
Appeal Decision

Site visit made on 31 August 2021

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/Y0435/W/21/3266815

2 Vienna Grove, Blue Bridge, Milton Keynes, MK13 0LG

- 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 Mr C Kempster against the decision of Milton Keynes Council.
 - The application Ref. 20/02388/FUL, dated 24 September 2020, was refused by notice dated 24 November 2020.
 - The development proposed is the change of use of amenity land to the rear of the application site to private garden use enclosed by 6ft (1.8m) featherboard fencing.
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Decision

1. The appeal is dismissed.

Procedural matter

2. I have used the description of the development drafted by the Council and referred to in the decision notice as it is more succinct and better describes the proposal.

Main Issue

3. The main issues are:
 - whether the proposal would result in a material loss of amenity open space/wildlife corridor;
 - the effect of this on the character and appearance of the area; and
 - the effect on biodiversity.

Reasons

Background

4. The appeal relates to a small area of land which lies to the rear of the back garden of the host dwelling and forms part of a linear space to the rear of other houses in Vienna Grove and Culbertson Lane and the fenced embankment of a railway line to the west. The linear green space is generally landscaped with trees and there is an informal footpath which winds between the undergrowth/brambles. It is proposed to fence off an area about 8m deep and the width of the plot and incorporate this land into the garden of the property.
5. The appellant says that the land is unregistered and provides copies of correspondence from the original housing developer and the Council which casts

doubt over the ownership of the land but this is a separate matter to the planning issues.

Loss of amenity open space

6. The land where the change of use to garden is proposed is identified as 'amenity open space' in the development plan - Plan:MK 2016-2031, as adopted in 2019, and where Policy L3A applies. The Council also refers to Policy L2 but this appears to relate to open space and leisure/recreation facilities in general and duplicates some of the tests set out in Policy L3-A which is more relevant to the specific issues in this case.
7. Policy L3-A sets out a presumption that changes of use will only be granted where a number of criteria are satisfied. Criteria 2 and 3 of the policy will be looked at under other issues below. Of the remainder, there is no formal evidence submitted that the open space in question is 'surplus to requirements' as per criterion 1, however, at my site visit it appeared to me that every housing enclave has a considerable and varied area of amenity open space and landscape belts. Under criterion 4 the appellant submits that a precedent has already been set where some other properties have already extended rear garden boundaries into the open amenity land. I saw various examples of this at the site visit where I walked along the informal footpath and the evidence also lists some 16 similar applications locally for change of use to make garden extensions and the Council acknowledges that many of these have been permitted.
8. In relation to criterion 5 there is no evidence to indicate that the proposed change of use would make the maintenance of amenity land impractical or unduly onerous and the appellant suggests that there has been little active maintenance of the land for many years. Finally in relation to 6, no replacement open space is offered as part of the proposal but in many ways this appears impractical for the small area of land involved.
9. Subject to the subsequent main issues, it appears to me that the proposal is not contrary to the provisions or spirit of the policy as it would be consistent with the other small extensions allowed and carried out locally and which would not materially reduce the extent of amenity open space either individually or collectively.

Effect on character and appearance

10. At the moment the rear of the gardens in Vienna Grove and Culbertson Lane are enclosed by a staggered line of timber fences. The position of the fence still leaves the main area of landscaped linear open space intact and does not intrude on the alignment of the informal footpath. I find that the proposed change of use and re-sited boundary fence would be consistent with the general form of the area and will not adversely affect the character and appearance of the area. There is no conflict with the relevant part of criteria 2 or 4 of Policy L3A regarding the appearance of the locality.

Effect on biodiversity and wildlife habitat

11. The Council refers generally to Plan:MK Policy NE1 but it seems to me that only part C of the policy is applicable as a Main Line Rail Wildlife Corridor. National guidance in section 15 of the National Planning Policy Framework (as issued in 2021) is also applicable.

12. The area proposed to be changed to garden lies at the side of the linear corridor and would not protrude materially beyond other existing garden fences. In general terms the small extent and the location of the land means that its enclosure is unlikely to be a barrier within the wildlife corridor. A significant width of corridor would remain; wider than many other parts along this local green space.
13. However, in relation to the actual effect on flora and fauna there is no evidence before me, in terms of a proper ecological appraisal, to demonstrate that protected species, some of which the appellant agrees are present in the area, would not be affected or that the intrinsic value of the land as a wildlife habitat would not be harmed. The appellant says the wildlife corridor has not been actively managed but this is likely to be a positive factor for wildlife rather than a restriction. The state of the land appears little different from the adjoining space and there is no reason to consider it would be unduly onerous or impractical to maintain it in the context of criterion 5 of Policy L3.
14. I note that the appellant has placed a number of bird boxes on neighbouring trees and intends to manage the extended garden to promote wildlife, but these factors, though commendable, are not mitigation resulting from a proper assessment of the wildlife value.
15. Overall on this issue, I find that the specific evidence before me on ecological matters does not demonstrate that the change of use of the land would result in a net gain for biodiversity and not harm the land's contribution to the wildlife habitat. On this basis I find that the proposal does not satisfy part C of Policy NE1, or Policies NE2 and NE3 of the MK:Plan.

Planning Balance

16. On the main issues I have found that the area of land proposed to change to garden land would not materially reduce the extent of amenity open space. Neither would the erection of the fence to enclose the space adversely affect the character or appearance of the locality. However, on the final main issue I have found that it has not been demonstrated that the change would not result in a net gain for biodiversity nor harm the recognised local habitat for wildlife including for protected species. On this basis, the proposal has not been shown to accord with NE policies mentioned above or part of criterion (3) of Policy L3A.
17. This conflict with the development plan has to be balanced with other factors. I recognise that other local gardens have been extended into the wildlife corridor over the years and the appellant seeks consistency in approach. However, many of these changes predate the present development plan and national guidance and the emphasis placed on nature conservation, and any precedent set does not attract significant weight now.
18. I conclude that the other factors put forward do not outweigh the conflict with the development plan and the harm that I have concluded would be caused by the proposal. This indicates that the appeal should not be allowed.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR