



Appeal Decision

Site visit made on 17 February 2022

by C Hall BSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2022

Appeal Ref: APP/A2280/W/21/3281050

93 Cliffe Road, Strood, Rochester ME2 3DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr J Jassal against the decision of Medway Council.
 - The application Ref MC/21/1440, dated 17 May 2021, was approved on 12 July 2021 subject to conditions.
 - The development permitted is the change of use from a small house in multiple occupation (6 bedrooms, 6 occupants, class C4) to a large house in multiple occupation (6 bedrooms, 7 occupants, Sui Generis).
 - The condition in dispute is No. 2 which states that: No more than 7 residents shall occupy the premises at any one time, with the additional occupant hereby permitted residing in bedroom 5 (front room at first floor as indicated on the drawing number 2106_PL01 Rev A). A register of the occupants shall be maintained on site at all times for inspection.
 - The reason given for the condition is: In the interests of residential amenity for both existing and proposed residents in accordance with the objectives of Policy BNE2 of the Medway Local Plan 2003 and paragraph 127(f) of the NPPF.
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Decision

1. The appeal is allowed and the planning permission Ref MC/21/1440 for the change of use from a small house in multiple occupation (6 bedrooms, 6 occupants, class C4) to a large house in multiple occupation (6 bedrooms, 7 occupants, Sui Generis) at 93 Cliffe Road, Strood, Rochester ME2 3DR granted on 12 July 2021 by Medway Council, is varied by deleting condition 2 and substituting it for the following condition:

2) No more than seven residents shall occupy the premises at any one time.

Main Issue

2. The main issue is whether the condition is enforceable and reasonable in the interests of the living conditions of existing and proposed residents.

Reasons

3. The Planning Practice Guidance (PPG) makes clear that conditions should be kept to a minimum and must satisfy the six tests, which include being enforceable and reasonable.
 4. The Council refers to the planning statement submitted with the application, which sets out that the additional occupant would reside in bedroom 5 on the first floor of the property. Nevertheless, to my mind anything suggested by or agreed to by the applicant should not be the subject of a condition unless it satisfies the six tests.
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5. I am aware that conditions which place unjustifiable or disproportionate burdens on an applicant will fail the test of reasonableness. The appellant cannot be expected to check that the condition is being complied with at all times by the residents. I therefore believe that the proposed condition would place an unjustifiable or disproportionate burden upon the appellant.
6. In terms of enforceability, I am aware that sometimes a condition will be unenforceable because it is in practice difficult to prove a breach of its requirements. I am of the view that this would be the case in this instance. Keeping a register of occupants on site at all times to address this matter would rely on accurate bookkeeping. I am not clear who would be responsible for keeping the register, and what details the Council would expect to be included. I therefore consider that it would be difficult to prove a breach of the requirements of the proposed condition.
7. I acknowledge the Council's concerns in relation to the size of some of the bedrooms, however this does not overcome my reasoning above. In any event, bedroom 3 also meets the floorspace requirement for dual occupation; I consider that the condition stipulating that the additional occupant would reside in bedroom 5 is unduly prescriptive. To my mind, a condition requiring no more than seven residents to occupy the premises at any one time would be reasonable and enforceable; the property's licence can be monitored by the Local Authority.
8. In the light of the above analysis, I conclude that the disputed condition is not reasonable or enforceable to protect the living conditions of existing and proposed residents.

Conclusion

9. For the reasons set out above and having regard to all other matters raised, the appeal is allowed and I shall vary the planning permission by deleting condition 2 and substituting it.

C Hall

INSPECTOR