



PLANNING DEPARTMENT	
Appeal Decision	
DoP	15
hearing held on Wednesday 15 December 1999	
Received	14 J
by F M Cherington DipURP MRTPI ARICS MEng	
Comments	
an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions	

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13 JAN 2000

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Appeal: T/APP/A1910/C/99/1027784

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by Mr T Fielding against Dacorum Borough Council.
- The site is located at The Boot Public House, 34 Station Road, Long Marston, Hertfordshire.
- The Council's reference is 4/1467/99ENA - E98/88.
- The notice was issued on 05 July 1999.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of children's play equipment/structure within the garden of the public house.
- The requirements of the notice are to remove the play equipment.
- The period for compliance with the requirements is 21 days.
- The appeal was made on the ground set out in Section 174(2)(c) of the 1990 Act as amended. Since the appropriate fee has not been paid, the deemed application for planning permission does not fall to be considered.

Decision: The appeal is allowed and I direct that the enforcement notice be quashed.

Procedural matters

1. The play equipment is located within the garden of the public house which is a two storey brick and tile building rebuilt in the 1950s. It lies close to the centre of Long Marston and its Conservation Area. This garden has a mainly grassed surface with smaller areas of paving. It also contains a brick built barbecue, tables and chairs for customer use. The Council accepts that this garden is part of the public house use and there is no objection to the principle of play equipment here nor any issue of noise, disturbance or other impact on neighbouring occupiers. There is no specific local policy guidance regarding play equipment in such locations and the Council's concern is with the visual impact of this equipment in terms of its form and size and the colour of some of the elements.

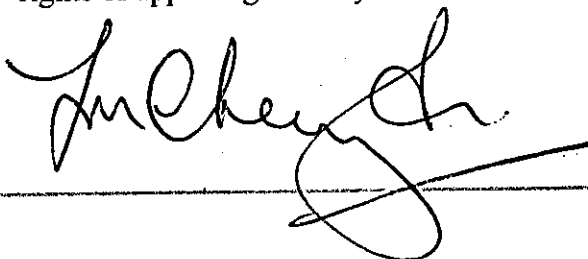
The Appeal on Ground (c)

2. The issue under this ground is whether these matters constitute development for which planning permission is required. The meaning of development is set out in Section 55(1) of the Town and Country Planning Act 1990 and Section 55(1A) states that building operations includes other operations normally undertaken by a person carrying on business as a builder. In addition, Section 336(1) states that the term "building" includes any structure or erection. The Council argues that the erection of this structure is a building operation which may be construed as development within the meaning of Section 55(1A) and relies on the case of Cardiff Rating Authority v Guest Keens [1949] 1 KB 385 in coming to that conclusion.

3. The play structure comprises three basic elements. The central section is a raised timber platform with ladder access from the front and rear providing support. This platform has a canvas canopy above and also provides access to the top of the slide which forms the second element to one side. This element also includes two cantilevered rails alongside the slide with a rope ladder and swing attached. On the other side is a horizontal beam supported by the central section and an "A" frame. This third element provides three swings.
4. The judgement in the Cardiff Rating Authority case identified three primary factors as being relevant to the question of what is a building. The first test relates to size, a building normally being something which is constructed on site as opposed to being brought to the site ready made. The structure is of predominantly timber construction with a natural finish and was supplied in kit form requiring only the bolting together of the individual components which had been pre-cut and pre-drilled. It was erected by the Appellant, who is the licensee of the public house, with the assistance of one helper. It has no foundations and, in my view, its erection required no specialist knowledge or professional expertise.
5. The Council argues that this structure is significant due to its size and design and satisfies this criterion. Whilst its overall length is about 6m and its maximum width at the centre section is about 3m measured at ground level, many of the component parts taper inwards above the ground. It is a somewhat open structure with a functional appearance. I do not consider its height to be significant apart from the canopy over the centre section which, although colourful, is a minor part of the structure as a whole.
6. The second and third tests relate to the degree of permanence and physical attachment to the ground. Although the Council alleged that some of the timber posts had been embedded in the ground thereby satisfying these criteria, I saw that this is not so and the structure only rests upon the grass surface and is kept in position by its own weight. However, it could be moved by several men without being dismantled and the Appellant says that it could be dismantled in about ten minutes. Whilst this time scale may be a little optimistic, I am satisfied that the whole structure could be dismantled in less than one hour.
7. Having regard to all these factors, I do not consider that this structure satisfies the tests in the Cardiff Rating Authority case, either individually or collectively. The Council argues that there is an intermingling of the tests here but I am not persuaded that this structure is so significant as to constitute development. Furthermore, it has also been held that a battery of swing boats capable of being lifted and taken away complete by six men or dismantled in about one hour did not constitute development.

Conclusions

8. I have taken account of all other matters raised, including the use and policy considerations, but find nothing to outweigh my conclusions in this case. For the reasons given above I consider that, on balance, the appeal should succeed on Ground (c). I shall exercise the powers transferred to me accordingly and the enforcement notice will be quashed.
9. This decision is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.



APPEARANCES

FOR THE APPELLANT:

Mr T Fielding

Licensee, The Boot Public House.

FOR THE LOCAL PLANNING AUTHORITY:

Anne Davies BA(Hons) MSc DipTP MRTPI

Head of Planning Enforcement, Dacorum Borough Council.

DOCUMENTS

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| Document | 1 | List of persons present at the hearing. |
| Document | 2 | Newspaper article from The Gazette dated 1 December 1999. |
| Document | 3 | Copy letter from the Council to Mr Fielding dated 19 June 1998. |