



Appeal Decision

Site visit made on 17 December 2020

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 January 2021

Appeal Ref: APP/W1525/W/20/3251018

Eweland House, Main Road, Margareting, Ingatestone, CM4 9HU

- 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 Les Coe against the decision of Chelmsford City Council.
 - The application Ref 20/00168/FUL dated 5 February 2020, was refused by notice dated 31 March 2020.
 - The development proposed is retrospective application for existing concrete slab and proposed ancillary outbuilding to be constructed on top.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have utilised the Council's description of the development as per the decision notice as I feel it more concisely describes the development. The concrete slab element has already been constructed and the appeal proposal is therefore part retrospective.
3. Since the application was refused, and the submission of this appeal, the Council has adopted a new Local Plan¹ (LP) on 27 May 2020. The policies from the previous Core Strategy, such as Policy DC1 referred to within the decision notice, have therefore been replaced and carry no weight within the determination of this appeal. Compliance with policies which are no longer in force at the point of determination can carry no weight within this appeal.
4. The Council's appeal statement, submitted in August 2020, clearly outlined this and the relevant policies within the newly adopted LP. The refusal reasons in the decision notice also state the then emerging policies. It should be noted that LP Policy DM6 was known as emerging policy CO2 in the Pre-Submission Document and it is emerging policy CO2 which is referred to within the decision notice. This is clearly explained in paragraph 13 of the Council's statement of case which the appellant has had opportunity to see and comment upon. Emerging Policy CO6 (refusal reason two) is assumed to now be adopted LP Policy DM10 as outlined in paragraph 14 of the Council's statement of case.
5. The appellant has had the opportunity, within final comments, to respond to the changes and clarification set out by the Council as outlined above. I am satisfied that both parties have had the opportunity to comment as to the impact of the adoption of the new LP, and the relevant policies which refusal is based upon, in relation to the determination of this appeal.

¹ The Chelmsford Local Plan (2013-2036)

Main Issues

6. The main issues are:

- i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2019 (the Framework) and relevant development plan policies;
- ii) The effect on the openness of the Green Belt;
- iii) If the proposal would be inappropriate development, whether the harm by reason 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 it.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

- 7. The appeal site is located within the boundary of a large semi-detached residential property within open countryside, Green Belt and the Margaretting Conservation Area. It is accessed via a long private driveway and due to the nature of the property, the garden and driveway are both to the front of the property. The concrete slab is already in place and it is noted that a previous application (19/01271/FUL) has been refused for identical reasons to this current proposal. The site is noted as not being visible from the road.
- 8. The concrete pad would be an engineering operation which, under paragraph 146 of the Framework, would not be inappropriate in the Green Belt provided it preserves openness and does not conflict with the purposes of including land within it. This is reflected within LP Policy DM10 (which also requires no harm to character and appearance of the area).
- 9. Openness has both a visual and spatial element within the Green Belt. The concrete pad, being below/at ground level, will not adversely impact on openness and its views are very limited to within a private driveway only within a treed alcove. It will introduce development however, at ground level this will not diminish space to affect the visual openness of the Green Belt. I do not find, given the site context, that it represents encroachment into the Green Belt. The proposal would not therefore conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open as outlined in paragraph 134 of the Framework.
- 10. The Council have stated there is a lack of harm to the character and appearance of the area, for both elements of the scheme, and thus I have no reason to conclude differently on that point. The concrete pad would fall within the exception within paragraph 146 b) of the Framework and would also be consistent with LP Policy DM10. The concrete pad is therefore not inappropriate development in the Green Belt.
- 11. The appellant's submissions focus on existing Green Belt Value and has very limited acknowledgement of paragraph 145 or paragraph 146 of the Framework – the paragraphs which ultimately define what is inappropriate or not inappropriate. Whilst it is contended that the site makes no meaningful contribution to the Green Belt the site is, none the less, designated as Green Belt and is therefore afforded the protection set in place within both the

recently adopted Local Plan and the Framework. The Framework is clear that construction of new buildings in the Green Belt should be regarded as inappropriate except in defined circumstances. This is reflected in LP Policy DM6 (new buildings in the Green Belt).

12. Whilst the proposed building itself is noted to be for sport/recreation use it is not for outdoor sport or recreation in connection with the existing use of land or a change of use as would be allowed under paragraph 145 b) of the Framework. The proposed building would be a residential outbuilding, and does not fall within any of the exceptions within paragraph 145 of the Framework or LP Policy DM6. Inappropriate development is, by definition, harmful and should not be approved except in very special circumstances.
13. The proposed building would be contrary to both LP Policy DM6 and paragraph 145 of the Framework which seek to resist inappropriate development except in very special circumstances. The proposal is therefore inappropriate development and there is a need to consider the scheme's impact on openness.

Openness

14. For ease of reference and aid logical reading of this decision, in light of there being two elements to the proposal, I have discussed the concrete pad's impact upon openness earlier in this decision. This is because it is directly linked, in the case of paragraph 146 of the Framework and LP Policy DM10, to assessing whether or not the concrete pad is inappropriate development in the Green Belt.
15. I find that the proposed building itself would have very limited impact upon the visual openness of the Green Belt due to its location set back from the road and within a group of trees. It would, however, introduce built form into the Green Belt where there is currently no built form. This would of course have a physical volume and thus spatially impact on openness.
16. Despite this I find the proposed building would have a limited impact upon the Green Belt given the site context and surrounding development and when taking into account the purposes of including land within the Green Belt. I find that the proposal would, overall, have a limited impact upon the openness of the Green Belt.

Very Special Circumstances

17. It is stated that the applicant is an ex-sportsman, with an extensive career, who now concentrates upon coaching and personal strength and conditioning. The original planning statement and statement of case both state that the proposal would provide a vital facility for sports training to be used for personal/family use. It is also stated it would be used as space to develop programmes to be delivered to students off site.
18. I acknowledge there has been some flexibility to the planning system to allow businesses to adapt, however, temporarily permitting takeaway and delivery from non-A5 food and drinks establishments during Covid-19 is not comparable to the construction of a permanent building as proposed.
19. I am mindful that exactly the same proposal sought consent in mid-2019 which is notably before Covid-19 was even reported and that the justification and claimed use for the proposal has not been entirely consistent. Comments

regarding Covid-19, and the impacts such restrictions have had upon the closure of sports venues, are noted but this is not a unique issue with much of the population and many sports professionals having unfortunately found themselves in a similar situation. It is stated that the proposal would allow those, who have not contracted Covid-19, to attend session at the site. Despite this, ultimately, it would be ancillary garden accommodation for the enjoyment of the occupants of Eweland House.

20. I am not convinced based on the statements and evidence before me that this is sufficient to warrant very special circumstances or that facilities could not be temporarily provided elsewhere during the pandemic.
21. The site is acknowledged to be constrained but this does not overcome the fact that the proposal is inappropriate development as defined within the Framework. Whilst the building dimensions may well be within the limits of permitted development the proposal, as acknowledged by the appellant, does not fall within the scope of such rights and as such I can attribute little weight to the modest dimensions.
22. For the reasons given, the total weight of the other considerations does not clearly outweigh the substantial weight that must be given to the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the proposal do not exist.

Other Matters

23. An overall lack of harm to the character and appearance of the area, and the Conservation Area, and no objection to general design are neutral considerations and none the less separate matters to Green Belt harm.
24. It is key to note that the wording of emerging policy CO2 included residential outbuildings within its exception list. This was, however, removed by the examining Inspector prior to adoption due to inconsistencies with the Framework. The comments made by the appellant in paragraph 1.29 of their appeal statement do not, therefore, hold weight due to this change and subsequent adoption of the amended policy.
25. Reference is made in the submissions to 'local precedent' however, other cases do not set a precedent and each case must be considered on its own merits. The cases outlined within the planning statement (table 3) are all extensions to existing buildings or replacement buildings for the same purpose which are not inappropriate development within the Green Belt. The proposals are not comparable to the appeal proposal which seeks to erect an entirely new building where there is currently no built form. Furthermore many of them pre-date even the first Framework and all pre-date the Local Plan now adopted, against which the proposals must be assessed in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004.

Conclusion

26. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR