



Appeal Decision

Site visit made on 26 July 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/A2280/W/21/3282683

54 Grange Road, Gillingham ME7 2PU

- 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/21/0511, dated 12 February 2021, was refused by notice dated 19 April 2021.
 - The development proposed is the change of use from class C3 dwelling house to class C4 HMO with a single storey extension to rear.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from class C3 dwelling house to class C4 HMO with a single storey extension to rear at 54 Grange Road, Gillingham ME7 2PU in accordance with the terms of the application, Ref MC/21/0511, dated 12 February 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Plan	– PL001
Block Plan	– PL002
Proposed Plans	– PL003
Proposed Plans	– PL004-B
 - 2) The extension hereby permitted shall not be occupied until space has been laid out within the site for one bicycle to be parked and that space shall thereafter be kept available for the parking of a bicycle.

Preliminary Matters

2. I have taken the description of development from that used in the decision notice and appeal form, removing the erroneous 'to', as it more succinctly describes that for which permission is sought.
3. At the time of my site visit the property appeared to be in use as a Class C4 house in multiple occupancy (HMO), albeit not all the bedrooms were occupied. The rear extension had also been erected although not yet occupied. This has no bearing on my decision.
4. A revised National Planning Policy Framework (the Framework) was published by the Government between the determination of the planning application and the appeal coming before me. I am satisfied that this latest version of the Framework does not raise any new considerations in relation to this appeal.

5. The third reason for refusal concerns the failure to provide appropriate mitigation measures against the likely significant effects of the proposal on the integrity of part of the North Kent Marshes Special Protection Area (SPA)/Ramsar sites, which includes a number of different and overlapping designations. The Officer Report and Decision Notice were not consistent in identifying which part of the North Kent Marshes SPA and Ramsar sites would be affected by the development. The Council has subsequently confirmed that the site is within the zone of influence of the Medway Ramsar and SPA.
6. Prior to the appeal coming before me, the appellant completed a signed unilateral undertaking and has made the relevant contribution towards mitigation for recreational disturbance to the Ramsar and SPA site. The Council has confirmed that this contribution addresses the matter and that it therefore withdraws the third reason for refusal. I return to this matter below.

Main Issues

7. The main issues are the effect of the proposed development on (a) the living conditions of neighbouring occupiers with particular regard to noise or other disturbance; (b) the living conditions of future occupants with particular regard to bedroom sizes; and (c) the integrity of the Medway Ramsar and SPA.

Reasons

Living Conditions of Neighbours

8. Policy H7 of the Medway Local Plan 2003 (the 'Local Plan') establishes criteria against which proposals for houses in multiple occupation (HMO) should be assessed. The criteria seek to ensure, amongst other things, that properties are in an area with a predominantly mixed-use or commercial character; and that where the property is not detached, relevant nearby or adjoining properties should be in multiple occupation or a non-residential use. For changes of use, the Policy requires that the property should be too large to reasonably expect its occupation by a single household.
9. The appeal site is a mid-terrace dwelling. Neighbouring properties appeared to be in residential use and the surrounding streets are generally characterised by residential terraces. Although the internal layout of the appeal property has been adapted to favour an HMO use, I do not consider that this would preclude the property's occupation by a single household. On this basis, the proposal would be contrary to Policy H7 of the Local Plan.
10. I acknowledge that HMOs are occupied by unrelated adults, who are more likely to have individual daily schedules, separate deliveries and visitors and thus are less likely to undertake activities together when compared to a family. Accordingly, whilst there could be more comings and goings than a family, I also acknowledge that the dwelling could accommodate a large family, a number of whom could be adults.
11. Importantly, there is no firm information to demonstrate how any increased occupation as a result of the proposal, including any use of the garden, when compared to the use of this property by a family or by up to 5 individuals living together, would lead to excessive noise or other disturbance.
12. In this respect I note that the additional room would take the form of a rear extension so would not be adjacent to party walls with neighbours.

Furthermore, the communal living area to the front of the ground floor acts as more of a thoroughfare from the 3 upper floor bedrooms through to the kitchen in the basement and from the front door through to the other bedrooms in the rear part of the house. Thus, it seems to me that this living area is unlikely to be heavily used and thus generate excessive noise or other forms of disturbance as a result of an additional occupant. In this respect there may be less noise than might be associated with family occupation which may have greater levels of communal socialising and noise in this part of the property.

13. The Council's suggestion that there would be a detrimental impact from occupants of the premises therefore appears to be little more than general assertion rather than related to the specifics of this case. In view of the above, together with the fact that the use of the site would remain residential, I conclude that the proposal would not cause unacceptable harm to the living conditions of neighbouring occupiers.
14. I therefore find that there are material considerations which outweigh any conflict with the provisions of Policy H7 of the Local Plan. The proposal would however accord with Policies H7 and BNE2 of the Local Plan insofar as they broadly require that development protects the amenities enjoyed by nearby and adjacent properties. For the same reasons, I find no conflict with the requirements of Paragraph 130 of the Framework which, amongst other things, seeks a high standard of amenity for existing and future users.

Living Conditions – Future Occupiers

15. The Officer Report acknowledges that all the bedrooms meet the Nationally Described Space Standards for single bedrooms. However, the report goes on to raise concerns that some of the rooms are shown on the submitted drawings as having double beds and so would fall below the space standards for double rooms.
16. However, the submitted drawings are not confirmation of the rooms being occupied by two people. Indeed, the very nature of the proposal would limit the total number of occupants to 6 people and thus would inherently limit the occupation of each bedroom to one person. Given the Council has acknowledged the rooms are sufficiently sized for single occupancy I find that the bedroom sizes would not harm the living conditions of occupants. Thus, the proposal would not be contrary to Policy BNE2 of the Local Plan which, amongst other things, seeks to protect the amenities of occupants of proposed developments. Similarly, I find no conflict with the Framework which seeks a high standard of amenity for existing and future users.

The Medway Ramsar and SPA

17. The Medway Ramsar and SPA provides on passage, overwintering, and breeding habitat to an array of species of European Importance, including waders and waterfowl, and migratory species. The site provides habitat for European wildlife throughout the year, and so interest varies at different times of the year. The conservation objectives are to ensure that the integrity of the site is maintained and restored in order to protect the habitats and the birds that depend on them.
18. Research undertaken in 2012 indicated that the majority of people visiting the site for leisure and recreation purposes came from within 6km of the Medway

Ramsar and SPA site. The appeal site is within this 6km zone of influence. The increased occupation of the appeal property would be likely to result in additional demand for recreation locally, and such activity within the SPA/Ramsar site 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 plans and projects, the proposal could have a significant effect on the integrity of the SPA/Ramsar site through recreational disturbance.

19. In such circumstances the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require a decision maker to undertake an appropriate assessment (AA) before granting permission. In doing so, I can consider whether or not mitigation could reduce any adverse effects on the protected areas.
20. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) was produced in 2014. It provides a strategic solution to ensure that the requirements of the Habitats Regulations with regard to the in-combination effects of increased recreational pressure on the SPA and Ramsar sites arising from new residential development within the zone of influence are met through mitigation measures. The SAMMS includes dog projects and wardens/rangers that can help visitors understand the impact of any disturbance and promote particular sites to dog walkers. Enhanced signage and access infrastructure can also be used to modify access and allow for re-routing of visitors away from particular parts of the SPA and Ramsar sites or the prevention of access to certain areas.
21. In 2015 the Council produced a policy statement setting out its position on a strategic approach to managing and mitigating the potential impact on the protected habitats. This confirmed the Council's support for the implementation of the mitigation measures as a partnership between the North Kent local authorities. It agreed to contribute funding, collected through a tariff, to a pooled budget to implement the strategic approach.
22. 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.
23. The appellant has submitted a Unilateral Undertaking in respect of the requisite contribution to the mitigation measures and confirmed subsequent payment of the contribution. I am satisfied that the contribution is necessary and ensures the delivery of the mitigation in a timely manner.
24. Overall, I conclude that the mitigation measures secured would be effective to adequately overcome any adverse recreational effects of the proposal. As a result, following an appropriate assessment, the proposal would not adversely affect the integrity of the Medway Ramsar and SPA.
25. Accordingly, in this respect, the proposed development would comply with the Habitats Regulations and Policy BNE35 of the Local Plan which, amongst other things, seeks to protect the Council's designated habitats sites from direct or indirect harm.

26. I find no conflict with the requirements of Paragraphs 180 and 181 of the Framework which, amongst other things, seek to protect sites of importance for biodiversity.

Other Matters

27. As Local Planning Authority, aside from the sizes of some of the bedrooms, the Council has not raised any other concerns in relation to the overall standard of accommodation. In a separate capacity, the Council has also granted the property an HMO licence. Given the evidence before me and my findings in relation to the size of the bedrooms, I have no reason to conclude the standard of accommodation would fall below the levels generally sought by the Council.
28. Interested parties have raised concerns in relation to on-street parking provision. However, the Council does not consider that the proposal would result in a severe highway impact and there is no substantive evidence before me to indicate that I should come to a different conclusion.
29. The construction of an outbuilding erected at the rear of the site would be a matter for the Council and is outside the remit of this appeal. Similarly, sightings of rats and mice are matters beyond the scope of this appeal.
30. Whilst neighbours have expressed concerns that other properties in the area may become HMOs, I have considered this appeal on its own merits based on the evidence available. It does not automatically follow that the same circumstances would apply to other sites or other proposals.

Conditions

31. The property is in use as a small HMO, which the appellant indicates has occurred through exercising permitted development rights. The extension has been erected and although not occupied at the time of my visit would fall within the existing use of the property. Accordingly, the standard time limit condition is unnecessary in this instance. However, a condition is required in the interests of certainty that lists the approved plans.
32. The extension has been erected and finished to match the existing dwelling, so a condition to this effect is unnecessary. Similarly, a Class C4 HMO would inherently limit the occupation of the property to a maximum of 6 people and so a condition to this effect would be superfluous.
33. The Council has suggested a cycle parking condition. Policy BNE2 requires developments to have regard to levels of traffic generation and the Framework seeks to encourage the use of more sustainable modes of transport. I am therefore satisfied that the provision of cycle parking to address the additional occupation resulting from this approval would be reasonable and necessary.

Conclusion

34. For the reasons given above, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions above.

Stewart Glassar

INSPECTOR