
Appeal Decision

Site visit made on 25 April 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 24th May 2017

Appeal Ref: APP/H2265/W/16/3165882

16 Royal Avenue, Tonbridge TN9 2DB

- 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 Peter Dabner against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/16/01498/FL, dated 11 May 2016, was refused by notice dated 1 July 2016.
 - The development proposed is extension and change of use to a 7 bed HMO.
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Decision

1. The appeal is dismissed.

Main Issue

2. The Council do not object to the extension of the property which has been previously granted planning permission¹ and was under construction and nearing completion at the time of my site visit. On the evidence before me and having visited the site I have no reason to disagree. Accordingly, the main issue is the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to noise and general disturbance.

Reasons

3. No. 16 Royal Avenue is a 2 storey semi-detached property in a street of similar properties that appeared to predominantly contain single family accommodation and had a peaceful and tranquil suburban character.
4. I acknowledge that planning permission would not be required for a C4 House in Multiple Occupation ('HMO')² which would allow for occupation by 6 unrelated individuals but this application is for use as a 7 bedroom HMO without restriction on the number of occupants, rather than a C4 use.
5. The proposal includes 3 bedrooms that are shown on the plans as providing a double bed and would therefore be suitable for double occupancy, in addition to 4 bedrooms shown as providing single beds. However, I also note that all but one of the bedrooms showing single beds is comparable in size to those with a double and could be used as such.

¹ TM/16/00619/FL.

² Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

6. The appellant suggests that occupancy would be for between 7-10³ persons but I share the Council's concerns that this could be greater and for the above reasons there is potential for 10-13 occupants in 7 lettable rooms. This would result in a material increase in comings and goings with associated noise and disturbance which would be over and above that which would be expected if the property was occupied by a large family or 6 unrelated individuals.
7. Furthermore, this would be exacerbated by the transient nature of HMO occupants, who would be more likely to lead separate, individual lives unlike the greater reliance on shared trips within a family and there would also be likely to be a commensurate and greater increase in visitors to the house and movements associated with servicing and deliveries. Given the close proximity of the property to other residential properties I consider there would be conflict between the proposal and other relatively low intensity residential uses in the immediate vicinity.
8. I have considered carefully the appellant's suggestion that a condition restricting the number of occupants to no more than 7 could be imposed. However, I have concerns regarding the use of such a condition in terms of the definition and interpretation of occupants, which is widely held as being a person who resides or is present at a given time. I am not persuaded that a condition attempting to limit numbers of occupants would be practically possible to enforce in terms of its interpretation and in detecting a contravention. Fortnightly property visits along with other management techniques⁴, such as making a register of occupants available on request would not be sufficient to alleviate my concerns in this regard. Consequently, such a condition would fail the tests of precision and enforceability set out in paragraph 206 of the National Planning Policy Framework.
9. For these reasons, the proposal would cause harm to the living conditions of neighbouring occupiers in terms of noise and general disturbance. The proposal would therefore conflict with Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Managing Development and the Environment Development Plan Document 2010. When taken as a whole and amongst other things, these require the character and amenity of an area, including prevailing level of tranquillity to be protected, conserved and where possible enhanced and that development which is detrimental to the amenity of a settlement will not be permitted.

Other Matters

10. In reaching this view I have balanced the need for a range of housing types in creating sustainable, inclusive and mixed communities that meets local needs as required by the Framework and accept that there are no objections to the quality of accommodation. Whilst I also recognise there may be a demand for such accommodation these matters do not outweigh the harm that I have identified in relation to the main issue.
11. I have been provided with an appeal decision in Langley, Slough⁵ where an Inspector considered such a condition was appropriate and what appears to be a delegated decision in Furnace Green, Crawley that imposed a similar

³ Email dated 28 June 2016.

⁴ 'rooms House in Multiple Occupation (HMO) Management Document.

⁵ APP/J0350/A/11/2157787.

restriction. However, I have not been provided with the full details and cannot therefore be certain that these are directly comparable to the proposal before me. In any event, each case must be determined on its own merits and the decisions do not therefore alter my view in relation to this issue.

Conclusion

12. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole. Material considerations do not indicate that a decision should be made other than in accordance with the development plan and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR