

Appeal Decision

Site visit made on 21 February 2017

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 29th March 2017

Appeal Ref: APP/J1915/W/16/3163415

132 Cambridge Road, Sawbridgeworth CM21 9BU

- 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 & Mrs Tom Lee against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/1956/FUL, dated 26 August 2016, was refused by notice dated 20 October 2016.
 - The development proposed is change of use of land to residential.
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Decision

1. This appeal is dismissed.

Preliminary Matter

2. In their appeal statement the Council have made reference to a number of policies of an emerging Local Plan (the eLP). However, as the eLP has yet to be tested at examination, having regard to the advice provided in the Framework¹, I have attached very limited weight to these policies.

Main Issues

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

Reasons

Is the proposal inappropriate development in the Green Belt?

4. The Framework² states that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt but then details six exceptions to this rule. A similar list of exceptions is listed within policy GBC1 of the East Herts Local Plan Second Review (2007) (the Local Plan). The second exception in the Framework allows:

¹ Paragraph 216 of the Framework

² Paragraph 89 of the Framework

"The provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries (not inappropriate in the Green Belt) as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it."

5. The proposal is for the change of use of land to residential. The appellant advocates that as the proposal would provide an additional garden area for 132 Cambridge Road it would be providing facilities for outdoor recreation and would thus fall within the second exception to the Framework. As a consequence they consider that the development would be 'not inappropriate'.
6. However, paragraph 89 relates solely to buildings and the proposal is for a change of use. As a result I consider that the exceptions listed in the Framework would not be applicable.
7. The Framework³ also provides a list of five other forms of development that are also considered not inappropriate development. I have assessed the proposal against this list and consider that it would not fall within any of these categories.
8. I therefore conclude that the proposed change of use would be inappropriate development. As inappropriate development is, by definition harmful to the Green Belt in accordance with the Framework⁴ I must give this substantial weight when reaching my conclusions.

The effect of the proposal on the openness of the Green Belt

9. The appeal site is an area of overgrown scrub land on the edge of Sawbridgeworth that in addition to providing some screening of the residential properties to the east and south of the site informs the transition from village to countryside. Furthermore, I observed at my site visit that the site is located at one of the main entrances to the village.
10. I also acknowledge that the site has the benefit of some screening and that, through the use of an appropriately worded condition, this could be reinforced by further planting. Furthermore, the Council have acknowledged, although they haven't suggested, that a condition removing permitted development rights for extensions and outbuildings could prevent the site being built on in the future.
11. However, openness in the context of the Green Belt means freedom from development. The change of use of this piece of land would result in the domestication of what is currently a piece of countryside through the introduction of the external paraphernalia, domestic clutter and activity associated with a residential use. The Framework⁵ indicates that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open. Given the location of the site on the edge of the village outside of the Defined Settlement Boundary the proposal would have the effect of spreading the village further north thereby eroding the overall openness of the Green Belt.

³ Paragraph 90 of the Framework

⁴ Paragraph 88 of the Framework

⁵ Paragraph 79 of the Framework

Would the harm by reason of inappropriateness and any other harm be outweighed by other considerations? If so would this amount to the very special circumstances required to justify the proposal?

12. The appellant advocates that the proposal is necessary because the current garden provided with No 132 is insufficient. However, I note that No 132 is a recent development⁶ and that the Council when they determined that application considered that the residential amenity space provided was sufficient for the size of dwelling proposed. Whilst I acknowledge that personal circumstances can be a valid material consideration⁷ I am not satisfied on the basis of the evidence before me as to why, apart from a desire for a larger garden, these personal circumstances would outweigh the harm to the Green Belt that I have identified above.
13. Whilst not mentioned by the Council in their reasons for refusal the appellant advocates that the proposal would be in accordance with the saved policies of the Local Plan. Section 38(6) of the Planning and Compensation Act and Section 70(2) of the Town and Country Planning Act 1990 state that determination of a planning application must be carried out in accordance with the development plan unless material considerations indicate otherwise. The appellant considers that as the Framework is silent on changes of use in the Green Belt the development plan policies should take precedence over the Framework.
14. However, whilst the Framework⁸ confirms that Local Plan policies should not be considered out-of-date because they were adopted prior to the publication of the Framework, it is also clear⁹ that for the purposes of determining a planning application the Framework is a material consideration.
15. For the reasons I have already outlined I consider that the proposal does not fall within the list of what the Council considers to be not inappropriate development in the Green Belt (policy GBC1) and as it would adversely affect the character and appearance of the local landscape it would be contrary to policy ENV7. Therefore, even if I did consider that the development plan should take precedence over the Framework I have found that the proposal would be contrary to its policies.

Other matters

16. The appellant has outlined a number of other development scenarios or 'fall-back positions' which they advocate could be allowed under the exceptions listed in the Framework, all of which they consider would have a greater impact on the openness of the Green Belt than the appeal proposal. However, in order to establish the validity of a fall-back position it is necessary to firstly establish that there is a greater than theoretical possibility that the fall-back position may take place. As there is no certainty that planning permission would be granted for any of the scenarios outlined by the appellant I have given this matter very limited weight in coming to my conclusions.
17. To support their case the appellant has also made reference to a number of other sections within the Framework including, amongst other things,

⁶ LPA reference: 3/09/2046/FP

⁷ Westminster V Great Portland Estates PLC

⁸ Paragraph 211 of the Framework

⁹ Paragraph 212 of the Framework

supporting improvements to living conditions and a good standard of amenity; a presumption in favour of sustainable development and looking for opportunities to provide access to recreation in the Green Belt¹⁰. However, I do not consider any of these reasons outweigh the harm that I have identified above.

Conclusion

18. I conclude that the proposal would be inappropriate development in the Green Belt as defined by the Framework. The proposal would extend the urban area and erode the openness of the Green Belt. As outlined above I give only limited weight to each of the material considerations cited in support of the proposal and conclude that they do not outweigh the harm that the scheme would cause. Consequently, I conclude that they do not provide the very special circumstances necessary to justify inappropriate development in the Green Belt. As a result the proposal would be contrary to the advice contained within section 9 of Framework and policies GBC1 and ENV7 of the Local Plan.
19. For the reasons above, and having regard to all other matters raised, I conclude that the appeal should therefore be dismissed.

Jo Dowling

INSPECTOR

¹⁰ Paragraphs 9, 17, 14 and 81 of the Framework