



Appeal Decision

Site Visit made on 13 October 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal Ref: APP/W1525/W/20/3250986

Victors Croft Nathans Lane, Writtle, CHELMSFORD, CM1 3RF

- 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 Ricky Bell against the decision of Chelmsford City Council.
 - The application Ref 16/01556/S73/1, dated 4 September 2019, was refused by notice dated 16 October 2019.
 - The development proposed is retention and refurbishment of existing garage, due to be removed under Condition 17 of planning application 16/01556/FUL.
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Decision

1. The appeal is allowed and planning permission is granted for retention and refurbishment of existing garage, due to be removed under Condition 17 of planning application 16/01556/FUL at Victors Croft Nathans Lane, Writtle, Chelmsford, CM1 3RF in accordance with the terms of the application, Ref 16/01556/S73/1, dated 4 September 2019, and the plans submitted with it, 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: Garage 4/1 and Garage 4/2
- 3) The outbuilding hereby approved shall solely be used for purposes ancillary to the residential use of the dwelling known as Victors Croft, including the parking of vehicles and the storage of equipment and machinery.

Preliminary Matters

2. Since the Council issued its decision it has adopted the Chelmsford Local Plan 2020 (LP). The policies in the LP supersede those referred to in the reason for refusal. It is incumbent upon me to base my decision upon the most up to date planning policy and this is what I have done. The appellant had an opportunity to address the change in policy through his appeal submissions.
3. I have amended the description of development in the banner heading above to ensure that it accurately captures the scope of the proposal.

Background

4. I have raised with the parties that the original application was submitted as a full application and the Council have confirmed that the description of development was amended prior to the validation of the application and that it was dealt with under section 73 of the Town and Country Planning Act 1990.
5. I have drawn to the attention of the parties the case of *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868. In that case, the Court of Appeal held that an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, in other words the description of the development for which planning permission was originally granted.
6. It follows from *Finney* that where amending a condition would result in a conflict between the new condition and the description of development, that particular amendment is beyond the powers under section 73 and cannot be made (a fresh planning application would be required). The corollary to this is that an amendment can only be made provided the new condition does not fundamentally alter the original planning proposal for which permission had been granted.
7. Applying these principles to the current appeal, the original permission included the demolition of the existing structures on the site. Based on the submitted plans, and as a matter of fact, the proposal would amend this to retain one of the existing structures. This is incompatible with the description of development on the original decision notice – which cannot be varied using the mechanism of section 73.
8. However, both parties have confirmed that the appeal should be dealt with as a full application and I do not consider any parties would be prejudiced by this approach as the issues to be considered are the same. Therefore, I have dealt with the appeal on this basis.

Main Issues

9. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt; and
 - 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 necessary to justify the development.

Reasons

Inappropriate development

10. Policy S11 (A) of the LP states that the openness and permanence of the Green Belt will be protected, and inappropriate development will not be approved except in very special circumstances. Policy DM6 sets out that where new buildings are proposed within the Green Belt a list of criteria will apply. These policies are consistent with the aims of the National Planning Policy Framework (the Framework).
11. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 145.
12. In this case the development could fall to be considered under a number of the exceptions provided in both Policy DM6 and paragraph 145 of the Framework. The Council have considered the development under both paragraph 145c and 145d. The appellant has cited paragraph 145b as being relevant to the consideration of the appeal. These exceptions are repeated in Policy DM6(A).
13. In both exceptions under 145c and 145d, the resultant garage would not be inappropriate, as it would not result in disproportionate additions over and above the size of the original building, it would remain in the same use and not be materially larger than the original building. However, as noted by the previous Inspector¹ the garage is due to be removed as per the condition attached to 16/01556/FUL and therefore could not represent either a replacement building or an extension or alteration to the building. Therefore, I do not consider the development could comply with these exceptions.
14. Paragraph 145b refers to the provision of appropriate facilities for outdoor recreation, provided that the facilities preserve the openness of the Green Belt, and do not conflict with the purposes of including land within it and this is broadly similar to the requirements set out in Policy DM6A ii of the LP. It has been put to me that what is stored within the outbuilding relates to outdoor recreation and the maintenance of the land, however no specific details have been provided and therefore I have insufficient evidence to conclude that the proposal could be considered under this exception.
15. In not complying with any of the listed exceptions, the scheme would be inappropriate development in the Green Belt, which paragraph 145 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

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

16. The site currently contains a detached bungalow, which was approved under 16/01556/FUL and it was a condition of the original planning permission that the other existing structures on the site would be demolished within 3 months of the occupation of the dwelling. The proposal would result in the retention of one of these structures, to be retained and refurbished for use as a garage.

¹ APP/W1525/D/18/3209971

17. Although the retained garage would be seen within the context of the existing dwelling and is modest in terms of its size, it would result in a reduction in the openness of the Green Belt, as the structure whilst already in existence was required to be removed as part of the overall redevelopment of the site. Therefore, the retention of the garage alongside the new dwelling would result in modest harm to the openness of the Green Belt. The Framework advises that openness is an essential characteristic of the Green Belt and its fundamental aim is to keep land permanently open. The appeal scheme would be at odds with this fundamental aim.

Other considerations

18. The bungalow on the site and its curtilage are subject to a restrictive condition which prevents the exercise of permitted development rights relating to outbuildings (Schedule 2, Part 1, Class E of the General Permitted Development Order 2015). Therefore, there is no ability for the appellant to erect an outbuilding on the site without the need for planning permission.
19. It is essential for the site to have some form of external store in connection with the maintenance and upkeep of the curtilage associated with the dwelling and the paddock beyond and the need to store equipment. This should probably have been addressed at the time of the original planning permission, especially as the Council decided to remove permitted development rights for future outbuildings. However, it was not and the need for an external store has not gone away because of this oversight. This is a factor to which I attach substantial weight.
20. Historically the site has had a number of outbuildings present on the site, associated with its previous use as a builders yard and the planning permission granted for its redevelopment, required the demolition of all of these outbuildings. This leaves the dwelling without any ancillary storage space for the normal domestic paraphernalia which would be associated with the occupation of the dwelling.
21. It would be more environmentally sustainable to retain and repurpose an existing building than to construct a new garage. I have had regard to the suggestion of the Council, that a room within the existing dwelling could be used for storage. However, the bedrooms do not include direct access onto the garden and it would be impractical to take garden equipment, such as lawnmowers through the house. It would also be disproportionate to expect the appellant to reconfigure the house in order to provide a garden store. In addition, I do not consider this would be satisfactory and living conditions could be harmed if garden equipment had to be stored in the house.
22. The lack of appropriate covered storage could result in external storage which could result in visual clutter and thus have an effect on the openness of the Green Belt.
23. Considering the previous appeal¹ on the site, the proposed garage was positioned further back into the site and extended into the paddock. It would have been over a metre taller than the existing garage and would have resulted in a two bay garage with roller shutter doors facing the entrance to the site. I consider that the overall scale and position in that decision is sufficiently different to the proposal before me that it enables me to come to a different conclusion.

24. The proposal before me differs from the proposals which were refused planning permission by the Council, in that it results in the reuse of an existing structure, which will be refurbished and therefore whilst, there will be a modest reduction in openness from that envisaged when planning permission was granted for the original dwelling, I consider that the need for an outbuilding on the site has been sufficiently demonstrated by the appellant.

Conditions

25. I have attached the standard time limit condition and a plans condition as this provides certainty. I have also added a condition to ensure that the use of the outbuilding is ancillary to the residential use of Victors Croft having regard to the sites previous commercial use this will ensure that the outbuilding will remain solely for domestic purposes.

Conclusion

26. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the retention of the building would result in a modest impact on openness. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
27. As explained above, I have given weight to the appellants need for an outbuilding. Unlike the previous refusals and dismissed appeal, I consider that the proposal before me enables the appellant to adequately meet those needs with the minimum impact on openness, reusing an existing building which is a sustainable approach to achieving this requirement and to this I have attached considerable weight.
28. Having taken account the other considerations outlined above, they outweigh the substantial weight which must be given to Green Belt harm. Consequently, I consider that there are very special circumstances necessary to justify inappropriate development in the Green Belt. For the reasons given the appeal should be allowed.

G Pannell

INSPECTOR