
Appeal Decision

Site visit made on 15 March 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal Ref: APP/V0510/W/21/3281803

Chalk Farm, Newmarket Road, Bottisham CB25 9BD

- 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 B T W Rayner against the decision of East Cambridgeshire District Council.
 - The application Ref 21/00671/FUL, dated 23 April 2021, was refused by notice dated 21 July 2021.
 - The development proposed is described on the application form as 'Change of use of amenity land and construction of a hard surfaced tennis court and associated development.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an additional plan¹, which shows the elevations of the proposed fencing and layout of the tennis court. In considering the acceptability of this additional plan I have had regard to the principles set out in *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]. The plan is primarily aimed at providing further clarification and it does not fundamentally alter the development as originally proposed and consulted on by the Council. I have therefore considered this appeal with regard to the additional plan.
3. The 'Green Belt' is not referred to directly within the Council's reasons for refusal. Notwithstanding this, the effect of the development on the Green Belt is clearly a main issue and this is reflected in the evidence provided by both parties and the inclusion of Local Plan² Policy ENV10 in the reason for refusal. As such, I have dealt with the appeal on this basis.
4. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework) and I have had regard to it in considering this appeal. The appeal process has afforded suitable opportunity for comment on the foregoing policy changes.
5. There is contention between the parties as to whether the existing land use of the Appeal Site is 'amenity land' or agricultural. When I visited the site it comprised a ploughed field beyond the walled boundary of the garden of the adjacent residential property. This does indicate an agricultural use. It may however, have been sown with grass seed and this is not possible to confirm.

¹ Ref: 486/P/01

²² East Cambridgeshire Local Plan – April 2015

Either way, the site has a currently open character and there is no evidence to suggest that there is a realistic prospect of any building being erected on the site under permitted development rights.

Main Issues

6. The main issues are:

- Whether the development would be inappropriate development in the Green Belt, including the effect of the development on the openness of the Green Belt and the purposes of including land within it.
- Whether the site is a suitable location for the proposed development with regard to its countryside location.
- Whether a net gain in biodiversity can be achieved.
- 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 necessary to justify the development.

Reasons

Inappropriate Development

7. The appeal site comprises a field, located within the Green Belt. Local Plan Policy ENV10 states in part that development in the Green Belt will be strictly controlled and limited to certain exceptions as prescribed in the NPPF. Framework Paragraph 149 states that the construction of new buildings in the Green Belt should be regarded as inappropriate development except in certain circumstances.
8. The proposed development involves the use of the land as a tennis court but also includes the erection of a 2.75m high chain-linked fence. The term 'building' is defined in section 336 of the Town and Country Planning Act 1990 (as amended) as follows: "'building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' On the basis of this definition, the development, which includes a fence, comprises a building as opposed to an engineering operation as suggested by the appellant. As such, it falls within the ambit of the exception to inappropriate development set out under Framework Paragraph 149(b), which relates in part to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport.
9. Even if the development were to fall under the exceptions at Paragraph 150(e) or 150(b), as suggested by the main parties, then the tests are the same in that all three exceptions require that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
10. Framework Paragraph 137 states that the essential characteristics of Green Belts are their openness and permanence. An assessment of openness involves a consideration of both spatial and visual aspects.
11. The site of the proposed tennis court comprises a field which is currently free from development. The introduction of a predominantly 2.75m high chain-link

fence around the perimeter of the tennis court and the net at the centre of the court would therefore result in a moderate reduction in the spatial openness of the Green Belt.

12. Turning to the visual aspect of openness, the site is predominantly bounded by hedgerows and trees to the west and south and the appellant's residential property is located directly to the north. As such, the site is largely visually screened from the surrounding area. However, limited views across the appeal site are possible from the east. There would therefore be a limited reduction in visual openness.
13. In terms of the purposes of including land within the Green Belt as set out under Framework Paragraph 138, the proposed development would also result in a limited degree of encroachment on the countryside. This is because an area of previous vacant land with a rural character would be transformed into a tennis court with a far more urban character. This visual encroachment would be partially visible from the east.
14. In summary, the proposed development would result in encroachment on the countryside, as well as a moderate spatial and a limited visual reduction in the openness of the Green Belt. As such, it would not preserve the openness of the Green Belt and it would therefore be inappropriate development.

Location of development in the countryside

15. The appeal site is located wholly outside of any settlement boundary as defined within the development plan and it is located within the countryside in this regard. Local Plan Policy GROWTH2 states that in the countryside development will be strictly controlled, with certain exceptions supported by other Local Plan policies. One such exception is 'outdoor recreation and leisure facilities', where Local Plan Policies COM 4 and COM 5 are applicable.
16. Policy COM4 outlines that new community facilities should be located within the settlement boundaries wherever possible but may be permitted in the countryside where there is a lack of suitable and available land within settlements or where a rural location is required. From the evidence before me, it is not clear whether the proposed tennis court would be available to members of the public. However, there is no evidence before me to indicate that there are no suitable alternative sites within existing settlements or that a rural location is required. As such, even if the proposed development was available to the public it would not be supported by Local Plan Policy COM4.
17. Policy COM5 relates to Strategic Green Infrastructure. The sub-text at paragraph 7.6.1 states that this policy focuses on strategic networks and sites of a strategic nature. The proposed development, which includes one tennis court, cannot be considered to be part of a 'strategic network' or a 'site of a strategic nature'. Indeed, when the development plan is taken as a whole, it is clear that Policy COM4 applies to smaller scale development of the type proposed in this instance, whilst COM5 applies to strategic scales of development. Therefore, even if the tennis court were to be publicly available, which is by no means clear on the evidence before me, given its small scale it would not derive any support from Policy COM 5.

18. As such, the proposed development would not comply with the spatial strategy for the location of new development set out under Local Plan Policy GROWTH2 and it would therefore conflict with this policy.

Biodiversity Net Gain

19. Local Plan Policy ENV7 requires in part that development protects biodiversity value and provides appropriate mitigation, reinstatement and replacement measures that will enhance habitats.
20. The Natural Environment SPD (2020) (The SPD) requires that new developments result in a net gain in biodiversity. Policy SPD.NE6, sets out the information which is required in order to establish whether a net gain in biodiversity can be achieved.
21. The appellant has been unable to provide the additional planting plan referred to within their statement of case. Notwithstanding this, the site of the proposed development includes a recently ploughed field which is unlikely to be of any great biodiversity value. Furthermore, the Site Location Plan submitted with the planning application indicates that the appellant owns a significant area of land beyond the appeal site, including areas containing existing trees and hedgerows which could potentially be enhanced significantly. With these considerations in mind, there is no reason why this matter could not be addressed through a suitably worded pre-commencement condition.
22. As such, subject to a suitably worded condition, the proposed development would comply with Local Plan Policy ENV7, the SPD and the provisions of the NPPF in relation to biodiversity net gain.

Other Considerations

23. Framework Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 states that 'very special circumstances' will not exist unless the potential harm to the Green Belt and any other harm, is clearly outweighed by other considerations.
24. The appellant has suggested that the proposed development would benefit the health of the occupiers of the adjacent residential property. This is considered to be a benefit of limited weight given the small scale of the proposal and the likely small number of residents living in the adjacent dwelling. As alluded to earlier in this decision, it is not clear whether the tennis court would be open to the wider public. However, even if it were, no evidence has been provided to demonstrate how many people it would serve, or which local areas would be served by the facility. As such, the social benefits associated with the development in this regard are limited.
25. The absence of harm in other regards, such as residential amenity, highways and drainage, would not be a benefit of the development and therefore would have a neutral effect.
26. The appellant has referred to several other planning permissions granted both within the district and in districts elsewhere. However, the precise site-specific circumstances of each of these cases are not before me. Furthermore, those decisions which were made in other districts would have been within a different development plan context. As such, they are not directly comparable to the

appeal scheme. For these reasons, none of the decisions provided alter my conclusions in relation to the proposed development.

27. The appellant has highlighted that the Local Plan, adopted in 2015, pre-dated the publication of the last two versions of the Framework. However, that does not mean that they are automatically out-of-date within the terms of Framework Paragraph 11d. Indeed, the weight to be afforded to the policies depends on the consistency of those policies with the Framework. Policy ENV10 refers to the approach taken in the Framework and it is therefore intrinsically consistent with it. Policy GROWTH2 does not place a complete bar on development in the countryside and as far as it is relevant to this appeal (sports and recreation development) it is consistent with the Framework. Policy ENV7 is broadly consistent with the advice contained in the Framework with regard to biodiversity and is supplemented by the SPD. The relevant development plan policies are not therefore out-of-date.

Conclusion

28. The proposed development would be inappropriate development, which is, by definition, harmful to the Green Belt. There would also be moderate harm to the openness of the Green Belt as well as encroachment on the countryside. I afford substantial weight to this harm, in accordance with the requirements of Framework Paragraph 148.
29. In addition, whilst I have concluded that the development would be capable of provide a net gain in biodiversity, it would conflict with the Council's strategy for the location of new development as set out within the development plan. The former has a minor beneficial effect but the latter weighs further against the development.
30. Given the substantial weight to be given to Green Belt harm, relative to the modest weight which I afford to the benefits of the proposed scheme, the harm is not clearly outweighed by the other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist. As such, having regard to the development plan as a whole and all other relevant material considerations, the appeal should be dismissed.

Luke Simpson

INSPECTOR