



Appeal Decision

Site visit made on 23 November 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 7th December 2023

Appeal Ref: APP/M1595/W/22/3313712

14 Raphael Avenue, Tilbury, Essex RM18 8NA

- 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 Tracy Clarke against the decision of Thurrock Borough Council.
 - The application Ref 22/00676/FUL, dated 16 May 2022, was refused by notice dated 26 October 2022.
 - The development proposed is change of use from a 6-person house of multiple occupation to an 8-person house of multiple occupation, and the erection of a single-storey rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to an 8-person house of multiple occupation, and the erection of a single-storey rear extension, at 14 Raphael Avenue, Tilbury, Essex RM18 8NA, in accordance with the application, Ref 22/00676/FUL, dated 16 May 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be commenced not later than three years from the date of this decision.
 - 2) The development shall be carried out in accordance with the approved plan, No.6457/20B.
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used on the existing building.

Background and preliminary matters

2. No 14 Raphael Avenue is a residential property which has apparently been used for over 20 years as a house in multiple occupation (HMO). It is not in dispute that in planning terms the use of the property as an HMO for up to six persons, within Use Class C4¹, is lawful by virtue of permitted development rights². An HMO licence, under the Housing Act 2004, is also said to have been granted by the Council. The tenants at the appeal property are said to be homeless persons, nominated and financially supported by the Council's Housing Department; this evidence is again not disputed.

¹ Under the Town and Country Planning (Use Classes) Order 1987

² Under the Town and Country Planning (General Permitted Development) (England) Order 2015: Schedule 2, Part 3, Class L

3. In April 2019, a lawful development certificate was issued for the addition of a loft conversion with dormer, providing additional accommodation in the roof space. I saw on my visit that this development has now been carried out.
4. The present application, as submitted, sought permission for a single-storey rear extension. After submission, the description was changed, with the applicant's agreement, to include the change of use of the property, from a 6-person HMO, to a larger one, for 8 persons. There is no disagreement that this use would fall outside of any use class, and would thus be regarded as a 'sui generis' use.
5. In the appellants' appeal statement it is argued that, notwithstanding the difference in use class, the change from six persons to eight does not amount to a material change of use. But the procedure through which that question could be determined would be an application for a certificate of lawful use. The appeal that is before me seeks planning permission for the development as stated, and I must determine it on this basis.
6. The HMO licence granted by the Council is said to be for up to five persons, rather than six. But licensing is a separate matter from planning permission. The submitted plans show that the layout of the house, prior to the loft conversion, included six bedrooms. What I saw on my visit appeared consistent with this plan. The amended description of the development, which evidently originated from the Council, and which is agreed by both parties, specifies that the proposed change of use is to be from an HMO for six persons. I have therefore dealt with the appeal on this basis.

Main issues

7. The proposed rear extension would form an enlarged, communal kitchen and dining space. The Council does not appear to object to this part of the proposed development. Rather, the reasons for refusal (RRs) all relate to the proposed change in the use of the property, due to the increase in the number of occupants.
8. In the light of the submissions before me, I find that the main issues in the appeal are as follows:
 - the effects of the proposed use on the character and appearance of the area;
 - the effects on neighbouring occupiers, due to noise and disturbance;
 - the effects on parking and highway safety;
 - whether the proposal would put the occupants at undue risk from flooding;
 - and whether the development should contribute to the Council's mitigation strategy for internationally designated sites.

Reasons for decision

Effects on the area's character and appearance

9. The Council's RR1 alleges that the development would cause harm to the character of the area, due to intensification and overdevelopment. In this

context, Policies PMD2 and CSTP22 of the Thurrock Core Strategy³ (the TCS) seek to promote high quality design, based on respect for the local context and existing character.

10. On my visit, I saw that Raphael Avenue is a street of terraced and semi-detached houses, forming part of a former local authority estate. Most of the properties are finished in a grey-coloured pebble-dash render, with a few, including the appeal property, having been overpainted in other muted colours. Externally the houses are set at distances of up to about 5m or so from the footways, with roughly half of the front gardens, again including No 14, having been paved or surfaced to provide off-street parking. In some cases the front boundaries are hedged, and the street also has a number of mature trees within the pavements. Overall, the street's appearance is neat and orderly, although otherwise unremarkable.
11. No 14 itself is a mid-terraced dwelling, of similar design to others nearby. Externally, the property's condition and maintenance appear about average for the street. Its existing use as a 6-person HMO is not obvious. In all of these respects there is little to distinguish the appeal property visually from any of those around it. In the development now proposed, the only external change would be the proposed rear extension, which would not be visible from the street; and which in any event would be little different from many other similar domestic extensions. As far as I am aware, the increase in occupancy, from six persons to eight, would not require any other external changes or visible manifestation. From all public views therefore, the property's appearance would be unchanged.
12. I appreciate that in this case the Council's concern extends beyond the visual and physical aspects of the area's character, to embrace also what might be termed the social dimension. Raphael Avenue is evidently seen as an area predominantly for families, whereas the appeal proposal would increase the number of single-person households. However, I can see nothing in either of the policies cited in RR1 that addresses this issue, nor am I aware of any other policies in the TCS that would support such an approach. Moreover, the National Planning Policy Framework (the NPPF) makes it clear that provision should be made for all types of housing need, and that the creation of mixed and inclusive communities is to be welcomed. Based on the evidence before me, it seems to me that in the present case my consideration of the development's impact on local character should be focussed primarily on the physical and visual aspects of that issue.
13. Having regard to all the above, and for the reasons already stated, it seems to me that the likely effects on the character and appearance of the area would be negligible. In this regard, I find no conflict with TCS Policies PMD2 or CSTP22, or any other relevant policy.

Noise and disturbance

14. The Council's concern in RR2 about disturbance to neighbours is stated to relate to noise, from pedestrian and vehicular movements, and from the use of internal and external amenity areas. TCS Policy PMD1 seeks, amongst other things, to avoid unacceptable impacts on amenity due to all types of pollution, including noise.

³ The Thurrock Core Strategy and Policies for Management of Development, adopted December 2011, incorporating amendments adopted in January 2015

15. It is not in dispute that the change in the use of the property, to incorporate two additional occupiers, would generate some additional comings and goings, whether on foot or by other means. However, for the purposes of this appeal it is clear in my view that it is only those 'new' movements, over and above the existing use, that are relevant. Given that the increase in occupancy would be only two persons, it seems probable that, over the course of a typical day or week, the total number of extra movements resulting from this change would be quite limited. It follows that any noise arising from those additional movements would be relatively infrequent.
16. Although it is said that none of the current or past HMO tenants at the property has ever kept a car, I accept that in the future this could change. And in that case, at least some of the comings and goings would involve the sounds of a vehicle starting, doors closing, and driving away. But in a through-road, serving around 50 or so dwellings, these kinds of sounds are likely to be fairly regular occurrences. Given the small increase in occupancy now proposed, even in the apparently unlikely event that all of those new occupiers' movements were to be by car, it seems to me that in this location the occasional noise arising would not be unduly noticeable.
17. With regard to any other types of noise, the presence of two additional occupants could produce some increase in household noise, in the form of voices, TVs and radios, and general activity. It could also mean some increase in the use of the rear garden. But these types of noise would not be qualitatively different from any other property in a residential area. To my mind, the quantitative effect of two additional occupants, over and above the existing six, seems likely to be relatively minor.
18. There appears to be no evidence that the use of the property as an HMO in the past has given rise to any noise issues or complaints, even though that use has existed for many years. I also note that in the present case, no neighbours have objected to the present application or appeal. This reinforces my view that there is no clear reason to anticipate that the relatively modest increase in occupancy now proposed would be likely to cause harm.
19. On the evidence available, I conclude that the proposed development's effects in terms of noise and disturbance would be unlikely to be significant. In this regard, there would be no unacceptable impact on neighbouring occupiers, and therefore no conflict would arise with Policy PMD1.

Parking and highway safety

20. The Council's concern in RR3 is that the development would result in additional on-street parking. On my visit, I saw that some on-street parking takes place along Raphael Avenue, even in the daytime, because of the number of properties lacking any off-street provision. In the evenings, I have no doubt that the demand is likely to be heavier. In the light of these local parking conditions, I appreciate the concern to ensure acceptable levels of highway and pedestrian safety.
21. At the appeal site, there is an existing concrete forecourt which appears capable, if required, of accommodating up to three smallish vehicles, or two larger ones. The appellant's evidence suggests that in practice this space is rarely used, but as already noted, this might change. The present appeal proposals would not add to the existing provision, and could potentially

generate some additional demand for parking. In that case, if the forecourt were being used by other tenants, or if the total demand from the new and existing occupiers exceeded the capacity of that space, then some overspill would occur. In these circumstances, the development could potentially add to the existing demand for on-street parking.

22. However, on-street car parking in residential areas is not an unusual situation. In Raphael Avenue, although some of the parking that takes place is either partly or wholly on the pavements, there appears to be sufficient space available for this to occur without causing obstruction or danger. The street is lit, and the amount of passing traffic is quite low; conditions are therefore not inherently unsafe. There is no evidence that the street's capacity is being exceeded. Nor is there any evidence of any existing accident record.
23. In the present appeal, even in the worst-case scenario, the maximum number of additional vehicles that could realistically be expected, resulting from the proposed increase in occupancy from six to eight persons, would be two. In percentage terms, this would appear to be a relatively modest increase in relation to the existing demand in the street. There is no evidence that the parking of this number of additional vehicles on the street, if this were to occur, would be significant, in terms of either capacity or safety. NPPF paragraph 111 makes it clear that development should only be prevented on highway grounds if the impact on safety would be unacceptable, or that on the road network would be severe; in the present case, the evidence does not support such a finding on either count.
24. I appreciate that the existing forecourt parking area at the appeal site suffers from some shortcomings; in particular, there is no dropped kerb, and manoeuvring is slightly hampered by an existing tree and lighting column. However, for the reasons that I have explained, I do not consider the appeal proposal to be dependent on this existing provision. Any problems with regard to access to the forecourt are therefore irrelevant to the present appeal. But in any event, there is no evidence that the defects identified are so serious as to prevent the forecourt from being used. The existence of at least two existing spaces seems to me to put the appeal property amongst the better served in the street, irrespective of these minor difficulties.
25. In considering these matters, I also give significant weight to the fact that the appeal site is close to a choice of convenience shops in St Chads Road, and also within reasonable walking distance of Tilbury town centre. Bus services are available close to the site, at St Chads Road and Feenan Highway. A reasonably good range of facilities is therefore available to occupiers without the need for a car. Planning policies, at both national and local levels, encourage developments in sustainable locations of this kind, where a choice of transport modes can offer the opportunity to reduce car ownership and use. These include Policy PMD2 of the TCS, which encourages developments that give priority to pedestrians and cyclists over traffic. These matters reinforce my view, that in the case of the present appeal, the lack of additional parking provision to match the additional occupancy does not make the proposal unacceptable.
26. I have had regard to the three TCS policies cited in RR3. Policy PMD8, as originally adopted in 2011, apparently required compliance with car parking standards contained in an SPD. But it appears that this policy, and the SPD,

have been deleted and not replaced; and in any event, the Council acknowledges that there is no defined standard for an 8-person HMO as now proposed. Policy PMD9 relates mainly to the provision of new accesses, or an increase in the use of an existing access, but in this case neither is proposed. Policy PMD2, as noted earlier, is concerned primarily with design and layout, and apart from the provision referred to above regarding pedestrian priority, the policy contains nothing else relevant to car parking or highway safety. I therefore find no conflict with any of these policies.

27. Based on the above, I conclude that the proposed development's impact on on-street parking would be no more than minor, at most, and on this basis, there would be no significant effect on highway safety.

Flood risk and the safety of occupants

28. In relation to RR4, the Council's stated concern is whether the information submitted is sufficient to be sure that occupiers of the development would be safe in the event of a flood incident.
29. From the Council's evidence, it is stated that the appeal property lies within a Flood Zone 3 area, where the risk of flooding is high, albeit that the area is also said to benefit from some form of flood defences. I note that this information is based on advice from the authority's emergency planning and resilience team. Although the appellant has produced map screenshots which appear to rate the area as lower risk, it is not clear whether these take account of all potential flooding sources. In the absence of any further technical evidence, I can see no good reason to doubt that the site falls within Zone 3.
30. The proposed extension would not contain any sleeping accommodation, and nor would the development as a whole involve any change to the numbers of persons sleeping in the existing accommodation on the ground and first floors. But the change of use to an 8-person HMO would increase the number of people living in an area of high risk, and on that basis I agree that the occupants' safety is an important consideration.
31. The TCS policies dealing with flood risk are Policies CST27 and PMD15. Policy CST27 seeks to ensure proper flood risk management, and requires proposals in Zone 3 to be treated in accordance with the relevant policies of the NPPF. Policy PMD15 sets out more detailed provisions for the application of the NPPF's sequential and exceptions tests, having regard to local circumstances in Thurrock.
32. In the present case, it is common ground that the sequential test is unnecessary, because the appeal site falls within an area covered by the Council's strategic flood risk assessment. The area of disagreement therefore relates to the exceptions test. However, Policy PMD15 states, at sub-paragraph 2, that minor developments and changes of use are exempt. In the present case the appeal proposal clearly falls into both of these exempted categories. I also note that, for changes of use, this approach is supported by NPPF footnote 56.
33. The Environment Agency flood risk form submitted with the application was designed for householder extensions, and not for changes of use. But in this case, the change of use element was added to the application, at the Council's request, only much later in the process. The form is clearly intended as a

simplified flood risk assessment, and thus would have been adequate to discharge any requirement relating to the proposed rear extension. In any event, the information provided shows that the floor level of the extension is to be set no lower than the existing ground floor, and that flood proofing is to be incorporated. In so far as the floor level is concerned, this is confirmed in the submitted plans; and the details of the flood proofing would normally be considered as part of a submission for Building Regulations approval. I can see nothing lacking in any of this information, but in any event, in the light of the above, in this case nothing further seems to be required to satisfy any of the relevant planning policies.

34. In addition, a flood evacuation plan has been submitted. The Council has not elaborated on its reasons for finding this inadequate. I accept that the plan is brief, but it seems to me that in the event of a flooding incident, simplicity would be likely to be an advantage. The appellant has expressed her willingness to prepare a more detailed evacuation plan, but no condition to that effect has been proposed by the Council. To my mind, there is no clear evidence that any such condition is needed for the purposes of compliance with planning policy. Such a requirement might be relevant in the context of any application for a new HMO licence, but that would be a separate matter.
35. I conclude that, despite the site's location in a high risk area, the proposed development would meet the relevant policy requirements for the type of use involved. As such, the scheme would provide for an acceptable level of safety for its occupants. In this regard the proposal would comply with Policies CST27 and PMD15.

Mitigation for internationally designated sites

36. RR5 relates to the possibility of harm to the Thames Estuary and Marshes special protection area (SPA), an internationally designated site of importance for nature conservation. The appeal site lies outside that area, but within a 'zone of influence' (ZoI) around it.
37. The Council states that, within the ZoI, a tariff is payable on all new dwellings, to be secured by legal agreement. However, any such request for payment or agreement would need to meet the relevant legal and policy tests⁴, by being shown to be necessary, to make the development acceptable in planning terms, and directly related to the development, and fairly and reasonably related in scale and kind.
38. In the present case, reference is made to an Essex Coast recreational avoidance and mitigation strategy (RAMS). However, no details of that document have been put before me. The appellant has, not unreasonably, questioned whether the terms of the strategy apply to the present proposal, where no new self-contained dwelling would be created. No response has been made to that point. In the absence of any further information regarding the RAMS, I cannot judge whether in this particular case the terms of the strategy are such as to make the requested contribution either necessary, or sufficiently related to the development.
39. Furthermore, as far as I can tell from the evidence, the RAMS does not appear to form part of the development plan, nor of any SPD. Nor does there appear

⁴ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010; and NPPF paragraph 57

to be any development plan policy relating to the ZoI, or requiring contributions from development in that area. TCS Policy CST19 encourages the enhancement of biodiversity in general terms, but makes no reference to any requirement for financial contributions. In the evidence before me therefore, I can see nothing that establishes that the contribution now sought is necessary to comply with development plan policy.

40. In considering this issue, I have taken account of the duties imposed by the relevant Habitat Regulations⁵. But as the appeal site is outside the designated SPA itself, the development would have no direct effect on that protected area. Any potential impact due to recreational pressure would be of an indirect nature at most; and in any event, in the light of the above, such an effect has not been substantiated in this case. On the evidence before me therefore, no basis has been shown for requiring a Habitat Regulations Assessment for a development of this scale and nature, in this location. It follows that in this case the suggested RAMS contribution is not made necessary by anything in the Habitats Regulations
41. I conclude that the Council's request for a contribution to mitigation for protected sites has not been justified. On the evidence available, no such contribution is necessary in this case.

Other matters

42. The Council acknowledges that it is unable to demonstrate a 5-year supply of sites for housing, as required by the NPPF. For the purposes of this calculation, the present proposal would not directly add to the 5-year supply, as it would not create any new dwellings. But nevertheless, it would help to meet the housing needs of two additional households, and in the circumstances, this benefit adds weight in favour of the appeal.

Conditions

43. I have considered the conditions suggested by the Council, having regard to the tests set out at NPPF paragraph 56. I agree that a condition specifying the approved plan is needed, to give certainty to the permission, and also a condition to control the external materials, in order to ensure a satisfactory appearance. These conditions, together with the statutory time limit for commencement, are set out on page 1 of this decision.
44. However, a condition specifying the nature of the permitted use is unnecessary, as the use is already made clear in paragraph 1 of the decision, and any further material change of use would require planning permission. In addition, the suggested conditions requiring improvements to the existing access and parking area are unnecessary, for the reasons already explained, and would also be unduly onerous in relation to the scale of the development. In any event, as the Council acknowledges, there is no certainty that the access condition could be complied with, in the light of the comments received from the Highways Officer. Both of these latter conditions would therefore be unreasonable.

⁵ The Conservation of Habitats and Species Regulations 2017

Conclusion

45. For the above reasons, I find that the proposed extension and change of use to an 8-person HMO would cause no material harm to the area's character, or to neighbouring occupiers, or to highway safety, nor would it result in any significant safety risks in respect of flooding. I also find no evidence that any harm would result from the lack of a contribution to mitigation for protected sites. In all these respects, the scheme would avoid conflict with the relevant policies of the TCS, and thus would accord with the development plan as a whole.
46. In addition, the development would make a small but positive contribution to meeting housing needs in an area of housing shortfall, and this adds further weight in favour of the development. No considerations weighing against have been substantiated.
47. I have taken account of all the other matters raised, but none outweighs these conclusions. The appeal is therefore allowed.

J Felgate

INSPECTOR