The Planning Inspectorate

Appeal Decision

Site visit made on 21 May 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2020

Appeal Ref: APP/U2370/C/19/3242359
Land at 99 Fleetwood Road, Poulton-le-Fylde, Lancashire FY6 7NU

- 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 Little Explorers Nursery and Forest School Carleton against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice, numbered PLG/6/113, was issued on 14 November 2019.
- The breach of planning control as alleged in the notice is:
  Without planning permission, the erection at first floor level of screening approximately 1.8 metres in height to the northern boundary and to the southern boundary and to the eastern boundary of the existing flat roof to the rear elevation of the detached building on the Land (shown edged in blue on the attached plan) to create an enclosure ("the Screening").
- The requirements of the notice are:
  Take down/demolish the Screening in its entirety (for the avoidance of doubt including, but not by way of limitation, any and all supporting posts) and remove it from Land.
- The period for compliance with the requirements is twenty eight days.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (f)

1. Planning permission[1] was granted 14 August 2017 for the 'Conversion of rear first floor flat roof to outside play area for children'. The rear first-floor flat roof of the appeal property is currently being used as an outdoor play area for children, similar to the development granted planning permission. The approved development included an obscure glazed with steel posts enclosure. There is no dispute between the parties that planning permission 17/00564/FUL remains extant. The constructed development has a plastic cladding enclosure with clear glazed windows.

2. Section 173 (3) of the Town and Country Planning Act 1990 as amended (the Act) states that 'An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes…'. Purpose (a) under Section 173 (4) is 'remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by

[1] LPA ref: 17/00564/FUL

discontinuing any use of the land or by restoring the land to its condition before the breach took place.'

3. The requirement of the subject enforcement notice seeks the removal of the screening, which would remedy the breach of planning control. However, it is necessary to consider whether the steps required are excessive (section 174(2)(f) of the Act). The extant planning permission could be implemented, which would likely have less of a detrimental effect on the operation of the business, i.e. the use of the area could be retained as an outside play area. Altering the existing screening to bring it in accordance with the approved development would have the same effect of remedying the breach as seeking its removal altogether by making it comply with the terms (including conditions and limitations) of a planning permission.

4. Therefore, the requirements of the enforcement notice are excessive as there is a reasonable, less onerous, alternative. I shall therefore vary the notice to include the alteration of the screening to comply with the extant permission as an alternative to the existing requirement.

Ground (g)

5. This ground of appeal is that the period for compliance is unreasonably short. The period for compliance is 28 days. The appellant makes a number of arguments as to why this period of compliance is unreasonable, although I note that no alternative period has been suggested. These arguments include the difficulty in arranging tradespersons to remove the screening just prior to Christmas. However, due to the timing of the appeal, this is no longer a critical issue. The appellant also argues that there are health and safety factors to take into account due to the nature of the business.

6. The construction of screening does not appear to be overly complex or heavily engineered. It seems to me that it would only likely take a matter of a few days, as contended by the Council, to remove it. However, it would potentially have a significantly adverse effect on the operation of the business, particularly if it was carried out when children are on the premises as there would be potential conflict between the tradespersons and the children. Therefore, the works would have to be carefully planned and managed. Such effects would likely be compounded by the current coronavirus pandemic.

7. I acknowledge that there would be potential difficulties in removing the screening whilst minimising any adverse effects on the operation of the business. However, the screening is a relatively lightweight construction and any disruption would likely be only for a few days. Nevertheless, the coronavirus situation clearly adds difficulties and uncertainties, even for relatively small undertakings of this kind. For that reason, I consider that an extension to three months is reasonable to reflect all these circumstances. I shall vary the notice accordingly prior to upholding it.

Formal Decision

8. The appeal is allowed and it is directed that the enforcement notice be varied as follows: by deleting the sub-text of paragraph 5 in its entirety and substituting: 'You must (1) Take down/demolish the Screening in its entirety (for the avoidance of doubt including, but not by way of limitation, any and all supporting posts) and remove it from the Land, or, (2) alter the Screening to

comply with planning permission ref: 17/00564/FUL, approved on 14 August 2017, and remove any excess materials from the Land'; and, the substitution of 3 months as the period for compliance.

Alexander Walker

INSPECTOR