



Appeal Decisions

Site visit made on 8 February 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal A: APP/Q3060/C/21/3274786

19 Gregory Avenue, Lenton, Nottingham NG7 2EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Sandeep Krishan (Flare Homes Ltd) against an enforcement notice issued by Nottingham City Council.
 - The notice was issued on 23 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an unauthorised rear dormer extension.
 - The requirements of the notice are to remove the rear dormer extension and reinstate the roof to its former condition.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.
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Appeal B: APP/Q3060/W/21/3270547

19 Gregory Avenue, Lenton, Nottingham NG7 2EQ

- 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 Sandeep Krishan (Flare Homes Ltd) against the decision of Nottingham City Council.
 - The application Ref 21/00013/PFUL3, dated 5 January 2021, was refused by notice dated 10 February 2021.
 - The development proposed is described as 'Retrospective Application for Rear Dormer Extension to Roof'.
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Decisions

1. Appeal A: The enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B: The appeal is dismissed.

Application for costs

3. An application for costs was made by the appellant against the Council in respect of Appeal B. This application is the subject of a separate decision.

Preliminary Matters

4. Although the appeal form for Appeal B makes no reference to Flare Homes Ltd, it is evident from the planning application form and other appeal documentation relating to Appeal B, as well as the appeal form relating to

Appeal A, that Mr Krishan represents the company, and I have therefore included a reference to Flare Homes Ltd in the heading above in relation to both appeals.

5. The appeal on ground (g) was made on the basis that the notice should require compliance by 30 September 2022. In view of the period that had passed since the submission of the appeal, I sought the views of the appellant as to whether this was still what was sought. The response was that a compliance date of 30 September 2023 was now sought. I have considered the appeal on ground (f) with this revised date in mind.
6. Both appeals relate to the same development. Accordingly, I consider the deemed planning application arising from Appeal A, ground (a) and Appeal B together below.

Appeal A, ground (a) and Appeal B

Main Issues

7. The main issues are:
 - Whether the development would preserve or enhance the character or appearance of the New Lenton Conservation Area, within which the property lies;
 - Whether the development undermines policies aimed at maintaining balanced communities; and
 - The effect of the development on the living conditions of nearby residents.

The conservation area

8. The New Lenton Conservation Area is comprised of a handful of primarily residential streets and areas of open space. The properties lining the streets are of a generally similar character and age, creating a coherent overall character. The semi-detached Edwardian houses and villas on Gregory Avenue, of red brick with grey slate roofs, are typical of the conservation area, and contribute positively to its significance. Viewed from the front, No 19 appears largely unaltered and features a traditional, pitched-roof dormer, as does its attached neighbour.
9. The dormer that has been constructed at the rear is very different in terms of its design and scale. In particular, its flat-roofed, box design is wholly at odds with the character of the building and the form of the original roof. Moreover, although set down below the ridge and also set back from the eaves a little, the dormer extends to nearly the full width of the property. As a consequence, it dominates the rear roof slope. In doing so, notwithstanding the use of materials to match the original roof, it substantially changes the rear of the building, harming its character and appearance.
10. The dormer is not visible from Gregory Avenue and has no effect on views of the front of the property. However, it is in clear view from other nearby roads, including Heath Close, from where its contrast with the more traditional roof forms of neighbouring properties is evident. Consequently, it harms the character and appearance of the conservation area. The extent of the harm to the significance of the conservation area is, in the words of the National Planning Policy Framework (the Framework), 'less than substantial'. In

accordance with Policy HE1 of the Nottingham City Land and Planning Policies Development Plan Document (LAPP) and Paragraph 202 of the Framework, this harm should be weighed against the public benefits of the proposal.

11. As the appellant points out, planning permission has been granted for a number of dormers in the conservation area in recent years, both by the Council and at appeal. However, I have no details of the design of those dormers, and am consequently unable to compare them to the one at No 19. The harm I have found in this instance is a direct result of the particular design of the development. Consequently, those other decisions do not justify the scheme before me and do not demonstrate any inconsistency in the Council's approach. A box dormer to the rear of a nearby property on Willoughby Avenue¹ can be glimpsed between the houses on Gregory Avenue, but it is not prominent and does not alter the overall character of the area, which is not characterised by large box dormers such as that at the appeal property.

Balanced communities

12. The appeal property is occupied as a House in Multiple Occupation (HMO). The submitted plans show that it currently has 6 bedrooms over 3 floors. Policy 8 of the Greater Nottingham Aligned Core Strategies (ACS) seeks to maintain sustainable, inclusive, mixed communities. Policy HO6 of the LAPP does not permit extensions to existing HMOs where there would be conflict with that objective. The supporting text to HO6 advises that planning permission will not normally be granted for further HMOs where there is already a significant concentration of HMOs, which it defines as anything above 10%.
13. The Council advises that over half of the households in the 'core output area' and the 'surrounding output areas' are student households, and argues that this means that the community is unbalanced. The Council also emphasises the importance of retaining and providing family accommodation.
14. However, the appeal property is already an HMO, and I have no reason to suppose that it would be returned to use as family accommodation, irrespective of the dormer extension. Thus, it is highly doubtful that the dormer will have any bearing at all on the provision of family housing in the area.
15. While it may be that the intensification of an HMO use could have an effect on the balance of the community, any such effect in this instance would, at most, be very limited indeed. The Council refers to 2 additional bedrooms having been created at the property. However, one of these is on the first floor, and is unaffected by the dormer. Since the dormer relates to a single second floor bedroom, it can only increase the capacity of the HMO by 1 bedroom. Moreover, the appellant has provided a drawing showing that even that bedroom remains viable without the dormer. Thus, it is not clear to me that, of itself, the dormer has increased the number of residents the unit can accommodate at all. In any event, the suggestion of 2 additional bedrooms exaggerates the actual effect of the dormer.
16. I have noted the suggestion by the Council that 'it is questionable whether the authorised use of the property is as a C4 use for up to 6 occupants'. However, the development before me concerns only the dormer, and has no bearing on the Council's ability to pursue any other breach of planning control it identifies.

¹ This is quite possibly 16 Willoughby Avenue, to which the appellant refers and advises is lawful

The removal of the dormer, which is all the notice seeks, would not result in the property having the Council's preference of only 4 bedrooms.

17. For these reasons, I do not consider that the dormer undermines the local objective of maintaining balanced communities, and find no conflict with Policy 8 or Policy HO6, or with the relevant policies of the Framework relating to this matter.

Living conditions

18. Policies DE1 and HO6 of the LAPP and Policy 10 of the ACS are concerned, amongst other things, with the amenity of residents. The policies do not rule out the expansion of an existing HMO *per se*; the question is whether or not harm would arise from any more intense use of the property. As I have already indicated, the dormer only facilitates, at most, the provision of a single additional bedroom, so any intensification of the use would be commensurately limited.
19. Be that as it may, the Council suggests that harm would arise due to increased comings and goings and increased use of the bedrooms, but there is no evidence to show why any such increases would be harmful in this instance. It also argues that HMOs are often poorly maintained and have inappropriate waste management, but the appeal property is already an HMO, and I have no evidence to show that these concerns apply to it. An increase in the number of occupiers could lead to increased on-street parking but, again, I have no evidence that such an increase would be problematic. Nor is there evidence to indicate that such a limited increase in occupation of the property is likely to lead to anti-social behaviour.
20. In the absence of any clear evidence or more detailed explanation to support the Council's concerns, and given the negligible effect of the dormer on the accommodation at the property, I find no harm to the living conditions of nearby residents and no conflict with Policy DE1, Policy HO6 or Policy 10 in respect of this issue.

Other Matters

21. I have noted that the appellant regards the Lawful Development Certificate issued by the Council as misleading, and this appears to have led to the unauthorised development being carried out. However, while I appreciate the appellant's concerns relating to this, it does not alter or outweigh the harm I have found.
22. While the Framework supports sustainable development, I do not regard this scheme as sustainable development in view of the harm I have found. I do not consider that that harm could be addressed with planning conditions. Although the Framework seeks to boost the supply of housing and meet housing needs, it is not clear that the rear dormer increases the number of people the property can accommodate at all. I appreciate that the dormer is designed to improve the accommodation at the property, and attach some, limited weight to that benefit.

Planning Balance

23. I attach considerable importance and weight to the harm to the conservation area. I have not identified any public benefits of the scheme sufficient to

outweigh that harm. Accordingly, there is conflict with LAPP Policy HE1 and with Paragraph 202 of the Framework. There is conflict too with the design aims of Policy 10 of the ACS and Policy DE1 of the LAPP.

24. I have concluded that the development does not result in harm in respect of balanced communities or the living conditions of local residents, and find no conflict with the relevant development plan policies or the Framework in respect of those matters. Nevertheless, my conclusion on the first issue leads me to the view that the development is harmful and that there is conflict with the development plan as a whole. That harm is not outweighed by any of the considerations before me. Accordingly, planning permission should not be granted.

Appeal A, ground (g)

25. The appellant seeks a compliance period until 30 September 2023. I understand that the house is let to students. As a consequence, the appellant wishes to avoid significant building works during term time, so as to minimise the impact on the students' studies. I also understand the property is let well in advance of the start of the academic year.
26. However, it is unfortunately the case that remedial works to residential properties due to enforcement action are often disruptive. That disruption needs to be weighed against the desirability of remedying the breach of planning control without undue delay. In my judgement, allowing a period of around a year and a half in this instance would be excessive. While I appreciate that it is preferable for works to be carried out during the summer holidays, I do not consider that this justifies the extensive period the appellant seeks. I can see no reason to impose any other period. While I appreciate that the Covid-19 pandemic has caused considerable disruption, I am not persuaded that the 6 months specified in the notice leaves insufficient time to secure contractors.
27. For these reasons, the appeal on ground (g) fails.

Conclusion

28. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B also fails, for the reasons given.

Peter Willows

INSPECTOR