
Appeal Decisions

Site visit made on 4 November 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal A: APP/N0410/C/18/3213065

Appeal B: APP/N0410/C/18/3213987

Land at 11 Frensham Walk, Farnham Common, Buckinghamshire SL2 3QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr M Seedel (Appeal A) and Mrs Seedel (Appeal B) against an enforcement notice issued by South Bucks District Council.
- The enforcement notice was issued on 22 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding on the Land in the approximate position outlined in blue on the Plan ("the Unauthorised Outbuilding").
- The requirements of the notice are to demolish or dismantle the Unauthorised Outbuilding and remove all resulting materials from the Land.
- The period for compliance with the requirements is 2 months.
- Both of the above appeals have been made on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). It is only necessary to pay one fee in order for an appeal on ground (a) and the application for planning permission to have been deemed to have been made under section 177(5) of the 1990 Act. As such, the application for planning permission deemed to have been made in relation to Appeal B has lapsed and no further action is to be taken in respect of that appeal.

Summary of decision: The appeal is dismissed and the notice upheld as corrected in the formal decision below.

The Notice

1. I have powers under Section 176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the enforcement notice. It is clear from the evidence before me that there is no dispute that the '*outbuilding*' cited in paragraph 3 of the enforcement notice relates to play equipment that includes a canopy/structure that has the appearance of a 'building'. To ensure clarity I consider that the alleged breach of control at paragraph 3 of the notice should be corrected by deleting the words '*an outbuilding*' and replace them with '*play equipment including a slide, swings, monkey bars and a raised platform with canopy*'. As such, I can make the necessary corrections to the notice without causing injustice to the appeal parties.
2. The word '*outbuilding*' will also need to be deleted from within the brackets, at the end of paragraph 3, and the requirements of the notice and replaced with '*play equipment*' in both places. I can make the necessary corrections to the notice without causing injustice to the appeal parties.

Procedural Matters

3. An accompanied site visit was arranged for 20 August 2019 and whilst the Council was represented neither of the appellants attended at the arranged time and they did not send their agent or representative. The accompanied site visit was rearranged for the 4 November 2019 and again neither of the appellants nor their agent attended. The Council was represented at this site visit and a person, who stated that she was the cleaner, was within the appeal property. However, the cleaner was unable to guarantee safe access into the rear garden due to the presence of large dogs at the property. She also tried but failed to contact the appellants.
4. After waiting some time, I indicated to the Council's representative and the lady in the appeal property that I would ascertain whether the neighbours at 9 Frensham Walk (No 9) were in their dwelling and whether they would allow me access into their rear garden. They were content with this approach and the occupiers of No 9 were in and allowed me to go through their dwelling into their rear garden. Consequently, I undertook an unaccompanied site visit from the rear garden of No 9.
5. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the sections relevant to that appeal have not materially altered. As such, in the circumstances of the case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.

Background

6. The appellant for Appeal A considers that the Council has not been consistent in relation to its reasons for serving the enforcement notice. I acknowledge that the reasons for issuing the notice, at paragraph 4, do not precisely specify whether they relate to the living conditions of nearby occupiers and/or the effect on the character and appearance of the area.
7. However, the Council have stated in its Written Statement that *'the height and positioning of the development relative to the neighbouring dwellings was a determining factor in concluding that the development causes harm to amenity'*. It goes on to state that *'by reason of its excessive height, elevated position and proximity to the boundary with the neighbouring property, this development is not compatible with the character and amenities of adjoining development and the locality generally'*. The appellant has had the chance to comment on this Written Statement and the comments submitted by the third parties.

Appeal A - The ground (a) appeal and deemed planning application

Main Issues

8. Taking into account all of the above, I consider that the main issues are: -
 - The effect on the living conditions of nearby occupiers with regard to outlook;
 - The effect on the character and appearance of the area.

Reasons

9. The play equipment comprises a relatively substantial structure that includes monkey bars, swings, a slide with a raised platform and canopy that is in close proximity to the boundary with No 9. The raised platform is at the top of a set of steps that allow access to the slide. A structure or canopy that has the appearance of a small 'house' with a pitched roof and fenestration openings virtually covers the raised platform.
10. Saved Policy H13 of the South Bucks District Local Plan (LP) states that proposals to erect a building within the curtilage of a dwelling will only be permitted where they meet a number of criteria. One of the criteria states, amongst other things, that the building would not adversely affect the character or amenities of nearby properties or the locality in general, for example through overdominance or obtrusiveness and would be in accordance with LP Policy EP3.
11. LP Policy EP3 states, amongst other things, that development will only be permitted where its scale, siting, height and design are compatible with the character and amenities of the site itself, adjoining development and the locality in general. It goes on to state that poor designs which are out of scale or character with their surroundings will not be permitted.
12. A building is defined by Section 336 of the 1990 Act as including any structure or erection and any part of a building, as so defined, but not plant or machinery comprised within a building. I have no evidence before me to indicate that the play equipment is not a building as defined by the 1990 Act. It follows that LP Policy H13 is relevant in this case.

Living conditions

13. The play equipment reflects the type of structure that can be expected to be seen in many domestic gardens. Nevertheless, due to the height and scale of the 'house' structure and its proximity to the boundary it is a dominant feature when viewed from the rear garden of No 9. Moreover, that height combined with its window openings means that the 'house' structure also has the appearance of a watch tower, sitting well above the adjacent boundary treatment. Even if those in that structure had no deliberate intention of looking into No 9's garden the use of it would result in a strong perception of being overlooked. This perceived overlooking increases its obtrusiveness. Consequently, due to the overall height, design and location of the play equipment I consider that it is experienced as dominant and obtrusive when in the rear garden of No 9.
14. There is dispute as to whether planning permission would be required if the play equipment was moved to another location within the rear garden area. It is not for me, as part of this appeal, to determine whether planning permission would be required for the play equipment if it was moved. To that end it is open to the appellant to apply for a determination under Sections 191/192 of the 1990 Act in this respect and the outcome of this appeal under Section 174 does not affect the issuing of such a determination.
15. Moreover, in moving the play equipment further away from the boundary with No 9 the impact on the living conditions of the occupiers of No 9 would be less than where it is presently located. As a result, even if relocating it would not

require planning permission it has little weight as a fallback position in this respect.

16. Taking into account all of the above, I consider that the play equipment as constructed adversely affects the living conditions of the occupiers of No 9 with regard to outlook. It follows that it conflicts with saved LP Policies H13 and EP3. These policies are broadly consistent with paragraph 127 of the Framework which states, amongst other things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. As such, with regard to paragraph 213 of the Framework the conflicts with these policies has substantial weight.

Character and appearance

17. The design and materials of the 'house' structure part of the play equipment are such that it resembles a children's play house and such an informal building would not be inappropriate as a feature in a residential garden setting if it were at ground level. However, the 'house' structure part of the play equipment extends significantly above the boundary treatment and appears to be appreciably taller than the majority of other visible structures within gardens in the immediate vicinity of the appeal site.
18. As such, when viewed from the neighbouring properties and their gardens it appears incongruous and is out of character with its surroundings in this respect. In addition, I have found that due to the overall height, design and location of the play equipment that it is experienced as dominant and obtrusive when in the rear garden of No 9. Consequently, the play equipment as constructed reflects a poor standard of design.
19. The impact of the development on the character and appearance of the wider area when viewed from the public realm is negligible. Nonetheless, the harmful effects of the structure are apparent from the neighbouring properties and I can find nothing in local and national planning policy to suggest that the requirement for high quality design only applies to development that is visible from within the public realm.
20. As a result, the play equipment harms the character and appearance of the area and conflicts with saved LP Policies H13 and EP3. These policies are broadly consistent with section 12 of the Framework therefore the conflicts arising in these respects have substantial weight.

Other matters

21. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

23. It is directed that the enforcement notice be corrected by: -

- Deleting the words '*an outbuilding*' from within paragraph 3 and replace it with the wording '*play equipment including a slide, swings, monkey bars and a raised platform with canopy*';
 - Deleting the words '*an outbuilding*' from within the brackets at the end of paragraph 3 and from the requirements of the enforcement notice, paragraph 5 and replace them, at both places, with the words '*play equipment*'.
24. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR