
Appeal Decision

Site visit made on 20 February 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 March 2025

Appeal Ref: APP/A2280/W/24/3348790

87 Rock Avenue, Gillingham, Medway ME7 5PX

- 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 Rishabh Dawar, Blue Chip Properties Ltd against the decision of Medway Council.
 - The application Ref is MC/24/0281.
 - The development proposed is Formation of front lightwell to create an additional bedroom to facilitate the enlargement of a large HMO (Sui Generis) from 7 to 8 bedrooms.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was submitted by Mr Rishabh Dawar, Blue Chip Properties Ltd against Medway Council. This application is the subject of a separate decision.

Preliminary Matters

3. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views and the revised version has been referenced in this decision.
4. The Council's reason for refusal refers to daylight. Having reviewed the submitted evidence, including the Council's Officer Report and Statement of Case, it is clear that the Council's concerns relate to sunlight, and that any reference to daylight is a typographical error. I have determined the appeal on this basis.

Main Issue

5. The main issue in this appeal is whether the proposal would provide future occupiers with adequate living conditions having regard to the outlook and daylight to the basement level bedroom.

Reasons

6. The appeal property provides three floors of House in Multiple Occupation (HMO) accommodation. The submitted evidence indicates that the appeal property has seven bedrooms. It is proposed to create a lightwell with window and door to the front of the property in order to convert the basement level into an additional

bedroom. This would take the total number of bedrooms within the property to eight.

7. The sole outlook from the bedroom would be via the windows and doors facing on to the outdoor lightwell, which would comprise a relatively narrow strip of land. Views out would be dominated by the lightwell walls at close proximity. This would result in a sense of enclosure that would be unduly oppressive. The position of a bin store in close proximity to the lightwell and metal grille atop would increase the sense of enclosure, further contributing to the oppressive environment.
8. The appellant's Internal Daylight/Sunlight Report (DSR) indicates that the bedroom would achieve a sunlight exposure level of 0.9 hours. This is below the target criteria of 1.5 hours of direct sunlight on the 21 March, as suggested by Building Research Establishment guidelines – Site Layout Planning for Daylight and Sunlight: A guide to good practice (2022) (the BRE Guide).
9. I acknowledge that the BRE Guide outlines that a dwelling will appear reasonably sunlit provided that a habitable room, preferably a main living room, can receive at least 1.5 hours sunlight on 21 March. The appellant points to the HMO's kitchen/diner which the DSR identifies as receiving 3.4 hours sunlight on 21 March.
10. During my site visit I observed the kitchen/diner. Whilst it contained a wall mounted television, it had only two bar-stool seats within it for occupiers. Due to its limited size, limited number of seats, and lack of comfortable seating such as a sofa, I find that the communal living space available for eight occupants is very limited. It is not a space where occupiers are likely to spend lengthy periods of time.
11. The BRE Guide is a material consideration, however it provides guidance rather than policy. The numerical guidelines and technical advice in the BRE publication are advisory and should be considered in the context of other site layout constraints. As a result of the constraints in the kitchen/diner communal area, it seems to me, unlikely that it would function as a main living room. It is likely that the occupier of the basement room would spend a lot of time in their own room, and for this reason sunlight exposure within the proposed bedroom is of particular importance. As a result of the low sunlight exposure within the basement room, future occupiers would find the conditions within it gloomy, and it would not provide satisfactory living conditions.
12. There are many other examples of lightwells and windows to basements at other properties on Rock Avenue. However, the submitted evidence does not indicate that these windows serve single HMO bedrooms, and therefore their existence does not establish a precedent for the type of development before me.
13. My attention is drawn to a planning permission¹ related to an HMO at 17 Ordnance Terrace, Chatham which involved a bedroom at basement level. The submitted drawings indicate that the property also had a lounge with armchair and sofa, in addition to a kitchen. As a result, occupiers of that basement level room, would have more attractive areas to spend time outside of their bedroom. In relation to a planning permission in Maidstone², whilst this related to the decision of a different Local Planning Authority, similarly the submitted drawings indicate that the

¹ Council Ref: MC/19/1027

² Council Ref: 20/505767/FULL

kitchen/diner area was larger, and provided more seating, including sofas. I therefore give these examples limited weight, as I cannot be certain that these are directly comparable. In any case, each scheme must be considered on its own merits. While consistency in decision making is important, ultimately, applications should be determined in the light of the specific circumstances and context of each case.

14. I have also been referred to a lawful development certificate³ in relation to a HMO at 137 Rock Avenue, Gillingham. In issuing a lawful development certificate, the Council is unlikely to have considered issues such as living conditions of future occupiers, and I therefore afford this example very limited weight. The appellant suggests that the Council, as licensing authority was content with the amenity standards. I have no information before me in relation to the Council's Licensing Standards. However, the development plan has a wider role to play in ensuring that a good quality of accommodation is secured to provide a good standard of living conditions for future occupiers.
15. For the above reasons, I conclude that the proposed development would not provide satisfactory living conditions for its occupants. Therefore, in this respect, it would be contrary to Policy BNE2 of the Medway Local Plan (2003) which states that all development should secure the amenities of future occupiers, with particular regard to daylight and sunlight.
16. It would also conflict with the aims of the Framework which, at paragraph 135 f) states that proposals should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

17. Residential development in this location is likely to have a significant effect, either alone or in combination with other development, on European Sites on the North Kent coast⁴, as a result of increased recreational disturbance. Mitigation is proposed in the form of a financial contribution towards access management and monitoring, as required in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy 2014. However, as I am dismissing the appeal for other reasons, it is not necessary to address the effect on European Sites in any further detail.
18. The main parties agree that the occupation of the property by one additional occupier is unlikely to cause harm in terms of noise and nuisance to the current occupants and neighbours. They also agree that the room would have a sufficient floor area. However, the lack of harm related to these matters means that they have no weight either for or against the development when it comes to the planning balance.
19. It has been put to me that future occupiers would be aware of the bedroom's characteristics before agreeing to occupy it. However, this is not a reason to allow the creation of new residential accommodation which I have found to be poor quality. There is no evidence before me to indicate that the room would be particularly attractive to shift workers.

³ Council Ref: MC/22/2448

⁴ Thames Estuary and Marshes Special Protection Area/Ramsar Site, Medway Estuary and Marches SPA/Ramsar Site and The Swale SPA/Ramsar Site

Conclusion

20. The proposal would not accord with the development plan as a whole and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR