



Appeal Decision

Virtual hearing held 20 April 2021

Site Visit made on 20 April 2021

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2021

Appeal Ref: APP/P0119/W/20/3259396

12 Bury Hill, Winterbourne Down, BRISTOL, BS36 1AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Jarman against the decision of South Gloucestershire Council.
 - The application Ref P19/1448/F, dated 7 February 2019, was refused by notice dated 7 July 2020.
 - The development proposed is the construction of a platform cantilevered over river-bank with associated post and rail balustrade.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a platform cantilevered over river-bank with associated post and rail balustrade at 12 Bury Hill, Winterbourne Down, BRISTOL, BS36 1AB, in accordance with the terms of the application Ref P19/1448/F, dated 7 February 2019, and the plans submitted with it. (There are no conditions imposed on this permission.)

Preliminary Matter

2. Part of the appellants' case is that the erection of the platform is permitted development¹, however, there is no application for a Certificate of Lawfulness before me therefore this aspect cannot be formally assessed. Nevertheless, my informal view is that the residential curtilage of the appellants' property finishes at the flood defence wall, notwithstanding the very small element of hard surfacing beyond the flood gate. The curtilage does not extend beyond the wall and take in half of the width of the river, as suggested by Mr Rocke to accord with the riparian ownership boundary. On this basis it appears to me that the platform is unlikely to be found to be permitted development.

Main Issue

3. The main issues are:
 - Whether the platform and balustrade constitute 'inappropriate development' in the Green Belt and the effect on its openness;
 - The effect on the landscape character of the River Frome valley, including on protected trees;

¹ As defined in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

- The effect on the maintenance of the river-bank and flood risk management; and
- whether there are other considerations, including the appellants' and family's personal circumstances and the best interests of a child, which clearly outweigh any harm caused by being inappropriate development, and any other harm, so as to amount to very special circumstances.

Reasons

Background

4. The appeal site comprises a detached house which lies in a small cluster of houses on the edge of Winterbourne. The house is separated from the built-up area by the River Frome to the west and on the opposite bank of the river lies The Dingle, a minor road which is also part of the route of the Frome Valley Walkway. The site lies beyond the settlement boundary and in the Green Belt.
5. The proposal, which is retrospective, concerns the erection of a wooden platform enclosed on one side by a post and rail balustrade. The platform is about 9m long and 5m wide where about one metre of the structure is cantilevered over the river/bank. Pedestrian access is obtained through a solid gate in the flood defence wall which runs along the western and norther sides of the house's garden. There are a number of willow trees along the riverbank which are the subject of a Tree Preservation Order (TPO).

Whether inappropriate development in the Green Belt

6. The National Planning Policy Framework (the Framework) indicates that 'inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Moreover, the erection of new buildings should be regarded as inappropriate unless such development falls within the exceptions set out in paragraph 145. The Act makes clear that the term 'building' includes 'any structure or erection' and therefore the platform is subject to a Green Belt assessment.
7. Mr Rocke for the appellants submits that the platform falls with the exception of part (e) of paragraph 145 as it constitutes 'limited infilling' in a village. However, the site is within a hamlet rather than the recognised village and the term usually applies to a clear gap in an otherwise mainly built-up frontage or area. The appeal site lies on the edge of the hamlet and the platform would not fill in a gap with other built development. On this basis I find that the erection of the platform is not infilling and must be regarded as inappropriate development in the Green Belt contrary to the Framework and Core Strategy Policy CS5 which governs the broad location of new development.
8. In reaching this conclusion I have taken account of the evidence submitted concerning the Council's informal 'pre-application advice' about the erection of a new dwelling on land to the south of the hamlet at Bury Hill, but the circumstances of this land are materially different to the appeal site and the location of the platform in particular.

The effect on openness

9. The issue of openness in the Green Belt has a spatial as well as a visual dimension, but given the limited physical extent of the platform, the visual

effect is the main concern. This effect has to be judged in the setting of the site where the adjoining flood defence wall is about the same height as the balustrade around the platform. At the site visit I also noted the extent of the existing hard surfaced area at the same height of the platform and 'outside' the flood wall. Given these factors and the basic low, two dimensional form of the platform, I find that its presence does not have any harmful effect on the openness of the Green Belt.

The effect on landscape character

10. The environs of the River Frome around the appeal site do not have a formal special landscape designation, but they provide an attractive landscape setting which is locally distinctive and 'The Dingle' opposite the site is part of the designated route of the Frome Valley Walkway. The platform is therefore very open to views from the public realm.
11. At the site visit I looked at the appeal site from Damsons Bridge but from this view point the platform was barely noticeable in the present degree of bankside vegetation. Seen from The Dingle opposite the site, the platform and balustrading is more noticeable. The horizontal edge of the structure and its projection over the river are at odds with the simple verdant form of the riverbank. Nevertheless, the platform is also seen in the context of the flood defence wall behind it and the domestic paraphernalia in the gardens of the houses.
12. In visual terms I agree with Mr Howat and Dr Rocks' assessment that the harm to the landscape setting is judged as 'slight to moderate' but that the area in which this harm visually occurs and is seen by the public is relatively limited and contained.
13. In terms of the effect on willow trees, these make an attractive contribution to the character of the riverbank. Of the two trees enclosed by the platform, one appears to have been dead for some time as the remaining trunk is covered with ivy/creeper. The platform appears to have been built around the trees and not fixed to them and there is little evidence that the platform will harm the future well-being of the remaining tree.
14. Overall on this issue I find that the platform has at worst a moderately harmful visual impact on the attractive riverside character of the area but this adverse impact is limited in its extent when viewed from The Dingle. Nevertheless, the acknowledged harm means that the erection of the platform conflicts with Core Strategy Policies CS9 and CS34 and Policies PSP1 and PSP2 concerning the protection of the landscape and local distinctiveness.

The effect on the riverbank and flood management

15. The riverbank on which the platform sits is clearly affected by flooding from the River Frome. The Council refers to the initial objection expressed by the Environment Agency (EA) to the platform which was said to interfere with flood defence works and their maintenance and repair. There was also no flood risk appraisal submitted with the application. However, the EA have now decided (as indicated by email of the 2 May 2019) to allow the structure to remain and not to enforce its removal as it presents a low risk of increased flooding to the property. Mr Jarman also indicated at the site visit that the platform has been

built with a trap door which allows access to a sluice valve which projects below the flood wall.

16. In terms of planning issues, Mr Howat agreed that there was no explicit conflict of the erection of the platform with the requirements of Policy PSP20 in terms of the management of flood risk. Further, given the simple design and form of the structure, there is no evidence to suggest that it would impede the flow of the river when in flood, or would materially displace flood water and make it more likely that other properties would flood.
17. Taking all of these aspects together, I find that it has not been demonstrated that the platform harms flood risk management or conflicts with the guidance in section 14 of the Framework or the provisions of the development plan on minimising flood risk.

Other considerations

18. A main aspect of the appellants' case concerns their personal family circumstances and in particular the benefit of the platform to their child who has a profound and continuing health condition. The appellants said that the platform was built to enable the child to have access to the river environment in a wheelchair. The benefit provided by the platform is supported and endorsed by two health professionals who say, in summary, that it provides safe, flat access to the riverside which would not otherwise be available, and enables the user to engage with and have the full experience of being at the natural environment of the riverside. I attach substantial weight to this consideration.

Green Belt and planning balance

19. In undertaking these balancing exercises, I have borne in mind the requirements of the Public Sector Equality Duty and placed no single factor above the best interests of a child.
20. On the main issues I have found that the erection of the platform and balustrade is 'inappropriate development' in the Green Belt, contrary to the guidance in the Framework, and substantial weight must be given to this harm, although the structure does not harm the openness of the Green Belt. The structure also causes slight to moderate visual harm to the character of the River Frome valley, but this harm is restricted to a relatively localised area. These adverse effects result in conflict with the provisions of the development plan as outlined above.
21. The environmental factors have to be balanced with the basic reason for the proposed platform: to provide safe and flat access for a member of the appellants' family with a profound disability. There are clear and compelling reasons put forward in support of the platform that it aids the child's well-being and enjoyment of the riverside environment which would otherwise not be available.
22. Having regard to the best interests of the child and the legal duty to advance equality of opportunity, these personal circumstances and the benefit provided by the platform greatly outweigh the moderate and contained visual harm associated with it. Moreover, in terms of the guidance in paragraph 143 of the Framework I find that 'very special circumstances' have been demonstrated to justify approving 'inappropriate development' in the Green Belt.

23. I also find that the conflict with the development plan is outweighed by these other considerations, and this indicates that the appeal should be allowed.

Conditions

24. Although the Council does not recommend conditions concerning the erection of the platform, the parties have put forward, with reservations, a condition to secure the removal of the structure if the specific personal circumstances involving the child change. Moreover, at the hearing the appellants said that the timber platform was demountable in that it had been put together with screws and bolts although it would be a lengthy task to dismantle it that would have to be undertaken by a professional carpenter.

25. Having regard to the guidance in the Framework and the Planning Practice Guidance about conditions, I have concerns over the necessity for such a condition given the moderate and contained harm identified, as well as practical difficulties over the enforcement of it. I therefore conclude that such a condition is not justified.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr T Roche BA, PhD, BTP, MRTPI

Director, Roche Associates

Mr and Mrs Jarman

Appellants

Mr J Clark,

Managing Associate, Foot Anstey, Solicitors.

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Howat, BSC, MRTPI

Senior Planning Enforcement Officer, South Gloucestershire Council.