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# Appeal Decision

Site Visit made on 14 September 2021

**by R Hitchcock BSc(Hons) DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 September 2021**

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**Appeal Ref: APP/D2320/D/21/3278198**

**37 Duxbury Gardens, Chorley PR7 3JZ**

- 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 Geoffrey Dalytse against the decision of Chorley Borough Council.
  - The application Ref 21/00147/FULHH, dated 08 February 2021, was refused by notice dated 19 April 2021.
  - The development proposed is a play area platform with playhouse and safety balustrade (retrospective).
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## Decision

1. The appeal is allowed and planning permission is granted for a play area platform with playhouse and safety balustrade at 37 Duxbury Gardens, Chorley PR7 3JZ in accordance with the terms of the application Ref 21/00147/FULHH, dated 08 February 2021 and the plans submitted with it.

## Preliminary Matters

2. The development subject of the appeal has already taken place. Accordingly, I shall deal with the proposal as one under s73A of the Act for development already carried out.
3. Since the time of the Council's decision a revised version of the Framework has been issued by the Government. However, it does not alter the status and primacy of the development plan. Furthermore, I find that there is no material change to the national approach of protecting neighbouring land uses, including neighbouring occupier's living conditions.

## Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring residents with particular regard to overlooking and loss of privacy.

## Reasons

5. 37 Duxbury Gardens is an end terrace townhouse in a block of 3 dwellings. The homes provide accommodation over 3 floors. The block lies within an estate of modern properties of mixed housing including flats and terraces. The townhouses are set behind driveways with landscaping strips and have gardens to the rear. An adjacent block at 33-36 Duxbury Gardens is set behind the line of the appeal site and separated by a narrow pathway providing access to the rear of some of the gardens.

6. The proposal seeks the retention of a timber platform supported on timber posts. The platform deck extends to the side boundaries of the narrow garden and has been constructed about a multi-stemmed tree. According to the Council, the platform height is about 1.85m. A children's wooden playhouse of about 1.56m in height has been fixed on the rear corner of the platform. A post and rail balustrade extends about the platform save for two access points facilitated by a timber ladder and scramble net.
7. The appellant states that the structure is sited some 18m from the rear of the house. It is built such that the platform is at a similar height to a close boarded fence along the pathway, but over the height of a fence and trellis along the common boundary with 38 Duxbury Gardens.
8. Despite the ground levels dropping away behind the terrace blocks, the use of the platform provides a raised vantage point which allows views over the adjacent and nearby garden areas of the neighbouring properties. However, the lower fencing and trellis to the consecutive gardens along the same block are at a height such that most adults can see across the neighbouring garden areas, including views towards the back of the houses.
9. Furthermore, the terrace features Juliette balconies at first floor level. These provide panoramic views across much of the combined garden areas nearby. The degree of overlooking to the rear garden areas from habitable rooms is therefore greater than most residential estate settings. Having regard to those matters, the intervening distance and that closer sited play equipment that might not require the benefit of planning permission would afford similar views, I find the extent of additional overlooking to these properties is not significant.
10. The views to the back of the house at No36 within the adjacent block are closer by several metres on account of the staggered alignment of the buildings. Nevertheless, these are still at some distance away and are partially obscured by the higher boundary fence beyond the intervening path and some limited screening by a bush within the neighbouring site.
11. Some additional views are afforded to a ground floor opening and the adjacent patio which cause a degree of overlooking that would not have previously existed. However, this would not be significant in the context of the intermittent use of the structure and the site's location within a family housing area where children will inevitably be seen and heard. Views beyond No36 are screened by the intervening fences.
12. Although not determinative in itself, I acknowledge the representations of the immediate neighbours which confirm my finding that the structure and its use are not intrusive or result in a harm to the neighbours' living conditions.
13. Taking all of the above into account, I find that the degree of overlooking would not cause significant harm to the living conditions of occupiers of the nearby properties in the particular circumstances of the case. The proposal would therefore align with Policy HS5 of the Chorley Local Plan 2012-2026 [2015] and the Council's Householder Design Guidance Supplementary Planning Document as they seek to protect the living conditions of nearby residents from undue overlooking and loss of privacy.

### **Other Matters**

14. I acknowledge the concerns of a nearby resident in relation to the change in views and greater visibility of the play structure arising from the removal of parts of the tree from within the site and some from neighbouring properties. However, the change of a view across third party land is not a matter of significant weight in planning decisions.
15. Unlike other trees in the locality, the Council confirm that the tree about which the platform sits is not formally protected. Accordingly, it was open to the appellant to remove all or parts of the tree without formal consent under the planning statutes. The expressed concerns relating to a subsequent effect on wildlife arising from the removal of trees are not supported by substantive evidence and I am therefore unable to attribute significant weight to that argument.

### **Conditions**

16. As an application for retrospective planning permission, no conditions are necessary.

### **Conclusion**

17. For the above reasons, the appeal should succeed.

*R Hitchcock*

INSPECTOR