



Appeal Decision

Site visit made on 1 April 2025

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2025

Appeal Ref: APP/Y0435/W/24/3357318

Land rear of 189 Newport Road, New Bradwell, Milton Keynes MK13 0AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Neil McDonald against the decision of Milton Keynes Council.
 - The application Ref is 24/00578/FUL.
 - The development proposed is the erection of two no. two-bedroom semi-detached dwellings with associated parking and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application site address set out above is taken from the Council's decision notice as this better describes the appeal site. Normally the description of development is taken from the application form, as submitted by the appellant to the Council. However, I am aware that the application form provided the wrong description of development. Nevertheless, both main parties agreed a revised description of development and I have considered the scheme as described in the banner heading above.
3. As part of the appeal, the appellant has submitted a Tree Survey Report, dated May 2024 by RGS Arboricultural Consultants (the 2024 Tree Survey Report). The appellant contends that this report was submitted prior to the planning application being validated. However, the Council's evidence indicates that both versions of the Tree Survey Report submitted to the Council were dated May 2022. Although the information received on appeal represents a change to what was considered by the Council at the application stage, and although the Council contend they did not receive the May 2024 version with the appeal documents, it was clearly submitted as part of the appeal package and available for the Council to comment on.
4. On this basis, having regard to the judgment in *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin), I consider that the additional information does not result in a substantial or fundamental change to result in a different application and no party would be unfairly prejudice. I, therefore, have had regard to the May 2024 Tree Survey Report in determining this appeal.

Main Issues

5. The main issues are:

- the effect of the proposed development on trees;
- the effect of the proposed development on the living conditions of the occupiers of the flats in 189 Newport Road, with particular regard to outlook and loss of light to properties and the external garden area;
- whether the proposed development would provide acceptable living conditions for the future occupants of the properties, with particular regard to external space and light to habitable rooms; and
- the effect of the proposed development on highway safety, with particular regard to parking.

Reasons

Trees

6. The 2024 Tree Survey Report has surveyed eight trees, including the six Lime trees along Wood Street which are protected through a Tree Preservation Order (TPO) and two trees within the car park area. It has classified five of them as Category B trees – of moderate quality, and three of them as Category C – low quality. The 2024 Tree Survey Report also details the root protection area and crown spreads of all eight trees and recommends the position of protective fencing and a construction exclusion zone.
7. Considering the Tree Constraints Plan, rather than the size of the trees indicated on the proposed layout, the two dwellings would sit very close to the root protection area and crown spread of both T1 and T2, and the tree protection fencing would not include the whole extent of either the root area or the crown spread.
8. Furthermore, the proposal includes separate pedestrian access points and refuse collection areas for each dwelling, both of which are within the root protection area, and one of which would be constructed around the stem of T2. It is, therefore, not clear that the proposed layout of the site has been influenced or informed by the position of these two Category B trees, as is recommended in the 2024 Tree Survey Report.
9. Moreover, work would need to be carried out within the construction exclusion zone. Although work could be carried out to construct the paths through a no-dig process I have no compelling evidence that this would ensure the long term retention of T2 where the path would be around and abutting the stem.
10. The 2024 Tree Survey Report also recommends the removal of basal shoots and crown lift to both T1 and T2 and this could be carried out under the planning process rather than needing separate TPO consent, if the appeal were to be granted.
11. Nevertheless, the 2024 Tree Survey Report does not include any assessment of the implications of this work and how the trees would be affected by the increase of the crown from its current 1-1.2m clearance to 3m. Furthermore, I saw at my

visit that the main stem of T1 includes a split with both parts of the tree appearing to grow above the split. I have no detail to indicate the effect of crown lift on this split or whether the crown can be lifted whilst retaining both parts of the stem. Moreover, I have no compelling evidence that there is scope for further crown lifting, as the appellant asserts, or the effect of such work on the trees.

12. The appellant has drawn my attention to a previous approval on the same site. From the plans provided by the appellant that consent was for a single storey dwelling, which would have been in a similar position to the main part of the dwellings proposed within this appeal. However, the appeal scheme before me includes ground floor projections at the front to provide entrances and WCs. This would bring the proposed building closer to the trees than the previously approved scheme. The current scheme is also for two-storey dwellings which would be closer to the canopy of the trees, even if the crown lift work were to be carried out.
13. Although the 2024 Tree Survey Report provides additional information, and the layout plan has been amended, and even taking account of the verbal advice provided by the appellant's Arboriculturist, as detailed in their Statement of Case, without detailed information on the implications of the proposed works I cannot be certain that the development of the site would not adversely affect the lifespan or condition of the trees and would not result in the future loss of the trees.
14. The loss of any of the TPO Lime trees, which currently contribute positively to the street scene and provide a green buffer along this edge, would be harmful to the character and appearance of the area. Removal of any of the trees and replacement planting would not achieve the same extent of green character along Wood Street.
15. Even if the trees were able to be retained, I have insufficient detail to fully understand the implications of the proposed layout of the development on the trees and of the works proposed to the trees. For these reasons, I find that there is a high risk that the proposed development would adversely affect trees, which would be contrary to the requirements of Policies D1 and D2 of the Milton Keynes Council Plan:MK 2016-2031 (the Plan:MK). Collectively these policies seek to ensure that development responds appropriately to the site and surrounding context, continues the verdant and green character of Milton Keynes, enhances the quality of the public realm, uses existing site features, and exhibits a positive character.

Living conditions of neighbouring properties

16. The appeal proposal is for two, two-bedroom, semi-detached dwellings with habitable room windows in the front and rear elevations. The proposed development would be behind the original rear elevation of the public house. However, the flats in this section of the building have a frontage onto Wood Street and I, therefore, concur with the appellant's assessment that the flats have their side elevation facing towards the appeal site rather than the rear elevation. The shared garden area for the flats sits between the former public house and the appeal site.
17. The Milton Keynes Council New Residential Development Design Guide Supplementary Planning Document, April 2012, (the Design SPD) recommends a minimum of 22 metres between rear elevations and 13.7 metres between rear and flank elevations. This is recommended to avoid overlooking and, therefore, the

distance between windows, or between a window and a garden, is more relevant than the distance between walls.

18. The nearest flats in the former public house would be less than 13.7 metres from the flank elevation of the proposed development. The ground floor flat has two windows in this elevation which, from the evidence before me, serve as the only windows to the kitchen of this flat. The first floor flat has a single window. However, I saw at my visit that this is obscure glazed. The appeal proposal would not include any windows in the flank elevation. Even if I were to consider the elevation of the flats as the rear there would not be any direct overlooking between the existing and proposed properties due to the lack of windows in the proposed scheme.
19. Albeit that the separation distance is less than the 13.7 metres recommended in the Design SPD it would be sufficient distance from the windows in the flats to not cause unacceptable loss of light for the occupiers of either of the existing flats. Moreover, the separation distance would ensure that the outlook from these windows would be acceptable, and the building would not result in an overbearing effect from within the neighbouring properties.
20. The garden area for the flatted scheme, in the former public house, would remain of a sufficient size in accordance with the requirements of the Design SPD. However, it would be dominated by two storey buildings either side with the flats being directly on the edge of the garden area and the proposed development close, albeit set in. The appeal scheme would be overbearing to the users of the garden area due to this close relationship. The visual effect of the development on this garden area is not similar to other two storey built form in the area as the garden affected is between the sides of two buildings, rather than at the rear of a row of buildings, as is the surrounding built context.
21. The proposed development would also reduce available sunlight to the communal garden for the flats and I have no compelling evidence, such as shadow assessments, to show that the garden would continue to receive adequate levels of sunlight, as the appellant asserts. Even though I find that the development would not adversely affect the internal living conditions of the nearest flats it would harm their external living conditions.
22. For the above reasons, I find that the development would result in unacceptable living conditions for the occupiers of the flats in 189 Newport Road, with particular regard to outlook and loss of light to the external garden area. The scheme is, therefore, contrary to the requirements of Policy D5 of the Plan:MK which, amongst other matters, seeks to ensure that all development creates and protects a good standard of amenity for buildings and surrounding areas, that the levels of sunlight and daylight within garden areas in particular are satisfactory, that external private or shared communal garden space meets the needs of its users, that new buildings are not overbearing upon existing open spaces, and that the outlook and visual amenity afforded from within communal garden areas is satisfactory.

Living conditions of future occupiers

23. The existing Lime trees along the frontage of the site would be close to the front of the proposed dwellings. The front elevations include habitable room windows to the proposed ground floor lounge and first floor bedroom. The position of the trees would result in overshadowing of these windows and block daylight and sunlight

from entering the front of the proposed dwellings. This would result in harmful living conditions for the future occupiers of the development.

24. Crown lifting is recommended in the 2024 Tree Survey Report. However, this would only be to a height of 3m and would retain a significant proportion of the canopy of the trees, which would continue to be close to the proposed dwellings and their front elevation habitable room windows. Even if the crown lift provided some light to these windows, I do not have compelling evidence, such as shadow assessments, to indicate that this would provide adequate natural light to the development.
25. In regard to external space, the Design SPD seeks to ensure that provision is made for private gardens where family housing is proposed. It also advises that gardens should be a minimum of 10 metres in depth. The appeal proposal would fall substantially short of this recommended minimum. Nevertheless, the appeal proposal would provide private rear gardens for each of the dwellings and a side garden to the unit nearest the car park. The gardens would be usable, not awkwardly shaped, or very narrow as is resisted in the Design SPD.
26. The rear elevations of the properties on Queen Anne Street are over 22 metres away from the proposed dwellings. The development would sit on a similar line to the former public house building and proposes fencing along the boundary. Consequently, although I acknowledge that there are windows in the elevation of the flats facing towards the appeal proposal, and the separation distance would be less than 10 metres, the proposed boundary fencing would restrict the potential for overlooking from the ground floor flat. Furthermore, the obscure glazing in the first floor flat would limit overlooking of the proposed dwellings or gardens from that property.
27. Therefore, although the proposed gardens would not meet the recommended 10 metre length in the Design SPD, the privacy of the garden is not compromised through overlooking or overshadowing from adjoining properties. Therefore, although there is technical conflict with the minimum garden depth set out in the Design SPD, the proposed gardens would be of an appropriate size.
28. Furthermore, although the previous approval was for a single storey dwelling with a wrap-around garden, it also would not have achieved the 10 metre depth recommended in the Design SPD and was considered to be acceptable.
29. For the above reasons, even though I find that the proposal would provide adequate garden area for the development and the position of the existing flats would not result in unacceptable loss of privacy, I find that the position of the existing trees, even with the proposed crown lift, would result in unacceptable living conditions for the future occupants of the properties, with particular regard to light to habitable rooms. The proposal would, therefore, fail to comply with Policies D5 and HN4 of the Plan:MK which, taken together, require development to create and protect a good standard of amenity for buildings and surrounding areas through, amongst other matters, ensuring the levels of sunlight and daylight within buildings are satisfactory, and demonstrate good internal and external design.

Highway safety and parking

30. The appeal site is an area of land on Wood Street between the former County Arms Public House, which has been converted to flats, and the car parking

associated with the flats. Tight knit terrace housing runs along the opposite side of Wood Street. Beyond the terrace houses is a two-storey block of flats with parking to the front. The pavement is narrow along both sides of Wood Street and there is existing on-street parking on the same side as the terraced houses.

31. The proposal is for a pair of two-bedroom semi-detached dwellings. The Council and the appellant disagree on which Accessibility Zone the appeal site lies within. However, having checked the Council's interactive mapping system the site lies within Zone 4 as identified in the Milton Keynes Parking Standards Supplementary Planning Document, January 2023 (the Parking SPD). Consequently, Table 2 of the Parking SPD requires two parking spaces, plus 0.25 unallocated spaces, per dwelling. The proposal would provide two spaces per dwelling and, therefore, falls short of the requirement set out at Table 2 by not providing the 0.25 unallocated space.
32. The Parking SPD also seeks to resist tandem parking, as is proposed in the appeal scheme. However, it advises where such parking is to be provided that an additional, convenient, on-street parking space must be provided at a rate of one space per every two dwellings. "Convenient" is defined in footnote 11 as being within 15 metre of the property. The SPD does not require additional parking to be provided on-site but seeks for it to be provided on the street.
33. I note the concerns of interested parties regarding parking capacity on Wood Street. However, the evidence submitted by the appellant, and my own observations at site, indicates that there are spaces available on Wood Street and on Newport Road, near the junction with Wood Street. Although the on-street parking would not be defined or allocated to the appeal development, and although it may be beyond the 15 metre distance recommended in the Parking SPD, there is on-street parking available in the area which would be capable of accommodating the 0.25 unallocated spaces for each dwelling, plus the 1 space required as a result of the tandem parking proposed.
34. Although the appellant's Parking Survey indicates instances of inappropriate parking activity, there is no evidence of this being the case for Wood Street. On the basis of the evidence before me the development would provide two parking spaces for the future occupiers of the proposed dwellings and visitor parking would be able to be accommodated within the surrounding area. The development would, therefore, be unlikely to cause unacceptable highway safety implications.
35. I also acknowledge that the existing car park has not been laid out in accordance with the scheme as approved for the conversion of the public house to flats. Nevertheless, I observed 15 marked parking spaces at my visit and the appeal proposal would remove two of these. Even if space 8 is unusable, as asserted by the Council, 12 spaces would be retained for the flats. This would meet the number of spaces required for that scheme. Moreover, the existing car park also provides visitor parking.
36. For the above reasons, I find that the proposed development would not adversely affect highway safety, with particular regard to parking. It would, therefore, comply with Policies CT2 and CT10 of the Plan:MK which, taken together, seek to ensure that development does not have an inappropriate impact on the operation, safety or accessibility of the local or strategic highway network, provides safe, suitable and convenient access for all potential users, would not compromise highway

safety, and provides parking to meet the adopted car parking standards within the Parking SPD.

Other Matters

37. The development of the site would make use of an under-utilised parcel of land which, at the time of my visit, was overgrown. Although redevelopment of the site would improve the character and appearance of the area, and weigh in favour of the development, it would not outweigh the harm I have identified in the main issues above.
38. Both parties have referred to the layout of the existing car park, serving the flats in the former public house, not being in accordance with the approved layout plan for that development. The enforcement of that development is not a matter before me and is not determinative in this appeal decision.

Conclusion

39. For the reasons set out above the appeal is dismissed.

K Townsend

INSPECTOR