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## Appeal Decision

Site visit made on 13 December 2016

**by Amanda Blicq BSc (Hons) MA CMLI**

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

**Decision date: 11<sup>th</sup> January 2017**

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**Appeal Ref: APP/M1520/W/16/3154885**

**238 Eastwood Old Road, Leigh-on-Sea, Essex SS9 4SQ**

- 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 V Wilkinson against the decision of Castle Point Borough Council.
  - The application Ref 15/0754/FUL, dated 10 September 2015, was refused by notice dated 22 January 2016.
  - The development proposed is change of use of land to domestic garden.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of land to domestic garden at 238 Eastwood Old Road, Leigh-on-Sea, Essex SS9 4SQ in accordance with the terms of the application, Ref 15/0754/FUL, dated 10 September 2015, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Block plan titled New oak framed dwelling, Revision A 23.11.15.
  - 3) Notwithstanding condition 2, no boundary treatments comprising walling, gates, fencing or planting shall be undertaken until full details of their nature, form, height, construction and materials, as appropriate, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development in Classes A, B, C, D, E, G or H of Part 1, of Schedule 2 to that Order shall be carried out on the site without the prior written consent of the Local Planning Authority

### Main Issues

2. The main issues are:
    - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
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- the effect of the proposal on the openness of the Green Belt;
- the effect of the proposal on the character and appearance of the area;
- whether the harm, by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the proposal.

## **Reasons**

### *Inappropriate development*

1. The appeal site is a strip of land located on the northern boundary of 238 Eastwood Old Road (No 238), which is a plot bounded on two sides by residential development and on the other two by informal woodland, also in the ownership of the appellant. Evidence before me indicates that there was previously a dwelling on the plot and there is currently a dwelling under construction. The appeal site and most of the adjacent plot have the appearance of a woodland glade, and are not being managed as domestic garden.
2. The appellant argues that the appeal site was previously within the domestic curtilage of the former dwelling, and this land is now required to provide an easement to a cesspit for the dwelling now under construction.
3. Paragraph 79 of the National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraphs 89 and 90 of the Framework set out the categories of development which may be regarded as not inappropriate in the Green Belt, subject to certain conditions. The change of use of land is not mentioned as an exception so on the basis that these are closed lists as established by case law, such development as is proposed here would be inappropriate. As required by Paragraph 88 of the Framework, I give this substantial weight.

### *Openness*

4. The appeal site is required to access the cesspit, which is some distance from the road. Whilst I appreciate that domestic gardens often have a more manicured appearance than less managed land, the appeal site would have to remain largely free of obstructions or structures to enable access. I also appreciate that domestic paraphernalia could be temporarily placed on the land, and that in time the site could be managed differently from the current informal management regime. However, the loss of openness associated with garden furniture and the like would have a small effect on openness, and I give this harm minor weight.

### *Character and appearance*

5. The appeal site would be largely screened by the woodland from the north and would remain as open land within the domestic curtilage of No 238. There is flatted development opposite, as well as residential development on both sides of Eastwood Old Road to the immediate south. Consequently, I do not consider that the inclusion of the appeal site within the curtilage of No 238 would appear as residential encroachment to the detriment of the character and appearance of the area.

6. As such, I find no conflict with Policy GB6 of the Local Plan<sup>1</sup> (LP) which, with regard to garden extensions into the Green Belt, states that applications will be refused where they would be detrimental to the visual amenities or character of the Green Belt, or affect sites of nature conservation interest or areas of open landscape.
7. The appellant has submitted details of potential biodiversity benefits to be gained from the development, but as the appeal site is of limited size and in any case would be adjacent to a dwelling, I have given this argument little weight in my reasoning.

#### *Other considerations*

3. Although the Council has no record suggesting that the land was previously part of the domestic curtilage of a previous dwelling, on my visit I noted a rough line of fruit trees which were located within the appeal site. This suggests that the appeal site has had some level of management and husbandry in the past. During the course of the appeal the appellant provided an aerial photograph from 2003 which appears to show a subtle change in vegetation approximately mid-way between a Y shaped path leading to Belfairs Court opposite the site, and the junction of Eastwood Old Road and Larchwood Close. I have reviewed this photograph and compared it to the proposed outer line of the appeal site, as well as to my observations on site with regard to tree species. On balance I am satisfied that it does appear that the appeal site was not part of the original woodland. This lends weight to the appellant's argument that the appeal site was within the domestic curtilage of an earlier dwelling.
8. The change of use is to facilitate an easement to access a cesspit, which would require it to be kept free of structures. Although technically the change of use would constitute inappropriate development under Paragraph 80 of the Framework, I give the apparent former use of the appeal plot as domestic curtilage, substantial weight. Furthermore, there would be no conflict with the Local Plan, and I consider the potential encroachment of domestic character onto the appeal site, would be so marginal as to not be material.
9. Consequently, I conclude that the limited harm from this development arising from the conflict with the Framework is clearly outweighed by other considerations, and that the very special circumstances required to allow inappropriate development in the Green Belt do exist in this case.

#### *Conditions*

10. I have suggested conditions to both main parties, and these are consistent with the requirements of the national Planning Practice Guidance and the Framework. In respect of the plans, I have imposed a condition specifying the drawing upon which I have based this appeal, as this provides certainty.
11. Notwithstanding that the site lies within the Green Belt I have imposed a condition removing permitted development rights in respect of ancillary buildings. Given the unusual circumstances of this appeal I consider this is appropriate in order to ensure that the appeal site remains open, and to prevent as far as practicable, the encroachment of domestic paraphernalia and other structures associated with the adjacent dwelling. I have imposed a

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<sup>1</sup> Castle Point Borough Council, Local Plan, adopted November 1998

condition requiring the submission and approval of proposed boundary treatments for the same reason. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

**Conclusion**

12. For these reasons and taking all matters into account, I conclude that the development would comply with relevant national policies in respect of the Green Belt and the relevant policies of the Council's Local Plan and that therefore the appeal should be allowed.

*Amanda Blicq*

INSPECTOR