



Appeal Decision

Site Visit made on 12 October 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2021

Appeal Ref: APP/A2280/W/21/3271194

87 Rock Avenue, Gillingham, Medway ME7 5PX

- 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 Rishabh Dawar against the decision of Medway Council.
 - The application Ref MC/21/0036, dated 6 January 2021, was refused by notice dated 5 March 2021.
 - The development proposed is change of use from 6-bed house of multiple occupancy (Class C4) to 7-bed house of multiple occupancy (Sui-Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from 6-bed house of multiple occupancy (Class C4) to 7-bed house of multiple occupancy (Sui-Generis) at 87 Rock Avenue, Gillingham, Medway ME7 5PX in accordance with the terms of the application Ref MC/21/0036 dated 6 January 2021 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Block Plan and AR25.1 Rev A.
 - 3) Prior to first occupation of the property as a 7-bed House of Multiple Occupancy, a refuse storage area and enclosure shall be provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority, and the refuse storage and enclosure shall be retained as such thereafter.
 - 4) The development hereby permitted shall be occupied by a maximum of 7 occupiers.

Application for Costs

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

Main Issues

3. The main issues are the effect of the proposal on the character of the area; and the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and disturbance.

Reasons

4. Saved Policy H7 of the Medway Local Plan 2003 (LP) indicates that where multiple occupation of dwellings is proposed, properties should be in an area with a predominantly mixed-use or commercial character, and that relevant nearby or adjoining properties should be in multiple occupation or a non-residential use.
5. Near to the appeal site, Rock Avenue and the surrounding streets are generally characterised by residential terraces. My impression was that for the most part, properties were occupied as single dwellings, but the appellant advises that there are 6 licensable Houses of Multiple Occupation (HMOs) on Rock Avenue including the appeal property, and this has not been disputed by the Council. I also saw a residential care home at the corner of Rock Avenue and Byron Road close by, and while it was unclear at my visit whether it remains occupied as such, the appellant has referred to one of the adjoining neighbours to the appeal site ('The Haven') as a care home. Other uses in the vicinity of the site include a dental surgery and shops, but non-residential uses are relatively few in number, and the area could not in my view reasonably be described as having a predominantly mixed-use or commercial character.
6. The site is also part of a terrace with residential neighbours. That said, the HMO on the site could potentially already be occupied by 6 unrelated individuals. While the appeal proposal would increase the size of the HMO to 7 bedrooms, multiple occupation of the site would not be new.
7. Moreover, there is no firm information to demonstrate how increased activity, including use of the garden, would lead to excessive noise or other disturbance, and the Council's suggestion that there would be a detrimental impact from unrelated occupants of the premises seems to me to be little more than general assertion. The additional bedroom is proposed to be single-occupancy, and I note that the appellant has not raised any concerns in response to a condition suggested by the Council to restrict the total number of residents to 7. From the evidence before me, I am satisfied that such a condition would be necessary and appropriate in this case. The increase in the number of potential occupiers would therefore be limited, and it seems to me that levels of traffic or activity would, in reality, be unlikely to be significantly greater than may already result from the site. Given these factors and that the use of the site would remain residential. I see no reason that there would be unacceptable harm to the living conditions of neighbouring occupiers.
8. In addition, no compelling evidence has been provided to show how occupation of the building as a 7-bedroom HMO would result in a noticeable change in the character of the appeal site. In any event, the character of the surrounding area is not exclusively residential, and other HMOs and at least one care home further provide for variety in the nature of residential accommodation. In this context, I do not consider that the proposed HMO would fundamentally alter the established character of the street scene or area, and I am satisfied that it would not be out of keeping or incongruous.
9. For these reasons, I conclude that the proposal would not cause unacceptable harm to the character of the area or the living conditions of neighbouring occupiers. Even leaving aside the existing occupation of the property as an HMO, I find that there are thus material considerations that would outweigh any conflict with the specific provisions of saved Policy H7 of the LP regarding

the location of properties in multiple occupation noted above. The proposal would also accord with Policies H7 and BNE2 of the LP insofar as they broadly require that development protects the amenities enjoyed by nearby and adjacent properties including with regard to activity levels and traffic generation. For the same reasons, I find no conflict with requirements within the National Planning Policy Framework (the Framework) seeking a high standard of amenity for existing and future users.

Other Matters

10. The appeal site is within the Zone of Influence of the Medway Estuary and Marshes Special Protection Area (SPA) which is one of 3 SPAs on the North Kent Coastline which are classified for bird species that are rare and/or vulnerable in a European context, and are sites that form a critically important network for birds on migration. The sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites).
11. The Conservation of Habitat and Species Regulations 2017 impose a duty on the competent authority to consider whether a proposed development may have a significant effect on the conservation objectives of such sites either alone, or in combination with other plans and projects within the framework of an Appropriate Assessment (AA). The increased occupation of the appeal site would be likely to result in additional demand for recreation locally, and such activity within the SPA/Ramsar sites could cause disturbance that would be detrimental to over-wintering or breeding birds. While the increase in recreational activity resulting from the development alone would be likely to be limited, it is likely that in combination with other developments, the proposal could have a significant impact on the integrity of the SPA/Ramsar sites.
12. However, the Council seeks financial contributions from new development to fund measures identified through the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) to mitigate such adverse impacts, and a tariff is specified per dwelling (including HMOs) reflecting the cost of delivering mitigation measures in perpetuity. The delivery of mitigation measures is to be through Bird Wise, a partnership of local authorities and conservation organisations established to ensure that development, considered in combination, does not have an adverse effect on the integrity of the SPA/Ramsar sites. Natural England has endorsed this approach and confirmed that implementation of the suite of measures covered by the SAMMS, funded by appropriate financial contributions, would be effective and reliable in preventing harmful effects.
13. The Council indicates that the requisite financial contribution has in this case already been paid by the appellant. A completed 'SAMMS mitigation contribution agreement for 9 units or less' states that the contribution is towards the mitigation of the effect of development on the North Kent SPAs and Ramsar sites, and the Council indicates that the contribution will be used towards mitigation through Bird Wise. Given the evidence before me, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose, and that the intended mitigation would be effective to adequately overcome any adverse effects of the proposal.
14. In light of the above and following an AA, I find that the proposal would not adversely affect the integrity of the SPA/Ramsar sites.

Conditions

15. I have considered suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity.
16. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. A condition to require refuse storage in accordance with agreed details is necessary in the interests of the character and appearance of the area and to ensure adequate provision is made. To safeguard the living conditions of future and neighbouring occupiers of the site, I have also imposed a condition controlling the number of residents. I have however amended the Council's suggested condition to refer to a maximum of 7 occupiers, because I see no reason that it would be necessary to prevent occupation of the property by fewer than 7 occupiers.

Conclusion

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

J Bowyer

INSPECTOR