
Appeal Decision

Site visit made on 26 May 2020

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2020

Appeal Ref: APP/A2280/W/19/3242570
14 Duncan Road, Gillingham ME7 4LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Doklu against the decision of Medway Council.
 - The application Ref MC/19/2552, dated 25 September 2019 was refused by notice dated 21 November 2019.
 - The application sought planning permission for part retrospective construction of part single storey part first floor rear extension and loft conversion including rear dormer along with construction of a part single storey part two storey side extension without complying with a condition attached to planning permission Ref MC/18/2676, dated 9 April 2019.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification), the extension herein approved shall remain in use with the rest of the house as a single family dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order amending, revoking and re-enacting that Order with or without modification) and no change of use to C4 shall be carried out unless planning permission has been granted on an application relating thereto.
 - The reason given for the condition is: To enable the Local Planning Authority to control such development in the interests of amenity, in accordance with Policy BNE2 of the Medway Local Plan 2003.
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Decision

1. The appeal is allowed and planning permission is granted for part retrospective construction of part single storey part first floor rear extension and loft conversion including rear dormer along with construction of a part single storey part two storey side extension at 14 Duncan Road, Gillingham, Kent ME7 4LE, in accordance with application Ref MC/19/2552 dated 25 September 2019, without compliance with condition number 4 previously imposed on planning permission Ref MC/18/2676 dated 9 April 2019 but subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing number DKM/7716/09 REV 02 and DKM/7716/10 REV 03 received 12 February 2019.

- 3) All materials used externally shall match those set out in the planning application form received 12 September 2018.

Application for costs

2. An application for costs was made by Mr Jazz Doklu against Medway Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The planning permission granted for the part single storey part first floor rear extension and loft conversion including rear dormer along with construction of a part single storey part two storey side extension includes a condition removing permitted development (PD) rights in respect of its use under Class C4 (Houses in Multiple Occupation) (HMO) or its use independently from the rest of the house.
4. The reason given for imposing the disputed condition is that it is in the interest of enabling the Local Planning Authority to control such development to safeguard amenity.
5. Taking the above background into account, the main issue is whether the removal of PD rights, in respect of Class C4 use or independent use from the rest of the house, is reasonable and necessary to (1) protect the character of the area, (2) safeguard the living conditions of local residents and, (3) ensure the safety of the users of the highway.

Reasons

Character of the area

6. The appeal site is located in Duncan Road, close to its junction with Trafalgar Street, Gillingham Road and Nelson Road. In Duncan Road, and within close proximity to the site, there are a series of different services including a pharmacy, a supermarket, a garage, and a pub. The street is therefore characterised by its fairly eclectic mix of uses and properties although it remains mainly residential with two storey terraced housing.
7. The appellant has stated that there are no HMOs within a 50m of the site. This statement has not been negated by the Council. Moreover, there is no clear evidence before me of how other properties along Duncan Road are occupied or how a small HMO would negatively impact the character of the area.
8. Furthermore, Paragraph 55 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are, amongst other things, necessary and reasonable. The Planning Practice Guidance (PPG) states that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
9. Judging from evidence submitted and my observations during the site visit, I note that the street, mainly due to its mixture of uses, does seem to be relatively busy with a reasonable amount of pedestrian and car traffic. Therefore it is unclear to me, considering that the street already has a significant amount of traffic, including non-residential traffic by virtue of the mix of services located along that street, how a small HMO would significantly change the character of the area.

10. In conclusion, and in the absence of clear evidence that demonstrates the impact that an HMO would have on the street, I do not find that the potential use of the property as an HMO and consequent intensification of use would cause significant harm to the character of the area.

Living Conditions

11. The appeal property is part of an existing terrace and it is adjoined by other properties on both sides which appear to be in residential use. On the opposite side of the road from the appeal site is a pharmacy with what appears to be residential use above, and a few doors further down from the appeal site, towards Gillingham Road, is a shop again with what appears to be residential above.
12. I acknowledge that the use of the appeal property as an HMO could, potentially, lead to six unrelated individuals occupying the property, and also that HMOs, by their very nature, may lead to an increase in the level of noise and general disturbance associated with the comings and goings of people. However, in this case the property could also be occupied by a family of six, including older children leading independent lives. I do not agree therefore that its use as an HMO would necessarily result in a significant increase in noise and disturbance over and above that likely to be generated by a family of six.
13. Furthermore, within the vicinity of the appeal site, there are other properties which, due to their use, are likely to generate more general disturbance than that to be reasonably expected from an HMO. Also, within a few meters from the appeal site, there is a bus stop, which is likely to have a higher impact on the levels of disturbance to nearby property than an HMO with six residents.
14. In respect of the use of the external amenity space, I do not find that the relative potential increase would be of such a level as to prejudice the living conditions of the occupants of nearby properties.
15. Therefore, I do not consider that the level of disturbance created by an HMO on this specific site would significantly harm the living conditions of the occupants of neighbouring dwellings.

Highway Safety

16. There are parking restrictions in place along Duncan Road and parking is restricted during certain periods of the day, which clearly signals that on-street car parking is an issue in this area.
17. Paragraph 109 of the Framework does state that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the cumulative residual impacts on the road network would be severe.
18. Taking into account that the appeal site is unable to provide off-street car parking, I now must turn my attention to the likely additional impact that the use of the property as an HMO would have when compared to the impact it would likely have if Condition 4 remains in place.
19. Although it is possible that future occupants of the property, if it were allowed to be used as an HMO, could apply for on-street car parking permits, a similar

argument could also be made in relation to occupants of the property while in its current use.

20. Furthermore, considering the site's accessibility in terms of services and public transport and due to its relatively modest size, I do not find that the property would necessarily lead to an unacceptable increase in the level of car use and there is no evidence before me to demonstrate that the parking needs of a house occupied as an HMO would be significantly different of that occupied by a family.
21. Evidence has been supplied by the appellant to demonstrate although 10 highway incidents have occurred within or immediately adjacent to Duncan Street in the last 5 years, these have occurred in close proximity to junctions with other roads. Therefore, there is no evidence to suggest that increased manoeuvring in Duncan Road would decrease highway safety.
22. In conclusion, I do not consider that the removal of Condition 4 would result in significant harm to highway safety or significantly impact the road network.

Other Matters

23. I have taken into consideration, as part of my decision making process, comments submitted on this specific proposal by other interested parties. Although I am mindful of the issues raised, I must come to a decision based on the planning arguments and the evidence presented. For the reasons stated above, I have found no significant harm would arise from the removal of Condition 4.

Conclusion

24. For the above reasons, and having had regard to all matters raised, the appeal is allowed and planning permission granted.

Andre Pinto

INSPECTOR