



Appeal Decisions

Site visit made on 5 March 2024

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2024

Appeal A Ref: APP/W4223/C/23/3330171

Appeal B Ref: APP/W4223/C/23/3330172

Lower Tunstead Farm, Tunstead Lane, Greenfield, Oldham OL3 7NT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act").
 - The appeals are made by John Dodd Property Limited and by Mr John Dodd against an enforcement notice issued by Oldham Metropolitan Borough Council.
 - The notice was issued on 23 August 2023.
 - The breach of planning control as alleged in the notice is the erection partly within the dwellinghouse curtilage of Lower Tunstead Farm, Tunstead Lane, Greenfield and partly adjacent to public footpath 238 Saddleworth of a raised wooden platform that does not constitute permitted development pursuant to Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the 2015 Order" by virtue of paragraph E.1(h) of Class E as it is a raised platform with a height greater than 0.3 metres.
 - The requirements of the notice are to:
 1. Permanently remove the platform from the Land; or
 2. Move the platform so it is wholly within the dwellinghouse curtilage of Lower Tunstead Farm and reduce the height of the platform pursuant to paragraph I of Part 1 of Schedule 2 of the 2015 Order and thus compliance with the provisions of Class E of Part 1 of Schedule 2 of the 2015 Order.
 - The period for compliance with the requirements is: 3 months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c) of the Act.
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Decision

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

The appeal on ground (b)

2. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. In legal grounds the burden of proof is on the appellant and the relevant test is the 'balance of probabilities'.
3. In summary, the appellant's case is that the erection as a raised platform with a height greater than 0.3 metres is incorrect and they have alternatively erected an unfinished children's playground/tree house/den/fort and adventure playground with a woodstore shed sheltered underneath. The appellant also asserts it is within the curtilage of the dwelling 'garden' and not partly outside it.
4. Schedule 2, Part 1, Class E.(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) provides permitted development rights within the curtilage of the dwellinghouse for 'any

building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure’.

5. At Class E.(h) of the GPDO it states that development is not permitted by Class E if *‘it would include the construction or provision of a verandah, balcony or raised platform’*. The interpretation for the purposes of Part 1 of the GPDO includes ‘raised’ which in relation to a platform means a platform with a height greater than 0.3 metres. The Technical Guidance¹ (TG) also sets out that raised platforms are not permitted under Class E and references the term ‘raised’ as defined in the GPDO.
6. As I saw, the development is made from wood and has steps attached which go up one side. This is on the other side of the wall where the garden is maintained and lawned giving access to the top of the structure. A slide is also positioned going into this area and the wooden structure has a metal pole protruding from within and above. It is supported by a considerable number of wooden pillars / legs from the ground which support a wooden platform top by fixings. The wooden platform top is further supported by metal fixings to timber joists, it can therefore be accessed and stood upon. The height of the wooden pillars /legs results in the structure being situated above the wall and is not fixed to any part of the wall. There were several tree cuttings, branches, pieces of timber stacked up underneath the structure laid directly on the ground and abutting the wall.
7. The structure would therefore constitute a wooden platform being raised above the ground and supported by wooden pillars/legs, thus being at a height greater than 0.3m. I accept it may be used as a den or play area, but it would still be a raised wooden platform and surrounding trees in this instance do not make it a tree house. Although, timber materials and tree cuttings are stored at the underpart of the raised wooden platform this is open on each side and they are stored directly on the ground next to the wall than being within any enclosure, shed or other wooden structure.
8. Curtilage is a legal concept and not a use of the land. It should not be confused with the planning unit and does not mean the same thing. The GPDO at Part 1 only applies to the curtilage of a dwellinghouse and not the whole residential planning unit if that is larger. However, the GPDO at Part 1 including Class E does not define curtilage but the TG defines it as *‘land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area’*. Nonetheless, the TG is only guidance and thus, there is no authoritative definition, and it is a matter of fact and degree.
9. The Council does not dispute that the red edge boundary runs over the boundary wall encompassing a strip of land between the stone wall and public right of way No. 238 (PROW) and the appellant owns this land. However, they assert that the land is outside the established curtilage of the property. The appellant asserts this strip is some 2.2m from the wall with adequate buffer to the PROW and the land is within the curtilage of the dwellinghouse ‘garden’. In addition, that a fence should have been erected to enclose the land but it has not been maintained from 1996.

¹ Permitted development rights for householders: technical guidance, 2019

10. Nevertheless, in this case, the relevant planning unit is the large dwellinghouse together with its gardens at Lower Tunstead Farm. The raised wooden platform is positioned partly over the garden and established stone wall which runs along and encompasses the rear of the property itself. The parcel of land which the platform is also partly sited adjoins the PROW leading to open fields. I saw that this parcel of land was unmaintained, and a considerable amount of vegetation connected and encroaching onto the footpath in comparison to the garden which is maintained with a mowed lawn, planted flowers and trees with other domestic paraphernalia on the opposite side 'over the wall'.
11. The appellant refers to the title deeds, however these only seek to show land ownership changes and do not set out clear areas of land to be used as garden or provide with any certainty the strip of land in dispute is curtilage. Neither does it stipulate the land is to be used for a purpose incidental to the enjoyment of the dwellinghouse. Moreover, the title plan is depicted by showing there is a right of access on this parcel of land with the PROW and fixed wall boundaries appear to be where the current stone wall is positioned. The second schedule relates only to covenants and agreement with past sellers it does not mean that the appellant does not have to comply with planning legislation and/or the GPDO.
12. Therefore, taking all the above factors into consideration and site observations including the physical layout of the property and the garden area 'over the wall'. I conclude this represents the curtilage of the dwellinghouse and the existing stone wall provides further certainty being a physical boundary to the strip of land and other parcels of land. Thus, the raised wooden platform can only be partly within the curtilage of the dwellinghouse.
13. The matter of any breach of covenants are a private matter for outside of the planning regime and the breach of planning control does not relate to the erection of a fence. Moreover, any fence would have to comply with the Schedule 2, Part 2, Class A of the GDPO and there is no ground (a) appeal for me to consider the planning merits of the case including other examples of gardens, finished materials, character and appearance, impact on the Green Belt openness or other protected open land and the setting of the listed building.
14. In conclusion, as a matter of fact and degree the erection of a raised wooden platform partly outside the dwellinghouse curtilage occurred, as described in the alleged breach of planning control. The appeal on ground (b) fails.

The appeal on ground (c)

15. Section 174(2) of the Act sets out the scope for an appeal on ground (c). It states, 'that those matters (if they occurred) do not constitute a breach of planning control'.
16. The appellant mostly relies on the arguments presented on the ground (b) appeal, including that the alleged breach of planning control is permitted development.
17. Following my conclusions on ground (b), the alleged breach of planning control amounted to a raised wooden platform with a height greater than 0.3 metres and was partly outside the curtilage of the dwellinghouse. There is no evidence

to show that the development was authorised by any planning permission granted by the local planning authority.

18. Even if I considered the appellants arguments regarding the conditions and limitations on permitted development for a playground/den/treehouse/shed with reference to Schedule 2, Part 1, Class E.1 of the GPDO. The Council's evidence states that the property is a grade II listed building, and by virtue of Schedule 2, Part 1, Class E.1(g) development is not permitted where '*the building, enclosure, pool or container would be situated within the curtilage of a listed building*'.
19. For these reasons, the appeal on ground (c) must fail.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

KA Taylor

INSPECTOR