

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
MR. C. GRANT 'A'	Retention of Gazebo - Glenfield House Nursing Home, Middle Lane, Wythall, B38 0DG	GB	12/0048-MT 20.03.2012

Councillor R A Clarke has requested that this application be considered by the Committee, rather than being determined under delegated powers.

RECOMMENDATION: that permission be **REFUSED**.

Consultations

WH	Consulted - views received 06.02.2012: no objection
Drainage Engineer	Consulted 01.02.2012 - no comments received to date
Tree Officer	Consulted 01.02.2012 - no comments received to date
Wythall PC	Consulted - views received 08.02.2012: no objection
Publicity	4 letters sent 01.02.2012 (expired 22.02.2012) 1 site notice posted 17.02.2012 (expire 09.03.2012) 1 press notice posted 10.02.2012 (expired 02.03.2012)

One objection received:

- Application previously refused under 09/0821: nothing has changed in any form between the two submissions.
- Located in dangerous position on edge of busy car park with access via a downward slope.
- No separate safe thoroughfare for these elderly slow moving residents some of whom are wheelchair bound, only a busy road leading to the car park.
- Impact on the openness of the Green Belt.
- Screening is not a reason to grant the application.
- Loss of privacy and well being.

The site and its surroundings

The application relates to a detached building currently used as a nursing home. The property lies to the north east of Middle Lane on the edge of a small group of buildings which includes residential dwellings, a church and commercial uses. The building is predominantly two and three storeys in height and is open to Middle Lane. To the rear and side of the building are designated parking areas and a garden.

The application site is located in a recognised area of Green Belt.

Proposal

This application seeks consent for the retention of an open sided gazebo which has been constructed on land at the rear of the site.

Relevant Policies

WMSS	QE1, QE3, QE6
WCSP	SD.2, CTC.1, D.28, D.38, D.39
BDLP	DS1, DS2, DS13, S21, RUB2, TR11
DCS2	CP3, CP10, C4, E4
Others	PPS1, PPG2, PPS4

Relevant Planning History

11/0686	Proposed Gazebo. Withdrawn 02.12.2011.
09/0821	Retrospective application for retention of gazebo. Refused 28.01.2010.
09/0509	Extension to existing nursing home - basement, ground and first floor extension and rear car (Amendment to planning approval B/2008/0615). Approved 18.09.2009.
B/2008/0615	Two storey rear extension to provide additional bedroom accommodation and changes to car park provision. Approved 06.11.2011.
B/2006/1114	Conservatory to nursing home. Approved 07.12.2008.
B/1998/0260	Brick sign (Advertisement consent). Approved 10.08.1998.
B/1993/0381	Extension of basement area under whole of new wing and internal alterations. Approved 21.06.1993.
B/1991/0642	Repair, alterations and extensions to form residential nursing home for the elderly. Approved 07.10.1991.
B20027	Change of use and extensions to form residential nursing home. Refused 11.03.1991.
B19691	Extensions and change of use to form residential care home for the elderly (as amended by letter received 19.09.1990).
B16843	Extension of building and use as residential nursing home. Withdrawn.
B16843	Provision of 7 no. luxury 2 bedroom apartments with swimming pool and garage block. Approved 14.03.1988.
B16009	Erection of side and rear extension to nursing home. Approved 14.03.1988.
B14667	Change of use to residential nursing home. Approved 19.01.1987.

Notes

The main issue in the consideration of this application is whether the proposed gazebo is an appropriate form of development in the Green Belt and, if not, whether any very special circumstances exist which clearly outweigh the harm caused. The proposal must also be considered in terms of the impact on the visual amenities of the locality and the residential amenities of adjoining properties.

Green Belt

Policy D.39 of the Worcestershire County Structure Plan 2001 and Policy DS2 of the Bromsgrove District Local Plan 2004 are in general accordance with advice given in Planning Policy Guidance Note 2: Green Belts in stating that inappropriate development

in the Green Belt will not be allowed unless very special circumstances exist to outweigh the harm caused. Policy DS2 reflects PPG2 in setting out the instances where development may be considered acceptable. No provision is made under this policy for the development associated with residential care homes. Policy D.28 of the Worcestershire County Structure Plan 2001 states that the expansion of existing businesses in the Green Belt will only be permitted in those settlements identified in the Local Plan where infilling is acceptable. The application site does fall within an identified settlement.

It is therefore considered that the proposed gazebo is an inappropriate form of development in the Green Belt. Inappropriate development is, definition, harmful to the Green Belt.

PPG2 states that the most important attribute of Green Belts is their openness. Standing away from the existing nursing home, the gazebo extends the built form of the application site and the tight cluster of buildings which the site belongs to into a previously undeveloped area. It has a footprint of 38 square metres and a height of 3.55 metres. Although open sided it is of a robust construction with timber posts and a felt tiled gabled roof. I therefore consider that the gazebo is harmful to the openness of the Green Belt and to some extent constitutes encroachment.

It now follows me to consider whether any very special circumstances exist which outweigh the harm caused.

In considering whether very special circumstances exist, the harm caused to the Green Belt, its aims and purposes as set out in PPG2 need to be considered with any other harm and assessed against any advantages to the proposed development. In considering proposals for inappropriate development in the Green Belt, paragraph 3.2 of PPG2 is relevant:

"Inappropriate development is, by definition, harmful to the Green Belt. *It is for the applicant to show why permission should be granted.* Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is *clearly outweighed* by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach *substantial weight* to the harm to the Green Belt when considering any planning application or appeal concerning such development" (*Council emphasis*).

The LPA takes the words "very special" to be given their ordinary, natural meaning. The meaning of the word "special" include those which exceed or excel those which are common. The test in relation to Green Belt policy qualifies that meaning to the extent that the circumstances have to be "very" special.

The applicant has put forward a number of considerations in their Planning Statement which they believe to constitute very special circumstances. These are based on the benefits of the gazebo to the health and wellbeing of the residents of the nursing home.

It is argued that the gazebo allows the elderly and mobility impaired residents of the nursing home to breathe fresh air and enjoy the grounds nursing home while remaining protected from the elements.

In an attempt to substantiate this argument reference has been made to a number of policy and regulatory requirements for nursing homes including the National Minimum Standards for Care Homes for Older People (Department of Health 2003), The Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 and associated guidance document entitled 'Essential standards of quality and safety' (Care Quality Commission 2010). It is argued that the gazebo meets the requirements of these documents.

With regard to the National Minimum Standards for Care Homes for Older People reference has been made to the following standards:

- Standard 10 which states that "*The arrangements for health and personal care ensure that service user's privacy and dignity are respected at all times.*"
- Standard 12 which states that "*The routines of daily living and activities made available are flexible and varied to suit service users' expectations, preferences and capacities.*"
- Standard 19 which states that "*The location and layout of the home is suitable for its stated purpose; it is accessible, safe and well-maintained; meets service users' individual and collective needs in a comfortable and homely way and has been designed with reference to relevant guidance.*" The supporting text to this standard requires that "*Grounds are kept tidy, safe, attractive and accessible to service users, and allow access to sunlight.*"
- Standard 20 which states that "*In all newly built homes and first time registrations the home provides sitting, recreational and dining space (referred to collectively as communal space) apart from service users' private accommodation and excluding corridors and entrance hall amounting to at least 4.1sq metres for each service user.*" The outcome of Standard 20 is to ensure that "*Service users have access to safe and comfortable indoor and outdoor communal facilities.*"

With regard to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 the applicant's emphasis is placed on Regulation 15 which states that "*The registered person (i.e. the care home provider) must ensure that service users (i.e. care home residents) and others having access to premises where a regulated activity is carried on are protected against the risks associated with unsafe or unsuitable premises.*"

Outcome 10 of the associated guidance to the regulations (Essential standards of quality and safety) provides advice on compliance with Regulation 15. It states that people who use services and people who work in or visit the premises should be in safe, accessible surroundings that promotes their wellbeing. The provider of the service should ensure that the premises protect people's rights to privacy, dignity, choice, autonomy and safety.

I have considered that applicant's Planning Statement and reviewed the relevant standards, regulations and associated guidance referred to above. It is clear in the standards that the grounds of a care home should provide access to sunlight (Standard 19), and that residents should have safe and comfortable outdoor communal facilities (Standard 20). There is not however any specific requirement within the standards for a care home to provide a sheltered outdoor area that is protected from the elements.

The applicant's assertion that the gazebo meets the above regulatory and policy requirements is based on an interpretation of the rhetoric used in the standards with particular emphasis on the terms 'safe and comfortable' in Standard 20, and 'privacy', 'choice' and 'safety' in Outcome 10. It is argued that the gazebo would provide a safe and comfortable outdoor area as required by Standard 20, and that it would provide an outdoor space where people can choose to go, where they can at relevant times have privacy, and where they are safe from exposure to sunlight and the weather.

It is considered that the interpretations used in the Planning Statement are based on rather vague statements within the relevant legislation and guidance and I find the applicant's argument to be somewhat contrived. It is not therefore accepted that there is clear policy and legislative support for the proposed gazebo within the National Minimum Standards for Care Homes for Older People and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2009. Members should not therefore give any weight to these matters.

Nonetheless, in pragmatic terms I appreciate the need for the care home to provide some level of outdoor shelter for residents, especially given the Smoke Free legislation that is now in place at the premises. I also appreciate the need for the care home to provide residents with shade given the health risks associated with overexposure to sunlight. It is not however considered that such a need would necessitate the erection of a permanent structure of this scale. It is considered that opportunities could be explored to provide areas of shade and shelter within the main building complex. For example, the existing trees on the site and moveable sun umbrellas could easily fulfill this requirement.

Moreover, the applicant does not provide any justification for the proposed location of the gazebo in an isolated position away from the cluster of existing buildings on the site. Surely a shelter in this location would be inaccessible to people with impaired mobility and the safety of residents may be compromised given the requirement to cross the car park. It is considered that these matters may conflict with the requirement for a home to provide a layout that is safe and accessible (Standard 19 of the National Minimum Standards for Care Homes for Older People).

Taking the above matters into consideration it is not considered that a justification for the proposal based on these specific grounds would overcome the permanent harm caused to the Green Belt. This argument could be repeated time and time again and I do not consider such a stance to be "very special" when using the test Members must pay regard to as set out in PPG2.

I therefore do not consider the points put forward by the applicant amount to very special circumstances. For the reference of Members, the issues relating to the wellbeing of residents (albeit in a less expansive manner) were not accepted as constituting very special circumstances in the appraisal of 09/0821 (refused under delegated powers in January 2010).

Residential Amenity

The gazebo lies over 20 metres from the boundary with the adjoining residential property, Glenfield Farm. Due to the slope of the land, views of Glenfield Farm are possible across the application site, including the gazebo. However, given the separation distance, it is

considered that any impact on neighbouring amenities of the adjoining occupiers in terms of overlooking and disturbance as a result of people congregating beneath the gazebo will not be significant.

Response to Objection

I note the views arising from the consultation process. Whilst I note the concern that the route the elderly residents of the home would take to reach the gazebo (down a slope and across the driveway and busy car park) is not safe, I consider resident's safety is primarily the responsibility of the applicant. The other points raised are dealt with elsewhere in this report.

Conclusion

The gazebo is inappropriate development in the Green Belt and is damaging to the openness of the Green Belt. No very special circumstances have been identified which outweigh the harm caused.

RECOMMENDATION: that permission be **REFUSED**.

The gazebo represents an inappropriate form of development in the Green Belt and inappropriate development is, by definition, harmful to the Green Belt. The proposal is therefore considered contrary to the provisions of policies D.28 and D.39 of the Worcestershire County Structure Plan 2001, policy DS2 of the Bromsgrove District Local Plan 2004 and the provisions of Planning Policy Guidance Note 2: Green Belts. The development is damaging to the openness of the Green Belt and challenges the purposes of including land within the Green Belt. No very special circumstances have been put forward or exist that would outweigh the harm caused.