



Appeal Decisions

Site visit made on 9 January 2024

by **H Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal A Ref: APP/X4725/C/23/3320315

Appeal B Ref: APP/X4725/C/23/3320316

2 Manor View, Beaconsfield Road, Upton, Pontefract WF9 1NG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeals are made by Mr Sean Carritt (Appeal A) and Mrs Julie Carritt (Appeal B) against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 10 March 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a summerhouse and greenhouse in the garden to the rear of the dwelling (the development).
- The requirements of the notice are to:
 - i) Demolish the unauthorised summerhouse and the associated wooden deck, and
 - ii) Demolish the greenhouse and concrete hardstanding area upon which it is sited
 - iii) Remove any resultant debris and restore the land to its previous condition.
- The period for compliance with the requirements is 6 weeks.
- The appeals are proceeding on the grounds set out in section 174(2)(a)&(g) of the Act.
- Since the appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeals fails and the enforcement notice is upheld with variation as set out below in the Formal Decision.

Preliminary matters

1. The National Planning Policy Framework 2023 (the Framework) does not define 'building'. However, the definition of a building under section 336 of the Act includes "any structure or erection". Case law¹ has established that size, permanence and physical attachment to the ground are important considerations in deciding if something is a building or not. The summerhouse and greenhouse are a moderate size, designed to be permanent and secured to solid bases. Taking these factors together, I consider both to be a building.
2. Policy CS1 of the Wakefield Metropolitan District Council Local Development Framework (LDF) Core Strategy (CS) (April 2009) requires that in the Green Belt, development will conform to national, regional and LDF policies relating to the Green Belt. Policy D23 of the Wakefield Metropolitan District Council Local Development Framework Development Policies Document (April 2009) (LDF DPD) sets out policy for existing uses in the green belt, which also requires development (including extension and alteration to residential properties) to meet the criteria set out in national planning policy or demonstrate very special circumstances.

¹ Including *Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions* [2000]

3. National planning policy regarding the Green Belt is set out in the Framework and postdates the LDF. The Framework was updated in late 2023 and while Green Belt policy within it did not change from the previous version, the paragraph reference numbers did. Within Chapter 13, paragraph numbers have gone up by 5 (eg paragraph 149 has become 154).
4. Despite the appellants questioning why the Green Belt boundaries were located as they are, there is no dispute that the buildings subject to the appeals lie within the Green Belt. However, there is dispute about whether the buildings are located within the curtilage of the dwelling and whether the area has permission for use as garden. Curtilage and use as garden are separate matters.
5. The Council state that the extent of the curtilage was clearly defined under the original planning permission for the dwelling (reference 96/99/50158/C) and does not extend to the area where the buildings are located. On the evidence available to me, this seems to be the case. Despite using the word 'garden' in the allegation, the Council also say there is no evidence that the area is authorised for use as garden. By contrast, the appellants state that the area is both within the curtilage and is garden. In support of this they state that they own and mow the area of land where the buildings are located. Ownership and use of the land as garden does not necessarily mean that the land is within the curtilage of the dwelling or that any such garden use is authorised.
6. Should the appellants wish to try to demonstrate that the location of the buildings is within the curtilage of the dwelling (and hence able to benefit from the relevant permitted development rights for outbuildings within the curtilage of a dwellinghouse), they should submit an application to the Council for a certificate of lawful use or development (LDC). Similarly, the appellants may choose to submit an application for a, LDC to establish the extent of the land which is lawfully in use as a garden. Alternatively, a planning application could be submitted seeking permission to extend the area authorised for use as garden. Without prejudice to the outcome of any such application, I have insufficient evidence available to me under these appeals, to allow me to conclude that the land where the buildings are located is within the curtilage of the dwelling. Similarly, I have insufficient evidence to allow me to reach a conclusion on the extent of the authorised garden. I have assessed the appeals accordingly.

The appeals on ground (a) and the deemed planning application

7. The ground of appeal is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation set out in the notice. Hence, planning permission is sought for erection of a summerhouse and greenhouse in the garden to the rear of the dwelling.
8. 2 Manor View is a two storey detached dwelling. The dwelling and the land immediately around it is not within the Green Belt. However, the land to the rear of the dwelling, on which the appeal buildings are located, is within the Green Belt. Therefore, the buildings to which the deemed planning application relate are within the Green Belt and this is not in dispute.

9. The Framework specifies that development within the Green Belt is inappropriate, with certain specified exceptions and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved, except in very special circumstances.

Main issues

10. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the Framework, including the effect on the openness of the Green Belt;
- The effect of the development on the character and appearance of the area; and
- If the development is found to be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the development is inappropriate, including effect on openness

11. Paragraph 154 of the Framework sets out various exceptions whereby the construction of new buildings is not inappropriate in the Green Belt. Further exceptions are set out in Paragraph 155. The appellants have suggested that the buildings are used for recreation and hence the exception at 154b can be applied. I have been presented with no evidence to suggest that any other exception might be relevant.
12. The exception at 154b) allows for “the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within”. The Council contend that the intention of this exception is to allow for appropriate public facilities in the green belt, rather than those for purely private use. While this may be a logical interpretation, public use is not specified in the Framework. However, regardless of whether the summerhouse and greenhouse can be considered as appropriate facilities for outdoor recreation, they still need to preserve openness and not conflict with any green belt purpose.
13. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Case law² has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect.
14. The dwelling has a modest area adjoining its rear elevation which is clearly garden and is landscaped with ornamental trees and bushes and surfaced in gravel and paved path. There is no formal boundary at the end of this area, but beyond it, the character of the land is significantly different and extends in a strip for some distance to the east of the dwelling. This area is grass, with a

² The Court of Appeal in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466.

few widely spaced small trees. The long southern edge of this area is defined by a vertical rock face with land beyond it at a significantly higher level. The long northern edge of this area is bounded by a fence consisting of wooden posts and a single wire. Beyond the fence is an area of open land with low lying vegetation, before the ground drops towards the bridleway and beyond to the open fields and a public footpath.

15. Prior to the construction of the summerhouse and greenhouse, and their associated bases, the area was open and undeveloped. The summerhouse and greenhouse result in the introduction of built form where there previously was none. Consequently, the scale and footprint of the buildings, while relatively modest, has a harmful effect on the spatial aspect of openness.
16. The fact that the buildings are on higher ground and the site lacks any significant screening on its northern boundary, means the buildings are prominent elements, clearly visible from the nearby bridleway, as well as from a public footpath, albeit at a greater distance. The clear separation between the dwelling and the buildings means they are seen as distinct elements within an otherwise open area, which exacerbates their impact on both the visual and spatial aspects of openness.
17. Given the context of the site and the nature and location of the development, I do not consider it to significantly conflict with any of the purposes of including land within the Green Belt.
18. For the above reasons, the development fails to preserve the openness of the Green Belt, so cannot benefit from the exception set out under paragraph 154b of the Framework. Hence it is inappropriate development in the Green Belt, which by definition, is harmful.

Character and appearance

19. I have identified a harmful impact on openness and there is no certainty about whether the area is approved for use as garden. Notwithstanding this, the scale and design of the summerhouse and greenhouse is similar to outbuildings which are commonly found in residential gardens, including nearby gardens.
20. Consequently, I conclude that the development does not cause unacceptable harm to the character and appearance of the area. Consequently, the development complies with Policies CS10 of the LDF CS and Policy D9 of the LDF DPD. Together, amongst other things, these seek to ensure good design and require that development is appropriate to and respects its locality, including in terms of scale, height, layout and materials, as well as protecting local character and distinctiveness.

Whether very special circumstances exist

21. The development is inappropriate development in the Green Belt, in the terms set out by the Framework, which by definition, is harmful. However, while the summerhouse and greenhouse are visible from public vantage points, their scale is not excessive, so the degree of harm to openness caused by the development is moderate. Notwithstanding this, in accordance with the Framework, I must attach substantial weight to this harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness (I have not identified any other harm in this case), is clearly outweighed by other considerations.

22. I acknowledge the appellants wish to have a home which they can use in a flexible way and that they have stated the summerhouse and greenhouse is important to their physical and mental wellbeing. However, I have been provided with no substantive evidence which would lead me to conclude that the development is essential, or that it is a proportional response or the only suitable option for the appellants needs. Consequently, I can afford these other considerations only limited weight.
23. Therefore, the other considerations, taken together, do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances required to justify a grant of planning permission do not exist and the development conflicts with the Framework.

Other matters

24. I note support for the development from some neighbours, as well as opposition from one. I have taken any relevant matters into consideration in reaching my conclusion.

Conclusion on ground (a) and the deemed planning application

25. I conclude that the development is inappropriate development in the Green Belt and very special circumstances do not exist, meaning the development conflicts with the Framework. The development also conflicts with Policies CS10 of the LDF CS and Policy D9 of the LDF DPD. There are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeals on ground (a) fail and planning permission is refused.

The appeals on ground (g)

26. The ground of appeal is that any time period specified in the notice falls short of what should reasonably be allowed. The appellants have requested the time be extended but has provided no reason why. In considering the scale and nature of the requirements, and allowing time for arrangements to be made, the specified period of 6 weeks could be tight. However, given the harm identified, it is desirable to address the breach of planning control without undue delay, so the 6 months suggested by the appellants is excessive.
27. On balance, the period for compliance with the notice falls short of what is reasonable and it would be reasonable to extend it to 3 months. The appeals on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1) of the Act to vary the notice, as set out below in the formal decision.

Conclusion

28. For the reasons given above, I conclude that the appeals on ground (a) should not succeed. I shall uphold the enforcement notice, with variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. However, the period for compliance with the notice falls short of what is reasonable so I shall vary the period for compliance in the enforcement notice prior to upholding it. The appeals on ground (g) succeeds to that extent.

Formal Decision

29. It is directed that the enforcement notice is varied as follows:

- In section 6, 'Time for compliance', delete the words 'six weeks' and substitute the words 'three months'.

30. Subject to this variation the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

H Davies

INSPECTOR