



Appeal Decisions

Site visit made on 15 October 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/A2280/C/23/3335500 & APP/A2280/C/23/3335501
Land at 60 Linden Road, Gillingham, Kent ME7 2PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andre Bell and Mrs Jacqueline Bell against an enforcement notice issued by Medway Council.
 - The enforcement notice was issued on 30 November 2023.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the conversion and change of use of the residential dwelling (C3) on the Land to a nine person House of Multiple Occupation (HMO) (sui generis).
 - The requirements of the notice are to:
 - (i) Cease the unauthorised use of the dwelling as a 7 plus person HMO;
 - (ii) Return the dwelling to its former use as a C3 dwellinghouse.
 - The period for compliance is within six calendar months from the date when the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal decisions

1. The appeals are therefore dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Preliminary Matters

2. Extraneous to the Town and Country Planning Use Classes Order 1987 (as amended) a House in Multiple Occupation (HMO) is a legal category of housing defined in part 7 of the Housing Act 2004, and is considered to be a residential property rented out by at least three people who are not from the same household, and is not entirely made up of self-contained flats. In other words the residents will share common facilities such as a kitchen, bathroom and wc, and maybe a communal lounge.
3. HMOs are licensable and a property is a HMO if a 'HMO declaration', served by the local housing authority (LHA), is in force in respect of it under s255 of the Housing Act. This confirms that the LHA is satisfied that the building meets the necessary tests, and that the occupation by persons who do not form a single household constitutes a significant use of that accommodation. The appeal property is licensed, accordingly.
4. However, the position under planning legislation is different, and an existing HMO in planning terms is not necessarily influenced by the above licensing process.

5. The Town and Country Use Classes Order defines two types of HMOs. Class C4 relates to small, shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. Larger HMOs, occupied by more than seven persons, are not categorised. Instead, they are classed as sui generis and do not fall within any use class. Therefore, unlike Class C4 HMOs – for which this is free movement from and to Class C3 – any change to a large, seven person plus HMO type requires the benefit of planning permission.
6. There is no statutory definition of a 'single household' for the purposes of Class C3(c) and a house-share, subject to a maximum six person residence might alternatively fall within Class C4
7. In this particular instance I am mindful that in September 2022 a s78 appeal was dismissed and planning permission refused for the property's use as a HMO. Accordingly, the issues which I identify later in this decision as to the uses planning merits and impacts have already been rehearsed. Moreover, in the absence of any material change in circumstances – at least anything significant in planning terms, and the appellants have said that the layout has not been altered since the appeal decision – it is not necessary that I reiterate the findings of the previous Inspector in any great detail. Her decision holds good and it is therefore a strong material consideration to be taken into account in reaching my decision.

The Appeal on ground (b)

8. The appeal on ground (b) is that the alleged breach of control has not occurred as a matter of fact. Here, the essence of the appellant's case is that the residents operate as a single household and that the property is therefore, for planning purposes, a class C3 use.
9. Since April 2010 Use Class C3 has comprised three particular elements rather than the two which were categorised under the original version of Class C3 by way of the Town and Country Planning Use Classes Order, 1987.
10. There was frequently some difficulty in the past as to determining whether the members of a house-share did genuinely form a single household, and there would seem little doubt that the uncertainty that arose in such cases led to the intended exclusion of the house-share model from the 2010 revision, and many of such arrangements would now fall within the then newly introduced Class C4.
11. Class C3(c), as defined in the Town and Country Planning Use Classes Order, refers to the use of a dwellinghouse by not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). The enforcement notice alleges that the property is currently in use as a large HMO (sui generis) and, although the appellants say that the property, for the past 5 years, has only ever homed 6 people at any one time, I have not received any detailed information to convince me that this is necessarily the case. To illustrate, in this regard, neither the tenants (either present or past) nor the owners have produced any statutory declarations to confirm the claims. The onus of proof lies with the appellant.

12. Accordingly, in the absence of any substantiated information before me to demonstrate otherwise, I am satisfied that the enforcement notice's allegation is correct.

13. The appeals on ground (b) therefore fail.

The appeal on ground (a) – the deemed planning application (DPA)

The Main Issues

14. These are as follows:

- 1) whether the bedrooms and facilities within the premises affords all the various occupiers a satisfactory standard of accommodation;
- 2) the use's effect on the living conditions of neighbouring occupiers; and
- 3) the effect on the character of the surrounding area.

Standard of accommodation

15. The property has six bedrooms, ranging between approximately 10.7sqm and, the largest, measuring some 17.8 sqm. One bedroom sits within the basement and is lit, albeit to a limited degree by a sunken light well. Towards the rear of the property is a communal dining room and kitchen, beyond which is a shower room and separate w/c. The main bathroom is situated at first floor level. A well maintained rear garden area is also accessible to all occupiers.
16. It would appear that the occupiers use the kitchen facilities as there are no standard cooking appliances within the bedrooms. However, the dining room is a little on the small side and it is unlikely that it could accommodate all the residents at any one time. Indeed, the appellants say that the dining area is only suitable for four adults to sit comfortably, eat and relax. It is also said that, due to night shifts, it is rare that all the residents would be home at any one time.
17. I have mentioned the appellants' claim that no more than six residents are housed within the property and, admittedly there are six bedrooms. However, there is no compelling evidence before me to show that the tenants' partners do not also reside within on occasions or perhaps more frequently.
18. In the above connection three of the bedrooms have floor areas slightly below 11 sqm, which is a typical minimum threshold for a double bedroom and, although there should be a degree of flexibility, I do have concerns about the standard of accommodation provided by the converted basement. I note the appellants' comment that the room was previously inspected by a Medway Council official as to its suitability but, having viewed this room during the late morning the degree of natural light entry was certainly less than convivial, even poor, and I am not convinced that this room lends itself easily to perform as primary living accommodation.
19. Further, I find that although the bathroom and w/c facilities are probably adequate, the fact that the second w/c and shower-room are accessed from the kitchen is not ideal. Nonetheless, the HMO appears well maintained and properly administered and this likely explains that it has now been licensed for some eight years.

20. I accept that HMO accommodation fills a gap in the market, but this should not be at the expense of the occupants' individual living conditions and, to this end, I note that the accommodation here conflicts with relevant provisos of both policies H7 and BNE2 of the Medway Local Plan (LP). Accordingly, in view of the shortcomings I have highlighted I conclude that the use - as it stands - does not represent a satisfactory standard of accommodation for all residents occupying the property.

Neighbours' living conditions

21. LP policy BNE2 seeks to protect the amenities or living conditions of neighbouring occupiers and, more specifically, policy H7 says that dwellings for multiple occupation will be permitted subject to certain criteria. One such proviso for such requires that where the property is not detached, as is the case here, relevant nearby or adjoining properties are already in multiple occupation or are used for non-residential purposes.
22. I have not seen anything to suggest that nos 58 or no 62 are in multiple occupation or in non-residential use. Indeed, the appellants have indicated that no 62 is in use as two self-contained flats. It has also been said that there are three dwellings operating as HMOs in Linden Road, and no 8, in particular has been cited.
23. I note that the previous Inspector considered that there would be a greater degree of comings and goings from the HMO use than would be the case if it was in use as a single family dwellinghouse. That may be the case, but I am also mindful that if the property was in use as a Class C3 shared house or, for that matter, a Class C4 HMO, with the requisite limit of six persons living there, these would likely be permitted uses of the property and the Council would have no control in planning terms.
24. I have mentioned that the appellants' assertion that no more than six persons reside there at any one time but, in the absence of evidence to the contrary, the Council's allegation as to the dwelling being in use as a large HMO (with seven or more persons residing there) has not been rebutted.
25. I am therefore of the view that without firm evidence as to the regular degree of occupation, which might suggest otherwise, the potential exists for neighbouring occupiers to be subject to undue noise and disturbance due to intensity of use. Again, there would be conflict with certain provisos of LP policies H7 and BNE2, and I conclude that the HMO (sui generis) would be harmful in this respect.

Local character

26. One of the requirements of LP policy B7 for HMOs to be permitted is where the property is in an area with a predominantly mixed-use or commercial character. That is not the case here as Linden Road appears to be almost exclusively residential in character. However, given that the Medway Local Plan was adopted over twenty years ago I find on this particular point that the contemporary advice within paragraph 135 of the National Planning Policy Framework (2023) that uses should be 'sympathetic' to local character whilst optimising the potential of the site is probably a more appropriate approach to take when determining such proposals. That said, I am also mindful that there should be a high standard of amenity for existing and future users.

27. On this main issue, therefore, I would consider that the use, on the whole, would have only a neutral effect on local character.

Other Considerations

Human Rights legislation

28. In considering the proportionality of a requirement to leave one's home it is relevant whether or not the home was established unlawfully.
29. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
30. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest. Given the planning position in this instance I am satisfied that this is the case here.

Conclusion

31. I have found harm on two of the three main issues and I find this compelling. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The Appeal on ground (f)

32. An appeal on ground (f) is the consideration that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by requiring the cessation of the HMO (sui generis) use, and the reinstatement of the former residential (C3) use.
33. The appellants say that they would be happy to exclude the basement bedroom from the schedule of accommodation. If so, this would reduce the number of bedrooms to five. However, the actual number of residents living within the property at any one time is of particular importance as, unless Medway Council has secured an Article 4 Direction to restrict the permitted change of Class C3 to Class C4 use, no breach of planning control will have occurred providing no more than six individuals reside at the property, which will be their only or main residence.
34. Given the above I find that the requirement to revert to a C3 use is appropriate as, despite the owner's permitted development entitlement, the compliance directive serves the planning purpose of the enforcement notice at issue.
35. Accordingly, the requirements are not excessive and the appeals on ground (f) fail.

The Appeal on ground (g)

36. The appeal on ground (g) is that the stated time period for compliance in the enforcement notice falls short of what is reasonable in the circumstances. The appellant, on the appeal form, has referred to this ground, but no alternative time period has been put forward.
37. In the circumstances and, having weighed up the planning position I have identified earlier, I find that a period of six calendar months from the date when the notice takes effect for the use to cease and for the residents, if necessary, to find alternative accommodation is not unreasonable.
38. The appeals on ground (g) therefore fail.

Timothy C King

INSPECTOR