



Appeal Decision

Site visit made on 14 October 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/H2265/W/24/3339056

16 Royal Avenue, Tonbridge, Kent TN9 2DB

- 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 Koi 168 Limited against the decision of Tonbridge and Malling Borough Council.
 - The application Ref is TM/23/03114/FLMIN.
 - The development proposed is the change of use from House of Multiple Occupation (HMO) (C4 use – 6 persons and less) to HMO (Sui Generis -More than 6 persons).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from House of Multiple Occupation (HMO) (C4 use – 6 persons and less) to HMO (Sui Generis -More than 6 persons) at 16 Royal Avenue, Tonbridge, Kent TN9 2DB in accordance with the terms of the application, Ref TM/23/03114/FLMIN, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing number: 027-A-101.
 - 3) Prior to the first occupation of the HMO hereby permitted, details for secure cycle storage for a minimum of 7 bicycles shall be submitted to and approved in writing by the local planning authority. The approved secure cycle storage shall thereafter be retained in accordance with the approved scheme for the life of the development.
 - 4) The development hereby permitted shall be occupied by a maximum of 10 occupiers.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of the occupants of neighbouring dwellings, with regard to noise and disturbance.

Reasons

3. The appeal site comprises a semi-detached building used as a small House in Multiple Occupation (HMO). The site is within a residential area consisting primarily of two-storey semi-detached properties set back from the road. The entrance to the building is positioned centrally, away from the site boundary and the entrance doors of the neighbouring properties.

4. The proposal is for the change of use of the HMO to a large HMO for a maximum occupancy of 10 persons within 7 bedrooms. The greater capacity would be likely to result in increased activity at the site given that occupants would live largely independently, including from more people coming and going at the front of the site. Nonetheless, a greater number of occupants is not, of itself, evidence that a larger HMO would cause material harm to the living conditions of the occupants of neighbouring properties or the character of the area.
5. A previous appeal¹ at the site for an extension and change of use to a large HMO was dismissed. The current proposal differs in that it includes a Noise Assessment Report in relation to the occupation of the site by up to 10 persons. The Council have not disputed the findings of the report and acknowledge that there has been no record of formal complaints in respect of the existing HMO. Moreover, the Council has not offered specific evidence as to how noise and disturbance generated by the proposal would lead to harm to the living conditions of the occupants of neighbouring properties.
6. The activity relating to the change of use would primarily take place to the front of the site. While there would be an increase in comings and goings, the activity would take to the front of the site where the front door is positioned away from the neighbouring properties, including those on the opposite side of the road. This would limit the effect of any noise and disturbance generated by future occupants entering and leaving the property.
7. While the proposal would intensify the HMO use at the site, this would not lead to demonstrable harm to the living conditions of the occupants of neighbouring properties. Furthermore, the location of the site within an area primarily comprising dwellinghouses would not fundamentally alter the residential character of the area.
8. I conclude that the proposal would not harm the living conditions of the occupants of neighbouring dwellings with regard to noise and disturbance. The development therefore accords with Policies CP1 and CP24 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy 2007, Policy SQ1 of the Managing Development and the Environment Development Plan Document 2010, which collectively require the character and amenity of an area, including prevailing level of tranquillity to be protected, conserved and where possible enhanced and that development which is detrimental to the amenity of a settlement will not be permitted, and the National Planning Policy Framework (the Framework), which requires development to create places with a high standard of amenity for existing and future users.

Other Matters

9. Concerns have been raised in respect of the effect of the proposal on on-street parking and traffic within Royal Avenue. Nevertheless, the Council states that the proposal would provide a suitable level of on-site parking and would not lead to a significant increase in on-street parking. On the evidence presented, I see no reason to disagree.

¹ APP/H2265/W/16/3165882

10. I note that concerns have been raised in respect of the effect of the HMO on neighbouring residents, including children, in respect of safety, security and littering. There is no substantive evidence before me to suggest that occupiers of this HMO have any greater likelihood of noise or antisocial behaviour than those occupying any other property.

Conditions

11. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interests of certainty.
12. The parties agree that the building could accommodate up to 10 occupants based on the minimum bedroom size standards with the Council's Guidance to HMO Amenity Standards. The Inspector for the previous appeal considered that a condition restricting number of occupants would fail the tests of precision and enforceability as set out in the Framework. The appellant has provided examples of appeal decisions where a condition has been included that limits the number of occupants within HMOs. While detection of a breach in respect of the number of occupants would be difficult, it would not be impossible, particularly as the HMO would be subject to a separate licensing regime. Accordingly, in order to safeguard the living conditions of future and neighbouring occupiers of the site, I have imposed a condition controlling the number of occupants.
13. To promote sustainable transport use, a condition is appropriate with regards to the provision of adequate additional cycle storage.

Conclusion

14. For the reasons given above the appeal should be allowed.

J Pearce

INSPECTOR