



Appeal Decision

Site visit made on 22 October 2024

by Dr Rachael A Bust BSc (Hons) MA MSc LLM PhD MIOl MCMI FGS MIEEnvSci MRTPI
an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/Q3060/W/24/3346748
13 Marchwood Close, Nottingham, NG8 1PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Zilfiqar Ali against the decision of Nottingham City Council.
 - The application Ref is 24/00058/PFUL3.
 - The development proposed is the change of use from C3 dwelling to C4 HMO and use of annexe as landlord's accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form confirmed that the change of use commenced on 01/07/2023 but has not been completed. As a retrospective scheme I have therefore determined the appeal on the basis of the submitted plans.
3. There is a city-wide Direction¹ preventing the change of use of a dwellinghouse to an HMO within Use Class C4 under permitted development rights. As such, within Nottingham City planning permission is required for this type of change of use.

Main Issues

4. The main issues are the effect of the development on:
 - i. The housing provision for a mixed and balanced community in the area with particular regard to family accommodation; and
 - ii. The living conditions of occupiers of the appeal site; neighbouring properties and, more broadly, residents in the surrounding area, with regard to noise and disturbance, property upkeep, waste disposal, on street parking and other occupancy matters.

Reasons

Mixed and balanced communities

5. The appeal property is an extended two-storey end-terrace dwelling. According to the submitted evidence, the detached outbuilding within the rear garden was permitted subject to a planning condition which restricts its use to be in conjunction with the main dwelling and therefore it is prevented from being an independent dwellinghouse. The appeal site is located within a

¹ Article 4, Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

relatively quiet residential cul-de-sac situated close to the University of Nottingham Jubilee Campus and the Nottingham University Hospital Queen's Medical Centre.

6. Policy 8 of the Nottingham City Aligned Core Strategy Part 1 Local Plan (ACS) places an emphasis on providing family housing. This is followed through into Policy HO2 of the Nottingham City Local Plan Part 2 - Land and Planning Policies DPD (LAPP), which seeks a balanced housing mix and a protection of dwellinghouses suitable for family occupation.
7. Policy HO2 sets out a clear presumption against the loss of dwellings suitable for family occupation unless one of the exceptions set out in criteria a) to f) can be demonstrated. In this case, there is no substantive evidence before me to demonstrate any of the policy exceptions have been met which would deem the appeal property unsuitable for family occupation and that an alternative form of accommodation is required or justified. The extended nature of the appeal dwelling would provide very suitable family accommodation.
8. Policy HO6 of the LAPP covers both HMOs and Purpose Built Student Accommodation. It seeks to restrict new HMOs in areas where there is a significant concentration. The explanatory text to Policy HO6 provides a threshold of 10% of the housing stock, above which would indicate that an area has a significant concentration of HMOs. The methodology is set out in Appendix 6 of the LAPP. The Council's adopted approach to the definition of geographical units is to use the independently generated Output Areas created by the Office for National Statistics.
9. The Council's evidence indicates that the concentration of HMOs in the core output area including the appeal property is approximately 10.8% and the average of the surrounding areas is some 41.1%. As such both of these figures demonstrate that the concentration of HMOs exceeds the threshold which has been established by the development plan as being reasonable for ensuring a mixed and balanced community.
10. I note the appellant's argument that these figures conceal the reality because of the high proportion of student accommodation within the wider area. However, Policy HO6 does not distinguish between these two forms of communal accommodation. The methodology for assessing concentrations set out in Appendix 6 of the LAPP does apply a weighting factor to Halls of Residence/Purpose Built Student Accommodation in order to make a comparison of their equivalent in HMOs.
11. The appellant also refers to the Council's Public Register of HMOs whereby in June 2024 the submitted extract illustrates that there were 2 properties (including the appeal property) on Marchwood Close. Whilst this register is a source of information it is a separate regime to the planning system. Furthermore, the core output area which includes the appeal site also includes part of Western Boulevard and Wollaton Road. No similar extract has been submitted to indicate licenced HMOs on either of these roads. As such, I find the Council's evidence which cites the core output area and the wider area to be more comprehensive and in line with the development plan.
12. In conclusion to this first main issue, I find that the appeal scheme would harm the housing provision for a mixed and balanced community with

particular regard to family accommodation. As such there would be conflict with Policy 8 of the ACS which seeks to maintain, provide and contribute to a mix of housing tenures, types and sizes. There would also be conflict with Policies HO2 and HO6 of the LAPP which, collectively seek to provide and retain family sized dwellings within the housing mix to create and maintain sustainable, inclusive and mixed communities.

Living conditions

13. The 5-bedroom appeal property has, for the past year, been rented out to 1 family and 3 individuals. The appellant has chosen to occupy the outbuilding (referred to by the appellant as the annexe) within the rear garden.
14. From the submitted plans and my site visit I found the main house to provide acceptable living conditions for occupiers. The annexe is a compact, well built, single storey building. It contains a combined living and bedroom space, together with the typical amenities, such as a kitchen with appliances and shower room, which would be found in self-contained accommodation. The appellant has indicated that they continue to have access to, and will sometimes make use of, the facilities shared by the tenants of the main house. It would appear that there would be no need, other than potential preference, to use any facilities within the main house.
15. The compact nature of the living space within the annexe, in my judgement, is less desirable as permanent accommodation. Given that the annexe has a restricted permission for use in conjunction with the main dwelling rather than as a stand-alone residential use it did not need to meet the adopted Nationally Described Space Standards (NDSS) which are designed to establish minimum acceptable standards for living accommodation. In this case, the submitted plans confirm that the annexe is 32 sqm metres and is below the NDSS requirement for a 1-bedroom, 1-person single storey dwelling with a shower room.
16. The siting of the annexe is relatively close to the main house. As such it reduces the available external garden area for occupiers of both the main house and the annexe. The remaining intervening rear garden area is partially separated by a short timber fence section. The presence of the annexe and the partial division therefore diminishes the functionally available garden area for the potential number of occupiers of the appeal site as a whole. The access to the rear garden and the annexe is from a shared narrow alleyway from Marchwood Close.
17. The appellant contends that the appeal property and annexe could provide accommodation for an extended family. The inter-relationship between a family dwelling and an annexe for a family member is, in my judgement, different to the HMO with landlord's accommodation which does not have the same day to day functional dependency. In any event, that is not the form of development which has been applied for in this case. The HMO form of accommodation is different as the occupants do not form a single household. In an HMO the occupants live different and independent lifestyles which tends to lead to more comings and goings with potentially more visitors and deliveries. As such it is a more intensive form of use which is more likely to be harmful to the living conditions of neighbouring occupiers in terms of noise and disturbance. As such the use of the appeal property, with its annexe, as an HMO is a more intensive use than as an extended single-family dwelling.

18. The appellant's willingness to accept an alternatively restrictive condition for the annexe is noted. However, it would not overcome my concerns about the intensification of the use of this appeal site as a whole.
19. The Council's other concerns expressed within the second reason for refusal are noted. However, given that a change of use has already occurred, and the appeal property has been operating without planning permission as an HMO, no cogent evidence has been submitted to substantiate these concerns specifically in relation to the appeal property. As such I find the Council's concerns to be expressed in general terms and without specific evidence relating to the appeal property. I acknowledge that HMOs can generate the concerns referred to. However, in relation to a retrospective application such as in this case, it would be reasonable to expect the Council to address specific concerns relating to how the appeal property has operated during the time since the use commenced.
20. At the time of my site visit, which I acknowledge is at a point in time, the appeal property was maintained and occupied and there was no apparent evidence of noise or disturbance. No details have been submitted to indicate whether any noise attenuation measures have been incorporated into the property at any stage to mitigate any noise from occupiers transferring to the adjoining dwelling in the terraced row. However, the end terrace nature of the appeal property would limit this potential impact unlike if it was in a mid-terrace position. Furthermore, noise could be mitigated by requiring a technical assessment and installation of suitable noise attenuation measures. This could be secured by a planning condition if all other aspects of the scheme were found to be acceptable.
21. The plans do not illustrate any specific area for refuse storage. At the time of my site visit a row of several wheeled refuse bins for both the appeal property and the annexe were lined up within the front area of the property. As such there was no evidence of uncontained refuse which could affect the character, appearance and environmental condition of the Marchwood Close street scene.
22. No car or cycle parking provision was illustrated on the plans. My site visit confirmed that the former front garden to the appeal property was block paved and can accommodate 2 on-site car parking spaces together with some space for cycle parking. Daytime parking controls on Marchwood Close in the form of permits indicates that parking intervention and control is necessary. In the absence of any specific car parking standards or requirements for the appeal scheme, the on-site space together with the appellant's on-street parking permit and the ability to purchase a visitor on-street permit would represent some car parking provision for the appeal scheme. Whilst not all current tenants have a car this might not always be the case. In any event, the appeal site is within an urban area with public transport options and therefore access to a car is not a determinative matter in this case.
23. In drawing together this second main issue, the combined effect of the appeal property and the annexe is an over intensive use of the site and furthermore, as a consequence of the size of the annexe it does not provide a satisfactory living environment. This represents harm to the living conditions of the occupiers and adjacent occupiers and therefore conflicts with Policy 10 2f) of the ACS and Policies DE1 and HO6 of the LAPP. These policies collectively seek, amongst other things, that residential development is required to meet

the NDSS and should meet the needs of occupiers without prejudicing the amenity of adjacent occupiers.

24. Whilst I find there is no evidence of harm in relation to waste disposal, parking, property maintenance and other occupancy matters. The absence of harm on these specific matters does not overcome the conflict which arises in relation to Policy 10 2f) of the ACS and Policies HO2, HO6 and DE1 of the LAPP.
25. The Council's reason for refusal relating to living conditions refers to Policy IN2 of the LAPP which relates to land contamination, instability and pollution. The Council's evidence does not elaborate on how the appeal scheme would be in conflict with this policy. Accordingly, it is not a determinative issue.

Conclusion

26. For the reasons given above the appeal should be dismissed.

Dr Rachael A Bust

INSPECTOR