



Appeal Decision

Site visit made on 10 March 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal Ref: APP/V2255/W/19/3241318
58 Volante Drive, Sittingbourne ME10 2JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Faseha against the decision of Swale Borough Council.
 - The application Ref 19/503080/FULL, dated 14 June 2019, was refused by notice dated 13 September 2019.
 - The development proposed is change of use from C3 to C4 use and garage conversion inc bedroom and ensuite.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from Class C3 (dwelling) to C2 (residential care home for elderly people) and conversion of garage to a habitable space, at 58 Volante Drive, Sittingbourne ME10 2JJ, in accordance with the terms of the application Ref 19/503080/FULL, dated 14 June 2019, subject to the conditions set out in the Schedule at the end of this decision.

Procedural Matters

2. The submissions indicate that the current lawful use of 58 Volante Drive has been subject of some disagreement between the parties. I note that the appellant has indicated that the current use of No 58 is as a house in multiple occupation, but also that it is used as a home for persons with learning disabilities, who thus presumably receive some care. The appellant's appeal statement nonetheless confirms acceptance of the Council's view that the current use of No 58 falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended), and is thus a dwelling house. I have therefore considered the appeal on this basis.
3. As originally described on the planning application form, the proposed change was to Class C4. Further correspondence between the parties included within the submissions however indicates agreement between the parties that the proposed change was in fact to Class C2, and more particularly a care home for elderly people. Therefore, in the interests of precision, I have used the Council's description of development in both the banner heading and in my decision above.

Main Issues

4. The main issues are the effects of the development on:

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- the safe and convenient use of the highway with particular regard to parking;
- the living conditions of occupants of neighbouring dwellings with specific regard to noise and disturbance; and
- the character and appearance of the area.

Reasons

Highways

5. The Kent Vehicle Parking Standards Supplementary Planning Guidance 2006 (the SPG) sets out specific maximum parking standards applicable to Class C2 uses. These require one space per 2 members of staff, one space per 6 residents, and a minimum of one space for an ambulance/delivery vehicle. As shown on plan submitted with the application, the provision of 3 off-road parking spaces was proposed, which was an addition of one to the existing 2 off-road spaces. This was considered to be compliant with the SPG by the Highways Authority, and I see no reason to reach a different view.
6. Officers however recommended approval of the scheme subject to a reduction in the proposed level of off-road parking from 3 to 2 spaces, or no change. Though the resulting conflict with the SPG was considered acceptable by officers, it nonetheless contributed to the reasons for refusal of planning permission by the Council's Committee.
7. In this regard, aside from the provision of a parking space for an ambulance/delivery vehicle, the standard set out in the SPG is a maximum rather than a minimum. Some flexibility is therefore possible. It is clear that very little alternative scope for on-street parking exists along the narrow branch of Volante Drive within which the site is located. It is however equally clear that a greater amount of space exists on-street a short distance beyond this. Use is unrestricted. There is therefore scope for overspill. In this context the Council has provided no explanation of how a vehicle ordinarily parked on-street would cause any harm to the safe or convenient use of the highway, and I can see no reason why it should.
8. In any event, it remains the case that an SPG-compliant 3 off-road spaces could be achieved on site, as is demonstrated by the original plan. Here I acknowledge that officers considered that the arrangement proposed would not be workable, and it is clearly true that if all 3 spaces were occupied by vehicles at the same time, the 2 vehicles parked parallel would be boxed in. However, as one space would only occasionally be required for use by an ambulance/delivery vehicle, in practice the 2 other spaces would be accessible most of the time, and/or scope would exist to shuffle vehicles around in the area available. In my opinion therefore, the SPG-compliant provision of 3 off-road spaces would be workable, limiting the need for or occurrence of any on-street parking.
9. Further reference within the decision notice to 'loading' and 'unloading' is not clearly explained, but presumably relates to ambulances and delivery vehicles. As noted above however, parking for an ambulance/delivery vehicle would be accounted for by one of the spaces provided on-site. Thus there is no reason why loading or unloading should cause any harm to the safe and convenient use of the highway.

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10. Concerns have been expressed by interested parties that parked vehicles would block the road or adjacent driveways. Whilst it is unclear why drivers would behave in such a way, in view of my reasons above, there appears to be no particular reason why parking of this type should occur.
11. Additional concerns have been expressed in relation to the adjacent school, a pedestrian entrance to which exists in the adjacent part of Volante Drive. However, whilst I understand that there may be brief fluctuations in on-street parking demand related to dropping-off and picking-up, I see no grounds to consider that simple parking on-street, or traffic movements related to the development should give rise to any harm or risk to the safety of school children or their parents.
12. For the reasons set out above I conclude that the development would not cause harm the safe or convenient use of the highway, and that subject to the provision of 3 off-road parking spaces, the development would comply with Policies DM7 and DM14 of The Swale Borough Local Plan, 2017 (the Local Plan) which each require parking in accordance with standards set out in the SPG; and the SPG itself.

Living conditions

13. The decision notice states that harm that would be caused due to noise and disturbance related to both parking, and loading and unloading of vehicles, particularly at night. However, no detailed evidence has been provided in support of this reason for refusal.
14. Whether 2 off-road parking spaces were provided, or an SPG-complaint 3, the number of parking spaces at the property would be no greater than is currently seen outside many other nearby dwellings. If only 2 spaces were provided however there would inevitably be an overspill of at least one vehicle on-street, as considered above. It is therefore apparent that the effects of the development would again be best contained and limited if an SPG-complaint 3 off-road spaces was provided on-site.
15. As outlined above, one of the spaces would be used by an ambulance/delivery vehicle. Whilst deliveries do not generally occur at night, ambulances would be unlikely to call at such times unless in an emergency. Visits of this type might equally be required in relation to occupants of adjacent dwellings, and cannot be considered unacceptable.
16. The proposed use is for a residential care home as opposed to a nursing home. Given the differing care needs implied, it is unlikely that daytime visits by ambulances would be frequent.
17. An increased frequency of deliveries might occur due to the number of unrelated adult occupants that would be accommodated at No 58. However, I have no information regarding the background frequency of visits by delivery vehicles to other properties in Volante Drive, and in any case it is unlikely that such deliveries would be of a volume sufficient to cause significant noise or disturbance.
18. Group trips by occupants might involve a large vehicle, but even in the unlikely event that such trips occurred daily, this would not generate a significant number of vehicle movements. Any noise associated with entering or exiting the transportation would also be brief and cause little harm.

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19. One of the 2 remaining spaces would be for use by staff, and thus likely to see use at the beginning and at the end of a shift. The level of such use would therefore be little or no greater than that of any other space in the area used to park a vehicle driven to and from a place of work. The only difference would be that the appeal site itself would be the place of work.
20. It is possible that a change over of staff might take place at night. If this indeed occurred, it might generate some noise with the potential to cause disturbance. However, residents of other dwellings in the immediate area might equally be shift workers or go out in the evening for social purposes. In this regard I have no information regarding the work or travel patterns of local residents or how these might change over time. As such I see little reason to believe that the potential parking of a vehicle by a member of staff outside the appeal property at night would cause any unacceptable harm due to noise and disturbance.
21. The last space would be for use by occupants. Thus it would presumably accommodate a vehicle either owned by an occupant, or a vehicle driven by a visitor. For reasons similar to those outlined above, it is no more likely that a vehicle would be parked by either type of user at night, than would a vehicle outside any other property within the immediate area. The frequency with which the space was used might vary depending on who its user was, or its users were, however I have been given no reason to consider that the level of associated vehicle use and movements would give rise to unacceptable harm.
22. Interested parties have implied that noise and disturbance would cause interference with the qualified right set out in Article 1 of the First Protocol to the European Convention on Human Rights, as incorporated in the Human Rights Act 1998. This states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. With regard to my reasons above however, I am satisfied that there would be no such interference, as any noise or disturbance generated by the development would be likely to fall within the normal range expected in a residential area.
23. For the reasons outlined above I conclude that the development would not have an unacceptable effect on the living conditions of neighbouring residents due to noise and disturbance. The development would therefore comply with Policy DM14 of the Local Plan, which amongst other things states that development should cause no significant harm to amenity and other sensitive uses or areas.

Character and appearance

24. The effect of the development on the character and appearance of the area was not a reason for refusal of planning permission. However, it was the reason why officers requested a reduction in the level of parking provision from 3 to 2 off-road spaces. In light of my findings that 3 off-road parking spaces would be both workable and desirable in relation to the above matters, my consideration of the effect that this would have on the character and appearance of the area is now required.
25. Many of the dwellings located adjacent have paved frontages which provide scope for parking by 2-3 vehicles. It appears likely that in some cases parking spaces have been expanded through the paving of front gardens. Green open

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- space within the street scene is therefore sporadic and fragmented, but where present it plays a notable visual role in relieving dominant presence of parking.
26. The appeal property currently has a hard-surfaced parking space to the front sufficient for 2 vehicles, with a small lawn alongside. This lawn provides a modest positive contribution to the visual character of the streetscene.
27. I agree with the Council that the loss of open green space within the broader streetscene to allow parking has had a cumulatively negative visual impact. However, the Council has provided no indication that any restriction currently exists to prevent this. I am therefore mindful of the fact that, as matters stand, parking provision could presumably be expanded at the appeal property in much the same way as elsewhere. Furthermore, in the absence of any indication that the Council intends to restrict the paving of front gardens in the future, expansion of frontage parking space could continue to occur at other properties in the area regardless of whether or not this was prevented at the appeal site.
28. The originally proposed grasscrete surfacing system would otherwise provide a more visually sensitive appearance within the streetscene than the hard surfacing generally employed outside other properties. This would allow a semblance of the green surface of the existing lawn to be retained. This could be secured by condition. Therefore, whilst openness of the frontage would clearly be reduced when the parking spaces were in use, in view of the above points, any harm that this would cause would not be unacceptable when viewed and considered in context.
29. For the reasons outlined above I conclude that the provision of 3-off road parking spaces would not cause unacceptable harm to the character and appearance of the area. It would therefore comply with Policy DM14 of the Local Plan, which amongst other things requires development to be of a design sympathetic to the location.

Other Matters

30. Interested parties have raised a number of additional points including loss of view, whether there is a need for care homes, the internal size of the accommodation provided, works already carried out at the property, and concern that the site would not be accessible for emergency vehicles at busy times. The Council does not share these concerns, and I see no reason to reach a different view.

Conditions

31. I have imposed standard conditions setting out the time period for commencement of development and identifying the approved plan for sake of certainty. I have referenced the plan originally submitted with the application given that this shows 3 off-road parking spaces.
32. I have also imposed a condition requiring use of matching materials in the interests of maintaining a satisfactory appearance within the streetscene, and a further condition requiring provision of the proposed parking spaces in accordance with the approved details. This is necessary in order to ensure that the development can cater for the basic demand for parking that it will generate, and that it will do so in a way which is visually sensitive.

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33. I have lastly imposed a condition limiting the scope of the Class C2 use permitted. This is because I have considered that the appeal scheme is acceptable on the basis of the proposed use being as a residential care home for 5 persons, as opposed to any other purpose which might be permitted within Class C2, or any more intensive use in this context. The Council's proposed condition does not seek to further limit occupancy on the basis of age, but I note that this was suggested at the Council's Committee meeting. No updated list of conditions has subsequently been provided. I have therefore considered the possibility. In this regard I note that the parking standard in the SPG does not differentiate between age groups in relation to the parking standard set for care homes, and I have no clear evidence in relation to the difference that this would make in terms of vehicle movements. Equally however I note that the proposal has been presented, and all parties have assessed it on the basis of the Class C2 use being for elderly persons. The appellant further notes that other models of care might be could unsuitable within the residential setting in question. A restriction would therefore be appropriate. In the absence of any definition of an 'elderly person' however, I have made reference within the condition to persons of 'state pensionable age', as this is a bracket into which potential occupants can be expected to fall.
34. The Council has also requested a restriction of changes of use permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). However, the area of concern is not specifically identified. Very limited scope for this in fact exists, and even insofar as I note that Class T of Part 3 of Schedule 2 of the GPDO allows for a change from Class C2 to state-funded school or registered nursery, this would be subject to the Council's prior approval. The restriction is not therefore necessary.

Conclusion

35. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: VIB/GC/V1.
- 3) The materials used to infill the outer face of the garage door in relation to the development hereby permitted shall match those on the existing building in terms of their type, colour and texture.
- 4) Occupation of 58 Volante Drive in relation to the Class C2 use hereby permitted shall not commence until the parking spaces shown on approved plan VIB/GC/V1 have been provided and made available for parking. The parking spaces shall be surfaced in accordance with the details annotated on the approved plan, and shall thereafter be retained and kept available for parking at all times.

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- 5) The Class C2 use of 58 Volante Drive hereby permitted shall be limited to that of a residential care home providing accommodation for no more than 5 persons of state pensionable age, and no other use (including any other use in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).