
Appeal Decision

Site visit made on 7 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2020

Appeal Ref: APP/U2805/C/19/3232013

54 Kesteven Way, Corby NN18 8GG

- 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 Mrs Valentina Croitoru against an enforcement notice issued by Corby Borough Council.
 - The enforcement notice was issued on 6 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an Oak Gazebo in the garden, shown hatched blue on the attached plan.
 - The requirements of the notice are:
 - 1 Demolish, dismantle the Oak Gazebo in its entirety.
 - 2 Remove all materials resulting from compliance with (1) from the land edged in red.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[a] and [g] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

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

Ground (a) and the Deemed Planning Application

3. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issue

4. The main issue in this case is the effect of the development on the living conditions of the occupiers of 37 and 39 Epping Road with particular regard to enclosure and loss of light.

Reasons

5. Kesteven Way forms part of a modern residential development and is characterised by a variety of housing types including short terraces, semi-detached and detached houses. The modest sizes of gardens, groupings of houses and changes in ground level offer the potential for high degrees of

overlooking between private spaces, which is mitigated by the high fences on the boundaries to rear gardens.

6. 54 Kesteven Way (No. 54) shares a boundary with houses which face Epping Road and the structure which has been constructed runs parallel with that boundary. The eaves height of the solid rear elevation of the gazebo is significantly higher than the fence and a substantial part of the gazebo is visible above the fence. In common with other dwellings on the development the gardens serving Nos. 37 and 39 Epping Road are compact, consequently the gazebo has a significant impact on the outlook from them. Whilst the gardens are already enclosed by boundary fences, they are at a lower level than those serving houses in Kesteven Way and the additional enclosure by the gazebo is considerable and harmful to the living conditions of the occupiers of 37 and 39 Epping Road.
7. There are areas of public open space in the wider area. However, these do not provide the same level of amenity as the private rear gardens. As such they do not compensate for the harm which the looming presence of the gazebo has over the private rear gardens of the neighbouring houses.
8. The rear gardens serving Nos. 37 and 39 Epping Road are north-east facing, consequently any loss of light associated with the presence of the gazebo is unlikely to be harmful to the enjoyment of these outdoor areas.
9. There is a proliferation of sheds and similar garden buildings on the housing development, but my attention has not been drawn to any relationships which are directly comparable to the building which has been constructed.
10. In summary, whilst I am not persuaded that the gazebo results in a loss of light to the gardens serving Nos. 37 and 39 Epping Road, it does have a significant enclosing effect which is harmful to the living conditions of the residents of those houses. Therefore, the development is contrary to Policy 8 of the North Northamptonshire Joint Core Strategy 2011-2031 (2016) and Policy P10(R) of the Corby Local Plan (1997). These policies jointly protect the amenity of neighbouring properties. For similar reasons the development is contrary to the National Planning Policy Framework which promotes a high standard of amenity for existing and future users.

Other matters

11. The Council is concerned that in the future the gazebo could be fully enclosed to create an independent residential unit. My decision is made on the basis of the structure as built and as such any future alterations to the structure or its use fall beyond my remit.

Conclusion in respect of ground (a) and the deemed planning application

12. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (g)

13. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that 3 months is too short a period to arrange for a contractor to dismantle the gazebo and

make the area safe. The Council consider that 3 months is ample time to carry out the works but have no objection to an extension to 6 months.

14. The gazebo affects the gardens serving Nos. 37 and 39 Epping Road and if I extend the time period for compliance to 6 months it could still be on site in the summer months when there would be a reasonable expectation that the occupiers of the Epping Road houses would wish to use their outside space regularly. There is no evidence before me to demonstrate that contractors are in short supply in the area or that the structure would take an extended time period to be dismantled.
15. Taking all of these matters into consideration I find that the 3-month period afforded by the notice does not fall short of what is reasonable. For the reasons given above, I conclude that the appeal on ground (g) should fail.

Conclusion

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Sarah Dyer

Inspector