



Appeal Decision

Site visit made on 1 November 2006

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date
27 Nov 2006

Appeal Ref: APP/L2820/C/06/2010294 & 95

26 Princes Avenue, Desborough, Northamptonshire NN14 2RQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs J B Roy against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2005/00159.
- The notice was issued on 19 January 2006.
- The breach of planning control alleged in the notice is: -
"The erection of children's play equipment comprising of two rectangular towers with pitched roofs linked by a bridge, an adjoining ladder and plastic slide, and two swings suspended from an overhead support, all linked together as one structure and constructed of timber and set into the ground in concrete. The whole structure occupies a space measuring approximately 6.1 metres x 4.1 metres x 3.2 metres and is shown in the approximate position marked in green on the plan attached to the Notice."
- The requirement of the notice is to: -
"Take down and permanently remove the play equipment structure from the land; or,
re-locate the structure so that it is no nearer than 20 metres to the closest edge of the public footpath where it adjoins the rear boundary of the land."
- The period for compliance with the requirement is two months.
- The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeals are dismissed, the enforcement notice is upheld and planning permission is refused.

The main issue in the appeals

1. The main issue in the appeals is the effect of the play equipment on the character and appearance of its surroundings and the outlook and privacy of neighbours.

The development plan

2. The development plan for the area includes the Northamptonshire Structure Plan and the Kettering Borough Local Plan. Policy GS5 of the Structure Plan indicates that development should have regard to its visual appearance in the context of the defining characteristics of the local area. Policy 30 of the Local Plan states that proposals for development will be granted permission where there is no adverse impact on the character of the area or the amenity of nearby property. Local Plan Policy 47 indicates that permission will not be granted for development that would have a significant adverse impact on the amenities of
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adjacent residential properties, because of overlooking and demonstrable loss of privacy within the property itself or in private areas of the garden.

Reasons for the decision

3. The equipment is towards the end of the long rear garden of 26 Princes Avenue. The houses, Nos 109 and 111 Dunkirk Avenue, are on the southern side of this part of the garden and the gardens of other houses in Princes Avenue are on its northern side. A public footpath adjoins its rear boundary, beyond which is a public recreation ground.
4. The equipment is larger than the play equipment normally installed in domestic gardens and has more in common with equipment used in public play areas. However, I agree with the Council that it could be suitable in a residential setting if its impact were acceptable.
5. The equipment is screened from the footpath and the recreation ground by fencing and a conifer tree. It is over 50m away from the houses in Princes Avenue and does not have a significant effect on 111 Dunkirk Avenue in its present position. The equipment would be acceptable, apart from the harm it does to the amenities of the occupiers of 109 Dunkirk Avenue. This house has a short rear garden and is at a lower level. The equipment intrudes on the outlook from the house and garden and it is possible to look into the rear windows of the house from the towers, bridge and swings, and on to garden areas that should be private. The equipment therefore conflicts with the policies referred to in para 2 above.
6. The appellants have planted evergreen trees next to the fence on the boundary between their garden and No 109's garden. At present, the trees do not screen the equipment and it will be a considerable time before they reach the required height and density. When they do, they will have an overbearing impact on No 109 and cause some loss of light. I do not consider them to be an acceptable solution.
7. The Council have acknowledged that the equipment would be permitted development if it were moved back at least 20m from the footpath, and the requirement of the notice allows this to happen. It is possible that the appellants will comply with the notice by re-locating the equipment on the 20m line, where it would harm the amenities of No 111, but I agree with the Council that this would be preferable to the current location, since the equipment would be at a lower level within the garden.

Conclusion

8. For the above reasons and having regard to all other matters raised, I conclude that the appeals should not succeed. I will uphold the notice and refuse planning permission.

Formal decision

9. I dismiss the appeals, uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

D. A. Hainsworth

INSPECTOR