



Appeal Decision

Site Visit made on 11 November 2020

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2020

Appeal Ref: APP/E2205/W/20/3255812
69 Crownfield Road, Ashford, TN23 5EE

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 S Mahant against the decision of Ashford Borough Council.

The application Ref 20/00479/AS, dated 13 April 2020, was refused by notice dated 12 June 2020.

The development proposed is change of use from C3 (residential) to C4 (small HMO).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (a) whether the proposal would adversely affect the living conditions of neighbouring occupiers by reason of excess noise and disturbance and (b) the adequacy of onsite parking provision and the consequent impact on highway safety.

Reasons

3. The appeal relates to a mid-terrace three storey building with a ground floor integral garage with a hardstanding available for parking between this and the road. Whilst the application form indicates that the change of use had not started, it was evident from my visit that internal alterations relating to the proposal had taken place and that two of the three units proposed were let.
4. Ordinarily, permitted development allowances set in planning legislation would enable a change of use from a dwellinghouse in use class C3 to a small house in multiple occupation (HMO) (3 to 6 occupants) in use class C4. However, the Council has issued an Article 4 Direction removing this allowance within four wards including Beaver Ward where the appeal site is located.
5. Policy HOU11 of the Ashford Local Plan 2030 (adopted 2019) (ALP) states that HMOs will only be permitted where the proposed development, taken by itself or in combination with existing HMOs in the vicinity of the site, would not result in an unacceptably harmful impact in respect of: a) Residential amenity, caused by increased noise and disturbance; b) Highway safety, caused by insufficient onsite parking provision thereby resulting in an unacceptable increase in on street parking; or c) Visual amenity, including that from inappropriate or insufficient arrangements for dustbin storage.

6. The plans show each unit with a double bed. All three units would be capable of occupation by two persons making a theoretical maximum of six persons. Whilst the appellant indicates intent to let to single persons, as it is claimed has happened on two of the units, there is no assurance in the long term that this would always be the case. However, in my judgement, overall occupation levels from the proposal are likely to be lower than if the property were to be divided into six single units, still within use class C4. Furthermore, that the level of occupation arising from the proposal is unlikely to be materially different from that arising from occupation as a single dwelling occupied by a family. There may be some differences in the patterns of comings and goings to and from the site between single and multiple occupation; but if the property is considered in isolation this would be unlikely to result in undue noise and disturbance for neighbours.
7. A reason for the imposition of the Article 4 Direction was the Council's concerns about the cumulative impact of a high concentration of HMOs in a locality resulting in an excess of noise and disturbance. The Council comments that the nearest HMO is at 63 Crownfield Road and that there are another five nearby. The appellant notes that there are 121 houses in Crownfield Road and Maypits, the roads referred to by the Council, and that the six licenced HMOs equate to just over 5% of this total. Moreover, that the other HMOs tend to be for a larger number of units than proposed at the appeal site. It is my judgement that activity levels likely to arise from the proposal when added to those arising from the local concentration of HMOs would not be so great as to result in excessive noise and disturbance that would significantly harm the living conditions of nearby residents.
8. The Council's Residential Parking and Design Guidance Supplementary Planning Document (SPD) states that for two spaces with walls/fences on one side, the available space needs to be a minimum of 5.2m wide. There is a low fence on the boundary with no.71 but not to the other side. The parties disagree on the precise width of hardstanding available for parking, but it would appear to be just short of the width specified in the SPD. The appellant has submitted photographs showing two cars parked on the frontage; I am in no doubt that it would continue to be used in this way should occupiers have two cars. Evidence submitted by the appellant indicates that car ownership levels for those living in HMOs tend to be relatively low compared with other forms of occupation. In the scenario that occupation as three units were to result in a need to park more than two vehicles, and the integral garage could not also be used, then on-street parking would be required. Crownfield Road is straight and there are opportunities for kerbside parking along its length should this be necessary. An increase in on-street parking is unlikely to arise from the proposal, but if it did, I consider its impact would be slight. There would not be an impact on highway safety to the detriment of other road users.
9. There would no external changes to the building. Bins could be stored adjacent to the entrance and brought forward to the kerb for emptying as required.
10. The proposal would be satisfactory in respect of neighbours' living conditions and parking. It would not result in any material harm in relation to criteria (a), (b) or (c) of Policy HOU11. The Article 4 Direction would enable the Council to consider any subsequent proposals for small HMOs in use class C4 in the vicinity of the site on their individual and cumulative impacts.

Other Matters

11. After refusal of the appeal proposal, the Council received advice from Natural England in respect of nationally and internationally designated protected sites at Stodmarsh lakes, east of Canterbury. This relates to an increased level of nitrates and phosphates within the protected sites which is adversely affecting the integrity of the habitat of the lakes. Natural England's report comments that until further research is complete, uncertainty of new growth's impacts on designated sites remains. Therefore, there is the potential for future housing developments across the Stodmarsh catchment to exacerbate existing impacts thereby creating a risk to their future conservation status¹.
12. One way to address this uncertainty and subsequent risk, until any solutions are implemented to remove the current adverse effects on Stodmarsh, is for new development to achieve nutrient neutrality. In line with established caselaw and the 'precautionary principle', Natural England are advising that applications for certain types of development within the Stour river catchment, and/or which discharge to particular Wastewater Treatment works within the catchment, should be the subject of screening under the Habitat Regulations and, consequently, the undertaking of an Appropriate Assessment prior to any decision to grant planning permission.
13. Responsibility for conducting an Appropriate Assessment passes to the Planning Inspectorate for proposals at appeal. However, there is little information to assist me in this process. Neither party has commented if they consider that occupation of the appeal site as a small HMO would be likely to result in a material increase in wastewater compared with occupation as a single unit. Such a change would not ordinarily require a grant of planning permission and the Council's Article 4 Direction relates to matters other than wastewater discharge. Neither party has consulted Natural England, as the Statutory Nature Conservation Body, for their opinion on the appeal proposal; this is a requirement for completion of an Appropriate Assessment.
14. The Council has not indicated if compliance with conditions or other restrictions, such as a planning obligation, would enable it to ascertain that the proposal would not adversely affect the integrity of the protected sites. Based on the information before me, there remains uncertainty that the proposal either alone, or in combination with other plans and projects, would not have a significant effect on the important interest features of the protected sites. Accordingly, and having regard to the 'precautionary principle', it would be inappropriate to grant planning permission under these circumstances.

Conclusion

15. Whilst I have found the proposal to be acceptable in relation to its effects on neighbours' living conditions and in relation to parking, there is insufficient information before me to conclude that there would not be an adverse impact on protected sites. The appeal should therefore be dismissed.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR

¹ Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites - For Local Planning Authorities - by Natural England (July 2020).