



Appeal Decision

Site visit made on 26 June 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Appeal Ref: APP/Q3060/C/23/3328530

28 Rolleston Drive, Nottingham NG7 1JT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Andrew Sykes against an enforcement notice issued by Nottingham City Council.
- The notice was issued on 12 August 2023.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from a dwelling house within Use Class C4, a house in multiple occupation (3-6 occupants) to a Sui Generis large house in multiple occupation (8 occupants) of the Town and Country Planning Use Classes Order 1987 (as amended)
- The requirements of the notice are
Cease the use of the land as a Large House in Multiple Occupation within Sui Generis Use and revert to a House in Multiple Occupation within Use Class C4 (3-6 occupants)
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 (the Act) (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.

Decision

1. It is directed that the enforcement notice is varied by deleting of the words 'and revert to a House in Multiple Occupation within Use Class C4 (3-6 occupants)' from the requirement in paragraph 5 of the notice.
2. Subject to the variation, the appeal is dismissed, 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.

The Notice

3. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. As well as requiring the use as a sui generis to cease, the requirement also refers to reversion to an HMO (Class 4). However, requiring the previous lawful use to resume is outside the scope of the notice when cessation of the unlawful use would remedy the breach in the event of the notice being upheld. I will therefore delete the part of the requirement which refers to reversion to the previous use.

Preliminary Matters

4. Both parties have provided copies of appeal decisions which they consider to be of relevance for this appeal. However, each of those appeals has been considered upon its own merits and circumstances based upon the relevant development plan policies in force at the time of the appeal decision. The

submitted decisions do not all relate to properties where there is a high concentration of HMOs and the number of occupiers referred to in the decisions vary between 7 and 11. Some of the decisions relate to properties in different local authority areas where different policies apply.

5. Other decisions were issued before the current development plan policies were in force. The Harlaxton Drive decision¹ was issued in January 2015 when the Greater Nottingham Aligned Core Strategy (Adopted September 2014) (the Core Strategy) had been recently adopted. However, since 2015, later policies address issues of overconcentration of HMOs and student accommodation by introducing percentage thresholds. Whilst the submitted decisions are noted, every appeal has to be assessed upon based upon its own particular circumstances.

An appeal under ground (c)

6. An appeal under ground (c) alleges that a breach of planning control has not occurred. The lawful use of the appeal property falls within use class C4 (HMO)(3-6 occupants). The Council alleges that a material change of use has occurred from a Class C4 (HMO) to a Sui Generis (HMO) as the number of occupiers has increased from 6 to 8. The appellant's argument is that the increase in occupation by 2 does not result in a material change of use.
7. The concept of a material change of use is not defined in statute and is a question of fact and degree in each individual case. For a material change of use to occur, there must be a difference in the character of the activity from what has taken place previously. Planning policies and recognised planning purposes may be relevant material considerations in making such a judgement, although they are not determinative by themselves and cannot be considered in isolation. This approach is supported by the Courts in the cases of Richmond² and Kensington³ where the extent to which a use fulfils a legitimate planning purpose is relevant in deciding whether there has been a material change of use.
8. The need to create mixed and sustainable communities is a recognised planning purpose and is an important objective in both the National Planning Policy Framework and development plan policies. The appeal property has a lawful use as a Class C4(HMO) and is unlikely to revert to a single dwelling house. However, increasing the number of occupants from 6 to 8, when the appeal property is located in an area where there is already a significant concentration of student and HMO households is likely to have more impact than in an area without a significant concentration.
9. An increase in the number of occupiers from 6 to 8 is an increase of 33%. The nature of an HMO is that although there are shared facilities, the individual occupants are not living together as a single unit. Adding 2 more occupants to 6 unrelated occupants to create a Sui Generis (HMO) in the absence of evidence to the contrary is likely to have resulted in more activity with separate travel, coming and goings at different times and eating and shopping separately. The increase of 2 additional occupants at the appeal property, does, in my view, materially change the nature of the use.

¹ APP/Q3060/C/14/2215559

² Richmond upon Thames LBC v SEETR & Richmond upon Thames Churches Housing Trust [2001]JPL84

³ Royal Borough of Kensington and Chelsea v SSCLG AND David Reis and Gianna Tong [2016]EWHC 1785

10. Whilst the appellant has sought to rely upon two other appeal decisions⁴ under ground (c), neither are comparable to the appeal property as both appeals relate to 7 occupants. In one case, the additional occupant was sharing a bedroom which is materially different from the circumstances of this appeal. I do find that a material change of use has occurred for which planning permission is required. The appeal under ground (c) therefore fails.

Main Issue

11. The main issues are the effect of the development upon:

- the need to create or maintain sustainable and mixed communities
- the living conditions of the occupants of neighbouring properties with regard to noise or disturbance and on street parking.

Reasons

Mixed Communities

12. The internal layout of the detached appeal property now includes 8 bedrooms for students over three floors with two shower rooms. There is a large kitchen and sitting room on the lower ground floor which leads onto a garden. The bedrooms can all accommodate a double bed, a desk, wardrobes, and a sink.
13. There is an Article 4 Direction in place which removes permitted development rights for changes from C3 Dwellinghouse use to Use Class C4 (HMOs) throughout the Councils administrative area. Whilst, the Council agrees that the lawful use of the appeal property is as a Class C4(HMO), the Council refers to the challenges HMOs present when the Council wishes to create and maintain mixed communities.
14. Policy 8 of the Core Strategy states that the appropriate mix of house tenure and density within housing development will be informed by various matters including the need to redress the housing mix within areas where there is an over concentration of student households and Houses in Multiple Occupation (HMOs).
15. Policy H06 of the Land and Planning Policies (Adopted January 2020)(LAPP) only supports the extension/alteration of existing HMO's, including development that facilitates an increase in the number of occupiers/bedspaces, provided there is no conflict with Policy HO1 and HO2 and does not undermine local objectives to create or maintain sustainable, inclusive and mixed communities. Whilst the appeal property has already been extended as the number of occupiers is being increased, I do consider that the policy is relevant to the development. There is no conflict with Policy HO1 and HO2 which seek to protect family housing as the Council confirms that the lawful use of the property is C4(HMO) use rather than as a family dwelling.
16. Policy H06 of the LAPP sets out criteria to be used to assess a development's impact upon local objectives which includes assessing whether or not there is significant concentration of HMO or student households. A 'Significant Concentration' is defined as being 10% of total households of a defined areas. The Council states that as of November 2022, 57.9% of the households within the appeal sites output area were student households or HMOs. The current

⁴ APP/W/5780/20/3263096 and APP/X/15/3132534

concentration is therefore well in excess of the threshold of what is considered to be 'significant.'

17. The appellant has not indicated that the Council's figure is disputed and the surrounding areas also have a significant concentration. The criteria set out in Paragraph 2 of Policy HO6 includes consideration of the existing proportion of HMOs and /or other Student Households in the area and whether there is a 'Significant Concentration.'
18. The text to Policy HO6 of the LAPP at paragraph 4.60 sets out that in areas where there is a significant concentration of student households and HMOs, supporting information addressing the criteria other than 'Significant Concentration' set out in Part 2 of Policy HO6 should be provided as well as addressing the issues raised in Paragraph 4.61. Other criteria include the individual characteristics of the building, any evidence of existing HMOs in the immediate vicinity that impacts upon local character, impact upon character and amenity and car and cycle provision. Neither party has provided any details of existing HMOs in the immediate vicinity.
19. I note that the appeal property has generous accommodation and the appellant is proactive in ensuring that the property is effectively managed and has experience in managing student accommodation. The appellant indicates that there is adequate parking and cycle provision and I do not disagree with that view. The appellant has referred to high demand for the appeal property but the aim of the Council and the University is to provide more purpose built accommodation which in the long term will help to achieve more balanced communities.
20. The fact that the appeal property has already been converted and can accommodate 2 more occupants does not mean that increased occupation is acceptable. The matters relied upon by the appellant do not overcome the policy harm that arises from increasing the number of occupants by 2 in an area where 57.9% of households are student households or HMOs.
21. For the reasons given, I do conclude that the development does have a harmful effect on the wider need to create and maintain sustainable and mixed communities. It is contrary to Policy 8 of the Core Strategy which, amongst other things, seeks to redress the housing mix where there is an overconcentration of HMOs. It is also contrary to Policy HO6 of the LAPP which refers to not undermining local objectives to create and maintain sustainable and mixed communities.

Living conditions

22. The Council has referred to the potential for harm to amenities in terms of noise, disturbance and on -street parking. However, no details are provided of any complaints or specific concerns made by local residents with regard to these matters.
23. There are two parking spaces within the appeal site itself. Rolleston Drive has permit parking between the hours of 8 a.m. and 8 p.m. and the appellant indicates that permits are limited to 3 per household. Whether or not students rely upon public transport or have their own vehicles is a matter of personal preference. However, there is no evidence to indicate that the use of the appeal property has caused any parking or other issues.

24. It has not been demonstrated that the development is harmful to the living conditions of neighbouring occupants. There is no conflict with Policy 10 of the Core Strategy or policies HO6, IN2, TR1 and DE1 of the LAPP which collectively refer to protecting amenities of neighbouring properties and parking provision.

Conclusion on ground (a)

25. I have found that the development does not harm the living conditions of neighbouring occupiers. However, I have found that development does not maintain sustainable and mixed communities. There are no material considerations to outweigh the conflict that I have identified with the development plan. The appeal under ground (a) fails.

The appeal under ground (g)

26. An appeal under ground (g) relates to the period for compliance. The period for compliance is 3 months. When the appeal was lodged in August 2023, the appellant asked for an extended compliance time until June 2024 when the student tenancy agreements in force at the time came to an end. However, those tenants have now vacated. As the appellant has entered into new tenancy agreements with 6 occupiers, the reason given for an extended compliance period no longer applies. The appeal under ground (g) therefore fails.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall vary and 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).

E Griffin

INSPECTOR