
Appeal Decision

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 18 September 2020

Appeal A Ref: APP/Y2003/C/20/3248758

Appeal B Ref: APP/Y2003/C/20/3248759

90 Windsor Way, Broughton, Brigg, DN20 0EL

- The appeals are 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 Oliver Bassil and Appeal B by Mrs Emma Bassil against an enforcement notice issued by North Lincolnshire Council.
 - The enforcement notice was issued on 10 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection of play equipment in excess of 2.5 metres in height within 2 metres of the boundary, which includes the construction or provision of a verandah, balcony and raised platform in excess of 30 cm above ground level.
 - The requirement of the notice is to remove the structure in its entirety.
 - The period for compliance with the requirements is 28 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

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

Procedural matter

2. The appellants indicated on the appeal form that a site visit was necessary to check relevant dimensions. On two occasions, the scheduled visits had to be postponed, due to the personal circumstances of the appellants. I then invited the Council, whose view was that a site visit was not required, to submit photographs of the development. In turn, I invited the appellants to submit their own photographs; these had added dimensions. I came to the view that, together with the written statements, this was sufficient evidence for my consideration of the appeals, which I have determined on this basis.

The appeal on ground (c)

3. This ground of appeal is that there has not been a breach of planning control; the planning merits of the development are not relevant. Operational development is defined in S.55(1) of The Act as "the carrying out of building, engineering, mining or other operations in, on, over or under land". A building is defined in S.336 of The Act as including any structure or erection. The Courts¹ have identified three primary factors as being decisive of what was a building (a) that it was a size to be constructed on site, as opposed to being

¹ Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

brought on to the site, (b) permanence and (c) physical attachment. No one factor is decisive.

4. At over 3.25m in height, this mainly timber structure is substantial in size and must have been assembled on site. It appears to be intended to remain in situ for the duration of its usefulness to the appellants' family, which would be likely to amount to a significant number of years; it should therefore be regarded as permanent in this context. It appears to be attached to the ground by its own weight and not to be readily moveable. Based on these considerations, the play equipment appears to me to fall within the definition of a building.
5. In Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO], permission is granted for buildings etc. incidental to the enjoyment of a dwellinghouse, subject to a number of criteria, E.1 (a) to (j). Of those that are relevant, the Council accepts that it meets criterion E.1 (e)(i) in that it has a dual-pitched roof and is less than 4m high but submits that it fails criterion (e)(ii) by exceeding 2.5m high within 2m of the boundary. This is disputed by the appellants in relation to the side boundary but they have not commented on the proximity to the rear boundary. Although this issue could have been resolved by measurement during a site visit, I do not need to determine it because the building fails to comply in other respects.
6. The building would not comply with a strict interpretation of criterion E.1 (d) as it has more than a single storey. However, as these are three, very small, child-size storeys which, put together, approximate to a normal storey height, this appears to breach the letter but not the spirit of the GPDO. However, what is clear from the photographs is that the structure includes, at a high level, the construction of a raised platform² and therefore falls foul of criterion E.1 (h). On this basis, the erection of the building required planning permission and the appeals on ground (c) fail.

The appeal on ground (f)

7. There is no appeal on ground (a) in this case and therefore I am unable to consider the planning merits of the development.
8. In their grounds of appeal, the appellants appear to accept that the only way to address the breach is to remove the structure entirely, as required by the notice. Although I have only seen photographs of the play equipment, and have no details of the method of construction, I find it surprising that it could not be modified, and perhaps re-sited within the garden, to overcome the main reason for issuing the notice, the overlooking of neighbouring residents. However, I have no alternative proposal before me such that I could vary the notice. Accordingly, the appeals on ground (f) fail.

B.S. Rogers

Inspector

² The GDPO defines "raised" in relation to a platform as being a platform with a height greater than 0.3 metres.