



Appeal Decision

Site visit made on 7 September 2020 by Mariam Noorgat BSc (Hons)

Decision by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/A2280/D/19/3242314

25 St Johns Road, Gillingham, Kent ME7 5QE

- 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 Birkby against the decision of Medway Council.
 - The application Ref MC/19/2543 dated 25 September 2019 was refused by notice dated 18 November 2019.
 - The application sought planning permission for the construction of a single storey extension to rear – demolition of existing single storey extension to rear without complying with a condition attached to planning permission Ref MC/19/1501, dated 12 September 2019.
 - The condition in dispute is No 3 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 the construction of a single storey extension to rear – demolition of existing single storey extension to rear at 25 St Johns Road, Gillingham, Kent ME7 5QE in accordance with the application Ref MC/19/2543 dated 25 September 2019, without compliance with condition number 3 previously imposed on planning permission Ref MC/19/1501 dated 12 September 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing number 19/255/03 D received on 9 July 2019.
 - 2) All materials used externally shall match those of the existing building.

Application for costs

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

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

4. The main issue is whether condition 3 is reasonable and necessary having regard to the character of the area, the living conditions of neighbouring residents in respect of noise and disturbance, and highway safety.

Reasons for the Recommendation

5. The plans approved by planning permission ref MC/19/1501 show the property to have three en-suite bedrooms. The extension subject of that permission is shown to provide a kitchen. Condition 3 restricts the use of the property to a single family dwellinghouse and prevents the change of use from a dwellinghouse (Class C3 Use) to a house in multiple occupation (HMO) (Class C4 Use).
6. The National Planning Policy Framework (the 'Framework') states, in paragraph 55, that the criteria for planning conditions includes that they should only be imposed where they are necessary, and relevant to the development to be permitted. I do not consider a condition restricting the use of the whole property is sufficiently related to the permitted kitchen extension. No other changes to the layout, including the number or size of bedrooms, was shown and there is no other substantive evidence before me to suggest the provision of the kitchen extension could lead to such a change of use. As such condition 3 is unnecessary.
7. Notwithstanding this, even if the dwelling were used as a HMO, the plans show three double bedrooms accommodating a maximum of six people. I do not consider six people living as an HMO would be materially different from six people that could live together as a single household at the property under its lawful Class C3 Use in terms of their impact on the character of the area or the living conditions of neighbouring residents. The dwelling is set within a dense urban and primarily residential area. Although it appears to be mainly occupied by families, it is a busy area with many comings and goings and therefore were this single property used as a 3 double bedroom HMO, the impact on this character or on the living conditions of the neighbours would be broadly comparable to that of a Class C3 Use dwellinghouse.
8. In respect to concerns regarding the impact on highway safety and parking, I saw at the time of my site visit that parking restrictions are in place and that there were quite a few parking spaces available close to the appeal site, though I accept in the evenings more cars may be present. However, given the close proximity of public transport and other shops and facilities to the appeal site, occupants of the property would not need to be reliant on cars. Similar to the above, it is not unreasonable to consider the volume of traffic generated by six

people living as an HMO to be comparable to that generated by six people living as a single household.

9. Paragraph 53 of the Framework identifies that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. For the reasons given above, there is no clear justification to remove the permitted development rights for this site relating to the change of use from Class C3 to Class C4.
10. In summary, I consider condition 3 is not reasonable or necessary as without it a potential Class C4 Use would not harm the character of the area, the living conditions of neighbouring occupiers, or highway safety. It therefore would accord with policies BNE1 and BNE2 of the Medway Local Plan, adopted May 2003 (the 'Local Plan'), which seeks to ensure development is appropriate to the character of the area and have regard to noise and activity levels respectively to protect the amenities of nearby properties. It would also accord with Local Plan Policy T1 which seeks to ensure the highways impact of development is acceptable.

Conditions

11. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permissions under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In the interests of certainty I have therefore imposed the conditions requiring the development to be carried out in accordance with the plans, and that the extension be constructed in materials to match the main building to protect the character and appearance of the area.

Recommendation and Conclusions

12. For the reasons given above, I conclude that the appeal should be allowed.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

13. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Andrew Owen

INSPECTOR