

Meeting:	Planning and Development Committee	Agenda Item:
Date:	4 April 2023	
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Application No :	22/00984/FP
Location :	8 Windsor Close
Proposal :	Proposed single storey rear and side extension
Drawing Nos.:	Proposed elevations; Proposed ground floor plan; Site location plan; Proposed site plan; Existing elevations; Existing ground floor plan; Existing First Floor Plan; Proposed First Floor Plan;
Applicant :	Psycare Ltd
Date Valid:	8 November 2022
Recommendation :	GRANT PLANNING PERMISSION



1. SITE DESCRIPTION

- 1.1. The property is an end of terrace dwelling constructed from a reddish/brown brick under a shallow-pitched bold roll roof tile with the front door positioned in a single storey projection at the front of the property. The application site plan indicates that the property does not have any parking available within the curtilage although there is block paved area in front of the house (but outside of the curtilage), which is owned by Stevenage Borough Council (SBC).

2. RELEVANT PLANNING HISORY

2.1 17/00224/FP Two storey rear extension. Refused 30.05.2017 for the reasons below and dismissed at appeal (APP/K1935/W/17/3180930):

1. The two-storey extension proposed would result in a reduced separation distance between the application property and the property immediately to the rear no. 20 Caernarvon Close. Accordingly, it would have an over-dominant and overbearing impact and would result in an unacceptable loss of privacy to the occupiers of no. 20 Caernarvon Close. The proposal is thus contrary to the Stevenage Design Guide Supplementary Planning Document adopted 2009 and policies TW8 of the Stevenage District Plan Second Review 1991-2011 and GD1 of the emerging Stevenage Borough Local Plan 2011-2031 Publication Draft January 2016.
2. The proposal would fail to provide the necessary off street parking facilities to serve the extended property. The proposal would, therefore, be likely to result in an increase in on-street parking that would be prejudicial to highway safety and the free flow of traffic. The proposal is therefore contrary to policies T15 of the Stevenage District Plan Second Review 1991-2011 and IT5 of the emerging Stevenage Borough Local Plan 2011-2031 Publication Draft January 2016 as well as paragraph 39 of the National Planning Policy Framework March 2012.

Appeal Conclusion: Whilst I have found no harm in relation to the proposed parking arrangement this would not overcome the harm I have identified to the living conditions of existing occupiers.

2.2 18/00164/FP single storey side and rear extensions. Approved 15.11.2018.

2.3 18/00432/CLED Certificate of lawfulness for the provision of residential accommodation and care to people in need of care under Class C2 of the Use Classes Order 1987. Lawful Development Certificate. Granted 15.11.2018.

3. THE CURRENT APPLICATION

3.1 This application seeks planning permission for a single storey side and rear extension to what is described as an existing 'C2' care home. The ground floor extensions would provide three bedrooms and a sitting room, and the first floor would be reconfigured to provide two larger bedrooms and a staff area. Cumulatively the works would create a five-bedroom property (the existing property has 3 bedrooms).

3.2 The single storey extension would be 'L' shaped and would wrap around the side of the existing property. It would have a maximum depth of 6.5m from the existing rear elevation of the property and would have a maximum width of 10.6m. Part of the extension would be offset off of the boundary with no. 7 Windsor Close by 1.25m and the side extension element would project beyond the existing side elevation of the house by approximately 3m. The extensions would adopt a flat roof which would be 3m in height.

3.3 It should be noted that this application is a direct re-submission, with no alterations, to the planning application which was submitted and approved in 2018 under reference number 18/00164/FP. This previous planning permission has now lapsed, resulting in the submission of this current application. This is a key material consideration in the determination of this current application.

3.4 This application comes in before the Planning and Development Committee as it has been called in by Councillor Facey. The Councillor called-in this application in terms of impact on neighbouring properties, impact on the character and appearance of the area, car parking issues and a challenge over the lawful use of the premises as a Care Home

4. PUBLIC REPRESENTATIONS

4.1 The application was publicised by way of neighbour letters and a site notice. A summary of the comments received can be found below. This is not verbatim, and full copies of the correspondence can be viewed on the Council's website.

4.2 21 Caernarvon Close

Objection:

- Property is not in C2 use and is a residential dwelling.
- The CQC de-registered the property as it no longer considered it a residential care home.
- Not enough parking for a 5-bedroom property.
- Extension is too big and will over dominate the plot.
- Remaining garden will not meet design guide standards and is far too small.
- Fails the 45-degree test.

5. CONSULTATIONS

5.1. None

6. RELEVANT PLANNING POLICIES

6.1. Background to the Development Plan

6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the decision on the planning application should be in accordance with the development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- The Stevenage Borough Council Local Plan 2011-2031
- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014); and
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007).

6.2 Central Government Advice

6.2.1 A revised National Planning Policy Framework (NPPF) was published in July 2021. This largely reordered the policy substance of the earlier 2012 version of the NPPF albeit with some revisions to policy. The Council are content that the policies in the Local Plan are in conformity with the revised NPPF and that the Local Plan should be considered up to date for the purpose of determining planning applications. The NPPF provides that proposals which accord with an up-to-date development plan should be approved without delay (para.11) and that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted (para.12). This indicates the weight which should be given to an up-to-date development plan, reflecting the requirements of section 38(6) of the 2004 Act.

6.3 Planning Practice Guidance

6.3.1 The PPG contains guidance supplementing the NPPF and with which Members are fully familiar. The PPG is a material consideration to be taken into account together with the National Design Guide (2019) which has the same status as the PPG.

6.4 Adopted Local Plan (2019)

6.4.1 The policies set out below are relevant in the determination of this application:

Policy GD1 - High Quality Design;
Policy SP8 - Good Design;
Policy IT5 - Parking and Access;

6.5 Supplementary Planning Documents

Parking Provision Supplementary Planning Document October 2020
Stevenage Design Guide Supplementary Planning Document January 2023.

6.6 Community Infrastructure Levy

Stevenage Borough Council adopted a Community Infrastructure Levy Charging Schedule in 2020. This allows the Council to collect a levy to fund infrastructure projects based on the type, location and floorspace of a development.

7. APPRAISAL

7.1.1 The main issues to be considered are the impact of the proposal on the character and appearance of the area, the impact on the amenities of neighbouring occupiers and the amount of parking provision. Following comments from local residents and the local ward councillor regarding the Use Class of the property, this will be addressed under section 7.2 of this report.

7.1.2 It should be noted that this application is a direct re-submission, with no alterations, to the planning application which was submitted, and approved, in 2018 under reference number 18/00164/FP. Whilst this previously approved application was predominantly determined under the previous iteration of the Local Plan, the currently adopted Local Plan (2019) was very close to adoption at the time and policies GD1, SP8 and IT5 were taken into consideration in the determination of that application. This is a key material consideration in the determination of this current application. Since the submission of this current application, the Council has adopted its updated Design Guide SPD (2023) and Parking Provision SPD (2020). However, there are no changes to the design standards which relate to this type of application and the off-street parking requirements for C2 use properties and 3 and 5 bedroom residential dwellings (Use Class C3) remain unchanged.

7.1.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

7.2 Lawful Use of the Premises as C2 (Residential Institution)

7.2.1 Third parties and a Ward Councillor have challenged that the property is not being lawfully used as a C2 care home and argue the use of the premises falls within Use Class C3 dwellinghouse. They refer to evidence from the Care Quality Commission (CQC) which states that the property is no longer registered as a care home as, under the CQC guidelines on what constitutes care, the property no longer meets the requirements. Accordingly, local residents are of the view that the property is therefore a C3 residential dwellinghouse and the current planning application, and specifically, the car parking provision, should be assessed as a dwellinghouse and not a residential institution.

7.2.2 The applicant provided a written statement as part of the application submission documents that they believe the property remains in C2 use because there is no live-in carer and staff

provide support to residents in the form of actively encouraging them to become independent and use facilities themselves with varying degree of prompting/assistance. They assert that the residents are in need of, and receive, a level of care and encouragement to help them become independent in the future, but they cannot do so at present.

7.2.3 The applicant provided a further written statement, via email on 8th March 2023, which confirms the following: -

- We are paid by Hertfordshire County Council and other local authorities to provide specific care to individual patients at 8, Windsor Close.
- The type of care being provided does not require registration as confirmed by the inspector as it is not a regulated activity within the acts.
- We are not allowed to provide information about specific treatments being offered to individuals as this is confidential.
- Suffice to say that as we are paid by County Councils to provide unregulated specific care to individual requirements, we are clearly operating a care home under C2 class use.
- The argument put forward about parking is irrelevant as none of our patients drive or own a car and staff park elsewhere if they arrive by car at all – local roads are non-restricted on parking.
- 8 Windsor Close has been a care home since 2002 and the same arguments were raised by objectors at the time of the earlier planning application for an identical extension which was approved.

7.2.4 Research was undertaken by Officers on DCP Online, which is an online depository of Planning Case Law and guidance on the Laws surrounding planning. In this regard, officers found that the Use Classes Order (as amended) defines care as “personal care for people in need of it by reason of old age, disablement, mental disorder, or alcohol and drug dependence”. It adds that, with regard to C2 residential institutions only, this definition of care also includes “the personal care of children and medical care and treatment”. There is also a lot of case law regarding C2 residential institutions and this is set out in greater detail below.

7.2.5 North Devon 05/08/2002 DCS No. 032-516-037 (APP/X1118/C/02/1081831) - The court held that in order to form a single household living together it was necessary for carers to live permanently within a building. Otherwise, it was reasoned that those in need of care would not be able to live as a single household because they were incapable of undertaking the tasks associated with running and living within a dwellinghouse. Although this ran counter to the judgment in *Sinclair*, it was necessary for a proper functioning household to exist. Otherwise, the use had to fall within Class C2. In so deciding, the court found that the Inspector was wrong to regard the use as falling within C3(b) rather than C2, and that the Council's contentions were correct. C3 does require at least one residential carer, together with of course those who are being cared for. Accordingly, a use will fall within Class C3(b) if at least one carer is resident within the building and all six or fewer residents are living together as a single household, otherwise the use would fall within Class C2.

7.2.6 Haringey 20/6/2019 DCS No. 400-022-351 (APP/Y5420/C/18/3197309) - The appellant described the use as a half-way house for adults with specific needs transitioning from a full-time care home to independent living, a residential institution falling within C2. On his site visit the inspector saw that each bedsit room was provided with a kitchenette and en-suite and had all the necessary facilities for independent day to day living. The issue was therefore whether the rooms had been used as self-contained flats or not. On the basis of the evidence provided, the inspector found a sufficient element of care provided for the use to fall within C2. On-site 24-hour supervision was provided, and each resident was carefully vetted for suitability, being adults referred by the council or the NHS who could not live by themselves unaided but were hoping to move towards a time when they could. Consequently, the inspector decided the matters alleged had not occurred and with the council's agreement

decided the allegation could be corrected to a C2 use without causing injustice to the appellant.

- 7.2.7 Enfield 15/04/2005 DCS No. 100-036-846 (APP/Q5300/A/04/1166773) - The conversion of a dwelling in north London to a residential care home for five people recovering from mental health difficulties was dismissed because it would conflict with a development plan policy which sought to maintain and increase the housing stock and would give rise to fears about antisocial behaviour. The inspector noted the appellant's argument that no change of use would occur because the use would fall within dwellinghouse use Class C3(b). He found, however, that there would be no live-in accommodation for carers and therefore concluded that staff and residents would not live as a single household and did not meet the parameters of C3(b). He decided that the use fell within Class C2.
- 7.2.8 Given the aforementioned, officers are satisfied that on the basis of Planning Law, the residents of the property require an element of care and assistance to live semi-independently and the property can therefore be considered to remain as a C2 use. With no carer living in the property, it cannot be determined to be a C3(b) use. Given there is an element of care/support provided daily by staff, the property cannot be considered to be C3 use.
- 7.2.9 It should be noted that the CQC's definition of care (as per their email: personal care is defined as the core regulated activity that involves supporting people in their homes (or where they're living at the time) with things like washing, bathing or cleaning themselves, getting dressed or going to the toilet.) is not relevant to the assessment in question as planning applications must be determined under Planning Law which does not define care within the same description.
- 7.2.10 Finally, it should also be noted that under planning reference number 18/0043/CLED, a Lawful Development Certificate (LDC) was issued to confirm that the property was in C2 use. It is therefore officers view, given all the evidence outlined above, that this position has not changed and the LDC remains valid, and, on the balance of probabilities, the property remains in C2 use.

7.3 Impact on the Character and Appearance of the Area

- 7.3.1 Firstly, it is considered that the proposal would have an acceptable impact on the character and appearance of the area. The extensions would be set to the side and rear of the existing property such that only the side extension element would be visible from the Windsor Close street scene. Although adopting a flat roof, the single storey nature of the extension and the significant set back from the front of the property of the side element would ensure that it is subservient to the original property. The modest nature of this part of the extension and its subservient nature would ensure that it would have an acceptable visual impact, particularly as the materials proposed would match the original property.
- 7.3.2 The proposed extension would be visible from the footpath to the south of the property that connects Windsor Close to Caernarvon Close. Whilst the rear extension element would be a large feature, only the top section of the extension would be visible above the existing fence. The single storey nature of the extension would again ensure that it would appear subservient set against the original property from this direction and would also avoid an overbearing impact on the footpath itself.

7.4 Impact on Neighbouring Amenities

- 7.4.1 With regard to the impact on neighbouring residential amenity, the two most affected properties would be no. 20 Caernarvon Close to the rear and no. 7 Windsor Close, the adjoining property to the north. With regard to no. 20 Caernarvon Close, although a large extension, the single storey nature would ensure that it would not result in an overbearing or

over-dominant impact on this neighbour as only the top portion of the extension would be visible above the existing fence line. Similarly, the existing boundary treatment would ensure that the extension would not result in an unacceptable loss of privacy to the occupiers of no. 20 Caernarvon Close as any direct views would be obscured by this fence line. Whilst it is recognised that there may be some overlooking available from the occupiers of no. 20 towards these ground floor bedrooms, this is an issue for the applicant and their occupiers to address and is not considered to be a sufficient reason to refuse planning permission.

- 7.4.2 In relation to no. 7 Windsor Close, it was noted from the site visit that this property has been extended to the rear with this extension projecting to a depth of approximately 3.3m. The proposed extension would project to the same depth adjacent to this boundary and then the final 3.2m of the extension would be offset from the boundary by 1.25m. The Design Guide (2023) requires extensions on a shared boundary to be no more than 3.5m deep; however, the proposed extension is not on the boundary and is offset by over 1m and therefore there is no restriction in the Design Guide in this regard. Further, the offset would also assist in minimising the impact of this extension on the neighbouring property.
- 7.4.3 Notwithstanding this, given the existing extension next door, only 3.2m of the proposed extension would be seen by this neighbour from their ground floor habitable rooms. In this regard, the visible depth of extension would not be considered overbearing, over dominant or result in harm to the outlook from this neighbour's ground floor habitable rooms.
- 7.4.4 However, 45-degree tests were undertaken against this neighbouring property. The neighbouring extension, according to planning records, is a brick conservatory with a parapet wall on the boundary, glazed roof and full glazed rear elevation. In this regard, whilst the comments from local residents would suggest that the development fails the 45-degree tests on plan, this was calculated using the centre point of the window closest to the boundary and not the centre point of the fully glazed elevation. Consequently, Officers are satisfied that the proposed extension easily passes the 45-degree tests when taken against the centre point of the rear elevation and on the elevations. In addition to passing the relevant light tests on no. 7 Windsor Close, the offset nature of the proposal would also ensure that it would not result in a significantly detrimental overbearing impact.
- 7.4.5 With regard to no. 21 Caernarvon Close, the separation distance of over 16.5m, and angled relationship between the two properties would ensure that the extension would not result in any adverse impacts on this property.
- 7.4.6 In terms of the private amenity area left for residents, it is recognised that the depth of garden, at approximately 4.5m, would be significantly below the usual garden depth of 10m as set out in the Design Guide (2023). However, this is obviously an existing property and how they use the land available is generally considered to be a matter for the landowner, providing that a useable garden area would still remain. Notwithstanding this, the depth remains the same as previously approved under planning permission (18/00164/FP). As such, the Council would be unreasonable in its actions if it now refused the application on this basis as the Local Plan (2019), whilst in draft form at the time, was taken into account at that time of determination of the 2018 application. In addition, the current Design Guide (2023) is the same as the 2009 version in this matter in terms of garden sizes.
- 7.4.7 A garden area of approximately 51sqm would still remain if the extensions were built out, although taking into account the sheds shown on the submitted plans, this is reduced to approximately 44sqm. This is considered acceptable in this instance and taking into account that this was the same size amenity space approved under 18/00164/FP, the Council would be unreasonable in its actions if it now refused the application on this basis as the current Local Plan (2019) was taken into account at that time and the current Design Guide (2023) is the same as the 2009 version in this matter.

7.5 Car Parking Provision

- 7.5.1 With regard to parking, although there is a block-paved area in front of the property, this is not in the applicant's ownership and therefore the existing property has no parking available within its curtilage. The original three-bedroom dwellinghouse, under the Council's Parking Standards SPD (2020) for residential development, would have been required to have 2 off-street parking spaces. Therefore, the original dwellinghouse can be considered to have an under provision of these two spaces.
- 7.5.2 The proposal would increase the number of bedrooms to five. Following discussion with the applicant it has been confirmed that the property is being used as a C2 care home. With regard to the Council's adopted parking standards, 1 space is required per 5 residents' bed spaces and 1 space per 2 staff. The application is for 5 residents and written confirmation has been received from the applicant that there is one member of staff on site 10am to 5pm with additional staff on call for other times if needed. Accordingly, it is considered that two parking spaces would be required for this size of C2 care home and given that the existing property also required two spaces there is no change to the off-street parking provision. As such, it would be difficult to refuse permission based on the lack of off-street parking provision to serve the development proposal.
- 7.5.3 With regards to cycle storage, the Parking Provision SPD (2020) requires C2 uses to provide 1 long term space per 5 staff and 1 short term space per 30 staff and 1 short term space per 20 bedrooms. In this regard, the property would be expected to provide storage for 3 spaces. Whilst no specific details of storage are included on the plans, the rear garden contains two large sheds which could be utilised for such storage; alternatively there is sufficient space in the rear garden for bicycles to be stored.

8 CONCLUSIONS

- 8.1 In summary, and on the balance of probabilities, the property remains in C2 (Residential Institution) use as defined by the Use Classed Order 1987 (as amended). The proposal would have an acceptable impact on the character and appearance of the area, would not have a detrimental impact on neighbouring residential amenity and that parking provision is acceptable given the C2 use of the property. It is considered that the application is acceptable, and it is accordingly recommended for approval.

9 RECOMMENDATIONS

- 9.1 That planning permission be GRANTED subject to the following:-
- 9.2 The imposition of suitable conditions, with authority given to the Assistant Director of Planning and Regulation in consultation with the Chair of Planning Committee, to amend or add to the suggested draft conditions set out in this report, prior to the decision notice being issued, where such amendments or additions would be legally sound and most effectively deliver the development that the Planning Committee has resolved to approve. These suggested conditions are as follows: -
1. The development hereby permitted shall be carried out in accordance with the following approved plans:
Proposed elevations; Proposed ground floor plan; Site location plan; Proposed site plan; Existing elevations; Existing ground floor plan; Existing First Floor Plan; Proposed First Floor Plan;
REASON:- For the avoidance of doubt and in the interests of proper planning.
 2. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON:- To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

3. The materials to be used in the construction of the external surfaces of the single storey side and rear extension hereby permitted shall match the materials used in the construction of the original dwelling to the satisfaction of the Local Planning Authority.

REASON:- To ensure the development has an acceptable appearance.

For the Following Reason(s):-

- 1 Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

INFORMATIVES

1 Public Information on Planning Applications

Warning: all information provided on your planning application is now publicly available. Individuals and organisations offering their services may contact you. The Council does not endorse or approve any builders, surveyors, trades persons or other supplier, and advises householders to obtain quotes/references, and check the legitimacy of any contractor who contacts them before making payment.

2 Community Infrastructure Levy

Stevenage Borough Council adopted a Community Infrastructure Levy (CIL) Charging Schedule at Full Council on 27 January 2020 and started implementing CIL on 01 April 2020.

This application may be liable for CIL payments and you are advised to contact the CIL Team for clarification with regard to this. If your development is CIL liable, even if you are granted an exemption from the levy, please be advised that it is a requirement under Regulation 67 of The Community Infrastructure Levy Regulations 2010 (as amended) that CIL Form 6 (Commencement Notice) must be completed, returned and acknowledged by Stevenage Borough Council before building works start. Failure to do so will mean you risk losing the right to payment by instalments and a surcharge will be imposed. NB, please note that a Commencement Notice is not required for residential extensions if relief has been granted.

Stevenage's adopted CIL Charging Schedule and further details of CIL can be found on the Council's webpages at www.stevenage.gov.uk/CIL or by contacting the Council's CIL Team at CIL@Stevenage.gov.uk.

3 Building Regulations

To obtain advice regarding current Building Regulations please contact Hertfordshire Building Control Ltd. by emailing us at building.control@hertfordshirebc.co.uk or phoning us on 01438 879990.

To make a building regulations application please apply through our website portal at <https://www.hertfordshirebc.co.uk/contact-us/> payment can be made online or by phoning the above number after the application has been uploaded. Please phone Hertfordshire Building Control for fees guidance on 01438 879990.

Hertfordshire Building Control can also be contacted by post at Hertfordshire Building Control Ltd, 4th Floor, Campus West, Welwyn Garden City, Hertfordshire, AL8 6BX.

Once a building regulations application has been deposited with relevant drawings and fee building work may commence. You will be advised in their acknowledgement letter of the work stages we need to inspect but in most instances these are usually:

Excavation for foundations
Damp proof course
Concrete oversite
Insulation
Drains (when laid or tested)
Floor and Roof construction
Work relating to fire safety
Work affecting access and facilities for disabled people
Completion

Please phone Hertfordshire Building Control on 01438 879990 before 10.00am to ensure a same day inspection (Mon - Fri).

4 Party Wall etc. Act 1996

Any work that affects a party wall, including foundations dug within 3.0m of a neighbouring building, may be controllable under the Act and may require approval from the adjoining owner(s). Party Wall Act matters are always civil matters and it is neither Stevenage Borough Council's nor Hertfordshire Building Control Ltd's remit to control or enforce Party Wall act matters. Please refer to the Government's explanatory booklet The Party Wall etc. Act 1996, a copy of which is available online at <https://www.gov.uk/government/publications/the-party-wall-etc-act-1996-revised-explanatory-booklet>

10 BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage Borough Council Supplementary Planning Documents – Parking Provision adopted October 2020 and Stevenage Design Guide adopted January 2023.
3. Stevenage Borough Local Plan 2011 – 2031 adopted 2019.
4. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
5. Central Government advice contained in the National Planning Policy Framework February 2021 and Planning Policy Guidance.