

Appeal Decision

Site Inspection on 6 March 2017

by Graham Self MA MSc FRTPI

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

Decision date: 08 March 2017

Appeal Reference: APP/R0335/C/16/3155891

Site at: 107 Dukes Ride, Crowthorne, Berkshire RG45 6DW

- The appeal is made by Mrs Alexandra Beattie under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Bracknell Forest Borough Council.
- The council's reference is EN/13/00028/UOPD.
- The notice is dated 7 July 2016.
- The breach of planning control alleged in the notice is: "Without planning permission the erection of a tree house within tree to the north west corner of land adjacent to 107 Dukes Ride".
- The requirements of the notice are:
 - "(i) Remove the tree house and any associated supporting frame from the land to which this Notice relates as shown in Appendix A.
 - (ii) Remove all materials associated with step (i) from the land to which this notice relates."
- The period for compliance is two months.

Summary of Decision: The appeal fails.

Procedural Matters - Grounds of Appeal

1. Normally I would have recorded the grounds of appeal in the summary information above. In this instance more explanation is needed than can be readily summarised.
2. The appeal was apparently originally lodged by a letter dated 1 August 2016, without the standard form which should be submitted when appeals against enforcement notices are made. The Inspectorate agreed to give the appellant some time to complete the form and suggested that she might like to contact Planning Aid to obtain free advice. The form was then submitted in September 2016. This form contains various boxes to be ticked so as to indicate which grounds of appeal under Section 174(2) of the 1990 Act are being pleaded. None of the boxes were ticked. However, written comments were placed in the spaces on the form relating to grounds (a), (c), (d), (e), (f) and (g). In later correspondence, the Planning Inspectorate informed Mrs Beattie that she had not supplied sufficient facts to support grounds (c), (d) (f) or (g) and asked for confirmation of the grounds of appeal.
3. According to the case file, the Inspectorate wrote to Mrs Beattie on 9 December 2016 advising her that ground (a) had lapsed because the fee for the application

deemed to have been made under Section 177(5) of the 1990 Act had not been paid. Mr Beattie was also told: "We will start your appeal on grounds (d) and (g)".

4. To add to this muddled situation, the council's statement refers to ground (d) incorrectly - part of the statement is headed "Ground (d) The notice was not properly served on everyone with an interest in the land". The ground of appeal under which it could be argued that the enforcement notice was not properly served is ground (e) of Section 174(2), not ground (d).
5. At the site inspection I tried to obtain clarification on which grounds of appeal were pleaded, but Mrs Beattie was unable to understand my question and could not confirm which grounds she had intended to plead. In summary, there is so much muddle about the grounds of appeal that - in the interests of fairness - I have decided to treat the appeal as if every possible ground was pleaded, except ground (a) (which is the ground claiming that planning permission should be granted for the development enforced against).¹
6. I cannot consider ground (a) because as has already been pointed out to the appellant, it has lapsed due to non-payment of the fee for the "deemed application". The Planning Inspectorate warned Mrs Beattie about this twice, in August and September 2016. This means that several of the points made by the appellant - for example about the design or appearance of the tree house - are irrelevant, as these are arguments in support of granting planning permission for the tree house, which is not an option I can consider.
7. I take the other grounds in logical, not alphabetical, sequence below.²

Ground (e)

8. This is the ground of appeal under which it could be claimed that the enforcement notice was not properly served on all those with an interest in the land. Mrs Beattie has complained that the notice or a related letter was addressed to her late husband, and that a lady named as Mary Rose Champion (who was included in the people to whom the notice was addressed) has no connection with the property. The council say that they issued the enforcement notice to all those who had an interest in the land as recorded in the Land Registry.
9. I am satisfied from the available evidence that the notice was properly served. Even if the notice was served on some people who did not in fact have a legal or financial interest in the property, no injustice has been caused since Mrs Beattie was able to appeal before the notice came into effect. Therefore there is no reason to allow the appeal on ground (e).

Ground (b)

10. Under ground (b) an appellant can contend that the breach of planning control alleged in the enforcement notice has not occurred. In this instance, the tree house has obviously been erected, and the appellant has not attempted to argue otherwise. Any attempt to plead ground (b) would clearly have failed.

¹ Had I been minded to allow the appeal on any of the grounds on which the Borough Council have not made submissions, it might have been necessary to first invite comments from the council in the interests of fairness. In the event that has not been necessary.

² The reason for this logical sequence is that, for example, if an enforcement notice is not properly served an appeal on ground (e) would succeed, the notice would be quashed and all the other grounds would not need to be considered. If what is alleged to have happened did not happen, an appeal would succeed on ground (b), the notice would be quashed and all the remaining other grounds would not need to be considered - and so on with grounds (c), (d), (f) and (g) in that sequence.

Ground (c)

11. Under this ground it can be claimed that what is alleged to have happened did not constitute a breach of planning control. The construction of the tree house was an act of "development" as defined in Section 55 of the 1990 Act. Such development required planning permission. No planning permission was obtained; nor was permission granted by the then applicable Town and Country Planning (General Permitted Development) Order. Thus the development was unauthorised and if ground (c) had been pleaded it would have failed.

Ground (d)

12. To succeed on ground (d), an appellant has to show that by the time the enforcement notice was issued, the development had become "immune" and so lawful through the passage of time. The onus of proof (on the balance of probabilities) is on the appellant. In her letter dated 1 August 2016 when the appeal was first lodged, Mrs Beattie states: "The construction has been erected for more than four years". But no detailed historical evidence, for example about the date the tree house was substantially completed, has been submitted - and it is the date of substantial completion which is important. The construction was evidently started before Mrs Beattie's husband died in 2008, but Mrs Beattie states that "only in later years" was the tree house completed by friends. No sworn statement or independent evidence is provided. In summary, no real case has been made out to support an appeal on this ground. I conclude that assuming ground (d) was pleaded, it does not succeed.

Ground (f)

13. Ground (f) is concerned with the requirements of the enforcement notice. Mrs Beattie states that she has tried to accommodate the council by taking advice to avoid dismantling the tree house, and that she cannot afford to employ labour to dismantle it. Unfortunately for her, these arguments have little bearing on ground (f) - what Mrs Beattie really wants is to retain the tree house, but that would be equivalent to granting planning permission for it, and as explained in paragraph 6 above, that is not an option for me even to consider in the absence of any planning application.
14. Mrs Beattie asks why she would need to remove the materials.³ The requirement to remove the tree house and supporting frame, and to remove the materials from the land, are normal steps for an enforcement notice directed at a construction operation. If the appellant can satisfy the planning authority that she would have some acceptable alternative use for the materials, the authority might be prepared to waive the second part of the requirements (the law gives them power to do so), but that would be a matter entirely for the discretion of authority. There is nothing unreasonable or excessive about the requirements of this enforcement notice, so if ground (f) had been pleaded it would have failed.

Ground (g)

15. This ground of appeal concerns the compliance period. Mrs Beattie feels that two months is not sufficient to prepare her children and to organise the required dismantling. I realise that the tree house holds memories of Mrs Beattie's late husband and that its removal may be upsetting. However, this circumstance does not seem likely to change whether the unauthorised structure is removed in two months or, say, three or four months. The enforcement notice has been suspended during the appeal process, so the period for compliance will now run

³ In the appeal form, this question is written as a point purporting to relate to ground (g), but it is more appropriately considered as a "ground (f)" argument.

from the date of this decision. No real case has been made out to justify extending the two month period. I conclude that the appeal on ground (g) does not succeed.

Other Matters and Costs Warning

16. In reaching my decision I have had regard to all the other matters raised in the written submissions on which I have not specifically commented, including the comments about lowering the roof or removing part of the tree house. They do not outweigh the points discussed above.
17. At the start of this decision I referred to the lack of clarity in the way the appellant pursued her appeal. As far as I can see from the case file, administrators in the Planning Inspectorate tried on more than one occasion to help Mrs Beattie understand what she needed to do in order to lodge her appeal. Mrs Beattie appears not to have responded to several letters, and not to have followed up a suggestion about where she could obtain advice. Having issued an enforcement notice, together with attached information about how to appeal and the grounds on which an appeal may be made, the Borough Council cannot reasonably be expected to advise the appellant in further detail how to appeal against their notice.
18. Both sides in this case have been negligent. The council should have known better than to treat ground (d) as relating to the service of the enforcement notice. Mrs Beattie has not been professionally advised and so cannot be expected to be familiar with planning law; but she should note that appellants have a responsibility to conduct appeals in a reasonable manner. This includes responding to communications and making a proper effort to understand what is required, or if necessary seeking advice, either from a professional source such as a planning consultant or from a free advice service such as Planning Aid or a Citizen's Advice Bureau. I have considered instituting an award of costs against the appellant on the grounds that her conduct of the appeal process fell short of what should reasonably be expected, but on balance I have decided against doing so.

Formal Decision

19. I dismiss the appeal and uphold the enforcement notice.

G F Self

Inspector