

**Planning Committee:** 20 March 2012

**Item Number: 21**

**Application No:** W 12 / 0040

**Town/Parish Council:** Warwick  
**Case Officer:** Steven Wallsgrove  
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**Registration Date:** 25/01/12  
**Expiry Date:** 21/03/12

**Guys Cross Nursing Home, 120-122 Coventry Road, Warwick, CV34 5HH**  
Erection of a replacement smoking shelter together with small modifications to rear paved area (retrospective application) FOR Mr D Sticklely

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This application is being presented to Committee due to an objection from the Town Council having been received.

### **SUMMARY OF REPRESENTATIONS**

**Warwick Town Council:** "Local Plan policies DP1 and DP2 require that development must positively contribute to the character and quality of the environment and in the opinion of the Town Council the development constructed, does not meet the requirements of these policies.

The Town Council are also concerned that the structure as built, did not correspond with the drawings which are deposited with the application.

The Town Council consider that the location of the smoking shelter and its proximity to the adjoining residential property will lead to disturbance to the adjoining resident, because of noise arising from the use of the smoking shelter by staff and residents of the nursing home. Additionally as the open sided smoking shelter faces the adjacent property, fumes will impact on the resident of that property.

Mr D Sticklely, the applicant attended the meeting and presented the application and answered questions raised by Members. Mr Sticklely had also circulated documentation for all Members, which specified responses to objections to the previous application.

Mrs J Lock, an adjoining resident was represented in her objection by Councillor Mrs L Bromley."

**Environmental Health:** "A properly constructed smoking shelter by its open nature will not contain noise. To enclose the shelter to contain noise would make it fail the requirements for ventilation of a smoking shelter.

The shelter does not of itself give rise to noise. Were we to object to the shelter the residents/staff will still probably go into the garden to smoke since they cannot smoke within the home. Unlike the patrons of a pub, who may be deterred by the absence of a smoking shelter, the residents of the home have nowhere else to go at night.

Surreptitious smoking within the building in the absence of a proper outside facility may give rise to a fire risk.

It can be argued that a shelter draws smokers to a particular part of the garden. Sound of normal conversation during the day is not going to give rise to a statutory nuisance. It is unlikely to be a nuisance at night. If there is a problem with raised voices or rowdy behaviour moving the shelter a few metres one way or another is unlikely to have a significant effect.

We have no reason to object to a smoking shelter."

**Public Response:** One neighbour objects strongly to tobacco smoke drifting into their bedroom and garden, and to loud voices at all times of day and night, from structure which faces them.

### **RELEVANT POLICIES**

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)

### **PLANNING HISTORY**

The property was converted into a nursing home following a consent of 1980, with alterations and extensions being approved in 1983, 1997, 2004 and 2005. A retrospective application (W11/0219) for a smoking shelter was refused permission with a further application (W11/1364) on a different part of the site being withdrawn.

### **KEY ISSUES**

#### **The Site and its Location**

The property was originally built as a pair of semi-detached houses on a triangular plot on the top of the hill. It now has Fields Court residential development to the south east and a low roofed bungalow to the north. The site is bounded by a high brick wall some 1.9m in height.

#### **Details of the Development**

The proposal, as submitted, was to erect a glazed smoking shelter in the gated back garden to the south of the gable of the neighbouring bungalow, some 1.5m from the property boundary, the design having open sections at the top and bottom of the panels. The structure that has been erected, however, was to a different design so the agent has submitted corrected plans to reflect what has been erected. These show larger glazed side panels, but with more of the elevations open in order to comply with the smoking shelter requirements. The paving shown on the plans has not been completed. The application was accompanied by a Design and Access Statement.

#### **Assessment**

In terms of the visual impact, the structure is set away from the boundary wall and, being no taller than the wall, cannot be seen from the neighbouring ground. It is barely visible from the streetscene and is considered an appropriate

domestic structure within the curtilage of this use in accordance with Policy DP1 of the Local Plan.

In terms of harm to amenity caused by the use of the shelter, particularly to the neighbour who has objected, since this is sited beside the existing paved path opposite the blank gable of the neighbours bungalow and 1.5m away from the boundary, it is considered that any impact will be minimal, and will be significantly less than from smokers sitting on a bench immediately beside the boundary wall which would be outside of the control of the Council as Planning Authority.

The size of the garden is relatively restricted and, due to the sunken path beside the home, the possibilities of relocation are limited. It is considered, therefore, that since Environmental Health have no objection, there are no grounds to justify a refusal on the grounds of it being contrary to Policy DP2 of the Local Plan.

### **RECOMMENDATION**

GRANT, subject to the conditions listed below.

### **CONDITIONS**

- 1 The development hereby permitted must be begun not later than the expiration of three years from the date of this permission. **REASON** : To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out strictly in accordance with the details shown on the application form, site location plan and approved drawing 151/1a, and specification contained therein, received on 3/2/2012 unless first agreed otherwise in writing by the District Planning Authority. **REASON** : For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.

### **INFORMATIVES**

For the purposes of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority, the development achieves acceptable standards of layout and design and does not give rise to any harmful effects in terms of impact on the immediate neighbour which would justify a refusal of permission. The proposal is therefore considered to comply with the policies listed.

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