



Appeal Decision

Site visit made on 25 July 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/C2741/D/24/3338894

Newstead, Front Street, Naburn, York, YO19 4RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr P Waterhouse against the decision of City of York Council.
 - The application Ref is 23/01726/FUL.
 - The development is the erection of a summerhouse with veranda in the rear garden.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a summerhouse with veranda in the rear garden at Newstead, Front Street, Naburn, York, YO19 4RR in accordance with the terms of the application, Ref 23/01726/FUL, and the plans and drawings submitted with it.

Preliminary Matters

2. The summerhouse and veranda have already been constructed and as such planning permission is sought retrospectively.
3. The decision notice refers to various policies in the City of York Local Plan – Publication Draft (February 2018) as modified 2023. As this local plan has not yet been adopted and as I have not been provided with the 2023 modifications referred to, I have afforded these policies very limited weight.

Main Issues

4. The main issues are i) whether the development is inappropriate in the Green Belt; ii) the effect of the development with regard to flood risk; and iii) the effect of the development on the garden of Lilac Cottage with particular regard to privacy.

Reasons

Whether inappropriate in the Green Belt

5. Paragraph 154 of the National Planning Policy Framework (the Framework) makes clear that the construction of new buildings should be regarded as inappropriate in the Green Belt except where, amongst other things, they comprise the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building.
6. Although the development in this case relates to a detached outbuilding, it is positioned close to the dwelling, within its domestic curtilage and is used for purposes incidental to it. Given that the development relates both physically and functionally to the existing dwelling, I am satisfied that it can reasonably

be treated as an extension to it. This view is consistent with established case law¹.

7. I have not been provided with any evidence regarding the size of the original dwelling, which I note has been extended to the rear. However, the summerhouse is much smaller in footprint, height and volume, than the dwelling, appearing proportionate to both the building and the wider plot of land it is situated within. I am also mindful of the fact that the summerhouse would most likely have constituted permitted development had it not included a veranda. I am therefore satisfied that the proposal would not result in disproportionate additions over and above the size of the original building.
8. I therefore conclude that the summerhouse and veranda is not inappropriate development in the Green Belt and as such, it would accord with the Framework. In reaching this view I have noted concerns raised regarding the effect of the development on the openness and permanence of the Green Belt. However, as I have concluded the proposal would not be inappropriate development in the Green Belt it is implicit that it would not harm either its openness or the purposes for including land within it. For the same reason it is not necessary for me to consider whether there are any special circumstances. Based upon my findings, the development would also accord with the 2018 unmodified version of draft Policy GB1 that I have been provided with.

Flood risk

9. Although paragraph 173 (footnote 59) of the Framework states that a site-specific flood risk assessment (FRA) should be provided for all development in flood zones 2 and 3, the application was validated without this. There is no evidence before me to suggest that the Council requested a FRA at any point during the application process.
10. Planning Practice Guidance states that a flood risk assessment needs to be appropriate to the scale, nature and location of the development. For example, where the development is an extension to an existing house, which would not significantly increase the number of people present in an area at risk of flooding, the local planning authority would generally need a less detailed assessment to be able to reach an informed decision on the planning application.
11. In this case the development is a domestic outbuilding. It would not provide permanent habitable accommodation or increase the number of people living in the flood risk area. It is evident from the drawings submitted and a site visit that the floor level of the building is raised well above the ground minimising its risk of flood damage. The plans suggest the floor level of the building is above the predicted 100 year flood level, albeit there is no evidence indicating what the 100 year flood level referred to in the submitted drawing is or how this level was obtained or calculated. Due to the building being elevated on stilts, it would not restrict the flow of flood water or increase the risk of flooding elsewhere.
12. In the absence of a FRA, the development conflicts with the Framework and the unmodified version of draft Policy ENV4 that I have been provided with.

¹ Warwick District Council v Secretary of State for Levelling Up Housing & Communities [2022] EWHC 2145 (Admin) and Sevenoaks District Council v Secretary of State for the Environment and Dawe [1997] EWHC Admin 1012

However, taking a pragmatic approach, I am able to conclude without a FRA that given the scale and nature of the summerhouse, it would not be highly vulnerable in the event of a flood and it would not increase flood risk on site or elsewhere.

Privacy

13. The appeal site slopes downwards from the rear of the dwelling towards the end of the garden. The floor level of the summerhouse and veranda are similar to that of the existing bungalow and its rear patio, which are closer to the neighbouring property, Lilac Cottage.
14. The summerhouse is angled with its windows and veranda looking across and down the garden towards the river beyond. Whilst it also faces towards the rear garden of Lilac Cottage, this is well screened by a shed and an existing hedgerow. The section of hedgerow closest to the cottage contains evergreen species and as such would be effective in winter months when the gardens and summerhouse are likely to be used less frequently. Furthermore, the summerhouse is approximately 18 metres from the boundary with Lilac Cottage. Consequently, even if the hedging was ever removed or reduced in height, the level of overlooking would not be unacceptable.
15. When standing on the veranda I was able to see beyond the lowest part of the hedge into a small part of the neighbouring garden. However, I was only able to see the end section of the garden, furthest away from the cottage, which I noted is already visible from land to the rear that I understand is owned by York Marina and is accessible by members of the public. I was unable to see into any windows, the patio areas to the rear of the cottage or the lawned area closest to the cottage.
16. From the end of the rear garden of Lilac Cottage, I was able to see the summerhouse and veranda beyond the boundary hedge and intervening trees. However, due to the separation distance I did not find the development to be overbearing or visually intrusive.
17. Some partial overlooking of rear gardens is not unusual or unacceptable and I note that Lilac Cottage has a first-floor window which no doubt allows views into the rear garden of the appeal site. Whilst a condition requiring the erection of a fence could be imposed, I do not consider that this would be necessary in this instance to make the development acceptable. I noted that the boundary hedge had been trimmed slightly lower towards the end of the gardens. Allowing this section of hedgerow to grow higher, in line with the remainder of this boundary planting, would provide a greater degree of screening should the neighbours desire this.
18. I therefore conclude that the development does not result in an unacceptable loss of privacy to the garden of Lilac Cottage and would accord with the Framework, the National Design Guide and the unmodified version of draft Policy D1 that I have been provided with.

Conditions

19. As the development has already commenced a time limit condition is unnecessary. As the development has been completed in accordance with the submitted plans and drawings, it is unnecessary to condition these further. A condition requiring the external surfaces of the summerhouse to match the

dwelling would be unreasonable and unnecessary as it would change the nature of the development applied for and constructed, which is a simple timber garden structure. Given the distance between the development and the garden of Lilac Cottage a condition requiring the erection of a fence is unnecessary to avoid an unacceptable loss of privacy.

Conclusion

20. For the reasons given above the appeal is allowed.

R Bartlett

INSPECTOR