

Appeal Decision

Site visit made on 26 September 2016

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 October 2016

Appeal Ref: APP/P1045/C/16/3144864 The Gate Inn, The Knoll, Tansley DE4 5FN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr James Neville against an enforcement notice issued by Derbyshire Dales District Council.
 - The enforcement notice, numbered PLS/AJ/JP/030.11, was issued on 13 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of play equipment.
 - The requirements of the notice are to:
 - (1) Permanently remove the play equipment in its entirety from the land;
 - (2) Carefully remove the current surface treatment by hand;
 - (3) Employ a specialist contractor to aerate the soil to a depth of 200 mm introducing organic matter, fertiliser and mycorrhizae fungi using an air spade or terravent machine, and
 - (4) Reinstate the land in accordance with the details of planning permission 15/00453/FUL which is currently being implemented on site and the conditions attached thereto.
 - The period for compliance with the requirements is 56 days with steps (1), (2) and (3), and four months with step (4).
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of play equipment on land at The Gate Inn, The Knoll, Tansley DE4 5FN referred to in the notice.

Reasons

2. The **main issue** is the effect of the development upon the health and well-being of a tree, which is subject to tree preservation order number 114 – tree adjacent to The Gate Inn, Tansley (TPO)¹.
3. The site is a Public House with garden and car park. It is situated within a mainly residential area at the edge of settlement. The children's play equipment is about 2 m in overall height and comprises a climbing frame and slide. It is positioned within an enclosed area beneath the canopy of a protected ash tree.

¹ The TPO was issued 14 July 1995.

4. The Council does not object to the siting of the play equipment in the root zone. It claims that the location of the apparatus would cause pressure to either fell or drastically prune the tree. The concern is that shed foliage, especially falling branches and deposits, would give rise to safety concern. For the following reasons I profoundly disagree with this planning assessment.
5. Firstly, due to the height of the children's play equipment, there is sufficient distance and clearance of the tree's lower branches. The design of the apparatus does not significantly protrude into the canopy. Secondly, the tree appeared to be in good health and vigour; there were no obvious signs of decay. In my experience, good arboricultural management can be encouraged particularly when determining an application for consent to carry out work. If an application is made for pruning or felling, the Council will have an opportunity to assess any potential impact on public amenity and consider reasons for the proposed work.
6. Thirdly, there is no suggestion that the tree is structurally unsafe. No tree is free from falling branches or leaves and the owner is responsible for maintaining the protected tree. Removal of dead branches or clearance of leaves would reduce risk from slippery surfaces. There is no statutory requirement setting out how often or to what standard the tree needs to be maintained.
7. I therefore find that the siting of the children's play equipment is unlikely to have a direct or indirect adverse impact upon the tree. Accordingly, the development would comply with the main aims and objectives of policy NBE6 of the Derbyshire Dales Local Plan 2005, which is saved by Direction of the Secretary of State, and is broadly consistent with policies found in section 11, *conserving and enhancing the natural environment*, to the National Planning Policy Framework.
8. The Council has not suggested any conditions for my consideration. In the light of national guidance, it is unnecessary to impose stipulations. This is because the development is acceptable in planning terms.

Conclusion

9. For all of the above reasons, I find that the development is unlikely to have a harmful effect upon the health and well-being of the tree.
10. Having regard to all other matters, my conclusion is that the appeal should succeed on ground (a) and planning permission is granted as set out in my Decision above.

A U Ghafoor

Inspector