



Appeal Decisions

Site visit made on 9 March 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 April 2020

Appeal A Ref: APP/X2220/C/19/3240875

Appeal B Ref: APP/X2220/C/19/3240876

12 Silberts Close, Dover, Kent CT15 7LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Aiden Softley and Appeal B is made by Mrs Gemma Caister-Softley against an enforcement notice issued by Dover District Council.
 - The enforcement notice, numbered UDEV/19/00125, was issued on 11 October 2019.
 - The breach of planning control as alleged in the notice is the erection of a playhouse structure, incorporating a raised platform exceeding 0.3m in height.
 - The requirements of the notice are to dismantle the playhouse marked as A, shown in the approximate position on the attached plan and shown in photograph A.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural matters

2. The appellants case is set out in the enforcement notice appeal form and their written statement, dated 26 January 2020. It is clear that there is significant overlap in the evidence advanced for the two different grounds of appeal. I have therefore considered the evidence in the context of the correct ground.

Reasons

Appeal A and Appeal B - ground (b)

3. The site comprises a semi-detached dwelling within a small development of residential properties. There is a moderate rear garden where the playhouse has been sited. The appeals are proceeding on ground (b), that the matters alleged in the notice have not occurred. This is known as one of the legal grounds and therefore the burden of proof is on the appellants.
4. The appellant's case on ground (b) is set out in their statement. They confirm that the climbing frame was purchased and constructed in April 2019, which predates the issue of the notice on 11 October 2019. It was clear from the site

visit that the playhouse remains on the site. I have no evidence that the playhouse I saw, differs from that on site when the notice was issued. A Certificate of Lawful Development application (existing) for a children's playhouse in the rear garden, has been submitted to the Council. This application has not been validated, but also confirms that the structure was substantially completed on 14 April 2019.

5. From the evidence I am satisfied that the matter alleged in the notice has, as a matter of fact, occurred. The appeal on ground (b) therefore fails.

Appeal A and Appeal B - ground (c)

6. The appeals are also proceeding on ground (c), that the matter alleged in the notice does not constitute a breach of planning control. This is another legal ground where the burden of proof is on the appellant, to make out the case that there has not been a breach of planning control.
7. The gist of their case is that the structure is temporary and is not fixed or concreted into the ground. They submit that the playhouse is a temporary structure.
8. Section 55(1) of the Town and Country Planning Act 1990 defines two limbs of development, namely operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. The first comprises activities which result in some physical alteration to the land with some degree of permanence, whilst the second comprises activities which are carried out in, alongside or on the land, but do not interfere with the actual physical characteristics of it.
9. It is established in case law that there are three primary tests to determine whether a particular structure is a building operation. These are: Size and whether the structure is constructed on site, as opposed to being brought onto the land ready-made; Physical attachment to the ground; and Permanence - normally the making of a physical change of some permanence. No single factor is decisive.
10. In this instance, the playhouse has been sited in the rear garden along the boundary with the neighbouring property. It comprises a roofed structure, with a balcony leading to a child's slide and steps and is raised above the ground on six timber supporting legs. It is of substantial solid timber design and was constructed on site.
11. The supporting legs have not been concreted or fixed to the ground, although I saw at my site visit that there are small spikes in the ground to stabilise the slide. It is not in dispute that the individual legs can be slightly lifted just clear of the ground by one person. The whole structure is capable of being moved, albeit by six people.
12. The grass beneath the structure has been removed and an area of artificial grass has been laid for the children's safety. I have no evidence to suggest that the structure has been moved since it was completed in April 2019. It has therefore been in the same position for almost a year and may remain in situ for many years to come. There is no evidence to suggest that there is any intention or reason to move it in the future. This view is supported by the associated changes that have been made to the surface of the ground. Taking

all of the above factors into account, I find that the development constitutes operational development.

13. Having determined that the playhouse constitutes operational development, it is then necessary to consider whether any permitted development rights apply. Schedule 2 Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, (GDPO) permits buildings required for a purpose incidental to the enjoyment of the dwellinghouse, to be built within the curtilage of a dwelling house without the need for express permission. However, such development is not permitted if it would include the construction or provision of a verandah, balcony or raised platform that exceeds 300mm in height. The raised platform, or balcony, of the playhouse clearly exceeds this height limit and therefore the development does not benefit from the rights conveyed by the GDPO.
14. Drawing all of the above points together, on the evidence I have before me, and on the balance of probability, I am satisfied that the structure constitutes development requiring planning permission. The appeals on ground (c) therefore fail.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Hilary Orr

INSPECTOR