



Appeal Decision

Site Visit made on 25 October 2021

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2021

Appeal Ref: APP/W1525/W/21/3278614

Bushmoor Kennels, Goat Hall Lane, Chelmsford, CM2 8PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Slade against the decision of Chelmsford City Council.
 - The application Ref 19/00145/S73, dated 1 May 2021, was refused by notice dated 22 June 2021.
 - The application sought planning permission for development described as "Demolition of existing kennels and outbuildings. Construction of 3 dwellings. Access, siting and scale not reserved matters, (landscaping and appearance reserved matters)" without complying with a condition attached to planning permission Ref 19/00145/OUT, dated 26 April 2019.
 - The condition in dispute is No 10 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), the dwellings hereby permitted shall not be enlarged or extended without the grant of an additional planning permission by the local planning authority.
 - The reason given for the condition is: The erection of additional extensions which could be constructed under the provisions of Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) could be disproportionate in size in relation to the existing buildings and would therefore constitute inappropriate development in the Green Belt contrary to Policy DC1.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Construction had begun on the approved development before my site visit. I have determined the appeal accordingly.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of protecting the openness of the Green Belt.

Reasons

4. Paragraph 149 of the National Planning Policy Framework (the Framework) states that the construction of new buildings should be regarded as inappropriate in the Green Belt other than in certain exceptions. One such exception is for 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, another allows for the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than

the existing development. Policy DM6 of the Chelmsford Local Plan 2020 (the LP) contains similar language.

5. I am mindful that the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) does not require new houses in the Green Belt to be subject to the removal of their permitted development rights. Furthermore, the Framework states that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do so, while national planning practice guidance advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity.
6. The new houses could be significantly expanded under permitted development if the appeal were to be allowed. While the addition of extra storeys as included in Class AA of the Order would not be permitted development as the houses were not built by 28 October 2018 as required, there is nevertheless potential for significant additions to the footprints and roofs of the houses. Planning permission for the three houses was granted, in part, because the development was considered to result in greater openness in the Green Belt compared to the buildings that previously occupied the site. The removal of permitted development rights relating to enlargement and extensions for the approved houses was considered reasonable and necessary to secure this benefit.
7. The benefit of the improved openness is therefore a consideration in the determination of this appeal. The appellant has not disputed that if the new houses were extended under permitted development then their footprint could exceed that of the buildings formerly on the site, with an attendant impact on the openness of the Green Belt. While there is no guarantee that such large extensions would be built, it is more than a theoretical possibility and therefore carries weight in the determination of this appeal.
8. The appellant has drawn three decisions to my attention in support of their case. In each decision the Inspectors refer to a test of exceptional circumstances in the national guidance to justify removal of permitted development rights. The current national guidance does not include this test. This therefore limits the weight that these decisions attract. In any case I must determine this appeal on its own merits.
9. The condition the subject of this appeal only applies to the enlargement of the houses and does not remove other domestic permitted development rights such as those for the construction of outbuildings. In this regard it is precisely defined, in line with national guidance that such conditions make clear exactly which rights have been limited or withdrawn.
10. Given the above considerations, the need to protect the openness of the Green Belt provides clear justification for the removal of permitted development rights from the approved houses. The condition is therefore reasonable and necessary in this instance, in accordance with the Framework and Policy DM6 of the LP.

Conclusion

11. For the reasons set out above, the appeal fails.

M Chalk

INSPECTOR