The Planning Inspectorate

Appeal Decision

Site visit made on 21 April 2021

by C J Leigh BSc(Hons) MPhill MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021.

Appeal Ref: APP/A2280/W/20/3263135
101-103 Shakespeare Road, Gillingham, Kent, ME7 5QL

- 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 Danny Birkby against the decision of Medway Council.
- The application Ref MC/20/2022, dated 2 October 2020, was refused by notice dated 2 November 2020.
- The application sought planning permission for construction of a 5-bedroomed end of terrace house with integral garage without complying with a condition attached to planning permission Ref 18/1484, dated 9 August 2018.
- The condition in dispute is No 6 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 dwellinghouse herein approved shall remain in use as a dwellinghouse falling within Class C3 only 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 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'.

Application for costs

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

Decision

2. The appeal is allowed and planning permission is granted for construction of a 5-bedroomed end of terrace house with integral garage at 101-103 Shakespeare Road, Gillingham, Kent, ME7 5QL in accordance with the application Ref MC/20/2022, dated 2 October 2020, without compliance with condition number 6 previously imposed on planning permission Ref 18/1484, dated 9 August 2018, and subject to the following conditions:
    1. The development hereby permitted shall be begun before the expiration of three years from the date of planning permission being granted under MC/18/1484 being 9 August 2018.
    2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers PL01 Rev A and PL02 Rev A received on 30 July 2018.

3. All materials used externally shall match those outlined within the application form and approved drawings.
4. The construction works shall be undertaken in accordance with the Construction Environmental Management Plan (CEMP) received on 8 November 2019 approved under planning application MC/19/2682.
5. The dwelling herein approved shall not be occupied until the area shown on the submitted layout as vehicle parking space and garaging has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space and garaging.
6. The shared living accommodation hereby permitted shall be managed in accordance with the Point 2 Point Management Plan, for HMO/co-living at 101-103 Shakespeare Road, and thereafter the property shall be occupied in accordance with these details.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of adjoining occupants.

Reasons

4. Shakespeare Road is a predominately residential road, with shops nearby and the Medway Maritime Hospital to the west. The Council's evidence indicates the area is primarily in single household occupation. I accept that the character and pattern of use of an HMO may be different to a single household property in terms of the density of occupation and that occupants may have individual lifestyles that result in comings and goings at different times of day and night. However, it is relevant in this appeal is whether that different level of occupation and pattern of use of the dwelling will have any harmful effect on living conditions: the reason for attaching Condition 6 was to enable the local planning authority to control use of the dwelling in the interests of amenity. This further requires an assessment of the dwelling in relation to neighbouring residences.

5. The appeal property, which is currently under construction, is wider than most other properties in the road and there is a gap to one adjoining house; effectively, the property is an end of terrace building that is larger than others. I saw that the Shakespeare Road properties in the vicinity of the appeal site primarily open directly onto the narrow footway: both front doors and windows. The footway is narrow with parked cars along the road, and this tight urban environment gives rise to activity directly outside homes at present.

6. The comings and goings from a dwelling in this situation as used by an HMO and as used by a household would have little material difference in terms of disturbance to neighbours: residents would enter and leave the house directly onto the footway, where there is already activity from many houses similarly directly accessing this area as well as vehicles close by. Indeed, the gap between the front door of the appeal property and the doors/front windows to the adjoining properties is wider than seen with most houses on this side of the road near the appeal site. The use of the rear garden by residents of the

property would not lead to a materially different impact within this tight urban area compared to the way in which any household could use that garden.

7. Residents have raised concerns regarding the effect on parking provision in the area. There is little objective evidence on this matter of levels of parking demand and provision, though I saw at my site visit there are parking controls in the area and that there is considerable parking along the road. However, I also acknowledge the site is close to employment areas – most notably the Medway Maritime Hospital –there are a number of bus services close by, and the area is generally level and conducive to walking and cycling. These matters indicate a strong likelihood that an increase in occupancy of the property will not necessarily lead to an increase in demand for car parking. Thus, on the basis of the evidence presented to me, I consider the proposals would not lead to any material disruption to existing occupants by virtue of demand for car parking, or to highway safety.

8. Both main parties have referred me to a number of appeal decisions. It is evident to me that my colleague Inspectors made a decision on whether those properties should be an HMO on the basis of the facts before them and the circumstances of each property, as they must. I have determined this appeal on its own merits in light of the character of the street and the particular features of the building and come to conclusions accordingly.

9. On the main issue it is therefore my conclusion that the proposed development would be appropriate to the area and not harm the living conditions of adjoining occupiers. It would therefore be consistent with Policies BNE1 and BNE2 of the Medway Local Plan 2002, which require new development to be appropriate to the character and appearance of the built environment and seeks to protect the amenity of nearby and adjacent properties.

10. The appeal is therefore allowed. I have attached the Council's suggested conditions, as these were those attached to the original grant of permission MC/18/1484 (modified where appropriate). I have attached the appellant's suggested condition that refers to the use of the Management Plan at the premises as, in this instance, it contains measures to assist in ensuring a neighbourly operation of the building; I consider it would be enforceable as it sets out ways in which the building would be used that, if breached, could be readily detected by interested parties and action initiated.

C J Leigh

INSPECTOR