

Alleged Unauthorised Development

Tonbridge

14/00174/WORKM

559436 145792

Medway

Location:

18 Hectorage Road Tonbridge Kent TN9 2DP

1. Purpose of Report:

- 1.1 To report the unauthorised construction of a timber play structure resembling the superstructure of a ship within the rear garden of 18 Hectorage Road, Tonbridge.

2. The Site:

- 2.1 The site is within the built urban area of Tonbridge. This is an early 20th century semi-detached house on the southern side of Hectorage Road. The neighbouring houses are in close proximity on either side.
- 2.2 The rear garden is approximately 4.5 metres wide by 13 metres long with a paved terrace adjacent to the rear of the house. The garden then rises up by about one metre to a lawn with a large garden shed/workshop adjacent to the rear boundary. There are interwoven panel fences topped with trellis approximately 1.85 metres high on both side boundaries. There are similar sized gardens to neighbouring houses on either side, with the back gardens of houses in Royal Rise on higher ground beyond the rear boundary to the south.

3. Planning History

- 3.1 None relevant

4. Alleged Unauthorised Development:

- 4.1 Without planning permission, the construction of a timber play structure resembling the superstructure of a ship that is over 4 metres high within 2 metres of the boundary of the curtilage of the dwellinghouse, and which incorporates a raised platform greater than 300 millimetres above ground level in the rear garden of this dwellinghouse.

5. Determining Issues:

- 5.1 The play structure is a climbing frame/tree house designed and purpose built by the owner and based on a nautical theme, resembling the superstructure of a ship. It is built of timber incorporating a hollow square tower representing the trunk of a tree with an internal ladder, supporting a cantilevered platform with an open balustrade of vertical timber posts and horizontal rope restraints and an "A" shaped cabin on top of the platform. There is also an external ladder to the platform, which has the appearance of a gangplank, which can be fitted on either side of the structure. The

structure is within 200 millimetres of the eastern side joint boundary fence with 20 Hectorage Road and within 10 metres of the back of the house.

- 5.2 The platform is 2.31 metres above ground level and the overall structure about 4.38 metres high from ground level to the top of a cantilevered central timber beam along the length that supports the roof of the cabin and which then extends forward as a hoist for a canvas bucket. The platform is open sided apart from the timber and rope balustrade and faces towards the rear of the house.
- 5.3 The structure constitutes development as defined by Section 55 of the Town and Country Planning Act 1990 (as amended) and, by virtue of its height, nature and proximity to the site boundary, does not constitute permitted development. As such, it requires planning permission from the Council. Without such permission the development is unauthorised and in breach of planning control.
- 5.4 To provide some background, I can advise that the owner was originally informed that the structure would require planning permission from the Council by letter back in June 2014. As Members will be aware, Section 73A of the Town and Country Planning Act 1990 (as amended) specifically allows for the submission of applications for development that has been carried out before the date of the application as one means of resolving a breach of planning control. The owner was invited to submit a retrospective planning application on a without prejudice basis and advised that without such permission the development was vulnerable to enforcement action. No application was submitted and several letters followed reminding the owner of the fact that the development was unauthorised. One letter also offered to meet with the owner to discuss what measures might be incorporated into the design of the play structure to overcome any concerns relating to the overlooking of neighbouring properties.
- 5.5 Contact was subsequently made by the owner via email dated 14 August 2014 explaining that he too wished to "clear this matter up". He advised that he would be away for the succeeding few weeks, but would welcome the opportunity to discuss the matter further on his return. However, he made no further contact and further letters were subsequently sent inviting him to resume his discussions with Officers.
- 5.6 To date, no further response has been received from the owner and an application has still not been submitted.
- 5.7 Turning to the planning considerations relevant to this matter, one of the core planning principles set out in the NPPF is that the planning system should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy CP24 of the TMBCS requires that all development must be well designed and of a high quality in terms of detailing and use of appropriate materials, and must through its scale, siting, character and appearance be designed to respect the site and its surroundings. Development

which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement will not be permitted.

- 5.8 The main issue in the consideration of this case centres on the privacy of the neighbours. Indeed, throughout our communications, the owner has been continually advised that any retrospective planning application he made would need to include details of screening around the raised platform to prevent direct overlooking into neighbouring properties and that any application without details of adequate screening was unlikely to be viewed favourably.
- 5.9 The structure is built on the lawn on a part of the rear garden which is approximately 1m higher than the floor level of No.18 itself. The gardens of the neighbouring properties appear to have similar variations in ground levels with the rear or southern parts generally higher than the floor level of the dwellings themselves. This exacerbates the impact of the structure, which is clearly visible from neighbouring properties. By virtue of its position within the garden, the change in land levels at this point combined with the height and design of the structure, there is significant overlooking occurring as a result of this development. As part of investigations, Officers have visited one of the neighbouring properties and it is clear that there are direct views from the structure over the garden immediately adjacent to the rear of the house and into the rear ground floor rooms and first floor back bedroom of this particular house, which is considered to be unacceptable.
- 5.10 Clearly one solution to remedy this harm would be to require the removal of the structure in its entirety. However, it is considered that alternative measures to prevent views from the structure could be incorporated into its design which would alleviate the identified harm to privacy. Indeed, the owner was advised of alterations that could be undertaken to overcome these concerns as follows:
- The removal of the ladder access to the outdoor deck, on both sides of the structure.
 - The removal of the balustrade in full from around the outdoor deck.
 - The insertion in the open gable cabin area of a timber 'wall' with or without an opaque safety glass/Perspex window.
 - The insertion of opaque safety glass/Perspex panels in the sides of the gabled cabin area.
- 5.11 As I have explained at paragraphs 5.4 and 5.5, the owner did not take the opportunity to undertake these suggested remedial works or seek to discuss further with Officers.
- 5.12 Officers have made every possible attempt to negotiate a more agreeable outcome with the owner of this property, particularly given that the structure is for use by his family members but, as the above explanation sets out, such attempts have not been successful. With this in mind, and given the serious loss of privacy arising from the

structure, there is no option but to recommend that formal action now be taken to resolve the matter. I therefore recommend that an Enforcement Notice be served to secure the remedial measures specified above in order to mitigate the detrimental effects on amenity arising from the direct overlooking onto neighbouring land.

6. Recommendation:

- 6.1 An Enforcement Notice **BE ISSUED**, the detailed wording of which to be agreed with the Director of Central Services to require the alteration of the unauthorised structure as specified above.

Contact: Gordon Hogben