



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: 09 November 2021

Appeal Ref: APP/A2280/W/21/3267340

24 Pier Road, Gillingham ME7 1RJ

- 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 E Overbury against the decision of Medway Council.
 - The application Ref MC/20/1115, dated 13 May 2020, was refused by notice dated 22 October 2020.
 - The development proposed is alterations and extensions of an existing, detached dwellinghouse to provide a 14-bedroom student/single person shared accommodation unit (House in Multiple Occupancy).
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Decision

1. The appeal is allowed and planning permission is granted for alterations and extensions of an existing, detached dwellinghouse to provide a 14-bedroom student/single person shared accommodation unit (House in Multiple Occupancy) at 24 Pier Road, Gillingham ME7 1RJ in accordance with the terms of the application Ref MC/20/1115 dated 13 May 2020 subject to the conditions in the attached schedule.

Background and Main Issues

2. The appeal proposes works to a detached dwelling at the corner of Pier Road and Knight Avenue, and use of the resulting building as a 14-bedroom House in Multiple Occupancy (HMO). The Council has not objected to the extensions and alterations to the appeal building itself, and while the building would be larger than its immediate neighbours, having regard to the mixed street scene along Pier Road and the relationship of the site with neighbouring dwellings, I see no reason to take a different view.
3. Accordingly, the main issue is whether or not the site is suitable for an HMO having regard to (i) the provisions of the development plan concerning the general location and circumstances of dwellings intended for multiple occupation, and (ii) the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings in respect of noise and disturbance.

Reasons

4. Saved Policy H7 of the Medway Local Plan 2003 (LP) stipulates criteria to be met where multiple occupation of dwellings is proposed. These include that properties are in an area with a predominantly mixed-use or commercial character; and for changes of use, set out that the property should be too large to reasonably expect its occupation by a single household.

5. To the north side of Pier Road, buildings in the vicinity of the appeal site vary in scale and form, and include student accommodation as well as a mix of non-residential uses. However, the site is located to the south side of Pier Road where other buildings in the vicinity appear for the most part to be generally in residential use. Nearby streets joining Pier Road from the south including Knight Avenue, and Corporation Road which runs to the rear of the appeal site, are also strongly characterised by regular layouts of similar two-storey dwellings with gardens to their rear. Pier Road at this point is a busy dual carriageway, and in my view provides for a clear visual and physical barrier and distinction between the development to either side. I acknowledge that the Council's report to Committee referred to the site as being within a mixed use area, but given the above factors, I cannot agree, and consider that the site itself sits within a predominantly residential area.
6. Turning to the existing building on the site, the submitted details indicate that it currently has 3 bedrooms. The proposal includes extensions and alterations to the building, but in my judgement and in the absence of clear information to the contrary, it seems to me that the existing property would appear generally suitable for occupation by a single household.
7. On this basis, the proposal would be contrary to the criteria of saved Policy H7 of the LP noted above concerning the general location and circumstances of dwellings intended for multiple occupation.
8. Further criteria within saved Policy H7 include that increased traffic and activity would not be detrimental to local amenity, and that the proposal would not adversely affect the amenity of the occupiers of nearby properties. Activity and comings and goings associated with a 14-bedroom HMO would be likely to be greater than the existing dwelling which is of fairly modest size. However, beyond general assertions that this would be detrimental to neighbouring occupiers, no compelling evidence to show how increased activity would result in excessive noise or disturbance so as to cause harm to the living conditions of neighbouring occupiers has been provided.
9. While I have found that its immediate surroundings are predominantly residential, the site nevertheless adjoins the mixed-use area to the opposite side of Pier Road, and this is an important part of its context. At my visit, traffic and noise from Pier Road were also apparent when on and in the immediate vicinity of the appeal site. Against this background, I note that there would be no increase to the number of parking spaces on the site, and I have no firm reason to doubt the results of the appellant's Noise Assessment setting out that vehicular noise associated with the proposal would be indistinguishable from other vehicular noise.
10. Pedestrian access to the building would be shared between two entrances. Having regard to the site layout and its proximity to nearby services and transport routes, I consider the entrance from Pier Road would be likely to be the preference for a greater proportion of trips, with the position of this entrance facing the main road and set away from neighbouring dwellings reducing the likelihood that movements here would be noticeable to nearby residents. Boundary treatment would provide separation between the garden and neighbouring properties, and the Noise Assessment comments that use of this space would not be out of keeping with the surrounding area. Given that the site would remain in residential use and the size of the garden which is

similar to or smaller in size than other nearby properties, I agree, and do not consider that use of the space would be likely to be conspicuous or significantly out of the ordinary.

11. Whether or not an HMO at 42 Watling Street, Gillingham referred to within the Noise Assessment offers a direct comparison to the proposal, the Council has provided no firm evidence to challenge the conclusions of the Assessment insofar as they relate to the appeal site itself. There is also no substantive evidence demonstrating that the proposal would be likely to result in noise late at night, nor to show that any noise or antisocial behaviour could not be effectively controlled and resolved through appropriate management of the property and/or other regulatory regimes.
12. Based on the evidence before me, I conclude that the effect of the HMO on neighbouring occupiers would be of limited significance, and would not cause unacceptable harm to their living conditions. It would therefore be in accordance with Policy BNE2 of the LP which broadly requires that development protects the amenities enjoyed by nearby and adjacent properties, and I find no further conflict with Policy H7 insofar as it identifies similar requirements. For the same reasons, I find no conflict with the National Planning Policy Framework (the Framework) which seeks a high standard of amenity for existing and future users.

Other Matters

13. I have no firm reason to find that consultation undertaken by the Council on the proposal did not meet relevant requirements, and note that addresses of properties adjoining the appeal site are included on the list of those notified of the development.
14. I have taken into account all of the representations made by interested parties, and note concerns including regarding parking pressure locally. However, at the time of my visit, there were a fair number of parking spaces available on street in the vicinity of the appeal site. I accept that this was a snapshot and that the situation may be different in the evenings and overnight, but the evidence before me includes a Transport Technical Note with a parking survey indicating a significant number of spaces also available during evenings and early mornings. Even if there have since been two applications for dropped kerbs as suggested by an interested party, any change to the reported level of overall on-street capacity would be relatively limited. In addition, the accessibility of the site to local facilities and public transport means that future occupiers would not necessarily need to rely on private vehicles. Given all of the above, I see no reason to disagree with the view stated in the Council's report to Committee that there would be no significantly detrimental impact to highways or parking as a consequence of the development.
15. Boundary treatment would prevent overlooking to neighbouring properties from ground-floor level windows of the development. The upper level window facing towards 71 Knight Avenue which serves a hallway, and the closest upper level windows facing the rear of dwellings on Corporation Road which serve bathrooms could be obscurely glazed, and subject to a condition to require this, they would not cause harmful overlooking. Other windows facing the rear of dwellings on Corporation Road serving bedrooms within the part of the building closest to Knight Avenue would be set away from the boundary, and I am satisfied that the separation would be sufficient to prevent loss of privacy for

neighbours here. Whether or not the building was occupied by students, no firm evidence has been submitted to substantiate fears that the proposal would lead to increased levels of crime or anti-social behaviour.

16. I am satisfied that none of the other matters raised, either individually or collectively, would result in a level of harm that would justify dismissal of the appeal, and the comments by interested parties do not alter my overall conclusions.

North Kent Marshes Special Protection Areas and Ramsar sites

17. The appeal site is within the Zone of Influence of the Medway Estuary and Marshes Special Protection Area (SPA); 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 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).
18. 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 development 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. The demand resulting from the development alone would be relatively limited, but it is likely that in combination with other developments, the proposal could have a significant impact on the integrity of the SPA/Ramsar sites through recreational disturbance.
19. To address adverse impacts, the Council seeks financial contributions from new development to fund mitigation measures identified through the North Kent Strategic Access Management and Monitoring Strategy (SAMMS). The delivery of mitigation is to be through Bird Wise, a partnership of local authorities, developers and environmental 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.
20. For proposals of 9 units or fewer, the Council advises that contributions may be paid directly with an accompanying SAMMS Mitigation Contribution Agreement, but that a Unilateral Undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990 is sought for larger proposals. Where HMOs are proposed, the Council applies the relevant tariff on a per room basis, and given the size of the proposed HMO, it considers that the appeal proposal would require a UU.
21. I note that the appellant did submit a UU. However, it had not been entered into by all relevant parties, and accordingly does not offer sufficient certainty that the Council could rely on it to secure the required contribution. Nevertheless, the appellant has already made a direct payment of the contribution sought by the Council, and the Council has confirmed that the submitted contribution would be transferred to Bird Wise. I appreciate that this

is a departure from the Council's preferred approach. However, in the circumstances and having regard to the evidence before me which clearly documents the purpose to which the contribution has been paid by the appellant, and how it will be used by the Council and subsequently Bird Wise, I am satisfied that there is as an exception in this case sufficient certainty that the contribution will be used for its intended purpose, despite the absence of a binding planning obligation. I am also satisfied that the contribution is necessary, and I consider that the mitigation measures secured would be effective to adequately overcome any adverse effects of the proposal.

22. 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.

Planning Balance

23. I have found that the living conditions of neighbouring occupiers would not be unacceptably harmed by the development, but the proposal for an HMO within a predominantly residential area and in place of a property that could be occupied by a single household would result in some conflict with saved Policy H7 of the LP.
24. Be that as it may, while it would comprise an HMO, the site would still be used for residential accommodation, and having regard to the information before me and my visit, I do not consider that it would fundamentally alter or conflict with the residential character of its immediate surroundings. Similarly, although the existing dwelling on the site could be occupied by a single household, I note that the layout results in a fairly small garden which may limit its attractiveness to families. There is also no compelling evidence before me to demonstrate that the proposal would undermine the Council's ability to meet needs for accommodation of this type. Accordingly, I find that the particular circumstances of the site limit the harm that would arise from the proposal to technical contraventions of aspects of saved Policy H7 of the LP.
25. Against this conflict, my attention has been drawn to figures indicating shortages in the supply of housing and of affordable housing within the area which the Council has not challenged. The proposal would not deliver affordable housing within the definition given by the Framework. Nevertheless, I have no firm reason to dispute the appellant's comments that HMOs form a vital part of the private rented sector and provide cheaper accommodation for people whose housing options are limited, including graduates and young professionals. The proposal would contribute towards meeting the general need for a range of housing to cater for different groups, and in this regard would gain support from the Framework which highlights the importance of ensuring a sufficient number and range of homes and that the needs of groups with specific housing requirements are addressed.
26. In my judgement, this factor is of sufficient weight to outweigh the technical breach of two criteria of saved Policy H7 of the LP. Although the proposal would not be in full accordance with the development plan, I accordingly find that there are material considerations which indicate that the appeal should be allowed, notwithstanding the conflict with the development plan.

Conditions

27. 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. I have also avoided the use of pre-commencement conditions where this is not necessary for a condition to achieve its purpose.
28. 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.
29. Pre commencement conditions to agree details of how construction will be managed and provision for surface water drainage are necessary in the interests of the living conditions of neighbouring occupiers, highway safety and flood risk because details need to be agreed before any works take place to ensure that they are satisfactory. The appellant's Phase 1 Desktop Study and Preliminary Risk Assessment Report identifies potential for contamination on the site, and pre commencement conditions are also therefore necessary to require further investigation and provision for remediation of contamination before works take place to safeguard health and the environment. I have however altered the conditions to avoid duplication and for the sake of clarity as to what is required at each stage. The appellant has provided written agreement to the pre-commencement conditions that I have found to be necessary.
30. Conditions to secure suitable internal noise and air quality standards are required to safeguard the living conditions of future occupiers of the development. However, I see no reason that it would be necessary for details to be submitted prior to any works taking place, and I have amended the suggested conditions accordingly. I have also attached a condition to require measures to mitigate the effect of the development itself on air quality in the interests of the environment.
31. I have imposed a condition to require provision for electric vehicle charging points to promote sustainable travel; and a condition to require implementation of parking is necessary in the interests of highway safety. To ensure a satisfactory appearance, conditions relating to the external materials of the development and landscaping are necessary.
32. In the interests of the living conditions of future and neighbouring occupiers, conditions controlling the number of occupiers and use of accommodation on the site, and to require the use of obscure glazing to some windows are necessary. Finally, I have attached a condition to require adherence to the submitted Flood Risk Assessment in order to reduce the risk of flooding.

Conclusion

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

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 01, 03 Rev A, 04 Rev C, 05 Rev B and 06 Rev B.
- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of:
 - i) delivery, demolition and construction working hours;
 - ii) parking of operative vehicles;
 - iii) deliveries to the site; and
 - iv) measures to control noise, dust and lighting arising from the construction phase of the development.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until a scheme showing details of the disposal of surface water, based on sustainable drainage principles, including details of the design, implementation, maintenance and management of the surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - i) a timetable for implementation (including phased implementation where applicable);
 - ii) operational, maintenance and access requirements for each sustainable drainage component; and
 - iii) proposed arrangements for future adoption by any public body, statutory undertaker or management company.

The sustainable drainage system for the site shall be completed in accordance with the approved details prior to first occupation of the development hereby approved, and shall thereafter be retained, managed and maintained in accordance with the agreed details.

- 5) No development shall take place until an investigation and risk assessment, in addition to the Phase 1 Desktop Study and Preliminary Risk Assessment Report prepared by Your Environment (Ref YE7464) submitted with the planning application, has been submitted to and approved in writing by the Local Planning Authority to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The investigation and risk assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent Model Procedures if replaced) and shall include:
 - i) a survey of the extent, scale and nature of contamination; and
 - ii) an assessment of the potential risks to:
 - human health;

- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 6) Where land affected by contamination which poses risks identified as unacceptable in the risk assessment is identified by the investigation and risk assessment pursuant to condition 5, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme must include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, a description of all works to be undertaken including a verification plan and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall be carried out, and the Local Planning Authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works.

Upon completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and submitted to and approved in writing by the Local Planning Authority before the development is first occupied.

- 7) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and an investigation and risk assessment in accordance with the requirements of condition 5 submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found, remediation and verification schemes in accordance with the requirements of condition 6 shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) No development above ground floor slab level shall take place until an acoustic assessment to determine the impact at the site of noise from transport related noise sources and, where necessary to achieve the standards below, of a scheme of mitigation, have been submitted to and approved in writing by the Local Planning Authority. The submitted scheme and details shall ensure internal noise levels (LAeq,T) no greater than 30dB in bedrooms and 35dB in living rooms with windows closed and a maximum noise level (LAMax) of no more than 45dB(A) with windows closed. Where the internal noise levels will be exceeded with

windows open, the scheme shall incorporate appropriate acoustically screened mechanical ventilation. The approved scheme of mitigation shall be completed prior to first occupation of the development hereby approved, and shall be retained as such thereafter.

- 9) No development above ground floor slab level shall take place until details of a clean air ventilation system (which provides both passive and rapid ventilation) to ensure satisfactory levels of air quality within the development has been submitted to and approved in writing by the Local Planning Authority. The clean air ventilation system shall be implemented in accordance with the approved details prior to first occupation of the development hereby approved and shall thereafter be retained.
- 10) No ductwork serving the clean air ventilation system subject of condition 9 shall be installed until a scheme to control noise and vibration created by it has been submitted to and approved in writing by the Local Planning Authority. The measures which form part of the scheme shall be implemented in accordance with the approved details prior to first occupation of the development hereby approved and shall thereafter be retained.
- 11) No development above ground floor slab level shall take place until details of the provision of electric vehicle charging points for the two parking spaces have been submitted to and approved in writing by the Local Planning Authority. Details shall include the location, charging type (power output and charging speed), associated infrastructure and timetable for installation. The charging points shall be provided in accordance with the approved details prior to first occupation of the development hereby approved and shall thereafter be retained.
- 12) No development above ground floor slab level shall take place until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 13) The development shall not be first occupied until full details of both hard and soft landscape works and a timetable for implementation has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details, and any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 14) The development shall not be first occupied until an Air Quality Mitigation Scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be prepared in accordance with the Medway Air Quality Guidance (April 2016) and shall specify the measures that will be implemented as part of the development to mitigate the air quality impacts associated with development related road transport emissions and shall include any gas fired boilers which should meet a minimum standard of <40mgNOx/kWh.

The approved details shall be implemented prior to the first occupation of the development hereby approved, and shall be maintained as approved thereafter.

- 15) The development shall not be first occupied until the area shown on drawing 03 Rev A for vehicle parking has been provided, surfaced and drained. Thereafter this area shall be kept available for such use, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) 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.
- 16) The house in multiple occupancy hereby approved shall be occupied by a maximum of fourteen people.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the ground floor communal areas shown on drawing 04 Rev C shall be kept available for such purposes at all times.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), the development shall be used as a sui generis House in Multiple Occupation only and shall not be used as a Use Class C2 Residential Institution or as an Approved Premises (i.e. as a probation or bail hostel) as recognised under the Offender Management Act 2007 (as amended).
- 19) The development shall not be first occupied until the first-floor window to the southern elevation of the building serving the landing and the first and second floor windows to the west elevation that serve en-suite and bathrooms have been fitted with obscure glass and, apart from any top-hung light that has a cill height of not less than 1.7 metres above the internal finished floor level of the room it serves, are non-opening. The windows shall be permanently retained as such thereafter
- 20) The development shall be carried out in accordance with the approved Flood Risk Assessment by DHA Environment (Ref JAC/JH/14253) and there shall be no sleeping accommodation on the ground floor level of the building at any time.

End of Schedule