



Appeal Decision

Site visit made on 4 December 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2020

Appeal Ref: APP/W0530/C/19/3229126

**The Land at Burwash Manor Farm, New Road, Barton, Cambridgeshire
CB23 7EY**

- 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 Michael James Alec Radford against an enforcement notice issued by South Cambridgeshire District Council.
 - The enforcement notice was issued on 23 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of children's play equipment.
 - The requirements of the notice are:
 - 1) Cease the use of the play equipment. Specifically the "Captain Mannering Four Platform Adventure Tower", and
 - 2) Remove the play equipment, specifically the "Captain Mannering Four Platform Tower" from the land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.
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Decision

1. The enforcement notice is quashed.

Matters concerning the Notice

2. In the enforcement notice (the 'Notice') the allegation is inconsistent with the requirements, in that the former targets only play equipment in the hatched circle, which it defines as the 'Development', but the latter requires removal of play equipment from the "Land".
3. The Land is defined in the Notice as that with 'thick black edging'. However, the plan does not show any area enclosed with thick black edging. Whilst the allegation does not make use of the "Land", the requirements depend on knowing what the "Land" is. Under s173(10) of the Act and Regulation 4¹ the Notice shall specify the precise boundaries of the land to which the Notice relates, whether by reference to a plan or otherwise.
4. On my site visit I observed two pieces of children's play equipment, namely a wooden swing set (hereafter referred to as 'the Swings') and a wooden climbing frame of multiple platforms. Both parties confirmed to me on site that

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

the latter was the Captain Mannering Four Platform Tower referred to in the Notice (hereafter referred to as 'the Tower').

5. Both pieces of play equipment were located within a rectangular play area, which was separated from the wider surrounding grassed picnic area by a picket fence on three sides and with the fourth side being formed by the southern site boundary with the rear of properties on Allens Close. A rectangle can be seen on the plan attached to the Notice, which approximates with the rectangular picket fence area. But this rectangle is not outlined by a black line any thicker than lines demarcating the properties on Allens Close, so is not the "Land". However, I am satisfied from my visit that the position of the Tower approximates with the hatched circle, even if the "Land" itself is not shown.
6. I note that the Council's officer report describes the "play equipment" as comprising both a Captain Mannering climbing frame and 2.4m log swing with cradle and flat seats. These are two separate pieces of play equipment as the Tower does not contain any swings, as was evident on site. The report refers to the play equipment (i.e. the Tower and the Swings) being in close proximity to the rear gardens of properties on Allens Close and causing noise and disturbance. On site, both the Tower and the Swings were a similar distance from the boundary with the rear gardens.
7. The report continues that the Tower in particular, due to its height, would give rise to overlooking of the rear garden areas, in particular Nos.1 and 2 Allens Close. However, Nos.1 and 2 are furthest away from the hatched circle of the Tower.
8. The third reason for refusal in the Council's report refers to the play equipment (both pieces) causing noise and disturbance and overlooking to properties Nos.1, 2, 4 and 6 Allens Close – the extent of these properties also coincides with the location of the Swings. Therefore, the Council's report does not categorically confirm if the Notice has been served because of the problems caused by both pieces of children's play equipment, or just because of the Tower alone. But it is clear from the Council's report that both pieces are, in its view, clearly causing problems.
9. Reason 4.5 of the Notice refers to the Development (namely the play equipment within the hatched circle) causing noise and disturbance and overlooking. This would appear to indicate that the Tower is the subject of the Notice, somewhat at odds with the concerns of the officer report.
10. The ambiguity is further fuelled by the requirement of the Notice and the use of the word "specifically". The punctuation used in the first requirement makes it unclear as to whether the use of all play equipment (emphasising the Tower) should cease, or only the Tower. Although the punctuation is changed in the second requirement, the similar wording used also causes uncertainty as to whether or not the removal of all play equipment is required.
11. I note that the appellant, in his Statement, regards the Notice to only refer to the cessation of the use of the Tower and its removal. However, I find the Notice is defective, although not a nullity, because of the inconsistency and ambiguity described above.
12. I have powers to correct a defective Notice. However, I do not have enough information to amend the plan attached to the Notice to define the "Land" as

described by the 'thick black edging'. If I were to correct the Notice to define the land as the rectangular play area as was clearly demarcated on site by the picket fence, this could possibly enlarge the land and require removal of two pieces of play equipment. This would enlarge the scope of the Notice and cause injustice to the appellant.

Conclusion

13. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land where the breach of planning control is alleged to have taken place. The enforcement notice cannot be corrected without causing injustice.
14. The enforcement notice is therefore invalid and will be quashed. In these circumstances the appeal on ground (a) as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

K Stephens
INSPECTOR