
Appeal Decision

Site visit made on 22 June 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2022

Appeal Ref: APP/Y0435/D/22/3293379

6 Lucy Lane, Loughton, Milton Keynes MK5 8EP

- 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 Caroline Hemming against the decision of Milton Keynes Council.
 - The application Ref 21/01536/FUL, dated 27 July 2020, was refused by notice dated 14 January 2022.
 - The development proposed is described as *'the proposals see the conversion and extension of the side conservatory to the side with a flat roof which provides an outdoor space for the associated first floor bedroom and bi-folding doors out to the lower level garden area. There is also a new single storey habitable space proposed in the south east corner of the site, this is constructed from timber panels with horizontal timber cladding and roof shingles'*.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Notwithstanding the description of development in the banner heading above, the evidence is that the planning application was amended at planning application determination stage such that the proposed outbuilding was removed and the width of the proposed roof terrace was reduced.
3. It is clear that the Council determined the planning application on the basis of these amended plans. I have therefore determined this appeal on the same basis. For the avoidance of doubt, the Council's description of development in its refusal notice more accurately describes the proposal that is before me, this being the *'conversion and extension to the side of the conservatory with a flat roof which provides an outdoor space for associated first floor bedroom and bi-folding doors out to the lower level garden area'*.

Main Issue

4. The main issue is the effect of the development on the privacy of the occupiers of 5 Lucy Lane.

Reasons

5. I was able to observe on my site visit that the stepped up rear garden area of the appeal site was at a higher level than the neighbouring 5 Lucy Lane and, in this regard, there was potential to overlook the rear garden area and windows of this property. However, the proposed roof terrace associated with the

proposed extension and alterations would be at a high level and users of this elevated outside amenity space would be positioned in close proximity to neighbouring ground floor rear windows and the outside amenity space associated with 5 Lucy Lane. It is likely that the roof terrace would be used frequently by occupiers of the appeal dwelling, particular in the spring and summer when the weather is better, and hence there would be potential for overlooking to take place for prolonged periods of time. I consider that it is reasonable to take the view that this space would likely be used more frequently than the existing elevated garden area.

6. While there is already some overlooking of 5 Lucy Lane from the stepped up garden, the proposal would unacceptably exacerbate this harm. In other words, existing overlooking would not in this case justify making matters significantly worse. I acknowledge the attempts made by the appellant to minimise overlooking in so far that a screen would be set in by about 1 metre from the edges of the development. However, the screen would measure only about 0.8 of a metre in height and so overlooking would still be possible when standing. Neither the position nor the height of the proposed screen would address my concern about harmful overlooking impacts.
7. In this case, I do not consider that it would be appropriate to address the aforementioned privacy concern by means of the imposition of a planning condition. This is because an alternative form of development would likely need further assessment relating to matters such as outlook, light and design. I find that this is a matter that therefore goes to the heart of the acceptability of the proposal. Any such amendments would need to be considered up front and with appropriate public consultation. Privacy concerns cannot, therefore, be reasonably reserved for consideration by planning condition.
8. For the reasons outlined above, I conclude that the proposed roof terrace would cause significant harm to the occupiers of 5 Lucy Lane in respect of overlooking. Therefore, the development would not accord with the amenity requirements of policy D5 of the adopted Plan:MK 2016-2031.

Conclusion

9. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR