



Appeal Decision

Site visit made on 28 February 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Appeal Ref: APP/K0235/W/22/3303573

6 Howard Close, Bedford, Cardington MK44 3SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Miss Jayne Greer against Bedford Borough Council.
 - The application Ref 22/00885/S73 is dated 12 April 2022.
 - The application sought planning permission for Erection of 2 bedroomed detached 1 ½ storey chalet style dwelling, including variation of approved plans condition 2 attached to 21/02081/FUL, without complying with a condition attached to planning permission Ref 22/00266/S73, dated 21 March 2022.
 - The condition in dispute is No 8 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order), no extensions or outbuildings shall be erected within the curtilage of the dwellinghouse hereby permitted, no extensions or alterations to the roof of the dwellinghouse shall be erected, and no gates, fences and walls shall be erected within the frontage between No. 6 Howard Close and the dwelling hereby permitted or across the shared driveway without the specific grant of planning permission by the Local Planning Authority. For the avoidance of doubt, this condition relates to Schedule 2, Part 1, Classes A, B, C, D and E, and Schedule 2, Part 2, Class A of the Order.
 - The reason given for the condition is: To safeguard the amenities of the adjoining occupiers and to ensure that an adequate level of amenity space is maintained around the new dwelling, in accordance with Policy 30 (i and ii) of the Bedford Borough Local Plan 2030 and design codes N1 and N3 of the adopted design guidance Residential Extensions, New Dwellings & Small Infill Developments.
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Decision

1. The appeal is allowed, and Planning Permission is granted for the Erection of 2 bedroomed detached 1 ½ storey chalet style dwelling, including variation of approved plans condition 2 attached to 21/02081/FUL, at 6 Howard Close, Bedford, Cardington MK44 3SL, in accordance with the terms of the application Ref 22/00885/S73, dated 12 April 2022, without compliance with condition 8 previously impose on planning permission Ref 22/00266/S73, dated 21 March 2022, and subject to the conditions contained within the attached schedule.

Preliminary Matter

2. I observed that a 1 ½ storey dwelling was under construction at the appeal site when I conducted my site visit. Although from the outside it appeared substantially completed, it was clad in scaffolding and construction works still seemed to be underway.

Background and Main Issues

3. Planning permission, subject to conditions, was granted for a 1 ½ storey, two bedroom dwelling at the appeal site.¹ Planning permission was subsequently granted which allowed the variation of the approved plans (condition 2 of the original permission) to permit a minor material amendment to the development.²
4. The appellant is now seeking to remove condition 8 of that second planning permission. This removes classes of permitted development applying to the appeal property, that would normally be available under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015. (the Order)
5. The appeal form states that this appeal is against a refusal to grant planning permission. However, the Council has clarified that it had failed to give notice within the appropriate time and that a decision notice was not issued in this case. The Council, through this appeal process, state that it was minded to refuse planning permission for this proposal. It has submitted an officer's report which outlines the Council's reasons for refusing planning permission.
6. The Council's reasons for refusing this planning permission goes beyond the reason originally given for attaching condition 8. The appellant has responded to these additional issues in their final comments in this appeal process.
7. Therefore, reviewing the information before me, the main issues in this case are the effect that removing condition 8 would have: on the living conditions of the neighbours, the living conditions of the future occupants of the appeal dwelling, and the character and appearance of the area.

Reasons

8. The National Planning Policy Framework (the Framework) at Paragraph 54 states that planning conditions should not be used to restrict national permitted development unless there is a clear justification. Planning Practice Guidance (PPG) clarifies that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.

Living Conditions

9. The appeal property is a small dwelling in a small plot. It aligns with the short row of terrace dwellings to the north. It is separated from No 6, in that terrace, by parking spaces and an outhouse at No 6.
10. Although the appeal dwelling is set back from the dwelling at No 6a, the front elevation of the new dwelling is orientated towards No 6a. This side elevation of No 6a has windows at its upper floor. The appeal property also faces, at this aspect, the side garden space of No 6a. Therefore, alterations at roof level at the front of the appeal dwelling would likely significantly adversely affect the privacy of occupants of that neighbouring dwelling.
11. The approved plans require obscured glazing in the dormer windows at this front elevation of the appeal property and this protects the privacy of the occupants of that neighbouring dwelling. The appellant indicates that this would

¹ Ref: 21/02081/FUL

² Ref: 22/00266/S73

protect the neighbours' privacy if permitted development rights were reinstated. However, these existing conditions are imposed under planning legislation that is separate to the provisions of the Order.

12. I note the appellant's comment that the Order limits changes to a principal elevation of a dwelling. Be that as it may, the evidence before me does not demonstrate that if I was to reinstate Classes B and C of the Order in this case, that the privacy of the occupants of No 6a, when in their dwelling and the side garden space, would not be harmfully impacted by future alterations to the front roof space of the appeal property. The hedge and fence at the shared boundary between No 6a and the appeal property would not minimise such harmful effects at this roof level.
13. The side roof planes of the appeal dwelling overlook the garden space of Nos 6 and 6a. Alterations to these roof planes would likely result in a greater sense of being overlooked from the side of the appeal dwelling, when occupants of Nos 6 and 6a are in their gardens. However, Class B and C of the Order is subject to conditions, and this includes those openings on the side of a dwelling, permitted under these Classes, would be obscured glazing. This is a similar measure to that in place already at the appeal property. As such, with regards to neighbours' privacy, the effect of permitted side roof alterations would not be significantly different to that which is already approved at the appeal property.
14. This said, although changes to the front roof space of the appeal property would not be harmful in respect to light and outlook, I have found that such alterations would harmfully affect the privacy of occupants of No 6a for the reasons outlined. Their property could be significantly less private if Classes B and C of the Order were excluded from condition 8.
15. The small size of the appeal plot would considerably limit extensions that could increase the footprint of the appeal dwelling. This small plot would also limit the scope for outbuildings to be located in the garden. Development permitted under Classes A and E of the Order is also subject to limitations and conditions. Therefore, taking account of these factors, and the existing degree of separation between the appeal dwelling and neighbouring dwellings, extensions and outbuildings permitted by the Order would not have a harmful effect on neighbours' outlook or privacy. This would also be the case for development permitted by Class D of the Order, which allows the erection of porches, as this type of development would largely be limited to the front and lower level of the appeal property.
16. The appeal property has a small rear garden, but this only falls just short of the space advised in the Council's adopted guidance on this matter. The garden is smaller than neighbouring plots, however, there are other similar size plots in the wider area. I also saw that surrounding gardens contained sheds and outbuildings. It therefore seems unreasonable that occupants of the appeal property should require planning permission for incidental buildings in their rear garden, when this is something that people would reasonably expect to have in an outdoor space. Moreover, the limitations of these permitted development rights would ensure that adequate garden space is retained at the appeal property.

Character and Appearance

17. The appeal property is at the end of a cul-de-sac of similar style properties. Surrounding properties have varied plot sizes, and the area is characterised by a sense of space between small groups of dwellings and by the surrounding countryside.
18. Given the limited scope to extend the footprint of the appeal dwelling or to fill the existing space in this plot as previously outlined, it is unlikely that reinstating rights for extensions, porches and outbuildings would result in the appeal dwelling being altered in a manner which would harm the consistent character of built form in this area. Nor, for this reason, would it lead to an overdevelopment of the plot such that it would harm the existing space in the immediate vicinity of the appeal property.
19. In any event outbuildings and extensions would be largely confined to the rear of the appeal property such that this would not impinge in the remaining space towards the front of the appeal property. Also, the property is set apart from the neighbouring terrace and is substantially screened from the wider street scene by other properties. It is not a prominent dwelling in the Close for this reason. With these factors, changes arising from the development permitted by Class A, D and E of the Order, that could be accommodated in this plot, would be slight, and would not harmfully erode the general sense of space that positively characterises the Close.
20. Condition 8 removes the rights in respect to the erection of fences and gates at the front of the appeal property. The Council indicates that this is justified to protect parking, and I will address that matter in due course. The Council has not raised concerns regarding the impact of this permitted development on either living conditions or the character of the area. Given the discreet location of the appeal property I find nothing before me that would lead me to question this. In light of this, I find no clear justification to retain the existing restriction on fences and gates at the appeal property, having regard to the main issues raised in this case.
21. I have had regard for the appeal decision related to a previous proposal at the appeal property. However, that proposal was for a three bedroom dwelling. Also, that proposal would have failed to reflect the common building line in the area and would have had a dominating parking area. In these regards, it is not directly comparable to the appeal property. This matter has not altered my findings for this reason.

Summary of Findings on the Main Issues

22. I find that reinstating permitted development rights in respect to roof alterations at the appeal property would result in harm to the living conditions of occupants of No 6a in respect of privacy. This provides a clear justification for the removal of these rights. However, I find no clear justification in this case for the removal of permitted development rights for extensions, porches, outbuildings, and fences and gates, at the appeal property for the reasons stated above. In light of this, condition 8 should be removed and a condition which removes permitted development rights in respect of roof alterations should be imposed.

23. Therefore, in respect of Schedule 2, Part 1, Classes A, D and E and Schedule 2, Part 2, Class A of the Order only, the removal of condition 8 would not have a harmful effect on the living conditions of the neighbours, the living conditions of future occupants of the appeal dwelling and, the character and appearance of the area. In these regards, the proposal would not conflict with Policies 30 and 32 of the Bedford Borough Council Local Plan 2030. These collectively require planning applications should have particular regard to, amongst other matters, the relationship of the development with the context in which it is placed, including overdevelopment, and the provision of private space, and that proposals should ensure that they minimise the effects of, amongst other things, disturbance.
24. The proposal in respect to these Classes of the Order would also be consistent with the advice set out in the Council's adopted guidance, Residential Extensions, New Dwellings, and Small Infill Developments which seeks to protect living conditions and the character of the area.

Other Matters

25. The Highway Authority is concerned that relaxing the permitted development rights would increase the occupancy capacity at the appeal property and this could have a harmful impact on on-street parking in the area. However, I note that the level of off-street provision at the appeal property is suitable for a 3 bedroom dwelling. In any event, with the retained restrictions on roof alterations and the confines of the appeal plot outlined previously, it would be unlikely that the capacity of the appeal property would expand, through the implementation of permitted development rights, so that there would be a harmful under provision of parking at this property.
26. The Highway Authority also raises concerns about fences restricting the visibility and fluidity of the parking areas and vehicle turning space at No 6 and the appeal property. However, there is a condition which addresses this matter to ensure safe and suitable parking for both properties. These concerns have not altered my findings in this case for these reasons.
27. Concerns have been raised about the effect of the proposal on Great Crested Newts. However, conditions of the planning permission related to this matter are unaffected by this proposal.
28. I have had regard to the comments raised by neighbours and interested parties in respect to removal of a telegraph pole, a concrete base at No 6 and an ongoing boundary dispute. However, these matters are outside the scope of this appeal.

Conditions

29. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I note that the Council updated conditions when issuing the second planning permission. As I have limited information before me about the status of the conditions imposed on that planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

30. The development has commenced so there is no longer a need for a statutory time limit condition in this case.
31. Condition 7 has been imposed and this modifies condition 8 of the second planning permission, as I have found clear justification in this case for the removal of permitted development rights in respect of roof alterations. This is in the interest of protecting neighbours' living conditions.

Conclusion

32. For the reasons outlined above, in respect of permitted development rights, condition 8 is removed and condition 7, which contains modified wording from condition 8, is imposed. Having regard to the development plan and other material considerations, planning permission is granted, and the appeal is allowed.

A J Sutton

INSPECTOR

Schedule of Conditions:

1. The development hereby approved shall be carried out in accordance with the plans and documents listed on this notice and those plans and documents approved as part of the original planning permission (LPA reference 21/02081/FUL), as listed below, unless required otherwise by a separate planning condition of this permission:

1. Location Plan, Dated 29th July 2021 (Council Plan Ref V01 on permission 21/02081/FUL); 2. Cycle Parking and Storage, Dated 29th July 2021 (Council Plan Ref V03 on permission 21/02081/FUL); 3. Cycle Parking and Storage, Dated 29th July 2021 (Council Plan Ref V04 on permission 21/02081/FUL); 4. Vehicle Tracking, drawing no. 21/017.2A, Dated 29th July 2021 (Council Plan Ref V05 on permission 21/02081/FUL); 5. Supporting Plans, Plan no. 8122/2/6, Dated 29th July 2021 (Council Plan Ref V06 on permission 21/02081/FUL); 6. Site Layout Existing, Dated 29th July 2021 (Council Plan Ref V07 on permission 21/02081/FUL); 7. Planning Statement, Dated 29th July 2021 (Council Plan Ref V08 on permission 21/02081/FUL); 8. Supporting Information, Dated 29th July 2021 (Council Plan Ref V09 on permission 21/02081/FUL); 9. SAP Report Energy, Dated 29th July 2021 (Council Plan Ref V10 on permission 21/02081/FUL); 10. Energy Statement, Ref No. 017229-2021, Dated 29th July 2021 (Council Plan Ref V11 on permission 21/02081/FUL); 11. Survey on Great Crested Newts, Dated 29th July 2021 (Council Plan Ref V12 on permission 21/02081/FUL); 12. Supporting Information, Dated 5th November 2021 (Council Plan Ref V13 on permission 21/02081/FUL).
2. The first floor windows in the front (West) elevation shall contain no means of opening (unless any opening part of the window is at least 1.7 metres above the floor level of the room it serves) and the glass shall be an obscure glazed type at least level 3 glass as defined in the 'Pilkington Textured Glass Range'. The windows as inserted in accordance with those requirements shall be retained.
3. The side window in the north elevation serving the dressing room facing No.6, shall contain no means of opening (unless any opening part of the window is at least 1.7 metres above the floor level of the room it serves) and the glass shall be an obscure glazed type at least level 3 glass as defined in the 'Pilkington Textured Glass Range'. The window as inserted in accordance with those requirements shall be retained.
4. The dwelling hereby approved shall not be occupied until an energy statement for the building has been submitted to and shall be approved in writing by the Local Planning Authority. The energy statement shall include:
 - An assessment of the actual effect on carbon dioxide emissions demonstrating the measures previously agreed as part of the energy audit which achieved a reduction of at least 19% in carbon emissions below the normal requirement set by the Building Regulations.
 - A statement of how the layout, orientation, design and materials used in the development have actually been influenced by the energy audit.

5. The dwelling hereby approved shall achieve and maintain the higher water efficiency standard in the Building Regulations as set out in Approved Document G: Sanitation, hot water safety and water efficiency, 2015 edition, DCLG October 2015 (or similar replacement standard) unless evidence is submitted which demonstrates that providing the water efficiency standard is not feasible or economically viable.
6. The residential units hereby approved shall be served with an appropriate open access fibre optic infrastructure to enable high speed and reliable broadband connection unless evidence is submitted and approved in writing by the Local Planning Authority which demonstrates that providing the required infrastructure is not feasible or economically viable.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order), no roof alterations shall be erected on the dwelling approved by this planning permission. For the avoidance of doubt, this condition relates to Schedule 2, Part 1, Classes B and C of the Order.
8. No development hereby permitted shall take place except in accordance with the terms and conditions of the Council's great crested newt organisational licence (WML-OR112) and with the proposals detailed on plan '6 Howard Close: Impact Plan for great crested newt district licensing (version 1)' dated 10th September 2021.
9. No development hereby permitted shall take place except in accordance with Part 1 of the GCN Mitigation Principles, as set out in the District Licence WML-OR112 And in addition in compliance with the following: - Works which will affect likely newt hibernacula may only be undertaken during the active period for amphibians.
10. Prior to the occupation of the dwelling, all on site vehicular areas (for both No. 6 Howard Close and the dwelling hereby approved), as shown on Approved Council Plan Ref. Nos. V02A and V05), shall be provided and surfaced to the satisfaction of the Local Planning Authority, so as to ensure satisfactory parking of vehicles is available for occupiers outside the highway limits at all times. The parking area shall be retained and maintained for parking purposes only for the lifetime of the dwelling(s).
11. The development shall be implemented fully in accordance with the details of the scheme of landscape works which were submitted to and approved by the Local Planning Authority under application reference 22/00323/AOC issued on 09.03.22 to satisfy the requirements of Condition 9 of planning approval 21/02081/FUL.
12. The development shall be implemented fully in accordance with the Electric Car Charging Point details shown on the site layout plan which was submitted to and approved by the Local Planning Authority under application reference 22/00322/AOC issued on 09.03.22 to satisfy the requirements of Condition 12 of planning approval 21/02081/FUL.
13. The development shall be implemented fully in accordance with the Construction Management Plan, which was submitted to and approved by the Local Planning Authority under application reference 22/00265/AOC

issued on 09.03.22 to satisfy the requirements of Condition 14 of planning approval 21/02081/FUL.

End of Schedule.