



Appeal Decision

Site visit made on 14 July 2021

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal Ref: APP/A2280/W/20/3257570

Site address: 245 Canterbury Street, Gillingham ME7 5XE

- 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 Mrs Nilufar Chowdhury against the decision of Medway Council.
 - The application Ref: MC/20/0703 dated 18 March 2020, was refused by notice dated 19 May 2020.
 - The development proposed is part retrospective application for the conversions of the ground and first floor to provide 2 units of one bedroom self-contained flats, together with the construction of a single storey infill extension, alteration to the shop front, installation of roof lights and provision of cycle and refuse storage -demolition of existing infill extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted and all representations completed, the National Planning Policy Framework (Framework) has been updated in July 2021. Both the Appellant and the Council have been offered an opportunity to comment on the Framework, and its relevance to this case, and I have taken the further representations into account in my decision. All references in this decision are to the July 2021 Framework.
3. It would appear that when the application and the appeal were submitted, the unit was vacant and had been marketed for a period of time, and both the Appellant and the Council address that position. At the time of the site visit, the ground floor unit was in use as a hot food take away unit. As a result of the change in circumstances, the Appellant and the Council have been offered an opportunity to comment on this changed situation and I have taken the further representations into account in my decision.
4. The application was submitted on the basis that it was part retrospective and I understand that the retrospective part relates to an existing rear infill extension that was built without planning permission, and which the proposal before me seek to replace with a new replacement extension. On the basis of the information before me including that the existing extension is to be replaced with a new extension, albeit on the same footprint, I shall consider the scheme as proposed development.

Main Issues

5. The main issues in this appeal are:

- a) The effect of the proposed use of the ground floor unit as a residential unit on the vitality and viability of the neighbourhood centre;
- b) The effect of the proposed residential frontage on the character and appearance of the neighbourhood centre and local area; and
- c) the impact of the proposals on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes (SPAs).

Reasons

Issue a) Effect on the neighbourhood centre

6. The appeal property is sited on the south west side of Canterbury Street, within a terrace of properties stretching from 227 – 255, between Jeyes Road to the north and the junction with Gillingham Road to the south. This length of properties appear to be in commercial and retail use at the ground floor, although a number appeared to be vacant at the time of my site visit.
7. This group of properties forms part of a neighbourhood centre under Policy R10 of the Medway Local Plan 2003 (Local Plan) where the Council seeks to resist the loss of existing shopping facilities, including retail, service and food and drink uses, unless an improvement to local amenity or provision of community facilities occurs that outweighs the loss.
8. Since the Local Plan was adopted in 2003, there have been a number of changes to the Use Classes Order, including in relation to hot food takeaways and under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, such uses are now sui generis. However, there are also a number of arrangements in place, including in respect of applications submitted before the latest changes were introduced, and I have taken these into account.
9. The government's recent changes to the Use Classes Order and subsequent changes have been introduced to reflect better the diversity of uses found in high streets and in town centres and to provide the flexibility required to enable active uses to be introduced to properties. However, the aim to ensure the continued vitality and viability of town centres and high streets remains a key government objective, as set out under Section 7 of the Framework.
10. As set out earlier, at the time of my site visit, the premises were in use as a hot food take away unit, whereas at the time of the application and appeal, the premises were vacant and part of the Appellant's case focussed on the fact that the property had been vacant and the attempts that had been made to let the unit. I have no further information before me about the existing use. However, it is currently providing a function related to the neighbourhood centre use and designation. The property has an active retail related use at ground floor. Although there is no specific information before me relating to the vitality and viability of the neighbourhood centre, the active use is likely to contribute to its overall viability and vitality.
11. In the absence of any further information relating to the current use, I am not satisfied that the loss of the existing use would not have an unacceptable harm

on the vitality and viability of the neighbourhood centre. This would conflict with Policy R10 of the Local Plan and Section 7 of the Framework.

12. The Appellant has provided a number of examples of where retail and commercial uses have been permitted to change to other uses, including residential. The Council has commented on these and advised that these were granted permission or prior approval for a number of different reasons, including pre-dating the Local Plan and evidence of letting attempts in respect of vacant units. These other examples do not therefore persuade me to a different conclusion in respect of the proposal before me.

Issue b) Character and Appearance

13. The proposed development would make a number of changes to the building, and of particular relevance, would remove the largely glazed shopfront and replace with a solid frontage, with an entrance door and window.
14. The general character and appearance of the local area is a wide mix of both commercial and retail uses together with residential uses. The neighbourhood centre includes a number of separate groups of commercial properties, interspersed with residential uses. Whilst I appreciate that there are commercial/ retail units on either side of the appeal property within this part of the neighbourhood centre, there are residential uses in very close proximity to the appeal site. Some of the residential uses benefit from small front gardens whilst others open directly onto the street.
15. Given the very mixed character and appearance of the local area, I do not consider that the proposed introduction of a residential frontage would materially harm the character and appearance of the local area, including the neighbourhood centre. There would be no conflict with Policy BNE1 of the Local Plan and Section 12 of the Framework, relating to achieving well-designed places and respecting the local context.

Issue c) SPAs

16. I am advised that appeal site lies within 6km of the North Kent Marshes SPA/Ramsar sites and that as a result the proposed development would be likely to have a significant effect, either alone or in-combination, on the coastal SPA/Ramsar sites from recreational disturbance on the over-wintering bird interest. The Conservation of Habitat and Species Regulations 2017 require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects.
17. I have very limited information before me regarding the steps taken by the Council, although the Council has confirmed that in accordance with advice from Natural England, an appropriate tariff per new dwelling should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries.
18. No such contribution appears to have been made, nor a legal agreement submitted to provide for a contribution in the event of planning permission being granted.

19. I cannot therefore be satisfied on the very limited information before me from the Council as well as the absence of any contribution from the Appellants that there would not be a significant adverse effect on the SPA / Ramsar sites. The development would therefore be in conflict with Conservation of Habitat and Species Regulations 2017 and is contrary to paragraphs 180 and 181 of the Framework and Policy BNE35 of the Local Plan.

Planning Balance

20. Paragraph 60 of the Framework refers to the government's objective to boost significantly the supply of housing and the provision of two self-contained residential units would make a modest contribution to that objective. When judged against some of the core planning principles the proposal would perform well in that there would be facilities within reasonable proximity. In terms of its component dimensions there would be a small social benefit in providing the additional residential units. Economic advantages would also arise from the works to provide and occupation of the new units.
21. Whilst I have concluded that there would be no harm to the character and appearance of the local area, this would not outweigh the harm I have concluded to the vitality and viability of the neighbourhood centre and to ecological interests off site. These are all matters which contribute to sustainable development, as set out under the development plan and the Framework. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development.
22. I have found that the proposal would conflict with the development plan when taken as a whole. There are no other considerations, including the advice of the Framework, that outweigh that conflict.
23. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be dismissed.

L J Evans

INSPECTOR