



Appeal Decisions

Site visit made on 23 May 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH MAY 2024

Appeal A Ref: APP/V4250/C/23/3333554

Appeal B Ref: APP/V4250/C/23/3333555

40 Hazel Grove, Golborne, Warrington, WA3 3LX

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr James Scaddon and Appeal B is made by Miss Tanya McGuire against an enforcement notice issued by Wigan Metropolitan Borough Council.
 - The notice was issued on 18 October 2023.
 - The breach of planning control as alleged in the notice is the erection of a playhouse with an elevated platform on the Land.
 - The requirements of the notice are to dismantle the playhouse on the Land.
 - The period for compliance with the requirement is 56 days.
 - The appeals are proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 (as amended) (the Act).
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Decisions

Appeal A Ref: APP/V4250/C/23/3333554

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/V4250/C/23/3333555

2. The appeal is allowed and the enforcement notice is quashed.

Reasons

3. The appeals made on ground (c) are that the matters alleged do not constitute a breach of planning control.
4. Section 55 of the Act provides a broad definition in subsection (1) of 'development' for the purposes of the Act and related legislation. This is the starting point for the consideration of the ground (c) appeals because 'development' requires planning permission under section 57(1) of the Act, and the carrying out of development without the required planning permission constitutes a breach of planning control under section 171A(1) of the Act.
5. The children's playhouse with an elevated platform is positioned in the rear garden of the dwellinghouse known as 40 Hazel Grove. The Courts have held that three primary factors are identified as decisive of what is a building: size, permanence, and physical attachment.
6. The main parties agreed on the site visit that other than a pole which had been inserted into an opening in the ground, the substantive part of the playhouse

was not physically attached to the ground. The site visit revealed that the pole was attached to the playhouse by means of a few Allen Key bolts which could be removed with ease. It was also agreed on the site visit that the playhouse rests by its own weight and is not mounted on a permanent base. It was evident that it could be lifted off the ground but could not be immediately moved elsewhere owing to the existence of the pole. While I accept that there is a pole which is holding the play equipment in place, this is likely for health and safety reasons. I do not find, as a matter of fact and degree, that the playhouse is physically attached to the ground.

7. I do not know if the children's play equipment was fully assembled on the site. However, in my judgement it is of a size where it did not have to be fully constructed or assembled on the site. I do not see why it could not have been brought onto the site in partly completed sections.
8. While there is no evidence that the equipment has been moved around the garden to date, I find that it would nonetheless be possible to do so with relative ease and speed, albeit that it would probably take two people to do it. I therefore find that the playhouse would be capable of being moved elsewhere within the garden. Indeed, it remains possible, once the children get older, that it would perhaps be moved to a less conspicuous position in the garden. I therefore find that the play equipment is not permanently positioned.
9. Given the above, and, as a matter of fact and degree, I conclude that the children's playhouse with an elevated platform is not a building. It is a moveable chattel and hence amounts to a use of the land. As the evidence is that it is being used as a piece of play equipment by children, I do not find that a material change of use of the land has taken place. The primary use of the land is a dwellinghouse. The children's play equipment falls within the curtilage of the dwellinghouse and is being used for a purpose that is incidental to the enjoyment of that dwellinghouse. In this regard, the breach of planning control does not amount to development by virtue of section 55(2)(d) of the Act.

Conclusion

10. As the breach of planning control does not amount to development, planning permission is not required for it. For the reasons given above, I therefore conclude that the appeals should succeed on ground (c). Therefore, the enforcement notice will be quashed.

D Hartley

INSPECTOR