
Appeal Decision

Site visit made on 29 November 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 8 February 2017

Appeal Ref: APP/P0240/C/16/3151983

Land at the Coach and Horses Public House, 95 The Green, Stotfold, Hitchin SG5 4DG

- 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 Mark McGilley (The Coach and Horses Ltd) against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice, numbered CB/ENC/15/0258, was issued on 17 May 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised construction of play equipment on the Land.
- The requirements of the notice are: Remove the play equipment and any resulting materials from the Land.
- The period for compliance with the requirements is one month from the date when the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

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 erection of play equipment on land at the Coach and Horses Public House, 95 The Green, Stotfold, Hitchin SG5 4DG, referred to in the notice.

Procedural Issues

2. Where more than one appellant is named on the appeal form, it is common practice for the Planning Inspectorate to allocate a separate reference number to each appellant. In this case, three appellants were identified on the appeal form; Mr McGilley on behalf of The Coach and Horses Ltd; Miss Ouwendijk; and Mr McGilley as an individual. Following the receipt of the appeal it was confirmed that the individual appeal by Mr McGilley was, in effect, a duplicate of the appeal by Mr McGilley (Coach and Horses Ltd). Accordingly, I have treated the submissions as a single appeal.
 3. By letter of 25 July 2016, the appellants wrote to confirm that they wished the appeals to be considered under ground (a), as opposed to ground (c) which was ticked on the application form. The Planning Inspectorate accepted this change and wrote to the Council on 03 August to confirm that the appeals would proceed on ground (a).
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4. Where an appeal is made on ground (a), which is on the basis that planning permission should be granted for what is alleged in the notice, a fee is normally payable. In this instance, the fee was only paid in relation to the appeal by Mr McGilley of the Coach and Horses Limited and the ground (a) appeal only falls to be considered in relation to that appeal. No fee was paid in relation to the appeal by Miss Ouwendijk and the ground (a) appeal does not fall to be considered in relation to that appeal. As there were no grounds of appeal other than ground (a), the appeal by Miss Ouwendijk therefore falls away. Consequently, I have considered a single appeal, by Mr Mark McGilley (Coach and Horses Ltd) and that appeal was made on ground (a) alone.

The Appeal on Ground (a)

5. From the information before me I consider that the main issue in the determination of the ground (a) appeal is the effect of the play equipment on the living conditions of neighbouring residents with particular regard to overlooking and the effect on privacy.
6. The equipment is located centrally within the lawn which is situated at the rear of the pub, behind the car parking area. The land associated with the pub is bound on three sides by residential properties. The closest dwelling to the play equipment is No. 27 Mowbray Crescent which shares a boundary with the southern end of the garden of the pub. At its closest point, the play equipment is just under three metres from the shared boundary. A timber panelled fence with a height of approximately two metres runs along the boundary. A number of established trees and shrubs are apparent within the garden of No. 27 although the deciduous trees were not in leaf at the time of my visit.
7. The garden of the newly constructed dwelling at No. 97a The Green abuts the garden of the pub to the north-west and the garden of No. 93 The Green shares the south-eastern boundary of the pub's garden and car park. As with No. 27 Mowbray Crescent, timber panelled fencing marks the boundary with other residential properties.
8. At my site visit I climbed onto the two platforms and crossed the walkway between them in order to observe the relationship with neighbouring properties. The gable end of the house at No. 27 Mowbray Crescent faces the garden of the pub and, save for one high level window, the elevation is a relatively blank façade. The window is much higher than the play equipment and is not affected by it in terms of overlooking. Views into the garden of the dwelling are limited in extent and are restricted by virtue of the fencing, planting and the pergola/ summer house that has been erected to the rear of No. 27. The fact that the equipment is set-in from the boundary also helps to minimise the degree of overlooking. Whilst some views are available into the garden, it is not uncommon for a degree of overlooking to exist within an urban environment and I could not see the private space immediately to the rear of the house where residents may expect a greater degree of privacy for sitting out.
9. The gardens of 97a and 93 The Green are set further from the play equipment and the angle of view, added to the height of existing fencing and the distance is such that any overlooking is not obtrusive. Moreover, I am mindful of the design of the equipment and the way it is likely to be used. The headroom under the sloping roof on each platform is limited such that it would deter use by adults. The gap between the top of the climbing net and climbing wall and

the bottom of the roof is also small and, as I was able to experience, it takes a degree of contortion for an adult frame to climb through and reach the platform. It would be difficult for the owners of the pub to enforce a restriction on who uses the equipment but it is clearly designed for children and, having regard to the type of activity that is catered for, it is likely that the majority of users would be from the intended age range of between 5 and 12, as suggested by the appellant.

10. Those using the equipment are likely to be engaged, for the most part, in using the climbing wall, the net, the fireman's pole, slide or swings. I find it unlikely that anyone would sit for prolonged periods in a deliberate attempt to look into neighbouring gardens. The restricted space on the platforms would discourage that. As such, any overlooking is likely to be fleeting and short lived. Therefore, taking account of the design of the equipment and its relationship with neighbouring dwellings, I am satisfied that its use will not cause any undue loss of privacy for adjacent residents.
11. The Council have not raised any concerns relating to noise or disturbance associated with the equipment and, in the absence of any evidence to the contrary, it appears to me that the use will not generate and disturbance over and above what could reasonably be expected in the garden of a pub. In view of the above, I find that the effect on the living conditions of neighbouring residents to be acceptable and, in that regard, the development complies with the aims of policy DM3 of the Central Bedfordshire Core Strategy and Development Management Policies (2009) and one of the core planning principles of the National Planning Policy Framework which is to secure a good standard of amenity for existing and future occupiers of land.

Other Matters

12. The Council consider that the appearance of the equipment is acceptable and its objections are made solely on the grounds of impact on neighbouring residents. The equipment is located at the rear of the pub and, whilst it can be seen from the road to the front, the impact on the street scene is minimal and, in any event, the appearance is of a well-built piece of equipment that does not look out of place in its setting.
13. Given my conclusions above, I am satisfied that the equipment is acceptable in planning terms. No planning conditions are required as no harm has been identified that needs to be mitigated.

Conclusion on Ground (a)

14. For the reasons given above I conclude that the appeal on ground (a) should succeed. I shall therefore grant planning permission for the play equipment, as built, and quash the notice.

Chris Preston

INSPECTOR