



Appeal Decision

Site Visit made on 12 May 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2021

Appeal Ref: APP/W1525/C/20/3261792

Land at Charvilles, Blind Lane, West Hanningfield, CHELMSFORD, CM2 8UF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Brand against an enforcement notice issued by Chelmsford City Council.
 - The notice was issued on 23 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a building.
 - The requirements of the notice are to:
 - (i). Demolish the building shown outlined in blue at the approximate location on the attached plan.
 - (ii). Remove from the land all debris and any waste material resulting from the works carried out at step (i).
 - (iii). Restore the land affected by the actions taken in step (i) by seeding with grass seed.
 - The periods for compliance with the requirements are three months in respect of requirements (i) and (ii) and six months in relation to requirement (iii).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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 deletion of three months and the substitution of nine months as the period for compliance with steps (i) and (ii); and
 - the deletion of six months and the substitution of twelve months as the period for compliance with step (iii), of the requirements.
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. The appeal was submitted by Mr and Mrs Paul Brand. However, Mr Brand subsequently confirmed that the appeal should proceed in his name only and I have dealt with the appeal accordingly.

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

4. 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 Issues

5. 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

6. There is no dispute between the parties that the site lies within the Green Belt. The Framework establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to a number of exceptions. Strategic Policy S11 of the Chelmsford Local Plan (the Local Plan) sets out that the openness and permanence of the Green Belt will be protected and resists inappropriate development in the Green Belt and Policy DM6 of the Local Plan sets out exceptions to inappropriate development. The Local Plan policies are in accordance with the Framework.
7. The appellant is not arguing that the development falls within any of the exceptions set out in Policy DM6 of the Local Plan and on this basis, there is no dispute that the building amounts to inappropriate development. Furthermore, in terms of the effect on the openness of the Green Belt the development results in the introduction of built form where there was previously none. Consequently, although the footprint of the building is small in comparison with the other buildings in the vicinity it nevertheless has a harmful effect on the spatial aspect of the Green Belt. Also, it is a visual intrusion into what was previously an open area, resulting in harm to the visual aspect of the Green Belt.
8. I conclude that the building is inappropriate development in the Green Belt having regard to the Framework and its effect on the openness of the Green Belt. The development is therefore contrary to Policies S11 and DM6 of the Local Plan.

Other considerations - The fallback position

9. The appellant argues that the development which is the subject of the notice would be less harmful to the Green Belt than the fall-back position, which would be the siting of a caravan for purposes ancillary to the existing use of the site. The appellant has obtained a certificate of lawful use or development (LDC) from the Council for such a caravan and the parties have provided me with a copy of the Council's report, the Decision Notice, and the drawings which are referenced on the Decision Notice.
10. The appellant describes the building which currently occupies the site as being 5.860 metres long and 4.710 metres wide with a height of 2.950 metres. By contrast according to the Council's report the caravan which is the subject of

the certificate would measure 8.9 metres long, 4.8 metres wide and it would have an internal ceiling height of 2.9 metres.

11. The Council says in its report that the appellant submitted his application for the LDC on 6 January 2020 and the LDC is dated 24 February 2020. The appellant subsequently submitted a planning application for the retention of the appeal building on 4 March 2020 which was determined on the 30 April 2020.
12. This action undermines to some extent the likelihood that the appellant intends to carry out the fallback option because it appears that the application for the LDC was made with the intention of providing a comparison with the appeal building as opposed to being the appellant's intended next step. On the other hand, in relation to his appeal under ground (g) he requests a longer period of compliance to ensure that there is no absence/gap in the provision of the building for his father. This highlights the importance placed by the appellant on the amenity provided to his father by some form of shelter and implies the intention to provide a caravan before the removal of the building.
13. The caravan which is the subject of the LDC would be larger in footprint and volume than the appeal building so it would have a greater impact on the spatial dimension of the Green Belt. Nevertheless, the caravan and the current building would have a similar adverse visual impact bearing in mind the formerly undeveloped nature of the site. Thus, the reduced effect on the openness of the Green Belt of the appeal building in comparison with the caravan attracts limited weight in favour of the appeal scheme.
14. The appellant also argues that a larger caravan than that which is the subject of the LDC could be brought onto the site. He quotes a maximum size of 20 metres long, 6.8 metres wide and with an internal height of 3.05 metres. Such a large caravan would have a significantly greater impact on the spatial and visual aspects of the Green Belt. However, there is nothing to demonstrate that the bringing onto the site of a caravan of these dimensions would be a realistic as opposed to a theoretical prospect. As such I have given this alternative fallback position very limited weight.
15. A further fallback position is introduced by the appellant under his appeal on ground (f). He contends that the building could be removed from the site, cut in half and brought back as a caravan in two parts and bolted back together. However, there is no information to demonstrate that such actions would be a realistic prospect, for example in terms of the effect of such works on the structural integrity of the building. For that reason, I have also given this alternative fallback position very limited weight.
16. Drawing all these points together I find that the siting of a caravan in accordance with the LDC is a realistic fallback position but that the other fallback options are not realistic. Nevertheless, I do not find that the impact of the caravan on the Green Belt would be significantly less desirable in terms of its impact on the Green Belt than the building for which the DPA is sought.

Other Considerations - Personal circumstances/Public Sector Equalities Duty

17. The appellant says that the appeal building is primarily used by his father and that it provides him with a degree of independence from the host dwelling. This gentleman also has two of the relevant protected characteristics which are set

out in the Equality Act 2010 and I must have regard to the Public Sector Equality Duty (PSED) in relation to this issue.

18. Having met the appellant's father during my site visit and observed that the appeal building is located in a quiet part of the land associated with the host dwelling and overlooking a pond, I can appreciate that this arrangement is likely to be beneficial to his wellbeing and that any changes are likely to be disruptive to him. However, I am also mindful that the appellant's father has a bedroom in the host dwelling, takes some meals there and uses facilities such as a washing machine there.
19. I have had due regard to the PSED and to the evidence regarding the appellant's family circumstances and the reasons for requiring the building. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed, and in this instance the appellant's circumstances do not outweigh the significant harm I have found.
20. Dismissing the appeal would mean that the appellant may have to consider other options for meeting his family's accommodation needs. However, there is no evidence before me to demonstrate that the appeal development is the only means by which such needs may be met. I have also addressed the appellant's needs to a more limited extent by extending the period of compliance with the notice as part of my consideration of the appeal under ground (g) below. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.

Conclusion on other considerations

21. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist'

Conclusion on ground (a) and the DPA

22. The proposal would be inappropriate development in the Green Belt and it would also result in harm to the openness of the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt. The other considerations set out above do not clearly outweigh the totality of the harm which is the test they have to meet to amount to very special circumstances. The appeal on ground (a) is therefore dismissed and the DPA is refused.

Ground (f)

23. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
24. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the building to be demolished and materials to be removed, therefore the purpose in this case is to remedy the breach of planning control.

25. The appellant argues that the steps required by the notice are excessive because he could remove the building from the site, cut it in half and bring it back, as a caravan, in two parts and bolt it back together. However, as I have noted above there is no information to demonstrate that such actions would be a realistic prospect or that they could be carried out without undermining the structural integrity of the building.
26. Consequently, it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons the appeal fails on ground (f).

Ground (g)

27. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period is too short to enable him to source, arrange delivery and site an alternative lodge caravan. He requests an extension to 9 months.
28. The Council's reference to the time period since planning permission was refused for the building and the time which has elapsed since the appeal was submitted is not a sound basis for arguing that the compliance period of 3/6 months is reasonable. This is because the appellant is entitled to assume success on any ground, and in this case success on ground (a) or (f) could have resulted in the retention of the building and/or works to it.
29. As I have set out above, there is insufficient evidence to justify an approval of the DPA to reflect the personal circumstances of the appellant, which would have allowed the building to remain in the Green Belt despite its harmful impact. However, I am mindful of the benefit which the building has for the wellbeing of the appellant's father.
30. For this reason, I shall extend the time period for compliance with requirements (i) and (ii) from 3 months to 9 months, during which time it is reasonable to assume that the use of the building will be intermittent in the winter months. I shall also extend the compliance period with requirement (iii) to 12 months to allow the re-seeding of the site to be carried out following the removal of the building in the most appropriate planting season. These revised compliance periods are both proportionate and reasonable in the circumstances.
31. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

32. For the reasons given above I conclude that the appeal succeeds in part. I shall uphold the enforcement notice with corrections and a variation.

Sarah Dyer

INSPECTOR