



Appeal Decisions

Site visit made on 21 March 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Appeal A Ref: APP/K0425/W/22/3304875

310 Marlow Bottom Road, Marlow Bottom, SL7 3QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Chris Newell against Buckinghamshire Council – Wycombe Area.
 - The application Ref 22/06270/FUL, is dated 9 May 2022.
 - The development proposed is described as 'works to the rear garden of 310 Marlow Bottom including replacement of retaining walls, relandscaping with alterations to levels and planting, with replacement garden room at the end of the garden'.
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Appeal B Ref: APP/K0425/W/22/3304882

310 Marlow Bottom Road, Marlow Bottom, SL7 3QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Chris Newell against Buckinghamshire Council – Wycombe Area.
 - The application Ref 22/06273/FUL, is dated 9 May 2022.
 - The development proposed is described as 'an application solely for the boundary treatments to the rear garden on 310. The suggestion made by the committee members for the previous application (21/08160/FUL) was to lower the height of the fence by about 0.5m adjacent to 312's patio. This application shows a lower fence in line with this suggestion. There is no change to the design of the fence with 308 as there were no issues raised with this in the previous application. The garden design and outbuilding are being dealt with in a separate application'.
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Decision

1. Appeal A is allowed and planning permission is granted for works to the rear garden of No 310 Marlow Bottom including replacement of retaining walls, relandscaping with alterations to levels and planting, with replacement garden room at the end of the garden at No 310 Marlow Bottom Road, Marlow Bottom, SL7 3QH in accordance with the terms of the application, Ref 22/06270/FUL, dated 9 May 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - PJSA-03-01, PJSA-03-02 and PJSA-03-03

2. Appeal B is allowed, and planning permission is granted for the erection of fencing to side boundaries at No 310 Marlow Bottom Road, Marlow Bottom, SL7 3QH in accordance with the terms of the application, Ref 22/06273/FUL, dated 9 May 2022, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - PJSA-03-01, PJSA-03-02 and PJSA-03-03
 - 2) Within 3 months of the date of this decision, the height of the fence shall be amended in accordance with drawing no PJSA-03-02. Thereafter, the fence shall be retained as approved for the lifetime of the development.

Preliminary Matters

3. Both Appeal A and Appeal B are against the failure of the Council to give notice of their decision on the above planning applications within the prescribed period. The Council's respective appeal statements set out that the proposals would have been considered compliant with the relevant policies of the Wycombe District Local Plan 2019 (Local Plan). Therefore, had the determination of the applications remained within their jurisdiction, the Council has confirmed that planning permission would have been granted. The appeals are therefore not contested by the Council.
4. At the time of my visit, it was evident that much of the work to the garden of No 310 Marlow Bottom Road has taken place which appears to be as shown on the submitted plans. Nevertheless, for the avoidance of doubt, I have determined the appeals based on the plans and supporting evidence before me. Where appropriate, and given that the development proposals are clearly linked, I have considered the appeals together to avoid duplication.
5. In relation to Appeal B, the submitted plan indicates that the development relates solely to fencing along the side boundaries. As such, I have taken the description of development as set out in my decision above from the Council's delegated report as this more accurately and succinctly describes the appeal development.

Background and Main Issue

6. A similar proposal was considered by the Council under application reference 21/08160/FUL¹. Planning permission was subsequently refused on the grounds that the proposed boundary fencing would be unduly overbearing in appearance due to its height and siting. The proposal was thereafter split into two separate planning applications which are now the subject of Appeal A and Appeal B. Whilst the overall development is largely unchanged, the plans submitted in respect of Appeal B indicate a reduction in the height of the fence (in part).

¹ Householder application for erection of detached garden room to rear with works to garden room to include new retaining walls, re-landscaping and alterations to levels, new boundary treatments and planting (part retrospective)

7. Having regard to the representations of interested parties before me, and notwithstanding the Council's submissions, the main issues in both Appeal A and Appeal B are the effect of the development on:
- the character and appearance of the area, including the Chilterns Area of Outstanding Natural Beauty (AONB);
 - the living conditions of the occupants of No 312 Marlow Bottom Road (No 312), with particular regard to privacy, overshadowing and outlook.

Reasons

Character and appearance

8. The appeal property lies within the boundary of the Chilterns AONB and comprises a newly constructed, two storey dwelling. The wider row of properties is characterised by detached dwellings of varied scale and appearance, a number of which feature elevated gardens to the rear. There is limited evidence before me in relation to the landscape characteristics and qualities of the AONB. However, I observed on my site visit that the village of Marlow Bottom is nestled in a hollow and is surrounded by blocks of woodland which are interspersed by rolling hills and agricultural land.
9. Photographic evidence indicates that the appeal site was originally terraced and comprised three tiers. A garden shed occupied part of the middle tier and was positioned adjacent to the shared boundary with No 312. There was also a mature tree located within the middle tier which has now been felled. A modestly proportioned summerhouse was sited in the corner of the top tier.
10. Despite the highly engineered form of the development and introduction of hard landscaping, the rear garden is fundamentally in keeping with the original tiered garden and broadly reflects the sloping nature of the adjoining plots. The garden room benefits from screening to the rear and within the context of its immediate surroundings, it does not appear overly obtrusive. Furthermore, and despite the newness of the fence, the overall form and appearance is not uncharacteristic of a residential setting. The appeal site has limited visibility in the wider context and would not be harmful to the landscape and scenic beauty of the AONB even when giving great weight to this matter.
11. Consequently, Appeal A and Appeal B do not harm the character and appearance of the area, including the AONB. The schemes therefore accord with Policies DM30, DM35 and DM36 of the Local Plan. Amongst other aspects, these policies seek to ensure that proposals deliver the highest quality design which respects the character and appearance of the existing property and the surrounding area, including the natural beauty of the AONB.

Living conditions

12. The garden room occupies an elevated position in the top tier of the appeal site and replaces a former summerhouse of more modest proportions. Owing to the scale and insulation of the building, I recognise that it has the potential to be used more frequently and for more prolonged periods throughout the year. However, due to the orientation of the building, blank side elevations and the centralisation of the glazing in the principal elevation, the main outlook from

the garden room is towards the rear of the appeal property and garden area. Thus, views into the garden and rear windows of No 312 are limited.

13. From within the top tier of the appeal site there are oblique views towards the first-floor bedroom and bathroom windows of No 312. However, because of the separation distance and intervening landscape feature detailed within Appeal B, direct sight lines are restricted. Views across the shared boundary from the middle tier are also limited owing to the respective ground levels and the intervening boundary treatment. Consequently, there is no harmful overlooking of either the garden or habitable room windows of No 312.
14. Retaining structures have been constructed along the shared boundary with No 312. On top of the blockwork sits a timber fence which, as detailed on the submitted plan varies in height along its length and exceeds 2.5 metres in places. The Council's appeal statement indicates that the ground levels of the appeal site have been lowered. This however is contested by the interested third parties who maintain that historically, the ground levels on either side of the boundary were identical.
15. Notwithstanding the opposing assessments, I have considered the proposals based upon the overall height and siting of the boundary including both the retaining structures and fence panels as I observed at my site visit. Likewise, and irrespective of the assertions made in relation to the unlawful lowering of the patio at No 312, my findings have been informed by my own observations at the time of my site visit.
16. Immediately to the rear of the No 312 is a patio area. Due to the lower ground level, plot width and the existing vegetation along the rear and opposite garden boundary, this area of the garden is naturally shaded and provides a high level of enclosure. Beyond the more private patio space lies a tiered garden. From within these higher tiers, there is a greater degree of openness and light together with views of the wider area.
17. The previous timber fence panels are in situ along the top and middle tier and an original fence post also remains adjacent to the patio area. Whilst the new boundary treatment is higher than the previous boundary along the top and middle sections, the difference at the patio level is less substantial. Considering the overall height difference and the physical characteristics of the site as set out above, I am not persuaded that the garden area is significantly more enclosed than its previously was. Further, whilst the timber fence is starker in its appearance and does not blend into its surroundings as effectively as the older boundary treatment, it is reasonable to assume that the visual effects will soften as the timber weathers. For these reasons, I find that the overall boundary is not unduly overbearing or dominant in appearance and therefore the neighbouring occupants' living conditions would not be compromised.
18. It has been put to me that the new planting along the shared boundary will only increase the level of overshadowing as this matures. Whilst I understand these concerns, at the time of my visit, the landscaping did not exceed the height of the fence and there is no substantive evidence before me to indicate that the planting will be maintained at a height above the fence. Even so, if the height were to become significant, there is a suitable mechanism to deal with high hedges in those circumstances.

19. Accordingly, I find that the development subject to Appeal A and Appeal B does not adversely affect the living conditions of the occupants of No 312 with particular regard to privacy, overshadowing and outlook. The development is therefore in accordance with Local Plan Policies C9, DM35 and DM36. Amongst other aspects, these policies seek to ensure that development proposals are of a high-quality design and preserve the amenities of neighbouring properties. The appeal proposals would also be consistent with the Council's Householder Planning and Design Guidance Supplementary Planning Document (SPD) 2020, where it seeks to ensure that householder development does not adversely affect neighbouring amenity.

Other Matters

20. I recognise that the development was undertaken without the benefit of planning permission and therefore the topographical survey cannot be verified. I also note that the appellant has chosen to submit two separate planning applications for the work undertaken. Whilst I appreciate the third-party frustrations in this regard, the planning system does not prohibit the submission of retrospective planning applications or the separation of proposals. Nevertheless, neither appeal scheme has been considered in isolation.

21. I have also had regard to the third-party comments in relation to the accuracy and completeness of the information presented to Members of the Planning Committee when considering the original planning application. I also acknowledge the findings of *R(Irving) v Mid Sussex DC* [2019] EWHC 3406 (Admin) in relation to the consistency of decision making. Although I accept that the previous scheme is a material consideration, the plans before me nevertheless differ to those previously considered by the Council and I have determined the appeals on their individual merit, in accordance with the development plan and relevant material considerations. Therefore, the Council's previous decision and submissions do not change my reasoning as set out in this decision.

22. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which, sets out the need to foster good relations between people who share a protected characteristic and those who do not. These characteristics include disability and I acknowledge that the occupant of No 312 shares a protected characteristic for the purposes of the PSED². It has been put to me by the occupant of the neighbouring property that the development and ongoing process has resulted in undue stress which in turn has affected wellbeing. Whilst I sympathise in this regard, for the reasons I have set out, I am satisfied that the development would not be unacceptable to the living conditions of the neighbour at No 312. Therefore, this does not alter my conclusions on the relevant main issue.

Conditions

23. I have had regard to the various planning conditions that have been suggested by the Council and have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such

² S6(1) of the Equality Act 2010 provides that a person has a disability if (a) they have a physical or mental impairment and (b) the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

amendments as necessary to comply with those documents and for clarity and consistency.

Appeal A

24. I have imposed a condition requiring adherence to the approved plans in the interests of certainty. Although I have referred to accordance with the approved plans, I have no evidence that a requirement to retain the development is necessary. A condition requiring the levels to be agreed would duplicate the requirements of the plans condition, therefore I have not imposed it.
25. The submitted Design and Access Statement details the provision of new ornamental planting, hedging and trees within the appeal site. At the time of my site visit, it was clear that some planting had already occurred. Planting beds are provided which will result in additional soft landscaping, a specific landscaping scheme is therefore not necessary. Nor is a separate condition required to provide a bird box or bug hotel in the context of Policy DM34 given that appeal A relates to a rear garden space where, by virtue of its design, there are opportunities for biodiversity enhancement.

Appeal B

26. I have imposed a condition requiring adherence to the approved plans in the interests of certainty. Notwithstanding the evidence before me, for the avoidance of doubt, I have also imposed a condition requiring the height of the fence to be amended within 3 months. A strict timetable for compliance is required as permission is being granted retrospectively.

Conclusion

27. Overall, for the reasons outlined above, having regard to the development plan as a whole and all other relevant material considerations, including the Framework, the appeal is allowed.

H Wilkinson

INSPECTOR