

Appeal Decisions

Site visit made on 6 February 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 22 February 2017

Appeal A: APP/J4423/C/16/3165409

3 Crescent Road, Sheffield, S7 1HJ

- 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 Anita Loong against an enforcement notice issued by Sheffield City Council.
 - The notice was issued on 15 December 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a tree house at the land.
 - The requirements of the notice are to remove the tree house in its entirety.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the 1990 Act also falls to be considered.
-

Appeal B: APP/J4423/W/16/3164248

3 Crescent Road, Sheffield, S7 1HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Anita Loong against the decision of Sheffield City Council.
 - The application Ref 16/01545/FUL, dated 21 April 2016, was refused by notice dated 16 September 2016.
 - The development proposed is the retention of tree house in rear garden.
-

Appeal A: Decision

1. It is directed that the enforcement notice be varied in Section 6 by deleting the words "28 days" and substituting instead "2 months".
2. Subject to the variation 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.

Appeal B: Decision

3. The appeal is dismissed.

Procedural matters and background

4. The treehouse subject of the enforcement notice in Appeal A is the same as that subject of the appeal against the refusal of planning permission in Appeal B. In addition, proposed alterations to the treehouse were submitted by the appellant to try and overcome the Council's objections to the development.
-

These have been considered by the Council and I have also taken account of them in reaching my decisions.

Appeal A: ground (a)/deemed planning application, and Appeal B

Main Issues

5. Having regard to all the evidence before me I consider the main issues in this appeal to be the effect of the development, firstly; upon the living conditions of occupiers of nearby residential properties with particular regard to privacy, and secondly; upon the character and appearance of the area, in particular the Nether Edge Conservation Area (NECA), a designated heritage asset¹.

Living conditions - privacy

6. No. 3 Crescent Road is a detached two storey dwelling house with front and rear gardens. The rear garden drops away from the house to a lower level as do adjacent rear gardens either side at No. 5 Crescent Road and No. 69 Wostenholm Road.
7. The tree house is fixed into and supported by a large mature plane tree located close to the rear eastern garden boundary wall which separates it from the rear gardens of Nos. 12 and 14 Steade Road. It is constructed in reclaimed cuts of timber, including recycled window frames with windows and a felt covered ridged roof, and resembles a small garden summer house in appearance. The ridge and floor levels of the tree house are approximately 6 metres and 3.4 metres, respectively, above the garden level. Access into the tree house is to the rear via steps which rise above and away from the dividing boundary wall with Nos. 12 and 14 Steade Road.
8. I acknowledge that the purpose of the tree house is for recreational use, and likely to be used mainly during warmer months of the year. However, during my visit to the appeal site I noted that the tree house provided clear views into and across the gardens of adjacent dwelling houses and their rear elevations. Consequently, it substantially reduces the level of privacy enjoyed by those occupiers who should reasonably expect to be able to enjoy the use of their private rear space without being overlooked, or perceiving that they are being overlooked. As such, I consider the tree house results in significant harm to their living conditions.
9. The proposed alterations, including the slatted doors over the tree house windows and the partial enclosure of the access steps with a side panel and roof cover, would nonetheless still result in the ability to overlook adjacent gardens. Moreover, even with eventual tree regrowth, it would not mitigate adjacent occupiers' perception of being overlooked.
10. For these reasons I find that the treehouse results in an unacceptable loss of privacy to adjacent residential occupiers resulting in significant harm to their living conditions in conflict with Policy H14(c) of the Sheffield Unitary Development Plan (1998) (UDP).

Character and appearance

11. Paragraph 132 of the National Planning Policy Framework (2012) states that when considering the impact of a proposed development on the significance of

¹ The National Planning Policy Framework (2012), Annex 2: Glossary, page 51

a designated heritage asset, great weight should be given to the asset's conservation. This reflects the statutory requirement of section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990 to give special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

12. As I previously described, the scale, design and materials of the treehouse are such that it resembles a small garden summerhouse. Although due to its elevated position as a treehouse I have found it to be harmful to the living conditions of neighbours, such an informal building would not be inappropriate as a feature in a residential garden setting if it were at ground level.
13. Given its rear garden location, and the drop in land levels from the road, it cannot be seen from the public realm despite its elevated position. As such, I find that it does not harm the character or appearance of the area or the NECA. The lack of any harm thereby preserves the character and appearance of the NECA. Consequently, I find no material conflict with UDP Policies BE5, BE16, BE17 and H14, or Policy CS 74 of the Sheffield Development Framework Core Strategy (2009).

Conclusion

14. Although I have found no material harm in respect of the effect on the character and appearance of the area, I have found significant harm to the living conditions of adjacent residential occupiers. The appeal on ground (a) of Appeal A therefore fails, and Appeal B is dismissed.

Appeal A: ground (g)

15. The ground of appeal is that the period for compliance with the requirements of the enforcement notice is unreasonably short.
16. The notice requires compliance within 28 days. The appellant seeks a period of three months on the basis that the treehouse gives balance to the tree, and if the treehouse were removed consideration would be given to the following options: removing the tree; drastically pruning the tree; or replacing the tree with a wildlife platform, any of which it is argued would require some form of formal consent from the Council.
17. I agree that the tree would have an irregular shape following removal of the tree house. However, the options the appellant suggests are not dependent upon the treehouse remaining in position. Moreover, there is no convincing evidence before me that the health of the tree is dependent upon it doing so.
18. However, it seems to me that 28 days is an inadequate period of time to comply, dependent upon weather conditions and arranging a suitable time(s) to undertake the necessary works of removal. On this basis I consider a period of two months to comply with the notice requirements would be reasonable in all the circumstances.
19. Therefore, the appeal on ground (g) succeeds to this extent and I have varied the notice accordingly.

Thomas Shields

INSPECTOR