



Appeal Decisions

Site Visit made on 13 August 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2021

**Appeal Ref: APP/W1525/C/21/3268835 (Appeal A) & 3268836 (Appeal B)
Land at All Seasons Farmhouse, The Chase, Galleywood, Chelmsford
CM2 8FX**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mrs Donna Karen Long (Appeal A) and Mr Marcus Justin Long (Appeal B) against an enforcement notice issued by Chelmsford City Council.
 - The notice was issued on 6 January 2021.
 - 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 and its foundations, as 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 it with grass seed.
 - The period for compliance with the requirements is: three months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (f), (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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Decisions

1. It is directed that the notice is:
 - corrected by the deletion of *'iii. Restore the land affected by the actions taken in step (i) by seeding it with grass seed.'* from section 5 of the notice and the deletion of *'step (iii)'* in section 6 of the notice; and
 - varied by the deletion of *'three'* from section 6 of the notice and the insertion of *'twelve'* as the period for compliance, so that it reads *'Compliance with steps (i) and (ii) shown above within twelve months from the effective date of the Notice.'*
2. Subject to the above corrections and variation, the enforcement notice is upheld and planning permission is refused on the on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. A retrospective application for the appeal building was refused by the Council, reference 19/00830/FUL on 24 July 2019 and dismissed on appeal, reference APP/W1525/W/19/3234487.
4. Since the appeal was lodged, the Government published its revised National Planning Policy Framework (July 2021)('the Framework'). The parties have had

the opportunity to comment on the implications of the changes during the appeal process.

Main Issues

5. The main issues of the appeal are:

- Whether the appeal scheme would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies; and
- The effect on the openness of the Green Belt; and
- The effect of the appeal scheme on the character and appearance of the area; and
- If the appeal scheme is 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 required to justify the appeal scheme.

Reasons

Whether inappropriate Development in the Green Belt

6. It is not disputed that the appeal site lies within the Metropolitan Green Belt. Policy S11 of the Chelmsford Local Plan 2013-2036¹ (CLP) states that inappropriate development will not be approved except in very special circumstances. Policy DM6 of the CLP sets out the circumstances in which new buildings will be granted planning permission in the Green Belt and includes the redevelopment of previously developed land where the proposed development would not have a greater impact on the openness of the Green Belt.
7. 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. 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 149.
8. Paragraph 149(g) of the Framework includes the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: - not have a greater impact on the openness of the Green Belt than the existing development.
9. The Framework defines previously developed land as 'Land which is or was occupied by a permanent structure, including the curtilage of the developed land...'. The definition excludes land in built-up areas such as residential gardens. Whilst the building is located on land which is adjacent to All Seasons Farmhouse and therefore forms part of the curtilage of the main dwelling, the appeal site is located in a generally rural area and is bound by fields. Consequently, it is my view that the appeal site is not located in a built-up area and is therefore previously developed land.
10. Case law has established that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The appeal building is a substantial wooden

¹ Adopted 27 May 2020

clad building which adjacent to the main dwelling. Although located in a generally rural area, bound by mature trees to the north and east, the building is clearly visible from the public footpath which bounds the appeal site and The Chase, which I saw was well used by walkers at the time of my site visit.

11. The appeal building is a new building. Whilst it may have been constructed on hardstanding, it has not replaced any previous structures. Consequently, it has a much greater impact on the openness of the Green Belt than the site before the development took place. While the building is single storey, due to its substantial dimensions and visibility from outside the appeal site, there is moderate visual harm to the openness of the Green Belt.
12. Thus, for the reasons given above, I conclude that the appeal building is inappropriate development in the Green Belt. The development is therefore contrary to policies S11 and DM6 of the CLP, the requirements of which are set out above.

Character and appearance

13. The appeal site comprises a substantial dwelling in a generally rural area. The Inspector, in respect of APP/W1525/W/19/3234487, found, by reason of its size and prominent positioning on the edge of the site, the appeal building adversely impacts the intrinsic character and appearance of the rural area.
14. Although the building is constructed of a similar wooden weatherboard finish and roof tiles as the adjacent stable building, given its substantial dimensions and visibility from outside the appeal site, I agree that it adversely impacts the intrinsic character and appearance of the rural area, contrary to the Framework, which aims to ensure that planning decisions recognise the intrinsic character and beauty of the countryside, amongst other things.

Other considerations

15. The appellants suggest that the barn has dual use and in addition to use for the business, is also used by their daughter to practice with her band in during the evenings and weekends, for gatherings and parties and as a games room for the appellants' granddaughter. Whilst this may be the case, the use of the building for the business is not incidental to the enjoyment of the dwellinghouse and so even if it is also used for activities which are incidental to the enjoyment of the dwellinghouse, the building is not development which is permitted by Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) permits buildings etc incidental to the enjoyment of a dwellinghouse.
16. In December 2020 a Certificate of Lawful Proposed Use or Development was issued by the Council for the erection of a swimming pool building within the rear garden of the appeal site, reference 20/01831/CLOPUD ('the LDC'). The outbuilding would have a comparable volume, footprint and appearance to the unauthorised building and is asserted to have a more prominent visual impact on the openness of the Green Belt by virtue of its more exposed position relative to the existing envelope of buildings on site.
17. The appellants suggest that rights afforded by Class E, Part 1 of Schedule 2 of the GPDO could be removed by condition. This would prevent the swimming pool building from being constructed, which could otherwise be built, and is asserted to be of benefit to the openness of the Green Belt. However,

permitted development rights have not been withdrawn (in total or in part) in the Green Belt in the GPDO.

18. The Framework states that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do so. In addition, the Planning Practice Guidance states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. I do not therefore consider it would be reasonable or necessary, in this case, to impose a condition restricting permitted development rights. If I were to grant planning permission for the appeal building, there would be nothing to stop the appellant from also constructing the swimming pool building. Consequently, the LDC does not weigh in support of the appeal scheme.
19. Paragraph 84 of the Framework states that planning decisions should enable sustainable growth of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings. The appellants utilise the appeal building for a dog day care and boarding business and state that the loss of the building would affect capacity for clients and would prevent the growth of the business.
20. I note the considerable support that has been expressed by interested parties, including key workers who have utilised the appeal site during the pandemic. The business provides jobs for Mrs Long and her 2 daughters and therefore brings economic benefits and provides a service to local residents. I am also advised that the appellants allow an interested party to store Halloween props, which are used to put on a display every year for a local charity. Given the number of people employed and the service it provides to the local community, these are benefits to which I afford significant weight.
21. The appellants suggest that the business is more suited to its current rural location than an urban area with noise sensitive receptors and that the use requires the owners to live on site. However, whilst the appellants have purchased the site, I have no substantive evidence that there are no suitable sites for the development outside the Green Belt or that it would not be feasible to find a suitable site elsewhere. I therefore afford this matter very limited weight.
22. Whilst I saw that there are substantial buildings set within Baddow Park's grounds, in the vicinity of the site, they do not directly affect the openness of the appeal site and therefore do not weigh in support of the appeal scheme.
23. The appellants suggest that Green Belt is being built on all over Chelmsford and has drawn my attention to Beaulieu Park. Interested parties have also drawn my attention to other development in the area, including a training centre, a house built at the bottom of The Chase, a marquee, which is alleged to have been sited by the winery and mobile homes on Hayes country park. However, I do not have substantive details of the developments referenced and do not know the circumstances around their development. Furthermore, I cannot be sure they are comparable to the appeal scheme before me.

Other Matters

24. The appellants state that they were unaware the appeal site was located in the Green Belt and have begun legal proceedings in relation to the searches carried

out prior to their purchase of the land. While I have some sympathy with the appellants, issues regarding the accuracy of conveyancing searches are outside the scope of my decision. Furthermore, as set out above, the building is not permitted development and was built without the benefit of planning permission. While the appeal site's location within the Green Belt affects its acceptability in policy terms, and therefore whether or not planning permission would be granted, it has no effect on whether the building is permitted development. The appellants could have investigated this prior to its erection and indeed prior to their purchase of the appeal site.

25. The removal of the appeal building will affect the appellants' ability to accommodate dogs. However, how an owner chooses to meet their dog's needs will depend upon a variety of factors, including the nature of the dog, an owner's personal circumstances and the availability of care elsewhere. Since these will vary, I consider it highly unlikely that there would be an adverse effect on Chelmsford if users of the facility choose to send their dogs elsewhere.
26. Enforcing the notice is asserted by an interested party to cause loss, harm and injury to many. The removal of the building will affect the appellants' business, which is a matter I have considered above and which I shall consider in relation to the ground (g) appeal. While I accept it may cause inconvenience for individuals who use the facilities, I am not persuaded it would cause loss, harm or injury to others.
27. I note the comments about improvements the appellants have made to the farmhouse and surrounding area. However, I am not persuaded that any improvements were contingent on the erection of the appeal building.
28. Although there is limited third party objection to the appeal scheme, this is a neutral factor in my consideration of the appeal.
29. The appellants have raised concern regarding a pre-application meeting with the Council. However, in determining the ground (a) appeal, I can only have regard to the planning merits of the case and so am unable to give any weight to this particular concern.
30. The Inspector in respect of APP/W1525/W/19/3234487 did not find any significant harm arising from noise, nor has any issue been identified with parking. These are neutral factors in my consideration of the appeal.

Green Belt balance

31. The Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
32. As set out above, I have found that the development is inappropriate development in the Green Belt and causes moderate visual harm to the openness of the Green Belt. This is a matter to which I attach substantial weight. It also harms the character and appearance of the area. This is a matter to which I attach moderate weight.

33. While I have found there to be significant positive benefits arising from the provision of employment and the services to the community, I am not persuaded that it would not be feasible to find a suitable site outside the Green Belt. Consequently, I find that the benefits of the development do not clearly outweigh the harm to the Green Belt and the harm to the character and appearance of the area.
34. Thus, for the reasons given above, 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)

35. For the reasons given above, I find that the appeal scheme is contrary to policies S11 and DM6 of the CLP, the requirements of which are set out above and the expectations of the Framework. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

36. An appeal under ground (f) is made 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. Given the requirements of the notice are to demolish the building and remove the debris, it is clear that the purpose of the notice is to remedy the breach.
37. The main thrust of the appellants' case under ground (f) is that since an outbuilding of a comparable size to the existing structure is permissible at the site, as confirmed through a Certificate of Lawfulness granted on 23 December 2020, reference 20/01831/CLOPUD, a lesser step would be to remove Class E Householder Permitted Development Rights afforded to All Seasons Farmhouse.
38. The GPDO does not grant retrospective planning permission. Furthermore, the building as constructed exceeds the limitations set out in the GPDO and is not for a purpose incidental to the enjoyment of the dwellinghouse. Varying the notice in this way would therefore not serve to remedy the breach of planning control.
39. Section 173(3) of the Act states that '*an enforcement notice shall specify the steps which the authority require to be taken...in order to achieve, wholly or partly, any of the following purposes*'. Section 173(4) sets out those purposes are '*(a) remedying any breach by...restoring the land to its condition before the breach took place*'. The scope of the enforcement notice is therefore limited by sections 173(4)(a) and (b). The recipient cannot be required to undertake works that would go beyond remedying the breach.
40. The Council describe the building as being sited on an area of hardstanding. Requirement (iii) states '*restore the land affected by the actions taken in step (i) by seeding it with grass seed*'. Although the appellants have not raised this as a concern, I have a duty to get the notice in order. From the evidence, it appears that the requirement to seed the land with grass seed would go beyond remedying the breach.

41. I shall correct the notice by deleting requirement (iii). I am satisfied that this would not cause injustice to either party, since the requirements would be less onerous but would still remedy the breach.

Ground (g)

42. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellants request that the compliance period is extended to 12 months.
43. The main thrust of the appellants' case under ground (g) is that sufficient time is required to enable a suitable company to be appointed to carry out the works, whose availability may be impacted by the Covid-19 pandemic, and remove equipment and furniture from the building and if necessary, seek an alternative premises from which to operate.
44. I note the considerable support that has been expressed by interested parties for the business and the services that it provides, particularly during the Covid-19 pandemic, and the effect that removing the building would have on the appellants' ability to honour existing bookings, which in turn will impact those who use the appellants' services. I also note the concerns raised by the appellants regarding their ability to afford the property, which could cause them to lose their home.
45. Although a period of over two years has passed since the unauthorised development was first brought to the appellants' attention, the appellants have appealed under ground (a) and were entitled to assume success. They should not have to set about complying until they know that the ground of appeal has failed.
46. The appeal building is substantial and so the appellants are likely to need to procure the services of a builder to carry out its removal. Extending the compliance period would give the appellants sufficient time to appoint a builder and for the work to be carried out. Furthermore, given the potential effect that removing the building would have on the appellants' business and livelihood, which could cause them to lose their home, as well as the effects on those who utilise their services, I consider it is reasonable and proportionate to extend the compliance period to 12 months.

Overall Conclusion

47. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeals on grounds (f) and (g) succeed to that extent.

M Savage

INSPECTOR