



Appeal Decision

Site visit made on 6 December 2024

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2024

Appeal Ref: APP/Y0435/D/24/3353098

93B Weston Road, Olney, Milton Keynes, MK46 5AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Carole Morrell against the decision of Milton Keynes City Council.
 - The application Ref 24/01045/HOU was approved on 20 August 2024 and planning permission was granted subject to conditions.
 - The development permitted is the erection of first floor extension, single storey rear extension and front canopy including associated alterations. The part demolition of existing garage to convert into new patio. Demolition of existing boundary wall and steps at rear garden and erection of new retaining boundary wall to connect the main dwelling and new steps access to the rear garden. Expansion of existing steps to the east and erection of new retaining boundary wall to eastern boundary. Installation of flue on west elevation and solar panels on rear elevation.
 - The condition in dispute is No3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no development covered by Class A of Part 1 of Schedule 2 to that Order shall be carried out without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.
 - The reason given for the condition is: To ensure the sufficient garden space and safeguard the amenity of the prospective occupiers.
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Decision

1. The appeal is allowed and the planning permission Ref 24/01045/HOU for the erection of first floor extension, single storey rear extension and front canopy including associated alterations. The part demolition of existing garage to convert into new patio. Demolition of existing boundary wall and steps at rear garden and erection of new retaining boundary wall to connect the main dwelling and new steps access to the rear garden. Expansion of existing steps to the east and erection of new retaining boundary wall to eastern boundary. Installation of flue on west elevation and solar panels on rear elevation at 93B Weston Road, Olney, Milton Keynes, MK46 5AA granted on 20 August 2024 by Milton Keynes City Council, is varied by deleting Condition No3.

Main Issue

2. There is one main issue which is whether Condition No3 is necessary and reasonable, having regard to the living conditions of occupiers of the appeal dwelling with respect to outside amenity space.

Reasons

3. The appeal dwelling is a three bedroom, split level bungalow on a wide but shallow plot set on sloping ground on the side of the valley of the River Ouse. Planning permission has been granted for mainly vertical extensions to add three first floor bedrooms and a bathroom. The existing layout would be re-arranged and a small rear infill extension would be added to provide an enlarged kitchen/dining area and lounge. The rear part of an existing garage conversion would be demolished and replaced by a patio.
4. Overall, the reduction in the amount of garden space would be negligible. The remaining rear garden, which is regular in shape and has open views to the south over the valley, would measure some 5.9m in depth and 14.9m in width, giving a total area of almost 90 square metres. The Council's New Residential Development Design Guide, Supplementary Planning Document, 2012, states in respect of family housing that gardens should be 10m in depth but can be shorter on wide plots. A standard of 7-8m is given but the SPD does not define what is meant by a wide plot. In my view, the rear garden at the appeal site is sufficient to serve the enlarged dwelling. Moreover, the Council confirms that it too considers the garden to be sufficient to serve the extended dwelling.
5. Nevertheless, the Council is concerned that further rear extensions that could be built under permitted development rights conferred by Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), would erode this space, leaving insufficient garden. Condition No3 therefore removes permitted development rights under Class A (enlargement, improvement or other alteration of a dwelling house).
6. The National Planning Policy Framework (NPPF) advises that planning conditions should be kept to a minimum and only imposed where they meet the six tests which require that they are: necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) goes on to state that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity.
7. The third test for planning conditions is that they should be relevant to the development being permitted. In this case, the shallow garden is pre-existing and it will not be materially reduced in size as a result of the proposed development. It was considered sufficient to serve the original dwelling without the need to withdraw permitted development rights for future extensions and the Council considers it sufficient to serve the enlarged dwelling. This would still be a three bedroom dwelling, albeit with a more spacious layout. The Council has not therefore demonstrated that the withdrawal of permitted development rights by Condition No3 is directly relevant to the development that has been permitted and this test is failed.
8. Furthermore, the condition withdraws all permitted development rights under Class A and not only those relating to rear extensions. The condition is therefore wider in scope than is necessary to prevent a future reduction in rear garden space. Thus, it would fail the test of reasonableness, even if such a restriction was necessary.

9. Finally, the appellant sets out that existing permitted development rights could be used to enlarge the dwelling by adding an additional storey in a similar way to that granted planning permission. The Council appears to concur with this view. Under these circumstances permitted development rights for rear extensions would be preserved and could still be exercised.
10. Overall, I find that Condition No3 fails to comply with the six tests for planning conditions and, in view of the overall size of the rear garden that would be retained, its regular shape, south-facing aspect and wide ranging views, I find the condition unnecessary to safeguard the amenity of occupiers with respect to garden space. In future, it would be for occupiers to weigh up the relative benefits of additional extensions permitted under the GPDO in terms of indoor and outdoor living space.
11. It is concluded on the main issue that Condition No3 is not necessary to make the development permitted acceptable in planning terms and is therefore not reasonable, having regard to the living conditions of occupiers of the appeal dwelling with respect to outside amenity space.
12. I shall therefore allow the appeal and vary the original permission by removing Condition No3.

KE Down
INSPECTOR