



Appeal Decision

Site visit made on 3 October 2023

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2023

Appeal Ref: APP/A2280/W/23/3319228

85 Luton Road, Chatham, Kent ME4 5AG

- 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 Merlin Management Ltd against the decision of Medway Council.
 - The application Ref MC/22/2008, dated 2 August 2022, was refused by notice dated 18 October 2022.
 - The development proposed is the change of use from C4 (HMO) 6 persons in 6 units to sui-generis HMO 10 persons in 6 units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Box F (2) has been ticked on the appeal form, which indicates the reason for the appeal is because the Council refused permission to vary or remove a condition. However, the original application form was for full planning permission and the Council determined the application on that basis. I have therefore proceeded to determine the appeal in the same manner.
3. The application form states that the change of use commenced in July 2022. I have therefore considered the appeal on this basis.

Main Issue

4. The main issue is whether the property provides an adequate standard of accommodation for existing and future occupiers, with particular regard to bedroom size and the quality of communal space.

Reasons

5. The appeal property has six bedrooms with communal kitchen and bathroom facilities as well as a common room in the basement. It is currently licensed as a house in multiple occupancy (HMO) for six occupiers. The development has made no physical alterations to the building but has increased its capacity to eleven, by converting five of the six bedrooms from single to double occupancy. The appellant proposes that the number of tenants in the building would be capped at ten.
6. I have not been directed to any specific local internal space standards for new developments that have been adopted as part of the development plan for the area. However, in its determination of the application, the Council relied on the Government's Technical Housing Standards - Nationally Described Space Standards 2015 (NDSS) as a material consideration, which sets minimum requirements for new dwellings. I have also been referred to the Council's HMO

licensing requirements, which are less restrictive in terms of bedroom sizes than the NDSS. However, the licensing regime operates independently from planning and the expectations do not necessarily align.

7. The Council has raised no objection to the sizes of rooms 1, 3 and 6, which exceed the NDSS for double rooms, or to room 5 which is retained as a single bedroom. I see no reason to disagree with the Council on these points.
8. Rooms 2 and 4 are each 10.8m² in size, falling short of the minimum NDSS requirement for a double room but exceeding the HMO licensing rules. From my observations, the rooms each contain a double bed and storage furniture. However, circulation space is very limited. The rooms are too small for two people to undertake a full range of domestic activities, which may include socialising, dining, working, and enjoying hobbies and pastimes. All of these activities are important for the health and well-being of occupants. It is therefore highly likely that residents would look for alternative private and communal spaces elsewhere in the building to meet their day-to-day needs.
9. Residents have access to a bright and reasonably spacious kitchen for food preparation. However, the only space for dining, recreation, and other communal activity is in the basement common room. The Council has not raised any objection in regard to the size of the common room. However, from my observations it is a dark and gloomy space that, due to its basement location, is poorly connected to the rest of the house. Natural light from the single window is restricted by obscured glass which faces the blank wall of the lightwell. Overall, the room is oppressive and uninviting.
10. Whilst the common room has served six occupants in the past, the additional residents are likely to rely on the space more heavily to compensate for the small size of the bedrooms for double occupancy. Overall, the poor quality of the common room, combined with the small size of bedrooms 2 and 4, means the building is too cramped to cater for the full range of domestic needs of ten residents.
11. There is limited evidence before me to indicate that any existing tenants would be made homeless if the appeal is dismissed. However, the outcome of the appeal may interfere with tenants' rights to respect for their private and family life and their home, under Article 8 as set out under the Human Rights Act 1998. However, this is a qualified right. Interference with it in this instance would be in accordance with the law and in pursuance of a legitimate aim, which is to ensure a reasonable standard of living for residents.
12. I conclude that the development fails to provide an adequate standard of accommodation for existing and future occupiers. This is contrary to policy BNE2 of the Medway Local Plan 2003 (the MLP) and paragraph 130(f) of the National Planning Policy Framework (the Framework) insofar as they seek to protect the amenity of existing and future users of development.

Planning Balance

13. The development is not in accordance with policy BNE2 of the MLP, which seeks to protect the living conditions of future occupiers. Development that conflicts with the development plan should not normally be permitted unless material considerations indicate otherwise.

14. Part of the Council's evidence refers to a new dwelling and has clearly been drafted in relation to a different scheme. However, the information provided concedes that the Council cannot currently demonstrate a five-year housing land supply. Therefore, paragraph 11(d) of the Framework is engaged. Although the Council has indicated that the site lies in or adjacent to a designated habitats site, no harm has been identified in respect of those assets. Therefore, there is no clear reason for dismissing the appeal under paragraph 11(d)(i) and the development falls to be considered against paragraph 11(d)(ii).
15. If allowed, the development would provide additional residential space for a small number of local residents in a sustainable location that is well connected to the town centre. However, the contribution that would be made to the housing shortfall would be very minor. I therefore attach limited weight to these matters in favour of the proposal.
16. The appellant has stated that the HMO has operated successfully for several years and provides housing for homeless people. Whilst many prospective tenants seek single person occupancy, the development would enable greater flexibility to house homeless couples together. The benefits of such flexibility do not, however, negate the importance of providing adequate living conditions for existing and future occupants. This includes more vulnerable members of the community. I have therefore attached limited weight to this matter in my consideration of the appeal.
17. No adverse impacts have been identified in relation to the effects on neighbours or the local community, or on parking and highway matters. The absence of harm carries neutral weight in the overall balance.
18. It has not been demonstrated that the development provides adequate living conditions for existing or future occupiers, which is contrary to paragraph 130(f) of the Framework. I attach significant weight to this harm.
19. Therefore, in the specific circumstances of the appeal scheme, the adverse impact would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole.

Conclusion

20. The proposal conflicts with the development plan when read as a whole. There are no material considerations before me, including the provisions of the Framework, that outweigh the harm I have identified. Therefore, for the reasons given above, I conclude that the appeal is dismissed.

E Catcheside

INSPECTOR