



Appeal Decision

Site visit made on 9 January 2025

by Eleni Marshall BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2025

Appeal Ref: APP/Y0435/D/24/3349185

86 Southern Way, Wolverton, Milton Keynes MK12 5EF

- 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 K Murati against the decision of Milton Keynes City Council.
 - The application reference is 24/01075/HOU.
 - The development proposed is retention of a detached outbuilding (retrospective).
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Decision

1. The appeal is allowed, and planning permission is granted for retention of a detached outbuilding (retrospective) at 86 Southern Way, Wolverton, Milton Keynes MK12 5EF Ref: 24/01075/HOU and the plans submitted with it subject to the following conditions:
 - 1) The development hereby permitted shall be maintained in accordance with the following approved plans: location plan 1768-20, block plan 1768-21, existing 1768-26 and existing (floor plan and elevations) 1768-28;
 - 2) The materials utilised within the development hereby permitted shall match those stated within the application form. The materials will be maintained for the lifetime of the development and any changes shall be submitted to, and approved in writing by, the Local Planning Authority.

Procedural Matters

2. The National Planning Policy Framework (the Framework) was revised on 12 December 2024 since both the determination of this proposal and the submission of this appeal; however, the key changes are not considered to impact upon the determination of this appeal in relation to the main issues noted below.

Main Issue

3. The main issue is the impact of the proposal upon the private amenity space of the host dwelling.

Reasons

4. The appeal site is a two and a half storey, semi-detached, dwelling with the subject of this appeal being a detached outbuilding which has been constructed in the rear garden. The appellant's original planning statement, submitted as part of the application, discusses the retention of a front forecourt which has been resurfaced with concrete, however, the description of the proposal that is before me is, as per the original application form, described as construction of a detached outbuilding (retrospective). This description has not been changed by the Council within their

decision notice, nor does the Council's delegated report consider the forecourt in question. The proposal that is before me is, therefore, a detached outbuilding and the retention of, or consideration of, any forecourt concrete is not within the scope of this appeal.

5. In a similar manner, the Council have outlined that it appears unclear as to exactly that for which the outbuilding would be used. It is stated that the apparent presence of kitchen units means that there is a high likelihood that the proposal is not what has been applied for (a day room). The Council have, therefore, raised concern as to the principle of the development as well as considering the remaining private outdoor amenity space as having potential to be unsuitable with separate domestic curtilage being created. Whilst I note the Council's comment on such matters, proposals should be considered on the basis for which they are submitted and not considered on a what if basis.
6. The starting point is to consider the proposal as applied for which is, in this case, retention of a detached outbuilding and not a separate planning unit. The plans that are before me (1768-28) show the floor plan being labelled as a day room with commentary, on the plan in question, outlining that the building is to be used as a day room for the personal enjoyment of the occupants of the house. It is on this basis that I have considered the proposal that is before me. If the proposal is not utilised as proposed, or there is a material change of use in the future to create a separate planning unit, then a separate grant of planning permission would be required, and the use of the building would be at risk of enforcement action if such permission is not granted.
7. The proposal would be located in the region of 7.5 metres from the host dwelling and, whilst created by what is described as two terraces, the remaining garden space is in the region of 50 sq./m and whilst this may, as noted by the Council, be divided by fencing, such fencing is, effectively, beyond the control of the Council. Whilst the fencing is acknowledged, as outlined, the remaining garden space available to the host dwelling as a result of the proposal would be in the region of 50 sq./m and the proposal should be assessed on the basis of a day room as submitted. Plan: MK 2016 – 2031 Policy D5 seeks to ensure that proposals create and protect a good standard of amenity for building and surrounding areas and should ensure that external private or shared communal garden space, in its extent and design, meets the reasonable needs of its user(s).
8. No further guidance is given, for example, within the policy stated, or the Council's reasoning as to the refusal, as to what the Council would consider as meeting the reasonable (i.e. fair and sensible) needs of occupiers of the host dwelling. Based upon the evidence before me, and notwithstanding the site characteristics as outlined above and acknowledged (including that of the loft conversion), the host dwelling would have access to in the region of 50 sq./m of private outdoor amenity space. Whilst I note the Council's comments regarding usable space to the sides of the proposal, I find the remaining amenity space likely to be appropriate for the reasonable needs of occupiers. I find, therefore, that the proposal would not be contrary to plan: MK Policy D5.
9. Additionally, as outlined within the appellant's original planning statement the property is understood to benefit from permitted development rights as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, in particular, Schedule 2 Part 1 Class E (Buildings etc incidental

to the enjoyment of a dwellinghouse). The Council's delegated report does not respond to, nor dispute, the presence of such permitted development rights. Whilst I note, as outlined within the submissions before me, the proposal as built is not consistent with the restrictions set out within the GDPO I find that there is still potential, as a fallback position, that if the proposal before me were to fail at appeal that the appellant could construct something of similar impact (in terms of footprint) to the proposal, or adjust the existing building, which I find would result in a similar amount of remaining private outdoor amenity space. I therefore attribute moderate weight to the presence of this potential within the determination of this appeal.

10. Overall, I find that the rear private amenity space, extending to in the region of 50 sq./m, is sufficient to meet the reasonable needs of its user(s) and that the site should be considered on the basis which it has been submitted as has been clearly defined within plans which, if approved, would be conditioned as part of any planning permission granted. Any material change to the use of the building in question, to create a separate dwelling, would require the separate grant of planning permission which would be assessed on its own merits as the point of any application being submitted of this nature. The proposal is, therefore, consistent with Plan: MK Policy D5, as outlined above and should be allowed.

Conditions

11. The Council's questionnaire suggests, in the event the appeal is allowed, three conditions that I have considered and applied as appropriate. Given that the proposal is made on a retrospective basis, there is no requirement for a time condition to be applied requiring commencement within three years – commencement has already occurred. A condition requiring the development to be in accordance with the approved plans as required to control and define the development which is granted consent.
12. A condition has been suggested which requires the external materials of the proposal to match that of the existing building, however, as set out in the appellant's original planning statement (and noted in the Council's delegated report) the bricks utilised do not match the host dwelling. The Council outline that this is, however, acceptable based upon the area being characterised by a variety of shades of brick and render. On this basis I have conditioned the materials to match that of the application form for the avoidance of doubt.

Conclusion

13. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Marshall

INSPECTOR