

Tonbridge
Medway

13 May 2016

TM/16/01498/FL

Proposal: Extension and change of use from single dwelling house to 7 bed HMO
Location: 16 Royal Avenue Tonbridge Kent TN9 2DB
Applicant: Mr Peter Dabner

1. Description:

- 1.1 Planning permission is sought for the erection of a two storey side extension and single storey rear extension together with the conversion of the extended, resultant, building from a single dwellinghouse to a 7 bed House in Multiple Occupation (HMO).
- 1.2 Planning permission has already been granted for exactly the same extensions in terms of dimensions and appearance (TM/16/00619/FL refers), albeit that a different internal layout, to facilitate the proposed use of the property as a HMO, is now shown.
- 1.3 The extended dwelling is proposed to incorporate 3 bedrooms (2 with en-suites) at ground floor level, together with a shared kitchen/dining room and lounge, with a further 4 bedrooms and 2 bathrooms at first floor level.
- 1.4 The associated curtilage is shown to include an area of hard standing to the front. There is also a cycle shed proposed to be located to the rear of the property.

2. Reason for reporting to Committee:

- 2.1 At the request of Councillor Jon Botten, due to the high level of public interest.

3. The Site:

- 3.1 The application site contains a semi-detached dwellinghouse on the south side of Royal Avenue, within the built confines of Tonbridge.
- 3.2 The adjoining half of the semi-detached pair has an existing two storey side extension and single storey rear extension which is built within fairly close proximity to the common boundary with the application site.
- 3.3 The front elevation of the neighbouring property to the east is set slightly back from the application property. This property does not have any windows within the flank elevation facing towards the application site.

4. Planning History (relevant):

TM/74/11047/OLD Grant With Conditions 29 September 1966

Layout of road and sewers and erection of 39 dwellings and garages

TM/16/00619/FL Approved 26 April 2016

Two storey side extension and single storey rear extension

5. Consultees:

5.1 Private Reps: (20/0X/28R/0S) (including 3 households with 2 objections each), raising the following key concerns:

- Area is for family homes not for a HMO – out of character and overdevelopment;
- Could potentially be a home for 14 residents;
- The residents of this converted house could be undesirable and transient;
- A HMO would impact the quiet enjoyment of neighbouring family homes;
- The local schools and children should be safeguarded against potentially undesirable residents;
- There are already many flat developments in Tonbridge;
- Car parking is a major issue in the local area;
- A HMO would result in more cars in the street;
- Access is extremely difficult for delivery vehicles, Council service vehicles and emergency vehicles;
- The proposals are in breach of parking standards set out in IGN3;
- Pedestrian health and safety is a concern as no street lights and parking on the pavement;
- Further demands will be put on the services, waste water and road infrastructure;
- Taking away the front garden area to park cars is out of character with the road and could increase surface water onto the road – as could the extensions;

- Potential overlooking from the proposals;
- The desirability of the area will be reduced and house prices will fall;
- This is against the restrictive covenants on the title deeds schedule; and
- The proposals will create a precedent for the area.

6. Determining Issues:

6.1 There are two main strands to this planning application,

- The built development proposed in the form of the side and rear extensions and;
- The change of use of the resultant building into a 7 bed HMO.

6.2 I will address each of these in turn.

Extensions to the building:

6.3 Planning permission has already been granted for the two storey side and single storey rear extensions to the dwelling, shown to be in exactly the same form as previously approved. The recent grant of planning permission for the extensions demonstrates that they were wholly policy compliant and would not cause any planning harm. There have been no changes to the relevant policy framework or material changes on site that would lead a different conclusion to be drawn two months after that previous grant of permission.

6.4 As such, the extensions could be built out at any time without any further approval from the Council as LPA. The internal configuration of the extensions would not be subject to any form of control and could deviate from those previously approved plans without any subsequent involvement from the Council. Of course, I recognise that the extension would in reality facilitate the change of use to the level proposed in this application, and I will now turn to the potential issues in that respect:

Change of use from dwellinghouse to house in multiple occupation:

Principles:

6.5 Importantly, it must be firstly recognised that the use of the building by between 3 and 6 unrelated residents who share basic amenities such as a kitchen and bathroom (House in Multiple Occupation, Use Class C4) does not require the benefit of planning permission from the Council as it is afforded permitted development rights as set out in the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The use of the building by

more than 6 people as a larger HMO requires the benefit of planning permission from the LPA.

- 6.6 The permitted development rights effectively set the benchmark against which the assessment of this case must be made because that could take place without any formal approval. It is therefore necessary, in making a determination in this case, to decide whether the additionality of the extra residents arising from the provision of a 7-bedroom property is acceptable in planning terms when considering how the building will be used and the comparative intensity of that use. The planning application proposes a total of 7 bedrooms to be provided within the building. The bedrooms are shown to be double rooms meaning that conceivably the facilities provided would allow for a total of 14 residents to occupy the building. It is the potential impact arising from this (maximum) level of occupation when compared to the permitted development benchmark of 6 residents that must be considered in determining this planning application.
- 6.7 Multiple occupations of traditionally built dwellinghouses may be alleged to have a damaging impact on residential surroundings, with increased activity in terms of comings and goings and general noise being cited in support of such assertions. Inadequate space about a house for requirements such as parking, dustbins and all the other domestic paraphernalia likely to be used by a number of “households” may also be stated as a problem which affects the environment in general, and which could be exacerbated as the number of occupants increases. These matters will provide the focus for the assessment that follows but, in terms of the broader principles, it is important to acknowledge that house conversions of this nature can provide an important source of new housing. They form an important part of the housing stock, providing a valuable supply of privately rented accommodation, providing accommodation for a variety of occupiers and being one of the most affordable forms of accommodation in the private rented sector.
- 6.8 In this respect, I am mindful that a key national housing objective as set out in the NPPF is the creation of mixed, sustainable and inclusive communities, which contain a variety of housing, particularly in terms of tenure and price and a mix of different households such as families with children, single person households and older people. In the broadest of policy terms, there is no policy objection to the provision of accommodation of this nature, provided it does not cause any other planning harm sufficient to justify refusal.

Impact on the character of the property and the surrounding area:

- 6.9 One of the core principles contained within the NPPF concerns the achievement of a good standard of amenity for all existing and future occupiers of land and buildings (paragraph 17). Policy CP1 of the TMBCS states that in determining planning applications the quality of the natural and historic environment, the countryside, residential amenity and land, air and water quality will be preserved and where possible, enhanced. Policy CP24 of the TMBCS specifically requires

good design and quality in new developments, and a respect for the site and its surroundings. This is supported by Policy SQ1 of the MDE DPD which states that all new development proposals should protect, conserve and where possible, enhance:

- the character and local distinctiveness of the area including any historical and architectural interest and the prevailing level of tranquillity;
- the distinctive setting of and relationship between, the pattern of settlement, roads and the landscape, urban form and important views.

6.10 It is clear that Royal Avenue and its immediate surrounds are characterised predominately by housing stock that is dominated by single-family units although subdivision within the terms of the permitted development rights may not be immediately apparent. By its very nature, the intensity of a seven-bedroomed HMO results, theoretically, in a significant number of unrelated people residing within a single property with a considerable amount of associated residential activity. As such, the size and scale of the proposed HMO in terms of its use may not be sympathetic to or in keeping with its surroundings or the local context, contrary to policies CP24 and SQ1.

6.11 However, in terms of the physical character of the residential area, the building will retain the appearance of a single residential dwelling house and contain residential rooms. In general terms, the proposed use will retain a residential character albeit in a more intensive form. It must therefore be considered whether or not the increased level of residential activity arising from the proposed change of use would have the consequence of causing any overt harm in planning terms that would justify the refusal of planning permission.

Car parking and cycle parking provision:

6.12 I am aware that there are localised parking problems already experienced within Royal Avenue. Whilst it is acknowledged that within the locality there is already high degree of on-street parking, these proposals must be assessed on their own merits, having regard to the adopted parking standards.

6.13 In HMO cases it may be asserted that residents would have a low level of car ownership. In addition, it may be argued that premises may lawfully be occupied by a large single household which may give rise to even greater parking requirements than a multiple occupation use. On appeal, I am aware that Inspectors have accepted that greatly reduced or nil parking requirements for HMOs are acceptable given the likely demand based on a common sense evaluation of the particular case - proximity to public transport, shops etc. being important factors as well as capacity on and off site and roadside parking controls operating.

- 6.14 In this case, KCC (H+T) has advised that they generally regard such proposals as a 4+ bed house for the purposes of applying IGN3: Residential Parking which would require 1.5 spaces in an edge of centre location; 2 spaces for a suburban location.
- 6.15 The proposals include an off-street parking area which would be capable of providing at least 2 parking spaces. In considering the parking provisions proposed, consideration must also be given to the location of the property within a sustainable location close to Tonbridge town centre with its associated transport infrastructure and services. The proposals also include the provision of a cycle store within the rear garden area.
- 6.16 Taking these factors into account, I have no reason to conclude that the proposals would be unacceptable on parking provision or more general highway safety grounds, particularly when considering the requirements set out in paragraph 32 of the NPPF which makes it very clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There are, therefore, no justifiable grounds to refuse planning permission on grounds of lack of parking or highway safety particularly when, once again, considering the benchmark set by the permitted development rights.

Impact upon the residential amenity:

- 6.17 Firstly, whilst I appreciate that there may be local anxiety about the nature of the future occupiers, there is nothing to suggest that the occupiers of the resultant accommodation would be any more or less likely to behave in an anti-social or threatening manner than any resident of a single family dwellinghouse. In any case, this is not something that can be controlled by the planning system. Other regimes operate to deal with any issues of anti-social behaviour and similar and they operate entirely independently of the planning system.
- 6.18 However, the level of activity resulting from a group of up to 14 residents must be considered in terms of the potential impacts on residential amenity. Undoubtedly, it is likely to result in more frequent comings and goings and differing patterns of behaviour than traditional family housing. The resulting potential for noise and disturbance to neighbouring occupiers is increased by the high number of occupants proposed in this instance. When considering the difference between the permitted development benchmark of 6 residents to the maximum 14 that this accommodation could provide for, it is my view that there would be a significant increase in activity that would in turn have a significantly detrimental impact upon the residential amenities of nearby property occupiers. In particular the noise and disturbance associated with increased trips in addition to more general intensification of activity at the property is likely to have a significant impact upon the living conditions of the occupiers of nearby residential properties, particularly

as the area is characterised mainly by family dwellings in close proximity to each other.

- 6.19 To some extent such disturbance is likely to be exacerbated by the design and location of the proposed car parking area to the front of the site, again given its proximity to surrounding residential dwellinghouses. Notwithstanding the commentary above concerning the technical parking standards to be applied in cases such as this, the fact that the applicant is proposing to provide such an area suggests there is an expectation their tenants will require its provision and thus will utilise it even if to a limited degree. How such an area might be regularised or used in practical terms is effectively an unknown quantity, and in all likelihood, could give rise to unorthodox movements of vehicles to allow for individual comings and goings of residents which could in turn create noise and disturbance which would simply serve to exacerbate the impact on neighbours further.
- 6.20 With these considerations in mind, I conclude that permitting the intensity of the use as proposed would harm the living conditions of neighbouring occupiers, contrary to the requirements of the NPPF and LDF. In making this assertion, I have been mindful as to whether or not there are any planning conditions that could be imposed upon a planning permission that could mitigate such harm and to whether or not the six tests set out in the NPPF would be met in seeking to impose any such conditions. Paragraph 203 of the NPPF states “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions”. Paragraph 206 of the NPPF states “Planning conditions should only be imposed where they are: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects.”

Limit on number of occupants:

- 6.21 The imposition of such a condition has the potential to resolve any concern that the intensity of occupancy of premises would increase in the future without the need for further planning permission. However, my concern would be that such a condition would be in danger of failing the test of reasonableness insofar as there would be a fundamental discord between granting planning permission for the level of accommodation proposed but then, for example, requiring by condition a far reduced level of occupancy of the approved facilities. Similarly, although not impossible to enforce, I would suggest that in practical terms it would be extremely difficult to enforce such a condition should it be imposed.

Restrictions on car ownership:

- 6.22 Such a condition could take the form of control to ensure that occupants would not be car owners; however this would again be extremely difficult to enforce. I appreciate that there is nothing to prevent an applicant entering into an undertaking to restrict lettings to non-car owners. In this situation we would need to consider how it would be monitored such an agreement, and I do not believe

that such an undertaking could be practically or successfully monitored in these circumstances.

Limited period or personal permissions:

- 6.23 Such conditions could in theory take the form of a temporary planning permission to allow for a “trial period” in order to ascertain in practical terms how a more intensive use would operate within this context and in order to practically test any other conditions that might be legitimately imposed.
- 6.24 Given that the proposal includes the construction of extensions along with other significant modifications to the building to allow for it to be used in the way proposed (and presumably to subsequently meet the requirements of any other legislation), it would be entirely unreasonable to seek to impose a temporary condition in this instance. A judgment must instead be made as to whether this level of residential use can harmoniously exist alongside the existing residential accommodation on a permanent basis.
- 6.25 In terms of personal permissions, I am aware of occasions whereby local authorities have sought to restrict occupancy to stipulated tenants (for example weekday tenants employed in the area who then return home to their primary residence at weekends) in an attempt to minimise impact on a locality. Appeal decisions conclude in such cases that there was no effective way of ensuring that the premises were used on this basis.
- 6.26 Again, with these considerations in mind, I do not believe that such conditions would meet the necessary tests.

Provision for a resident caretaker:

- 6.27 In some cases, where it is likely that there may be possible problems relating to the multiple occupation of premises, a condition may be applied requiring the provision of accommodation for a resident caretaker. I am aware that some local authorities take this further by stipulating that should these requirements not be met for any continuous period exceeding one month, the use as a whole should cease within three months. There is nothing to suggest that the residents of the proposed accommodation would be of a nature that would require such onerous intervention and therefore as such any such condition would be unreasonable in planning terms.

Amenity standards for the future occupants:

- 6.28 Internally, the provision of substandard accommodation may be a matter of local authority concern, but the intervention of the planning system into the field of matters otherwise controllable under housing or environmental health powers may only be justified when overcrowding implied has a knock-on effect on wider amenity or land use concerns, as assessed above.

6.29 In any case, I can confirm that the bedrooms are all of a sufficient size and adequate communal living and kitchen facilities have been provided. The standard of accommodation is therefore acceptable in terms of the governing housing legislation.

Refuse and Recycling Storage:

6.30 There will be a need to provide a suitable area within the site for the storage and screening of bins. A side entrance into the rear garden is to be retained along the length of the extended building and so the storage area would most logically be sited in the rear garden (at an appropriate point). I understand that for the proposed use, the Council would provide 2 x 360l black bin (this is the family sized bin - "normal" size is 240l), 2 x 240l green lidded bin (although more could be provided upon request) and 2 x green recycling boxes.

6.31 I would suggest that a planning condition be imposed on any permission granted requiring details of such an area to be submitted for formal approval prior to the occupation of the building as an HMO. The residential curtilage is of a sufficient size to ensure that such a store could be accommodated without causing harm to visual or residential amenity subject to appropriate siting and design.

Other matters:

6.32 I appreciate that there is some concern regarding the impact the extensions and areas of hardstanding might have on surface water drainage. As established, the extension already has an extant planning permission in place and the creation of hardstanding within front gardens, (provided porous materials are used in its construction) amounts to permitted development. This can be secured in this instance by way of a planning condition.

6.33 I acknowledge that there is a general local feeling that the wider town has in recent years seen the development of a large number of flatted residential schemes. However, an HMO offers a different type of accommodation to a self-contained flat, both in terms of function and affordability. It is also not for the Planning Authority to seek to resist a particular type of housing in a location which is otherwise considered acceptable in those other land-use terms. Equally, the grant of planning permission for an HMO in this location would not set a precedent for other similar developments within the locality as each case would need to be assessed on its own merits at that point in time.

6.34 The representations received raise a number of objections concerning matters such as demand on infrastructure services (e.g. water, sewerage, etc.), a reduction in local house prices, and the presence of a restrictive covenant within the road. These are not material planning considerations which can be taken into consideration in the determination of this application.

6.35 In light of the above, I conclude that, on balance, the increased level of activity arising from the proposed change of use would not be compatible with its surroundings or local context as it would be at a level that would cause harm to the residential amenities of the surrounding occupiers contrary to the requirements set out in the NPPF and LDF. There are no planning conditions which could be reasonably imposed that would mitigate the identified harm and I therefore recommend that planning permission be refused for the following reason:

7. Recommendation:

7.1 Refuse Planning Permission for the following reason:

- 1 The proposed change of use to a seven bedroom House in Multiple Occupation would result in an unacceptable intensification of the use of the property which would cause harm to the living conditions of neighbouring residential occupiers by virtue of the resultant levels of activity and associated noise and disturbance. As such, the proposal is not compatible with its immediate surroundings and would cause harm to residential amenity and is therefore contrary to policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and policy SQ1 of the Managing Development and the Environment DPD 2010.

Contact: Vicky Bedford