



Appeal Decision

Site visit made on 23 July 2019

by Graeme Robbie BA(Hons) BPI MRTPI

Decision date: 26 July 2019

Appeal Ref: APP/Z3445/W/19/3228343

35 Kempton Drive, Dosthill, Tamworth, Staffordshire B77 1QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Kelly Louise Gibbs against the decision of Tamworth Borough Council.
 - The application Ref 0041/2019, dated 11 January 2019, was approved on 20 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is garage conversion (retrospective).
 - The condition in dispute is No 2 which states that:
The existing driveway shall be extended to a width of at least 5.5m by the 30th November 2019.
 - The reason given for the condition is:
 - *To ensure that adequate provision is made for the parking of vehicles clear of the highway in the interests of highway safety and in accordance policy EN5: Design of New Development and Appendix C (parking standards) as set out in the adopted Tamworth Local Plan 2006 - 2031.*
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Decision

1. The appeal is allowed and the planning permission Ref 0041/2019 for garage conversion (retrospective) at 35 Kempton Drive, Dosthill, Tamworth, Staffordshire B77 1QN granted on 20 March 2019 by Tamworth Borough Council, is varied by deleting condition 2 and substituting it for the following condition 2:
 - 2) The existing driveway shall be extended to a width of at least 5.5m by 31 May 2020.

Procedural Matters

2. Planning permission was granted in March 2019 for the conversion of an integral garage at the appeal property into a habitable room. The garage at the property was previously accessed by a single width driveway which, together the Council considered provided two car parking spaces. The works of conversion had been commenced prior to the submission of the planning application.
3. The approval to convert the garage to a habitable room has resulted in the loss of the parking space within the garage. The Council attached a condition, the dispute over which is now the subject of this appeal, to ensure that satisfactory alternative provision for a second parking space was made within a specified time period. The appellant seeks, by way of this appeal, a longer period for the provision of the compensatory parking space.

4. Although I saw at the time of my visit to the site that the works of conversion to a habitable room for which planning permission was sought and granted have been carried out, the requirement of the disputed condition has not yet 'bitten'. I have determined the appeal accordingly.

Main Issue

5. The main issue is the effect of the proposed variation to the disputed condition on highway safety.

Reasons

6. I saw that, without the works required by the disputed condition, there is insufficient space within the existing driveway to provide a second car parking space. The appellant does not dispute the need for the works required by the condition, but instead seeks an extended period of time for the works to be carried out. Having completed the works of conversion earlier in 2019, the appellant states that she is not in a position financially to progress the required works by the negotiated¹ deadline imposed by the disputed condition. I have no evidence before me, other than the suggested costs being in the region of £4000, regarding the appellant's ability financially to carry out the works.
7. Whilst the Council state that the appellant was advised at an early stage² that planning permission and approval under the Building Regulations would be required, it is not clear from the evidence before me whether that advice also included details of requirements regarding provision of alternative parking provision. If that had been so, and I have no evidence before me to suggest that the Council conveyed the detail of such a requirement to the appellant as part of that initial advice, then it would have allowed the appellant to factor in those costs as part of an overall budget or contingency.
8. Although I accept that such advice was subsequently passed on³ to the appellant, this was after works had started⁴ and therefore at a relatively late stage of the process. Thus, on the evidence, I do not find it unreasonable for the appellant to suggest that, having budgeted for specific building works for the conversion, additional costs incurred latterly may not be easily, readily or quickly absorbed.
9. The residential estate has an intimate and relatively tight grain with small front gardens and properties situated close to the roadside. There is a slight kink in the road outside No. 35 but visibility is good in both directions. Driveways at Nos. 34 and 36 are on the far side of their respective plots from the appeal property and so there is a lengthy stretch of road without a pavement crossing / driveway entrance on either side of the appeal property. Opposite, lie driveway entrances to two properties, both of which have wide dropped kerb entrances, double garages and double width driveways.
10. Thus, I conclude that the highway environment in the vicinity of the appeal property is not so confusing, convoluted, congested or challenging as to render the short-term possibility of vehicles associated with No. 35 harmful to highway safety. Clearly, the Council thought so in granting permission subject to a

¹ Paragraph 12 – LPA Statement of Case

² 11 October 2017 – paragraph 2, LPA Statement of Case

³ Appendix 1 – LPA letter dated 7 January 2019

⁴ in response to a list of Building Control commencements

replacement provision timescale longer than they might otherwise have considered.

11. I am advised that a period of at least 6 months for carrying out the required works was arrived at, in part, from a compliance period in relation to a recent appeal⁵. I do not however have the details of that appeal before me and so cannot be certain that it provides a direct comparison. I have in any event determined the current appeal on its own merits and on the available evidence.
12. The appellant's assertion that there have been no incidents arising from the works having already been carried out has not been challenged and, from all that I have seen and read, I am not persuaded that allowing a longer period of time for the works to be carried out would cause unacceptable harm to highway safety.
13. The Tamworth Local Plan (TLP) policy EN5 expects new development to, amongst other things, pay particular regard to highway safety, and Appendix C is clear about the provision of sufficient parking provision for residential properties. I have not however been directed towards any development plan requirements for timescales for carrying out such required works and, in the absence of such, I am satisfied that the extended time period for increasing the width of the driveway would not be unreasonable and would not cause an unacceptable impact on highway safety.
14. For the reasons I have set out, an extension to deadline for increasing the width of the driveway at No. 35 would not cause unacceptable harm to highway safety. There would be no conflict with TLP policy EN5 or the provisions of TLP Appendix C. In reaching this conclusion I have also had regard to the provisions of the Council's 'Design Guidance (Draft) Supplementary Planning Document'⁶.
15. Whilst I have some sympathy with the Council's aim of seeking to avoid excessive on-street parking in the longer term, there is no fundamental dispute between the main parties over the need for the replacement parking provision. The appellant has cited other examples where replacement provision has not been made, thereby questioning the consistency of the Council's approach to such matters. However, as I do not have anything other than limited anecdotal evidence before me regarding other similar conversions referred to by the appellant, I give only limited weight to consistency, or lack thereof.
16. I am also advised that the disputed condition was the result of negotiation between the main parties during the Council's determination of the application; the result being a time period longer than the Council would normally consider but shorter than that sought by the appellant. Although noted, and notwithstanding the absence of a robust financial justification from the appellant for the additional time sought, I am not persuaded from the evidence that additional time for carrying the works out would result in an unacceptable impact on highway safety.

Conditions

17. I have considered the matter of conditions in light of the Framework and Planning Practice Guidance. The Council have not suggested any conditions in

⁵ APP/Z3445/D/17/3168799

⁶ January 2019

the event that the appeal should succeed, but the previously approved planning application set out two conditions, of which one (condition 2) is the subject of this appeal. I have therefore adopted revised wording to condition 2 to reflect the extended time period for carrying out the required works.

Conclusion

18. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR