

Appeal Decision

Site visit made on 31 January 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 20th February 2017

Appeal Ref: APP/J1535/W/16/3155886

Land adjacent to 8 Woodgreen Road, Waltham Abbey, Essex EN9 3SA

- 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 Rizwan Hussain against the decision of Epping Forest District Council.
 - The application Ref EPF/0609/16, dated 3 March 2016, was refused by notice dated 29 April 2016.
 - The development proposed is described as 'change of use of land through incorporation into curtilage of existing dwellinghouse, construction of 5-a-side football pitch to include surface and boundary fencing and associated engineering operations'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. It was evident from my site visit that the development proposed has been substantially completed. I have determined the appeal on this basis.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development within the Green Belt and the effect on openness.
 - The effect of the proposal on the character and appearance of the area.
 - If the development is inappropriate, whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so would this amount to the very special circumstances necessary to justify the proposal.

Reasons

Policy context

4. Policies GB2A and GB7A of the Epping Forest Local Plan 1998 ('LP') pre-date the National Planning Policy Framework ('the Framework'). The general approach taken in Policy GB2A is consistent with the Framework but the policy wording does not entirely reflect it, in particular paragraph 87 which advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Therefore I find
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that Policy GB2A is not entirely consistent with the Framework but as it is broadly consistent, I still afford it significant weight.

Whether inappropriate development

5. The laying of the 5-a-side artificial grass pitch ('the pitch') and the gravel pathway are engineering operations because they change the physical nature of the land. A 'building' includes any structure or erection¹ and consequently the associated fencing is a building for planning purposes.
6. The Framework sets out at paragraph 89 that the '...construction of new buildings' should be regarded as inappropriate unless they are for one of a specific set of purposes; these include '...appropriate facilities for outdoor sport, 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'. Following on from the judgement of *Fordent Holdings Ltd v SSCLG and Cheshire West and Chester Council*, it is clear that paragraph 89 relates solely to buildings, therefore this exception only relates to 'facilities' that are buildings. Paragraph 90 of the Framework sets out other forms of development that are also not inappropriate in the Green Belt, provided they preserve openness and do not conflict with the purpose of including land within it. This includes engineering operations.
7. With regard to the building and engineering operations, were I to find that these are not inappropriate, then the associated change of use for these elements would not be inappropriate in accordance with *Bromley LBC v Rookery Estates Company* [2016] EWHC 595 (Admin).
8. The *Fordent Holdings* case also confirms that the 5 points within paragraph 90 form a closed list; the list does not refer to the use of the land and consequently, what amounts to the wider extension of the existing garden area to be used as residential amenity land, is not covered by any of the exceptions in paragraphs 89 or 90. The appellant contends that the wider change of use is appropriate development under paragraph 90 of the Framework as it advances the Council's positive obligations under paragraph 81. This encourages local authorities to positively enhance the beneficial use of the Green Belt for, amongst other things, opportunities for outdoor sport and recreation. In support of this, I have been provided with the Court of Appeal judgement of *Timmins v Gedling Borough Council* [2015] EWCA Civ 10, part of which is contended supports such a position.
9. Whilst I have had regard to this judgement and note the comments from Lord Justice Mitting, it is clear that Lord Justices Richards and Tomlinson did not share this view. In my view, although a proposal may well result in the beneficial use of the Green Belt, this does not mean that it cannot also be 'inappropriate' and the fact that a proposal may be a beneficial use is merely an 'other consideration' that has to be weighed in the balance. Therefore the wider use of the land as an extension of the existing residential garden land would be inappropriate development within the Green Belt.
10. Turning to the consideration of the appropriateness of the pitch and engineering operations, paragraph 79 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping

¹ Section 336 Town and Country Planning Act 1990 (As amended)

land permanently open and that the essential characteristics of Green Belts are their openness and permanence. Openness has both spatial and visual aspects and in this respect, I saw from my visit that the appeal site is a substantial parcel of open land that is largely free of development and that apart from the pitch and fencing, contained mature trees at some of its margins and was subdivided by electric fencing and hedgerows.

11. The timber boards and associated posts and netting result in a structure of a substantial size and presence. Although the timber boards around the bottom part of the fencing were painted green, they had weathered and were clearly conspicuous. Having viewed the pitch from a number of areas, it clearly has a greater impact on openness, both in spatial and visual terms, being a clear intrusion of a type of development that is somewhat alien in its context. It does not preserve the openness of this part of the Green Belt and conflicts with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. Furthermore, the pitch and associated engineering operations do not assist in safeguarding the countryside from encroachment. Although the change of use per se has little appreciable impact on openness, the siting and extent of the gravel pathway, lined with timber railway sleepers that links the existing curtilage to the pitch, appears somewhat visually incongruous.
12. Taking everything together, the proposal before me does not fall within any of the exceptions outlined in the LP or the Framework and would be inappropriate development in the Green Belt, which is by definition, harmful. It conflicts with Policies GB2A and GB7A of the LP which, amongst other things, seeks to prevent an excessive adverse impact upon openness and conflict with the purposes of including land in the Green Belt. In accordance with paragraph 88 of the Framework, I attach substantial weight to this harm.

Character and appearance

13. Although a small number of residential properties and some commercial uses are located nearby along Woodgreen Road and Southend Lane the appeal site has a semi-rural setting. There are clear views of open countryside to the rear and side that contributes positively to this and I found that it has a stronger affinity to the open countryside rather than the residential gardens of properties along Woodgreen Road and neighbouring commercial uses.
14. The pitch introduces an urban feature that contrasts unfavourably with the immediately adjacent fields and the wider countryside, fundamentally altering the rural character of the site, to its detriment. It is an alien and jarring incursion that is out of keeping with the character of the appeal site and the surrounding rural area. This effect would not be mitigated by painting the fence green or additional landscaping, which I am mindful would take a significant time to mature.
15. Furthermore, the curtilages of adjoining residential properties appeared to be much smaller. In any reasonable assessment it is excessive when compared to the size of these existing curtilages and therefore does not relate well to them. I do not share the appellant's view that a much smaller site could not correspond with existing landscape features or would result in an awkward appearance.

16. For these reasons, the proposal causes harm to the character and appearance of the area and conflicts with Policies GB4, GB7A, DBE1 and DBE4 of the LP. Amongst other things and when read as a whole, these seek to protect rural character and only permit the extension of residential garden land where it does not have an adverse effect upon character of the landscape and its setting, relates well to the curtilages of adjoining residential properties and would not be excessive in size. I attach substantial weight to this harm.

Other Considerations

17. I note that the pitch is to be used solely for their recreational use of the appellant's family and friends but to my mind, because there would be no public benefit this reduces the weight that can be attached to it. Nonetheless, it is a benefit to which I attach moderate weight.
18. There is nothing substantive before me to suggest that the land requires any particularly exceptional management or improvement insofar as its appearance is concerned and that this could only take place by incorporation of the land into the residential amenity land already owned by the appellant. I therefore give such a consideration minimal weight.
19. For the reasons set out above I do not share the appellant's view that the proposal results in any particular landscape benefits. There is nothing substantive before me in terms of biodiversity benefits and there is no reason why this could not take place on its own. Nevertheless, the appellant's intention to create a new wildflower meadow is a benefit to which I attach minimal weight. I give no weight, in this particular case, to mere compliance with the normal development management objectives of the development plan and the Council's lack of objections on such grounds, given its Green Belt location.

Planning balance and conclusions

20. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
21. The other considerations put forward do not clearly outweigh the substantial weight that I give to the harm to the Green Belt, by reason of inappropriateness, harm to openness and the other harm I have identified in terms of character and appearance. Consequently, the very special circumstances necessary to justify the development do not exist.
22. For the above reasons, the proposal would conflict with the development plan, when read as a whole and the Framework. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR