



Appeal Decisions

Site visit made on 12 April 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2022

Appeal A Ref: APP/C1570/W/21/3276589

Land east of Friars Lane, Hatfield Heath, Essex CM22 7AP

- 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 David Worrell against the decision of Uttlesford District Council.
 - The application Ref UTT/20/2317/FUL, dated 12 September 2020, was refused by notice dated 22 January 2021.
 - The development proposed is described as the "formation of hardened access to allow all year round planting and maintenance".
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Appeal B Ref: APP/C1570/W/21/3276590

Land east of Friars Lane, Hatfield Heath, Essex CM22 7AP

- 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 David Worrell against the decision of Uttlesford District Council.
 - The application Ref UTT/20/2299/FUL, dated 9 September 2020, was refused by notice dated 4 March 2021.
 - The development proposed is described as the "erection of a fence".
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Costs Application

3. An application for costs was made by David Worrell against Uttlesford District Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The address in the banner above is taken from the Council's written statement as it more accurately reflects the location of the appeal site.
5. For ease of reference, I refer to the different cases as Appeal A and Appeal B in this decision letter as set out in the headers. I have dealt with each appeal on its own individual merits but to avoid duplication, I have considered the appeals together in this document. Although there are two appeals, I have used singular terms in places for the ease of reading.
6. Since the submissions of the appellant's appeals the revised National Planning Policy Framework (the Framework) was published and came into force on 20 July 2021. In light of this I sought the views of the main parties in writing and I have taken any subsequent responses into account in reaching my decision.

Main Issues

7. The main issues in this appeal are:

- whether the proposals would be inappropriate development in the Green Belt having regard to the Framework and development plan policy,
- the effect of the proposals on the openness of the Green Belt, and
- 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 very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

8. Appeal A – The Framework states at paragraph 147 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved unless in very special circumstances. Certain forms of development are deemed not to be inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. One of these exceptions listed at paragraph 150 b) of the Framework is an engineering operation.
9. As the development proposes a sub-base of hardcore to support the cellular system to be installed, one can reasonably consider this to represent an engineering operation. Therefore, providing the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it, the formation of a hardened access into the site need not be inappropriate development within the Green Belt.
10. Appeal B – The Framework states at paragraph 149 that, save for a number of exceptions, the construction of new buildings within the Green Belt is inappropriate development. The fence to be constructed should be considered as a building and thus, falls to be considered under paragraph 149. Accordingly, unless one of the exceptions listed therein applies, which have not been advanced by the appellant, the proposed fence would be deemed as inappropriate development within the Green Belt.

Openness

11. The appeal site itself forms a parcel of land with a relatively straight boundary to the south and to the north it is staggered to follow adjoining boundaries. The site benefits from an existing vehicular access off Friars Lane with the land largely laid to grass and bound by hedging, trees and fencing. The site has a gentle slope from the north to the south where it meets adjoining open fields. Although the site lies adjacent to existing residential properties to the north, it nonetheless forms part of the surrounding rural landscape.
12. Paragraph 137 of the Framework states that the fundamental aim of Green Belt policy is prevent urban sprawl by keeping land permanently open. In considering the concept of openness, the courts have found that it broadly has 2 dimensions; spatial and visual. Additionally, it is accepted that the purpose and/or the use of development can affect openness, as well as its physical presence. Paragraph 148 of the Framework states that substantial weight should be given to any harm to the Green Belt.

13. Appeal A – The appellant states that the hardened access is required to allow tree and hedgerow planting to take place and to be able to carry out all year maintenance of the land. It is also argued that following the installation of the cellular system, the land would be no different in appearance than if the works had not been undertaken. Therefore, there can be no impact on openness or on the character of the area.
14. The area to be covered by the access is quite large, extending deep into the site and although the 'Coregrass HD' system proposed would be green in colour, I have very few clear details of how the end product would look visually, both from distant and closer views. However, it is evident that the hardened access is required to facilitate the parking of vehicles and machinery which, from the appellant's evidence, is to maintain the 60 or so trees to be planted and could take place in any weather conditions throughout any time of the year.
15. Notwithstanding that there is an existing access into the site, in its current state the land is devoid of development and contributes towards the openness of the Green Belt. To allow the hardened access into the site would create a large area where vehicles could enter the site, which could include using and keeping vehicles on the site for protracted periods of time to carry out planting and maintenance, and at any time during the year. Therefore, the presence of vehicles and indeed machinery, whilst not constituting an act of development within themselves, would add to a loss of openness when the site is being used for its intended purpose.
16. Accordingly, this would result in moderate visual harm which would not preserve the openness of the Green Belt or safeguard the countryside from encroachment. The proposed development would therefore fall outside the exceptions set out in paragraph 150 of the Framework and should be considered inappropriate development in the Green Belt. The proposal would therefore conflict with Policy S6 of the Uttlesford Local Plan 2005 (ULP) which seeks to ensure that development proposals are compatible with the purposes of including land in the Green Belt.
17. Appeal B - The appellant states that the fence is required for security purposes to ensure that new planting is not disturbed. It would be a two-dimensional structure, to be constructed of chestnut posts and galvanised stock fencing running along a boundary to the appeal site that is already marked with vegetation. The proposed fence would be around 1.1m in height and the posts supporting it would be some 1.5m in height. It would be sited amongst the vegetation, merging with it at a similar height and given the linear form and merge with the existing natural barrier, it would have little impact upon the openness of the Green Belt.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations

18. Appeal A – Whilst I acknowledge that the site is waterlogged from time to time, this can be said of any land that is subject to the same ground conditions as the appeal site. Thus, I would afford this consideration limited weight.
19. Appeal B - The erection of the fence constitutes inappropriate development in the Green Belt. This amounts to substantial weight against the development and the absence of any harm to the openness of the Green Belt is a neutral factor in the overall balance. Any obligation to maintain a sufficient boundary is a private matter for the appellant to consider. It does not represent an appropriate reason to override the fundamental aim of the Framework to prevent urban sprawl by keeping the Green Belt permanently open. Again, I would afford this consideration limited weight.

20. Although the Council's written report stated that the fence was acceptable, it failed to establish whether it represented inappropriate development in the Green Belt in the first instance.
21. The appellant argues that the plantation of an orchard can be likened to an allotment and thus, under paragraph 149 b) of the Framework, the use of the land would be not considered as inappropriate. Whilst I am not persuaded that the planting of trees to form an orchard can be considered to represent appropriate facilities for an allotment, paragraph 149 b) retains the requirement that this is providing that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. For the reasons as set out above, I do not find that to be the case for Appeal A.
22. From the evidence before me, the site does not represent agricultural land. Consequently, any development permitted under such a use is not relevant to the issues that are the subject of this appeal. Although the planting of trees and hedges do not require planning permission, that is not what is before me to consider as part of either appeal, which I have considered on its own merits. Moreover, I have not been provided with any details of ecological benefits that would ensue should this appeal be allowed. Such matters are therefore only afforded limited weight in favour of the developments.

Green Belt Balance and Conclusion

23. The proposals for Appeal A would be inappropriate development in the Green Belt in that I have identified that the development would result in harm to the openness of the Green Belt, albeit modestly. The proposal for Appeal B constitutes inappropriate development.
24. The Framework establishes that substantial weight should be given to any harm to the Green Belt, and development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. I do not find the waterlogging of the land, that the appellant has a legal requirement to maintain a proper boundary, or the other matters raised by the appellant, to amount to the very special circumstances required to overcome the harm to established Green Belt policy protection.
25. The proposals would be inappropriate development in the Green Belt and would therefore not accord with the Framework. Consequently, paragraph 11 d) ii) of the Framework is not engaged. Whilst the other considerations before me carry weight, they are not of sufficient weight to amount to the very special circumstances necessary to justify the development. There are no material considerations that indicate that the appeals should be determined other than in accordance with the development plan. Accordingly, the developments would be contrary to Policy S6 of the ULP and paragraphs 137, 147, 148, 149 and 150 of the Framework.
26. Thus, Appeal A and Appeal B are dismissed.

Graham Wyatt

INSPECTOR