The Planning Inspectorate

Appeal Decision

Site visit made on 3 January 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 09 January 2023

Appeal Ref: APP/Y3940/C/22/3296526
The Log House, 286 Turleigh Hill, Winsley, Bradford-on-Avon, Wiltshire, BA15 2LR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Neil Shaylor against an enforcement notice issued by Wiltshire Council.
- The notice, numbered ENF/2021/00811, was issued on 10 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, operational development comprising the erection of a raised platform structure shown in the approximate area of the Land annotated with a blue circle on the attached plan entitled "Location Plan".
- The requirements of the notice are: Demolish in full the raised platform structure and remove all resulting materials from the Land.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

2. An application for costs has been made by the Council and is subject to a separate decision.

Preliminary Matters

3. Originally, two appeals were made one by Mr Shaylor and another by Mrs Shaylor. However, subsequently, Mr Shaylor made it clear that he wished for only his appeal to proceed and I have assume the second appeal (3296527) has been withdrawn. This does not affect the outcome of this appeal in any way.

Background to the Appeal

4. No 286 lies on the western side of Turleigh Hill, which lies in a steeply sloping valley. The house and garden lie parallel to the road and at the bottom of the garden, on the uphill slope, at least one large tree has been felled leaving a stump. A raised platform has been constructed on this stump, one end is butted up to the boundary wall with the adjacent house which lies further

uphill, the other end is cantilevered out on large wooden supports over the valley.

The Appeal on Ground (c)

5. This ground is that planning permission is not required. No specific argument has been made on this ground by the appellant that, for example, the platform benefits from specific permitted development rights, or already has planning permission. The Council argue that it is clearly a building as defined in Skerritts[1], and they are correct to do so. They go on to conclude therefore that it requires planning permission. However, for the sake of completeness, I should consider the argument that it could be a building allowed under Class E[2].

6. The definition of a building includes a structure, and so it could be considered to be a building whose purpose is incidental to the enjoyment of the dwellinghouse. Class E expressly removes the right to build a raised platform at E.1(h). Class I provides an interpretation of a 'raised platform' as one whose height is greater than 0.3m. The height above the garden is several meters, but at the boundary end it sits on the ground. I have seen it argued that this is sufficient to bring such a platform within the ambit of Class E because at 2(2) of the interpretation section of the GPDO it is explained that where the ground level is not uniform measurements should be taken from the highest part. However, even if I were to accept this, the supporting pillars are not part of a 'raised platform' for the purposes of the GPDO, but, in my view, are of such a scale they form a separate engineering operation that requires planning permission in its own right. Consequently, the structure as a whole does not benefit from permitted development rights but requires planning permission.

The Appeal on Ground (a)

7. The site lies within the green belt and the Winsley conservation area. There are very strict rules as to what can be built in the green belt and these are set out at paragraphs 147 onwards of the National Planning Policy Framework (NPPF). These state that "*inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*". They go on to say that any new building is by definition "*inappropriate*", subject to a small number of exceptions that are not relevant here. Thus, the raised platform is "*inappropriate development*" and should not be allowed unless there are "*very special circumstances*". This may seem harsh, given it is a relatively small structure in a private garden, but that is the effect of the Government's green belt policy, for the intention is to keep the green belt free from buildings and other development.

8. What comprise very special circumstances has been considered on numerous occasions by the courts and suffice to say they have set a high bar. Private use by a householder does not count, nor do arguments that it isn't very big, it doesn't cause any harm, other people have got one etc. Consequently, there are no very special circumstances in this case and planning policy directs that planning permission is not granted.

9. The Council are also concerned about the impact on the conservation area. While the platform is relatively modest, it is clearly visible from the road, where

[1] Skerritts of Nottingham Ltd v Secretary of State (No.2) [2000]
[2] Class E of the General Permitted Development (England) Order 2015.

it can be seen jutting out over the garden. Normally, I would not consider private garden structures to harm a conservation area when they are seen within the context of the domestic garden but in this case the platform is so high up and eye-catching that it stands out as incongruous and harmful. The NPPF has introduced the concept of two grades of harm to a conservation area, '*substantial harm*' is very serious, but everything else is called '*less than substantial harm*'. Although the harm here is at the lower end of the scale it is nevertheless harmful. There are no public benefits to counterbalance this harm, so this is another reason to refuse planning permission.

10. It follows that the Council's subsidiary argument that there is harm to the wider landscape is also a valid concern, for the same reason.

11. The Council were also concerned about bats. As they pointed out lighting of the platform could be controlled by a condition, but as the appellant wouldn't apply for planning permission their hands were tied. Now, a condition could be used to control lighting, but only in the event that I were to grant planning permission which it is clear from the above arguments that I won't be.

12. In conclusion therefore, the raised platform is inappropriate development in the green belt, causes less than substantial harm to the conservation area, and minor harm to the wider landscape. Taken together these form a weighty reason to refuse planning permission. No arguments have been made that would counterbalance the harm and no conditions would overcome the fundamental problems I have identified. The appeal on ground (a) fails.

The Appeal on Ground (f)

13. This ground is that the requirements are excessive. The requirements are to demolish the platform and remove it from the garden. Given the platform is harmful to the green belt and the conservation area I can think of no lesser actions that would satisfactorily overcome these problems than removal of the platform. The appeal on ground (f) fails.

The Appeal on Ground (g)

14. The appellant argues that the platform helps to support the boundary wall that was weakened when the tree was removed. Given the end of the platform adjacent to the wall is only one plank high, very little support seems to be being provided. I am sure the notice could be complied with without compromising the boundary wall even if the back edge of the platform was left in place to carry out a supporting role. I would not have thought specialist advice was necessary, and there is no suggestion that specialists were involved in the original decision to build the platform. 3 months seems perfectly generous to me. The appeal on ground (g) fails.

Simon Hand

INSPECTOR