The Planning Inspectorate

Appeal Decision

Site visit made on 11 March 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2020

Appeal Ref: APP/U2235/W/20/3244124
Delhi Spice UK, Ashford Road, Bearsted, Maidstone, Kent ME14 4BS

- 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 R Channa against the decision of Maidstone Borough Council.
- The application Ref 19/504564/FULL, dated 3 September 2019, was refused by notice dated 7 November 2019.
- The development proposed is a children's climbing frame.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site already features a children's climbing frame that both main parties acknowledge does not have planning permission, with a retrospective application having been the subject of an appeal[1]. The children's climbing frame for which planning permission is now sought would be of a different design and in a different position. Therefore, whilst the appellant's intention is to relocate and alter the existing structure, due to the differences between the existing situation and the proposed development, this appeal should not be considered on a retrospective basis.

3. Furthermore, as the existing structure does not benefit from planning permission, the reference to it being relocated is not relevant to the assessment of the proposed development. I have, therefore, excluded that reference from the description of the development in the heading above.

4. The plans that were submitted with the application included elevations that were labelled incorrectly. I have sought clarification from the main parties in this respect and both agree that the structure would be orientated in accordance with the site plan (JCA.01) that was submitted with the application. As the site plan clearly indicated the proposed position and orientation of the structure and was the subject of public consultation, I am satisfied that no parties have been prejudiced in this regard and have determined the appeal on that basis.

Main Issue

5. The main issue is the effect of the development on the living conditions of the occupiers of the adjacent neighbouring dwellings of The Grove, with particular regard to privacy and noise.

[1] APP/U2235/W/19/3222909

Reasons

6. The appeal site consists of an area of grassed land that is used in conjunction with the adjacent public house/restaurant building that is shown to be within the appellant's control. The rear gardens of the residential properties of 9 to 12 The Grove (inclusive) back on to the appeal site, with a tall fence being located at the boundary between the appeal site and those dwellings.

7. The proposal relates to the provision of a children's climbing frame in a position that would be inset from the part of the boundary that is shared with the neighbouring dwelling of 10 The Grove by approximately 10 metres. The proposed structure would feature a raised platform at a height of 1.5 metres that would be entirely covered by a roof and enclosed by timber cladding on the elevation facing the properties of The Grove. Therefore, the raised platform would be covered and enclosed to such an extent that views towards the neighbouring properties from that level would be largely restricted. Any remaining views from the raised platform towards the dwellings of The Grove would be obstructed by the boundary treatments at the site to an extent that the occupiers of the neighbouring dwellings would not be unduly overlooked as a result of the use of the raised platform.

8. However, whilst the appellant has indicated that the design of the climbing frame would ensure that it is only used by children, it is inherent to the use of the structure that it would be climbed upon. Therefore, even though the roof would cover the entire raised platform and make access difficult, the submissions of the appellant do not demonstrate that it would not be possible for users of the climbing frame to achieve access onto the roof. In this regard, although it is not intended that the roof would be used in such a way, that intention would not necessarily limit the use of the climbing frame.

9. As such, there is a possibility that users of the structure would access the roof and, although such use might occur relatively infrequently, this would afford users elevated views towards the neighbouring properties, particularly 10 The Grove. These views would cause overlooking of the gardens and habitable rooms of the neighbouring properties in a manner that contrasts with the existing situation. That overlooking would cause an actual and perceived loss of privacy that would detract from the ability of the residents of The Grove to enjoy their properties, in particular their private gardens. Whilst the separation distance between the climbing frame and the boundary of the site and the depth of the neighbouring gardens would offer some mitigation, this would not be sufficient to prevent a harmful loss of privacy within the neighbouring properties.

10. I have had regard to the suggestion of the appellant that additional planting or screening could be provided at the boundary of the site. However, I have insufficient details before me to demonstrate that planting would provide timely or effective mitigation. Moreover, any structures that would increase the height of the existing boundary would be likely to require planning permission and, as such, it would be unreasonable to require such mitigation without it first having been the subject of public consultation. The appellant has also suggested that a condition could be imposed to ensure that the climbing frame is only used in conjunction with the adjacent restaurant. However, I have no basis to conclude that limiting the use of structure in that way would mitigate the effect of the development. In any event, given the other uses that occur at

the land within the appellant's control, it would not be possible to enforce such a condition.

11. I have had regard to the potential to impose a condition to prevent the use of the roof of the climbing frame, but the nature of the use of the structure and the likelihood that users would be unaware of such a restriction leads me to conclude that such a condition would not be effective or enforceable. Therefore, I am not satisfied that the harm caused by overlooking and a loss of privacy could be addressed through the imposition of a condition that would pass the tests that are set out at paragraph 55 of the National Planning Policy Framework (The Framework).

12. Whilst it is likely that users of the climbing frame would be heard within neighbouring properties, the scale of the structure indicates that it would not be able to be used to an extent that its use would cause more noise than would be expected within a residential environment or through the use of the existing outdoor area that serves the premises. Furthermore, I have no basis to conclude that the children's climbing frame would be used at times that are different to the outdoor space at the site. For these reasons, whilst I note the experiences of interested parties in relation to the use of the existing structure at the site, the evidence before me does not lead me to conclude that the use of the structure, including its roof, would cause noise disturbance to an extent that would harm the living conditions of nearby residents. Restricting the times that the structure could be used, as suggested by the appellant to address the issue of noise, would not address overlooking or loss of privacy.

13. Overall, for the reasons given above, the proposal would have an unacceptable effect on the living conditions of the occupiers of the adjacent neighbouring dwellings of The Grove, with particular regard to privacy. The development would, therefore, conflict with policy DM1 of the Maidstone Borough Local Plan (2017) which requires that development respects the amenities of occupiers of neighbouring properties by ensuring that development does not result in excessive overlooking or an unacceptable loss of privacy. In addition, the proposal would conflict with paragraph 127 of The Framework which, amongst other things, requires that development creates places with a high standard of amenity for existing and future users.

Other Matter

14. The absence of an objection from Bearsted Parish Council or the Council's Environmental Health Officer does not lead me to reach a different conclusion in respect of the main issue or the conflict with the development plan.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR