
Appeal Decision

Site visit made on 16 July 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 15 August 2019

Appeal Ref: APP/Y0435/W/19/3228829

46 Mitcham Place, Bradwell Common, Milton Keynes, MK13 8BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miss Lenka Novakova against the decision of Milton Keynes Council.
 - The application Ref 19/00550/FUL, is dated 4 March 2019.
 - The development proposed is change of use of Council's owned land to garden.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of Council's owned land to garden at 46 Mitcham Place, Bradwell Common, Milton Keynes, MK13 8BX in accordance with the terms of the application, Ref 19/00550/FUL, dated 4 March 2019, subject to the following 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 plans: Red-line boundary plan entitled BM130165.
 - 3) Prior to the first use of the development hereby permitted, details of the means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the first use of the development hereby permitted and shall be retained thereafter.

Application for costs

2. An application for costs was made by Miss Lenka Novakova against Milton Keynes Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of the development in the banner heading above is taken from the appeal form rather than the application form, for the purposes of brevity.
4. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement and I have treated those as the basis of the decision the Council would have made, had it been empowered to do so. The Council is

principally concerned that the development would lead to an unacceptable loss of open space, and would harm its character and appearance. I have drawn on the Council's concerns, together with other evidence before me, to inform the main issue in this appeal.

Main Issue

5. Having regard to the above, the main issue is whether the development would result in an unacceptable loss of open space having regard to the impact on its character and appearance.

Reasons

6. The appeal sites comprise two parcels of land which lie adjacent to a narrow footpath and the garden fence associated with 46 Mitcham Place (the appeal dwelling) and adjacent properties. Beyond this the land slopes up and away from the appeal site, comprising a mix of vegetation and grass.
7. The Milton Keynes Council Plan:MK 2016-2031 March 2019 (the Local Plan) identifies recreational open space, amenity open space, and leisure and recreational facilities as the three main typologies of open space. The Council refer to the site as being within a wider area of amenity open space. It is likely that the amenity open space as a whole, within which the appeal site is located, provides useable and functional open space for occupiers of the houses in the area.
8. Policy L3 of the Local Plan states that planning permission will only be granted for the change of use of amenity open space, including its incorporation into private garden land, subject to a number of criteria. Contrary to the requirements of a number of those criteria, the appellant has failed to demonstrate that the land is surplus to requirements, nor is any alternative provision proposed.
9. Moving onto the other criteria contained within Policy L3 of the Local Plan. The appeal sites are relatively small and generally triangular in shape. On my site visit I observed that the adjacent path, which routes along the rear boundary of several properties, was severely overgrown and barely passable in places. There was evidence of litter on the appeal sites which contributed to their unkempt appearance. To my mind this suggests that they are unlikely to be areas where users of the wider amenity open space would walk, sit, or otherwise engage in leisure and recreational activities. The functionality of the appeal sites is constrained by the boundary fence which borders each of them on two sides, and the path which lies in front of them, thus they are hemmed in, and this limits the contribution they make to the wider amenity open space.
10. The boundary treatments associated with the appeal dwelling and nearby properties are predominantly made up of wooden fencing. Some of the fencing lies close to the existing path. Whilst no details of proposed boundary treatments have been provided, the appellant has referred to the fact that the sites would be enclosed. Therefore, I am satisfied that a planning condition could be imposed requiring an appropriate boundary treatment. Even though the proposal would reduce the amount of space to the side of the path, it would 'round off' the existing garden area and serve to create a consistent boundary with the path and wider amenity open space. Given the limited visual contribution the sites make to the area, subject to appropriate boundary

treatment, the development would preserve the character and appearance of the area.

11. The Council have put to me that existing vegetation on the sites could constitute a semi-natural habitat which would be of greater value than a private garden. However, on my site visit the existing vegetation was dominated by weeds and lacked a sense of richness and diversity to suggest that it contributed to local habitats. There is no evidence before me to suggest that the sites are of habitat value, useful in creating a stepping stone to another habitat or any other feature of wildlife value. To my mind, they make a minimal contribution to local biodiversity.
12. I have considered the concerns of the Council that granting planning permission for the proposal could set a precedent for applications from other households wishing to extend their garden in a similar manner. However, each planning appeal must be considered on its individual merits depending on the specific circumstances in each case. It is also put to me that the sites are currently maintained by the Council and are not a financial burden. Neither of these considerations are sufficient to outweigh the lack of harm I have found in this particular instance.
13. In conclusion, the development would not result in an unacceptable loss of open space having regard to the impact on its character and appearance. Accordingly, although the proposal would conflict with some of the criteria contained in Policy L3 of the Local Plan and paragraph 97 of the National Planning Policy Framework, it would comply with the overarching objectives of those policies and principles as the open space lost would not contribute to visual amenity, biodiversity or recreational use of the wider area of amenity open space.

Other Matters

14. A neighbour is concerned that the proposal would restrict their ability to access the amenity open space from their garden. However, on my site visit, I saw that the proposal would leave a small gap in front of the rear gate of the neighbouring property, thus retaining access to the open space to the rear. In any event, this is a private matter which carries only limited weight and does not outweigh my findings on the main issue.
15. A number of other matters have been raised by third parties relating to other works that have apparently taken place at the appeal property in the past. These are matters which are unrelated to the appeal before me and have had no bearing on my decision.

Conditions

16. I have applied the standard '3 year' time limit and 'approved plans' conditions. I agree with the Council that a condition is required relating to an appropriate boundary treatment in order to contain the extended garden area, in the interests of the character and appearance of the area. However, as I find that the development would not result in the loss of any trees or vegetation which contribute to the visual amenities of the area, a landscaping condition is not necessary.

Conclusion

17. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Matthew Woodward

INSPECTOR