



Appeal Decision

Site visit made on 6 September 2022

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/A2280/W/17/3179343

60 Linden Road, Gillingham ME7 2PH.

- 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 Mrs Jacqueline Bell against the decision of Medway Council.
- The application Ref MC/16/4508, dated 2 November 2016, was refused by notice dated 11 May 2017.
- The development proposed is change of use of property from residential to HMO.
- This decision supersedes that issued on 20 December 2017. That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The previous appeal decision for this development proposal was quashed by order of the High Court on 12 July 2018 and so is required to be redetermined.
3. I have taken the description of development from the appeal form as it is clearer than the description on the application form.
4. The appeal documentation, given its age, refers to the National Planning Policy Framework 2012 (the Framework). For the avoidance of doubt, I have referred to the current Framework, published in 2021. The parties have had the opportunity to refer to the current Framework.
5. During the appeal process, I put forward main issue c) which was not considered as part of the first appeal decision. The main parties were offered the opportunity to comment on this main issue and I have had regard to the Council's comments in reaching my decision. The appellant did not comment.
6. The Council supplied two recent appeal decisions¹ prior to the site visit. Given that they were only issued in August 2022, they could not have been supplied much earlier in the appeal process. The appellant was given the opportunity to comment on these decisions, but did not do so.
7. I saw on site that the property was laid out as indicated on plan PL-1633. The application form also confirmed that works commenced on 1 November 2016. I have therefore considered the development as having taken place.

Main Issues

8. The main issues in this appeal are:

¹ APP/A2280/W/21/3280570, decision issued 15 August 2022, and APP/A2280/W/22/3292406, decision issued 16 August 2022.

- a) the effect of the development on the living conditions of its occupiers, with particular regard to communal facilities, light and outlook;
- b) the effect of the development on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance; and
- c) whether the location of the house in multiple occupation (HMO) is acceptable, having regard to local and national planning policy.

Reasons

a) Living conditions of occupiers of the HMO

9. The appeal property is a three-storey mid-terraced building occupied by an HMO. The basement contains a bedroom, while the ground floor hosts two bedrooms, a kitchen/dining area, a toilet and a shower room with a further toilet. The first floor has three further bedrooms and a bathroom. The Council's concerns in this case relate to the quality and extent of communal space provision internally and the basement bedroom, which has a single high level window adjoining the ground floor bay window.
10. Policy BNE2 of the Medway Local Plan 2003 (Local Plan), amongst other things, requires development to secure the amenities of its future occupants and advises that the design of development should have regard to daylight and sunlight. No specific reference is made to the adequacy of communal space in HMO, but it does refer to securing the amenity of future occupants. This is consistent with paragraph 130 of the Framework which looks to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
11. I visited the HMO on a bright, sunny day. On entering the basement, it was evident that some natural light was provided by the single high level window in the room. However, the room is relatively large and deep and the natural light offered is limited, particularly further away from the window. Once the electric light was switched off, the room was dark, despite the sunny conditions. As such, the development is not acceptable in respect of light to the basement room, with consequently poor quality living conditions for the room's occupiers.
12. Turning to outlook for that same bedroom, the single high level window does not allow for outlook as it is not possible to look out, due to the angle, height, position and finish of the window. Even if it was possible to see out of the window, the outlook would be likely to be limited to the front garden wall of the property and the sky. I consider therefore that the development provides an unduly restricted outlook for the occupiers of the basement bedroom.
13. With regard to the quality and extent of internal communal facilities, the only shared living space within the property is the kitchen/dining area located on the ground floor. This contains a dining table and four chairs, and a kitchen area with cooking facilities, fridges and freezers, and food storage and preparation space. The only way of accessing the toilet and shower room is through the kitchen/dining area. Outside, there is a rear yard.
14. I expect that the occupiers of No 60 spend much of their time in their bedrooms. Indeed, two bedrooms have seating areas and food preparation and storage facilities, including kettles, microwaves, and fridges. Notwithstanding

this, it is possible that all occupiers would wish to use the kitchen/dining area for cooking and eating or simply to leave their bedrooms. The communal facilities appear to be constrained. It is difficult to see how all occupiers might comfortably occupy this single shared kitchen/dining space. In the absence of additional communal space for a lounge/TV area, I find that this causes harm in addition to the harm already found in respect of light and outlook.

15. The Council refers to the Government's Nationally Described Space Standards (NDSS). However, I concur with the previous Inspector that the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current local plan policy. In this case, the Local Plan considerably predates the NDSS and there is no relevant policy. Accordingly, this does not weigh against the development.
16. The Council has licensed this HMO for occupation. This is addressed by different legislation and does not necessarily involve the same considerations. While the previous Inspector considered that this indicated a reasonable standard of accommodation had been reached, it remains necessary for me to assess the development on its planning merits. It is not clear from the previous decision whether the Inspector had access to the basement room and kitchen/dining area as I did. While the property appears well-maintained and tidy, it would not offer high quality living conditions as outlined.
17. I conclude that the development has an unacceptable effect on the living conditions of its occupiers, with particular regard to communal facilities, light and outlook. It therefore conflicts with Local Plan Policy BNE2 as set out above.

b) Living conditions of neighbouring occupiers

18. Local Plan Policy H7 deals with dwellings intended for multiple occupation. It confirms that HMO will be permitted subject to a number of criteria. The majority of these criteria are discussed in the following main issue. The fourth criterion of the aforementioned Policy H7 indicates that where a property is not detached, relevant nearby or adjoining properties should be in multiple occupation or a non-residential use. The appeal property adjoins two other buildings within the terrace.
19. The evidence provided indicates that the adjoining house at 58 Linden Road remains a single family dwellinghouse, while neighbouring 62 Linden Road has been divided into flats. There would therefore be an inherent conflict with the fourth criterion of Local Plan Policy H7 with regard to the provision of an HMO adjacent to other properties which are neither HMO nor in non-residential use.
20. It is possible that the bedrooms with their role as primary living spaces within the HMO are located next to bedrooms at the first floor in both neighbouring properties, particularly at No 58 which remains a single house. The previous Inspector noted that they were not aware of the nature of the accommodation at No 58. However, since the first decision was made on this appeal, the Council's statement confirms that No 58 remains a single house.
21. Based on the number of likely residents of the HMO, it is likely that there is and would continue to be a higher level of comings and goings from No 60 on a daily basis and a greater intensity of use of No 60's first floor than if the appeal property were used as a single family dwellinghouse. It appears that this likely increase in use since 2016 has not resulted in reported instances of noise and

disturbance to any part of either No 58 or No 62 as yet. However, this would not prevent such issues from occurring in the future if the occupiers of the HMO changed. As noted in another nearby appeal², the explanatory text of Local Plan Policy H7 states that HMO will normally be detached properties to avoid adverse effects on nearby residences.

22. In conclusion, and in the absence of evidence that any noise and disturbance to neighbouring properties can be effectively managed and mitigated, it has not been demonstrated that the development does not and would not have a materially harmful impact on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. It would therefore conflict with Local Plan Policies H7 and BNE2. Local Plan Policy H7 is set out above. Local Plan Policy BNE2, amongst other things, looks to protect those amenities enjoyed by nearby and adjacent properties and refers to the design of development having regard to noise.

c) Location

23. Section 5 of the Framework deals with delivering a sufficient supply of housing. Paragraph 62 of the Framework refers to the need to provide different size, type and tenure of housing for different groups in the community. Local Plan Policy H7 is not inconsistent with this aim as it does not prevent the provision of HMO altogether, but merely seeks to direct them to particular locations and ensure no harm to neighbouring living conditions, amongst other things.
24. This main issue addresses the locational criteria in Local Plan Policy H7 for HMO. The fourth criterion in respect of living conditions of neighbouring occupiers is covered in the second main issue above.
25. The first criterion of Local Plan Policy H7 relates to the property in question being located in an area with a predominantly mixed-use or commercial character. I saw from my site visit that Gillingham Football Club's ground is close to the end of Linden Road. During my site visit, I also saw a small supermarket and other shops and services located along nearby Gillingham Road. Notwithstanding these non-residential uses, the appeal property is a mid-terraced building on a street with two rows of terraced properties, many of which are still single family dwellinghouses. Nearby streets such as Priestfield Road and Gordon Road are also predominantly residential. I find therefore that the area is neither predominantly mixed use nor has a commercial character.
26. The second criterion of Local Plan Policy H7 refers to the property being located where increased traffic and activity would not be detrimental to local amenity. The appeal property is in walking distance of Gillingham railway station and town centre. A variety of services and facilities are within easy reach, including Medway Hospital. On-street parking is regulated by means of parking permits, though I have not been advised of any way of restricting the HMO occupiers' access to permits. Notwithstanding this and given the nature of the HMO accommodation and the proximity to services and facilities, the Council and the previous Inspector considered that the development would be likely to result in low car ownership for its occupiers. I see no reason to disagree and consider any effect on traffic and activity such as parking would be negligible.

² APP/A2280/W/20/3252697, decision issued 25 October 2021.

27. The third criterion of Local Plan Policy H7 is not relevant as the appeal property is not detached. The fifth and final criterion states that for changes of use, the property would be too large to reasonably expect its occupation by a single household. No specific guidance is set out to assist in assessing what size of housing would be too large. However, from what I saw on site, the appeal property is a three-storey mid-terraced property with rooms at basement, ground and first floor. If used as a family dwellinghouse, it would be likely to have three bedrooms. It is not particularly large and is a similar sized property to other existing family dwellinghouses on the same street. As such, I consider that it would not be too large to be occupied by a single family.
28. In both the officer report and their statement, the Council has referred to a percentage of homes converted into HMO on Linden Road. The criteria of Local Plan Policy H7 do not refer to a specific percentage limit for such conversions on residential streets. As such, it does not reflect a particular tipping point. Instead, it only serves to indicate that a considerable percentage of homes on Linden Road remain as single family dwellings, thereby confirming that the appeal property would not be too large to be occupied by a single family.
29. Concluding on this main issue, the location of the HMO is not acceptable, having regard to local and national planning policy and it would conflict with the first and fifth criteria of Local Plan Policy H7 as set out above.

Other Matters

30. The appeal site lies within 6 kilometres of the North Kent Marshes Special Protection Areas/Ramsar sites. The Conservation of Habitats and Species Regulations 2017 requires that a competent authority makes an Appropriate Assessment (AA) of the implications of the plan or project on the integrity of the sites in view of their conservation objectives. The appellant provided a completed unilateral undertaking dated 6 March 2017 which commits to a payment toward strategic mitigation and management measures. Given my findings on the main issues in this appeal, I have not carried out an AA and reached a finding on this matter.
31. The appellant has stated that dismissal would result in the occupiers of the HMO being made homeless. However, I have little evidence that the occupiers of the HMO would not be able to find alternative accommodation locally.
32. Local residents have raised concerns about the increase in HMO accommodation, issues with difficult tenants, and increased levels of drug and alcohol issues. I have not addressed these matters further, given my decision.

Conclusion

33. For the reasons given above, and having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

Joanna Gilbert

INSPECTOR