



Appeal Decision

Site visit made on 19 June 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/A1720/C/24/3336233

6 Brookview Close, Fareham, Hampshire, PO14 3EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Miss Harriett Whitren-Jones against an enforcement notice issued by Fareham Borough Council.
 - The enforcement notice was issued on 1 December 2023.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref P/04/1355/FP granted on 28 October 2004 for erection of eight dwellings and associated garages via Fairacre Rise.
 - The development to which the permission relates is: Without planning permission, the failure to retain the garage for the parking of vehicles contrary to condition 7 of planning permission P/04/1355/FP.
 - Condition 7 states: *'No dwelling hereby permitted shall be first occupied until the areas shown on the approved plans for the parking of vehicles (including any garages) associated with that dwelling have been constructed and made available. These areas shall thereafter be retained for the parking of vehicles at all times.'*
 - The reason for this Condition states: *'To ensure adequate parking provision within the site in the interests of highway safety; in accordance with Policies DG5 and T5 of the Fareham Local Plan Review.'*
 - The requirements of the notice are to:
 - (i) Cease the use of the garage (shown hatched red on the attached plan) as a habitable room;
 - (ii) Remove from the Land any waste materials resulting from complying with step (i); and
 - (iii) Make the garage (shown hatched red on the attached plan) available for the parking of vehicles in accordance with Condition 7 of planning permission reference P/04/1355/FP.
 - The period for compliance with the requirements is: two months after the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act (as amended), Condition 7 attached to the planning permission dated 28 October 2004, ref P/04/1355/FP, is discharged in relation to this property only, subject to the following condition:

The on-site parking space, hereby approved, shall be kept available for the parking of vehicles at all times.

Reason: In the interests of highway safety and to prevent on-street parking congestion in Brookview Close and surrounding streets.

2. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the use of the garage as a habitable room without complying with the said condition but subject to the other conditions attached to that permission where they are still relevant.

Ground (d)

3. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
4. The notice was issued and served on 1 December 2023. The time limits for enforcement action are set out in section 171B of the 1990 Act. In respect of the breach of a condition attached to a planning permission, s171B(3) sets out that no enforcement action may be taken after the end of the period of ten (10) years beginning with the date of the breach. That means that the works to convert the garage to a habitable room sufficient for it to have been incapable of accommodating a parked car must have been completed by 1 December 2013.
5. The appellant, who purchased the property on 20 October 2020, states (in her appeal letter of 1 May 2024) that the previous owner had insulated the garage walls and placed a raised flooring in the garage as well as a partition for storage, and that she merely finished the works to make it a habitable room last year.
6. The Council claims that in an email exchange with the appellant in December 2022, she stated that the garage would be retained for car parking. The Council believes the works to convert it to a new habitable room – her elder son's bedroom – took place in April 2023, as confirmed by an officer site visit on 21 June 2023. I have no reason to disbelieve the Council that this was indeed the case.
7. The onus is on the appellant to produce evidence of what she alleges. I understand that the previous owner has died, which precludes any evidence of the alleged works being provided. Without evidence that the garage was converted to a habitable room that prevented it from being used to park cars I am unable to realistically conclude, on the balance of probability (the relevant test here), that it was incapable of being used for the parking of cars continually since at least 1 December 2013.
8. The appeal on ground (d) therefore fails.

Ground (a)

9. Ground (a) is that, in respect of any breach of planning control which may be stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.
10. The reason for imposing Condition 7 on the original consent for this and the other seven houses in Brookfield Close, an infill extension onto Fairacre Rise, was to ensure adequate on-site parking in the interests of highway safety, in accordance with the then relevant local plan policies.

11. A new plan was adopted on 5 April 2023: the *Fareham Local Plan 2037*, whose policies succeed those set out in Condition 7. The Council lists these in its Statement as Policies TIN2 and D1. TIN2 states that development will be permitted where there is no unacceptable impact on highway safety and the residual cumulative impact of development on the road network is not severe. D1 essentially requires high quality design. The Council also cites its Residential Car & Cycling Parking Standards Supplementary Planning Document (2009) (the SPD) as being relevant; in particular, it states that 3 off-street parking spaces are required for a 4-bedroom house.
12. During my visit I was able to inspect the Close. All 8 houses have at least 2 off-street parking spaces each. Nos 8 and 12 each have 2 spaces in the open parking bay on the east side of the Close. The others, apart from the appeal property, all have garages and at least one parking space, except for No 14 at its southern end, which has 2 tandem open parking spaces. The garages all have garage doors, although they were all closed, and so I cannot confirm whether they are definitely used for parking; they are all clearly large enough to be so used.
13. There is no other available parking in the Close and there is little available on-street parking at this western end of Fairacre Rise due to the designed-in frontage parking and consequently all the dropped curbs of the houses here.
14. But beyond that, to the east of the junction with Middle Mead, and in Middle Mead and Duncan Drive, there were many available on-street parking spaces on Fairacre Rise. I appreciate my visit was in the middle of a working day and that on-street parking is likely to be heavier at night. But nearly all the houses in these adjacent streets and in the estate in general have generous off-road parking provision. Consequently, even though the off-street parking provision (the single space in front of the former garage) at the appeal property would not meet the Council's SPD, I fail to see how this breaches Policy TIN2 because it would not adversely impact on highway safety in Brookview Close or surrounding streets. The Council has failed to explain exactly how it would.
15. Enforcement action is discretionary and planning authorities should act proportionately in responding to suspected breaches. I appreciate that the Council may be worried that one breach of Condition 7 could lead to subsequent breaches, which cumulatively may lead to adverse parking stress and adverse highway safety effects on this and surrounding streets. It will though have to consider each case on its merits when assessed against the on-street parking situation at the time. At the date of making this decision there is no evidence of parking stress or any adverse highway safety effects on Brookview Close or on neighbouring streets following the conversion of the garage at this property into a habitable room.
16. There is therefore no reason for me to uphold the notice and not to grant planning permission in breach of Condition 7, since there are no adverse highway safety effects stemming from its breach and consequently no breach of Policy TIN2. Policy D1 is not particularly relevant because it is concerned predominantly with the design of new buildings and spaces.
17. I agree with the Council that a new condition is required in order to ensure retention of the parking space in front of the now converted garage at the property, not least to prevent any possible parking congestion (and consequential conflict between neighbours) on Brookview Close itself.

Conclusion

18. For the reasons given above, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed.
19. I shall discharge the condition which is subject to the notice, and grant planning permission on the application deemed to have been made for the conversion of the garage into a habitable room without complying with the condition enforced against but subject to a new condition as described above.

Nick Fagan

INSPECTOR