



Appeal Decisions

Site visit made on 16 February 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 March 2021

Appeal A: APP/R2520/C/20/3262424

Appeal B: APP/R2520/C/20/3262425

Land known as 2 Sisters Close, South Hykeham, Lincoln, LN6 9YE

- 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 appeals A and B are made by Russell Drewery and Kerry Drewery respectively against an enforcement notice issued by North Kesteven District Council.
 - The enforcement notice, numbered ENF/619983, was issued on 30 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of operational development on the Land, namely the erection of a timber garden room.
 - The requirements of the notice are (a) Disassemble the timber garden room referred to in paragraph 3 of this Notice; (b) Remove from the Land all materials arising from the above; and (c) Reinstall the land with top soil and grass, so that it matches the ground level immediately adjacent to the footprint of the removed timber garden room.
 - The period for compliance with the requirements is 16 weeks.
 - Appeals A and B are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. In respect of Appeal A only, the appeal on ground (a) and the application for planning permission deemed to have been made also falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by the insertion of the word 'partial' before the word 'erection' in paragraph 3, 'The Breach of Planning Control Alleged'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (b) and the Notice

2. An appeal on this ground is on the basis that the matters stated in the notice have not occurred. The appellants' case is that the description of the breach of planning control as alleged in the notice, namely the erection of a timber garden room, has not occurred as a matter of fact as the development is only partially built and is not a completed building. My observations during the site visit accords with the evidence submitted by the parties, the development is a partially constructed building consisting of a wood-frame structure resting on a gravel and metal mesh base but without solid walls, floors or a roof. The appellant has put these arguments as an appeal under ground (b) and it has therefore been considered in those terms, although success on this ground does not invariably result in the notice being quashed.

3. The Council does not object to the correction of the wording of the allegation and it was clear that the notice related to the timber structure in the rear garden of 2 Sisters Close. The allegation can be corrected, even in the absence of an appeal under ground (b), to the "partial erection of a timber garden room" without causing injustice to either party. The development has taken place, there is no dispute regarding this, and the appeal under this ground is put on the basis that the description is incorrect. It is not arguable that the correction denies the appellant the opportunity to appeal on other grounds and I direct that it is corrected as set out above. The appeal therefore succeeds on ground (b) but I am not quashing the notice.

Ground (a) and the application for deemed planning permission

4. This ground now falls to be considered on the basis of the allegation as corrected pursuant to ground (b). The application for deemed planning permission is for the partial erection of a timber garden room
5. The main issues on this ground are the effect of the development on:
- The character and appearance of the area, including its effect on a protected tree; and
 - The living conditions of the occupants of the host property and neighbouring properties.

Character and appearance

6. The host property is located in a short residential street with access and parking to the front and gardens to the rear adjoining the rear gardens of houses on Ascot Way, which is where the protected tree is located.
7. Neither party has submitted technical evidence regarding the protected tree but both agreed that the Tree Officer from the Council provided comments during a retrospective application for the development which was subsequently withdrawn. I have not seen a copy of these comments but the parties agree that the Tree Officer stated that s/he could not support the application as it would result in a reduced favourable rooting environment. The Council's case in summary is that the structure has a new base which exceeds the recommended limit of 20% coverage of any existing unsurfaced ground within the root protection area ("RPA") of the tree which will affect the tree's vitality and longevity. The appellant has not provided a tree survey or any information regarding the impact of the development on the protected tree. The appellant states that the appeal structure has no foundations and that the impact on the root system of the tree is minimal but does not provide evidence to support this and does not dispute that the base of the development exceeds 20% of previously unsurfaced ground within the RPA. The development is therefore not in accordance with the advice in BS 5837 and contrary to Policy LP17 of the Central Lincolnshire Local Plan (2017) which is intended to protect the character and setting of landscape and townscape, including trees, and paragraph 170 of the National Planning Policy Framework ("the Framework") which provides that planning decisions should contribute to and enhance the natural and local environment.

Living conditions

8. The development does not benefit from permitted development rights pursuant to Part 1, Class E of the Schedule to the GDPO, in relation to incidental buildings within the curtilage of the dwellinghouse (which were removed when permission was granted for the host property.) The rear garden provides the only private outdoor space for the house, and the development is the full width of the garden filling approximately one third of the area overall. The development is not much higher than the existing fences but is nevertheless a large structure which is extremely prominent within the plot and when viewed from adjoining properties, and which takes up a substantial area of the garden. There are other similar buildings in adjoining properties and in the vicinity. The building, if completed to the same scale and massing as indicated by the existing frame, would not be very visible from Newark Road or Ascot Way. It would have been visible from the back windows of the properties on Ascot Way and Sisters Close but, depending on its finish, would not have been particularly obtrusive at its current height, and it is similar in size and height to existing outbuildings in the vicinity.
9. Whilst the development does cover a large proportion of the garden there would still be remaining private garden which could be used by the host property. I do not therefore find that harm is caused to the living conditions of the occupants of the host property, or to adjoining neighbouring properties by the development by way of its scale and massing, but the development is only built to frame stage and there were no plans submitted to enable an assessment of the proposals for the completed building.

Conclusion

10. The application for deemed permission is for the development as it existed at the time of the service of the notice, which in this case following the correction of the allegation, is for the partial erection of a timber garden room. A further grant of planning permission would be required to complete the building but in this case the likely harm to the amenity value, and future health and longevity of the protected tree is sufficient to require the removal of the development.
11. For the reasons set out above, the development causes harm to the character and appearance to the area including its effect on the protected tree and is in conflict with development plan and the Framework. As there are no material considerations to outweigh this conflict I conclude that the appeal on this ground should be dismissed and planning permission is refused.

Ground (f)

12. The basis of an appeal on this ground is that the steps required exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity. The purpose of the notice in this instance was to remedy the breach of planning control, and the harm in planning terms is being caused by the potential damage to the tree. It is therefore right that the requirements seek to remove the structure and ensure that the topsoil and grass are reinstated to the surrounding ground level once the removal has taken place. The appeal on this ground is therefore unsuccessful.

Zoë Frank

INSPECTOR