



Appeal decision

Site visit made on 13 December 2013

by Mike Croft MA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 December 2013

Appeal ref APP/Q3060/C/13/2202428

52a-54 Alfreton Road, Nottingham, NG7 3NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Nottingham City Council.
 - The appeal is made by Mr Bektas Aslan.
 - The Council's reference is 12/00263/ENCCOU.
 - The notice was issued on 7 June 2013.
 - The breach of planning control as alleged in notice is the material change of use of the land from retail on the ground floor with ancillary offices on the first floor to use as a social club on the ground and first floors.
 - The requirement of the notice is to cease the use of the land as a social club on the ground and first floors.
 - The period for compliance with the requirement is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. I dismiss the appeal, uphold the enforcement notice, and refuse planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

2. The appeal form indicated that grounds (a) and (b) were being pleaded. However, following correspondence with my office colleague, the appellant changed his grounds to those indicated in the heading above. Some of the arguments that the appellant deployed on his now-redundant ground (b) appeal can be regarded as points supporting his ground (a) appeal, and I have treated them as such.

The ground (a) appeal

3. The main issues are whether authorisation of the use in question would (i) harm the character of the area in visual terms and/or (ii) unduly harm the living conditions of local residents.

i. Character of the area

4. The appeal property is a three-storey terrace building on the north side of a shopping street which is part of a Local Shopping Centre defined in the Nottingham Local Plan, adopted in 2005. It is also within the Gamble

Street/Alfreton Road Conservation Area. The club is called the "Anatolian Social Club".

5. The Council's concern on this issue is that the use in question does not require or present an active frontage, and so is detrimental to the vitality and viability of the Centre and fails to preserve or enhance the character or appearance of the Conservation Area. The appellant claims that the frontage has changed since the notice was served, and that a very active frontage is now in place. However, I saw when I visited the appeal property that a metal security shutter screened half the ground floor frontage. This was during a weekday morning when the club was open, and the Council's representations indicate that the shutter has not been observed by its officers other than in the down position. To have such a shutter in the down position at times when the street presents a busy, vibrant appearance is harmful. In addition, the glazed parts of the remainder of the ground floor frontage are mainly covered by an opaque film. The Council regards this as no more than a cosmetic alteration, and I agree.
6. To summarise, the appeal use makes no positive contribution to the appearance of this shopping street. Although only a single unit, that absence of a positive contribution must be seen as harmful to the Centre's vitality and viability as the Council claims. To the extent that such vitality is an important part of the character of the Conservation Area, the social club use here also fails to preserve the character and appearance of the Conservation Area.
7. I therefore regard the appeal use as unsatisfactory on issue (i). It is contrary, on issue (i), to Local Plan policies CE1, S6 and BE12 to which the Council draws my attention.
 - ii. *Local residents' living conditions*
8. Although a shopping street, this part of Alfreton Road also has residential accommodation on nearby upper floors. A planning permission granted in 1992 included formation of a self-contained flat on the second floor of the appeal building itself. No 52 next door includes a residential flat.
9. The Council's position is that the club has a harmful effect on the living conditions of nearby occupants, especially from noise and disturbance as late as 0600 hours as a result of activity both within the building and from users congregating in the premises' rear yard. The Council also says that the latter harms the privacy of neighbours.
10. I saw that the ground floor of the premises is very much as the Council describes it, with television screens, games machines, and with drinks (including alcohol) available.
11. As indicated in the headings above, the enforcement notice alleges the use of both ground **and first** floors as a social club. I was unable to include the first floor in my inspection on the basis (on information from the appellant) that it is now occupied, separately from the club, in connection with the second floor flat. There is no evidence before me to indicate that the first floor was not part of the club when the notice was served, and there is no suggestion to that effect in the appellant's now-redundant ground (b) appeal. It is not clear to me whether this reduction in the physical extent of the club is intended to be permanent or temporary. I recognise that the reduction in the club's size certainly has the potential to reduce correspondingly any harm to living conditions through noise and disturbance.

12. The appellant also says that the use of the rear yard has ceased as a goodwill gesture. Again, it is not clear whether this is intended to be a permanent change or not. I have no doubt that any congregation of even a small group of people in the yard in the early hours of the morning could well create disturbance for first- and second-floor residents nearby. Harmful effects because of loss of privacy are less clear to me.
13. Alfreton Road is a busy road, both as a shopping street and as part of the A610 road to Nottingham city centre from junction 26 of the M1 motorway. Those living there cannot expect the same level of residential amenity as in a quiet residential area. In addition, the appellant points out that there are other late night uses (including a 24-hours food store) on Alfreton Road. But the scope for disturbance from the appeal use itself is clear, particularly from the use of the first floor, the use of the yard, and the use continuing through much of the night. A planning permission for the club use could be subject to conditions preventing the use of both the first floor and the yard, and imposing a closing time (perhaps midnight as suggested by the Council), and those restrictions could make the use satisfactory in relation to issue (ii).
14. However, it is important to bear in mind again that the enforcement notice alleges use of the first floor as well as the ground floor as a social club. That means that the deemed application is for permission for that use specifically on the first floor as well as on the ground floor. It must be doubtful therefore whether a condition excluding the first floor would be reasonable in terms of the guidance in Circular 11/95, *"The use of conditions in planning permissions"*. The appellants' long-term intentions are not clear, neither in relation to the first floor nor the external rear area, and that adds to my doubts about the reasonableness of a restrictive condition of the sort I mention. Given those points, therefore, and on the evidence before me, I find against the appellant on issue (ii). Authorisation of the appeal use would, on issue (ii), be contrary to Local Plan policies CE1, NE9 and S6.

Conclusion and other matters

15. The appellant considers that permission should be granted because the club promotes social cohesion, cultural diversity and the integration of club members (mainly from Turkey) into British society. Those are obviously laudable attributes of a club such as this. But I am not satisfied that they outweigh the objections that I have described for this club in this particular location. Even with the possibility of issue (ii) being met through restrictions on a planning permission, the objections under issue (i) remain. So the ground (a) appeal fails.

The ground (f) appeal

16. The appellant presents no arguments to support his ground (f) appeal. I agree with the Council that the enforcement notice's requirement is not excessive. The ground (f) appeal therefore fails.

Overall conclusion

17. As the appeal fails on both of grounds (a) and (f), my decision on it provides for the enforcement notice to be upheld and for planning permission to be refused on the deemed planning application associated with the ground (a) appeal.

Mike Croft

INSPECTOR

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