



Appeal Decision

Site visit made on 19 January 2009

by **James Ellis LLB (Hons) Solicitor**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
27 January 2009

Appeal Ref: APP/R1845/A/08/2086716

8 The Croft, Kidderminster, Worcestershire DY11 6LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Nigel Haywood against the decision of Wyre Forest District Council.
- The application Ref 08/0680/FULL, dated 26 June 2008, was approved on 9 September 2008 and planning permission was granted subject to conditions.
- The development permitted is the erection of a shed and a wooden canopy over an existing paved area.
- The condition in dispute is No. (2) which states that: 'The upright posts and horizontal timbers of the roof of the canopy hereby approved shall be stained in a green colour to match that of the colour on the side of the party fence facing No. 9 The Croft, within 6 months of the date of this decision unless otherwise agreed in writing by the Local Planning Authority.'
- The reason given for the condition is: 'In the interests of visual amenity and to accord with Policy D.1 of the Adopted Wyre Forest District Local Plan.'

Decision

1. I allow the appeal, and vary the planning permission Ref 08/0680/FULL for the erection of a shed and a wooden canopy over an existing paved area at 8 The Croft, Kidderminster, Worcestershire DY11 6LX granted on 9 September 2008 by Wyre Forest District Council, deleting condition No. (2) and substituting therefore the following condition: '(2) All the upright posts and horizontal timbers of the roof of the canopy hereby approved shall be stained in a green colour to match that of the colour on the side of the party fence facing No. 9 The Croft or, alternatively, all of them shall be stained in a brown colour to match that of the colour of the fences facing the rear garden of No. 8 The Croft, such staining to be carried out within 6 months of the date of variation of this decision and the colour of the staining shall be maintained at all times thereafter.'

Procedural matter

2. The canopy the subject of the condition in dispute has already been erected.

Main issue

3. The main issue is whether condition No. (2) is reasonable having regard to the effect of the colour of the upright posts and timber horizontals of the roof of the canopy on the character and appearance of the area.

Reasons

4. The appeal property is on the south side of The Croft and backs onto Whitegate Drive. It is in a residential area and is occupied by a detached house which is similar to others in this part of The Croft. The permitted canopy has been constructed in the south-west corner of the rear garden to the property adjacent to its boundaries with No. 9 The Croft and Whitegate Drive. It has 6 timber posts and a pyramidal roof, which I am advised is about 2.5 metres high at its peak. The wooden roof of the canopy has been covered in felt which is a reddish brown in colour. The timber posts supporting the roof and the timber horizontals of the roof have not been stained and remain a natural wood colour.
5. The sides of the fences facing in towards the rear garden of the appeal property have been stained brown whereas those facing in towards the rear garden of No. 9 have been stained green. Both colours are, in my experience, commonly used in the gardens of residential properties. In addition to being seen from rooms within the house at No. 8 and the rear garden to that property, the canopy can also be seen from rooms within the house at No. 9 and also from its rear garden. This is evidenced by photographs submitted by the occupier of No. 9 and also from what I saw on my site visit. The appellant has indicated that he wishes to stain the timber posts and timber horizontals of the canopy in a brown colour.
6. In my opinion, the proposed canopy would be of an appropriate size and design given its garden setting. In addition, I consider that it would have an acceptable appearance, always provided that its timber supports and horizontals were of such a colour that it would blend in with its surroundings. I consider that the present unstained timber posts and horizontals stand out in stark contrast to the existing fencing, garden features and vegetation in the rear gardens of both Nos. 8 and 9.
7. If the timber posts and horizontals were to be stained green, as required by condition No. (2), I consider that the permitted canopy would be in keeping with the character and appearance of the area given the colour of the fencing facing in towards the rear garden of No. 9 and that of vegetation in both gardens. However, if the posts and horizontals were to be stained brown, they would match the colour of the fencing facing in towards the rear garden of No. 8, and also that of the felt on the roof of the proposal. Having regard to this, I again consider that the canopy would not look out of place if brown staining were to be undertaken. I therefore conclude that if the posts and horizontals were to be stained brown, the permitted canopy would not harm the character and appearance of the area. In this respect, it would not be contrary to saved Policy D.1 of the Wyre Forest District Local Plan, adopted in 2004.
8. I therefore consider that it would be entirely acceptable for the horizontal timbers and upright posts to be to be stained in either a green or brown colour. It follows that I do not consider it reasonable for the wording of condition No. (2) to restrict the colour of the staining to green. Also, I consider that for the avoidance of doubt, and in the interests of maintaining the character and appearance of the area, it would be appropriate for the colour of staining to be maintained once the initial staining has taken place.

9. A third party has referred to the planning history behind the erection of the permitted canopy and to the loss of a protected tree on the appeal site. Whilst I have sympathy with the third party, I can only give limited weight to these matters in the context of the main issue before me for determination.
10. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting another.

James Ellis

Inspector