



Appeal Decisions

Site visit made on 28 January 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal A, Ref: APP/W1525/X/19/3233017

Canford House, Wantz Road, Margaretting, Ingatestone, Essex CM4 0EP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jo Flack against the decision of Chelmsford City Council.
 - The application Ref 19/00966/CLOPUD, dated 30 May 2019, was refused by notice dated 17 June 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a garage.
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Appeal B, Ref: APP/W1525/D/19/3240424

Canford House, Wantz Road, Margaretting, Ingatestone, Essex CM4 0EP

- 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 Jo Flack against the decision of Chelmsford City Council.
 - The application Ref 19/00846/FUL, dated 29 April 2019, was refused by notice dated 30 August 2019.
 - The development proposed is described as the erection of an outbuilding (for leisure activity), outdoor swimming pool and surfacing, outdoor tennis court and surfacing, boundary fencing and landscaping.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed insofar as it relates to the erection of an outbuilding and boundary fencing and planning permission is refused for these aspects of the development. The appeal is allowed insofar as it relates to the outdoor swimming pool and surfacing and the outdoor tennis court and surfacing and planning permission is granted for these aspects of the development at Canford House, Wantz Road, Margaretting, Ingatestone, Essex CM4 0EP in accordance with the terms of the application, Ref 19/00846/FUL, dated 29 April 2019, so far as relevant to that part of the development hereby permitted and 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: PL-5742_61, PL-5762_62 and PL-5762_63.
- 3) No development shall commence until details / samples of the materials to be used in the construction of the hard standing and tennis court hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land including those on the boundaries of the site, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Appeal A

Procedural Matters

3. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application for the erection of a garage against the provisions set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

Main Issue

4. As the appeal is confined to the narrow remit of reviewing the Council's decision, the main issue is whether that decision was well founded or not well founded.

Reasons

5. The appeal relates to a detached dwelling situated within a large plot of land set well back from the road behind other plots of land and is accessed via a long shared private drive. Within the site the dwelling is located in the north east corner and it is proposed to erect a double garage in the south east corner. The appellant hopes to use the north west part of the garden, which is the larger portion of the plot, for the development in Appeal B.

6. The main point at issue is the Council's determination that the principal elevation (PE) of the dwelling is the southern elevation and as such the garage would require planning permission. This is because Class E of the GPDO sets out where a building would be situated on land forward of a wall forming the PE of the original dwelling house, development would not be permitted. The Council accepts that the garage would accord with the remaining limitations of Class E and I see no reason to take a different view.
7. Canford House was built in the 1970s, has not been extended since its construction and the Council state that permitted development rights were not removed when planning permission was given for the original building.
8. Both parties refer to "Permitted development rights for householders, Technical Guidance" ¹(TG). This assists with the interpretation of the GPDO. PE is not defined in the GPDO but the TG understands it to be in most cases the part of the house which fronts the main highway serving the dwelling. It will usually contain the main architectural features or a porch and will be, what is understood to be, the front of the house.
9. The PE relates to the original dwelling house. The appellant submits that there is no presumption that the architectural front of a building will be the PE and equally no presumption that the elevation facing the highway will be the PE. His view is that the PE is the east elevation as this is where the entrance to the property is positioned and is the elevation directly approached from the site entrance and existing parking area. It also faces the public highway and contains not only the main entrance but also several key windows. I will deal with each of these points in turn.
10. Firstly, with regard to the position of the main entrance, I find it is technically within the southern elevation. Visitors may stand adjacent to the eastern elevation in order to enter the property but for the main entrance to be within the east elevation, the door would have to be in the position of the hallway window. I therefore find that the main entrance is in the southern elevation.
11. Secondly, there are no main windows which serve principal rooms in the east elevation. In addition to the hall window, there is a secondary window to a TV room. This room is a smaller living room compared with the generous lounge/dining room within the southern elevation. The TV room window overlooks the north side of the property onto a part of the garden that can only be described as a garden strip compared with the generous proportions of the garden area to the west and south of the dwelling house. There is also only one window at first floor level above the secondary TV room window, which serves bedroom 4. Bedrooms 1, 2 and 3 are larger in area and are within the southern elevation. The remaining windows in the east elevation serve the kitchen and a utility room.
12. Thirdly, the TG sets out that where the distance between a dwelling and the highway is substantial, it is unlikely that it can be said that a building fronts the highway. In this case there are two dwelling houses also situated in generous plots that separate Canford House from the road. I therefore consider that the dwelling does not front the highway when it is positioned

¹ The application was determined before the September 2019 version of the TG was published but in relation to the proposal the advice has not changed.

approximately 90m from it. For all these reasons I am not persuaded that the PE is the east elevation.

13. The house has been designed to make the most of this attractive plot and its substantial grounds. It is orientated towards the south with a wide frontage under a steeply pitched hipped roof. The principal rooms are positioned within this elevation (lounge/dining room and master bedroom) and overlook a large proportion of the grounds. This elevation contains the most windows with four, plus French windows, in the lounge/dining area, two kitchen windows and seven windows at first floor level of which six are pleasingly grouped as pairs across the elevation. In comparison, the west elevation only contains two windows (a secondary lounge window and a playroom window). Although there are two chimneys on the north elevation, which add architectural interest, it is the southern elevation that is the most decorated with vertical tile hanging at first floor level above a rendered ground floor. By way of contrast the east and west elevations only have a plain brick facade with no ornamentation. I therefore find that the southern elevation is the PE.

Conclusion

14. As a result of my findings the proposed garage would not be lawful as it would contravene paragraph E.1.(c) of the GPDO.

Appeal B

Procedural Matters

15. The Council's reasons for refusal refer to policies from the Chelmsford City Council Core Strategy and Development Control Policies Development Plan Document (the DPD) adopted 20 February 2008, which were the subject of a Focussed Review in December 2013. There is also an emerging local plan which has now reached an advanced stage in the adoption process.
16. The emerging local plan is the Chelmsford Draft Local Plan (LP). This was the subject of an Examination that ended December 2018. Thereafter, the Inspector issued a Post Hearing Advice Note in February 2019 advising that the emerging LP could be found 'sound', subject to main modifications. These have now been the subject of public consultation during the summer of 2019 and responses have been sent to the examining Inspector. The LP will be formally considered at a Full Council meeting on 31 March 2020 after which it is hoped the LP will be adopted. As such, the policies within it merit significant weight.
17. The relevant LP policies for this appeal are CO1, CO2 and CO6, which deal with development in the Green Belt, and policy HE1 which deals with development in conservation areas.
18. After the site visit took place the Supreme Court issued their ruling in respect of *Samuel Smith Old Brewery*². The parties were therefore given an opportunity to submit any further comments as this case relates to openness in the Green Belt. The appellant chose not to make any comments other

² R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

than saying openness is a matter for the Inspector. The Council consider that the judgement does not alter its position that the scheme as a whole would be inappropriate development that would be harmful to the Green Belt. I have had regard to these comments in my determination of this appeal.

Main Issues

19. The appeal site is within the Green Belt (GB) and the western portion of the site lies within Margaretting Conservation Area (CA). Therefore, the main issues are:
- whether the development is inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy; and the effect of the development on the openness of the GB;
 - the effect of the development on the CA, having regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA; and
 - if the development is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances necessary to justify it.

Reasons

Whether inappropriate development and openness

20. Canford House site is irregular in shape with the western portion of the plot having a significantly greater depth than the eastern portion, which contains the house. The appellant wishes to make the most of this shape and proposes to build a tennis court, swimming pool and outbuilding within the north west corner, which would leave the garden directly west and south of the dwelling undeveloped. A chain link fence would separate the pool and the tennis court and an acoustic fence would surround the development. There would also be an area of hard standing around the pool.
21. The appellant's proposals comprise several elements and it is necessary to look at each in turn. The Framework establishes that the construction of new buildings is inappropriate development subject to a number of exceptions. The term 'building' refers to any structure or erection and it therefore includes not only the outbuilding but also the swimming pool (a structure that is largely below ground) and the fencing.
22. The exceptions to this are set out in paragraph 145 (a) to (g) of the Framework. It is considered that the appellant's proposals for the swimming pool fall within paragraph (b), being the provision of appropriate facilities (in connection with the existing use of land) (*in this case a dwelling, my interpretation*) for outdoor sport and outdoor recreation. There is a caveat to this which is that any new buildings would only be not inappropriate development provided they preserve the openness of the GB and do not conflict with the purposes of including land within it.

23. Openness is an essential characteristic of GBs. The appellant refers to *Turner*³ but the Supreme Court whilst upholding paragraph 14 of *Turner* has recently held in *Samuel Smith Old Brewery* that visual impact as a necessary part of analysis is not expressly referred to in the Framework nor is it made so by implication. How to take account of the visual effects in any particular case is a matter of planning judgement.
24. It is my view that there would be no loss of openness with respect to the swimming pool as the structure would be below ground level. This building is therefore not inappropriate development in the GB. It also accords with Policy DC1 of the DPD and Policies CO1 and CO2 of the LP which deal with development in the GB.
25. The proposed fencing would not fall within exception (b) of paragraph 145 of the Framework as it is not for outdoor sport and outdoor recreation and it would not fall within any of the other exceptions. Whilst it would result in a reduction in the openness of the GB in this area, there are no public views of the fencing and Canford House enjoys a secluded location. The effect on the openness of the GB as a whole would therefore be minimal, nevertheless the proposed fencing when judged against the Framework would be inappropriate development in the GB. The DPD and the LP do not deal with fences in the GB any differently from the Framework and thus the fencing would be contrary to Policy DC1 of the DPD and Policies CO1 and CO2 of the LP.
26. The plans for the proposed outbuilding show it would be used as a boiler room/store, bathroom and changing room which would be facilities in connection with the use of the swimming pool. However, most of the floor area would be taken up with a gym, games room and two bar areas. These would not be appropriate facilities in connection with outdoor sport and outdoor recreation and therefore overall the outbuilding would not fall within exception (b).
27. The appellant submits that the outbuilding should also be assessed against paragraph 145 (c) and (e) (and (g) if the site is found to be outside the village) of the Framework, namely as an extension or alteration of a building, as limited infilling in a village or the partial or complete redevelopment of previously developed land (PDL). He relies on case law and two appeal decisions⁴ to support his argument that the outbuilding is not inappropriate.
28. With regard to paragraph (c) of the Framework, the case of *Dawe* and the appeal decisions, I find that the proposed outbuilding, whilst visible from the dwelling, would be some distance away from it at 13m, whereas the garage in appeal ref 3128756 was close to an existing garage. However, physical separation is only one matter to take into account. The relationship of the outbuilding with the original dwelling and its function are also relevant.
29. With that in mind, it is my view that the size and use of the outbuilding would preclude it from being considered as a 'normal domestic adjunct'. This is because at 16.6m wide, 6.1m deep and laid out as a gym, two bars,

³ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

⁴ *Sevenoaks District Council v SSE and Dawe, Dartford BC v SSCLG* [2017] EWCA Civ 141, APP/Y3615/D/15/3128756 and APP/C3620/D/13/2191786

games room, bathroom, boiler room and store, it would not have a typical ancillary use associated with a 'normal domestic adjunct'. Moreover, the size of the outbuilding would be similar to the width of Canford House. For these reasons I regard the proposed outbuilding as inappropriate development, having regard to paragraph (c).

30. Whether the outbuilding could be considered as limited infilling in the village is disputed by the Council, who refer to Policy DC12 in the DPD (highlighted in Policy DC1 Managing Development in the Metropolitan Green Belt.) This defines 'limited infilling' as infilling in a small gap in an otherwise built up frontage. Margaretting village is spread over a large area with development concentrated at the crossroads (Main Road, Wantz Road and Maldon Road).
31. I find the appeal site is in the village as it is bounded on all sides by other residential properties and is a short walk from the crossroads. However, it has no road frontage and the generous proportions of the adjacent plots mean that the outbuilding would not amount to any infilling at all as the remaining space between adjacent dwellings would, to all intents and purposes, not be significantly reduced by the development. Furthermore, the appellant's submission runs counter to the definition of infilling in Policy DC12. For these reasons I regard the proposed outbuilding as inappropriate development having regard to paragraph (e) of the Framework.
32. As I find that the site is within the village, there is no need to consider the development in relation to paragraph 145 (g) of the Framework.
33. The outbuilding would result in a reduction in the openness of the GB in this area. However, there are no public views of the outbuilding as Canford House enjoys a secluded location. It is doubtful whether neighbouring occupiers would be able to view the outbuilding from their dwellings. It would only be visible to them if they walked to the end of their long gardens and then they would be able to glimpse it through the greenery. The effect on the openness of the whole of the GB would therefore be minimal. Notwithstanding this, the proposed outbuilding when judged against paragraph (b) of the Framework would be inappropriate development in the GB and would be contrary to Policy DC1 of the DPD and Policies CO1 and CO2 of the LP.
34. I consider that the tennis court is not a building. In my view the laying out and construction of the tennis court and the proposed hard standing around the swimming pool are engineering operations. These fall to be considered under paragraph 146 of the Framework as one of a number of forms of development also not inappropriate in the GB. This is provided they preserve its openness and do not conflict with the purposes of including land within it. Policy C06 from the LP contains similar wording and adds, provided there is no harm to the character and appearance of the area.
35. It is considered that the tennis court and hard standing would not result in a loss of openness and would not conflict with the purposes of including land within the GB. This is because the built form of the hard standing and tennis court on the area that they cover in relation to the overall size of the plot would be limited. The hard standing and tennis court surface would be of no great thickness and would barely protrude above the height of the surrounding grass. The construction of the hard standing and tennis court

would therefore be not inappropriate development when judged against the Framework and would accord with Policy DC1 of the DPD.

Character and appearance

36. The CA, which is largely residential in character, is centred on the development around the crossroads but also includes the parkland of two large houses, Eweland Hall and Peacocks. Many of the buildings in the CA are 18th and 19th century and are mostly separated from the roads by mature hedging, well-kept verges and trees. The distinctive character and appearance of the area stems in part from its semi-rural appearance and its level of greenery, visible in many gardens. This is described by the Council as a 'landscape character'. That part of Canford House which is included in the CA has a landscape character with a pond in the south west corner, partly situated within the adjacent property, Ponders, and bordered by trees. There are no public footpaths across the CA other than one across the parkland of Peacocks south of Main Road. There is therefore a large degree of seclusion in the layout of the dwellings with some situated behind others along private drives.
37. The appellant's proposed layout of the north west corner of his plot has been carefully thought through with the tennis court positioned adjacent to the boundary with The Farthings to the north. This property fronts Penny's Lane and is situated in substantial grounds. To the east and west, the tennis court, swimming pool and hard standing would border two other long gardens with the western garden having a number of mature trees where it abuts Canford House.
38. I consider the effect of the proposed developments on the character of the CA would preserve its open features when viewed from the neighbouring properties and from within the Canford House plot as well. The proposed chain link fencing separating the pool area from the tennis court, being open in design, would also preserve the character and appearance of the area and such a fence is already used to mark the western and northern boundaries of the site. However, the surface of the tennis court, the development of the swimming pool and the introduction of a large area of hard standing would harm the landscape character of the CA as they would result in a loss of natural landscape. The harm would be modest though and could be mitigated by the planting of new landscaping.
39. The proposed outbuilding and acoustic fencing would result in some visual intrusion into this garden landscape due to their extent, height and size. The appellant pointed out the existence of outbuildings within the rear garden of The Farthings at the site visit. However, notwithstanding that this property lies outside the CA, this plot is also approximately twice the size of Canford House. The outbuildings at The Farthings sit comfortably within their setting due to the size of the plot and also as they have a rustic appearance of black weatherboarding.
40. The harm caused by the outbuilding and acoustic fencing though would only be visible to three other households, which would limit the harm to the landscape character and secluded appearance of the area. In addition, the imposition of conditions requiring the submission of a landscaping scheme and details of the external finishes for the outbuilding could mitigate the harm and would preserve the character and appearance of the CA.

41. For these reasons, subject to the imposition of conditions relating to landscaping and materials, I find that all of the development would accord with Policy DC17 of the DPD and Policies CO6 and HE1 of the LP, which require that new development must preserve or enhance the character or appearance of the area and the CA.

Other considerations

42. The appellant submits that the proposals would enable him and his family to live a healthy lifestyle, which he states would accord with paragraph 141 of the Framework. Whilst clearly the development would be a benefit to the appellant and his family, this argument only attracts limited weight. He also states the acoustic fencing would protect the amenities of neighbouring residents from noise nuisance. This only attracts limited weight though as the houses of neighbouring residents are quite distant from the appeal site and they sit within large grounds.

Conclusions

43. The tennis court, swimming pool and hard standing would not be inappropriate development in the GB and the character and appearance of the CA would be preserved, subject to the imposition of conditions, as discussed.
44. The outbuilding and fencing would be inappropriate development in the GB and the Framework establishes that substantial harm should be attached to any harm to the GB. In addition, there would be a minimal loss of openness. The absence of harm in relation to the character and appearance of the CA, as it could be mitigated with conditions, would count as neutral in the overall balance.
45. Other considerations weighing in favour of the development must clearly outweigh this harm. The only considerations put forward are the personal benefit of the development for the appellant's family and the benefit of the acoustic fencing to neighbouring occupiers. These however do not outweigh the substantial harm which I have identified. The very special circumstances needed to justify the development do not therefore arise. Accordingly, I conclude that the appeal should be dismissed in respect of the outbuilding and fencing.

Conditions

46. The Council have suggested several conditions in the event that planning permission is granted for the development but not all of them apply to the successful development. In addition to the standard time limit condition and those I have already referred to, it would be necessary to impose a condition requiring that the successful development be carried out in accordance with the approved plans.

Conclusions

Appeal A

47. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a garage

was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

48. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

D Fleming

INSPECTOR