



Appeal Decisions

Site visit made on 22 March 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Appeal A: Ref APP/B5480/C/21/3281208

11 Vicarage Road, Hornchurch RM12 4AS (Land Registry Title Number NGL128752)

- 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 appeal is made by Mrs Judith Howes against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice, numbered ENF/540/20, was issued on 27 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building with a climbing frame and raised platforms in the rear garden, in the approximate area hatched red on the plan attached to the notice.
 - The requirements of the notice are to:
 - (i) Remove/demolish the building, climbing frame and raised platforms as well as any and all associated development, including any flags, ropes, slides or other attached paraphernalia to the structure with the area hatched RED on the plan attached to the notice; AND
 - (ii) Remove all materials, rubble and debris from the site as a result of taking step (1) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (c) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Appeal B: Ref APP/B5480/C/21/3281207

11 Vicarage Road, Hornchurch RM12 4AS (Land Registry Title Number NGL128752)

- 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 appeal is made by Mr Peter Howes against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice, numbered ENF/540/20, was issued on 27 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building with a climbing frame and raised platforms in the rear garden, in the approximate area hatched red on the plan attached to the notice.
 - The requirements of the notice are to:
 - (i) Remove/demolish the building, climbing frame and raised platforms as well as any and all associated development, including any flags, ropes, slides or other attached paraphernalia to the structure with the area hatched RED on the plan attached to the notice; AND
 - (ii) Remove all materials, rubble and debris from the site as a result of taking step (1) above.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act).
-

Decisions

1. It is directed that the enforcement notice be corrected by replacing the word “platforms” by “platform” in section 3 and in section 5.
2. Subject to these corrections, due to ground (b) succeeding to this extent, Appeals A and B are otherwise dismissed and the enforcement notice is upheld.
3. In respect of Appeal A, the application for planning permission deemed to have been made under section 177(5) of the Act as amended is refused.

Applications for costs

4. Applications for costs in respect of each appeal were made by Mrs Judith Howes and Mr Peter Howes against the Council of the London Borough of Havering. The applications are the subject of a separate Decision.

Procedural Matter

5. Since the notice was issued, the Havering Local Plan 2016-2031 and Policies Map were adopted on 17 November 2021 and replace the Core Strategy and Development Control Policies Development Plan Document (2008).

Ground (b) (Appeals A and B)

6. For an appeal to be successful under this ground, the appellants must satisfy me on the balance of probabilities that the matters as stated in the notice have not occurred as a matter of fact.

Platforms or Platform?

7. The allegation refers to raised platforms in the plural, and the appellants make the point that there is only one raised platform (that being to provide access to the slide) and that neither the picnic bench or its seating, or the horizontal ladder, constitute platforms. I agree, ground (b) succeeds to this extent, and I am correcting the notice accordingly.

Building?

8. The appellants also say that, as a matter of fact, the allegation is wrong that a building has been erected since it is said the structure comprising the play equipment is moveable and not attached to the ground.
9. In the case of *Skerritts*¹, the three primary factors which were identified as decisive of what was a building were physical attachment to the ground, permanence and size.
10. While the structure sits by its own weight upon large beams, without other fixings to secure it to the ground, I find it more likely than not given its substantial size (and large assembly of play equipment components) that it is not capable of being readily moved without significant force of effort (and possibly significant disassembly, the ease and readiness of which is unclear). The effect of this is a degree of immobility and permanence, perhaps associated with the apparent fact from the papers that it has remained in the same location since assembly on-site, which in my judgement renders it a building. Accordingly, the ground (b) appeal fails on this aspect.

¹ *Skerritts of Nottingham Ltd v SSETR* (No.2) [2000] 2 PLR 102

Ground (c) (Appeals A and B)

11. For an appeal to succeed under this ground, the appellants must demonstrate on the balance of probabilities that the matters stated in the notice (if they occurred) do not constitute a breach of planning control.
12. The appellants' argument under this ground turned on success under ground (b) and the 'Skerritts tests' since a structure which is not a building may not require planning permission as operational development.
13. However, I have found the appeal structure to constitute a building under ground (b) as a matter of fact and degree. Accordingly it is operational development for the purposes of s55 of the Act, which does not benefit from planning permission. Therefore I am not satisfied that the matters stated in the notice do not constitute a breach of planning control, and ground (c) fails.

Ground (a) and the deemed planning application (Appeal A)

Main Issue

14. The main issue in the ground (a) appeal is the effect of the development on the living conditions of the neighbouring occupiers at 13 Vicarage Road (No 13), particularly as regards privacy and outlook.

Reasons

15. The appellant seeks the retention of the existing play equipment which is located within 2 metres of the boundary with No 13. According to the appellant's submissions, the overall height of the play equipment at the highest point is 3.45 metres with the raised platform being 1.43 metres. The play equipment also has a metal flagpole, with flag, projecting above the ridgeline of its roof.
16. Notwithstanding the limited obscuring effects of adjacent foliage, the significant height of the play equipment relative to the somewhat lower height of the close boundary treatment, provides users standing upon the platform with a close and direct view of the patio seating area and rear conservatory windows of No 13. This causes significant harm to the living conditions of its occupiers through overlooking.
17. The appellant has suggested that this harm might be overcome through planning permission being conditioned to require a 900mm high trellis being fixed to the top of the existing fence (on 3 three existing fence panels) with artificial lemon leaf foliage. While this would reduce the amount of overlooking, there would still be an unacceptable opportunity for overlooking above the level of the trellis by users standing upon the platform and using the vertical ladder. Further, while I am unconvinced by the Council's reason for enforcement that the allegedly overbearing play equipment creates an increased sense of enclosure to the neighbouring occupiers (due to its open arrangement and lack of solid form over a relatively small area), the proposed mitigation would in my judgement cause significant harm in itself to neighbouring outlook due to the high boundary treatment that would be created for a significant length close to the rear patio seating area.
18. For these reasons, with or without the proposed condition, the development causes significant harm to the living conditions of occupiers of No 13.

19. Accordingly, it is in conflict with Policies GG3, D1 and D4 of the London Plan (2021) and Policy 7 of the Havering Local Plan 2016-2031 (2021), as supported by the Council's Residential Extensions and Alterations Supplementary Planning Document (SPD), which together seek to protect living conditions. For the same reasons, the development is in conflict with the design principles contained within Chapter 12 of the National Planning Policy Framework (the Framework).
20. As the development conflicts with the development plan as a whole, and there are no other considerations which outweigh this finding, I will not grant planning permission either with or without the suggested mitigation/condition. Accordingly, ground (a) does not succeed.

Ground (f) (Appeals A and B)

21. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
22. It is clear to me from the way the notice has been drafted, requiring complete removal or demolition of the appeal development, that its purpose is to remedy the breach of planning control (rather than to remedy harm to amenity) by restoring the land to its condition before the breach took place.
23. The appellants say that the requirement for complete removal or demolition of the play equipment is excessive. However, anything less in my view would not remedy the breach of planning control – which is the purpose of the notice.
24. In any event, even were the purpose of the notice to remedy harm to amenity, the alternative scheme put forward as a lesser requirement by the appellants (the trellis and artificial foliage mitigation, which I have considered under ground (a)) would not, for the reasons I have given within this Decision, acceptably reduce harm to amenity.
25. The appellants have also suggested lesser steps (a) whereby the height of the structure could be reduced and the raised platform removed so that children might continue to have a structure for play, or (b) a relocation of the structure to a position more central within the garden. However, even were these alternative schemes consistent with the purpose of the notice, the appellants have provided insufficient details to enable consideration.
26. Accordingly, the ground (f) appeal fails.

Ground (g) (Appeals A and B)

27. For an appeal to succeed on this ground, I must be satisfied that the compliance period of the notice falls short of what is reasonable.
28. The appellants say that 2 months is insufficient time to make an alternative planning application, demount and relocate the structure, including removal of all materials. However, I am satisfied that this period is sufficient time to comply with the notice steps. It is not necessary for the notice to allow time for a planning application to be made.
29. Accordingly, the appeal under ground (g) fails.

Conclusion

30. The appeals do not succeed, except to a limited extent under ground (b). I am upholding the enforcement notice with corrections. In respect of Appeal A, the application for planning permission deemed to have been made under section 177(5) of the Act as amended is refused.

Andrew Walker

INSPECTOR