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|-----------------|-----------------------------------------|---------------|-------------|
| Site Address:   | 36 Oaktree Drive, Emsworth, PO10 7UJ    |               |             |
| Proposal:       | Retention of play equipment.            |               |             |
| Application No: | APP/16/00722                            | Expiry Date:  | 12/09/2016  |
| Applicant:      | Mr & Mrs Carr                           |               |             |
| Agent:          | Mr J Montgomery                         | Case Officer: | Tina Pickup |
|                 | Tanner & Tilley Development Consultants |               |             |
| Ward:           | Emsworth                                |               |             |

Recommendation: **REFUSE PLANNING PERMISSION IN RETROSPECT**

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## **1 Site Description**

36 Oaktree Drive is a new two storey detached dwelling located at the head of a private cul-de-sac; it is the northern most dwelling within the Urban Area before woodland to the north. The property has an unusually large garden benefiting from a wide curtilage - the depth from the rear elevation is some 8m but the width extends to some 28m. It is bound by 1.8m high close boarded fencing.

The land slopes up to the north-east and the recent housing development has resulted in some marked level differences with retaining walls. The garages and parking area immediately to the east of No 36 and south of the garden, is at a much lower level than the application site garden (approximately 1 - 1.5m lower) with retaining timbers below the close boarded fencing. The property has a sitting out patio area outside its north eastern elevation and this is at the lower level with small retaining wall and the garden then slopes up to the north-east from here.

The housing development was constructed by virtue of Planning Permission 09/72129/002 for the "Demolition of 2No dwellings and erection of 48No. dwellings with associated garages and parking with access from Oak Tree Drive." This was permitted on 28/02/2011 and condition 10 removed permitted development rights for Class A, D and E development i.e. Extensions to the houses, porches and incidental buildings or enclosures. The reason for the imposition of this condition was to ensure the appearance of the development was satisfactory having regard to relevant policies.

At the eastern end of the garden timber play equipment has been erected. This structure is cemented into the ground and has an overall length of some 6.5m, width of 2.5m and height of 2.2m. As originally constructed it was configured to comprise a 3m long monkey bar at 2m high from which 3 swings hang at its eastern end, then a double platform with railings from which a slide extends to the west with a climbing wall to the south and steps/ladders up from the north with a fireman's pole.

## **2 Planning History**

APP/14/00545 - Proposed demolition of unstable brick boundary wall and replacement with new brick boundary wall as detailed located to north of Plot 32 of Planning Approval ref 09/72129/002. Replacement stables., PERM, 19/11/2014

APP/14/01285 - Application for variation of Condition No. 1 of Planning Permission APP/14/00337 to extend timescale from 31st December to March 31st 2015.,

PERM,23/01/2015

09/72129/002 - Demolition of 2No. dwellings and erection of 48No. dwellings with associated garages and parking with access from Oak Tree Drive., PERM,28/02/2011

### **3 Proposal**

This application seeks retention of the play equipment - as originally submitted the proposal sought to retain the equipment as originally erected.

During the course of determining this application, amended plans have been received proposing a reconfiguration of the equipment as follows: the climbing wall to be removed; the upper platform and railings removed; steps provided up from lower platform to top of slide; and fireman's pole removed.

The applicants had agreed to complete the re-configuration works and did make some of the changes. However these were not as expected and hence a photograph taken on site on 07/11/2016 comprises the final amended plan on which the determination of this application will be based.

### **4 Policy Considerations**

National Planning Policy Framework

Havant Borough Local Plan (Core Strategy) March 2011

CS16 (High Quality Design)

DM10 (Pollution)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

### **5 Statutory and Non Statutory Consultations**

None

### **6 Community Involvement**

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 6

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: **8** in total: 2 objections; 2 support ; then a further 2 comments on the offered Re-configuration; and 2 objections to the final photograph

**Summary: On Original Plans for Retention - 2 Objections** - garden onto open aspect and had professionally landscaped with table and chairs next to fence; now 1m away from climbing frame and platform in direct of view of seats; large construction so close to joint boundary; son of applicant waves across fence from platform; height means can see into garden and through glass doors into lounge & hall; applicant viewed from garden and removed roof and planted 3 trees; these soften but clear views still possible; enables easy access over fence for intruders; platform 1.5m high and 1.7m from common boundary; condition 10 of 09/72129/002 removed pd rights for class A, D & E development; Class E prevents buildings, enclosures that exceed 2.5m within 2m of the boundary; Policy CS16 seeks to protect amenity of neighbours from loss of privacy, outlook, noise and overlooking; agents use of policy DM18 mistaken as intended to protect a proposal from pollution; noise greater than from lower in contained garden due to height; should be refused and enforcement notice served for removal;

**2 Supports** - impact on privacy & outlook negligible; noise same whether equipment there or not as dense development; material in keeping; no loss of open space or habitats; not a permanent structure so query need for application; fulfils Council's aim of encouraging physical activities; if live in development of 3/4 bed houses should expect play equipment;

**On Revised plans for Re-configuration** - drawings not clear but if platform and surrounding balustrade removed from 3 sides leaving one supporting monkey bar; climbing wall removed completely; ladder repositioned; and work done in a given time, then accept new proposal; additional tree in corner requested to help privacy; in spirit of compromise willing to accept revised layout provided strictly adhered to and completed within 3 to 4 weeks;

**On Final Photograph Amended Plan** - Object as alterations that were promised have not been carried out; 3 sides not removed enabling children to hang on balustrade, walk round 4 sides which are now higher than previous platform; issue of privacy not resolved as children have uninterrupted view into garden and sitting room; disappointed that amendment offered not honoured; current retention of railings enables children to walk round the bottom railing whilst holding top railing giving them same view as previous platform; privacy in garden and house remains breached; proximity and configuration still compromises privacy and object.

**Comment:** These issues will be discussed below:

## **7 Planning Considerations**

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon residential amenity
- (i) Principle of development

The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. Section 55 of the Town and Country Planning Act 1990 states that development includes the "carrying out of

building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.” The very fact that the climbing frame structure is concreted into the land and cannot be easily moved i.e. it has a degree of permanency, means that it is the Local Planning Authority's view that it is a structure involving a building operation that constitutes development.

Class E of the General Permitted Development Order 2015 does give permitted development rights for structures within the curtilage of dwellinghouses and criteria apply. However condition 10 of 09/72129/002 removed those permitted development rights and accordingly any development within the curtilage needs planning permission. The removal of these p.d. rights was to protect the appearance of the area and resultant impacts of any Class E structures on the overdevelopment potential of this new tight knit development.

This application has been submitted as a householder application for the retention of the play equipment at Number 36 Oak Tree Drive only - it is not being dealt with as a variation of condition 10 of 09/72129/002 which would relate to the whole of that development.

(ii) Impact upon residential amenity

The precise siting of the play equipment is considered to be an un-neighbourly position being within 1m of the eastern boundary with Nos 15 & 17 Aubin Wood. Due to the sloping levels of the land this eastern end of the garden is the highest point of surrounding land. The rear garden of 15 Aubin Wood also slopes up gently to the shared fence line whilst the rear garden of No 17 is more level. Both gardens have patio and quiet sitting out areas in full view of the play equipment. As a result of the levels the play equipment is additionally prominent, being highly visible above the shared fence on the eastern boundary.

In its original form it was considered that the use of the equipment resulted in a direct loss of amenity to the occupiers of both No 15 and 17 Aubin Wood due to its height, siting and proximity so close to the boundary fence. The level of the upper platform, position of the climbing wall and monkey bars above the swings gives children an elevated position from which to see into neighbouring gardens. The play equipment is clearly visible above the shared fence of No 15 and 17 Aubin Wood and the use of the equipment means that views are possible into both the private sitting out areas of both properties and also into the open plan dwellinghouses themselves. This was considered harmful to neighbouring amenity from a loss of privacy and the proposal considered contrary to Policy CS16 which requires a High Quality Design and seeks to protect neighbouring amenity.

When advised that the application was to be recommended for refusal the applicants volunteered some amendments shown on some plans received with annotations showing elements to be removed and reconfigured. In the interest of neighbourly relations and a compromise, both neighbours were willing to accept the offered compromise which appeared to remove the children's ability to climb at the higher level (except for the monkey bars which were to remain). Since the plans were a little ambiguous and not precise enough to condition, it was agreed with the applicant that they would make the amendments straight away to avoid confusion. However after waiting several weeks the re-configuration works were not completed as expected.

Whilst the upper platform has been removed and alternative ladders to the slide provided from the lower platform, the 3 sides of the balustrading has not been removed, and an un-intended consequence of this is that the children can still climb

round this balustrading retaining their elevated view. A further un-intended consequence is that due to safety, a pair of red handles have been fixed to enable the children to hold securely when climbing the ladders - but these handles also enable them to hold on and turn round, again continuing the views into adjacent gardens and inside the dwellings. The monkey bars also still remain, as does the fireman's pole, both of which allow children to perch at this high level with views across the fence, affecting the privacy of neighbours. This is considered to still be harmful to the amenity of the neighbouring residents at 15 & 17 Aubin Wood, contrary to Policy CS16.

Four trees have now been planted on the eastern boundary - these are 'Red Robins' which are an evergreen species which can vary in 2m to 5m in height depending on the specific plant. Whilst they do currently help to provide some screening, they are currently quite small and shrub like and do not provide sufficient immediate screening. Regard must be had to the fact that will grow and bush out a bit.

Throughout the planning process of this matter, the applicants have repeatedly been advised that the optimum solution to overcome the privacy issues would be to re-site the equipment further from the eastern boundary where the land is naturally lower. It has been suggested the equipment be moved to the west, such that the central platform element is 10m from the eastern boundary fence, which would provide adequate separation at a lower level to overcome the overlooking issues. If this option had been pursued then the equipment need not have been reconfigured at all.

However this decision must be based on the configuration of the equipment to date i.e. the photograph taken on 7/11/16 as there is no reasonable prospect of any further modifications. On this basis the application is recommended for refusal as the configuration still allows children an elevated view into neighbouring private amenity sitting out areas aswell as the open-plan houses themselves. The tree planting is not considered sufficient screening to adequately mitigate against the privacy issues. The layout, siting and proximity of the equipment to the shared boundary is considered to be materially harmful to neighbouring amenity and is contrary to Policy CS16 clause 1. e).

## **8 Conclusion**

The use of the play equipment in its current form, due to its siting in such close proximity to the eastern shared boundary, and the garden levels, is considered harmful to the quiet enjoyment of the neighbouring gardens and results in a loss of privacy to both the gardens and rooms inside the open plan houses at both 15 and 17 Aubin Wood. This loss of residential amenity is considered contrary to policy CS16 of the Core Strategy 2011.

Since the play equipment is already in situ then it is also necessary to consider the expediency of appropriate Enforcement Action to secure its removal from the land.

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## **9 RECOMMENDATION:**

That the Head of Planning be authorised to **REFUSE PLANNING PERMISSION IN RETROSPECT** for application APP/16/00722

(A) for the following reasons

- 1 Due to the levels and siting in such close proximity to the eastern shared boundary, the retention of the play equipment in its form as at 07/11/2016, is considered harmful to the amenity of adjacent neighbours at 15 and 17 Aubin Wood. The position and design of the play equipment enables elevated views into both neighbouring gardens and inside the rooms of the open plan houses at 15 and 17 Aubin Wood. This is considered to result in a loss of privacy and detrimental to residential amenity, contrary to policy CS16 of the Core Strategy 2011 and the National Planning Policy Framework 2012.