



Appeal Decision

Site visit made on 24 October 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal Ref: APP/Y0435/W/21/3283653

Land Adjacent to 113 Melrose Avenue, Bletchley MK3 6PW

- 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 Jake Forth of Sero Group Limited against Milton Keynes Council.
 - The application Ref 21/00181/FUL, dated 20 January 2021, was refused by notice dated 25 March 2021.
 - The development is a proposed detached two storey dwelling with new access and parking.
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Decision

1. The appeal is dismissed and consequently planning permission is refused.

Preliminary Matters

2. The Council's Decision Notice does not list the reasons for refusing planning permission for the proposed development and is therefore acknowledged to be flawed.
3. A mistake of this magnitude is surprising and reflects very poorly on the Council. It has caused some discussion between the main parties and with the Planning Inspectorate as to whether the appeal should be determined against the refusal of planning permission, or against the Council's failure to give notice of its decision within the appropriate period, as a result of the flawed Decision Notice.
4. The Appeal Form shows the appeal was made on the grounds that planning permission was refused by the Council on 25 March 2021 (the date of the flawed Decision Notice), rather than on the grounds the Council failed to give notice of its decision within the appropriate period. Furthermore, from the appellant's Statement of Case it is clear that they have considered the reasons for refusal listed in the Council's officer report. The Council has also listed these reasons in the letters notifying third parties of the appeal.
5. My general approach to determination would be the same regardless of whether this was a refusal appeal or a failure to determine appeal and the evidence before me would be the same. I am satisfied that in this case, there would be no disadvantage to any of the parties in determining the appeal on the basis of a refusal of planning permission, given the appeal notifications that have been sent. Notwithstanding the flawed Decision Notice, I have determined the appeal on this basis.

6. However, in my formal decision I have also confirmed that a consequence of the appeal being dismissed is that planning permission is refused, for the avoidance of any doubt.

Main Issues

7. The main issues are the effect of the proposal on:
- The character and appearance of the area;
 - A Tree Preservation Order (TPO) protected tree; and,
 - The living conditions of future occupiers with particular regard to privacy.

Reasons

Character and appearance

8. The appeal site is located in an established residential area, containing 2-storey detached and semi-detached houses and some single-storey bungalows. Most dwellings have front gardens with driveways and are set back from the highway a similar distance, giving a visual coherence to the area. The streets contain footpaths with grass verges, some of which contain occasional mature or semi-mature trees.
9. There are areas of woodland to the north and east, providing a buffer between the housing and the mainline railway/Watling Street. As with much of Milton Keynes, the footpaths in the area connect to a wider network of landscaped pathways. One such pathway connects the housing to Watling Street and beyond, through the mature woodland buffer.
10. The appeal site is located by two short cul-de-sacs that are part of Melrose Avenue. The site is an irregularly shaped plot that is largely covered with grass, although a large Horse Chestnut tree, which is subject to a TPO, and a much smaller tree, are located in the central eastern part of the site. A further tree is positioned nearby in the grass verge to the south of the site.
11. The layout of the suburban area, including areas of landscaped open space such as the appeal site, gives it a spacious character whilst the presence of mature and semi-mature trees soften the appearance of the dwellings to be found here.
12. The proposed development would entail the erection of a 2-storey detached dwelling with a dual-pitched roof on the central western part of the appeal site, next to the footway to the south. At the eastern end of the site two car parking spaces and a short driveway would be provided, although the crossover of the footway would be outside the site edged red.
13. Whilst not shown on the submitted drawings the appellant states that apart from by the proposed parking area, the remainder of the site, including the side and rear private amenity space of the proposed dwelling, would be enclosed by 1 metre high fencing. The trees on and next to the appeal site are proposed to be retained.
14. The design, scale, massing and materials of the proposed dwelling would not be out of keeping with other nearby dwellings. However, the position of the proposed house, distinct from the established building line formed by the front

elevations of the existing dwellings on Melrose Avenue, would be incongruous and visually obtrusive.

15. Furthermore, the proposed dwelling would have no front amenity space, in contrast to the vast majority of the dwellings on Melrose Avenue. Together with the scale and massing of the proposed dwelling, this would create an unsympathetic and visually cramped development at a prominent position in the street, which would be readily visible for residents and others passing through the area.
16. The appeal site could be considered 'Amenity Open Space', with reference to the wording of paragraph 14.17 of Plan:MK, the local plan for Milton Keynes adopted 2019. In refusing planning permission the Council has treated the appeal site as 'Amenity Open Space' but has not addressed the consequent inconsistency, which is raised by the appellant, that it is not identified as such on the Plan:MK Policies Map.
17. Whilst Policy L3 (change of use of amenity open space) of Plan:MK does not specify that 'Amenity Open Space' is only that shown on the Plan:MK Policies Map, it is not an unreasonable conclusion for the appellant to draw.
18. From the evidence I cannot be certain that the appeal site is 'Amenity Open Space' and so it is not clear that Policy L3 would apply. However, regardless of whether it is 'Amenity Open Space' or not, the provision of a 2-storey dwelling, boundary fencing and car parking spaces on an area of semi-natural open space would be a significant and obtrusive change to the appeal site.
19. The proposed dwelling would also block or impede views of the existing trees on the appeal site from the west, whilst the proximity of the proposed dwelling, parking spaces and fencing would be detrimental in views of the trees from the north and east.
20. These urbanising effects would be readily visible and would detract from the semi-natural open space of the appeal site and from the spacious character and appearance of the area.
21. I note that a bungalow has been constructed in the back garden of 113 Melrose Avenue¹, which is also out of keeping with the prevailing character of the dwellings in this area, including in terms of orientation and position. I am not familiar with this proposal although I note that its scale and massing are considerably less than the appeal proposal and it is located at the end of a cul-de-sac, in a relatively unobtrusive position. In any event, each proposal should be considered on its individual merits, which is what I have done in this case.
22. For these reasons the proposed development would adversely affect the character and appearance of the area. It would, therefore, conflict with Policies D1 (designing a high quality place) and D2 (creating a positive character) of Plan:MK 2019; with Policies D1 (local character) and D2 (design and amenity) of the West Bletchley Neighbourhood Plan 2019 and, with Chapter 12 – Achieving well-designed places, of the National Planning Policy Framework 2021 (the Framework).

¹ LPA Ref. 18/01567/FUL

TPO tree

23. The substantial Horse Chestnut tree on the appeal site is protected by a TPO because of the value it brings to the amenity of the area². The appellant claims that the Council did not inform them there was a TPO protected tree on the site until very late in the application process, leaving them no time to undertake an arboricultural impact assessment (AIA) in relation to the effect of the proposal on this tree. However, I note that the appellant has not submitted an AIA with their appeal documents.
24. The appellant states that careful consideration was given in the proposed site layout and design to the effects of the proposal on the various trees on or near the site. However, I am not satisfied from the very limited evidence before me that the construction of the proposed development, close to the TPO protected Horse Chestnut tree, would not adversely affect the tree's health.
25. Furthermore, were the proposed development to be constructed, the limited size of the appeal site and the proximity of the proposed dwelling to the Horse Chestnut tree, located in the private amenity space of the dwelling and near to the car parking area, would be likely to lead to conflicts with future occupiers in the enjoyment of their home. This in turn would increase pressure for the reduction or removal of this TPO protected tree, which has an acknowledged amenity value to the area.
26. Whilst the Horse Chestnut tree on the site is proposed to be retained, the appellant has not provided any compelling evidence that the proposed development would not result in harm to the TPO protected tree and so this is not a matter that can be satisfactorily controlled by way of a condition.
27. For these reasons I am not satisfied that the proposed development would not adversely affect the TPO protected tree on the appeal site. I can find no conflict with Policies NE1 (protection of sites), NE2 (protected species and priority species and habitats) and NE3 (biodiversity and geological enhancement) of Plan:MK (2019). However, it would conflict with Chapter 12 of the Framework.

Living Conditions

28. The appellant's Planning Statement notes 'The site has permitted development rights withdrawn for classes 1 and 2 and is not subject to any other planning constraints'; the Council's officer report repeats this. Unfortunately, it is not clear from the main parties' evidence what is being referred to here.
29. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO), grants permitted development rights. Schedule 2, Part 2, Class A of the GPDO could allow for the erection of a fence less than 1 metre in height around most of the appeal site, unless this permitted development right had been withdrawn.
30. However, regardless of the withdrawal or otherwise of permitted development rights, I have already noted that the appellant proposed to enclose the majority of the appeal site with a 1 metre high fence as part of this development proposal. Whilst not one of the Council's stated reasons for refusal in their officer report, from my observations of the site, and as noted by

² PPG - Tree Preservation Orders and trees in conservation areas – Tree Preservation Orders – general - Paragraph: 001 Reference ID: 36-001-20140306 Revision date: 06 03 2014

West Bletchley Council in their objection, the proposed boundary treatment would allow for overlooking of both the private amenity space and rear habitable rooms of the proposed dwelling.

31. I also note that the position of the proposed dwelling, immediately next to the footpath at the southern boundary of the appeal site, would allow for direct views into ground floor habitable rooms of the proposed development.
32. Consequently, the proposed development would cause unacceptable harm to the living conditions of future occupiers, with particular regard to privacy. It would, therefore, conflict with Chapter 12 of the Framework.

Other Matters

33. One of the Council's reasons for refusal concerned the effects on highway safety of the proposed vehicle access arrangements, given the location of a lamppost by the proposed entrance. However, in its statement of case the Council has withdrawn this reason for refusal and is satisfied that the conflict with the lamppost's location under the Highways Act could be addressed by a suitably worded condition.
34. I note the comments from Thames Valley Police (TVP) objecting to the proposed development on the grounds of crime prevention. The Council's officer report does not list these objections and the concerns of TVP have not been addressed by the Council, or by the appellant.
35. If I were considering allowing this appeal, I would need to give these matters further consideration. However, as I am dismissing the appeal for other reasons, no further action is required in this case.
36. I also note the comments from the appellant regarding the advice they received from the Council and the administrative errors the Council are said to have made, including with regard to the flawed Decision Notice. Whilst mistakes are regrettable, it is not clear from the evidence that the appellant has been disadvantaged in making their appeal as a result. These matters have not affected my assessment of the proposal, as set out above.

Conclusion

37. For the reasons given above, and taking into account all matters raised, I conclude the appeal is dismissed and consequently planning permission is refused.

Andrew Parkin

INSPECTOR