
Appeal Decision

Site visit made on 6 August 2024

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Appeal Ref: APP/Y1138/W/24/3342607

81 Willow Walk, Crediton, Devon EX17 1DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by William Reynolds against the decision of Mid Devon District Council.
 - The application Ref is 23/01196/FULL.
 - The development proposed is described as "retention of land as domestic garden, including the erection of play equipment and fence."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the development from the Council's decision notice as this more accurately describes the appeal proposal than that on the application form. The description of development refers to the "retention of land as domestic garden." However, retention is not a form of development under s55 of the Town and Country Planning Act. The submitted evidence confirms that the development has been carried out and I was able to see this during my site visit. I have therefore dealt with the appeal on the basis that permission is being sought retrospectively.
3. Whilst it is referred to in the Council's decision notice, the description of the development on the planning application form does not include the erection of a fence. This is confirmed in the Appellant's appeal statement and I have determined the appeal on that basis.
4. The National Planning Policy Framework (the Framework) was revised in December 2023. The reasons for refusal refer to paragraphs 130 and 131 of the previous Framework, the text of which is now found in paragraph 135 of the revised version. I have referred to the revised version in my decision.

Main Issues

5. The main issues are
 - the effect of the development on the living conditions of the occupiers Nos 97, 99, 101 and 103 Willow Walk with particular reference to privacy;
 - the effect of the development on the character and appearance of the surrounding area; and

- the effect of the development on the natural environment with particular reference to biodiversity.

Reasons

Living conditions

6. The play area consists of 3 covered timber platforms linked by connecting bridges. At either end of the connected platforms are timber frames supporting various swings. There is a wooden ladder accessing the central platform and a rope climbing net on the eastern side of the northern platform.
7. During my site visit, I viewed the site's surroundings from the access ladder at a height adjacent to the balustrade around the central platform. This provided an equivalent viewpoint to that of a child. Whilst the play area is enclosed by a substantial close boarded fence, the height of the platforms and bridges together with the proximity of the structures to the boundary means that there are clear views from them into the rear windows and private garden spaces of 101 and 103 Willow Walk. The view towards No 99 is partially screened by an intervening tree and is less direct whilst the view towards No 97 is more oblique and interrupted by the tree and garden fences.
8. Although the structures are intended for use by the appellant's child and this use may currently be intermittent, the loss of privacy arising from the overlooking of Nos 103, 101 and to a lesser extent 99, harms the living conditions of the occupants of those houses. Even though the play area is for the private use of the appellant's family I am mindful that the level of its use may change over time and any increase would exacerbate the loss of privacy currently experienced.
9. Some degree of overlooking is to be expected in a housing estate where first floor windows can allow views across gardens and between houses. Play equipment is also commonly found in domestic gardens. However, this does not justify the loss of privacy which arises from the construction of the platforms and connecting bridges in close proximity to the boundary with the adjoining houses.
10. I have given consideration as to whether an appropriately worded condition to secure higher boundary screening could be imposed if I were minded to allow the appeal. However, from the submitted evidence it is not clear whether a satisfactory planting scheme could be carried out which would provide the necessary screening within a reasonably quick period of time. The existing boundary fence does not form part of the appeal proposals and in any event an increase in its height could require planning permission in its own right. On this basis, I have concluded that such a condition would not resolve the harm I have identified.
11. Whilst policy S1 of the Mid Devon Local Plan 2013-2033 (MDLP) sets out the Council's sustainable development priorities, it is a strategic policy which does not directly relate to the privacy effects of the appeal proposal. However, for the reasons given, the development does conflict with MDLP Policy DM1 which requires new development to demonstrate adequate levels of privacy to private amenity space; and with the Framework which requires planning decisions to ensure a high standard of amenity.

Character and appearance

12. Willow Walk is a residential road where the houses are set back from the road, separated from it by front gardens and driveways. The cul-de-sac where the site is situated is consistent with this character with grassed front gardens, green space at its northern end and playing fields to the south giving it an open feel.
13. The site is located between a block of garages and two storey houses at the end of the cul-de-sac. From the evidence, it was previously an open, overgrown parcel of land of uncertain ownership. The undated photograph in Appendix B of the Council's Appeal Statement shows the gap between No 81 and the garage block where the site appears as a green space bordering on to open land now occupied by 97 to 103 Willow Walk.
14. The site is now enclosed on 3 sides by the garden boundaries of the houses in Willow Walk and the garage block. The fourth side is separated from a footpath and the playing fields by a grassed strip, bushes and trees. Overall, the site feels enclosed and its position between buildings means that it does not make a significant contribution to the open character of Willow Walk, which is derived from the other more prominent spaces. As a consequence, its use for domestic purposes does not harm the open or spacious character of Willow Walk. Whilst it is currently physically separated from 81 Willow Walk by a fence, this detachment does not in itself have a harmful impact on the character or appearance of the road.
15. The roofs of the platforms are visible above the garages, from adjoining gardens and through gaps in the bushes along the footway but are largely seen in the context of the surrounding buildings. The lower parts of the play area are screened from view by the existing garden fences and the garage block. As a result, the play equipment does not have an adverse impact on the appearance of the road.
16. Therefore, whilst MDLP policy S1 is a strategic policy and not directly relevant, the effect of the development on the character and appearance of Willow Walk complies with Policy DM1 of the MDLP and Policy D1 of the Crediton Neighbourhood Plan 2021 (CNP) which seek to protect the character of the built environment; and with the Framework which requires development to be sympathetic to local character.

Natural environment

17. Whilst the evidence suggests the site was previously overgrown and a neighbouring resident placed hedgehog boxes on the land, I have no evidence of its previous biodiversity value. On my site visit, I noted that the site had been largely cleared of any previous vegetation and I could see no evidence of potential habitats apart from the trees and vegetation along the northern and southern site boundaries. MDLP Policy S9 requires development to support opportunities for protecting species populations and linking habitats. The Council's Delegated Report on the scheme indicates that the introduction of features such as bird boxes, insect nests and planting would be enhancements which would satisfy the policy requirements. The appellant has also indicated a willingness to make such enhancements. Were I minded to allow the appeal I am satisfied that these matters could reasonably be dealt with by condition.

18. On this basis, the effect of the development on the natural environment and biodiversity complies with MDLP Policy S9 and CNP Policy D1 which seek to protect and enhance the natural environment; and with the policies of the Framework to conserve and enhance the natural environment.

Other Matters

19. An appellant does not have to own a site to seek planning permission. The ownership of the site and the ability of owners of the adjoining garages to access the garages for maintenance are private matters between the relevant parties and not within my jurisdiction. If I were minded to allow the appeal, planning permission would not override any legal rights of access.

Conclusion

20. The proposal conflicts with the development plan as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

R Kent

INSPECTOR