



Appeal Decision

Site visit made on 20 December 2021

by Sian Griffiths BSc(Hons) DipTP MScRealEst MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 7th February 2022

Appeal Ref: APP/K0235/D/21/3284167

20 Harlequin Crescent, Wixams, Bedford MK42 6EH

- 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 and Mrs Harrold against the decision of Bedford Borough Council.
 - The application Ref 21/00974/FUL, dated 6 April 2021, was refused by notice dated 27 July 2021.
 - The development proposed is single storey side and rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for single storey side and rear extension at 20 Harlequin Crescent, Wixams, Bedford MK42 6EH in accordance with the terms of the application, Ref 21/00974/FUL, dated 6 April 2021 and the plans submitted with it, subject to the conditions below:
 - 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: Location Plan 47474 – V01; Proposed Floor Plans 02A SECTION – V03; All Elevations, Floor and Block Plan 01A – V02.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Procedural Matters

2. I requested a further response from the council on the case put forward by the appellant, as it was apparent to me that their disabled child was not mentioned in the original application. I requested further comments on the evidence submitted by the appellants, but the council did not offer any further comments. As such, I have proceeded on the basis of the information before me and have considered it as a main issue under the heading 'The Public Sector Equality Duty and Human Rights'.

Main Issues

3. The main issues are:
 - The effect of the proposals on the character and appearance of the area;

- The effect of the proposals on the living conditions of existing and future occupiers, and
- The effect of the Public Sector Equality Duty and Human Rights.

Reasons

Character and Appearance

4. Harlequin Crescent is a pleasant residential street within a substantial, planned housing development known as Wixams. The estate offers a mix of housing which is interspersed by open spaces and equipped play areas. During the site visit, I toured the estate and observed some of these open spaces available to residents and visitors.
5. Harlequin Crescent is of a fairly high density with a number of townhouses that have small rear gardens, set back from the street behind small, landscaped front gardens. No 20 is a semi-detached 2.5 storey townhouse which is also linked to its neighbour at No 22 by a pitched car port roof, which reinforces the 'terraced' feel of the street.
6. Policy 28S (i and ii) (Place Making) of the Bedford Borough Council Local Plan 2030 (2020) (LP) states that proposed development will be expected to complement local character as well as contribute to local distinctiveness. Policy 29 (i and ii) (Design quality and principles) of the LP has similar requirements.
7. Policy 30 (The impact of development – design impacts) of the LP requires developers to be mindful of matters such as overdevelopment, local distinctiveness, the provision of private space as well as scale, massing, height and so on.
8. Design Code E1 and E2 of the Residential Extensions, New Dwellings and Small Infill Developments January (2000) (RENDSID), sets out guidelines for the basic shape, scale and character of residential extensions.
9. The relevant parts of the National Planning Policy Framework (the Framework) include Section 12 (Achieving well-designed places), which, at paragraph 130 promotes development which reflects local character and distinctiveness, as well as the creation of places that are safe, inclusive and accessible and which promote health and well-being.
10. Whilst much of the proposed development would be confined to the rear of the appeal dwelling, I consider the loss of the front garden to facilitate a parking space would be harmful to the street scene on the grounds that it would introduce hard landscaping, where previously it was planted, matching the neighbouring properties. I find this would result in moderate harm to character and appearance: moderate because of the scale of this aspect of the proposed development as being limited to an area no larger than a parking space.
11. The further development to the side of the property would be visible from the public domain and this would add additional built form where the current tandem driveways are free from development, providing an open aspect to the rear gardens beyond. Given that the existing car port canopy will remain in situ, I consider this aspect of the development would have a limited level of harm to the street scene, where it would not be particularly prominent.

12. Overall, I consider the proposals would be harmful to local character as a result of the new parking space to the front of the dwelling. The side extension would be visible from the public domain but given its lack of prominence and the size of the parking space to the front I do not attribute more than moderate harm overall, where these aspects would be contrary to the relevant parts of policies 28S, 29 and 20 of the LP, as well as Design Codes E1 and E2 of the RENDSID and Framework.

Living Conditions

13. At the site visit, the rear garden appeared fairly small with a strong sense of enclosure reinforced by the close boarded fencing and retaining wall to the rear which forms part of the boundary to dwellings along Tawny Avenue, which are set at a higher ground level. It was clear to me that this sense of enclosure would also already be felt at neighbouring No 18 Harlequin Crescent.
14. The proposed extension would run along the boundary separating No's 20 and 18 and would extend approx. 3m into the existing rear garden, together with the addition of a side extension which would remove one of the three parking spaces on the existing tandem driveway (the third space would then be re-provided within what is currently the front garden of the property). The entire extension would be single storey, with a shallow pitched roof.
15. Having regard to the evidence submitted by the appellants in respect of the Certificate of Lawfulness (ref 21/02264), which I discuss later, it is clear to me that the appeal proposal would result in a development that would be larger than ordinarily permitted by the Council.
16. Furthermore, whilst recognising the proximity of the extension to the boundary between the two neighbours, I consider the slope of the pitched roof would mitigate the visual impact of the extension on the occupiers of No 18. I do not consider it would not result in anything more than limited harm to their outlook through an increased sense of enclosure at a limited level, bearing in mind the presence of the existing close boarded fence. The Council did not refuse the extension on the grounds that it would result in reduced light to No 18, and I have no reason to come to a different conclusion.
17. More critically, I am aware that the proposed extension would substantially reduce the available garden space serving the appeal property, where the existing rear garden is already small.
18. Design Code E3 (Space Around Building) of the RENDSID seeks residential extensions that do not extend along a party wall beyond 3m where there are no existing projections. It also goes on to seek to protect private garden areas, where developments should not exceed a third of the development plot (where the remaining two thirds would be garden).
19. I therefore find that whilst there would be limited harm to the outlook of the neighbouring occupiers at No.18, but there would be harm to the living conditions of the occupiers of the appeal property, where their amenity space would be reduced below the levels required by Design Code E3. This would be contrary to Design Code E3, as well as policies 28s and 29 of the LP.

The Public Sector Equality Duty and Human Rights

20. There is a profoundly disabled child at this property. It is difficult to meet the needs of this child as the house is on three floors, with a small ground floor, and no lift being available.
21. I am aware the 'best interests' of children should be a primary consideration, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child.
22. I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The Act sets out the relevant protected characteristics, which include disability.
23. There appear to be three options available to the appellants: move house; to undertake the extension allowed under permitted development or to implement the appeal scheme, if allowed.
24. The appellants have stated that moving house would be financially prohibitive, although there is no evidence provided to support this claim, I accept that moving house is rarely a cost-neutral exercise. The appellants have stated that they have secured grant funding from the council which could be used towards funding home improvements (including the proposed extension) for the appeal property to meet the child's needs.
25. The permitted development extension is acceptable (by definition) in living conditions and character and appearance terms, albeit I accept that this would result in the loss of a spare bedroom and other living space within the existing house.
26. Having regard to the personal circumstances and inability of the Appellants to be able to move to a larger house due to financial limitations, it is readily evident to me that this would constitute a failure to uphold the principles of PSED.
27. Turning to the Rights of the Child, and Article 8, it is also clear to me that dismissing this case would not automatically result in the child becoming homeless and/or not attending school. Dismissing the appeal would not, in my view, interfere with the appellants' and their child's rights under Articles 1 and 8. It would be unlikely to result in the child becoming homeless or not attending school (once they were of school age), given the extensions that would be possible under permitted development (the fallback position) as previously discussed.
28. Overall, and based on the evidence before me, I find the personal circumstances of the disabled child to be compelling and that the extension would provide vastly improved living conditions for the child. This benefit, in my view attracts very substantial weight.

Other Matters

29. The appeal property has the benefit of permitted development rights, and evidence of this has been provided in a certificate of lawfulness (ref 21/02264/LDP dated 26 August 2021) (LDC) as part of the appeal submission.

30. The LDC is for an extension that would measure 'approximately 3.0 metres in depth, 4.41 metres wide, 2.56 metres to the eaves and a maximum height of 3.43 metres'. This would, in effect, constitute a 'fallback' position for the appellants should this appeal be dismissed. However, I note from the appellant's statement this would not secure the outcome that they seek as it would be too small: it could not allow for the extended living space that is needed to accommodate the ground floor bedroom with ensuite accessible bathroom, and an adapted bathroom, all with a connected hoisting system.
31. In any case, the proposed extension would be larger and therefore more prominent than the LDC scheme which would be harmful to the character and appearance of the area insofar as it would extend to the side of the dwelling (more than the 4.41m of the LDC scheme). However, the projection into the rear garden would be no greater than that of the LDC scheme, which would result in a similar loss of rear garden space. The proposed development would therefore be more harmful in respect of the character and appearance of the area but similarly harmful in respect of living conditions than that permitted under the LDC and as such the existence of this fallback position does not justify the development proposed in this respect.
32. I have considered the submissions of the adjacent neighbour, together with the later submission by the neighbour to the rear at Tawney Avenue. Both raise issues of poor drainage to the gardens, however, there is no evidence before me that would suggest that the proposed development would be harmful in drainage terms. Nor do I consider matters such as the Party Wall Act to be material, given that it is not for me to determine here. Given the raised position of the property at Tawney Avenue, I do not find there to be harm in relation to changes to the outlook of the occupiers.
33. I am sympathetic to the points raised by neighbouring occupiers concerning the limitations placed on how much development would be 'permitted', however, that does not prevent individual planning applications being made for more development, nor does it prevent planning permission being granted where a compelling case has been made.

Planning Balance

34. Overall, whilst the appeal proposals would result in diminished private amenity space and moderate harm to the character and appearance of the area, as well as limited harm to the outlook of the neighbouring property at No 18, I consider the very substantial weight attributed to the rights of the child and the specific needs of the disabled child living at the appeal property as outweighing the harm I have identified.

Conditions

35. I have applied conditions 1 and 2 setting a time limit and specifying plans to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and in the interests of certainty. Condition 3 has been applied in order to protect the character and appearance of the area.

Conclusions

36. For the reasons given, and having regard to all other matters raised, the appeal is allowed, subject to the conditions set out.

Sian Griffiths

INSPECTOR