

Appeal Decision

Site visit made on 24 October 2023

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2023

Appeal Ref: APP/W2465/D/23/3325506

1 Hutton Place, Leicester LE4 5FB

- 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 Bisuns against the decision of Leicester City Council.
 - The application Ref 20230375, dated 7 March 2023, was refused by notice dated 20 June 2023.
 - The development proposed is a conservatory.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed conservatory on:
 - the living conditions of the occupiers of No 15 Wolsey Island Way, with regard to natural light and outlook;
 - the amount of rear garden amenity space of the host dwelling; and
 - flood risk.

Reasons

Living Conditions

3. The appeal property is a two storey end-of-terrace dwelling in a recent residential development of terraced and semi-detached properties. No 1 is perpendicular to Wolsey Island Way, due to its frontage being on Hutton Place next to the junction of the two roads. It adjoins No 15 Wolsey Island Way, with the two properties having conventionally laid out gardens with a shared boundary.
 4. The property the other side of No 15 has a single storey extension that is visible above the boundary fence. The wall of the proposed conservatory would protrude above the shared boundary fence to a limited degree, with the glass roof angled away from it. Nonetheless, the overall depth and extent of the conservatory in the modest-sized garden, combined with the effects of the existing extension to the other side, would result in a sense of enclosure by built development in a substantive part of No 15's garden. These effects would also be readily apparent from the rear patio doors of the property. While these serve a kitchen and dining room, this is likely to be used as a habitable living
-

space, particularly in the summer with the doors open. For these reasons, the proposal would be an overbearing and dominant presence, which would have a materially harmful effect on the reasonable use and enjoyment of the neighbouring garden and rear of the dwelling.

5. With regard to the effect on natural light to No 15's rear, the closest window serves the kitchen area, with the kitchen/diner also being served by the patio doors. This dual aspect to the room, combined with the limited height of the conservatory above the boundary fence and the glass roof, means that the extent of any overshadowing or obscuring of light would not be significant. Consequently, there would be no harm with regard to this matter.
6. Accordingly, taking these findings as a whole, I conclude that the proposed conservatory would have an unacceptably harmful effect on the living conditions of the occupiers of No 15 Wolsey Island Way, with regard to outlook; although there would be no such harm with regard to the effect on natural light. Therefore, the proposal is contrary to Policy CS03 of the Leicester City Core Strategy (2014) requiring high quality design in development; and to Policy PS10 of the Leicester Local Plan (2006), which requires the effects on residential amenity to be taken into account in determining development proposals. It is also contrary to the National Planning Policy Framework's (the Framework) requirement that development should create places with a high standard of amenity for existing and future users¹.

Amenity Space

7. The Council's *Residential Amenity* Supplementary Planning Document (SPD) includes minimum standards for private amenity space for different dwelling types. For the appeal property, a terraced dwelling with two or three bedrooms, the expected standard is 75m² of amenity space.
8. While the existing rear garden is around 55m², the appellant contends that the garden to the front of the property and parking areas should be taken into account. The SPD defines residential amenity for the purposes of external space as the benefit enjoyed from physical external space which is part of the private home. However, it qualifies this by stating that the level of enjoyment is also dependent on a number of factors, including location, size, orientation, sounds, noise, accessibility and enclosure.
9. In this regard, the rear garden is particularly important as private space for use for children's play and sitting out because it is enclosed. The front garden and parking areas are not enclosed and, moreover, due to their layout and configuration are of limited practical use. The proposed conservatory would reduce the rear garden to around 33m², which is well below the expected standard included in the SPD. It was clear from the inspection that this would result in a materially reduced amount of space in the rear garden, which would be of limited practical use to the current and future occupiers of the property.
10. I acknowledge the appellant's contention that an extension and outbuildings could be built in the rear garden as permitted development, which would also reduce the amount of rear garden space. However, it is not clear that the appellant intends to implement such a scheme and in any case this is not

¹ Paragraph 130.

sufficient basis to set aside the findings of harm that arise in the specific circumstances of the proposal in this case.

11. Therefore, for these reasons, I conclude that the proposal would have a materially harmful effect on the amount of rear garden amenity space of the host dwelling. Consequently, it conflicts with Policy CS03 of the Leicester City Core Strategy, Policy PS10 of the Leicester Local Plan and the Framework, all as described with regard to the first main issue above.

Flood Risk

12. The appeal site falls within Flood Zone 2, which has a medium probability of flooding. Policy CS02 of the Core Strategy concerns flood risk, amongst other matters, and says that where development is proposed in flood risk areas, mitigation measures must be put in place to reduce the effects of flood water; and all development should aim to limit surface water run-off by attenuation within the site as a means to reduce overall flood risk. The Framework requires that a site-specific flood risk assessment (FRA) should be provided for all development in Flood Zones 2 and 3². An FRA was not provided in this case.
13. The appellant contends that the requirement to address this matter could be addressed by a condition. However, this would not provide sufficient certainty that any mitigation that might be required could be addressed subsequent to a grant of permission. Both local and national policy require flood risk to be addressed in the circumstances of this case, including through submission of a site-specific FRA and such an assessment has not been provided with the appeal submissions. The fact that the Council did not request such an assessment is not sufficient reason to overcome this omission.
14. Therefore, it is not possible in the absence of an FRA and based on the information currently available, to assess properly the effect of the proposal with regard to flood risk. Consequently, I must conclude that this weighs against the proposal and that it is in conflict with Core Strategy Policy CS02 and the Framework, as described.

Other Matters

15. I acknowledge that revisions were made to the proposal before the Council's decision and the appellant's concern that a site visit was not undertaken by the Council. However, these procedural matters do not have a direct bearing on the determination of the appeal. I acknowledge also that there were no objections to the proposal. However, given the permanent nature of the change proposed, the effects need to be considered in the long term, with regard to both current and future occupiers of the neighbouring property.

Conclusion

16. For the reasons given it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

² Paragraphs 167, 168 and Footnote 55.