

3.2 REFERENCE NO - 19/502924/FULL		
APPLICATION PROPOSAL To allow pavement to be dropped to allow one car to park on drive. (Resubmission of 18/502670/FULL).		
ADDRESS 26 Forbes Road Faversham Kent ME13 8QG		
RECOMMENDATION - Refuse		
REASON FOR REFERRAL TO COMMITTEE Request by Councillor Ben J Martin		
WARD Watling	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Mrs Teresa Pitham
DECISION DUE DATE 13/08/19	PUBLICITY EXPIRY DATE 18/07/19	

Planning History for 26 Forbes Road (current application site)

18/502670/FULL

To allow pavement to be dropped to allow one car to park on drive.

Refused Decision Date: 26.07.2018

Appeal dismissed Decision Date: 13.12.2018

Planning History for nearby property at 28 Forbes Road

SW/13/1149

Lawful Development Certificate for creation of a vehicular access. (Existing)

Refused Decision Date: 25.11.2013

SW/08/0284

Dropped kerb.

Refused Decision Date: 06.05.2008

Appeal dismissed Decision Date: 19.01.2009

1. DESCRIPTION OF SITE

- 1.1 Forbes Road is part of the main A251 road which forms one of the main road entrances to Faversham and is a very busy road. No.26 Forbes Road is two storey semi detached dwelling set amongst similar dwellings. It is located opposite the junction with Athelstan Road, very close to the junction with Aldred Road, and close to the pedestrian crossing that exists at that junction. It is also close to the tunnel under the main London to Dover railway line where road levels drop significantly and the carriageway rises steeply on both sides. Single yellow line daytime on-street parking restrictions apply outside the property, prohibiting on-street parking from 8.30am to 6.30pm on Mondays to Saturdays inclusive. These restrictions allow loading and unloading, and they permit parking for up to three hours at a time by a disabled badge holder even within the prohibited hours. The property is one property away from Aldred Road, which is a short

cul-de-sac with on-street parking bays on both sides and only one residential property fronting onto it.

- 1.2 The application property has hardstanding created under Permitted Development (PD) rights to the full width and depth of the frontage (6.5m x 7m). This hardstanding is of recent origin as a June 2017 Google Street View image shows the frontage grassed over with just a narrow garden path along the southern boundary, and with a car parked on the grass. The Council's own aerial photography records confirm this position with the frontage shown grassed over in mid 2015.
- 1.3 The streetscene is characterised by houses with soft landscaped front gardens with low walls or fences, and the only other nearby hard surfaced frontages are at numbers 28 and 30 Forbes Road. Number 28 (see more below) has no dropped kerb but the frontage was entirely hard surfaced (5.8m x 6.8m) on 04 April 2008 under PD rights. At number 30 Forbes Road a dropped kerb has existed for many years (no planning history), although here the frontage was still grassed over in 2008/2009, and the dropped kerb here appears to pre-date the hard surfacing.
- 1.4 Numbers 33 and 34 Forbes Road are further up the road and are set well back from the highway. These properties have driveways serviced by a joint dropped kerb. The one at number 34 was approved in May 2000 after a turning facility was included in the scheme. The vehicle crossover at number 33 was granted planning permission in July 2003 after drawings showing adequate vehicle turning space (a minimum of 8m x 8m) were submitted and approved by Kent Highways.
- 1.5 The planning history of number 28 (see top of report for details) is of particular relevance to the current application. The frontage of this very similar property has been hard surfaced since 2008 under PD rights, but no dropped kerb has been approved. Two cars are regularly parked side by side on the frontage here, meaning that each has to bump up and down the kerb and reverse on or off the frontage. In 2008 the owners of number 28 sought planning permission for a dropped kerb. Kent Highways and Transportation objected and the application was refused. Subsequently an appeal was submitted to the Planning Inspectorate and an appeal decision issued on 19 January 2009. The Inspector decided that the lack of turning space meant that vehicles would be reversing either on or off the highway at this point, which would be potentially dangerous due to the site's position close to the Athelstan Road junction, with the Inspector saying;

"The appellants may seek to enter and leave the highway at low speeds. However, other road users may be travelling at speeds approaching 30 mph, whilst needing to be alert to traffic movements at the junction and pedestrian activity in the vicinity of the zebra crossing. All these factors mean that movements in and out of the access at No 28 would result in increased hazards for traffic using Forbes Road and pedestrians using the footway.

I therefore conclude that the creation of the access would give rise to unacceptable harm to highway safety... Whilst I appreciate the appellants' desire to park close to their home and reduce the pressure on on-street parking in the locality I consider these to be insufficient reasons to set aside the harm that I have identified to highway safety".

The Inspector dismissed the appeal.

- 1.6 Following that decision the owners of number 28 submitted a Lawful Development Certificate application in 2013 for an existing dropped kerb, claiming several years proven parking on their driveway. However, as the dropped kerb had not in fact ever been made the application was refused. There remains no dropped kerb at number 28.
- 1.7 At number 26 (the current application site) matters have followed a similar path. The frontage was soft landscaped until at least 2017 but it has since been entirely hardsurfaced (6.5m x 7m – enough room for two cars to park side by side) although no dropped kerb has been installed. In 2018 a planning application (18/502670/FULL) to install a dropped kerb was submitted. Kent Highways and Transportation originally raised no objection to the application (subject to certain criteria being met), but when I queried this with them (as they had formally objected to the 2008 application at number 28) they noted the appeal decision at number 28 and made the following comments;

'My initial assessment was based on the available visibility, apparent precedent for such a form of access along this part of Forbes Road and the crash record. Considering the comments made and ratified on the application for two doors up, however it would appear prudent not to further establish a precedent for access without a turning area, along this route.'

- 1.8 The application was refused in July 2018 for the following reason;

(1) The proposed development, by virtue of lack of adequate turning facilities and its location adjacent to a classified highway, would encourage vehicles to either enter or exit the site in such a manner as to cause a hazard to other highway users resulting in unacceptable harm to highway safety and convenience, contrary to policies DM6 and DM14 of the 2017 adopted Local Plan Bearing Fruits 2031

The refusal was appealed but the appeal was dismissed in December 2018. The full appeal decision letter is attached as an Appendix to this item. Members will note that the decision refers to the previous appeal decision at number 28 and to the presence of a small number of dropped kerbs nearby. However, in my view the key points being made by the latest Inspector's decision are;

1. The main issue in this appeal is the effect of the proposal on highway safety along Forbes Road.
2. I have no reason to question the ability of the Appellant to turn her vehicle within the front garden area to ensure that access and egress from the parking space would be in forward gear.
3. However, the permission if granted, it would endure for future occupiers and would therefore be capable of being used by a wide range of car sizes as well as by more than one car at the same time. It would not be possible and enforceable to restrict the parking to one car only and only of certain dimensions.

4. I am concerned that the accessing or egressing of a car from the appeal property, particularly if reversing in or out, would be a further factor that would contribute to the potential for conflicting movements at this point along Forbes Road.
5. The increased hazards would be unacceptable in highway safety terms.
6. This would conflict with Policies DM6 and DM14 of the adopted Swale Borough Local Plan: Bearing Fruits 2031, as well as the National Planning Policy Framework, all of which, amongst other things, seek safe vehicular access to avoid unacceptable impacts on highway safety.

Despite the appeal decision the property frontage is routinely used for parking, although this involves bumping up and down the kerb.

2. PROPOSAL

2.1 The current application is for exactly the same development as refused and dismissed on appeal last year. That is the installation of a dropped kerb across the full 7m width of the property's frontage. However, it is accompanied by additional documentation comprising a lengthy letter from the applicant and a suggested draft Unilateral Undertaking proposing restricting parking on the frontage of the property to only one car of a certain size between the hours of 8.00am and 6.00pm except on Sundays and Bank Holidays when these restrictions would not apply.

2.2 The applicant's letter explains, in summary, that;

- The applicant has been diagnosed with a terminal illness and the application is paramount to her health and well-being
- I have been offered to apply for a blue badge parking space outside my house
- KCC originally supported the previous planning application until they were reminded of the appeal decision at number 28
- Our local MP Cllr Anthony Hook supports the application. *(NB I have not seen or received any such correspondence from Mr Hook)*
- We have recently moved here where we plan to retire and we have two small grandchildren. Our safety concerns are part of the reasons for the application
- We only have one car and wish to park our car on the front of our property so that we do not have to park it on one of the side roads
- The site is very accessible to the railway station and town centre
- There are no visibility restrictions from our drive and we meet the necessary distance from a junction for a dropped kerb
- There is no crash record here since 2017 whilst we have been using our drive
- The appeal decision at number 28 Forbes Road is over 10 years old and each case should be treated on its merits
- There are other dropped kerbs nearby, including new ones on the A2 main road

(NB The locations of these is not specified and I am not aware of any such approvals)

- Daytime parking restrictions apply here but in the evening parking is limited and we cannot always park nearby
- At other times parking on the road is allowed, so we cannot see how it would be unsafe for us to use our driveway in forward gear
- A condition restricting parking to only one car within on-street parking restriction hours is suggested, but as an alternative a draft Unilateral Undertaking has been submitted alongside the letter. The applicant considers that a condition to this effect would meet the necessary test for a condition
- A further condition to maintain visibility is also offered and adequate sightlines can be maintained
- The last application was refused for lack of turning space, but the frontage is large enough to turn a car around on and KCC have confirmed that they do not have a minimum standard size necessary to turn a car round
- The property frontage meets KCC minimum standards for parking spaces, visibility and distance from junctions

2.3 The applicant's draft Unilateral Undertaking proposes the following restrictions on use of the property;

- a) The property owner can only use one car on the drive (except between the hours of 6pm to 8am, Sundays and bank holidays, in line with current parking restriction)
- b) The owner is only permitted to park a motor vehicle that is no larger than 2,022 by 4,417 in size
- c) The owner shall procure the above restrictions in any lease agreement or other disposal of the site and include it in all advertising or marketing of the site

2.4 The draft Unilateral Undertaking;

- d) Does not include the mortgagee as a party to the document, as it should
- e) Does not state the units that the size of the motor vehicle is to be measured in
- f) Does not require the owner to enter or leave the site in forward gear,
- g) Does not require the owner to turn within the site
- h) Is not yet signed or dated

2.5 These omissions from the draft agreement could be discussed further with the applicant if necessary, but in view of my recommendation below, and because they essentially seek to secure precisely the sort of restrictions that the December 2018 appeal decision says are unenforceable (see the last sentence of my point 3 in paragraph 1.8 above) I have not sought to put the applicant to the legal costs of having the draft agreement re-written.

- 2.6 Finally, in response to a recent conversation with a relative of the applicant I have received an email accepting the principle of a full Section 106 Agreement binding future occupiers of the property, or a personal planning permission by condition if either was felt to be a way of making the development acceptable.

3. PLANNING CONSTRAINTS

- 3.1 Potential Archaeological Importance

4. POLICY AND CONSIDERATIONS

- 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies DM6 and DM14.

- 4.2 Policy DM6 clause 2c. states;

In assessing impacts on the highway network, development proposals will avoid the formation of a new direct access onto the strategic or primary distributor route network where possible, or unless identified by the Local Plan. Other proposals for new access onto the networks will need to demonstrate that they can be created in a location acceptable to the Borough Council and appropriate Highway Authority.

- 4.3 Policy DM14 clause 10. states;

All development proposals will, as appropriate achieve safe vehicular access, convenient routes and facilities for pedestrians and cyclists, enhanced public transport facilities and services, together with parking and servicing facilities in accordance with the County Council's standards.

- 4.4 The NPPF, at paragraphs 108 and 109, states that;

108. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

b) safe and suitable access to the site can be achieved for all users; and

c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

109. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5. LOCAL REPRESENTATIONS

- 5.1 One immediate neighbour to the site has written to object to the application on the basis that the proposal would generate effects on the highway safety, and would generate noise, smells and disturbance, as well as altering the visual appearance of the area.

6. CONSULTATIONS

- 6.1 Faversham Town Council has raised no objection to the application, but has commented that *“the traffic safety concerns raised are justified but the restriction of only allowing one vehicle to park on the drive will alleviate the concerns raised”*.
- 6.2 Kent Highways and Transportation (KHT) have recommended refusal of the application as follows;

“Thank you for your consultation in relation to the above planning application. I note that this proposes the same arrangement as the previous application that was dismissed at appeal, with the exception of the submitted unilateral undertaking. Having consulted on this matter I am of the view that this document would not prove enforceable or binding on future occupiers of the dwelling. This would again create a condition whereby a driveway with insufficient turning area, would be located immediately on the A251/Forbes Road and in close proximity to its junction with Athelstan Road, both to the detriment of highway safety. I therefore recommend that this application be refused on highway grounds for the following reason:-

- *“The proposals do not provide adequate facilities to enable vehicles to enter and exit the site in a forward gear, to the detriment of highway safety.”*

- 6.3 The County Archaeological Officer has confirmed that no archaeological measures are required in connection with this development.

7. BACKGROUND PAPERS AND PLANS

- 7.1 Application papers for application 19/502924/FULL

8. APPRAISAL

- 8.1 As in the previous applications here, the main consideration is the effect of the creation of the proposed access on highway safety.
- 8.2 Forbes Road is a busy A road connecting the A2 with the town centre of Faversham. In the section between The Mall and Station Road it has two sharp bends, several junctions and a zebra crossing. The mouth of the junction with Athelstan Road is opposite no.26 and the junction with Aldred Road is only the width of one semi-detached property away, approximately 7m. The road here has a downward gradient from south to north towards the railway tunnel, and single yellow lines to restrict daytime parking.
- 8.3 Properties along Forbes Road generally have no off-road parking facilities. Those that do are either where the houses are set back further from the highway and there is sufficient room to turn a vehicle around within the site, or where hard standings have

been created under Permitted Development rights. No planning permissions have been granted for dropped kerbs without adequate turning space being available.

- 8.4 Number 26 is one half of a pair of semi-detached dwellings in a group of similar properties along this stretch of road all of which have small front gardens. The paved area in front is 6.5m deep by 7m wide. The Highway Authority considers this to be inadequate to allow vehicles to turn around on the site enabling a vehicle to enter and leave the site in forward gear. I have no reason to disagree with this assessment. The lack of turning space means that vehicles would be likely to reverse either on to the highway, or onto the parking area in front of the house. This would be a hazard to road safety at this busy and confusing point. Even if a vehicle could be turned on the frontage the act of turning into or out from the frontage of the property would involve slowing and turning movements on Forbes Road at a point where other drivers would be concentrating on adjacent junctions, the zebra crossing and the railway bridge. The prospect of vehicles stopping to turn into the property, and the addition of more turning movements at very slow speeds at this point will add to the range of hazards that already exist.
- 8.5 Although there is no minimum turning space size set down in regulations, the application site is not large and there is a real likelihood that vehicles would reverse onto or off the classified road to enter or exit the site. Even if a vehicle could be turned around it will still be entering or leaving the highway at a busy and awkward point. This would result in a danger to highway safety and convenience, especially due to the existence of the junction opposite. The position now is the same as with the appeal decision at number 28 and highway circumstances have not changed in the interim. I am guided by the two consistent appeal decisions and see no reason to depart from them.
- 8.6 The current application seeks to explore the possibility of restrictions being imposed on the current owner of the property, or future owners, during times when on-street parking outside is restricted. These measures include either a planning condition, a personal condition, or a planning obligation either in Unilateral or full Section 106 Agreement form. The restrictions suggested relate to only one car of a certain maximum size being allowed to park on the frontage when on-street parking restrictions apply.
- 8.7 These suggested restrictions are essentially exactly the same as those already considered and ruled out by the Planning Inspector as recently as December 2018 at this very property. Members will note for the attached appeal decision at the end of paragraph 4 where the Inspector says *"It would not be possible and enforceable to restrict the parking to one car only and only of certain dimensions"*. Members will also be aware that for any planning condition to be acceptable it must meet certain basic tests including being "reasonable" and "enforceable". I share the view of the Planning Inspector that such conditions would not be enforceable.
- 8.8 Furthermore, if the Council were to accept such a peculiar set of conditions on this individual property I can foresee this leading to significant pressure for other similar installations, not just near to this site but in all sorts of dangerous locations. None will have the same circumstances and it is also likely that there will be pressure to allow two cars on some properties, such as number 28 Forbes Road. Such development would

not only have adverse consequences for highway safety, but would encourage the paving over of front gardens resulting in loss of greenery and biodiversity in streetscenes on main roads.

- 8.9 A draft Unilateral Undertaking has been submitted with the same proposed restrictions. I do not consider that these overcome the basic highway safety objection, and the same questions of reasonableness and enforceability apply. Notwithstanding the current inadequacies in the draft Undertaking I do not consider that any such Undertaking can be sufficiently robust and acceptable to overcome the highway safety objection so clearly set out on the two relevant appeal decision at this section of Forbes Road.
- 8.10 Finally, the applicant's personal circumstances are raised. I can appreciate that these will be uppermost in her mind, but the implications of making matters easier for her are a reduction in road safety for everyone else. I have already stated that the current on-site parking restrictions provide for a three hour window for a disabled badge holder to park outside the property. I gather from our own parking team that a disabled parking bay would not normally be allowed in such a location, but Aldred Road is just one door away and a dedicated disabled bay might be approved there. Accordingly, there is no reason to suppose that the applicant will not be able to park close to the property both during the day and at all times that the on-street restrictions do not apply – that is after 6.00pm, and before 8.30am, and on Sundays. The applicant has raised the question of a personal permission. Such a permission is extremely rarely justified for permanent physical works which will inevitably outlast the user, and in this case I do not see why this would be justified, or how it would overcome the highway safety issue. Accordingly, I do not see a personal permission as a reasonable option here.

9. CONCLUSION

- 9.1 This proposal is precisely the same as one dismissed at appeal less than one year ago. The applicant has made every effort to explore ways around the problems that the latest Planning Inspector anticipated. However, the threat to highway safety remains the same and the safeguards suggested were already considered and ruled out by the Planning Inspector. I do not consider that the Council has any reasonable grounds to disagree with the latest appeal decision which supports our previous refusal and that to do so is likely to result in significant problems both here and elsewhere. I recommend that the application be refused.

RECOMMENDATION - REFUSE for the following reason:

REASON

- (1) The proposed creation of a new access point at a busy and complicated part of a classified highway, would encourage vehicles to either enter or exit the site in such a manner as to cause a hazard to other highway users resulting in unacceptable harm to highway safety and convenience, contrary to policies DM6 and DM14 of the 2017 adopted Local Plan Bearing Fruits 2031

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 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.

