



Appeal Decisions

Site visit made on 27 July 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal A: APP/C3240/W/21/3274173

27 Church Hill, Ironbridge, Telford TF8 7PZ

- 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 and Mrs Hosley against the decision of Telford and Wrekin Council.
- The application Ref TWC/2021/0154, dated 26 January 2021, was refused by notice dated 1 April 2021.
- The development proposed is described as retrospective permission for erection of traditional, rustic, folly style summerhouse with raised deck area and composting outdoor loo; for incidental enjoyment of application as garden building.

Appeal B: APP/C3240/C/21/3274170

27 Church Hill, Ironbridge, Telford TF8 7PZ

- 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 Mr Ian Hosley against an enforcement notice issued by Telford and Wrekin Council.
- The enforcement notice, numbered ENF/2020/0678, was issued on 31 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a timber summerhouse with raised timber decking platform and the erection of a timber composting toilet.
- The requirements of the notice are 1. Demolish the timber summerhouse with raised timber decking platform and timber composting toilet, including any footings, foundations and services, and reinstate the land to its previous condition 2. Remove all materials arising from the land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Decisions

Appeal A: APP/C3240/W/21/3274173

1. The appeal is dismissed insofar as it relates to the summerhouse, decking and staircases and planning permission is refused. The appeal is allowed insofar as it relates to the composting toilet, and planning permission is granted in accordance with the terms of the application, Ref TWC/2021/0154, dated 26 January 2021, and the plans submitted with it so far as relevant to that part of the development hereby permitted.

Appeal B: APP/C3240/C/21/3274170

2. The appeal is dismissed and the enforcement notice is upheld.

Appeal A - The s78 Appeal

Procedural Matter

3. The description of development, as stated on the application form, is set out in the banner heading above. The Council's decision notice and the appeal form describe the development as the "erection of a summerhouse with raised decking area and composting outdoor toilet (part-retrospective)". The re-wording seeks to clarify the proposal in planning terms. The Council dealt with the development on this basis and, accordingly, so have I.

Main Issues

4. These are the effect of the development on i) the character and appearance of the Severn Gorge Conservation Area, the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site, and the setting of Listed Buildings and Buildings of Local Interest; ii) the living conditions of the occupants of neighbouring properties; and iii) the structural stability of the sloping land.

Reasons

Character and appearance of the Severn Gorge Conservation Area (CA), the Outstanding Universal Value of the Ironbridge Gorge World Heritage Site (WHS), and the setting of Listed Buildings and Buildings of Local Interest

5. The appeal site is within the spacious grounds of a grade II listed building, which is located within the CA and WHS. The property is listed as 'Orchard House' and is described as a mid-19th century detached villa in an eclectic domestic revivalist style. The grounds and garden of No.27 steeply descend the sides of the Gorge from Church Hill to the boundary of properties on New Road, and the steep descent continues to the Wharfage adjacent to the River Severn.
6. The appeal building is constructed of rough sawn larch cladding, timber roof shingles, painted wooden fenestration and decorative timber upright posts and eaves detailing. Due to the steep topography of the site, it is raised up above the ground on stilts to one side, with wooden stairs providing access to the summer house structure. To the side of the summer house is the composting toilet constructed of similar materials. An area of decking is provided to both the front and side of the summer house and this is bounded by balustrade and raised timber planters which are set on the decking. At the time of my site visit, the development appeared complete.
7. The National Planning Policy Framework (the Framework) advises that Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are defined as an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
8. The Ironbridge Gorge was established as one of the UK's first World Heritage Sites by UNESCO in 1986 in recognition of its role as the birthplace of the industrial revolution and its unique landscape. The quality of the area is described and encapsulated in a statement of Outstanding Universal Value in accordance with UNESCO guidelines.

9. Ironbridge is synonymous with the Industrial Revolution with the Grade I listed bridge famed as being the world's first iron bridge. The significance of the WHS and the CA lies in its long industrial history due to the abundance of raw materials and the River Severn for transport. This part of the CA and WHS is characterised by the dramatic natural landscape incorporating steep wooded sides of the Gorge, interspersed with mainly traditionally constructed historic buildings. The steeply sloping side of the valley rising to the north forms a backdrop of buildings set amongst the soft landscaping of plateaued gardens within the grounds of those historic buildings.
10. The siting of the summerhouse is relatively discreet in views from Church Hill and the listed building itself. However, the nature of the Gorge is such that the structure is in an elevated location, its height exacerbated by the topography and it is visible from public vantage points beyond its boundaries. It is also observable from properties on New Road, some of which are statutorily listed or locally listed. Although partially screened by vegetation at this time of year it remains visible and, given the significant covering by mixed deciduous planting, this is likely to be exacerbated in months when the vegetation cover will be less dense.
11. I appreciate the intentions of the summerhouse to appear as a 'folly' in the landscape, however, the development is a large and prominent structure of dense form and construction serving a clear purpose as a garden building. In this context the development appears alien to the historic pattern and nature of development within the area. Although it is located a distance from its grade II host and other buildings, the development bears no reference to the architecture of the house or to the surrounding historic environment. There is no affinity with the existing built environment and, isolated from other development, its scale, siting and appearance present a prominent anomaly in the verdant landscape setting on the slopes of the Gorge. It may be consistent to an extent with other outbuildings in the vicinity regarding use of timber in its construction, but it is of a form and scale that is inconsistent with examples of outbuildings I saw at the time of my visit. Overall, I consider that the development is inappropriate in its setting, altering views of the CA and WHS and harming the quality of the character and appearance of the surrounding historic landscape.
12. It is natural to assume that the appearance of the structure could become less stark over time due to weathering, but its basic mass and form would remain evident within both local and more distant views. Likewise, it is likely that planting would fail to provide screening given the steep levels involved and elevation and prominence of the development. Furthermore, any such mitigation could not be secured in the long term.
13. Paragraph 199 of the Framework requires that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm¹ to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

¹ National planning Policy Framework paragraph 200

14. Bearing in mind the scale of the CA and the WHS, the localised harm that would be caused by the proposal would be, in the parlance of the Framework, less than substantial. Paragraph 202 of the Framework confirms that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The site is already in its optimum use as a private garden and there are no public benefits to outweigh the less than substantial harm arising from the development.
15. For the reasons set out above, the development does not protect and enhance the outstanding universal value of the WHS or preserve or enhance the character or appearance of the CA. Although it does not directly impact the host listed building, it is harmful to the setting of the listed buildings and buildings of local interest within its surroundings. Consequently, in that regard, the development conflicts with Policies BE1, BE3, BE4, BE5 and BE6 of the Telford and Wrekin Local Plan 2011-2031 (LP) and the approach of the Framework to the protection of heritage assets. Policy BE2 of the LP refers to residential alterations and extensions and therefore is not considered to relate to the development before me.

Living conditions of the occupants of neighbouring properties

16. The summerhouse benefits from a sizeable decking area that extends the accommodation provided for additional outdoor use, whether that be sitting reading or entertaining with a BBQ. The development's elevated position enables views across the River Severn and more localised views down towards neighbouring properties. This is likely to be a similar situation to many surrounding properties, where there are glimpses between the trees to private garden areas belonging to houses below. Although the tree cover appears predominantly deciduous and provides a level of screening, this would be significantly less once the trees shed their leaves, and this would likely provide extended views into private gardens. Notwithstanding this, viewing from the summerhouse, the distances are such that any overbearing impact or loss of privacy would be small, especially as the development is for incidental use to the main house rather than main accommodation which would be occupied on a permanent basis.
17. Overall, the development is not considered to have an unacceptable impact upon the amenity of the occupants of neighbouring properties by way of overbearing impact and loss of privacy. On this matter I find no conflict with Policies BE1 and BE2 of the LP.

Structural stability of the site

18. The steep slopes of the Gorge are historically geologically unstable, and landslips are common. Accordingly, concerns have been raised by neighbours and the Council about the structural integrity of the development regarding slope instability and the absence of a land stability report.
19. Since the Council's refusal of the planning application, the required investigations were undertaken and the report², by Sladen Associates, was submitted as part of the appeal documents.

² Report on Stability Assessment dated July 2021

20. The report includes a map of the locality with details of how the area is zoned according to different degrees of perceived risk with respect to potential land instability. The summerhouse is located within an area described as Zone 3, which defines the area as likely to be suitable for development in accordance with the development plan, provided appropriate mitigation and stabilisation measures are implemented.
21. The study concludes that the absence of evidence of superficial instability and given the relatively low level land use as a garden area, works to improve the factor of safety are not considered justified. The report was accompanied by a completed stability declaration form. Taking account of these submissions, the development accords with the essence of Policy BE9 of the LP which supports development where the structural integrity of land within areas of suspected slope instability/poor ground conditions will not be compromised.

Consideration of alternative options

22. The appellant advanced drawings to illustrate three options to reduce the scheme to a "more acceptable level" in preference to complete removal of the whole development. These options comprise:
23. Option 1 reducing the size of the decking to the side and removing the second staircase; option 2 removing the side decking and second staircase completely; and option 3 removal of the summerhouse, decking and staircases, retaining only the composting toilet.
24. Regarding options 1 and 2, removing or reducing in size the decking area and second staircase would naturally reduce the scale of the development. However, the bulk and height of the building would remain, and these options would not remedy the harm identified.
25. Option 3 proposes the retention of the composting toilet which is a significantly smaller structure placed on the ground with no steps or decking. This option would not harm the living conditions of occupiers of neighbouring properties and would have a neutral effect on the WHS and CA. In this respect, option 3, due to its limited visual impact, would preserve its landscape setting and the character and appearance of the CA and WHS. Consequently, it would accord with Policies BE1, BE3, BE4, BE5 and BE6 of the Telford and Wrekin Local Plan 2011-2031 (LP) and the approach of the Framework to the protection of heritage assets.

Conditions

26. As the composting toilet building has been constructed, a condition for the commencement of development within 3 years is unnecessary. There are no other conditions suggested and none that I consider necessary.

Conclusion

27. For the reasons given above, I conclude that the appeal should be allowed in part and dismissed in part by allowing the composting toilet to remain in situ as proposed by option 3. The remaining development is contrary to the development plan as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding.

Appeal B - The Enforcement Notice Ground (f)

28. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the demolition of the summerhouse, decking platform and composting toilet, and for the land to be reinstated to its previous condition, I consider the purpose is to remedy the breach of planning control.
29. The appeal under ground (f) is that the requirements of the notice exceed what is necessary and for the consideration of whether lesser steps would overcome the breach of planning control. Given that the requirements on the notice go no further than simply requiring the appellant to undo what has been done, by complying with part 5 of the notice, the requirements self-evidently cannot exceed what is necessary to fully remedy the breach of planning control.
30. Furthermore, in the absence of a deemed planning application, I have no powers to grant permission for any alternative schemes under a ground (f) appeal.
31. Notwithstanding this, the alternative options put forward by the appellant have been considered under the s78 appeal (Appeal A). Some of the works covered by the enforcement notice (the composting toilet) will now be authorised by the permission I intend to grant under Appeal A. The enforcement notice shall cease to have effect so far as inconsistent with that permission³. In these circumstances there would be no need to vary the requirements of the notice under ground (f) as that would be underenforcement which would lead to another permission.
32. Accordingly, the appeal on ground (f) fails.

S A Hanson

INSPECTOR

³ S180 of the Act states that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with the permission.