
Appeal Decision

Site visit made on 30 May 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 26 June 2017

Appeal Ref: APP/W4325/C/16/3163998

Land at Frankby Cottage, Montgomery Hill, Caldy, Wirral, CH48 1 NF

- 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 Jonathan Shudall against an enforcement notice issued by Wirral Borough Council.
 - The notice was issued on 28 September 2016.
 - The breach of planning control as alleged in the notice is described as: alleged erection of tree house and platform.
 - The requirement of the notice is to permanently remove the treehouse and platform.
 - The period for compliance with the requirement is within a period of two months from the date on which this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The appeal is allowed and 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 for the development already carried out, namely erection of tree house and platform on land at Frankby Cottage, Montgomery Hill, Caldy, Wirral, CH48 1 NF referred to in the notice subject to the following conditions:
 - 1) The development hereby permitted, subject to conditions 2) to 5) inclusive, shall be maintained in accordance with Drawing Ref PWH/16/FCTH-1 dated 1 November 2016.
 - 2) Unless within three months of the date of this decision a scheme for the exterior painting of the tree house including its platform hereby permitted, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the tree house shall cease and the tree house and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.
 - 3) If no scheme in accordance with condition 2) is approved within three months of the date of this decision, the use of the site shall cease and the tree house and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
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- 4) Upon implementation of the approved scheme specified in condition 2) that scheme shall thereafter be retained in use.
- 5) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in conditions 2) and 3), the operation of the time limits specified therein will be suspended until that legal challenge has been finally determined.

Preliminary matters

2. The Council did not attend the pre-arranged site visit. My inspection of the site was undertaken alone, so far as circumstances permitted, and I inspected the tree house and its environs unaccompanied while the owner waited in the background. There was of course no discussion regarding the appeal and the Council has since accepted the procedure.
3. Section 177(1)(a) states that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.
4. I saw that the tree house has been constructed in accordance with a drawing submitted in this appeal Ref PWH/16/FCTH-1 dated 1 November 2016, except that part of the platform appears to be missing and the safety rail was not fitted. Also the timber is untreated whereas the plan shows it to be stain finished brown. For the avoidance of doubt I am satisfied that the platform as detailed in the drawing is within the scope of s177(1)(a) of the 1990 Act such that they are capable of forming part of the deemed application in this appeal.

Ground (a) and the deemed application for planning permission

Main issue

5. The main issues on this ground are:
 - a. Whether the development is inappropriate development in the Green Belt having regard to the development plan and national planning policies; and
 - b. The effect of the development on the character and appearance of the area.

Reasons

Whether inappropriate development

6. Paragraph 89 of the National Planning Policy Framework (Framework) states that new buildings would be inappropriate development in the Green Belt. An exception would be the provision of "appropriate facilities for outdoor sport and recreation", as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
7. The development plan includes the Unitary Development Plan for Wirral 2000 (UDP). Policy GB2 states that within the Green Belt there is a general presumption against inappropriate development and such development will not be approved except in very special circumstances. Paragraph 215 of the Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

8. The exception in Policy GB2 (ii) is for “essential facilities” for outdoor sport and outdoor recreation. It is based on an earlier expression of national Green Belt policy in the form of the now cancelled PPG2 which also used the term “essential facilities”. As the policy is of some age and contains a significant inconsistency compared with the more recent national policy, I give greater weight to the policies in Paragraph 89 and section 9 of the Framework.
9. Openness is defined as absence of development so that any development will have an impact on openness whether or not it is visible from public viewpoints. It may include factors relevant to visual impact or amenity although the absence of visual impact is not necessarily a measure of the effect on openness in relation to Green Belts. That said, openness is not narrowly limited to a volumetric approach. One of the purposes of the Green Belt according to Paragraph 80 of the Framework is “to assist in safeguarding the countryside from encroachment”, which itself includes preservation of openness of aspect, a characteristic quality of the countryside. Openness is an open-textured concept and several factors may be relevant in an assessment of it.
10. The tree house is supported on joists fixed into the canopy of two mature trees and it sits within their canopies in a secluded part of the extensive rear garden of Frankby Cottage. The gross floor space created is 12m² within a site area of some 0.8ha. There is a narrow timber platform with an overall length of 6m, set 3.3m from the ground, accessed by a ladder. A small playhouse of simple design is affixed to it, 2.3m tall with a footprint of 1.5m x 2.1m, resulting in a usable platform area of some 2.1m x 3m. Consequently the bulk of the structure has a spatial impact on openness, albeit minimal.
11. In terms of its locational context the tree house is in a rural setting, within the north-east boundary of a residential plot of a dwelling that is part of a small cluster of other dwellings with large gardens. Frankby Cottage retains permitted development rights for certain built development in its curtilage, up to 4m high if 2m away from the curtilage boundary and 2.5m high otherwise.
12. A public footpath about 85m away at the front of the property extends eastward where glimpses are obtainable of the north-east boundary. Given the distance and angle of view, if it is seen at all, the visual impact of the tree house would be very small, even allowing for leaf fall in the winter. The appellant would accept a condition requiring the finished colour to the tree house and platform to be approved. Such a condition would in my view ensure that the structure minimises any visual impacts.
13. The tree house is for children of the appellant to encourage outdoor activity. As such it represents the provision of appropriate facilities for outdoor recreation, supported generally in the Framework. It is unlikely to be in use other than in the warmer months and the level of activity on and surrounding it will consequently vary considerably depending on the seasons of the year.
14. Considering its purpose, minimal scale, design and locational context, the inherent spatial and visual impacts arising from the tree house are not in my judgement harmful to the openness of the Green Belt. The predominant sense of greenness and freedom from development at the site would be preserved such that there would be no encroachment into the surrounding countryside, nor would it conflict with the other purposes for including land within the Green Belt.

Other matter: "extensions" policy

15. The Council also relies on UDP Policy HS11 in support of its case, which deals with proposals for house extensions. Neither the policy, the reasoned justification, nor the Council itself explains why the policy is relevant to the erection of free standing buildings. Case law has confirmed that an extension to a building is capable of including the erection of a detached outbuilding as a normal domestic adjunct to the dwelling. However whether the erection of an outbuilding should be considered an "extension" to the dwelling is a matter of fact and degree in each case. Nothing in the text of the policy suggests the kind of development comprised in the enforcement notice should be an "extension" and in view also of the considerable distance from the dwelling, I see no justification for Policy HS11 to apply.
16. That said, the Supplementary Planning Guidance Note 11 2004 - House Extensions (SPG) is also referred to by the Council. It deals almost exclusively with "extensions" without clarifying whether or how that might include outbuildings. However it advises that "extensions *and* buildings" within gardens in the Green Belt should not have a harmful visual impact on their surroundings. I am doubtful of the status of the document supplied¹ but that apart, the advice in the SPG should be treated as a material consideration. The tree house would comply with the advice as, although it has a slight visual impact in my view it would not be a harmful influence on its surroundings.

Conclusion on whether inappropriate development

17. The tree house provides appropriate facilities for outdoor recreation that for the reasons given preserve the openness of the Green Belt and do not encroach upon it or conflict with any of the purpose of including land within it. It is therefore not inappropriate development for the purposes of the Framework.
18. As I have found no harm to the Green Belt by reason of inappropriateness, the test set out in Paragraph 88 of the Framework does not apply. Therefore the appellant does not need to demonstrate that very special circumstances exist that outweigh any harm to the Green Belt so as to justify the development.

Character and appearance

19. The appeal site is adjacent to Caldry Conservation Area, however no concern is expressed by parties that the development fails to preserve or enhance its setting. Given its organic material and simple form, and subject to a suitable painting scheme, the tree house is not intrusive in the wider area and its appearance is consistent with the domestic ancillary function of the garden. It would not alter the essential character of the rural open landscape which surrounds it. Therefore there is no adverse harm to the character or appearance of the area, and in this respect it complies with the SPG. It also complies with Paragraph 58 of the Framework which, among other matters, seeks development that responds to local character.

Other matters

20. The elevated position and fairly close proximity to the boundary of Woodhome allows views into a relatively small part of the garden of that property, however

¹ The document supplied is in the form of a draft policy in a report that was presumably presented to a committee meeting, making it unclear whether its contents were in fact adopted by the Council.

the views are mitigated by considerable tree planting at the boundary such that any overlooking would not cause an unacceptable loss of privacy.

21. Some of the activities associated with the tree house could be noisy. It is however less likely to be used in colder or wetter months. The main dwelling at Woodhome and its immediate private amenity space is some 100m from the tree house. At the time of my visit the zip wire said to have been used from the structure was not in evidence. However it has to be considered that such equipment might be attached to trees without the tree house being there. Recreational use of a garden area is likely to result in some noisy activity from time to time wherever children or indeed adults are present.
22. Where the impacts are significant it may be necessary to withhold permission. In this instance, having carefully considered the comments of interested persons I am satisfied that the use of the tree house would not be so oppressive to occupiers of Woodhome so as to demonstrably harm the use and enjoyment of that land. Nor do I consider that in view of the separation distances involved, serious loss of privacy or significant noise disturbance would result to other residents nearby.

Conclusions on ground (a) and conditions

23. The development is not inappropriate development within the Green Belt having regard to the development plan and national policies, in particular section 9 of the Framework. It is in keeping with normal residential use as an ancillary facility that having regard to its location and minimal scale in particular, does not harm the essential character or appearance of the locality. It thus complies with SPG and Paragraph 58 of the Framework.
24. I have imposed conditions requiring a scheme of painting of the tree house to be approved, in the interests of preserving the character and appearance of its surroundings. I will also specify by condition the relevant drawing as this would provide, in the interests of safety and certainty that the platform and the safety rail will be properly maintained as such.

Conclusion

25. For the reasons given above I conclude that the appeal on ground (a) should succeed and that the enforcement notice should be quashed and planning permission granted on the application deemed to have been made under section 177(5) of the Act.

Grahame Kean

INSPECTOR