
Appeal Decision

Site visit made on 1 February 2022

by R W Allen B.Sc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal Ref: APP/L2440/D/21/3287647
28 Penzance Avenue, Wigston, LE18 2HW

- 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 Miss Elizabeth Mattock against the decision of Oadby and Wigston Borough Council.
 - The application Ref 21/00445/FUL, dated 20 August 2021, was refused by notice dated 8 October 2021.
 - The development proposed is slide, swing and small play area attached to the rear of the garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice uses different wording to describe the appeal proposal from that used by the appellant in the application form. As I find the latter to be a reasonably accurate description, I have followed the appellant's wording in the banner heading above. The appeal structure was in-situ at the time of my site visit. Although only hand drawn, I noted no obvious differences between the appeal drawings and what I saw on site. I have therefore determined the appeal on the structure as built.
3. I wrote to three of the occupiers of the neighbouring properties to notify each of my intention to visit their dwellings as part of my site visit. Nos.26 and 30 Penzance Avenue did not answer. The occupier of No.37 St Ives Road left a note stuck to the front door in which I was permitted to access the rear garden via an unlocked side gate, which I duly did. I am satisfied that I was able to view the appeal site and its surroundings sufficient for me to determine the appeal.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area and on the living conditions of the occupiers of neighbouring properties.

Reasons

5. The structure in question is a child's outdoor play equipment which takes the form of a fort. It is attached to the rear elevation of an existing garage and constructed off the ground; with access served by a small ladder which leads to a lower platform area. From here, a set of stairs leads to an upper platform

which sits atop of part of the garage roof. It is well designed and made, and I can understand why the appellant's young child enjoys playing in it.

6. For the most part, I do not share the Council's view on the harm this structure causes. I find little merit in the Council's rather limited explanation of the perceived harm to the character of the street scene. Indeed, aside from an isolated viewpoint between No.26 and the appeal property, I do not find that the structure is in anyway visible from public vantage points to have any significant bearing on the character of the area.
7. I observed, particularly from the upper platform, that views into the gardens of those properties opposite were easily accessible, particularly No.37 St Ives Road. However, a similar overlooking effect already occurs from an existing first floor window at the appeal property, such that I do not find it has resulted in significant harm to the neighbour's privacy. Concerns relating to excessive sunlight and shading to No.37 St Ives Road have not been substantiated; but given the size of the structure and its distance to the neighbour I find any negative effect in this regard is highly unlikely. I also find that the structure is similarly and sufficiently distant from No.30 Penzance Avenue such that views into its garden are not severe, and again I am not persuaded that it has led to undue harm to the occupier's privacy and outlook.
8. However, it is to the neighbour at No.26 Penzance Avenue where I find a different story emerges. Because of its height and positioning immediately on the boundary with the neighbour, it is, I find, rather oppressive and dominant, and has considerably constrained outlook to the occupiers of the neighbouring dwelling. Additionally, while the upper platform is set in from the edge of the existing garage, it does not prevent even a small child from the ability to overlook both closely and directly into the garden area itself and the habitable room window of the property.
9. The structure has, as a result, caused significant harm to the outlook and privacy amenities of the occupiers of No.26 Penzance Avenue, and thus harmed their living conditions and reasonable enjoyment of the property. Accordingly, the structure is contrary the policy 6 of the Borough of Oadby and Wigston Local Plan 2019, which states that all new development must protect local amenity from unacceptable effects on, amongst other things, overlooking. It would also be contrary to the Council's Guidance.

Conclusion

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

R W Allen

INSPECTOR