
Appeal Decision

Site visit made on 1 April 2019

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 April 2019

Appeal Ref: APP/M0655/C/18/3206121

38 Arizona Crescent, Great Sankey, Warrington WA5 8DA as shown edged red on the plans attached to the notice

- 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 Krishan Jaglan against an enforcement notice issued by Warrington Borough Council.
 - The enforcement notice was issued on 24 May 2018.
 - The breach of planning control as alleged in the notice is the construction of a cricket practice cage in the rear garden.
 - The requirements of the notice are (a) completely remove the enclosure and associated materials or (b) reduce the height of the enclosure to a maximum of 2.5 metres.
 - The period for compliance with the requirements is 1 calendar month.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended (the Act).
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal on ground (c)

2. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
3. The notice alleges unauthorised operational development. There is no suggestion from the Council that the alleged breach of planning control has resulted in a material change in the primary use of the land as a single dwellinghouse. Taking into account the evidence before me, as well as my own site inspection, the use of the land by the appellant's son/family members for cricket practise purposes has not lead to a material change of the use land as a dwellinghouse.
4. The point of contention relates to whether or not the breach of planning control constitutes the erection of a building, and, if so, whether such a building would be permitted development taking into account the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
5. The breach of planning control includes six 3.6 metre high posts which according to the appellant have been "*buried in ground to provide stability*". All six posts are covered with a net which comprises 50x50 mm mesh. The appellant says that the cricket net is removable and so it is not a permanent

- fixture. The appellant contends that the breach of planning control is not a building and hence planning permission is not required for it.
6. Section 336 of the Act states that a building "*includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*". In considering the above matter further, the Courts have defined a building. In this regard, there are three matters that need to be considered: (i) that the development is of a size to be constructed on site, as opposed to being brought on to the site, (b) its degree of permanence and (c) physical attachment. No single matter is necessarily decisive and a planning judgment should be reached on a fact and degree basis.
 7. It is clear from reading the appellant's ground of appeal that there is no suggestion that it is intended to move the six posts from their current position. In this regard, the evidence indicates that the six posts are intended to be permanently in their current position. I acknowledge that the netting may be capable of being removed with relative ease from time to time. However, there is no suggestion that the netting would not be in place for some periods of time: 'permanent' in the context of planning control does not necessarily mean everlasting. In any event, the potential to remove the netting for some periods of time would not alter my view that when the breach of planning control is considered as a whole, and on the evidence that is available to me, it would be seen as being a permanent addition to this garden setting.
 8. I was able to see on my site visit that the posts were "*buried*" into the ground. Indeed, I was able to see that concrete had been used. Whilst there is some indication that the netting might be removed from time to time, I consider that the posts, which essentially provide the frame for the netting, have been erected on the site in such a way that they are physically attached to the ground. The potential to remove the netting from time to time, does not alter my view that when the breach of planning control is considered as a whole, and on the evidence that is available to me, the substantive part of the cricket practise facility is physically attached to the ground.
 9. Given the nature of breach of planning control (i.e. six separate 3.6 metre high posts, cross posts and affixed netting), coupled with the fact that the posts are buried into the ground, the evidence before me indicates that the breach of planning control was not brought onto the site in one piece and in fact was very likely constructed and assembled on site: the appellant has made no reasonable case to the contrary.
 10. For the collective reasons outlined above, and as a matter of fact and degree, I conclude that the breach of planning control amounts to the erection of a structure and hence a building as defined in Section 336 of the Act.
 11. Class E of Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such unless that building is within 2.0 metres of the boundary of the curtilage of the dwellinghouse and exceeds 2.5 metres in height. Paragraph 2(1) of the GPDO defines a building as including "*any structure or erection*". As the structure/building is positioned immediately alongside the boundary of the curtilage of the dwellinghouse and exceeds 2.5 metres in height, planning permission is therefore required for the breach of planning control.

12. On the evidence that is before me, and for the reasons outlined above, I conclude that the breach of planning control constitutes operational development for which planning permission is required. Therefore, the ground (c) appeal fails.

D Hartley

INSPECTOR