
Appeal Decision

Site visit made on 4 May 2016

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 May 2016

APPEAL A:

Appeal Ref: APP/P0240/C/16/3145199

Erin House, 171 Dunstable Road, Caddington, Luton LU1 4AN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Raymond Gill against an enforcement notice issued by Central Bedfordshire Council.
- The Council's reference is CB/ENC/15/0349.
- The notice was issued on 28 January 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a ground level swimming pool to the side of the residential property.
- The requirements of the notice are: Demolish all of the blockwork and lining material used in association with the construction of the swimming pool and re-fill the void area with rubble and soils to achieve, with the provision of 0.3m deep of top soil, a flat, stable ground level to match the adjacent ground level.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

APPEAL B:

Appeal Ref: APP/P0240/W/16/3143491

Erin House, 171 Dunstable Road, Caddington, Luton LU1 4AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs R Gill against the decision of Central Bedfordshire Council.
 - The application Ref CB/15/03508/FULL, dated 15 September 2015, was refused by notice dated 11 November 2015.
 - The development proposed is: Retention of swimming pool below ground only.
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Decisions

Appeal A:

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a ground level swimming pool on land at Erin House, 171 Dunstable Road, Caddington, Luton LU1 4AN referred to in the notice.

Appeal B:

2. The appeal is allowed and planning permission is granted for the construction of a ground level swimming pool at Erin House, 171 Dunstable Road, Caddington, Luton LU1 4AN in accordance with the terms of the application, Ref CB/15/03508/FULL, dated 15 September 2015, and the plans submitted with it.

Procedural Matter

3. Two appeals are before me; Appeal A is submitted against the enforcement notice served by the Council and Appeal B relates to the Council's decision to refuse to grant planning permission for the retention of the swimming pool as built. The application form submitted in relation to Appeal B described the proposal as the 'retention of swimming pool below ground only'. The term 'retention' does not actually describe an act of development. Consequently, within the formal decision in relation to Appeal B I have described the development as the 'construction of a ground level swimming pool', that being the description given by the Council to describe the breach of planning control in relation to Appeal A.

Appeal A on Ground (a) and Appeal B

4. The two appeals relate to the same development. The swimming pool is largely complete and Appeal B sought permission for the retention of the works. The reason for refusal of planning permission and the reasons for issuing the enforcement notice are essentially the same, relating to the effect of the proposal on the Green Belt. Consequently, I have dealt with the ground (a) appeal in relation to Appeal A and Appeal B together in one decision.
5. The site is situated within the South Bedfordshire Green Belt. From the information before me the main issues are:
 - i) Whether the development represents inappropriate in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - ii) If the development is inappropriate development, whether any harm to the Green Belt by way 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.
6. The Development Plan for the area is made up of the saved policies of the South Bedfordshire Local Plan Review (2004). The Council accept that no relevant policies have been saved. The 'Development Strategy for Central Bedfordshire' was withdrawn following a resolution by the Council's Executive on 19 November 2015. Consequently, I can give no weight to the policies of the formerly emerging plan, as referred to by the Council. Therefore, in terms of Green Belts, the policies of the Framework form the most up to date position and I have assessed the proposal on the basis of those policies.
7. The Council and the appellant are in agreement that the proposal would constitute inappropriate development within the Green Belt. Neither party has set out in great detail why they have reached that conclusion. The appellant accepts that the development is inappropriate because 'it is not specified in

paragraphs 89-90 of the Framework¹ and the Council reached a similar conclusion, as set out within the delegated officer report regarding the retrospective planning application.

8. Whilst noting the agreement of the parties I must consider the detail of the matter before reaching my conclusion. Paragraph 87 of the Framework identifies that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 89 notes that the construction of new buildings should be regarded as inappropriate unless the buildings fall within a limited number of exceptions.
9. Section 336 of the Town and Country Planning Act 1990 (the Act) defines a "building" as any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building. Section 55 (1A) of the Act identifies that "building operations" include operations normally undertaken by a builder. In essence, a swimming pool is a "structure" with four walls and an impermeable base and, in my experience, the construction of a pool is an operation that would normally be undertaken by a builder. As such, I consider that the swimming pool, as constructed, amounts to a "building" as defined by the Act.
10. Moreover, it appears to me that the building could be considered as an appropriate facility for outdoor recreation; that being one of the listed exceptions at the second bullet of paragraph 89. There is nothing within paragraph 89, or elsewhere in section 9 of the Framework, that would require a swimming pool to be open to the public in order for it to be considered as an appropriate facility. The pool would be used for outdoor recreation by occupants of the dwelling and I am satisfied that a swimming pool could be considered as an appropriate facility in relation to a residential property, providing that it was designed as an ancillary building to meet the needs of the occupants of the house.
11. In this case, the scale of the pool is not unduly large bearing in mind its function, measuring 13.7m by 6.8m. It seems to me that the length of the pool is commensurate with the intended activity – if the pool was shorter to any significant degree the ability to swim properly within it would be impeded. In view of the above, I am satisfied that the pool represents a building that can be considered as an appropriate facility for outdoor recreation.
12. My conclusions on that point are reinforced by the fact that swimming pools within the curtilage of residential properties can commonly be erected under permitted development rights granted by virtue of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Had the Government wished to exclude the possibility of swimming pools being erected at residential properties within the Green Belt it would have been possible for them to do so by including Green Belts as a category of land within Article 2(3) or 2(4) of the GPDO in a similar way to Conservation Areas or National Parks. However, the GPDO does not do so and swimming pools can routinely be erected within the Green Belt under the permitted development regime. I am aware that permitted development rights have been removed in relation to the appeal site but that does not alter my conclusion that, as a matter of general principle, a swimming pool can be considered as an appropriate facility in association with a dwellinghouse.

¹ Paragraph 11 of the 'Grounds and Facts' statement prepared by J&J Design

13. The final limb of the second bullet of paragraph 89 requires that any facility must preserve the openness of the Green Belt and not conflict with the purposes of including land within it. The five purposes of Green Belt are set out at paragraph 80 of the Framework. The pool is contained within the existing curtilage of the dwelling which sits within the countryside. The curtilage has not been extended as a result of the erection pool and the structure is not readily visible from public vantage points outside the site. As such, I am satisfied that the pool has not resulted in encroachment of development into the countryside and find that it does not conflict with any of the specified purposes of including land within the Green Belt.
14. Moreover, the swimming pool is subterranean and essentially flush with the level of the ground that immediately surrounds it. In that sense, the openness of the Green Belt has been largely preserved. I am mindful that the presence of new development, including structures such as swimming pools or hard surfaces can have a detrimental effect on openness in some circumstances, particularly where development is encroaching onto previously undeveloped land.
15. However, in this case, the pool is located close to the side of the dwelling and is enclosed by boundary fences, walls and other garden vegetation. The dwelling and its associated domestic curtilage have a different character to the surrounding agricultural land. The swimming pool is well contained within the curtilage of the dwelling and has not resulted in any outward change in the character of the dwelling or any apparent change to the openness of the Green Belt. The Council note that the pool may be visible to members of the public if they were to be seated on the upper deck of a double decker bus as it passed the site. They have provided no information as to the frequency of bus services past the site and, even if those on a bus caught a brief view of the pool it would be seen in the context of the established residential character of the dwelling and its associated curtilage. Consequently, in view of the above, I conclude that the development has not materially affected the openness of the Green Belt.
16. The Council have made reference to the fact that further buildings or structures may be erected in relation to the pool, as evidence that it would be likely to cause harm to the openness of the Green Belt. However, it appeared to me that the pool was essentially complete and I can only determine the proposal as it relates to the breach of planning control alleged in the notice. I noted that a housing for a pool cover was integrated within the wall on one side of the pool such that it did not project beyond the top of the structure. The appellant has suggested that no further buildings would be necessary and I have no reason to doubt that statement. Any curtilage buildings would require planning permission by virtue of the conditions relating to the property which remove Class E permitted development rights.
17. At my accompanied site visit the Council noted that a wall had recently been erected along the eastern boundary of the dwelling, adjacent to the pool. A small shed or store was incorporated into the end section of the wall. Whether or not planning permission is required for the wall and the attached shed is a matter that falls outside the scope of my decision. Boundary treatments are present around much of the property and it is not clear that wall and small building are in any way connected to the swimming pool. I noticed a hedgerow on the opposite side of the wall and the area to the side of the dwelling and the

pool would be enclosed by that hedgerow regardless of the presence of the recently erected wall. Consequently, the presence of the wall does not alter my conclusion on the effect of the development on the openness of the Green Belt.

18. Therefore, to summarise, I consider that the swimming pool is a building that can be considered as an appropriate facility for outdoor recreation that does not conflict with the purposes of including land within the Green Belt and preserves the openness of the Green Belt. Accordingly I conclude that the development falls within the kind of facility listed in the second bullet of paragraph 89 of the Framework and, as such, does not amount to inappropriate development.
19. The Council's case relied largely on their conclusion that the development amounted to inappropriate development. They do not allege any other specific harm. I note that the reason given by the Council for removing permitted development rights in relation to the construction of the dwelling was to control development in the interests of the amenities of the area. In that regard, the scale and appearance of the pool is appropriate within its residential context, set within a large garden, and the development has not caused harm to the character of the area.

Conditions

20. The Council have put forward a condition which would seek to prevent any 'roof cover' or other structures to house plant and equipment in association with the pool. As set out above, the appellant has suggested that no other structures will be required in association with the pool and, in any event, permitted development rights for any curtilage structures have been removed through the imposition of a condition on the consent for the dwelling. As such, permission would be required for any additional structures and the suggested condition would not add to that layer of control. As such it is unnecessary.
21. No further conditions have been put forward by either party and, as the pool is essentially complete, I am satisfied that an unconditional approval would be appropriate.

Conclusion in relation to Appeal A on ground (a) and Appeal B

22. For the reasons given above, I consider that the development does not represent inappropriate development within the Green Belt. The swimming pool constitutes a building that would fall within one of the permitted exceptions listed at paragraph 89 of the Framework. No other harm has been identified that would weigh against the development and, consequently, I conclude that the swimming pool is acceptable in planning terms.
23. Accordingly, I conclude that Appeal A on ground (a) should be allowed and planning permission will be granted for the development. For the same reasons, I also conclude that Appeal B should be allowed.

Appeal A on ground (g)

24. It is unnecessary for me to consider whether the appeal on ground (g) should succeed because the enforcement notice will be quashed in consequence of my decision to allow Appeal A on ground (a). Therefore, I shall take no further action on this ground of appeal.

Chris Preston

INSPECTOR