
Appeal Decisions

Site visit made on 7 February 2017

by Simon N Hand MA

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

Decision date: 10 February 2017

Appeal A: APP/D1780/C/16/3151275

Land at 11 Malvern Road, Southampton, SO16 6PZ

- 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 & Mrs R Healey against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 11 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden structure including a raised platform situated at the rear of the land on the attached plan.
 - The requirements of the notice are cease the use of the raised platform; remove all posts, rails, tarpaulin and netting from above the raised platform of the wooden structure (hatched black on the attached plan); remove the timber staircase from the wooden structure (hatched black on the attached plan).
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal B: APP/D1780/C/16/3152157

Land at 11 Malvern Road, Southampton, SO16 6PZ

- 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 Mrs K Healey against an enforcement notice issued by Southampton City Council.
 - The appeal is identical to Appeal A above.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

The appeal on Ground (d)

2. The development subject to the notice is a wooden structure in the corner of the back garden of No 11. It consists of an open fronted shed-like structure with a wooden roof, coated in a waterproof material which is slightly tilted to allow for drainage, but is in effect a flat roof. This is described as a "raised platform" in the notice. The shed is not large and it contains several items of gym equipment. Four tall wooden posts form the corner posts to the shed and they extend upwards several metres above the roof, according to the Council to about 4.4m in height. At the back of the structure is the boundary with new

houses in Leah Close, and this consists of good sized trees and shrubs which generally provide screening between the houses. There is a gap in the screening to the rear of the structure which is filled by camouflage netting fastened to the posts. The right hand side (as one looks at the structure) and the front have a wooden rail linking the corner posts that acts as a sort of balustrade. The left hand side is open, but is where a wooden staircase provides access.

3. The ground (d) appeal is that the structure has been in place for more than 4 years before the date of the notice and so is immune from enforcement. It is up to the appellant to demonstrate that, on the balance of probability, this is the case, and the key date is 11 April 2012. The reasons for the structure, its use, its value as a privacy screen or its impact as an eyesore have no place in the ground (d). These matters could only be considered if the appellants had applied for planning permission under ground (a) and paid the requisite fee.
4. The appellants' evidence is that the structure has been in place for many years. A neighbour has written in to agree with this and states it has certainly been in place for 4 years prior to April 2016 and another neighbour says it has been there for many years. The Council agree that a structure has certainly been in place, but not the full size of the one that is here today. This is supported by a letter from Driftstone Property, the developers of Leah Close, who say a structure was certainly being developed when the houses were being built, but not the one that is there now. They provide a photograph showing the top of the roof surrounded by the four tall wooden posts, but that would appear to be all, there do not seem to be any side rails, and certainly no tarpaulin or camouflage netting. The photograph is dated December 2013. The neighbour at No 6 Leah Close says the structure was being worked on when they moved in in 2015 and Mr Healey told him it was a den for the children. Mr Healey says his children are in their 20s and they have no grandchildren, so this is unlikely to be accurate. He has also provided a photograph from 2011 of a beach hut, which is in the other back corner of the garden, but this does not show the structure subject to the notice so adds little to the appeal.
5. In my view it is quite likely there was a structure in place for many years, and certainly before April 2012, and this is likely to have been the gym, with its flat roof. The wooden corner posts that are 4.4m tall, do now seem to be an integral part of the structure, and were clearly in place in December 2013, but whether they were always part of the gym is unclear and there is no strong evidence they were in place before April 2012. The neighbours' letters merely refer to a structure and it is clear the side rails are a later addition and the appellant himself says the staircase was only in place when the neighbour at No 6 moved in, that is in 2015. Consequently, I consider there is no evidence to convince me that on the balance of probabilities, the matters alleged in the notice were in place before 12 April 2012. The appeal on ground (d) fails.

The Appeal on Ground (f)

6. The notice only requires the appellant to remove the posts, rails, tarpaulin and netting above the level of the roof, to remove the staircase and stop using the roof for any purpose. Mr Healey says he does not use the roof and the staircase is only for stretching after gym work, so these elements should cause him no problem. The posts and netting etc are used for privacy from the neighbour at No 6, but there are other ways of providing privacy, including

planting, that do not create an eyesore. In any event, as there is no ground (a) the ground (f) is restricted to the question of whether the requirements in the notice are excessive given the matters alleged. Clearly they are not as they are the minimum required to rectify the breach as defined in the allegation. The appeal on ground (f) fails.

7. I shall dismiss the appeals and uphold the notice.

Simon Hand

Inspector