The Planning Inspectorate

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: 16 August 2022

Appeal Ref: APP/A2280/W/22/3292406
133 Railway Street, Gillingham ME7 1YF

- 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 Ms Maria Luisa Mena against the decision of Medway Council.
- The application Ref: MC/21/3177 dated 27 October 2021, was refused by notice dated 23 December 2021.
- The development proposed is single storey rear extension, loft extension and change of use to 5 person HMO accommodation.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I understand that the Council has already granted permission for a single storey rear extension together with the re-opening of the lightwell to front to facilitate the use of basement as living space under its reference MC/21/1801 dated August 2021. It has also approved an application for a lawful development certificate (proposed) for the construction of an L-shaped dormer to the rear and roof lights to the front under its reference MC/21/1808 in August 2021. Accordingly, although these proposals are resubmitted with this proposal, I agree with the Council that there is no concern in respect of these elements taken in isolation.

3. The second reason for refusal relates to the impact of the proposal on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes (SPAs). A signed and dated Unilateral Undertaking (UU) was submitted with the appeal to address this issue which I shall consider further below.

4. The Council's appeal statement refers to a House in Multiple Occupation (HMO) for 6 persons whereas the application, the plans and the Council's decision refers to 5 persons. I have considered this appeal on the basis of seeking an HMO for 5 persons in accordance with the application submission.

5. There are permitted development rights to allow a C3 residential use to become a C4 HMO use for up to 6 persons and vice versa. However, I am advised that a condition was imposed on Permission MC/21/1801 to remove these permitted development rights.

Main Issues

6. The main issues in this appeal are:

   a) Whether the proposed development would provide a suitable location for a HMO having regard to the provisions of the development plan, including with reference to the effect on the living conditions of adjoining neighbours, and

   b) The effect of the proposal on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes (SPA).

Reasons

Issue a) Living Conditions

7. The appeal property is a mid-terraced property on the north side of Railway Street within a predominantly residential area albeit there are some commercial uses in the wider area and particularly further to the west, near the station.

8. Policy H7 of the Medway Local Plan is specific to the provision of dwellings intended for multiple occupation and sets out a criteria based policy. Apart from criteria (iii) and (iv) which are expressed in the alternative, each of the other criteria requires to be satisfied. The Appellant has criticised the policy for being too restrictive but, notwithstanding the date of the Plan, the policy forms part of the adopted development plan and I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise.

9. The Appellant also argues in favour of much more recent policies associated with the National Planning Policy Framework (Framework). 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 do not therefore consider that the relevant policy in the adopted development plan policy contradicts the Framework, including at Paragraph 130 f) which seeks to protect the amenities of existing and future occupiers.

10. From the information before me as well as my site visit, and notwithstanding some commercial uses further to the west, I would not assess the existing dwelling to be in an area with a predominantly mixed-use or commercial character (the first criterion). The immediate context to the appeal property is residential with residential uses on both sides and opposite as well as to the rear. The property is not detached and the terraced properties either side appear to be in residential use as single units and I have been provided with no information to the contrary (Criteria iii and iv). The property is a medium sized terraced house and even taking into account the permitted extensions, there is no evidence before me to indicate that the property is too large to reasonably expect its occupation by a single household; I have also not been provided with any evidence to the contrary (criterion v).

11. The second criterion relates to whether increased traffic and activity associated with the proposal would be detrimental to local amenity. There is very limited information before me from either the Appellant or the Council in this regard.

The occupancy of the house in terms of the numbers of people may be little different to a single family use, but I do share the concerns of the Council that a number of people living independently may well use the property in a noticeably different way to one family in terms of their coming and goings, the hours of activity and use of the rear garden. In this regard I have also taken into account the nature of the surrounding residential properties. I am not persuaded on the information before me that the second criterion would be satisfactorily met. This adds to the unsuitability of the proposed use when combined with the other criteria under Policy H7 of the Medway Local Plan.

12. I therefore conclude that the proposed development would not provide a suitable location for a HMO having regard to the provisions of the development plan, including with reference to the effect on the living conditions of adjoining neighbours. It would therefore conflict with Policies BNE2 and H7 of the Medway Local Plan in these regards.

13. The Appellant has referred me to two appeal decisions in a different area where permission has been granted for changes of use to a large HMO under Ref: APP/N5090/W/20/3251995 and dismissed for an HMO up to 6 no persons under Ref: APP/N5090/W/21/3268522, although in that case the Inspector found that the proposal would not cause harm to the function and character of the local road in which the property was situated. I have taken both appeals into account, but each proposal must be considered on its individual planning merits and in accordance with the relevant development plan unless material considerations indicate otherwise. I do not therefore see any conflict between those appeal decisions and my findings in this case.

Issue b) Effect on the SPAs

14. There is no disagreement between the parties regarding the need to address the likely significant effect of the proposals on the SPAs. In agreement with Natural England a tariff approach has been agreed to fund strategic measures across the Thames, Medway and Swale estuaries. The decision notice refers to the absence of details to allow the undertaking of an Appropriate Assessment or via a contribution towards strategic mitigation measures.

15. A completed Unilateral Agreement (UU) has been submitted at the appeal stage to make the appropriate contribution and therefore to meet the requirements of the Conservation of Habitat and Species Regulations 2010 and to accord with Policy BNE35 of the Medway Local Plan and paragraphs 180 and 181 of the Framework in this regard. Were no other matters of concern, and planning permission were to be granted I am satisfied that the submitted UU would satisfactorily address this issue, in accordance with the above Regulations and policies.

16. However, the submission of a satisfactory UU does not outweigh my conclusions under my first issue.

Conclusion

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

L J Evans

INSPECTOR