
Appeal Decision

Site visit made on 31 October 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 23 November 2017

Appeal Ref: APP/J2210/W/17/3179883
38 South Street, Canterbury CT1 1EA

- 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 and Mrs M Starling against the decision of Canterbury City Council.
 - The application Ref 17/00377, dated 12 April 2017, was refused by notice dated 25 May 2017.
 - The development proposed is change of use from a single dwellinghouse (Use Class C3) to a small house in multiple occupation (Use Class C4).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In July 2017 the Council adopted the Canterbury District Local Plan. Consequently, Policies DBE3 and HD6 of the Canterbury District Local Plan Publication Draft 2014, as referred to on the Council's decision notice, have now become Policies DBE3 and HD6 of the Canterbury District Local Plan 2017 (Local Plan). Furthermore, Policy BE1 of the Canterbury District Local Plan First Review 2006 (LPFR), also referred to on the Council's decision notice, has been superseded by Policy DBE3 of the Local Plan and thus carries no weight. I have considered the appeal on this basis.
3. The appellants indicate that until recently, the appeal property was their family home which they occupied along with their two children. In addition, the application has been made on the basis of the change of use from a single dwellinghouse (Use Class C3) to a small house in multiple occupation (Use Class C4). Thus, whilst the appellants state that the appeal property is currently occupied by four adults, I have considered the appeal on the basis that the lawful use of the appeal property is that of a single dwellinghouse (Use Class C3).
4. The appellants have submitted a revised proposed ground floor plan as part of the appeal in an attempt to overcome the Council's concerns in respect of living conditions. It shows an alternative subdivision of the lounge to provide two bedrooms. However, the partition wall would be sited in the centre of a front facing window and would be likely to be noticeable from along South Street. It would also result in bedrooms of considerably less width than those originally proposed. The revised plan is therefore substantially different to the proposed

ground floor plan submitted with the original planning application which was considered by the Council and consulted upon.

5. Having regard to the 'Wheatcroft Principles' it would therefore be unreasonable for me to accept the revised plan given that it may deprive the consultees of the original proposal the opportunity to provide representations on the it. In addition, the Council has raised a concern that the siting of the partition wall would, given its visibility, be out of keeping with the character and appearance of the area. In addition, that the narrow width of the bedrooms would result in a cramped living environment for any future occupiers. I share these concerns.
6. Moreover, the Procedural Guide for Planning Appeals – England dated 31 July 2015, in Annexe M paragraph M.1.1, sets out that a fresh planning application should normally be made if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal. I have therefore considered the appeal on the basis of the plans submitted as part of the original planning application.

Main issues

7. The main issues are whether the proposal would result in an overconcentration of houses in multiple occupation (HMOs) in the locality, and if so, the effects of this on the character and amenity of the area; and whether the proposal would provide adequate living conditions for any future occupiers.

Reasons

Concentration of HMOs

8. The appeal property is a three bedroomed, two storey, detached dwelling located within an area that is predominantly residential in character. Other dwellings in the area are typically two storeys and semi-detached or detached. The proposal seeks to convert the appeal property to a five bedroom dwelling for use as a HMO.
9. Canterbury City Council executed a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 (Article 4 Direction) which took effect on 25 February 2016. The Article 4 Direction removed permitted development rights for the change of use from single dwellinghouses (Use Class C3) to small HMOs (Use Class C4) within the Canterbury area. The appeal property lies within the area subject to the Article 4 Direction. The proposal should therefore be assessed against the relevant policies of the Council's development plan.
10. Policy HD6 of the Local Plan sets out that in order to maintain an appropriate housing mix and to safeguard the character of local communities, the proportion of HMOs within the areas subject to the Article 4 Direction should not exceed 10% of the total number of dwellings within a 100 metre (m) radius of any application property. Moreover, that the change of use to HMOs will not be permitted where that proportion would be exceeded. The policy also sets out that in areas where there is already an exceptionally high proportion of HMOs, such as in any particular block of properties, consideration will be given to permitting further conversions. Policy DBE3 of the Local Plan requires, amongst other things, development to promote, protect and enhance the distinctive character, diversity and quality of the District and to positively contribute to its local context.

11. The evidence demonstrates that within a 100m radius of the appeal property, there are 88 residential properties of which 9 are registered as HMOs. This equates to HMOs constituting approximately 10.2% of the total number of properties within this radius. The change of use of the appeal property to a HMO would increase this to approximately 11.4%. The proposed change of use would therefore exceed, albeit by a modest degree, the Council's required maximum threshold of HMOs in the area. Thus, it would result in an overconcentration of HMOs in the locality which would fail to maintain an appropriate housing mix in the area.
12. The supporting text to Policy HD6 of the Local Plan identifies that there is evidence that a high proportion of HMOs in any given area changes the character of the area, and the nature of the local community. Furthermore, that the Council has undertaken research that indicates that levels of late-night disturbance, untidy gardens and incidents of litter and poor storage of refuse experienced by local residents are significantly higher in areas with higher proportions of HMOs than those with lower proportions. I have no substantive reasons to doubt the findings of this research and the policy is in place to prevent such problems from arising. Thus, the overconcentration of HMOs in the area would also fail to safeguard the residential character and amenity of the area.
13. Moreover, there is no substantive evidence before me to demonstrate that there is a shortage of HMO provision in the District to justify any overriding need. Nor is the proportion of HMOs in the area exceptionally high to justify the permission of further conversions.
14. I therefore conclude that the proposal would be contrary to Policies HD6 and DBE3 of the Local Plan. These are recently adopted policies which have been found to be sound and thus I afford them significant weight. It would also be contrary to the aims and objectives of the National Planning Policy Framework (the Framework) which seek to promote inclusive and mixed communities.

Living conditions

15. The lounge on the ground floor of the appeal property would be subdivided to provide two additional bedrooms. One of these bedrooms would have no window. Thus, as a result of a severe lack of outlook, natural light and ventilation, the proposal would provide wholly inadequate living conditions for any future occupier of this room.
16. The appellant suggests that a window could be incorporated into the flank wall of the appeal property to serve this bedroom under permitted development rights subsequent to any planning permission. However, whether or not this is the case is not a matter for me to determine in an appeal under s78 of the Town and Country Planning Act 1990. Moreover, I have considered the appeal on the basis of the submitted plans which show no window. It is also suggested by the appellants that a condition could be imposed to secure the provision of a window to serve the bedroom. However, given the close proximity of the flank wall of the appeal property to the shared boundary with the neighbouring property, as shown on the submitted site location plan, a window in this location would be likely to continue to provide a poor level of outlook and natural light for any future occupier of this room. It may also have adverse implications for neighbour privacy. In addition, given that the appellants have attempted to overcome the lack of any window by submitting a

revised plan to subdivide the lounge in a different manner, this is indicative that it may not be feasible to incorporate a window into the flank elevation of the appeal property in any event. It would therefore be unreasonable of me, in light of these factors, to consider the imposition of such a condition had I been minded to allow the appeal for other reasons.

17. I therefore conclude that the proposal would be contrary to Policy DBE3 of the Local Plan, which requires, amongst other things, development to consider the amenity of future occupiers. It would also be contrary to the aims and objectives of the Framework which seek to secure a good standard of amenity for all future occupants of land and buildings.

Other matters

18. The appellants make reference to some examples of appeal decisions which involved the change of use of dwellinghouses to HMOs. Reference is also made to an example of a planning permission granted by the Council for the change of use of a dwellinghouse to a HMO on Forrester Close¹. However, the appeal decisions relate to other parts of the country, including North Yorkshire, Brighton and Newport and would therefore have been considered under a different planning policy context. In addition, I have only been provided with the appellants' summary of these appeal decisions which does not allow me to make any detailed comparisons between those cases and the proposal I am to consider. Nor have I been provided with any further detailed information in respect of the Forrester Close permission, such as the Council's officer report or the Council's decision notice. Thus, I am unable to make any detailed comparisons in this regard also. It is also not clear what stage the Council's emerging Local Plan was at when it decided the Forrester Road application and thus the weight that could be afforded to its policies. On this basis, these examples are not material considerations to which I afford any significant weight. Moreover, each case should be considered on its own merits.

Conclusion

19. Planning law² requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. As set out above, I have found that the proposal would conflict with the relevant policies of the development plan. I do not consider that there are any material considerations that indicate that the proposal should be determined otherwise than in accordance with the development plan.
20. Accordingly, for the reasons set out above and having regard to all other matters, including parking, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR

¹ Ref CA/16/01073

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990