



Appeal Decision

Site visit made on 17 November 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2021

Appeal Ref: APP/U2235/C/20/3255164

Land at The Rose, 87 Ashford Road, Bearsted, Maidstone, Kent ME14 4BS

- 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 R Channa against an enforcement notice issued by Maidstone Borough Council.
- The enforcement notice was issued on 21 May 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of permanent children's climbing play equipment in the garden curtilage of The Rose Public House.
- The requirements of the notice are: (a) Dismantle from the land the children's climbing play equipment; (b) all resultant materials from step (a) removed from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

1. The appellant confirmed during these proceedings that he is no longer pursuing the ground (a) appeal. In the absence of a deemed application arising from a ground (a) appeal, I am unable to consider the planning merits of the development alleged in the enforcement notice. It also means that I cannot determine whether the alternative scheme put forward with the appeal is a part of the development alleged in the notice.

Background

2. The appeal site contains a pub/restaurant and the associated car parking area, including a hand car wash facility, as well as a rear garden containing outdoor seating. The climbing frame in the enforcement notice is a timber structure with a raised platform approximately 1.5m above ground level, partly covered by a roof. The climbing frame is located within the pub garden, towards the common boundary with adjoining residential property. An appeal against the refusal of planning permission for the climbing frame was dismissed in May 2019¹. An appeal against the refusal of planning permission for a climbing frame of an alternative design and position was dismissed in April 2020².

Ground (f) appeal

3. The ground of appeal is that the requirements of the notice are excessive.

¹ Appeal Ref: APP/U2235/W/19/3222909.

² Appeal Ref: APP/U2235/W/20/3244124.

4. At s173 (4), the Act provides that an enforcement notice can have two purposes, namely: (a) remedying a breach of planning control, including by restoring the land to its condition before the breach took place, or; (b) remedying any injury to amenity caused by the breach. The purpose of the notice is not specified. However, the notice alleges the erection of a climbing frame without planning permission. The notice requirements include demolition of the climbing frame. If the purpose of the notice had been solely to remedy an injury to amenity, it would have required modification of the climbing frame to a point where amenity was no longer adversely affected. That it does not do so means that the purpose of the notice must be to remedy the breach by restoring the site to its condition before the breach took place, falling within sub-section (a) above. That purpose can only be achieved by demolition of the climbing frame.
5. As noted above, drawings showing a climbing frame of an alternative design and in a different position were supplied with the appeal. However, the power to grant planning permission, whether in whole or part, in respect of what is alleged in the notice in s177(1) of the Act is linked to ground (a), not ground (f). Established case law confirms that where there is no deemed application following a ground (a) appeal and the purpose of the notice is to remedy the breach, general planning considerations cannot be taken into account and the notice cannot be varied to attack its substance³. Any assessment of the alternative scheme would necessarily involve consideration of its planning merits, including whether the objections to the development would be overcome. Therefore, the alternative scheme cannot form part of the considerations under ground (f) and it does not represent an obvious alternative to the notice requirements.
6. Given the above context, the notice requirements are reasonable and are not excessive, having regard to the purpose of the notice. Any requirements that stopped short of demolition of the climbing frame would not restore the site to its condition before the breach took place and so would not remedy the breach.
7. Accordingly, the ground (f) appeal fails.

Conclusion

8. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

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

Stephen Hawkins

INSPECTOR

³ *SSTLR v Wyatt Brothers (Oxford) Ltd and Oxfordshire CC* [2001] PLCR 161; *Mata v SSCLG* [2012] EWHC (Admin).