
Appeal Decisions

Site visit made on 8 September 2016

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 October 2016

Appeal A: APP/Z2260/W/16/3142509
14 Wyndham Avenue, Margate, Kent CT9 2PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Oleksiy Gordiychuk against the decision of Thanet District Council.
 - The application Ref F/TH/15/0600, dated 1 July 2015, was refused by notice dated 22 October 2015.
 - The development proposed is the change of use from a dwelling house (Class C3) to a house in multiple occupation (Class C4)¹.
-

Appeal B: APP/Z2260/C/16/3142650
14 Wyndham Avenue, Margate CT9 2PR

- The appeal is made under section 174 of the Act as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Oleksiy Gordiychuk against an enforcement notice issued by Thanet District Council.
 - The notice was issued on 15 January 2016.
 - The breach of planning control as alleged in the notice is the material change of use of the dwelling house to a house in multiple occupation.
 - The requirements of the notice are to cease the unauthorised use of the property as a house in multiple occupation.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Act as amended.
-

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the change of use from a dwelling house (Class C3) to a house in multiple occupation (Class C4) at 14 Wyndham Avenue, Margate, Kent CT9 2PR in accordance with the terms of the application, Ref F/TH/15/0600, dated 1 July 2015, subject to the following conditions:
 - 1) No more than 13 persons shall occupy the property as their principal or main residence at any time.
 - 2) The building at the end of the garden shall at all times be available to residents for the storage of up to a total of 10 bicycles.

Appeal B

2. No further action to be taken.

¹ Classes C3 and C4 of *The Town and Country Planning (Use Classes) Order 1987* (as amended)

Appeal A

Main Issue

3. The main issue in this case is the effect of the development on the living conditions of neighbouring residents.

Reasons

4. Along Wyndham Avenue are semi-detached properties of a generally similar appearance. They stand back from the pavement behind small front garden areas and each pair is separated from the next by narrow passages that allow rear access. The appeal property and 15 Wyndham Avenue form the end pair on one side. Although of a similar appearance to No 15 from the front, No 14 seems to have been extended rearwards and at roof level. Its internal floor space is therefore larger than that of its adjoining neighbour.
5. All of the properties would, not doubt, have initially been occupied as dwellings, but a number have changed their use over the years. The parties accepted that 7 and 15 Wyndham Avenue were flats, and flats also appeared to be at 16 and 19 Wyndham Avenue. Moreover the Electoral Register Records implied 2 Wyndham Avenue had been flatted in the past as well.
6. The Appellant contended the appeal property itself had been recently used as flats, but the absence of any planning permissions or Certificates of Lawfulness mean I am not in a position to find that is its lawful use or that such a use could be re-instated if this appeal was dismissed. Rather, I understand it can be lawfully used as a dwelling and so have assessed the appeal on that basis.
7. At the time of my visit No 14 was a house in multiple occupation (HMO), accommodating up to 13 people in 10 bedrooms spread over 3 floors. These rooms were not self-contained, as there were shared toilet and washing facilities (although sinks were in 4 bedrooms), large shared kitchen and dining areas on the ground floor, and a basement laundry for the use of all residents.
8. Much concern was raised about actual and possible anti-social behaviour by the occupiers, as well as the additional noise they would create. I am not in a position to assume they would be any more or any less likely to act in an anti-social manner than those in a dwelling and if such behaviour does occur that is for others to address. Moreover, there is no reason why, as individuals, the residents should generate any more noise than the members of a household. However, it is fair to expect that, even given its size, appreciably more adults would live in No 14 as an HMO than if it remained as a house. This is reflected in the Electoral Register Records that show none of the dwellings on Wyndham Avenue were occupied by any more than 4 or 5 adults. Moreover, the occupiers would be more likely to act individually rather than together as a common household. As a result, their cumulative activity would generate more noise both inside and outside of the property.
9. In coming to this view I am aware that an appeal decision was put to me where the Inspector found *'there is nothing to show that increasing the number of people living in an HMO would give rise to disturbance or that this would be bound to create more difficulties for neighbours than occupation as a single dwelling'*². However, that was in relation to an appeal to increase the number

² Ref APP/Z2260/W/15/3023023 dated 2 September 2015 concerning 39 Rumfields Road, Broadstairs CT10 2PQ

- of occupants in an HMO from 4 to 6. Therefore, that allowed for only 2 more to live there, and the total of 6 was much less than now before me and comparable to the number of adults who could be found in a large family home. As such, those comments do not necessarily apply to this current appeal.
10. Internally it is more likely that activity would be throughout the building rather than concentrated on the ground floor as would be expected with a dwelling, while the individual rooms could well contain televisions and music systems, and also be used for entertaining visitors. These matters therefore give rise to the possibility of more extensive noise transmission to No 15 through the common wall and also more noise on the upper floors than if No 14 was a single house.
 11. However, as No 15 is divided into 5 flats I anticipate that its use is of a similar character with activity spread throughout the building. Moreover, in No 14 hallways, landings and staircases rather than bedrooms generally abut the shared wall with No 15, and this arrangement reduces possible noise transmission as it acts as a buffer between the bedrooms and that neighbouring accommodation. Indeed noting No 15 has a number of windows on its side elevation overlooking the adjacent road junction, I anticipate that it has a similar layout thereby reducing possible noise nuisance even more. Therefore, I find the development does not cause unacceptable noise within No 15.
 12. Turning to activity outside, I accept that when compared to its use as a dwelling more people will be using the garden or coming to the property and leaving, and again this could give rise to an increase in noise. However, Wyndham Avenue connects the main road near the adjacent shopping centre to the housing areas behind, and so I anticipate it will have a certain amount of activity in any event. In such a context, and putting aside the matter of anti-social behaviour, I consider the additional noise and disturbance arising from the extra residents is not unacceptable.
 13. Turning to the increased parking pressure from the development, this concern did not revolve around highway safety. Rather it related to an adverse effect on living conditions as greater parking demand meant residents were inconvenienced by searching for a place to park. However, the site had no parking provision as a large dwelling. Furthermore, it is in a highly sustainable location close to shops and other facilities, while bus routes are nearby and the character of the roads and the proximity to employment, jobs and so on mean cycling is a realistic option. Taking these factors together I see no reason why this scheme should increase demand for spaces over-and-above that associated with its lawful use. It therefore follows that the scheme does not exacerbate parking pressures to any appreciable degree and so, in this regard, has no material effect on the living conditions of residents.
 14. There was an over-riding concern about this HMO adding to a concentration of such uses in the area and the effect it would have on the character of the road. The fact that there is no HMO in Wyndham Avenue at present is not necessarily a reason to resist this one, especially given the emphasis at both a national and local level to promote communities with diverse housing. In relation to the concentration of HMO uses, a conflict was highlighted with the policies in the *Cliftonville Development Plan Document*. However, this site lies just outside the area covered by that document and so cannot be subject to its terms.

15. I was also referred to the *Thanet Local Plan to 2031* and although it is not yet adopted and could well change over time, it is fair to assume the Council currently considers its Policy H09 is a suitable means of assessing schemes such as this. When read against this policy, there is no other HMO within 50m (indeed only one was highlighted within 100m and that was on another road) or in this frontage of dwellings. Consequently the scheme does not conflict with the quantitative approach in that policy as it now stands.
16. I therefore have no basis to consider this development results in an overconcentration of such uses on Wyndham Avenue or in this area of Margate.
17. Moreover, while it was said the use was contrary to the character of dwellings along Wyndham Avenue, as stated above there are a number of properties, including the 2 either side, that are now flats. Given my findings above concerning the absence of harm, I consider this HMO therefore would not be at odds with the existing uses on this part of the road.
18. In assessing this issue I am aware the Appellant contended there had not been formal complaints about the previous use of the property as flats or as an HMO. However, to my mind it cannot be inferred that an absence of objections to the Council means no harm to living conditions has been experienced. That contention has therefore been afforded limited weight.
19. Accordingly, I conclude the development does not adversely affect the living conditions of adjacent residents, and so does not conflict with Policies H11 and D1 in the *Thanet Local Plan 2006*.

Other matters

20. For the reasons stated above I consider the development does not adversely affect highway safety. There is opportunity for refuse bins to be stored to the side of the dwelling so the visual impact of those is not a basis to resist the scheme. As I have found no harm I am of the view that the scheme does not conflict with neighbours' human rights.

Conditions

21. In the Appellant's view no conditions need to be imposed as the site is subject to licensing regulation. However, to my mind if it relates to valid planning matters then conditional control is appropriate. In this regard, and in the interests of neighbours' living conditions, I consider the number of residents should be restricted to a maximum of 13. Moreover, a facility for the storage of 10 bicycles should be retained so as to discourage the use of the private car. However, as the scheme has been implemented I see no reason to require it to be in accordance with the submitted plans.

Conclusions

22. For the reasons stated I conclude Appeal A should be allowed.

Appeal B

23. Given my findings and conclusion in relation to Appeal A, and having regard to the provisions of section 180 of the Act as amended, I have no need to consider the ground (g) appeal that comprises Appeal B. This is because the planning permission under Appeal A means the notice shall cease to have effect

insofar as it is inconsistent with that permission. I therefore take no further action in relation to this appeal.

J P Sargent

INSPECTOR