



Appeal Decision

Site visit made on 7 October 2019 by G Sibley MPLAN MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2019

Appeal Ref: APP/K0235/D/19/3234183

14 Shaftesbury Avenue, Bedford, Bedfordshire MK40 3SA

- 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 Mrs Helen Smallwood and Dr Smallwood against the decision of Bedford Borough Council.
 - The application Ref: 18/03092/FUL, dated 3 December 2018, was refused by notice dated 22 May 2019.
 - The development proposed is a single storey rear extension.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Application for costs

3. An application for costs was made by Mr and Mrs Smallwood against Bedford Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The appeal site is located within the Bedford Conservation Area (the CA). However, the proposal is situated to the rear of the host dwelling and consequently would not be visible from the public domain. The Council is satisfied that it would preserve the character and appearance of the CA and, from the evidence before me, I have no reason to reach a different conclusion.
5. In view of the above, the main issue is the effect of the proposed development on the living conditions of the occupiers of no.15 Shaftesbury Avenue with particular regard to the outlook from within that property and whether the proposal would have an overbearing impact.

Reasons for the Recommendation

6. The property is a two storey semi-detached Victorian dwelling and is located within the Bedford Conservation Area (CA). The property is connected to no.15 and the gardens are split by a part brick wall, part wooden fence that is approximately 2 metres tall. Both this property and no.15 have a two storey outrigger projection from their rear elevations and this has created a small

patio area at the rear of each dwelling. The proposed single storey extension would develop this patio area and would extend out further than the existing rear outrigger projection for both properties and would loop around the outrigger for no.14. The proposal would be around 3 metres tall and would extend out approximately 6 metres from the rear of the property.

7. The window that would be most affected would be the bay window and the patio doors that sit within the middle of the bay window at the rear of no.15. This opening serves the rear living room which is one of the main habitable rooms in the dwelling and a space where neighbouring residents are likely to spend a reasonable proportion of their time. The existing room is well served by daylight from this window. The current outlook is partially of the existing boundary wall and, beyond that, the existing projection to the rear of no.15 is also visible. However, that two storey rear wing is set away from the shared boundary and does not appear overbearing when viewed from the rear of No. 15.
8. The proposal would, in effect, extend the height of the shared boundary wall to around 3 metres and would extend 6 metres into the garden area. As identified in Appendix 3 of the appellant's Statement of Case, when considering the depth of the proposal, it would fail the 45-degree code when taken from the centre point of the patio doors. Whilst the Council concluded that levels of daylight and sunlight would not be unduly affected its concerns related primarily to the outlook and physical impact of the flank wall of the proposal.
9. In contrast to the comparatively open outlook presently enjoyed the extension would project a considerable distance into the garden and beyond the adjacent rear window in no.15. The combination of the height and length of the boundary wall would appear overbearing and create a significant sense of enclosure when viewed from the rear window of the neighbouring property. The outlook for the occupiers would be negatively affected and the impact would be heightened due to the fact that the window serves one of the main habitable rooms within the property. This would be contrary to the Residential Extensions, New Dwellings and Small Infill Developments Design Guide (SPG). Whilst the SPG may have first been published in 2000, the relevant guidance is still relevant for modern proposals and as a result the SPG should be given appropriate weight in the decision-making exercise.
10. For the reasons given above, the proposed development would result in a significant loss of outlook and have an overbearing impact when viewed from the rear of No.15. Consequently it would harm the living conditions of the occupiers of no.15, contrary to the aims of policies BE29, BE30 and BE37 of the Bedford Borough Local Plan 2008 and the Residential Extensions, New Dwellings and Small Infill Developments Design Guidance.

Other Matters

11. The appellant has referred to a planning application that was approved by the Council at no.5 Shaftesbury Avenue for a single storey rear extension (Council ref: 18/01123/FUL). The 2009 Guildford Borough Council vs Secretary of State and Moffat¹ notes that precedent should be a material consideration to which a decision maker can give attention. Nevertheless, whilst there are similarities in the two proposals there also appear to be some differences. The

¹ [2009] EWHC 3531 (Admin) CO/4261/2009

approved extension at No. 5 had a pitched roof sloping away from the shared boundary, unlike the extension in this case which has a flat roof. Moreover, from the information before me, I cannot be certain of the internal layout of the property adjacent to No. 5 such that I cannot draw a direct comparison on the effect of the two proposals. In any event, each case must be assessed on its own merits and I have made my recommendation on the information before me, including what I was able to view at my site visit. Consequently, the fact that the Council granted planning permission for an extension to No. 5 does not amount to a justification to allow the proposal before me which would cause harm for the reasons set out above.

12. The appellants have referred to evidence of a previous extension at the property and have made associated comments on what it may have been possible to erect under 'permitted development rights' had the property been outside of a Conservation Area. Be that as it may, there is no suggestion that the proposal in this instance does not require planning permission and I must determine the appeal on its merits. Moreover, the lawfulness, or otherwise, of a suggested alternative form of development is not a matter for determination in relation to an appeal under s78 of the Town and Country Planning Act 1990. The correct procedure for determining whether an alternative proposal would be lawful would be to apply for a certificate of lawful development under section 192 of the Act. In the absence of a certificate of lawful development, the information before me does not demonstrate conclusively that a realistic fall-back position exists whereby an extension of a similar depth could be erected as permitted development and the arguments put forward in that respect do not lead me to alter my recommendation which is based upon the planning merits of the proposal.

Conclusion and Recommendation

13. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be dismissed.

Chris Preston

INSPECTOR