



Appeal Decision

Site visit made on 11 November 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/B1550/C/20/3256365

Land north of A129, east of A130, Old London Road, Rawreth, Essex, also known as The Warren - Academy Soccer YFC, Old London Road, Wickford SS11 8SG

- 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 Shane Bird, Academy Soccer FC, against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 9 June 2020.
- The breach of planning control as alleged in the notice is Without planning permission,
 1. The erection of a timber enclosure used as a storage area (shown in the approximate area hatched and marked A-B-C-D on the attached plan 2);
 2. The erection of a raised deck area with balustrades to the front and rear of the refreshment / changing room buildings (shown cross hatched on the attached plan 2).
- The requirements of the notice are
 1. Remove from the land, the structure, and any fixings, erected to form an enclosed area shown approximately between points marked A-B-C-D on the attached plan 2;
 2. Remove the raised deck area and balustrades to the front and rear of the changing and refreshment buildings any associated hardstanding and foundations, shown in the approximate positions cross hatched and labelled D1 and D2 on Plan 2;
 3. Remove from the land, all resultant material and debris arising from carrying out steps 1 and 2.;
 4. Restore the land to its condition before the development took place.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice, as varied, is upheld as set out below in the Formal Decision.

Main Issues

1. The main issues are:

- whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the development on the openness of the Green Belt;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

2. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
3. Paragraph 145 of the Framework establishes that new buildings within the Green Belt are 'inappropriate' unless, amongst other things, it involves i) the provision of appropriate facilities for outdoor sport as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it and ii) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
4. A "building" is defined in s336 of the Act as including any structure or erection. Therefore both the construction of the timber enclosure and the decking areas would constitute building operations and need to be considered against the aforementioned criteria.
5. Policy DM16 of the Rochford District Council Development Management Plan 2014 (DMP) sets out that additional permanent facilities associated with the provision of playing pitches will be permitted providing amongst other things that they are small in scale and essential to the functioning of the activity; modest in size, bulk and height to ensure minimal impact on the Green Belt, and of a scale, design and siting to protect the character of the countryside and nature conservation. The policy, insofar as it relates to the Green Belt, is not therefore entirely consistent with the Framework which would serve to reduce the weight that I could give should I find the developments to conform to this policy but to be in conflict with the Framework.

Timber enclosure

6. The enclosure encompasses two large metal containers and various loosely stored, miscellaneous ancillary items and equipment relating to the functioning of the academy use. The containers themselves also house such items, equipment and machinery. It was apparent from my visit that when viewed from various parts of the wider site the enclosure is substantial in both height and length.
7. Notwithstanding the existence of the containers, and the appellant's point that the fencing has resulted in them being clustered together with the building, and therefore less spread out than before (as depicted in photographs included in the statement), from the information before me I consider that the continuity of the timber structure results in a greater sense of enclosure than would previously have been the case.
8. Accordingly I find that the enclosure fails to preserve the openness of the Green Belt, particularly in visual terms. Furthermore I consider that, because of its size and height, it cannot be regarded as a proportionate addition to the original building. The development is therefore in conflict with the Green Belt policy tests as set out in the Framework and with the Green Belt test in Policy DM16 of the DMP.
9. In addition, though the timber panels have been painted dark green, the structure retains a uniformly strident and utilitarian appearance, resembling a

- temporary hoarding around a building site. As such, it appears at odds with, and harmful to, the softer character of the surrounding countryside. The design of the enclosure is not therefore of a high standard. The development would therefore also conflict with Policy DM16 for this reason.
10. Though the site is adjacent to and visible from the A130 road, the visibility of the structure would only be very fleeting from vehicles passing at speed. This however does not overcome the harm that I have identified above.
 11. The appellant argues that the timber enclosure is a necessary security response, given that the site has previously been subject to break-ins and theft of equipment. It is said that all equipment is essential and cannot all be stored within the containers, also that the enclosure of machinery protects the safety of children.
 12. I have no reason to doubt these points and acknowledge that, despite the presence of CCTV, its countryside location and lack of natural surveillance may make the site disproportionately vulnerable to crime. I have also taken into consideration that storage of equipment is essential to the functioning of the site and that the enclosure has served to screen, previously visible and openly stored items which would not necessarily have been an effective design solution in itself.
 13. However I am not persuaded that the timber enclosure, as constructed, and which I have found to be unsatisfactory for the aforementioned reasons, is the only solution in this case. Nor am I persuaded that it has resulted in visual improvements when compared with the original 'fallback' arrangements. This serves to reduce the weight that I may otherwise have given to security and safety considerations as a justification for the enclosure. I therefore consider that this should attract only moderate weight in the planning balance.

Decking

14. The areas of raised decking have been constructed to adjoin the front and rear of the building. The timber rail design and limited height of the balustrade features, together with the restricted height of the decking itself ensures that this part of the development does not appear obtrusive in relation to its surroundings.
15. Collectively the raised decks are not insubstantial in terms of the physical area that they cover, however not so much so that they should be regarded, in my view, as disproportionate to the footprint of the parent building. This said, because of the balustrade features in particular, they do result in some, albeit very limited, spatial and visual harm to the openness of the Green Belt. Nevertheless, for this reason there is still conflict with the Framework's Green Belt policy.
16. The appellant seeks to justify the development on the ground that it enables access to the building and external viewing areas for people with a disability. It was apparent from my visit that the front deck is directly accessible from the site car parking area via a fixed ramp and that access between both decks and the building could be gained with the use of portable ramps.
17. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and

victimisation and to advance equality of opportunity. The Act recognises that disability constitutes a relevant protected characteristic for the purposes of PSED. I acknowledge the supporting representations from the parents of two children with disabilities and concur with the view that the decking would help to facilitate safe and convenient access to the sports facility, whilst acting as a relatively comfortable and convenient viewing area. Whilst I acknowledge that some general congregation may take place within these areas, I nevertheless attach significant weight to this consideration.

Other Matters

18. I have noted the representations from third parties. These include a concern about traffic generated in relation to the site. However I do not consider that the developments the subject of the notice would in themselves result in any negative traffic impacts.
19. Concerns have also been raised regarding development not adhering to the original planning permission and the sale of refreshments and the holding of functions at the site. However these matters are outside the remit of my considerations in this case.

Green Belt balance

20. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt.
21. With regard to the timber enclosure I have found harm to the Green Belt by way of inappropriateness and to its openness. I have also found harm to the character and appearance of the wider area. I have balanced this against the other considerations referred to above, which relate to security and safety. However for the reasons given, having also had regard to all other points raised by the appellant, they do not clearly outweigh the harm identified.
22. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently the timber enclosure conflicts with the Green Belt protection aims of the Framework and with Policy DC16 of the DMP. The ground (a) appeal therefore fails in respect of this element of the development.
23. With regard to the decking I also found harm to the openness of the Green Belt, although not to the character and appearance of the wider area. However when balanced against the other considerations referred to above, I find the reason for the decking, namely the promotion of disabled access to the ancillary facilities, provides a compelling justification for the development that outweighs Green Belt harm.
24. The very special circumstances necessary to justify this element of the development have therefore been demonstrated. Consequently it conforms with the Framework. Furthermore I do not find conflict with the wording of Policy DM16 in this regard. The ground (a) appeal therefore succeeds in respect of this element of the development.

Conclusion

25. In terms of varying the notice, despite the absence of an appeal under ground (g), I am persuaded that there would be justification to lengthen the time for compliance with the enforcement notice from 4 months to 8 months. I consider that this would provide a reasonable opportunity for the appellant to make a planning application to the Council for a revised storage scheme, should they seek to do so, and consider it possible to present a justifiable case, whilst still providing sufficient time to remove the existing structure.
26. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with the aforementioned variation and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.
27. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the erection of the raised deck area with balustrades to the front and rear of the refreshment / changing room buildings (shown cross hatched on the attached plan 2), because this benefits from planning permission and is therefore lawful for planning purposes.

Formal Decision

28. The appeal is allowed insofar as it relates to the raised deck areas with balustrades and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for The erection of a raised deck area with balustrades to the front and rear of the refreshment / changing room buildings (shown cross hatched on the attached plan 2).
29. It is directed that the enforcement notice be varied by the deletion of the words "Four (4) months", in Schedule 6, and their substitution with the words "Eight (8) months" instead, as the period for compliance.
30. The appeal is dismissed and the enforcement notice is upheld, as varied, insofar as it relates to the timber enclosure, and planning permission is refused in respect of The erection of a timber enclosure used as a storage area (shown in the approximate area hatched and marked A-B-C-D on the attached plan 2), on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR