
Appeal Decision

Site visit made on 22 January 2024

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/Q3060/W/23/3326386

363A Derby Road , Nottingham NG7 2DZ

- 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 Nishad Nijamali (Exxco1 Ltd) against the decision of Nottingham City Council.
 - The application Ref 22/02347/PFUL3, dated 30 November 2022, was refused by notice dated 26 January 2023.
 - The development proposed is extension and alteration of existing large HMO to provide 10 additional bed spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

Main Issues

2. The main issues are:
 - The effect of the proposal on the character and appearance of the host building and the wider area also having regard to the setting of Lenton Lodge a Grade II* listed building;
 - The effect of the proposal on the living conditions of neighbouring occupiers with regard to noise and disturbance and the occupiers of 367 Derby Road with regard to privacy;
 - Whether the proposal would provide appropriate living conditions for the proposed occupiers with particular regard to light and outlook; and
 - Whether the proposal would maintain a balanced and sustainable community.

Reasons

Character and appearance

3. The appeal site is located on the corner of Hill Side and Derby Road. Hill Side has a quiet intimate character with large, detached villas set back from the road, elevated in large plots with planted gardens giving a verdant feel. This character is maintained to the west along both sides of Derby Road. In some places there is a low boundary wall, but shrubs and trees are behind it maintaining the green appearance.
4. On the opposite side of Derby Road from the appeal site is Lenton Lodge a grade II* listed building (the Lodge). The Lodge was constructed between 1823-

25 as the gate lodge to Wollaton Hall. Originally erected at the main entrance to Wollaton Park, it is constructed from Ashlar with lead mortar and lead roofs in the Elizabethan Revival style. Its significance for the purpose of this appeal lies in its architectural and historic interest providing information on the local evolution of an important building and park in the City and retaining much of its original features and materials.

5. The Lodge is experienced in the context of a busy main road together with a built environment which would be far removed from its original setting. Nevertheless, the domestic scale of most of the surrounding buildings, together with their distance from the Lodge, means that a sense of green space is maintained so that the Lodge maintains its dominance in the area. Even the modern large building to its east does not dominate due to its massing and location set back from the road. To the east of the appeal site the character becomes more mixed with larger commercial properties mixed in with housing.
6. The appeal site was originally occupied by a modest nineteenth century house set in a large plot which, apart from The Lodge, is the oldest surviving building in the immediate vicinity. Later, large extensions provided a care home, which was then converted to the current HMO. The extensions were designed to be subservient to the host dwelling with a two storey extension to the rear set below the ridgeline of the original dwelling and a single storey extension at each side of the dwelling. As a result the original dwelling is legible and as a whole the structure contributes positively to the spacious, verdant character of the area.
7. The appeal site is located in the setting of the Lodge and given the age of the building has done for a considerable amount of time. The subservience of the extensions, particularly along the Derby Road frontage means it can still be seen in association with the Lodge allowing uninterrupted views of it along Derby Road. Consequently, the appeal building contributes positively to its significance, even though being just one part of its setting.
8. The proposed first storey extension would not increase the footprint of the existing dwelling but would considerably increase the height to both the north and south sides of the building. As a result, the building would erode the space around the original house at first floor and lead to a mass of building which would be untypical of the surrounding domestic villas. Furthermore, even with the varied roof form, the height of the resultant building close to Derby Road would intrude on views along the road where the building line is typically set back. This would create a large obtrusive feature that would dominate views and visually compete with The Lodge, diluting its significance.
9. The harmful effects would be reinforced by the removal of the hedge marking the boundary to Hill Side and Derby Road and its replacement with a 2.1metre high brick wall creating a hard uncharacteristic edge to the development. Even if there were to be room for planting behind it, it would take some time to grow to a size to appear above it to soften its appearance. Furthermore, the proposal would result in a loss of a significant amount of grass and outdoor space for residents as a result of the proposed car parking layout, giving an uncharacteristic extent of hard surface in an area otherwise mainly characterised by green space around buildings.

10. While the extensions would be to the rear of the original dwelling, their size and scale would still engulf it, such that its legibility would be harmfully eroded to its detriment.
11. For the reasons above, I conclude that the proposal would be harmful to the character and appearance of the host building and the area. It would also fail to preserve the significance of Lenton Lodge a Grade II* building. It would therefore be contrary to Policies 10 and 11 of the Nottingham City Aligned Core Strategies Part 1 Local Plan 2014 (the Core Strategy) and Policies DE1, DE2 and HE1 of the Nottingham City Land and Planning Policies Development Plan Document Local Plan Part 2 2020 (LAPP). Together, these require that development respects and enhances the townscape and streetscape particularly the established scale, massing, historic views and be reflective of local character as well as conserving and/or enhancing heritage assets and their settings in line with their interest and significance.

Living conditions

12. To the west of the appeal building is 367 Derby Road a detached property with a private clinic sited closest to the appeal site and the remainder of the property used as two flats. The single storey clinic contains non habitable rooms adjacent to the boundary with the appeal site. The two storey element containing the flats is a significant distance from the boundary and there would be no material harm caused by any opportunity for direct overlooking between the two residential uses.
13. The first storey element of the proposal to the south would extend close to the boundary with No 367 and would contain two first floor windows which would give the opportunity for residents to look directly into the rear garden area of No 367 closest to the boundary. Although one of the windows would be obscure glazed, the other would not as it would serve a bedroom. However, the Council suggests the rear garden is used only for the clinic, a commercial area. As such there would be no material harm to the living conditions of residents of No 367. The two high level windows serving the kitchen areas would not lead to any overlooking of the neighbouring property.
14. The Council raises concerns that the proposal would exacerbate the existing harm to the amenities of neighbours and the wider area in general. However, there is very limited information before me regarding any potential problems. In its case officer report the Council refers to the potential for increased noise and anti-social behaviour (ASB); poor property maintenance and inappropriate management of waste disposal; a high turnover or occupants and the absence of residents outside of term time due to the increased number of residents proposed. I am not clear what potential harm would arise to residents' living conditions from the latter issue
15. I appreciate that some of these comments have been made by local residents. However, waste disposal and management of premises are matters that could be adequately dealt with by a condition. There is no substantive evidence before me of a problem with antisocial behaviour and behaviour. While I acknowledge it is likely that with increased residents there would be an increase in traffic movements, parking is accommodated on site together with turning and manoeuvring space. I am not persuaded that there would be material harm to residents' living conditions, particularly as any existing problems are not well evidenced.

16. The appellant has stated that natural light and ventilation would be provided to all habitable rooms to meet requirements under Building Regulations. This has not been disputed by the Council. However, outlook is a different matter. The plans show that at least five of the bedrooms would be reliant on a single rooflight only for outlook. Given the type of accommodation proposed and that the living room is a shared facility it is likely that people may spend lengthy periods of time in their bedrooms. Even so, the shared living rooms only have high level windows also leading to a lack of outlook. Consequently, the future occupiers would have a considerable lack of outlook which would provide overly oppressive and enclosed living conditions.
17. The appellant suggests that rooflights would be the most efficient window type for natural light provision thereby reducing the need for electric lighting compared to vertical windows of the same size. That may be the case, but it does not compensate sufficiently for the lack of outlook. They also draw my attention to other permissions across the city with habitable rooms serviced only by rooflights¹. However, there is a lack of detail and no indication if these are comparable to the scheme before me sufficient for me to make a similar decision.
18. I appreciate there is a balance to be had between the effect on the living conditions of neighbouring residents, the external appearance and the living conditions of prospective residents. However, for the reasons above I conclude that the appellant's solution does not provide appropriate living conditions for proposed occupiers with particular regard to outlook. The proposal would therefore be contrary to Policies DE1 and HO6 of the LAPP. These require that development provides a satisfactory level of amenity for occupiers of the development.
19. The Council also refers to Policy 10 of the Core Strategy. However, this requires that development has an appropriate impact on the amenity of nearby residents and occupiers, and I have found the proposal to be acceptable in this regard.

Balanced and sustainable community

20. Policy 8 of the Core Strategy requires that residential development should maintain, provide and contribute to a mix of housing tenures, types and sizes to create sustainable, inclusive and mixed communities. The policy goes on to state that the appropriate mix of house, type, tenure and density will be informed by amongst other things the need to redress the housing mix within areas of concentration of student households and HMOs.
21. I accept that the appeal building, due to its size and configuration is not suitable for use as a family dwelling and the proposal would not result in the loss of such. Nevertheless, the proposal would result in an increase in 10 bed spaces to an existing 18 bed HMO in an area where the Council has supplied evidence that there is a Significant Concentration of HMOs as defined in the explanatory text to Policy HO6 of the LAPP specifically regarding HMOs and Purpose Built Student Accommodation. The text also states that where there is already a significant concentration planning permission will not usually be granted for further HMOs.
22. However, the Policy also recognises that is one of a number of criteria of Policy HO6 that will be examined when considering proposals and paragraph 4.62 of

¹ 14/02416/PFUL3

the LAPP states that in considering proposals for HMOs in areas of Significant Concentration they will be required to be accompanied by supporting information addressing the criteria and issues raised in paragraph 4.61 of the LAPP.

23. The proposal is the extension of an existing facility and I note the comments of the appellant regarding the relatively minor increase in local population that would result, and the large amount of purpose built student accommodation that has been erected in the area. However, at the local level an increase of 10 beds to an existing 18 bed HMO would amount to a significant increase at that property and I still need to assess the proposal against the relevant criteria and issues.
24. The accommodation provided has not been specifically stated to be for student accommodation, nor is the site vacant and therefore criteria f) – i) of Policy HO6 are not relevant. A condition could be applied to deal with management issues. Furthermore, appropriate levels of car parking together with the provision of cycle parking would be provided meeting criterion e). There is very limited evidence before me of existing HMO's or purpose built accommodation within the immediate vicinity impacting on local character and amenity therefore the proposal would meet criterion c).
25. Criterion b) requires that regard be had to the individual characteristics of the building or site and immediate locality and this is explained in paragraph 4.61 that this may include its size, location, nature of and relationship of site to neighbouring uses, availability of external space, parking provision and any other special character or attributes that, having regard to the scale and intensity of the proposal, could facilitate /limit suitability for that purpose or for alternative use.
26. I have already found that the proposal would have an acceptable relationship with surrounding uses. The existing external area would be reorganised so that car parking would be provided although this would lead to a loss of green space on the site. It would be in a residential area, albeit one that the Council has evidenced already has a large concentration of HMO's. In addition I have found that the size of the extensions would not be acceptable in terms of local character.
27. Criterion d) requires that regard be had to the impact the proposed development on the character and amenity of the area or site having regard to the criteria set out in Policies DE1 and DE2. I have found that the proposal would conflict with Policies DE1 and DE2 being harmful to the character and appearance of the area and to the significance of a listed building. Therefore it fails to comply with criteria b) and d) of Policy HO6.
28. Policy HO6 requires me to make an assessment having regard to all the criteria. In this instance the proposal is in an area of a Significant Concentration of HMO accommodation and is harmful to the character and appearance of the area and the site while having regard to its individual characteristics and immediate locality. I acknowledge that the proposal may ease the pressure for the change of local family housing, but such applications would be considered under relevant policies in the development plan. I also understand that the Council has implemented an Article 4 Direction to help with this issue. Therefore, taking all factors into consideration, it would not meet the underlying objectives of Policy

HO6 to maintain a sustainable, inclusive and mixed community. Therefore there would be conflict with Policy 8 of the Core Strategy and Policy HO6 of the LAPP.

29. The Council also refers to Policy HO1 of the LAPP. However, this policy relates to housing mix and the need to prioritise family housing. This proposal does not result in the loss of family housing, nor could the site be realistically used for family housing. In this instance therefore it has not been determinative.

Other Matters

30. The appellant has drawn my attention to an appeal decision regarding the materiality of a building not suitable for family accommodation in allowing a HMO under the same policy I am considering here². However, I note that the property at Colwick Road was a house and was considered under Policy HO2 of the LAPP which is not considered in this decision as it is agreed that the proposal would not be suitable as a family dwelling. Furthermore, I have considerable evidence from the Council regarding the mix of property types which does not appear to have been the case in the Colwick Road decision. Therefore, it is not sufficiently similar to the case before me now in order for me to reach the same conclusions.

Conclusion

31. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
32. Given the extent of the works relative to the building, I find the harm to the listed building to be 'less than substantial' but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
33. The proposal would provide additional units of accommodation to meet a specific sector of the population in an accessible location. It would also provide economic benefits through the purchase of materials and the construction of the extensions together with the spend in the local economy of prospective residents. However together these are not sufficient to outweigh the considerable importance and weight I attach to the harm.
34. The proposal would fail to comply with policies regarding character and appearance of the area, prospective living conditions and the provision of sustainable, inclusive and mixed communities and therefore conflicts with the development plan as a whole. The material considerations I outline above, including the Framework are not sufficient to outweigh that conflict. The appeal is therefore dismissed.

Zoe Raygen

INSPECTOR

² APP/Q3060/W/22/3296114