



Appeal Decision

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 13/03/2023

Appeal reference: CAS-01502-F6G6N0

Site address: Land at 52 Oak Way, Penllergaer, Swansea SA4 9WW

- 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 Richard Clarke against an enforcement notice issued by the City and County of Swansea Council.
 - The enforcement notice, numbered ENF2021/0235, was issued on 5 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a skateboard ramp and fence over 2m in height in rear garden.
 - The requirements of the notice are to:
 - i. Remove the skateboard ramp.
 - ii. Lower the extended fence to 2m in height.
 - iii. Remove all associated materials generated as a result of compliance with i and the removal of material from the reduction in the fence ii.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) 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 as amended.
 - A site visit was made on 20 September 2022.
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Decision

1. The appeal is dismissed, and 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.

The appeal on ground (b)

2. The ground (b) appeal is made on the basis that those matters alleged in the notice has not occurred because they do not amount to be development under section 55(1) of the

Act as amended. Reference is made to what constitutes a building and whether the erection of the building amounts to a building operation.

3. The appellant refers to the case of *Skerrits of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102 (Skerrits) and *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co. Ltd* [1949] 1QB 385 (Cardiff Rating). The Cardiff Rating Authority was endorsed by the Skerrits case identifying three primary factors as being decisive of what was a building. These were, (a) that it was of a size to be constructed on site as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor on its own is decisive.
4. The appellant purchased the skateboard ramp from Backyard Carpentry. It was constructed and delivered in several sections to the site and thereafter assembled there which took some 2 hours to complete. The appellant has compared it to the assembly of garden furniture. It is contended that the ramp is not fixed to the ground as it sits on the existing patio and can be moved around the garden.
5. The skateboard ramp has been installed in the rear garden of No. 52 a semi-detached property. The installation is positioned next to the south and east boundaries of the garden. It lies adjacent to the garden boundaries of neighbouring properties. The installation is some 7.8m by 4.7m as shown on the plan and elevation drawing no. (PH21/291/1) submitted by the appellant. Two sides of the ramp are positioned right up to their respective boundaries. One end is positioned some 2m from the rear wall of the appeal property, the remaining side is open to the garden.
6. The photographs provided by the appellant show aspects of the construction process. They show one flat square timber frame with lateral timber pieces evenly spaced filling the frame. The frame is supported on legs with cross beams attached to provide strength and rigidity to the frame. The frame piece shown is set next to a rising step in the patio and the end of the frame is supported by two bricks beneath it. Other pieces comprise the ramp sections of which there are four in the photograph. These consist of sections of wood rising in a curve formation and held together with matching side curved boards. Smaller timber sections are shown laid out on the patio floor.
7. The frames, flat and curved, are linked together, and topped with plywood to provide a sloping ramp. Either end, have flat platform sections or varying heights so that the skateboarder can stop and turn. The ends are supported by higher timber frames, one of which is boarded, the other platform is fenced with the fence raised at one end. Part of one platform which is marginally higher than the main ramp has just the timber frame for protection.
8. From my inspection I noted there were round metal poles running the width of the ramps, the main larger ramp, and the two higher ramps, and situated between the ramp slopes and their respective platforms. I also noted an angular metal bracing beam wedged between the side of the ramp adjoining the fence and a storage box.
9. In my view, several pieces would have to be put together on the site, and this is evident from the appellant's photographs. Sections of wood frames have been put together and held by screws and wood braces that have been nailed in, so that the sections are combined in strength. At one end next to the house the construction is open to view, and this shows vertical posts attached to one another, cross diagonal beams to provide rigidity and horizontal timbers linking the vertical sections of the frame. These components of timber have been attached together by screws or in places nails and wood bracing.
10. From what I saw the assembly process on the site is quite extensive. Whilst the structures were brought to the site in pieces, the ramp has been constructed on site. This denotes, in my view, as a matter of fact and degree, that it is a size to be constructed on site. The

plywood ramp, the platforms, the backboards, and metal tubing would have required a means of fixing to the frames to ensure stability and rigidity. I consider that one primary factor of size of what may constitute a building has been met.

11. The Council indicates that the skateboard ramp has not moved in the garden. It was in the same location in June 2021 when the installation was first reported to the Council, and in September 2021, when the Council visited the site. The Council asserts that the appellant's photograph shows the installation in the same location, and that permanent fencing has been erected on the boundary, which shows there being no intention to relocate it. Furthermore, the Council contends that the method of relocation would entail dismantling and rebuilding, each task taking one hour, and by a carpenter, a member of the building trade. The alternative location within the garden could only be in front of the patio doors, which the Council asserts would be impractical, and adversely affecting the occupant's outlook.
12. From the available evidence there is nothing to suggest that the installation has moved since it was assembled. It has been in situ since 2021, over a year. There does not appear to be an intention to move it in practice, because of the erection of the fence to safeguard the users of the ramp and to prevent overlooking. The alternative possible location would be in front of the patio doors of the appeal property, which appears an impractical solution. In my view, the installation has a permanent rather than a fleeting character and has been in one place a sufficient length of time to be of significance in the planning context. The skateboard ramp has a solid and permanent character which derives from its wood frame and posts, its boarded sides, ramp, and platform flooring. The skateboard ramp as a matter of fact and degree satisfies the permanence test.
13. The appellant asserts that the skateboard ramp is not attached to the ground and is only anchored in place by virtue of its own weight. The Courts have held that an absence of physical attachment is not in itself decisive. However, affixation by this means, in my view, affords the ramp to have a significant degree of physical attachment to the land on which it stands.
14. I conclude that, as a matter of fact and degree, that the skateboard ramp due to its size, permanent rather than fleeting character, and the nature of anchorage, is a structure which is considered as a building for planning purposes. The skateboard ramp amounts to the carrying out of a building or other operation, in, on, over or under land, which constitutes 'development' as defined in section 55(1) of the 1990 Act as amended. The building operation was carried out by a carpenter who is a person in business involved in the building trade.
15. No case has been made under grounds (b) or (c) in relation to the fence and therefore there is no challenge that it constitutes development and requires planning permission.
16. I conclude that the skateboard ramp is development and the appeal on ground (b) therefore fails.

The appeal on ground (c)

17. This ground relates to whether there has been a breach of planning control. In this ground the appellant is asserting that the development is permitted development not requiring planning permission. Section 57 of the 1990 Act as amended states that planning permission is required for development. Planning permission may be granted by development order by section 57(3).

18. The appellant considers that the development is permitted by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013. The appellant refers to the Welsh Government Guidance document entitled Planning: a guide for householders. Version 3 May 2020 section C, and section 11 of the Welsh Government Technical Guidance: Permitted development for householders, Version 2, April 2014.
19. The Council refers to Class E which grants permission for the provision within the curtilage of the dwellinghouse of any building or enclosure, raised platform ... required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to a series of limiting criteria that are set out in Class E.1(a) to (m). The interpretation of Part 1 defines 'raised' in relation to a platform as a platform with a height greater than 30 centimetres under I.1.
20. I would concur with the Council that a skateboard ramp contains raised platforms and that this development is above 30 centimetres in height. Criterion E.1(j) excludes development that would include the construction or provision of a veranda, balcony or raised platform of which any part is more than 30 centimetres above the surface of the ground directly below it. The skateboard ramp is therefore caught by this criterion of the order which is the statute in force. The technical guide to householder development refers to the same restriction on pages 52 and 53. The guide for householders is a simpler guide and is not an authoritative interpretation of the law as is set out in the introduction on page 1 of this document.
21. In terms of the fence, this exceeds 2m in height and is therefore not permitted by Schedule 2, Part 2, Class A of the order.
22. Planning permission is required for the development enforced against and this constitutes a breach of planning control, because there is no record of a planning permission for it. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed application

23. The ground (a) appeal and the deemed application derives its terms from the allegation. The main issues are the effect of the skateboard ramp on the living conditions of nearby residents in relation to privacy, noise and disturbance, and the effect of the fence on the living conditions of nearby residents in relation to outlook and privacy.
24. The appellant asserts that the activity of skateboarding in the rear garden of this property occurred before the ramp was installed, and there is no material difference in impact on neighbouring occupiers living conditions because of the development. Furthermore, overlooking mutually occurs in this area due to the configuration of properties and their gardens. The appellant has compared the issue of overlooking from the development to the use of a trampoline in rear gardens of properties, whereby users would bounce up and down and see into next door's properties. The presence of a skateboarder standing on the raised platforms would be similar in effect to the use of a trampoline.
25. I accept that the ramp is not used 24 hours in the day. However, I do not agree that the effect of the ramp would be like children playing in a garden. The sound from a skateboard ramp as the skateboarder travels over it in my experience is marked and pronounced. This is made worse in my view when the wheels of the skateboard travels over the metal pipework which has been installed between the ramp and the raised platform. This regular and persistent sound by each skateboarder would be a source of nuisance and annoyance to residents. I would envisage that the skateboarder would

sometimes inadvertently knock or hit the back board. By its nature, skateboarders fall on the ramp and the skateboard would roll away and possibly roll off the ramp onto the patio.

26. This activity resulting in noise and disturbance cannot be controlled or limited in any effective way. Being right next to two boundaries of adjoining residents' properties, I would consider that the impact of the activity associated with the development would be significantly worse than the day-to-day use and enjoyment of a garden. The preceding use of the patio as a place for skateboarding cannot be controlled if that activity fell within an incidental use of the property. The development of a skateboard ramp requires planning permission, and in my view, the effects are far greater than before it was installed, in relation to its impact on living conditions.
27. In relation to overlooking, I accept that in the context of the area there is a degree of mutual overlooking. However, there is a considerable difference between a person standing on the raised platform, and at a height capable of looking over into next door's garden and abutting the boundary neighbouring fence, to someone bouncing up and down on a trampoline. As the Council notes any impact on privacy is fleeting on a trampoline, whereas this development, which requires permission is not, and cannot be controlled or limited. A person can stand on these areas of raised platforms for a considerable length of time, whilst taking a break from the activity. Neighbouring occupants would be able to see them, and I would envisage that they would feel that they are being overlooked and their privacy being adversely impacted. I consider that the development of the ramp has made the neighbouring properties nearby less enjoyable places to reside for the occupants.
28. A resident has made representations on the appeal and has described their objections on noise, disturbance, and privacy. I recognise their objections and the descriptions of how this development has impacted on their life.
29. I conclude that the skateboard ramp harms the living conditions of nearby residents in relation to privacy, noise, and disturbance, conflicting with Policy PS 2 of the Swansea Local Development Plan (LDP).
30. In relation to the fence this extends upwards next to the boundary with a neighbouring property. It is much higher than neighbouring fences and is as a direct result of the skateboard ramp development, otherwise it would serve no practical purpose. I concur with the Council that the fence due to its height and position has a detrimental impact on the living conditions of occupants of neighbouring properties in relation to a diminished outlook. Outlook is considered here in the context of overbearing development rather than issues of loss of light, aspect, or view. A fence at this height on the boundary has an overwhelming and oppressive effect on next door's garden and house. It may cause additional shading to the garden of the neighbouring property in the evening due to its orientation, height, and position. This adds to my concern about the fence.
31. I agree with the Council that the fence enforced against is there because of the ramp development and without it the impact on privacy would be worse than already exists with the development in place.
32. The development is not minor in the context of its impact, and I therefore conclude that the fence harms the living conditions of nearby residents in relation to outlook and privacy, conflicting with LDP Policy PS 2.
33. The ground (a) appeal and the deemed application should therefore be dismissed.

Conclusions

34. I conclude that grounds (b), (c) and (a) should fail, and the enforcement notice be upheld.
35. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

Iwan Lloyd

INSPECTOR