



Appeal Decision

Site visit made on 23 January 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20.02.2024

Appeal Ref: APP/J3015/W/23/3327115

31 Humber Road, Beeston, Nottinghamshire NG9 2EJ

- 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 Jack Nijjar against the decision of Broxtowe Borough Council.
 - The application Ref 22/00301/FUL, dated 30 March 2022, was refused by notice dated 14 March 2023.
 - The development proposed is change of use from A1 to C3/C4 HMO dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from A1 to large HMO dwelling at 31 Humber Road, Beeston, Nottinghamshire NG9 2EJ in accordance with the terms of the application, Ref 22/00301/FUL, dated 30 March 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: block and location plan drawing 406.P05 rev B, plans as proposed drawing 406.P03 rev D and elevations as proposed drawing 406.P04 rev D.
 - 3) Prior to any above ground works details of the materials to be used in the construction of the external surfaces of the extensions and alterations hereby permitted shall have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

Applications for costs

2. An application for an award of costs was made by Mr Jack Nijjar against the decision of the Broxtowe Borough Council. This application will be the subject of a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December. The revised Framework is a material consideration which should be taken into account from the day of publication. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

4. The description of development in the banner heading above is taken from the application form and includes reference to the proposal being a C3/C4 use. However, the submitted plans also include external alterations and additions to the building and, as a large HMO, the use would be sui generis use. The Council's description of development on the decision notice better reflects the appeal proposal both in terms of use and the proposed extensions and alterations. I have, therefore, considered the appeal on the basis of the description of development on the Council's decision notice.
5. Although the conclusion to the Council's statement of case only references Policy 10 of the Greater Nottingham, Broxtowe Borough, Gedling Borough, Nottingham City, Aligned Core Strategies Part 1 Local Plan, adopted September 2014 (ACS) and Policy 17 of the Broxtowe Borough Council Part 2 Local Plan 2018-2028 (LP) I have considered Policies 8 and 10 of the ACS and Policies 15 and 17 of the LP as all four were all included in the reason for refusal.

Main Issue

6. The main issue is whether the proposed development is suitable, having regard to the development plan's approach to the provision of Houses in Multiple Occupation (HMOs).

Reasons

7. The appeal site is the host building, 31 Humber Road, which is a semi-detached building containing a hot food takeaway on the ground floor and one flat above. The adjacent dwelling, from the Council's evidence, is in use as an HMO. Within the immediate area is a block of flats on the opposite side of Humber Road and other residential properties on Humber Road, Fletcher Street and Middle Street around the appeal site.
8. The proposed change of use would alter the existing building from a hot food takeaway and flat above to a single, seven-bedroom, HMO. Four of the bedrooms would be on the ground floor, along with two kitchens, a sitting area, dining room and shower room. At first floor would be three bedrooms and a shower room. All of the rooms are of sufficient size to accommodate the number of occupants proposed and are provided with natural light and ventilation.
9. There is an Article 4 Direction covering the appeal site and surrounding area which removes the Permitted Development rights for the change of use from a dwellinghouse (use class C3) to a small HMO (use class C4).
10. The appeal property as a hot food takeaway and flat is not currently in a C3 use. Moreover, as a seven-bedroom HMO the proposal would be a large HMO and, therefore, a sui generis use not a C4 use. Consequently, the proposal would have required planning permission even without the Article 4 Direction. However, that planning permission is required for the change of use does not imply that there would be harm from such uses.
11. The Broxtowe Borough Council Houses in Multiple Occupation – Supplementary Planning Document, adopted July 2022, (SPD) acknowledges that HMOs are a significant part of the housing mix within Broxtowe and that they provide accommodation for a range of individuals. The SPD relates to both small and large HMOs and seeks to ensure that the demand for HMO accommodation can

- be met across the Article 4 area in a way that would not lead to adverse effects on the character of the area, through a saturation of a single type of home.
12. Although the area contains other HMOs, as detailed in the appellant's statement and the Council's committee report, I have no substantive evidence before me to show that the number of student households and HMOs has altered the residential profile of the neighbourhood, or that the area already suffers from an overconcentration of student households that has upset the balance of the area, the community or resulted in amenity issues, including parking.
 13. The SPD provides advice on managing the concentration of HMOs within sections 2.1-2.3 and I have not been provided with any substantive evidence that the proposed development would result in 'clustering', 'sandwiching', or that it would result in the total number of known HMOs exceeding 20% within an 100m radius.
 14. Neither is there any substantive evidence that the proposed change of use of the appeal property would tip the balance of house types so as to adversely affect the character of the area or its residential profile. Within the committee report, the Council acknowledged that there are other HMOs in the area but that there were still a large number of properties in the area that are occupied by families, and this was my view of the area at the time of my visit. The proposal would contribute to the mix of house types and sizes in the area and, therefore, would help to create a sustainable, inclusive, and mixed community.
 15. Even though the proposal would be more of an intensive residential use than the existing flat above the shop, and more intensive than if the building were to be converted to a single-family dwelling, the existing building currently contains a hot food takeaway which has associated comings and goings and noise and disturbance from customers and deliveries. The property is also on a junction of four roads, one of which also contains the tram line. The immediate area would already be affected by noise from traffic and trams and noise, traffic, and parking from the hot food takeaway use.
 16. The proposed change of use from a hot food takeaway and flat to a seven-bedroom HMO would increase the number of residential occupants. However, I am not convinced that there would be a noticeable increase in noise or disturbance from the comings and goings of the future occupants, even though they would be unrelated, in comparison to the existing use. Moreover, I have no substantive evidence that the intensification of the use and the associated noise and disturbance would be to such an extent that would adversely affect the character of the area.
 17. The proposed extension to the rear of the property would replace an existing car port structure, would be single storey and not extend beyond the rear or side elevation of the existing building. New windows and doors would also be inserted, predominately in place of the existing large glass shop front, all facing either Humber Road or Fletcher Road. The extension and alterations, subject to a condition to require the details of the materials to be approved, would not adversely affect the character or appearance of the building or the surrounding area and would reflect the design and proportions of the adjoining property.
 18. For the above reasons, I find that the proposed change of use would not harm the character of the area or housing mix, including considering the cumulative

effect of the intensification of the use. As such, the proposal would be suitable development, having regard to the development plan's approach to the provision of HMOs and would not conflict with Policies 8 or 10 of the ACS which, taken together, seek to maintain, provide, and contribute to a mix of housing tenures, types, and sizes in order to create sustainable, inclusive, and mixed communities.

19. For the same reasons, the proposal would not conflict with Policies 15 and 17 of the LP which, taken together, seek to ensure that development provides an appropriate mix of house size, type, tenure and density to ensure that the needs of the residents of all parts of the Borough, and all age groups, are met, and requires all development to integrate into its surroundings, make a positive contribution to the character and appearance of the area, and ensure a satisfactory living conditions for occupiers of the new development and neighbouring properties.

Other Matters

20. The Council also raise concern that allowing the appeal would set a precedent for the intensification of other properties to large HMOs, through change of use. However, I have not been made aware of any other similar properties that are in a similar existing use or similar context. Each case, in any event, would need to be considered on its merits and assessed against the development plan, including assessing the effect of concentrations of HMOs on the character of an area. For these reasons, the potential for other large HMOs to be created would not alter my findings on the main issue.

Conditions

21. The Council has provided a list of conditions that it considers would be appropriate and the appellant has commented on this. I have considered these in light of the National Planning Policy Framework and the Planning Practice Guidance. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
22. As detailed within the preliminary matters above, the proposal includes external alterations and an extension. Consequently, in order to protect the character and appearance of the area, I also consider a condition, requiring the external materials to be used in the alterations and additions, to be submitted for approval is necessary.

Conclusion

23. For the reasons given I conclude that the appeal should succeed.

K Townsend

INSPECTOR