

Appeal Decision

Site visit made on 17 January 2017

by JP Sargent BA(Hons) MA MRTPI

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

Decision date: 3 February 2017

Appeal Ref: APP/J3720/W/16/3161363

Hillgrove House, Kington Lane, Claverdon, Warwick CV35 8PP

- 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 Henry Whale against the decision of Stratford on Avon District Council.
 - The application Ref 16/02002/FUL, dated 15 June 2016, was refused by notice dated 30 September 2016.
 - The development proposed is a new tennis court.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are
 - a) whether this would be inappropriate development in the Green Belt;
 - b) whether it would harm the openness of the Green Belt and conflict with the purposes of including land in the Green Belt, and its impact on the character and appearance of the area; and
 - c) if it would cause harm to the Green Belt by reason of inappropriateness and other harm, whether that harm would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the works.

Reasons

Inappropriateness

3. Hillgrove House is set back from the road in a relatively tightly defined curtilage, and this is surrounded by a large paddock that, in planning terms, is in agricultural use. The proposal is to construct a tennis court within this paddock, a few metres outside the curtilage of the dwelling. It would be solely for use in connection with Hillgrove House and its extent comprises the application site. It would have an artificial surface measuring about 34m by 17m, and would be enclosed by a fence between 1m and 2.75m in height. The Appellant has said it is necessary to put the tennis court in the paddock because there is no room for it in the grounds of the house.
 4. Hillgrove House and the surrounding paddock lie in the Green Belt. The *National Planning Policy Framework* (the Framework) says such a designation serves 5 purposes, one of which is to assist in safeguarding the countryside
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from encroachment. It adds that inappropriate development is by definition harmful, and the construction of new buildings should be regarded as inappropriate. Exceptions to this are then given in paragraph 89, one of which (under the second bullet point) is

'[the] provision of appropriate facilities for outdoor sport [and] outdoor recreation ... as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it'.

Paragraph 90 addresses works that are not covered by paragraph 89, stating

'certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.'

It then proceeds to list 5 specific instances, one of which, under the second bullet point of that paragraph, is *'engineering operations'*. Policy CS.10 in the *Stratford on Avon District Council Core Strategy* broadly reflects this guidance.

5. The parties have assessed the development against these 2 exceptions. However, in my opinion the proposal is primarily a change of use, as the land would no longer be agriculture but would be used for another purpose, whether that be as *sui generis* amenity land according to the Appellant or as garden land in the opinion of the Council. As paragraphs 89 and 90 contain closed lists, the change of use to either garden land or amenity land is inappropriate development under the wording of the Framework, and therefore this scheme must also be considered as inappropriate development in this Green Belt location. To my mind whichever of those 2 uses is in fact now proposed makes no material difference in the consideration of this issue and so it is not a point of disagreement I need to address.
6. I appreciate that some of the buildings covered by paragraph 89 could also inevitably involve a change of use (such as those that fall within the last 2 bullet points). Similarly, the judgement of *Fordent Holdings Limited v Secretary of State for Communities and Local Government and Cheshire West & Chester Council* [2013] EWHC 2844 (Admin) from September 2013 found that the *'other development'* to which paragraph 90 refers can include a material change of use, and the example cited in that judgement is that of mineral extraction. However the *Fordant* judgement also found that the *'facilities for outdoor sport and recreation'* in para 89 concerned facilities that were in the form of buildings rather than uses.
7. In this instance I am not persuaded that contending the tennis court falls under the second bullet point of either paragraph 89 or paragraph 90 can be used to define the use as not inappropriate. To my mind the concept of engineering operations does not necessarily involve a material change of use, while the formation of the tennis court is a secondary element to the proposal and, unlike limited infilling in villages or mineral extraction, the change of use could occur without such operations being undertaken. Indeed, drawing on the *Fordant* judgement, to take a contrary view would mean that to use the site as an open lawn or pitch (both of which could be for outdoor recreation) would be inappropriate, while filling the site with a tennis court in connection with that use, which must have a greater effect on openness, may not be.

8. In coming to this view I have taken into account the appeal decision from May 2013 at Ingatestone¹ in Essex (the Ingatestone decision) that has been cited by the Appellant. As with this case that appeal concerned a proposal to form a tennis court for private use in an agricultural field close to a dwelling in the Green Belt. The Inspector found it was not inappropriate development having assessed the works jointly against the second bullet point in paragraph 89 (with regard to the tennis court in general and the fencing in particular) and against the second bullet point of paragraph 90 (in relation to the hard standing²). His discussion focussed very much on exploring the distinction between public and private sports facilities, and he did not explicitly consider the change of use and whether that should be assessed separately as inappropriate. Indeed, he specifically dismissed the Council's contention that the works were an extension of the dwelling's curtilage and said there was no proposal before him to change the use of the meadow. However, the Ingatestone decision does not offer a basis for me to reach different findings as it is post-dated by the *Fordant* judgement that does much to clarify this matter.
9. Accordingly I conclude that the proposal is inappropriate development in the Green Belt.

Openness, character and appearance

10. The Framework says the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
11. The paddock in which the tennis court would be sited is bounded on the one side by a leylandii hedge or similar, while a mound with a broken line of trees and shrubs is on another. The house is on the third side while the final side slopes down towards a valley bottom and the land then rises again beyond.
12. The surfacing of the tennis court would be flat and green, one could see through the fencing, and lighting could be controlled. However, it would nonetheless be apparent as it would involve some modification to land levels. Furthermore, while the details of the perimeter fence have not been submitted it is fair to assume that, even with its see-through nature, the effect of one layer of fencing behind another would mean it would still be noticeable, while the proposal would stand slightly away from existing development around the house. Therefore, in my opinion the Green Belt would be less open than at present and so its sense of openness would be harmed. As the development would represent an encroachment of built form into the Green Belt it would also conflict with one of the 5 purposes of including land in the Green Belt.
13. Moreover, for these reasons I consider the introduction of this development onto what is now a grassed paddock would detract to some degree from the character and appearance of the surrounding countryside.
14. I appreciate that Core Strategy Policy AS.10 accepts in principle private leisure development outside the built-up areas, the main rural centres and various other specifically defined places. However, in the designated Green Belt that

¹ Appeal APP/H1515/A/12/2187437 dated 14 May 2013 concerning Lightoaks Cottage, Mill Green Road, Ingatestone, Essex CM4 0HX

² The Inspector considered that the hard standing may be also assessed as a building under the second bullet of para 89.

'in principle' acceptance must be in line with the Framework (and paragraphs 89 and 90 in particular) in order to be consistent with that document.

15. The impact of the works on the character and appearance of the area was given by the Council as one of its reasons for refusing the scheme, but it no longer took that view in its appeal statement. Rather, mindful of the acceptance in principle of small-scale leisure based uses in Core Strategy Policy AS.10(s) it considered the impacts to be satisfactory. However, even if this is such a use that is acceptable in principle its effect on local landscape character still has to be assessed, and for the reasons stated I find its impact in that regard to be harmful. If it is not so defined then it is judged against the penultimate paragraph of Policy AS.10, where its justification, the benefits to the area and its accord with the development strategy for the District are taken into account. I discuss the first 2 of these below, but its harm to the Green Belt in my opinion is not in accordance with the development strategy for the District. As such, it conflicts with that penultimate paragraph.
16. Views of the site from the public domain or other dwellings are limited, but that in itself is not a reason to consider harm is not caused to these matters, and it would be apparent from a wide swathe of countryside across the valley. In the Ingatestone decision the Inspector found a similar tennis court would not harm the character or appearance of the surroundings or the Green Belt's openness. In coming to that view though he seemed to have placed great weight on the fact that what was before him could not be seen from the public domain due to the screening by vegetation. That is not an approach I share and consequently I have come to different findings.
17. Accordingly I conclude that the proposal would cause some harm to the openness of the Green Belt and to the character and appearance of the area.

Other considerations to weigh against the harm

18. The Framework states that substantial weight should be given to any harm to the Green Belt, and that inappropriate development should not be approved except in very special circumstances. It adds that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. In this case the Appellant has placed weight on the health effects of the tennis court and the consequent benefits that may have to the public purse. He also said that a tennis court next to his house would reduce the need to travel.
20. Paragraph 81 in the Framework says local planning authorities should look for opportunities to provide outdoor sport and recreation in the Green Belt. Taking this into account, I do not doubt that there could be health benefits from the scheme, but these would be limited to a few people only and would be dependent upon how often they played. On the matter of travel, I am unaware as to how far the Appellant now goes to play tennis, though I noted there was a tennis club in the village. I also appreciate that the development could well result in opponents coming to the appeal site, thereby offsetting to some degree any savings in travel.
21. I can see no other benefits to the local area, whether significant or otherwise. While the Appellant has explained why he wants the development, any developer has reasons they consider to be sound for what they are proposing,

and that alone cannot make the works '*fully justified*' in line with Core Strategy Policy AS.10.

22. Overall, I consider these other considerations are not sufficient to outweigh the substantial weight that should be given to the harm to the Green Belt caused by the development.

Conclusions

23. Accordingly I conclude that this would be inappropriate development in the Green Belt that would harm the fundamental purposes and aims of the Green Belt causing harm to its openness and the character and appearance of the area. In the absence of any other considerations that clearly outweigh this harm, the development would be contrary to Policies CS.10 and AS.10 in the Core Strategy and the Framework.

J P Sargent

INSPECTOR