W2465/C/21/3286414.'

33. Subject to the corrections and variation, the appeal is allowed in so far as it facilitates a scheme for 3 self-contained flats and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the material change of use to 3 self-contained flats at 7 Church Avenue, Leicester LE3 6AJ referred to in the enforcement notice, subject to the following conditions:
- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with approved plan Drawing Number A1-02 Revision F set out in Appendix 3 to Propinvest Glenfield Ltd's appeal statement.

⁶ Where a planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.

- 3) The 3 flats hereby permitted shall not be occupied until the secure cycle shed has been provided in accordance with details shown on Drawing Number A1-02 Revision F and as set out in Appendix 7 to Propinvest Glenfield Ltd's appeal statement. Once provided the secure cycle shed shall be retained thereafter.
 - 4) The 3 flats hereby permitted shall not be occupied until waste storage and collection facilities have been provided in accordance with details that have been submitted to and approved in writing by the local planning authority. Once provided the waste storage and collection facilities shall be retained thereafter.
34. Subject to the above corrections and variation, the enforcement notice is upheld, and the appeal is dismissed insofar as it relates to 5 self-contained flats. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the material change of use to 5 self-contained flats at 7 Church Avenue, Leicester LE3 6AJ, referred to in the enforcement notice.

M Madge

INSPECTOR