
Appeal Decisions

Site visit made on 7 July 2020

by H Porter BA(Hons) MScDip IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal A Ref: APP/T3725/W/20/3245265

36 High Street, Kenilworth CV8 1LZ

- 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 Mr & Mrs Richard & Kate Owen against the decision of Warwick District Council.
 - The application Ref W/19/0697, dated 28 April 2019, was refused by notice dated 1 November 2019.
 - The development is installation of a tree house, pergola, replacement boundary fence and new fencing to the northern end of the garden (retrospective).
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Appeal B Ref: APP/T3725/Y/20/3245268

36 High Street, Kenilworth CV8 1LZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr & Mrs Richard & Kate Owen against the decision of Warwick District Council.
 - The application Ref W/19/0698/LB, dated 28 April 2019, was refused by notice dated 1 November 2019.
 - The works are installation of a tree house, pergola, replacement boundary fence and new fencing to the northern end of the garden (retrospective).
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Decisions

1. Appeal A is allowed and planning permission is granted for the installation of a tree house, pergola, replacement boundary fence and new fencing to the northern end of the garden at 36 High Street, Kenilworth CV8 1LZ, in accordance with the application Ref W/19/0697 dated 28 April 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall be retained and carried out in accordance with the approved plans OW-PL-01, OW-TEL-1, OW-PEL-1.
 - 2) The erection of new fencing to the northern end of the garden hereby permitted shall begin not later than three years from the date of this decision.
 - 3) Notwithstanding Condition 1, prior to the commencement of the relevant part of the development, details at a scale of 1:20 that show the elevation, material, finish of the proposed fencing, as well as the design and position of the gateway through it, shall be submitted to and approved in writing by the local planning authority. The relevant part of the development shall be carried out in accordance with the approved details.

2. Appeal B is allowed and listed building consent is granted for the installation of a tree house, pergola, replacement boundary fence and new fencing to the northern end of the garden at 36 High Street, Kenilworth CV8 1LZ, in accordance with the application Ref W/19/0698/LB dated 28 April 2019 and subject to the following conditions:
 - 1) The works hereby permitted shall be retained and carried out in accordance with the approved plans OW-PL-01, OW-TEL-1, OW-PEL-1.
 - 2) The erection of new fencing to the northern end of the garden hereby permitted shall begin not later than three years from the date of this decision.

Preliminary Matters and Background

3. Planning permission and listed building consent are being sought for the retention of a tree house, pergola and boundary fencing, constructed within the rear garden of No. 36. I saw on my site visit that these elements are in position and have been carried out in accordance with the submitted plans. In addition, planning permission and listed building consent is being sought for the proposed installation of new fencing across the northern end of the garden, which has not been carried out. I have dealt with the appeal on this basis.

Main Issues – both appeals

4. The appeals concern a Grade II listed building within the Kenilworth Conservation Area (CA). In considering whether to grant planning permission or listed building consent, sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require the decision-maker to have special regard to the desirability of preserving the listed building, its setting or any features of special architectural or historic interest which it possesses; and to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
5. Accordingly, the main issues in both appeals are whether the works and development already carried out and being proposed would preserve the listed building, its setting or any features of special architectural or historic interest which it possesses; and whether the character or appearance of the Kenilworth Conservation Area has been, or would be, preserved or enhanced.

Reasons – both appeals

6. The statutory list description identifies the Grade II listed building No. 36 High Street (No. 36) as being of late 18th century origin, much altered. In recognition of its special interest and significance as an entity, No. 36 is identified as being part of a group, Nos. 30 – 62 (even); this also being specifically identified by the initials 'GV' (Group Value) in the list description.
7. No. 36 High Street is a handsome two-storey dwelling that is part of an irregular terrace fronting the north side of High Street, Kenilworth. A former vicarage, No. 36 expresses the architectural attributes of a relatively high-status townhouse and Classical architectural style typical of the late-Georgian period. The significance and special interest of the listed building are derived, in-part, from its aesthetic, its architectural form, and surviving historic fabric and layout. Special interest is also informed by the building's former use as a Vicarage and the intrinsic value it has as part of the group fronting High Street.

An enclosed private garden extends from the rear of No. 36, which is partly bound by red-brick walls of some age. The garden is part of the historic plot associated with the listed building and the surroundings in which the heritage asset is experienced, and is thus part of the setting of the listed building.

8. The significance of the CA is largely drawn from its range and quality of historic buildings and their built evolution, materials and status, which collectively denote the area's rich architectural and social history. Due to its prominent location in a central position within the High Street in Kenilworth and the CA, the appeal building makes a positive contribution to the special interest and significance of the CA as a whole.
9. Attached to the base of a mature tree within the rear garden of No. 36, the tree house measures some 3.5m x 3.5m, is constructed of timber and partly open-sided. Owing to its scale, form and position, the tree house is innocuous in the context of the listed building and its garden setting; it is read very much as an impermanent structure designed for the purpose of recreation and enjoyment. Consequently, I do not consider that the tree house detracts from the significance or special interest of the listed building or its setting, which have been preserved.
10. The pergola structure has been erected within a lower section of garden, close to the dwelling where the garden has been recently subject to re-landscaping. The pergola is read as part of the re-landscaping works and fits within a high quality, contemporary garden design that complements the listed building and does not affect its setting. Looking back towards the rear elevation of No. 36 from the garden, the pergola does not harmfully infringe views or dilute appreciation of the architectural interest of the building. The replacement fence is constructed of high-quality materials and is entirely fitting within the context of the recent re-landscaping scheme. It has not harmed the significance or special interest of the listed building.
11. In addition to the works and development already carried out, the construction of a 1.8m high fence with access gate across the northern end of the garden is proposed. This would truncate the garden in length, however, the historic map extract referred to by the Council serves to illustrate that the rear garden has already been significantly altered and no longer reflects that which existed at the end of the 19th century. The Council contend that the listed building requires extensive open grounds to preserve its historical significance; I do not agree. Indeed, the construction of Elmbank Road and the introduction of a detached double garage at the northern end of the garden have contributed to an erosion of its extent and openness. Moreover, I am aware that planning permission, now expired, has been granted for the erection of a new dwelling within the rear portion of the appeal site. Therefore, whilst the whole of the garden is within the setting of the listed building, the rear portion per se is not germane to its significance or special interest.
12. Bearing in mind the listed building has been a residence in a central, town-centre location, it seems likely and pragmatic for the associated garden to be subject to sympathetic change and adaptation over time to suit its residential use. The visual impact of the extant and proposed works is relatively localised due to the concealed position of the garden, away from public vantages. Even cumulatively, the combined effect of the extant and proposed works and development would not be harmful to the setting or special interest of the listed building nor to the character and appearance of the CA as a whole.

13. In light of the foregoing, no conflict arises with the statutory duties within sections 66(1) and 72(1) of the Act; Policy KP13 of the Kenilworth Neighbourhood Plan; Policy HE1 of the Warwick District Local Plan 2011 – 2029, adopted September 2017; or with the historic environment policies within the National Planning Policy Framework, revised February 2019.

Conditions

14. I agree with the Council that a condition specifying the plans is necessary as this provides certainty. I do not consider a darker stain on the boundary fence would be either necessary or reasonable and have therefore not imposed a condition to that effect. In respect of the proposed fencing across the rear garden, I have included a condition specifying the time limit for its construction. I also consider requiring a scaled elevation including details of its finish would be necessary in the interests of certainty and to ensure the significance of the listed building and its setting is preserved.

Conclusion – both appeals

15. For the reasons given above, and having considered all other matters raised, I conclude that both Appeal A and Appeal B should be allowed.

H Porter

INSPECTOR