



Appeal Decision

Site visit made on 14 November 2023

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th December 2023

Appeal Ref: APP/W1850/W/23/3319853

39 Crescent Road, Colwall, Malvern WR13 6QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Adrian Johnson against Herefordshire Council.
 - The application Ref 224324, is dated 29 December 2022.
 - The development proposed is erection of a Gazebo.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a Gazebo at 39 Crescent Road, Colwall, Malvern WR13 6QW in accordance with the terms of the application, Ref 224324, dated 29 December 2022, and the Location Plan, Plans and Elevations Drawing Number 1350:01 submitted with it, subject to the following condition:
 - 1) Within three months of the date of this decision the boundary fence shall be increased in height to 2m, measured from the higher adjacent ground level, in accordance with details that have first been submitted to and agreed in writing by the local planning authority. The fence shall be retained and maintained at the increased height thereafter.

Preliminary Matters

2. I have not included the full description of development from the appellant's planning application form as it makes reference to the proposal being retrospective and that is not in itself development. I was able to see on my site visit that the development has taken place and therefore I have determined this appeal on that basis.
3. The council did not formally determine the application. However, the council has stated that subject to a condition to increase the height of the boundary fence, the application would have been recommended for approval. The main issues identified below are based on my site visit, the Council's statement and the representations from interested parties.

Main Issues

4. I have derived the main issues from my site visit, consideration of the council's statement of case and interested party representations.
5. The main issues are the effect of the proposed development on:
 - a) the character and appearance of the area; and

- b) the living conditions of occupiers of neighbouring properties with particular regard to noise, privacy and outlook.

Reasons

Character and appearance

6. The appeal is for a timber built gazebo, which is open to the front, in the rear garden of No 39 Crescent Road, a detached property. No 39 has a relatively spacious garden. The proposed gazebo would lie close to the boundary with the next-door property, No 41 Crescent Road.
7. Crescent Road is a pleasant street in a generally residential area, largely comprising attractive residential properties, a number of which have shed and ancillary buildings within their rear gardens.
8. The Colwall Neighbourhood Development Plan (CNDP) was made in 2021, and as such forms part of the statutory development plan. Policy CD3 of the CNDP states that outbuildings should not compete, in terms of scale, decoration and design, with the main building. Materials should complement the original building.
9. I saw from my site visit that the garden is of a large enough size to accommodate the gazebo without it appearing cramped or disproportionate with the main dwelling. This impression is reinforced by the open-fronted nature of the gazebo which does not have the dominance or massing of a more solid structure. I therefore consider that the gazebo is of a scale that allows it to remain subservient to the main property, rather than in competition with it. The design of the gazebo, and the materials of timber walls with a wooded roof of a black shingle style are not dissimilar to typical outbuildings, and do not appear incongruous in relation to the main dwelling.
10. I consider that the proposal is not uncharacteristic with the typical pattern of development in the area, which comprises of dwellings with separate outbuildings within their gardens, which can at times be viewed from neighbouring properties and the street.
11. The appeal site is located within the Malvern Hills Area of Outstanding Natural Beauty (AONB). Paragraph 176 of the National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection. Due to the location of the gazebo within a domestic garden in a built-up residential area, I consider that the landscape, natural and scenic beauty of the AONB would be conserved.
12. I conclude that the gazebo does not harm the character and appearance of the area and as such I do not find the proposal in conflict with Policy CD3 of the CNDP. The development is in accordance with Policies LD1 and SD1 of the Herefordshire Local Plan Core Strategy (CS) which seek to ensure that development proposals conserve and enhance the AONB and respect the scale, height, proportions and massing of surrounding development.

Living conditions

13. The boundary fence between the appeal property and No 41 is smaller than the permitted development height of 2m. The appellant has agreed to increase the

boundary fence in his ownership which would help screen the gazebo from the neighbouring property. The council consider that increasing the height of the boundary fence to 2m from a point part way along the appellant's conservatory to the start of the neighbour's shed at No 41 would ameliorate the appearance to a degree acceptable in policy terms. This would improve the outlook for the residents of No 41 and would also provide additional privacy along with noise screening between the gazebo and the outdoor sitting area of No 41.

14. Concerns have been raised that the gazebo is visible from, and directly faces the property and garden of No 35 Crescent Road. However, the proposed gazebo is sited some distance away, and is not located along a boundary with No 35. The gazebo is single storey, and there is a boundary fence between the two properties which prevents users of the gazebo from looking directly into the garden of No 35. Whilst it is likely that the gazebo can be seen at an angle from the upstairs windows of No 35, intervisibility between properties and neighbouring gardens is not uncommon. Furthermore, due to the position of the gazebo within the garden, and the orientation of the property at No 35, the gazebo is not directly facing habitable room windows of No 35. I consider that there is an adequate degree of separation between the gazebo and No 35 to ensure that harm is not caused to the living conditions of the occupiers of No 35 in relation to privacy or outlook.
15. I do not consider that the gazebo causes harm to the living conditions of the occupiers of No 35. With an appropriate condition to increase the height of the boundary fence, I consider that the gazebo would not cause harm to the living conditions of the occupiers of No 41. The development therefore accords with Policy SD1 of the CS which seeks to safeguard residential amenity for existing residents.

Conditions

16. I have had regard to the condition suggested by the council, as well as to National Planning Practice Guidance on conditions. For clarity, I have slightly amended the suggested condition from the council so as to ensure that the conditioned fence remains in place. I have therefore attached a condition requiring that the garden fence be increased in height within three months of the date of this decision, and is retained at that new height thereafter. This is needed to ensure the protection of the living conditions of the neighbouring occupiers.
17. As the structure is already in situ, I have not seen it necessary to attach standard conditions regarding the start date of the development, plans or the materials, though for certainty the plans are included within the terms of the decision.

Conclusion

18. For the reasons given above, I conclude that the development would comply with the development plan as a whole and there are no other material considerations, including the Framework, to lead me to find otherwise than in accordance with it. As a result, the appeal should be allowed.

L C Hughes

INSPECTOR