

<b>2.6 REFERENCE NO - 22/500289/FULL</b>		
<b>APPLICATION PROPOSAL</b> Change of use of existing dwelling (C3 use class) to a 7 bed HMO (sui generis) including rear dormer loft extension, cycle storage and bin store (resubmission of 21/503563/FULL).		
<b>ADDRESS</b> 115 Park Road Sittingbourne Kent ME10 1EQ		
<b>RECOMMENDATION</b> Grant subject to conditions and receipt of SAMMS payment		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The property benefits from a Lawful Development Certificate for conversion to a six bedroom HMO and erection of a rear dormer window under permitted development, and as such this forms a fallback position that must be taken into account. The proposed increase from a six-bedroom HMO as is lawfully permitted to a seven-bedroom HMO as is proposed will not cause unacceptable harm to residential or visual amenities, or parking.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Ward Member		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> S Bracey <b>AGENT</b> Pedersen Smith Architects
<b>DECISION DUE DATE</b> 17/03/22		<b>PUBLICITY EXPIRY DATE</b> 24/02/22

**Planning History**

21/505123/LAWPRO

Lawful Development Certificate (Proposed) for the change of use from single family dwelling (use class C3) to 6-bedroom House in Multiple Occupation (use class C4) including erection of rear dormer roof extension.

Approved Decision Date: 26.11.2021

21/503563/FULL

Change of use of existing dwelling (C3 use class) to a 7 bed HMO (sui generis) including rear dormer loft extension, cycle storage and bin store.

Refused Decision Date: 25.08.2021

Appeal In Progress

SW/93/0607

Single storey extension and alteration for registered disabled person

Approved Decision Date: 06.10.1993

**1. DESCRIPTION OF SITE**

1.1 115 Park Road is a two-storey end of terrace property located on the eastern side of Park Road. The dwelling has a small front garden and space at the side of the house to access the rear garden. The rear garden is some 25m deep by some 6m wide.

- 1.2 The house is set in an area of nineteenth century housing and, in common with neighbouring properties, has no on-site parking. On street parking is available; the locality is the subject of a residents' parking scheme.
- 1.3 Properties to both sides are occupied as single-family dwellings. The site is also located within an Area of High Townscape Value.
- 1.4 Planning permission has been previously sought for conversion of the dwelling to a seven-bedroom HMO and erection of rear dormer window under application 21/503563/FULL. The application was refused for the following reasons, and the applicant has lodged an appeal against this refusal, which is currently in progress.

*(1) The proposal would create an intensive form of residential use which would be unsuitable to its setting which consists of an area where single family units predominate. The proposal would give rise to significant levels of activity over and above the current use. Overall level of disturbance for surrounding residents and demand for finite provision of on-street vehicle parking would increase unacceptably. As such, the proposed development would be contrary to Policies CP4, DM7 and DM14 of the adopted Swale Borough Local Plan (2017) and Swale Council's adopted SPG - The Conversion of Buildings into Flats & Houses in Multiple Occupation.*

*(2) The design of the proposed dormer to the rear roof slope would be detrimental to the appearance of the house and surrounding area within an Area of High Townscape Value by reason of the form, scale and bulk of the rear dormer which would be incongruous with the overall appearance and character of surrounding built form. As such the proposal would fail to represent good design, and would be contrary to Policies CP3, CP4, DM14 and DM36 of Bearing Fruits 2031 - The Swale Borough Local Plan, and the National Planning Policy Framework and Swale Council's adopted SPG - Designing an Extension, A Guide for Householders.*

*(3) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of the adopted Swale Borough Local Plan 2017; and paragraphs 8, 170, 171, and 175 of the National Planning Policy Framework.*

- 1.5 Since the refusal of this application, a Lawful Development Certificate was submitted (ref. 21/505123/LAWPRO) seeking confirmation that the conversion of the property to a six-bedroom HMO and erection of a rear dormer window would amount to permitted development. A certificate for this proposed development was granted in late 2021. Works to the interior of the property have begun, and the side window has been replaced with a larger one, as shown on the plans submitted as part of this application.

## **2. PROPOSAL**

- 2.1 This application seeks planning permission for the conversion of the property to a seven-bedroom HMO, including the erection of a dormer window on the rear elevation and two rooflights on the front elevation to facilitate a loft conversion, and changes to the fenestration on the rear and side elevations of the property.
- 2.2 The conversion will provide three bedrooms (all with en-suites), a kitchen and dining/living room on the ground floor, three bedrooms (one with an en-suite) and a bathroom on the first floor and one bedroom (with an en-suite) within the loft space.
- 2.3 The proposed dormer window on the rear elevation will have a width of 4.9m, height of 2.8m and length of 3.6m. The drawing shows hanging tiles will be used that match the existing property. The existing window at the rear of the single storey extension at the property will be divided into two smaller windows, and the existing first floor window in the side elevation will be replaced with one of a larger scale.
- 2.4 The development remains the same as the proposal refused under application 21/503563/FULL, which is currently being appealed by the applicant. However, since this refusal, a Lawful Development Certificate has been granted under application 21/505123/LAWPRO for the conversion of the property to a six-bedroom HMO with a rear dormer window. This development therefore constitutes a fall-back permission that must be taken into account during the determination of this application – and which did not exist during consideration of the first application refused under 21/503563.
- 2.5 The development which benefits from a lawful development certificate incorporates a six bed HMO with two living room areas, one at ground floor level and one in the roof space within the proposed dormer loft conversion. Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows for the change of use from a dwellinghouse to a small HMO (up to 6 persons) as permitted development and without the need for planning permission. Schedule 2, Part 1, Class B of the same Order similarly allows for the enlargement of a dwellinghouse through an addition to its roof as permitted development without the need for planning permission. The lawful development certificate as granted confirms that the change of use to a six person HMO and erection of the dormer window qualifies as permitted development. The current application is for a dormer window of the same design and size as can lawfully be constructed under the approved LDC, but seeks to change the loft area to an additional bedroom – resulting in a 7 bed HMO. It is this increase in the number of bedrooms that takes the scheme beyond permitted development parameters which allows a change of use from a dwellinghouse (use class C3) to a dwellinghouse used by not more than six persons as a house in multiple occupation (Use Class C4) without planning permission.

## **3. PLANNING CONSTRAINTS**

- 3.1 Area of High Townscape Value

#### **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Development Plan: ST1, ST3, CP3, CP4, DM7, DM14, DM16, DM28 and DM36 of Bearing Fruits 2031: The Swale Borough Local Plan 2017
- 4.3 Supplementary Planning Guidance (SPG): 'The Conversion of Buildings into Flats & Houses in Multiple Occupation' and 'Designing an Extension, A Guide for Householders'
- 4.4 Swale Borough Council Parking Standards Supplementary Planning Document (SPD)

#### **5. LOCAL REPRESENTATIONS**

- 5.1 18 objections have been received. A summary of the points raised in the objections is set out below:
  - Loss of privacy from dormer
  - Enlarging side window has impacted privacy, as existing small window was obscure glazed
  - Greater use will create noise and privacy concerns
  - Greater amount of refuse leading to smells and vermin
  - Would worsen excessive demand for on street parking – possibly up to 14 additional cars provided by the development
  - Only change from the refused application is the addition of cycle storage
  - Sewer system dates from 1880's and could not cope with greater use
  - Disruption from construction
  - Type of development not in keeping with area of family residences
  - Short term lets and general turnover could cause a problem
  - Concerns regarding values of and saleability of houses on the road
  - Bins on footway awaiting collection would cause an obstruction
  - Proposal out of character with this area of young families
  - Unsightly conversion not in keeping with Victorian design
  - Would cause an increased fire risk
  - Would overload supply of water and electricity
  - Living conditions of occupiers will be extremely poor
  - Will set a very dangerous precedent for further applications
  - This application raises the same issues as the refused one
  - Planning statement is insulting and libelous to local residents
  - The reference to various HMOs around the UK, including Brighton and Gloucester are not comparable to Sittingbourne or this dwelling
  - Work has already begun, including the removal of the chimney and changes to internal walls
- 5.2 The local Ward Member, Cllr Clark requested the application is called into Planning Committee.

## 6. CONSULTATIONS

- 6.1 Swale Housing Team – *“There are no objections from a housing point of view to the application, as the proposed indicated facilities shown on the planning application seem to support the use of the property as HMO, but the use of any property as a HMO with five or more unrelated people forming two or more households and sharing facilities will require the owner/ relevant person to apply for a mandatory HMO licence from the Private Sector Housing Team before it can be used by 5 or more people.”*

## 7. BACKGROUND PAPERS AND PLANS

- 7.1 Plans and documents relating to applications 22/500289/FULL, 21/505123/LAWPRO and 21/503563/FULL.

## 8. APPRAISAL

### Principle of Development

- 8.1 The site lies within the built-up area boundary of Sittingbourne, and is within a sustainable urban location suitable for residential development. As such, the principle of development is generally accepted. The application will intensify the residential use of the site, through the creation of the seven-bedroom HMO, and the previous application at the site (ref. 21/503563/FULL) concluded that this intensification would be unsuitable to its setting which consists of an area where single family units predominate, leading to significant levels of activity over and above the current use. The overall level of disturbance for surrounding residents and demand for finite provision of on-street vehicle parking would also increase unacceptably.
- 8.2 As part of the refused planning application, reference was made to the Council’s SPG entitled ‘The Conversion of Buildings into Flats & Houses in Multiple Occupation’, which sets out that properties with an original floorspace of less than 110 sqm are not suitable for conversion (the original floorspace of the property is 108 sqm). Furthermore, in an area where homes in single family occupation predominate, the Council would generally seek to retain the dwelling as a single-family unit.
- 8.3 For the reasons set out above, this proposal does not accord with the SPG, however since application 21/503563/FULL was refused, application 21/505123/LAWPRO was submitted and has determined that the conversion and extension of the property to a six-bedroom HMO can take place under permitted development. As such, this forms a fall-back position that must be taken into account and given significant weight in the determination of this application. As such, the fact the development does not comply with the SPG cannot form a reason for refusal in my view. The main consideration, taking into account the fall-back position of a 6 bed HMO, is therefore the impact of one additional bedroom within the HMO as proposed will have upon visual amenity, residential amenity and parking.

### Visual Impact

- 8.4 When assessing the impact on visual amenities from the external changes proposed, I note the proposed flat roof dormer is contrary to the advice of the Council's SPG entitled 'Designing an Extension: A Guide for Householders'. The SPG sets out that dormers should be in proportion to the roof, usually being no deeper than half the depth of the roof slope and preferably with pitched roofs with tiles that match the main roof. The dormer proposed here has a flat roof and covers almost the entirety of the rear roof slope. The second reason for refusal under application 21/503563/FULL related to the poor design of the rear dormer window, the harmful impact this would have upon the property and wider area, and the conflict with the Council's SPG. However, notwithstanding the poor design of the dormer, application 21/505123/LAWPRO has subsequently determined that it amounts to permitted development. Taking into account the fact the dormer window can therefore be constructed without the need for planning permission and the weight that must be given to this, there is no reasonable planning purpose to continue to object to its design or to refuse on this basis.
- 8.5 The changes to the fenestration and proposed rooflights will sit comfortably on the property in my view and I have no concerns in this regard. The only difference between the scheme that benefits from a lawful development certificate and the current application is that the side facing first floor window is proposed to be clear glazed rather than obscure glazed. This has no wider visual impact and the impact on the neighbouring property is considered below.

### Residential Amenity

- 8.6 The dormer window will increase the bulk of the roof slope, however due to the positioning of the neighbouring dwellings, which sit in line with the host property, I do not consider that the dormer will cause any harmful overbearing or overshadowing impacts. The rooflights on the front elevation and windows in the rear dormer will provide views similar to the existing windows, and as such I do not envisage any harmful overlooking will occur. The previous refusal did not cite overlooking as an issue and, significantly, the dormer window is in any case permitted development.
- 8.7 The first-floor window in the side elevation has been replaced with one of a larger size. This is required to be obscure glazed under the terms of the lawful development certificate, however this application seeks to permit the window as clear glazed. Concern has been raised by neighbours regarding potential overlooking from this window. However, the window which was previously located in the side elevation was clear glazed, and it faces onto the flank wall of the neighbouring property. I do not consider that views of the neighbouring property from the enlarged window will cause any overlooking. Even if this was the case, it would not be materially worse than the overlooking experienced from the window previously in place.
- 8.8 The intensification of the residential use has the potential to increase disturbance to neighbouring properties, and this was originally a major concern when considering the refused application. This related essentially to the pattern of activity within a HMO with 7 individuals leading independent lives and associated comings and goings, which would

be more intense and varied than a typical family. However, now it has been established that the property can be converted into a six-bedroom HMO without planning permission, this represents a material fallback that has to be given weight. The occupation of an additional room is unlikely to increase the level of activity at the property (whether internally or in the outdoor amenity area) to a discernible degree over and above the level associated with its occupation by up to six residents. The applicant has made reference to appeal decisions where Inspectors have considered the impact of a 7 bed HMO vs a 6 bed HMO and these conclude that the difference is marginal and not harmful. I would agree that it would be very difficult to identify demonstrable harm through an uplift in one additional bedroom.

- 8.9 With regard to the amenity for future occupiers of the development, I consider all rooms are appropriately sized, and are served by windows that will provide adequate natural light and ventilation. Access to the communal garden at the rear of the site is provided from the communal space on the ground floor, and the garden is of an acceptable scale to provide outdoor amenity space for the seven bedrooms.

#### Highways

- 8.10 The scheme provides no off-road parking, and therefore future occupiers would likely park in Park Road and other surrounding streets. Whilst the site is within walking distance of the centre of Sittingbourne and therefore is in a relatively sustainable location, it is fair to assume that the conversion of the property to a seven-bedroom HMO is likely to generate an increased demand for parking provision when compared to the current single household use of the property.
- 8.11 However, I must again pay regard to the fact the property can be converted to a six-bedroom HMO under permitted development, and that unacceptable highway impacts from one additional bedroom would be very difficult to justify. I acknowledge neighbours concerns regarding the impact of the development upon parking and agree that Park Road is located in an area of parking demand, however taking into account the development will result a maximum of one additional vehicle when compared to the LDC scheme, I do not believe this will cause unacceptable harm to highway safety and convenience in the surrounding area.
- 8.12 I note cycle storage is shown within the rear garden for four bicycles. I include a condition below to ensure this storage is provided prior to the occupation of the HMO.
- 8.13 Neighbours have suggested that up to fourteen additional cars could be parked in the surrounding area, if all seven bedrooms are occupied by couples. The agent has set out in the covering letter provided with this application that only seven people will occupy the HMO, and notes that a condition could be imposed to restrict the occupancy of the HMO to seven people. They reference an appeal decision where an Inspector imposed a similar occupancy condition. I believe that a seven person HMO would not cause unacceptable harm from a parking perspective, but do consider that if fourteen people occupied the HMO, this could cause an unacceptable increase to parking stress. As such, I believe it would be appropriate to limit the occupancy of the HMO to seven and include a relevant condition below.

### SAMMS Payment

8.14 I have for completeness set out an Appropriate Assessment below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development, there is no scope to provide on-site mitigation and therefore off-site mitigation is required by means of developer contributions at the rate of £253.83 per additional room. Three additional bedrooms are proposed here, and therefore a total fee of £761.49 is required. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee in principle.

### Other Matters

8.15 The above sections of the appraisal have addressed the majority of the concerns raised by neighbours, but the remaining ones will be addressed here. The potential impact to the value of neighbouring properties is not a planning matter and as such cannot be taken into account here.

8.16 Neighbours have also reviewed the three appeals which the agent refers to in their cover letter, and have raised concerns that they are not comparable to the scheme proposed here. The three appeal decisions all relate to seven and eight bedroom HMOs which were granted approval at appeal, in Worcester, Gloucester and Brighton. I do note that these cities are not directly comparable in scale to Sittingbourne, and may be located in more densely populated areas where HMOs are more common. Nonetheless, for the reasons set out above I believe a seven-bedroom HMO in this location will be acceptable when taking into account the property can be converted into a six-bedroom HMO under permitted development.

8.17 Members should also note that if permission is granted, then the current appeal would be withdrawn. However, if they were to refuse planning permission then the appeal would continue. In my opinion, it would be very difficult for the Council to continue to oppose the development based on the fallback position that has since been established through granting the lawful development certificate, and which will carry significant weight. This would bring a greater risk of costs through the appeal process, which should be acknowledged.

## **9. CONCLUSION**

9.1 Since the previous planning application at the site for a seven-bedroom HMO and rear dormer was refused, the council has determined through issuing a lawful development certificate that the change of use of the property to a six-bedroom HMO and erection of a rear dormer window would amount to permitted development. This therefore forms a fall-back position that must be given significant weight in the determination of this application, and having reviewed the scheme on this basis, I do not consider that the addition of one more bedroom within the property could be held to cause unacceptable harm to visual or residential amenities, nor will it result in a harmful increase in on-street parking. As such, I recommend planning permission is granted.



- 10. RECOMMENDATION** – GRANT Subject to receipt of a SAMMS payment and the following conditions:

**CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby permitted shall be carried out in accordance with the following approved plans: 168-01 Rev A, 168-04 Rev B and 168-05 Rev A.

Reason: In the interests of proper planning and for the avoidance of doubt.

- (3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reason: In the interests of visual amenity.

- (4) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:  
- Monday to Friday 0800 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interest of residential amenity.

- (5) The bin and cycle storage shown on the approved plan shall be provided prior to the first occupation of the development hereby approved.

Reason: To ensure adequate provision and retention of waste disposal facilities and adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits, and the amenities of the area.

- (6) The House in Multiple Occupation hereby approved shall not be occupied by more than 7 residents at any time.

Reason: In the interests of residential amenity and to ensure the development does not result in an excessive increase in on-street parking.

**Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the

Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "*it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*" The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwellings are occupied.

Due to the scale of development there is no scope to provide on-site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off-site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the

standard SAMMS tariff (which will be secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

