



Appeal Decision

Site visit made on 4 August 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal Ref: APP/W1525/C/19/3230097

Land at Land West of The Lodge, Grange Lane, Downham, Billericay, Essex CM11 1LE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Amos against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice, reference 18/00080/ENF was issued on 10 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a building, decking and a jetty.
 - The requirements of the notice are:
 - i. Demolish the building shown outlined in blue at the approximate location on the attached plan.
 - ii. Demolish the decking and jetty outlined in green at the approximate location on the attached plan.
 - iii. Remove from the land all waste materials resulting from the action taken at steps (i) and (ii).
 - iv. Restore the land affected by the works carried out at steps (i), (ii) and (iii) to its former condition, by seeding with grass.
 - The period for compliance with the requirements is step (i) within three months and steps (ii), (iii) and (iv) to be completed in full within two months from 31 August 2019, being the end of the current nesting season.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the omission of the words 'step (i)' and substitution with 'steps (i), (ii), (iii) and (iv)' and deletion of the words 'Compliance with steps (ii), (iii) and (iv)....current nesting season' so that the time for compliance reads as follows:

'Compliance with steps (i), (ii), (iii) and (iv) within three months from the effective date of the Notice'
2. Subject to the variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

3. The Council advised that the Chelmsford Local Plan (May 2020) (the Local Plan) was adopted on 27 May 2020. It has provided copies of the relevant policies from the Local Plan and both parties have had the opportunity to comment on the relevance of these policies to the appeal.

The Notice

4. The time for compliance with the notice places a limitation on requirements (ii), (iii) and (iv) being carried out in full within two months from 31 August 2019. In the event that I dismiss the appeal it would be necessary for the time for compliance to be varied, however there is no appeal under ground (g) against which this matter would ordinarily be addressed.
5. I have asked the main parties for their comments on this issue. The Council has replied to suggest that any alternative two-month compliance timeframe prior to the upcoming nesting season would be an appropriate substitution in respect of the current steps (ii), (iii) and (iv) to the Notice. In this regard the Council states that the nesting season ends at the end of August and resumes at the beginning of February. It follows that any compliance period should therefore fall outside of this period.
6. The appellant is concerned that birds are present on the lake all year round not only in the nesting season and they take shelter under the jetty decking in the winter months. He feels that if the appeal does not have a favourable outcome the wildlife habitat would be greatly damaged. These comments are not directly related to my query regarding the compliance period and they reflect comments already made by the appellant in his submissions.
7. I cannot see any particular reason why the compliance period for all four steps should not be the same and in the light of the comments made I will vary the notice to align the compliance period for steps (ii), (iii) and (iv) with the three month compliance period for step (i) as this would ensure compliance outside the period during which birds will be nesting.

Ground (c)

8. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
9. The appellant has had planning permission for the construction of a natural pond/lake (Council Ref 16/00491/FUL) (the 2016 Consent). In the light of this he considers that the construction of a building, decking and a jetty is reasonable as part of this project and for management purposes. He points out that there are no conditional restrictions shown on the 2016 Consent, with regard to such works.
10. In order to succeed on ground (c) the appellant has to show that either that the building, decking and jetty is not development, that planning permission is not required, or that planning permission has been granted. The appellant has not demonstrated that any of these circumstances apply in this case.

11. There are no restrictions on the 2016 Consent regarding the construction of buildings or other structures. However, this was not necessary and, based on the evidence, the appellants assumption that he could carry out further works in addition to those described in the 2016 Consent is unfortunately incorrect.
12. For the reasons set out above, the appeal on ground (c) fails.

Ground (a) and the Deemed Planning Application (DPA)

13. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issue

14. The main issues are:

- Whether or not the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development/effect on openness

15. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to a number of exceptions. It also states that certain other forms of development are also not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it, including engineering operations. Similarly Strategic Policy S11 of the Local Plan resists inappropriate development in the Green Belt, Policy DM6 sets out exceptions to inappropriate development and Policy DM10 permits engineering operations in the Green Belt where they preserve openness, do not conflict with the purposes of the Green Belt and do not harm the character and appearance of the area. The Local Plan policies are in accordance with the Framework.
16. The building could be regarded as severable from the decking and jetty. On this basis the decking and the jetty would amount to an engineering operation. In its reference to relevant planning policy in its statement the Council refers to both new buildings and engineering or other operations and, whilst the policy references have changed, the policies in the new Local Plan which have been provided to me relate to both types of development.
17. Looking firstly at the building, the 2016 Consent does not relate to the change of use of the land, consequently the building could not be regarded as providing facilities associated with an outdoor recreation use which is one of the exceptions to buildings as inappropriate development in the Green Belt. Neither is there any evidence to show that the building is in agriculture or forestry use, nor that it is a replacement/extended or altered building. The site is not in a village and does not, thus, represent limited infilling, nor does it

deliver affordable housing or local transport infrastructure. It follows that the building does not fall within any of the exceptions to inappropriate development set out in the Local Plan nor the Framework and that it amounts to inappropriate development in the Green Belt.

18. The Framework identifies that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and sets out the safeguarding of the countryside from encroachment as one of the purposes of the Green Belt. The Green Belt has both a spatial and a visual dimension. The erection of a building on a site where there was previously none clearly affects openness of the Green Belt as it occupies part of the Green Belt and is a visual intrusion into what was previously an open area.
19. With regard to the decking and jetty, as engineering operations, these elements do not constitute inappropriate development subject to the provisions set out in Policy DM10 of the Local Plan, which reflect those in the Framework, relating to the impact on the openness of the Green Belt.
20. The decking covers a substantial area and there are steps onto it from the jetty and the path to it. There are a series of linked posts around part of the decking and together with the jetty it is a significant feature on the edge of the pond/lake adjacent to it. In view of the absence of structures previously on the site, this element of the development has led to a loss of openness in spatial terms by virtue of the footprint of the decking and the jetty.
21. The decking and jetty are large enough to accommodate a number of people and associated activity. In combination both the presence of the decking and jetty and the potential for them to accommodate activity in the open countryside where such activity was not previously present also has a harmful effect on the visual dimension of the Green Belt.
22. Overall, the decking and jetty have a moderate effect both spatially and visually, thus these engineering operations have a moderate harmful impact on the openness of the Green Belt. The Framework states that any harm to the Green Belt should be attached substantial weight in decision making.
23. In order not to constitute inappropriate development in the Green Belt the decking and the jetty would have to both preserve openness and not conflict with any of the five purposes of the Green Belt which are set out in the Framework. I have concluded that the engineering operations would not preserve the openness of the Green Belt. Furthermore, these parts of the development would not safeguard the countryside from encroachment, which is one of the five purposes of the Green Belt. Therefore, the decking and the jetty are inappropriate development.
24. I conclude that the building and the decking and jetty, both in combination or regarded as two separate forms of development, are inappropriate development in the Green Belt having regard to the Framework and their effect on the openness of the Green Belt. The development is therefore contrary to Policies S11, Policy DM6 and Policy DM10 of the Local Plan.

Other Considerations

25. There was support from national and local bodies when the appellant made his application for the natural pond/lake and he has had support from local residents for the building and the decking/jetty. He also states that he has

ensured that the design would promote wildlife including nesting birds, bumble bees and insects and that he is passionate about the project himself. From the appellant's point of view the natural pond/lake has been a success and he has provided anecdotal evidence of the presence of a wide variety of creatures found in and around this feature.

26. The appellant considers that some form of storage facility is vital to ensure the pond/lake is properly maintained and that maintenance by boat is also necessary for which safe access is needed via a jetty. The jetty also provides shelter for birds during the winter months.
27. At the time of my site visit there were a number of pieces of equipment in the building which it would be reasonable to assume are used for maintenance of the pond/lake and the surrounding area. However, there is no detail of the nature or regularity of the essential maintenance regime so as to justify those machines being required to be stored at the site or the boat being stored in the building in the winter months. On this basis it may be convenient for items for maintaining the pond/lake to be on the site, but this is a benefit to the appellant only as opposed to be shown to be necessary to ensure the longevity of the pond/lake.
28. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I have not identified any benefits which would clearly outweigh the harm to the Green Belt by reason of inappropriateness. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Conclusion in respect of ground (a) and the DPA

29. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sarah Dyer

Inspector