



Appeal Decision

Site visit made on 29 October 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/Z2260/W/24/3338388

6 Luton Avenue, Broadstairs, Kent CT10 2DH

- 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 S Mayhew (Maybank Homes Ltd) against the decision of Thanet District Council.
 - The application Ref is F/TH/23/0502.
 - The development proposed is change of use from an assisted living home for over 55 year olds, with no living-in staff, to a house in multiple occupation.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr S Mayhew (Maybank Homes Ltd) against Thanet District Council. This application is the subject of a separate decision.

Preliminary Matters

3. I observed during my visit that the premises is in use as a house in multiple occupation (HMO), but the landscaping works on the plans before me had not been carried out. I have therefore considered the appeal on the basis that the development has commenced, as did the Council.
4. The Broadstairs and St Peter's Neighbourhood Plan (BSPNP) was made in December 2023 and forms part of the development plan for the appeal site. I therefore give previous drafts of the emerging BSPNP minimal weight.
5. 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, so 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.

Main Issues

6. The main issues are the effect of the development on:
 - the integrity of a protected European site; and

- the living conditions of neighbouring occupiers, with particular reference to noise and disturbance.

Reasons

Integrity of protected European sites

7. The site is within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Area (the SPA), which is a European site protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the site. This responsibility falls to me as competent authority in the context of this appeal.
8. The SPA covers much of the Thanet coast and is used by large numbers of migratory birds, including populations of European importance of over-wintering Turnstone and European Golden Plover. The SPA includes the seafront of seaside towns and the Pegwell Country Park, so is an important recreational and economic resource. There is a threat to its integrity as a protected European site from public access and recreational disturbance to birds, including from activities such as walking, cycling and dog walking.
9. The Council has agreed a Strategic Access Management and Monitoring Plan (SAMM) for the SPA, which requires strategic mitigation for recreational disturbance when the effects of development, considered in combination with other plans and projects, cannot be ruled as insignificant under the Habitats Regulations. The SAMM requires any new development of one home or more within Thanet District to pay a tariff towards the agreed strategic mitigation measures. For other development, the SAMM requires a case-by-case assessment by the competent authority of its likely effect on recreational disturbance and the need for mitigation.
10. The former assisted living home and the current HMO are both forms of non-self-contained residential accommodation. It is likely the occupants of both facilities made and make use of recreational opportunities along the Thanet Coast and within the SPA, in a similar way to the occupants of self-contained housing. It follows that, if the development has resulted in an increase in the number of people occupying the appeal premises, the level of recreational activity and resulting disturbance to protected birds will also have increased. Such an increase, alone and in combination with other plans and projects, would be likely to have a significant effect on the integrity of the SPA.
11. The evidence before me includes differing information about how many people could have occupied the appeal premises in its former use as an assisted living home. I understand the planning history of the site shows there could have been up to 7 residents in the part of the premises known as No 6A, but records for No 6 are incomplete. Plans provided by interested parties suggest there may have been approximately 12 bedrooms across Nos 6 and 6A at the time the premises was sold some four years ago, but it is unclear how many people these could have accommodated. The appellant states variously that up to 26 or 27 people could have occupied the former assisted living home, but there is no compelling evidence to substantiate these figures and the plans provided do not demonstrate this definitively. The Council's committee report states the development has led to a reduction in the number of bedrooms compared to

the previous use, but its appeal statement asserts there would be a likely increase in residents from the development.

12. As competent authority, my responsibility is to ensure I am confident there is sufficient information to support my conclusion. The above evidence is not sufficiently clear for me to be confident the former assisted living home could have accommodated 16 or more people, and therefore that there has been no increase in occupants resulting from the change of use to an HMO. Bearing in mind the precautionary principle, I find the effect of the development on the integrity of the SPA from increased recreational disturbance is likely to be significant in the absence of objective evidence to the contrary.
13. I note the appellant's willingness to facilitate an inspection by Planning Enforcement, but this does not clarify the former occupancy level of the premises for the purposes of this appropriate assessment.
14. A financial contribution per additional occupant in the appeal premises would contribute towards the SAMM measures and thereby help to mitigate the adverse effect of the development on the integrity of the SPA. On the evidence before me, no such mitigation has been secured and no mechanism to secure it is proposed. I recognise the Council did not request mitigation from the appellant because it did not identify a likely significant effect. However, in my capacity as competent authority for the purposes of this appeal I have reached a different conclusion from the Council.
15. For the above reasons, I conclude that, in the absence of mitigation, the development has had a harmful effect on the integrity of a protected European site. This is contrary to Policy SP29 of the Thanet Local Plan 2020 (TLP), which states developments for uses that would increase recreational activity causing disturbance to qualifying species may be required to make contributions towards the SAMM Plan following case-by-case assessment under the Habitat Regulations. It is also contrary to the Framework, which states planning permission should be refused if significant harm to SPAs cannot be avoided or adequately mitigated.

Living conditions

16. The appellant's Soundscape Assessment dated June 2023 (SA) carried out both long term and short term attended measurements to quantify the difference in sound pressure levels around the immediate site. The long-term assessment took place over five days and six nights and included a weekend. Given the appeal premises has been operating as an HMO since at least April 2022, when an HMO licence for up to 17 occupiers was granted, the SA takes into account noise already generated by this use.
17. The SA identifies vehicle passes on Luton Avenue as the dominant element of the soundscape at the site. It concludes Luton Avenue is subject to regular passing traffic, suggesting it is likely to be used as a cut through road to other parts of the town. The SA does not identify unacceptable levels of noise from cars parking in the street, people entering or leaving the HMO, deliveries or from within the appeal premises. I note the SA's methodology and findings were accepted by a Senior Environmental Health Practitioner at the Council.
18. The SA assumes up to 26 people could have occupied the premises when it was operating as an assisted living facility. As noted above, this figure is

unsubstantiated. This assumption is primarily used in the SA to compare numbers of vehicle movements to and from the rear car park, which itself post-dates the former assisted living home use. Be that as it may, the rear car park would be removed so there would be no vehicle movements associated with it were the appeal to be allowed. Consequently, whether or not 26 people could have occupied the assisted living home, this consideration does not materially affect the SA's principal findings about noise and disturbance from the HMO.

19. Removal of the car park and re-landscaping could be secured by condition were I to allow the appeal. Similarly, a condition to secure restricted use of the side door as a fire exit only would overcome concerns about noise from its use by people entering or leaving the building. A condition to secure an appropriately designed waste storage facility would mitigate disturbance from bins or rubbish. Furthermore, the number of occupants could be restricted to 16 via condition, which would mitigate concerns about dual occupation of bedrooms.
20. Concerns have been raised about anti-social behaviour, loud parties and noisy vans associated with the HMO since it was established, with reference to complaints having been made to the Council. However, there is no pertinent evidence before me of a record of such complaints, notwithstanding that I understand a freedom of information request was submitted to obtain this. Nor is there compelling evidence that the type of people who live in the HMO are more likely to engage in anti-social or noisy behaviour than those who previously occupied the assisted living home, or than residents of the street more generally. Photographs of vans provide a snapshot in time and do not amount to definitive evidence of a persistent problem linked to the HMO.
21. I have considered the previous appeal decision for the site¹. Two of that Inspector's concerns - about noise and disturbance from, and the visual impact of, the rear car park - would be overcome by its removal. His third concern was that the introduction of 17 independent individuals in this quiet street would be likely to generate significantly more movement to and from the premises, as well as noise and disturbance from the house and garden.
22. The development in this appeal would be restricted to 16 occupiers rather than 17. In addition, the SA provides further evidence since the previous appeal. These factors, as well as the mitigations referred to above, satisfy me that - even if those in the HMO do generate more movement and noise than the occupiers of the former assisted living home - the level of disturbance to neighbouring occupiers would not be so high as to be unacceptable.
23. For the above reasons, I conclude the HMO does not have an unacceptable effect on the living conditions of neighbouring occupiers, with particular reference to noise and disturbance. Accordingly, I find no conflict with TLP Policies HO19 and QD03, which require HMOs and development generally not to give rise to an unacceptable impact on the living conditions of neighbouring residents through noise or general disturbance; or with BSPNP Policy BSP9, which requires respect for the character of the area. I also find no conflict with the Framework, which requires development to mitigate and reduce to a minimum potential adverse impacts from noise.

¹ Ref APP/Z2260/W/21/3286227 (3 April 2023)

Other Matters

24. The Council and Highway Authority are satisfied the proposal would not have a harmful effect on highway safety, based on evidence of sufficient capacity for on-street parking in the area to meet the needs of up to 16 occupants. This assessment takes account of the availability of alternatives to private car use, including nearby public transport and cycling. The latter would be subject to a condition to secure adequate cycle-storage, which could be imposed if the appeal were to be allowed. As with the SA, the parking evidence's findings pertain despite uncertainty over the number of people who could have lived in the former assisted living home. Taking all this together, and notwithstanding the proximity of schools, on the evidence before me I see no reason to disagree with the Council's conclusion on highway safety.
25. Other concerns raised include an existing concentration of bedsits in the area, the supply of housing to meet local need, local infrastructure and the living conditions of future occupiers of the HMO. However, these matters did not form part of the reason for refusal and there is no compelling evidence before me to lead me to a different conclusion from the Council in these regards.
26. The particular circumstances relating to the appeal proposal would be unlikely to be repeated elsewhere. Therefore, concerns about precedent are not a significant consideration. Ownership issues are a private matter between the relevant parties and not within my jurisdiction. Licensing of HMOs is the subject of a separate regulatory regime. I have judged the proposal against material planning considerations, based on the evidence before me.

Conclusion

27. I have found the development conflicts with TLP Policy 29. Although I have found no conflict with TLP Policies HO19 and QD03, I conclude there is a conflict with the development plan read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be dismissed.

C Carpenter

INSPECTOR