
Appeal Decisions

Site visit made on 30 August 2016

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2016

Appeal A: Appeal Ref: APP/A2525/C/16/3149626

Appeal B: Appeal Ref: APP/A2525/C/16/3149627

56 Spalding Road, Holbeach, Spalding, Lincolnshire PE12 7HG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Christopher Styles (Appeal A) and Mrs Margaret Styles (Appeal B) against an enforcement notice issued by South Holland District Council.
 - The Council's reference is ENF-366-15-E09.
 - The notice was issued on 01 April 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a wooden viewing platform, railings and staircase in the rear garden on the Land.
 - The requirements of the notice are: (1) Remove the wooden viewing platform, railings and staircase in the rear garden on the Land.
 - The period for compliance with the requirements is one month from the date the notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on grounds (d) and (f).
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Decisions

Decision in relation to Appeal A

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision in relation to Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Although Mr and Mrs Styles completed the same appeal form it is common practice for the Planning Inspectorate to assign separate reference numbers to each appeal where there are multiple appellants in relation to a single notice. Thus, the appeal by Mr Styles is referred to above as APPEAL A and the appeal by Mrs Styles as APPEAL B. APPEAL A will proceed on grounds (a), (d) and (f) and APPEAL B will proceed on grounds (d) and (f).

The Appeals on Ground (d)

4. The appeals on ground (d) are made on the basis that, at the time the notice was served, it was too late to take enforcement action against the matters
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stated in the notice. The ground of appeal relates to the statutory time limits for taking enforcement action imposed by section 171B of the Town and Country Planning Act 1990 (the Act). In relation to operational development the period is four years from the date that the operations were substantially completed.

5. The appellants' submissions in respect of ground (d) are based on the fact that the structure that is currently in place was a replacement for an earlier platform that had been in place for a number of years. The precise date when the former structure was erected is not clear but the photographs would indicate that it was a number of years old and the former owners of the house have indicated that it was erected in approximately 2006 or 2007. I have no reason to doubt that version of events.
6. The information provided states that the former structure started life as a children's tree house with an enclosed playhouse on top of a platform. The playhouse was removed at some point to leave the platform and associated steps. What is clear is that the former structure was removed in its entirety prior to the current platform being erected. A comparison between the photographs of the previous structure and the current building show that the old framework was removed to allow for the construction of the new platform which is made of entirely new structural timber, with a new staircase, new balustrade and new floor covering. The new platform is significantly larger in floor area than the structure it replaced.
7. Therefore, the evidence suggests that nothing was retained of the previous structure and the construction of the current platform represented a new building operation. It is a new building and not a repair or alteration of the previous structure. The works to erect the platform were undertaken within the last four years and the structure is not immune from enforcement action by virtue of the time limits imposed by section 171B of the Act. Accordingly, the appeals on ground (d) must fail.

Appeal A on Ground (a)

8. An appeal on ground (a) is made on the basis that planning permission should be granted for the matters stated in the notice. Section 177 of the Act stipulates that planning permission may be granted on appeal for the whole, or any part, of the matters stated in the enforcement notice. The main issue in the determination of the ground (a) appeal is the effect of the platform on the living conditions of neighbouring residents, with particular regard to overlooking and privacy.
9. The veranda, or viewing platform, is located towards the north-eastern corner of the garden of 56 Spalding Road, a substantial detached dwelling set within a generous plot. One side of the structure abuts the wall of a detached garage and a semi-mature tree, which is located immediately to the rear of the garage, projects through the platform. The eastern edge of the platform runs closely adjacent to the shared boundary with the garden of the neighbouring house at 54 Spalding Road and the northern perimeter is close to the boundary with the gardens of Nos 10, 12 and 14 Fairfield.
10. When stood on the platform I was able to gain clear views into the gardens of those neighbouring dwellings, including the patio and seating area in the bottom corner of the garden of No. 54 and the areas immediately to the rear of

- dwellings at Fairfield. Clear views into the conservatory to the rear of No. 14 can also be obtained.
11. At the time of my visit row of potted coniferous trees had been placed along the eastern edge of the platform, running parallel with No. 54. I understand that those potted plants were placed on the balcony in the days leading up to my visit. The trees did provide a degree of screening and restricted views from the platform back towards the rear of the house at No. 54 but did not exclude views from the garden altogether, and clear views of the patio and seating area could still be obtained, as described above. Moreover, given that they are contained in pots, the trees would be readily movable and there can be no guarantee that they would remain in place for the lifetime of the development. Without any screening views into the garden of No. 54 would be largely uninterrupted.
 12. In my view, given the height and proximity of the platform to neighbouring boundaries, the use of the structure will cause significant harm to the living conditions of neighbouring residents by virtue of overlooking and loss of privacy. I appreciate that it may not be the intention of those using the platform to peer in on their neighbours but the elevated position and location is such that a significant degree of overlooking is inevitable. Certainly, neighbours within adjacent gardens would be able to see people situated on the balcony and I have no doubt that use of the platform will create a strong sense of being overlooked, regardless of the intentions of those using the structure. It has the visual impression of a watch tower overlooking the immediate neighbourhood.
 13. Consequently, use of the platform has resulted in overlooking and a significant loss of privacy for neighbouring residents. I acknowledge that a degree of mutual overlooking between properties in urban areas is common. For example, it is not unusual for first floor bedroom windows to have views into neighbouring gardens, as is the case in this instance. As shown within photographs G and H of the appellants' statement neighbouring gardens and windows can be seen from windows within No. 56. I was able to observe this for myself at my accompanied visit.
 14. However, the bedroom windows are set much further away from neighbouring boundaries than the platform and the way in which an internal room such as a bedroom is used is substantially different. The platform is clearly designed for sitting out and taking in the external environment, possibly even external dining. Thus, those using it are likely to sit or stand on the platform, possibly for extended periods. Whilst those within a bedroom may stand and take a fleeting view from a window I consider that it is unlikely that they would sit or stand for prolonged periods. In my view, use of the platform is far more harmful in terms of the effect upon neighbouring privacy.
 15. New development must be considered in the context of the relevant policies of the development plan and national planning policy. One of the core principles set out at paragraph 17 of the National Planning Policy Framework (the Framework) is that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings. Similarly, policy SG17 of the South Holland Local Plan (2006) states that the extent of any overlooking and loss of privacy will be taken into account when reaching decisions and that planning permission will be granted for development that

will not cause harm to residential amenity. For the reasons given, I conclude that use of the platform has caused a significant loss of privacy for neighbouring residents such that the development fails to comply with policy SG17 and the identified core principle of the Framework.

16. The use of the temporary screening of potted conifers does not alter my conclusions in that regard. Those pots could be moved or re-arranged or the plants could die over the lifetime of the development. No other form of mitigation has been put forward and I am not satisfied that the impact of the development could be controlled through the use of conditions. In order to prevent undue levels of overlooking any screen would need to be of a substantial height and would need to wrap around large sections of the balcony. Such screening would be likely to increase the visual impact of the structure and may constitute additional development for which planning permission would be required.
17. Given that no details have been provided, it would be inappropriate to impose a condition to require such screening as this would deprive those adjacent from a right to comment on any proposals. Similarly, any screen that was effective in reducing overlooking would be likely to enclose the space on the platform and reduce the outlook from it such that it would impact on the usability of the space and may not be acceptable to the appellants. Thus, in the absence of any suggested form of mitigation I find that the use of conditions would not overcome the harmful effects of the development.
18. I am mindful that the current structure was erected in place of a previous structure in roughly the same part of the garden. The previous structure was designed and used as a children's tree house, with a covered playhouse on top of the platform. There is no record of any planning permission being granted for that structure and, when erected, it would have been substantially different than the present structure which is not covered and is of a more substantial and robust construction, designed for sitting out and outdoor leisure. Whilst the playhouse was removed at some point to leave an open veranda the photographs depict a smaller and more make-shift structure than that which exists at present. The access stairs appear to have been steeper (and therefore harder to negotiate), the handrails less sturdy and the area available for seating was more restricted.
19. Consequently, it appears to me that the former structure would have been a less attractive proposition as an outdoor seating and recreation space than the current structure which has been purposely designed for that function. It follows that any residents of the property are more likely, in my view, to spend time on the current structure when compared to the previous platform. The current structure, as described in the breach, represented operational development for which planning permission is required. The development fails to comply with the relevant policy of the development plan and a core principle of the Framework, as set out. The fact that a previous structure existed does not negate the need to consider the new development in line with relevant and up to date development plan policy.
20. Paragraph 9 of the Framework identifies that pursuing sustainable development involves seeking positive improvements in the quality of the built environment as well as in people's quality of life. This is to be achieved by, amongst other things, replacing poor design with better design. There is no presumption

within the Framework that development which has a harmful impact should be replicated through new or replacement development of the same kind. Consequently, in my view, the fact that a previous structure existed does not dictate that planning permission should be granted for the current development; a structure which causes substantial harm for the reasons set out.

21. As set out below, the appeals under ground (f) are made on the grounds that the steps required by the notice are excessive and that the notice should be varied to require the removal of 1.3m from the length of the platform in order that its size corresponds to that of the previous structure. For the reasons set out below, if the structure were to be reduced by removing 1.3m from its length it would still require planning permission. However, under a ground (a) appeal, it is necessary for me to consider whether planning permission should be granted for the whole or any part of the matters stated in the notice. Thus, I have considered the possibility of granting planning permission for part of the structure, reduced by 1.3m in length, in relation to Appeal A.
22. Firstly, if the structure was reduced by 1.3m in length, as indicated in photograph C of the appellants' statement, it is apparent that the staircase would not provide access to the remaining section of the platform – the top of the stairs would terminate at the perimeter of the structure. Setting aside the practicality of gaining access to the remaining element of the structure, the reduction in length would not lead to any significant reduction in the degree of overlooking in to neighbouring gardens that would result from use of the platform. In particular, the eastern edge of the platform would remain in close proximity to the side of No. 54, affording views into the garden, and clear views of the private areas to the rear of opposing houses at Fairfield would remain. Although the reduction of 1.3m would take the edge of the structure slightly further away from the shared boundary with houses at Fairfield the height of the platform is such that clear views would remain.
23. Consequently, I am not satisfied that it would be possible to grant planning permission for part of the structure in a way that would make it acceptable in planning terms. The remaining part of the structure would still result in significant levels of overlooking and a loss of privacy, contrary to policy SG17 of the Local Plan and the aims of paragraph 17 of the Framework.
24. In view of the above, I conclude that planning permission should not be granted for the structure, either in whole or in part, and the appeal on ground (a) in relation to Appeal A fails to that extent.

The Appeals on Ground (f)

25. An appeal on ground (f) is made on the basis that lesser steps would remedy the breach of planning control, or the injury to amenity, as the case may be. The appellants have put forward the argument that the steps required by the notice are excessive and that, if planning permission is refused for the structure as built, they should only be required to remove 1.3m from the length of the platform in order that its size corresponds to that of the previous structure. That suggestion is based partly on their understanding that the structure would be lawful, if reduced to the size of the previous structure.
26. For the reasons set out above, I have concluded that the structure is not immune from enforcement action by virtue of the passage of time and that it

represents operational development for which planning permission is required. The structure, in its entirety, requires planning permission. As noted by the Council, permitted development rights set out in Class A (k) of Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 limit the height of any raised platform or veranda to 30cm above ground level. Anything above that would require planning permission, as is the case in this instance. Thus, even if 1.3m was removed from the platform the remainder of the structure would still amount to operational development for which planning permission is required.

27. In seeking the complete removal of the platform, railings and staircase, it appears to me that the Council is seeking to remedy the breach of planning control and not merely the injury to amenity caused by the breach. Therefore, the removal of 1.3m from the platform would not remedy the breach of planning control because the remaining part of the structure would still require planning permission. For the reasons given, I have concluded that planning permission should not be granted for the breach, in whole or in part. Accordingly, the appeals on ground (f) must fail.

Overall Conclusion

28. For the reasons given I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application made in relation to Appeal A.

Chris Preston

INSPECTOR