



Appeal Decisions

Site visit made on 22 October 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2024

Appeal A Ref: APP/A2280/W/24/3339076

287 Castle Road, Chatham ME4 5JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Henry Oleghe (Setsquare Places Limited) against the decision of Medway Council.
 - The application Ref is MC/23/2580.
 - The development proposed is change of use from C3 to large HMO (*sui generis*).
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Appeal B Ref: APP/A2280/W/24/3342035

287 Castle Road, Chatham ME4 5JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Henry Oleghe (Setsquare Places Limited) against the decision of Medway Council.
 - The application Ref is MC/24/0203.
 - The development proposed is change of use from C3 to large HMO (*sui generis*).
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Decision

1. Appeal A is allowed and planning permission is granted for loft conversion with dormer to rear and rooflights to front to facilitate conversion of a single dwellinghouse (C3) to form a large house in multiple occupation (*sui generis*) at 287 Castle Road, Chatham ME4 5JA in accordance with the terms of the application, Ref MC/23/2850, and the plans submitted with it, subject to the following conditions:

- 1) Unless within 3 months of the date of this decision a scheme for the secure parking of cycles is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site as a house in multiple occupation shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site as a house in multiple occupation shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved cycle parking scheme specified in this condition, that cycle parking shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The house in multiple occupation hereby approved shall be occupied by no more than 10 persons at any one time.
2. Appeal B is allowed and planning permission is granted for loft conversion with dormer to rear and rooflights to front to facilitate conversion of a single dwellinghouse (C3) to form a large house in multiple occupation (*sui generis*) at 287 Castle Road, Chatham ME4 5JA in accordance with the terms of the application, Ref MC/24/0203, and the plans submitted with it, subject to the following conditions:

- 1) Unless within 3 months of the date of this decision a scheme for the secure parking of cycles is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site as a house in multiple occupation shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site as a house in multiple occupation shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved cycle parking scheme specified in this condition, that cycle parking shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The house in multiple occupation hereby approved shall be occupied by no more than 8 persons at any one time.

Preliminary Matters

3. There are two appeals relating to this site as set out above. Although I have considered each on its individual merits, to avoid duplication I have dealt with the two schemes together except where otherwise indicated.
4. Notwithstanding the descriptions of development in the banner heading above, which are taken from the original application forms, it is clear from the plans and accompanying details that the development in both appeals comprises a loft conversion with dormer to rear and rooflights to front to facilitate conversion of a single dwellinghouse (C3) to form a large house in multiple occupation (*sui generis*) (HMO). In Appeal A the HMO has 8 bedrooms for up to 10 people, and in Appeal B it has 7 bedrooms for up to 8 people.
5. I observed during my visit that the loft conversion with rear dormer and rooflights has been completed and the premises is in use as an HMO. I also observed that the rooms shown as bedrooms with bathrooms on the plans for

Appeal A appear capable, in principle, of being occupied. It follows that this is also the case in Appeal B. I have therefore considered both appeals on the basis that the development has already taken place.

6. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. The proposed revisions to the Framework are draft and therefore may be subject to change before the final Framework is published. Moreover, the draft revisions to the Framework and other proposed reforms are not directly relevant to this appeal. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on them.

Background and Main Issues

7. The Council included Policy HO3 of the Arches Chatham Neighbourhood Plan (ACNP) and Policy H7 of the Medway Local Plan 2003 (MLP) in its reasons for refusal for application Ref MC/24/0203 but not for application Ref MC/23/2580. I understand the ACNP was made by the Council in May 2024 following a referendum. It therefore has full weight as part of the development plan for the appeal site. Accordingly, ACNP Policy HO3 is relevant to both Appeals A and B. MLP Policy H7, which applies specifically to HMOs, is also relevant to both appeals.
8. The site is within the zone of influence of the North Kent Marshes Special Protection Areas (SPAs), which are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
9. Consequently, the main issues in both appeals are:
 - whether the appeal premises and location are suitable in principle of HMO use;
 - whether the development provides acceptable living conditions for occupiers of the HMO, with particular reference to bedroom size, bathroom provision and communal living space; and
 - the effect of the development on the integrity of protected European sites.

Reasons

Suitability in principle for HMO use

10. MLP Policy H7 supports change of use to an HMO where the property is too large to reasonably expect its occupation by a single household. However, ACNP Policy HO3 states developments that remove family homes from the market will not be supported and defines family housing as having two or more bedrooms with access to external amenity space.
11. Under section 38(5) of the Planning and Compulsory Purchase Act 2004, if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

12. The appeal premises falls within the ACNP's definition of a family house, so the development conflicts with ACNP Policy HO3. This Policy is more recently approved than MLP Policy H7, so I give it greater weight.
13. Nevertheless, the size of the appeal premises is a material consideration in this case. The original dwellinghouse has been enlarged through addition of a two-storey side extension, a single storey rear extension and a dormer to provide rooms in the roof. This level of enlargement was possible because of the unusual end of terrace location and adjacent road layout providing relatively generous space to the side of the house. As such, the dwellinghouse comprises four ground floor habitable rooms in addition to a kitchen/diner, and six further upstairs rooms capable in principle of being habitable rooms.
14. This quantity of habitable rooms is uncommonly large bearing in mind the surrounding neighbourhood is generally characterised by relatively modest terraced dwellings. There is no pertinent evidence of unmet need for such large family-sized homes in the area so I find it unlikely the house would be occupied by a single household. The house is already occupied by multiple households, which demonstrates demand for that type of accommodation in this location. The supporting text to ACNP Policy HO3 aims to achieve a mixed variety of different sized homes in the area. Use of the appeal site as an HMO would contribute to this aim, without unduly jeopardising the objective to protect smaller homes for family occupation.
15. Taking all this together, it would be unreasonable to prevent occupation of the house by multiple households, notwithstanding the condition restricting change of use to a small HMO on the permission for the side and rear extensions¹. In these circumstances, the Framework's objective to provide an appropriate mix of housing types for the local community lends support to the development. I give these considerations significant weight such that they outweigh the conflict with ACNP Policy HO3 in these appeals.
16. Another recent decision involving ACNP Policy HO3 has been brought to my attention². There is no pertinent evidence the circumstances in that case are directly comparable to those before me, so I give it limited weight. In any event, I have considered the current appeals on their individual merits.
17. MLP Policy H7 includes three other requirements for dwellings in multiple occupation: that the property is in an area with a predominantly mixed-use or commercial character; that it is located where increased traffic and activity would not be detrimental to local amenity; and, where the property is not detached, that relevant nearby or adjoining properties are in multiple occupation or a non-residential use.
18. The appeal site is in a largely residential neighbourhood comprising mostly terraced dwellings. Nonetheless, as noted above, the location is unusual because it is on the end of a terrace and at a junction of three roads such that there are no dwellings directly opposite No 287. Other than the dwelling that adjoins it, the nearest uses to the appeal premises are a convenience store and a large area of allotments. I therefore find the immediate vicinity of the appeal site to be predominantly mixed-use.

¹ Application reference MC/23/0014

² Application reference MC/24/0051

19. For the same reasons, comings and goings to the site materially affect few residents other than the occupiers of the adjoining premises at No 285. There is no compelling evidence that this effect is detrimental to their living conditions, whether or not that property is in multiple occupation and even if No 287 were occupied by 10 people. I am therefore satisfied the objectives of MLP Policy H7 are met in both appeals.
20. For the above reasons, I conclude the appeal premises and location are suitable in principle for HMO use. The development accords with MLP Policy H7, and the conflict with ACNP Policy HO3 is outweighed by other material considerations, including the Framework.

Living conditions

21. The development plan policies brought to my attention do not specify minimum standards for HMOs.
22. Although licensing of HMOs falls to another regulatory regime, the minimum bedrooms sizes set out in the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 (HMO Regulations) provide a relevant guide. There is no dispute that the bedroom sizes in both appeals are consistent with these standards, and I concur.
23. The Council is concerned some of the bedrooms do not comply with 'Technical housing standards – nationally described space standard' 2015 (NDSS). However, Planning Practice Guidance³ states that where a local planning authority wishes to require an internal space standard, they should only do so by reference in their Local Plan to the NDSS. No such reference is before me. Moreover, the NDSS deals with internal space within new dwellings, whereas the development in these appeals involves change of use of an existing dwelling to an HMO.
24. Consequently, I give the 2018 HMO Regulations greater weight than the 2015 NDSS as a guide to appropriate bedroom sizes in these appeals. On this basis, and bearing in mind my observations on site, I am satisfied the bedroom sizes in both appeals are acceptable. I am also satisfied that in Appeal B one of the bedrooms, and in Appeal A two of the bedrooms, could be occupied by two people.
25. Bedroom 3 in Appeal A is on the ground floor, accessed via an external side door or through the kitchen. This room also has an external door leading to the rear garden. Both external doors are semi-glazed and there is a rooflight in the ceiling, which together provide ample natural light. The back door provides an outlook to the garden when opened. Given this room is within the side extension, the wall separating it from the kitchen is part of the structure of the original house, rather than an internal partition. This, and the option to access the room independently of the kitchen, help to mitigate noise and disturbance from the communal spaces. I observed sufficient wall space in the room to position a bed and storage, despite the doorways. I am therefore satisfied the quality of accommodation in Bedroom 3 in Appeal A is acceptable.
26. The layout of the en-suite bathrooms and downstairs toilet is compact. Nevertheless, I saw during my visit that these facilities have sufficient internal

³ Paragraph: 018 Reference ID: 56-018-20150327

space and they do not unduly restrict circulation space on landings or the layout of bedrooms. I find these facilities are acceptable.

27. The communal kitchen is large enough to accommodate a reasonably large dining table. There is an adjoining communal lounge, with natural light borrowed from the kitchen's windows and doors through an open archway, which I observed to provide an adequate quality of accommodation. Even if I accept the Council's calculation that the useable area of the communal lounge is 11.6m², the combined area with the kitchen would exceed 30m². This is sufficient to meet the needs of 10 people, bearing in mind they would be unlikely all to use it simultaneously, and notwithstanding the size of the bedrooms. There is also an external garden area for communal use. Taking all this together, I find the provision of communal space is acceptable in both appeals.
28. For the above reasons, I conclude the development in both appeals provides acceptable living conditions for occupiers of the HMO, with particular reference to bedroom size, bathroom provision and communal living space. Accordingly, I find no conflict with MLP Policy BNE2, which requires development to secure the amenities of its future occupants.

Integrity of protected European sites

29. The coastline of North Kent encompasses three SPAs, which are also Ramsar Sites: the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA, and The Swale SPA. Together, these sites provide an extensive area of on passage, overwintering and breeding habitat for an array of waders and waterfowl of European importance, such as Avocet, Dunlin, Redshank and Cormorant. The conservation objectives of the SPAs aim to ensure the integrity of the sites is maintained or restored.
30. The SPAs provide an important recreational and economic resource. There is a threat to their integrity from public access and disturbance, including from recreational activities such as walking, dog walking, bait digging and water sports. The development in both appeals, particularly when combined with other plans and projects, could have a significant effect on the sites.
31. Under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development in both appeals on the integrity of the sites. This responsibility falls to me as competent authority in the context of these appeals.
32. It is likely the occupants of the HMO will visit the SPAs, resulting in increased recreational activity that could disturb the protected habitats and birds within them. I therefore find the development in both appeals, alone and in combination with other plans and projects, is likely to have a significant adverse effect on the integrity and conservation objectives of the SPAs.
33. The parties have agreed financial sums to be put towards a programme of strategic mitigation measures set out in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy. Natural England has been consulted as part of this appropriate assessment and has confirmed these sums are sufficient to avoid an adverse impact on the integrity of the SPAs.

34. Although not contained within legal agreements, I am satisfied on the evidence before me that the agreed sums have been received by the Council for the purposes of contributing to the strategic mitigation measures described above. I therefore find there is no adverse effect from the development in either appeal on the integrity of the SPAs as designated European sites. This accords in both cases with MLP Policy BNE35, which reflect the requirements of the Habitat Regulations; and with the Framework, which requires adequate mitigation if significant harm to sites protected under the Habitats Regulations cannot be avoided.

Conditions

35. As the development in both appeals has already taken place, conditions relating to the time limit for implementation and compliance with plans are not necessary.
36. A condition is necessary in both cases to ensure a scheme for the parking of cycles is submitted, approved and implemented to promote cycling. There is a strict timetable for compliance because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the cycle parking before the development takes place. The condition will ensure the development can be enforced against if the requirements are not met.
37. A condition limiting the number of people occupying the HMO is necessary in both appeals to maintain adequate living conditions for occupiers.

Conclusion

38. I have found the development in both appeals accords with MLP Policies H7, BNE2 and BNE35, but conflicts with ACNP Policy HO3. Therefore, the development in both appeals conflicts with the development plan, read as a whole. However, material considerations in both appeals indicate that a decision should be made otherwise than in accordance with it.
39. Therefore, Appeal A should be allowed, and Appeal B should be allowed.

C Carpenter

INSPECTOR