



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 13/1/09

Ymweliad safle a wnaed ar 13/1/09

Appeal Decision

Hearing held on 13/1/09

Site visit made on 13/1/09

gan/by Hywel Wyn Jones BA (Hons) BTP MRTPI

**Arolygydd a benodwyd gan y Gweinidog
dros yr Amgylchedd, Gynaliadwyedd a
Thai, un o Weinidogion Cymru**

**an Inspector appointed by the Minister for
Environment, Sustainability and Housing,
one of the Welsh Ministers**

Dyddiad/Date 27/02/09

Appeal A: APP/E6840/C/08/2077165

**Site address: The Castle Inn, 64 Church Road, Caldicot, Monmouthshire,
NP26 4HW**

**The Minister for Environment, Sustainability and Housing has transferred the
authority to decide this appeal to me as the appointed Inspector.**

- 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 Judith Gribble against an enforcement notice issued by Monmouthshire County Council.
- The Council's reference is E06/191.
- The notice was issued on 16 May 2008.
- The breach of planning control as alleged in the notice is:
Without planning permission: Unauthorised operational development comprising of the erection of a children's play fort.
- The requirements of the notice are:
Demolish the castle/fort construction, and remove the resultant material from the land.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/E6840/A/08/2077006

**Site address: The Castle Inn, 64 Church Road, Caldicot, Monmouthshire,
NP26 4HW**

**The Minister for Environment, Sustainability and Housing has transferred the
authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Judith Gribble against the decision of Monmouthshire County Council.
 - The application (ref: DC/2007/01326), dated 8 October 2007, was refused by notice dated 23 April 2008.
 - The development is described as "Retention of children's play area, built in the form of a castle/fort (revised proposal)".
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Decisions

Appeal A: APP/E6840/C/08/2077165

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

Appeal B: APP/E6840/A/08/2077006

2. I dismiss the appeal.

Background and Preliminary Matters

3. The castellated walls of the timber play fort are generally between some 2.4 and 2.7m high. It contains 2 platforms that extend the full width of the structure; the rearmost one is some 1.3m above ground level, the foremost is some 0.3m higher. Within this enclosure there are various ladders that provide access to the platforms as well as other play equipment. Its rear boundary virtually abuts the fence that separates the grounds of the public house from neighbouring gardens.
4. Whilst the Appeal B scheme proposes to reduce only one of the platforms - that closest to the neighbours - Mr Prosser confirmed at the Hearing that the appellant would be willing to accept a condition requiring the other platform to be reduced to the same height.
5. In the event that both appeals were unsuccessful the appellant confirmed her intention to place an inflatable bouncy castle on the site of the appeal structure, and referred to the noise arising from its use including that associated with the generator required to maintain its inflation. The Council confirmed its opinion that the 'castle' did not require planning permission. The appellant explained that a bouncy castle had been used on a site adjacent to the fort during the preceding summer but that the unfavourable weather had curtailed its use to some 5-6 occasions. It is clear to me that the inflatable structure would be used appreciably less frequently than the fort. Not only does it demand time and effort to erect the structure, but it also requires a member of staff to supervise it at all times. Furthermore, the appellant accepted that, because of the effort necessary to inflate the castle and the fact that it could not be used when it was raining, the castle would not be used if there was a reasonable risk of rain. When compared to the appeal structure it is clear that the nature of its use is also materially different, and is more likely to be used by younger children. In comparison to the fort, the temporary nature of the bouncy castle means that its impact on its surroundings would be modest.

Section 78 Appeal and the Ground (a) Appeal under Section 174

Main Issues

6. The main issues in the case of both appeals are the effect of the play fort on:
 - (i) the living conditions of neighbouring residents, particularly in terms of any overlooking or noise and disturbance; and
 - (ii) the character and appearance of the Caldicot Castle Conservation Area.

Reasons

7. During my visit I observed that the present height of the platforms provide a potential for overlooking of the rear gardens of the closest neighbours, Nos 99 and 100 Castle Lea, and No. 50 Church Road. In relation to No. 50 the effect is less intrusive given the screening offered by a shed, the extent of intervening vegetation and the fact that the area most affected is the far end of the garden which does not appear to be the most valued private amenity space. Whilst the effect on No. 100 is reduced by a line of dense vegetation along the mutual boundary, it would be unreasonable to rely on its screening quality as it could be seriously affected by the failure of one or more plants. Although the degree of separation offered by the furthest platform reduces the extent of overlooking, I observed that the rear garden and rear elevation of No. 99 could be clearly overlooked from this platform.
8. Bearing in mind the proximity of these platforms to the neighbours and the nature of their use, I find that, at their present height, both give rise to an intrusive degree of overlooking. In this respect, I share the opinion expressed by the Council at the Hearing that a reduction in the height of both platforms to 0.7m above ground level would ensure that the existing enclosure would prove an effective screen, thereby protecting the neighbours' privacy. A local resident expressed concern regarding the potential for overlooking in the event that users climbed its walls. Whilst this is possible, it has not proved a problem in the past and seems to me to be unlikely to significantly impact on neighbours' privacy in the event that the platforms were lowered.
9. During the Hearing the Council conceded that no noise monitoring has been undertaken in or near the site whilst the fort was in use. Indeed it appears that no Council officer had visited the site or environs to witness it in operation. Nevertheless, it is clear from the correspondence that has been submitted by all the nearest households that the use of the fort was perceived as both noisy and intrusive. Neighbours confirmed that despite their proximity to the public house they enjoyed relative quiet when the fort was not in use. They acknowledged that activities within the grounds of the public house, including another play area and the car park, were audible but they were not perceived as intrusive. In contrast the level and nature of the noise arising from the fort was sufficiently intrusive to dissuade residents from using their gardens or even to abandon planned events, such as family barbeques.
10. The play fort's elevated platforms, its play equipment, and the type of games played within it combine to give rise to boisterous activity, raised voices and screams. It is inevitable that these activities will take place during fine weather when neighbours are most likely to choose to use their rear garden for relaxation. I do not agree that this level of impact could reasonably be expected by those living next to the grounds of this public house.
11. It seems to me that the fort not only leads to a concentration of children within this area but also encourages behaviour that the nearest neighbours have found objectionable. It is likely that the enclosed nature of the facility means that children are screened from the natural surveillance that would otherwise curb over exuberant behaviour. Indeed the play-fighting that takes place may also lead to the foul language and missile throwing into adjacent gardens which have

been witnessed by some residents. Whilst it appears that such events are infrequent, I appreciate that such incidents would exacerbate disturbance to the neighbours.

12. I have considered the suggestion of limiting the hours of use of the fort but, as any reasonable restriction would not overcome the harmful impact on neighbours' enjoyment of their gardens, this does not overcome my concern in this respect.
13. On this first main issue I conclude that the existing structure gives rise to an unacceptable impact on the living conditions of neighbouring residents in terms of overlooking, and noise and disturbance. Subject to a condition limiting the height of both platforms to 1.3m, I find that the Appeal B scheme would not give rise to an overlooking problem, but this does not alter my view that its impact, in terms of noise and disturbance, would unacceptably impact on the living conditions of the nearest neighbours. Thus both schemes conflict with Policies ENV1 and DES1 of the Monmouthshire Unitary Development Plan (UDP), 2006.
14. Turning now to the second main issue. During the Hearing the Council confirmed that, in accord with the advice of its Conservation Officer, it considered that the fort was harmful to the character and appearance of the Conservation Area. Policy CH1 of the UDP, broadly reflects the duty imposed by Section 72 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
15. Contrary to the views of the Council, I consider that the simple design of the structure and its timber finish means that it sits comfortably within the context of the adjacent timber fence and nearby trees and other vegetation. Whilst the Council's Conservation Officer is concerned that its use would harm the character of the area, it seems to me that such an activity within the spacious grounds of the public house is not detrimental in this respect. On this issue I conclude that the presence of the play fort is not harmful to the character or appearance of the Conservation Area. Thus, in this respect, the scheme does not conflict with the UDP.
16. I acknowledge, as is evidenced from the letters of support for the scheme and a petition estimated to contain some 1500 signatures, that the fort is a valued facility by patrons. As it serves to attract custom to the public house I am also mindful of its contribution to the appellant's business and the expressions of support from several local residents, some of whom refer to the impact of the public house on the locality when it was used as a sport bar. However, I find that neither these considerations nor the absence of harm in relation to the second main issue leads me away from my findings that both schemes are unacceptable because of the noise and disturbance that would be caused to neighbours.

Appeal on Ground (f)

17. During the Hearing the Council confirmed that the enforcement notice had been issued under the provisions of Section 173(4)(b) of the Act and sought to remedy an injury to amenity. The appellant suggests that the steps required by the notice are excessive given that the platform could be lowered to prevent overlooking of neighbouring properties. I have considered this matter in my assessment of Appeal B and found that even though such steps would remedy the

loss of privacy to neighbours it would not address the unacceptable impact arising from noise and disturbance.

18. The steps specified in the notice are reasonable and necessary to remedy the injury to the amenity of neighbouring residents. The appeal on ground (f) fails.

Conclusions

19. For the reasons given above and having regard to all other matters raised, I conclude that the enforcement notice should be upheld. I shall refuse to grant planning permission on the deemed application and dismiss the Section 78 appeal.

Hywel Wyn Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D Prosser BSc DipTP MRTPI	Agent – Derek Prosser Associates, 6 Rose Court, Ty-Canol, Cwmbran, NP44 6JH
Mrs J Gribble	Appellant
Mr S Gribble	Appellant's husband

FOR THE LOCAL PLANNING AUTHORITY:

Ms P Clarke MA MRTPI	Enforcement Manager, Monmouthshire County Council
Ms A Pankhurst BSc DipTP MRTPI	Planning Enforcement Officer, Monmouthshire County Council

INTERESTED PERSONS:

Cllr J Marshall	County Councillor – 5 Churchfield Avenue, Caldicot, NP26 4ND
Mr R Brown	100 Castle Lea, Caldicot, NP26 4PL
Mr P Jones	102 Castle Lea, Caldicot, NP26 4PL
Mrs E Jones	102 Castle Lea, Caldicot, NP26 4PL
Mr G Webb	50 Church Road, Caldicot, NP26 4HW
Mr I Carter	99 Castle Lea, Caldicot, NP26 4PL
Mr A Morris	97 Castle Lea, Caldicot, NP26 4PL

DOCUMENTS

Document	1 Council's letter of notification of the Hearing
Document	2 Consultation reply from Council's Environmental Health Officer, 23 August 2006
Document	3 Letter from local residents dated 10 January 2009
Document	4 Extract from Unitary Development Plan