



Appeal Decision

Site visit made on 30 January 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2024

Appeal Ref: APP/B1415/W/23/3322544

37-39 Mount Road, Hastings TN35 5LB

- 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 Vitae Investments Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/22/00624, dated 28 July 2022, was refused by notice dated 26 January 2023.
 - The development proposed is the change of use from C3 to HMO (sui generis) including managers accommodation at first floor level, with single storey extension to the side, works include new rear external steps at first floor level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's decision notice since this succinctly describes the proposal.
3. The appellant submitted revised ground and first floor plans (revision C dated January 2023) which were not referenced on the Council's decision letter. They are however referred to by the Council in their delegated report which confirms that they do not form the basis of the refusal of planning permission but may be relevant in a future appeal.
4. The revision C amendments remove a chimney breast to room 3 at ground floor and alter the configuration of the first floor by replacing room 11 with a communal lounge.
5. The Council have provided commentary on the revision C drawings in their evidence. Given that the alterations to the scheme are small, and do not affect the description of development and would not intensify the proposed use, I do not consider that my acceptance of revision C would be prejudicial to any party. I have therefore determined the appeal on the basis of the revision C floorplans.
6. The National Planning Policy Framework (the Framework) was updated in December 2023, during the consideration of the appeal. The Council and the appellant were given the opportunity to comment upon the revisions insofar as they relate to the appeal and I have taken any comments received into consideration.

Main Issues

7. The main issues are the effect of the proposal on:

- The living conditions of future occupiers with particular regard to outlook, daylight, communal space and room sizes.
- The living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

Living conditions of future occupiers

8. The appeal site spans 2 adjacent plots and comprises a large 2 storey single family dwelling. The surrounding area is residential in nature, characterised by high density terraced housing with courtyards or small gardens to the rear. There is some outdoor space to the rear of the appeal property in the form of one small, enclosed courtyard, and another larger courtyard, running along the rear boundary and the boundary with the house immediately to the north. There is an area of hardstanding to the front of the appeal site which has the potential to be used as an external recreation space.
9. At ground floor, there would be 5 bedrooms which solely face a courtyard and would therefore have a rather restricted outlook. In this regard, rooms 3, 6 and 7 would have the most restricted outlook, with their only windows facing the most enclosed courtyard areas. Due to their proposed windows and position relative to the courtyard, rooms 4 and 5 would have a slightly more open outlook than the other rear ground floor rooms.
10. I have not been provided with any quantitative evidence regarding daylight or sunlight levels. Given the orientation of the windows and built form of the appeal site, it would be difficult to achieve reasonably sunlit rooms to the rear ground floor. However, the rooms also appear to have poor levels of daylight and on the basis of the evidence before me I do not consider that the combination of low daylight levels and restricted outlook particularly to rooms 3, 6 and 7 would provide acceptable living conditions for future occupiers.
11. The 7 proposed rooms facing the street over ground and first floors would have an open outlook and would be well lit. At first floor, rooms 11 and 12 would have a courtyard outlook, along with the manager's room, the first-floor rooms were generally better lit due to the more open outlook at this level.
12. The communal kitchen and dining area to the rear of the ground floor would have obscure glazed windows, replicating the existing situation. Although the room is well lit, there is no outlook. I note the appellant's offer of considering replacement glazing for the ground floor kitchen window, or the introduction of new rooflights. Whilst this may offer an improvement to the outlook, it could be at the expense of neighbouring occupiers' privacy and in any event, that is not the scheme before me. I do not consider these matters could reasonably be dealt with by condition given their implications for the privacy of neighbours.
13. The room labelled 13 at first floor level, whilst having a Gross Internal Area of 8.4 square metres, would be narrow. It would be under the 2.15m minimum width prescribed by the Nationally Described Space Standards, and the positions of the doors would make it an awkward space to use. Notwithstanding

its overall size, I am not persuaded that this would be of an acceptable standard to offer adequate living conditions for future occupiers. I note the appellant's offer of the room becoming management office space as an alternative. Had the appeal scheme been considered acceptable in other respects, this could have been secured by an appropriate planning condition.

14. Overall, I consider that the individual room sizes are otherwise acceptable on the basis of the revision C plans, which mean that the 2 rear-facing first floor rooms labelled as living area and management office would not be used as bedroom accommodation. The absence of harm in this respect holds neutral weight in the overall planning balance.
15. My attention has been drawn to numerous examples where HMO accommodation has been approved in the local authority area without access to any outdoor space. I do not consider these examples are directly comparable given that several are in a town centre location and are closer to parks or the seafront than the appeal site, others are significantly smaller HMOs than the appeal proposal. In any event, I have determined this appeal on its own merits.
16. My attention has also been drawn to examples where there is a similar or lesser amount of outdoor space for an HMO scheme compared to the appeal proposal. The development plan does not contain any specific planning policy requirement for external space standards for HMOs. Policy DM3 of the Hastings Local Plan – Development Management Plan 2015 (DMP) states that permission will be given for development where appropriate levels of private external space are provided. As such, the adequacy of the external space is a matter of planning judgement.
17. To the rear, the external space is narrow and irregularly shaped. It would be highly overlooked by the ground floor rooms, resulting in a potential lack of privacy for the occupants of those rooms along with the potential for noise disturbance. This would in my view make it difficult for residents to use and would potentially create conflict over the use of space. The appeal site is located some distance from any public park or the seafront. Given the number of occupiers intended for the building and the lack of any alternative public space within close proximity, I do not consider that the external space would be appropriate for the proposal, contrary to Policy DM3.
18. I acknowledge that due to the pattern of development locally and the nature of the housing stock, rear rooms facing enclosed courtyard areas are a common feature. However, when these rooms are part of a single-family dwelling, it would be reasonable to assume there would be other rooms with a more open outlook which would also be used by the same occupiers for day to day living. The nature of an HMO, however, means that the individual rooms are the sole private living space of that occupier. The ground floor rooms with poor daylight and outlook as identified above, in conjunction with a ground floor kitchen area with no outlook, along with a restricted outdoor recreation area have the effect of making the proposed accommodation harmful to the living conditions of the future occupiers.
19. I conclude in relation to this issue therefore that the proposals would not offer acceptable living conditions for future occupiers, which runs contrary to Policy SC1 of the Hastings Planning Strategy 2014 and Policy DM3 of the DMP which

amongst other things seek to achieve a good standard of living accommodation for future occupiers.

Living conditions of neighbouring occupiers

20. I recognise that the property is substantial and could be occupied by a large family. Nevertheless, the proposed number of rooms would provide accommodation for up to 14 unrelated occupiers, each forming an independent household with their own comings and goings. The manager would also be accommodated. It would be a reasonable expectation that each occupier would have their own schedule, leaving and entering the property throughout the day, in addition to their own deliveries and visitors.
21. The courtyards to the rear and the front forecourt area would offer some limited recreational space for the occupiers. The level of activity and noise from ordinary social interaction should many of the residents be using the outdoor space either to the front or rear would be significantly greater than that associated with a single-family dwelling on a day-to-day basis.
22. The number of people potentially occupying the building would be a significant increase in the intensity of the residential use given that the building is currently a single dwelling. The activity and noise associated with the increased intensity of use would be harmful to the living conditions of the neighbouring residential occupiers, particularly given the proximity of neighbouring residential windows and gardens either side and to the rear due to the density of development in the area.
23. I have no doubt that the presence of a manager on site would help in the running of the proposed HMO and would assist in the management of any incidences of late-night noise or anti-social behaviour, as would a management plan which regulates access to external areas. I note the appellant's comments regarding their record and experience of managing similar sized HMOs in the area. However, the nature of the noise and activity would likely be associated with general everyday comings and goings and use of the external space rather than behaviour of an anti-social nature and a management plan would not reduce the intensity of day-to-day use.
24. I note the suggestion of a soundproofing condition to reduce noise breakout; I do not consider that this would wholly address the issue of increased activity and noise disturbance since the issue would also arise from comings and goings and external noise.
25. I conclude that the proposal would lead to unacceptable harm to the living conditions of neighbouring occupiers with regard to noise and disturbance. It would therefore be contrary to Policies DM3 and DM6 of the DMP and Policy SC1 of the Hastings Planning Strategy 2014. These policies seek to avoid development which has an adverse impact on the amenity of neighbouring properties, including noise pollution, and manage change in a sustainable way, including an aim to provide inclusive places where existing residents want to live and work.

Other Matters

26. The appellants agreement to a permission personal to them is noted. Planning permission runs with the land and Planning Practice Guidance (Paragraph 015, reference ID: 21a-015-20140306) is clear that limiting the benefit of a

permission to a company is inappropriate. There are no exceptional circumstances presented in the evidence which would lead me to a different conclusion.

27. Whilst I note the comments of the Council's HMO licensing team with regard to the evolution of the scheme and the identified need, the legislation under which HMO licences are issued is entirely separate to planning regulations and my assessment is necessarily based on the development plan and other relevant material considerations.
28. I have had regard to other matters raised by interested parties. As I am dismissing the appeal on the main issues for the reasons given above, I have not pursued these matters further.

Planning balance and conclusion

29. The proposal aligns with some of the core principles of the Framework in that it would provide housing in a sustainable location for which there is an identified need, including 6 rooms that would be fully accessible accommodation for wheelchair users. It would make efficient use of the land. There would also be some socio-economic benefits arising from new occupiers using local shops and services. These benefits attract considerable weight in the overall planning balance.
30. However, the Framework is also clear in its aim to create places with a high standard of amenity for existing and future users. The harm I have identified to the living conditions of future occupiers of the appeal site and to neighbouring occupiers, outweighs the identified benefits. As such the proposal is contrary to the development plan read as a whole.
31. The material considerations in this case do not indicate that the decision should be taken otherwise than in accordance with the development plan. The appeal should therefore be dismissed.

L Francis

INSPECTOR