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## Appeal Decisions

Site visit made on 10 May 2023

**by David Jones BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 May 2023**

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### **Appeal Refs: APP/A0665/C/22/3307203 and 3307204**

#### **16 St. Georges Close, Ellesmere Port CH65 4FR**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Miss Bryony Challoner and Mr David Harrison against an enforcement notice issued by Cheshire West and Chester Council.
  - The notice was issued on 22 August 2022.
  - The breach of planning control as alleged in the notice is without planning permission, erection of large play equipment inside the curtilage of rear garden ("the unauthorised development").
  - The requirements of the notice are: (1) Remove the entire play equipment, including platform, attachments to the sides, front and rear of the structure and the canopies ("the unauthorised development"); (2) All resulting materials from the land must be removed as outlined in red on the attached enforcement plan ("the land")
  - The period for compliance with the requirements is: 4 months.
  - The appeals are proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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### **Decision**

1. It is directed that the enforcement notice is corrected by;
  - in section 3 deleting the words "inside the curtilage of" and substituting instead the words "within the"
  - in section 5 deleting the words "from the land must be removed as" and substituting instead the words "must be removed from the land".
2. Subject to these corrections, the appeals are dismissed and the enforcement notice is upheld.

### **The Notice**

3. The alleged breach of planning control in section 3 of the enforcement notice includes the phrase 'inside the curtilage of the rear garden'. The rear garden forms part of the curtilage of the dwelling house, therefore in order to make the alleged breach clearer I have omitted any reference to curtilage. There are also some grammatical errors in section 5 of the notice which can be corrected for precision and clarity. I can undertake these corrections using the broad powers available to me under the provision of section 176(1) of the Act, without causing injustice to the parties.

### **Appeal on ground (f)**

4. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Act sets out the purposes

which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) to remedy the breach of planning control that has occurred, or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of the notice are to remove the play equipment in its entirety. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.

5. The appellants have suggested lesser steps which they consider would reduce the impact of the development on the living conditions of neighbouring occupants in terms of overlooking and privacy, and on the character and appearance of the area. These steps consist of reducing the overall height of the structure, reducing the platform height down to 5 foot 2 inches, reducing any parts of the structure within 2m of a boundary to under 2.5m in height, removing the second level of the play equipment, replacing the existing bright roofs with wooden roofs, and installing cloth, tarp, or wooden covers around the open platform areas. These though are arguments which relate to planning merits.
6. However, where there is no appeal under ground (a) consequently there is no deemed application for planning permission, as such there can be no arguments about the planning merits of the development under ground (f). The only consideration is whether the requirements exceed what is necessary to achieve the identified purpose, which in this instance is to remedy the breach of planning control.
7. Since the purpose of the notice is to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

### **Other Matters**

8. I am aware of the circumstances surrounding one of the appellants children and the benefits that the play equipment brings in terms of his mental, physical, and emotional needs. The appellants have referred in their statement to the United Nations Convention on the Rights of the Child, with particular reference to Articles 23, 27 and 31.
9. However, it should be noted that human rights or equality considerations do not arise in ground (f) where the issue is strictly whether the requirements are excessive to remedy the breach of planning control or any injury to amenity caused by the breach.
10. Whilst I acknowledge a third-party representation in support of the appeal, the matters raised relate to planning merits which are not relevant to the grounds of appeal in this case.

### **Conclusion**

11. For the reasons given above, I conclude that the appeal fails. I shall therefore uphold the enforcement notice with corrections.

*David Jones*

INSPECTOR