



Appeal Decision

Site visit made on 11 July 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2023

Appeal Ref: APP/G5180/C/22/3307250

Land at Elba, 1 Walsingham Park, Chislehurst BR7 5QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Mark Mann against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 12 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a children's climbing frame including a raised platform in excess of 0.30m in height.
 - The requirements of the notice are to permanently remove from the land the unauthorised structure.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of one month and the substitution of two months as the period for compliance in section 5 of the notice (time for compliance).
2. Subject to this variation, the appeal is dismissed, 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.

The appeal on ground (c)

3. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
4. The appellant's case on this ground is that the climbing frame is an ordinary piece of domestic garden furniture which is a feature of many gardens. They argue that it is not a building and does not constitute development which requires planning permission.
5. By virtue of section 55(1) of the 1990 Act the meaning of 'development' includes the carrying out of building, engineering, mining, or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.

6. A 'building' in section 336(1) of the Act includes 'any structure or erection'. The main characteristics of a building as identified by the courts¹, as a matter of fact and degree, are size, permanence and physical attachment. No one test is conclusive.
7. The climbing frame is relatively substantial, made up of various sections which the appellant says were assembled on site by a professional company. The manner of its physical attachment has not been explained however, it appeared to be attached to the ground with large upright timbers.
8. The appellant stated that the frame is capable of being dismantled and moved or removed completely; and this may be done when their children outgrow the climbing frame. However, there is no evidence beyond these assertions that there is an intention for it to be moved or removed, nor that it could be moved without being at least partially dismantled, as acknowledged by the appellant in their appeal on ground (g).
9. It is not therefore comparable to a football goal, trampoline, or barbeque, which ordinarily, can be readily moved around the garden without being dismantled.
10. Accordingly, I consider the erection of the climbing frame to constitute a building operation and therefore development which requires planning permission.
11. Although referred to, the appellant has not sought to demonstrate that the climbing frame constitutes permitted development. However, since both parties have referred to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), specifically Part 1 Class E, I shall cover this in the interests of completeness.
12. Schedule 2 Part 1 Class E of the GPDO grants planning permission for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to conditions and limitations, including that development is not permitted if it would include the construction or provision of a verandah, balcony or raised platform (E.1.(h)).
13. The interpretation of Part 1 states that 'raised' in relation to a platform means a platform with a height greater than 0.3 metres. The climbing frame includes two raised platforms. Accordingly, the climbing frame fails to meet the Class E.1.(h) requirement and is not permitted by Class E of Part 1 of Schedule 2 of the GPDO.
14. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

15. The main issue is the effect of the climbing frame on the living conditions of neighbouring occupiers with particular regard to privacy and overlooking.

¹ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

16. The climbing frame is located relatively close to the shared boundary with the neighbouring dwelling, Bendham, which occupies a lower ground level than the appeal property, due to the topography of the locality. There is some screening on the boundary between the gardens and that does provide some shielding from views of the areas closest to the dwelling.
17. However, because of the significant height of the climbing frame, relative to the lower ground level of the garden at Bendham, users of the frame, particularly standing on the upper platform, have elevated and direct views over the garden of Bendham, including a seating area located close to the shared boundary. This causes significant harm to the living conditions of its occupiers through overlooking, making the garden less pleasant to use.
18. Views towards upper floor windows in Bendham are possible from the climbing frame, limited to some extent by a hedge. Nevertheless, since such views are from an elevated position, this results in a significant increase in the actual and perceived level of overlooking and loss of privacy.
19. I acknowledge that the climbing frame is only likely to be used by children however, this does not significantly reduce the harm. That bedrooms are generally only occupied at night and curtains and blinds can safeguard privacy, are matters of limited weight.
20. There is no harm to the living conditions of the occupiers of the Laurels because of the ground levels and boundary treatments, and I acknowledge the representation of support from the occupier. However, this is a neutral matter which cannot outweigh the identified harm.
21. Overall, for the reasons given above, I conclude that the climbing frame materially harms the living conditions of the occupants of Bendham with regard to overlooking and loss of privacy. It is therefore contrary to Policy 37 of the London Borough of Bromley Local Plan (January 2019) which requires that there is no harm to the privacy of neighbouring occupiers. It also fails to accord with the aims of the National Planning Policy Framework to seek a high standard of amenity for existing and future users.

Other Matters

22. The appellant suggested that the climbing frame could be re-sited. However, no details have been provided to enable such a consideration.
23. I acknowledge that this was not a wilful breach of planning control. However, this and the appellant's misgivings about the Council's handling of the case are separate matters which have no bearing on the planning merits of the development.

Conclusion on ground (a)

24. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (g)

25. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant's requested six months on the basis that the frame was erected by a professional company and as such will need to be safely dismantled and removed.

26. The time period given for compliance within the enforcement notice is to allow for the physical works associated with the notice to be removed. In the absence of substantive explanation and given the straightforward nature of the construction, I consider the period of one month is proportionate to the breach of planning control that has occurred.
27. However, since the Council have suggested they would be agreeable to a period of two months, I consider it reasonable to extend the period accordingly. The appeal on ground (g) therefore succeeds to this extent.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR