



Appeal Decision

Site visit made on 7 July 2022

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal Ref: APP/A2280/W/21/3280570
36 Kingswood Road, Gillingham ME7 1DZ

- 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 Jamie Chapman against the decision of Medway Council.
 - The application Ref: MC/20/3208 dated 14 December 2020, was refused by notice dated 8 February 2021.
 - The development proposed is change of use of existing licensed HMO (Use Class C4, small HMO) to a 8-bedroom licenses HMO (sui generis) use
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has noted in its appeal statement that since the determination of the application, The National Planning Policy Framework (Framework) referenced at that time has been superseded by the one published in July 2021. In its statement the Appellant has included reference to the 2021 Framework, and I am therefore satisfied that there is no need for me to refer the matter back to the parties. I shall refer only to the 2021 Framework.
3. I am advised that the property is currently in use as a 6 person HMO, although that is not before me to determine. There are permitted development rights to change a house under Class C3 into a Class C4 HMO for between 3 to 6 persons and to change back to a C3 use. Planning permission is, however, required to create an HMO for over 6 persons.
4. There is a lack of clarity about the current use of the two basement rooms. At the time of my site visit, both were unoccupied and did not appear ready for immediate occupation. The proposal before me seeks permission for a change of use to a 8 bedroom licensed HMO through the use of the two rooms at basement, following alterations, as two bedrooms and this is the basis upon which I have determined the appeal.
5. An additional plan has been submitted at the appeal stage, 376/102F, which appears to show minor internal changes to the proposed basements rooms, including the insertion of cupboards. I am satisfied that the Council and no other party is prejudiced by me taking this additional plan into account in my decision.

Main Issues

6. The main issues in this appeal are:

- a) whether the proposed development would provide a suitable location for a House in Multiple Occupation (HMO), having regard to the provisions of the development plan, and
- b) Whether the proposal for two bedrooms at basement level would provide satisfactory living conditions for future residents.

Reasons

Issue a) Suitability of Appeal Property Location for HMO use.

7. The appeal property is a mid-terraced property on the east side of Kingswood Road. There are flats to the immediate north and a hostel to the south, but the road and surrounding area appear to be predominantly in self-contained residential use, with many remaining as single dwellings. This is the predominant character of the road and local area.
8. Although I am advised that the property is currently in use as an HMO, this has been undertaken through permitted development rights and could be converted back to single residential use at any time, whereas the proposal before me would require planning permission. As planning permission is required for the proposed development, I consider that it is necessary for me to consider the suitability of the appeal property location for HMO use on the basis of the proposed use as an 8 person HMO against development plan policy.
9. Policy H7 of the Medway Local Plan sets out a criteria-based approach to consider whether permission should be granted for dwellings proposed for multiple occupation. Apart from criteria (iii) and (iv) which are expressed in the alternative, each of the other criteria require to be satisfied. Criterion (i) deals with the suitability of the location.
10. Although I have noted the more intensive residential related uses either side of the appeal property, there is a predominance of residential uses in the local area, many of which appear to be in occupation as single family dwellings. No information has been provided to me to indicate otherwise. Notwithstanding the proximity of the station, the property is not in an area with predominantly mixed use or commercial character. It therefore fails to accord with criterion (i) of Policy H7.
11. I agree that the Framework seeks a wide variety of housing to meet different needs. However, Policy H7 of the Medway Plan does not preclude the provision of HMOs but seeks to direct them to specific locations and away from others to ensure that the amenities of existing residents and the character of such areas can be protected. I have already found that the character of this local area comprises predominantly single dwellings.
12. On the basis of its location in a predominantly residential area, with a large number of properties appearing to remain in single family use, the proposal, in so far as planning permission is required, would not provide a suitable location for an HMO as proposed, having regard to the provisions of the development plan and in particular Policy H7 of the Medway Local Plan.

Issue b) Living Conditions

13. The proposal would seek to make alterations to the one existing window per room serving the basement rooms. The existing openings would be deepened to insert a glazed patio door with external steps so that the door would also provide a means of escape. At the time of my site visit both rooms had a very limited outlook.
14. Whilst there would likely to be some modest improvement to outlook as a result of the proposed window changes, I am not persuaded that the amendments would be sufficient to improve the outlook to enable satisfactory living conditions to be provided for the proposed use. The section provided only shows the position for a person of a certain height when standing. I agree with the Council that given the intended use, it would be likely that future occupants would spend considerable time in their individual rooms. The outlook would continue to be restricted and very limited in many parts of each room.
15. Whilst this finding relates to both rooms, I have a particular concern with the rear room where the position of the window opening is currently in one corner, and would still be, even with the proposed amendments. This position for the one and only window to serve the room would particularly limit the outlook for occupiers of that room, taking into account the size and shape of the room.
16. I have taken account of the assessment undertaken for both rooms in respect of daylight levels and the conclusions drawn. However, this does not overcome the concerns I have about the satisfactory living environment in respect of outlook.
17. I am not therefore satisfied that the proposed basement rooms would provide satisfactory living conditions for future occupiers of these basement rooms. This would conflict with Policy BNE2 of the Medway Local Plan and the Framework and in particular Paragraph 130 f) both of which seek a high quality of design which protects the amenities of existing and future occupiers.

Other Considerations

18. There was a previous appeal decision relating to the same property for a change of use from a dwelling to a 8 bedroom HMO, although that decision, which was dismissed, is not before me. I have determined this proposal on its planning merits.
19. The Appellant has drawn my attention to an appeal decision for a change of use from a C3 dwelling to a C4 small house in multiple occupation which was granted permission in May 2019 under the Ref: APP/X1355/W/19/3222572. I understand that permission was required because of an Article 4 Direction was in place to exclude C3 to C4 changes of use from permitted development. I have read that decision, but it seems to me that the issues raised in that appeal are not direct pertinent to the considerations before me. It does not therefore persuade me to a different view.

Conclusion

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

LJ Evans

INSPECTOR