



Appeal Decisions

Site visit made on 17 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/A5270/C/21/3278023 (Appeal A) & 3278022 (Appeal B)
Premises known as 9 Rotherwick Hill, Ealing, LONDON W5 3EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Prayer Nekati against an enforcement notice issued by London Borough of Ealing.
 - The notice was issued on 20 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission: The Installation of freestanding climbing frame in the rear garden.
 - The requirements of the notice are to:
 1. Remove the freestanding climbing frame from the rear garden; and
 2. Remove all resultant debris from the site.
 - The period for compliance with the requirements: three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under
 - Appeal B is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are dismissed, 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 as amended.

Ground (a)

Main Issue

2. The main issue is the effect of the appeal scheme on the living conditions of the occupants of No. 7 Ashbourne Close, having regard to outlook and overlooking.

Reasons

3. The appeal site comprises a detached dwelling in a generally residential area, within the Hanger Hill (Haymills) Conservation Area. A substantial climbing frame has been erected in the rear garden of the property. The rear garden backs onto No 7 Ashbourne Close, which is a detached property with a modest rear garden.
4. A planning appeal, reference APP/A5270/D/20/3260031 for the installation of a freestanding climbing frame in the rear garden (retrospective) was dismissed on 13 May 2021. The Inspector in that appeal found that the climbing frame had a harmful effect on the living conditions of the occupiers of No 7 Ashbourne Close. Photographs provided by the Council and an interested party, show that without the vegetation the climbing frame can be clearly seen from the rear garden of No 7.

5. Since the appeal was dismissed, the appellant has installed a series of trees in pots and bins between mesh fencing and wooden fencing, which delineates the appeal property and No 7. The vegetation limits views from the climbing frame towards No 7 Ashbourne Close. However, I have significant concerns about the likely success of the planting which has been put in place, given the limited size of the pots into which the trees have been placed. Furthermore, the pots and bins could easily be removed.
6. Were the vegetation to be removed, given the height of the platform, users of the climbing frame are likely to be able to peer into the garden and the dwelling beyond, which the occupants of No 7 are likely to find intrusive. Furthermore, given its substantial size and elevated position, it is likely to appear a prominent feature when viewed from No 7, which would diminish the outlook from the property.
7. Although it would be possible to provide mitigation in the form of additional planting, I agree with the Council's stance that hedges and trees would take too long to establish and that the occupants of the neighbouring property would suffer harm to amenity in the meantime. The vegetation would have to grow to significant maturity before it provides any meaningful screening. Moreover, no details of planting are offered and so I afford this matter very limited weight.
8. Thus, for the reasons given above, I find that the appeal scheme would have a harmful effect on the living conditions of the occupants of No 7 Ashbourne Close, contrary to policy 7.4 of the Ealing Development Management DPD (2013), which seeks to protect local character, policy 7B of the DPD which seeks a high standard of amenity for adjacent uses by ensuring good levels of privacy and policy D3 of the London Plan (2021) seeks development which delivers appropriate outlook, privacy and amenity amongst other things.
9. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appellants' child is disabled, they will have protected characteristics for the purposes of the PSED.
10. Under the Human Rights Act 1998, Article 8 affords the right to respect for private and family life, home and correspondence. This is a qualified right, and interference may be justified where in the public interest. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. This applies to appeal decisions and Article 8 rights of a child should be viewed in the context of Article 3(1).
11. The appellant asserts that the removal of the climbing frame, which serves as sensory equipment to meet the needs of a disabled child, will have a detrimental effect on the well-being of the child who uses it. I have been provided with an Educational Psychology Report, Occupational Therapy Health Advice and a risk assessment, which confirm the child's diagnoses and makes reference to the child's interest in climbing. However, the reports do not identify a need for provision in the rear garden of the child's home, nor do they specify the nature of any provision that should be made.

12. A letter written by a social worker details the child's needs and explains the role of the climbing frame in managing the child's behaviour. However, the letter is a number of years old and the needs of the child may have changed. Furthermore, while the child may benefit from the provision of equipment which allows them to climb, it is not clear from the evidence provided that the appeal scheme is the only means of meeting the child's needs in this regard.
13. The risk assessment identifies a range of activities which the appellants are doing to address climbing and jumping from a height. Furthermore, it may be possible to meet the child's needs with an alternative, smaller piece of equipment which would not cause the harms identified above. Consequently, I am not persuaded that the removal of the climbing frame would have consequences of such gravity as to engage the operation of Article 8.
14. Having regard to the legitimate and well-established planning policy aims to protect living conditions, in my view, the benefits of the appeal scheme would be outweighed by the harm I have identified. Thus, in terms of the best interests of the child, and having due regard to the PSED, I consider that upholding the notice and refusing planning permission is necessary and proportionate.

Ground (f)

15. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
16. Given the requirements of the notice, it is clear that the purpose of the notice is to remedy the breach of planning control. The appellant's case under ground (f) is that the local authority has failed its duties under the 2010 Equality Act. However, I have considered these matters under ground (a).
17. No lesser steps have been put forward by the appellants and there are no obvious alternatives which would overcome the planning difficulties, at less cost and disruption. Consequently, it is not excessive to require the climbing frame to be removed and the appeals under ground (f) fail.

Conclusion

18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

M Savage

INSPECTOR