



Appeal Decision

Site visit made on 4 August 2020

by **K A Taylor MSC URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Appeal Ref: APP/L3245/W/20/3250184

Amen Corner, 4 The Beeches, Whitchurch, Shropshire SY13 1NB

- 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 T Ciesielski against the decision of Shropshire Council.
 - The application Ref 19/04743/FUL, dated 5 November 2019, was refused by notice dated 4 February 2020.
 - The development proposed is for erection of gazebo and statue.
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Decision

1. The appeal is dismissed.

Procedural Issues

2. The address of the appeal site is taken from the application form. However, the Council's decision notice states '*Land adjacent 4 The Beeches*'. Whilst I saw engraved plaques identifying the property as '*Amen Corner*' during my site visit, I have no evidence before me from the appellant that confirms the site address of the land has formally changed.
3. The gazebo and statue have been erected and I am therefore considering the appeal as retrospective.
4. The appellant has questioned whether the gazebo and statue required planning permission. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
5. From the evidence before me, it is apparent that parties have arguments in relation to the designation and lawful use of the land in regard to public open space and it being sold privately by the developer. However, the appeal before me is for the erection of a gazebo and statue, I shall therefore return to this following my reasoning.

Main Issue

6. The main issue is the effect of the development on the character and appearance of the area.

Reasons

7. The appeal site is a parcel of land which is to the south and abuts the residential property known as no. 4 The Beeches. The land was originally designated as part of a larger housing development¹ for public open space but was subsequently sold to the appellant. The Beeches is a residential cul-de-sac and consists of a mix of housing types being two storey and bungalows, properties are within spacious plots and are characterised with open plan frontages. Despite some variation in form, the properties in the area present a discreet arrangement including the open nature of plots and frontages being free from any built form, that appreciably contributes towards the local character.
8. The gazebo is of a Victorian style and is constructed of ornate metal with a dome roof, it has part open sides but contains a seating area and is positioned on a decorative paved base. The statue has been placed within the gazebo. Observations from my site visit included that the gazebo has been installed with lighting both from the roof and by ground spotlights. Further domestic paraphernalia has been added to the land including other smaller statues, additional planting and boulders, however these did not form part of the original application and are therefore not part of this appeal decision.
9. The gazebo is located in a prominent position towards the frontage of the land and results in the structure being clearly visible in the street scene towards the entrance and from the end of the cul-de-sac. Particularly due to the open aspect of the frontages of properties and the sloping approach onto the residential estate from Chester Road. The gazebo, in combination with its overall scale, materials, depth and substantial height appears as an incongruous addition on the land. It detracts from the open nature of the character and appearance of the immediate and wider street scene.
10. This is further exacerbated by the siting of the large statue within the gazebo. The statue is of a stark appearance due to its design, materials and feature characteristics. Although, I agree with the appellant that the development may add interest to the street scene it does not make a high-quality visual contribution to the landscape and neither the nature of the footprint combined with the gazebo justify it. Accordingly, both the gazebo and statue appear at odds being visually intrusive and as dominant additions within the street scene to the detriment of the character and appearance of the area.
11. The appellant argues there are other areas on the Beeches that have incorporated open space within gardens, I have no substantive evidence to support this. Even if I did, these areas are free from any built form in comparison to the appeal site. I acknowledge that the appellant as set out in the appeal statement wishes to encourage residents of the estate to utilise the land. However, this is somewhat contradictory to the supporting statement that accompanied the application that states the gazebo *'has been placed to the front of the dwelling for the applicants ongoing pleasure and enjoyment'*.
12. Furthermore, the land, albeit as open space is now within the appellants private ownership, therefore it would be the appellants choice whether to permit public access or not, despite there being restricted covenants these would not fall within the scope of planning legislation. However, I did observe

¹ Planning Decision Application Ref: 14/02830/OUT & 15/05325/REM

at the time of the site visit that access to the land is somewhat restricted and confusing by the nature of the landscaping. Anybody wishing to access the land would have to navigate over/or through the planting, boulders and box hedge.

13. As such, I do not have any substantive evidence before me, particularly with its visual appearance that the land forming the appeal site, is land for which would serve as a public benefit with enhanced public amenity value to justify the erection of the gazebo or statue. Notwithstanding this, it does appear that the land has never been used for its intended public open space purpose given the extent and appearance of domestic paraphernalia within it.
14. For the reasons given above, I conclude that the development causes harm to the character and appearance of the area. It would be contrary to Policies CS6, CS8 and CS17 of the Shropshire Local Development Framework, adopted core strategy 2011 and Policies MD2 and MD12 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan, 2015. Amongst other things, taken together they aim to protect and enhance environmental assets, require development to be designed to a high quality, contribute to and respect locally distinctive or valued character and existing amenity value, contribute to the health and wellbeing including local amenity, quality landscaping, open space and support proposals which contribute positively to the special characteristics and local distinctiveness of an area.
15. It would also be at odds with the aims of the National Planning Policy Framework, Chapter 12 in regard to achieving well-designed places and Chapter 15, paragraph 175 in regard to biodiversity.

Other Matters

16. From the evidence before me, the lawful use of the land appears to be that of open space as set out in the original planning permission for the land. I have not seen any evidence that the lawful use of the land is garden, including that of any application which has been made under section 191 of the 1990 Act². As such, the continued lawful use of the land would be a future matter for the Council. In regard to the original developer or any subsequent landowner not carrying out the development in accordance with the approved residential planning decision and conditions the onus would fall on the Council to pursue the reasons for this and it is not a matter for the Inspector to determine.
17. I note that local residents have expressed additional concerns about the development, including health and safety, appropriateness of design of features of the statue, land and property values, erection of gate posts and other obstructions. Given my findings in relation to the main issues, it is not necessary to consider these matters in detail. The matters of legal covenants referred to in the land registry documents are not within the control of the planning system.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

² The Town and Country Planning Act 1990 (as amended)