



Appeal Decision

Site visit made on 10 August 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2022

Appeal Ref: APP/W1525/W/21/3281589

White Gates, Woodham Road, Rettendon, Chelmsford SS11 7QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs A German against the decision of Chelmsford City Council.
 - The application Ref 21/00261/OUT, dated 2 February 2021, was refused by notice dated 25 June 2021.
 - The development proposed is the erection of four detached bungalows with associated access and amenity in lieu of existing previous development and use; with partial restoration to grassland of outlying areas.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is made in outline in respect of the access, layout, and scale of the proposed development, leaving its appearance and landscaping reserved for future consideration.
3. A certificate of lawful use or development¹ (LDC) exists in respect of some areas of the appeal site, confirming the use of that land for storage is lawful. The appellant disagrees with the Council's decision to grant the LDC subject to different areas of land to that applied for, and they refer to other areas of the appeal site used for domestic purposes. As alluded to in the appeal submissions, the appropriate method to address claims with regard to the extent of land which should be confirmed as lawful for any purposes by the LDC would be through an appeal against that decision under section 195 of the Act.
4. The application the subject of this appeal was made in the knowledge that the Council had granted the LDC for smaller areas of land than that applied for and for storage use only. On account of the disagreement between the main parties on this point, I am unable to examine in detail any claims relating to the lawfulness of buildings or areas of land, including those outside of the appeal site but within the ownership of the appellant, as part of this appeal under section 78 of the Act.

Main Issues

5. The main issues are: i) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; ii)

¹ The Council's reference: 19/00459/CLEUD

the effect of the proposal on the openness of the Green Belt; and iii) whether any 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 proposal.

Reasons

Whether Inappropriate

6. The appeal site is a large area of land occupied by a collection of small buildings, storage containers, and various items and building materials stored in the open, located within a rural area forming part of the Green Belt. The appeal site falls within the definition of previously developed land provided in the Glossary at Annex 2 of the Framework.
7. Paragraphs 147 and 148 of the Framework advise that substantial weight should be given to any harm to the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework advises that the construction of new buildings should be regarded as inappropriate in the Green Belt, but exceptions include the partial or complete redevelopment of previously developed land, excluding temporary buildings, which would not have a greater impact on the openness of the Green Belt than the existing development.
8. Policies S11 and DM6 of the Chelmsford Local Plan 2013-2036 (2020) (LP) are consistent with the advice of the Framework in stating that inappropriate development in the Green Belt will not be approved except in very special circumstances. Policy S11 explains that the openness and permanence of the Green Belt will be protected and opportunities for its beneficial use will be supported where consistent with the purpose of the Green Belt. Policy DM6 reflects the advice of the Framework with regard to the redevelopment of previously developed land, adding, amongst other things, that proposals will be assessed based on the sustainability and appropriateness of the proposal's location, and the size, scale, massing, spread, visual impact, and activities/use of the proposal compared to the existing development.
9. Taking the above into account, if the proposal would have a greater impact on the openness of the Green Belt than the existing development, it will be inappropriate.

Openness

10. The existing buildings and areas of open storage confirmed as lawful by the LDC form a compact core down the centre of the appeal site, immediately to the rear of the appellant's house. They are accessed by hard-surfacing which runs from the driveway along the side of the appellant's house. They are low-level in height and are surrounded by an extensive grassed area. Some areas of open storage, storage containers and buildings do not form part of the land the subject of the LDC, as explained above.
11. I accept that the areas confirmed as lawful by the LDC to be used for storage could be used for the storage of shorter/taller and less/more numerous items. It is not correct that items could be stacked to reach any height and cover any area as claimed by the appellant, as there would be a physical limit to such stacking which may necessitate further development requiring planning

permission. However, the existing buildings and areas of open storage confirmed as lawful by the LDC have an adverse impact on the openness of the Green Belt, and that impact could be lawfully increased or decreased to a limited extent.

12. The proposed dwellings would have eaves and ridge heights of 2.27m and 4.6m respectively and would have footprints amounting to 499 sq.m and volumes amounting to 1873.7 cu.m. This would compare to the existing buildings' footprints amounting to 668.2 sq.m and volumes amounting to 1709.9 cu.m, and the footprints and volumes of existing areas of storage amounting to 524.7 sq.m and 849 cu.m.
13. Therefore, in isolation, the built form of the proposed dwellings would be smaller in footprint and volume than those of the existing buildings and items stored combined. However, the proposed dwellings would be accompanied by a formal driveway, parking and garden areas, which would be enclosed by planting and post and rail fencing and would comprise a different character and intensity of use.
14. The difference between the impact of the proposal on the openness of the Green Belt and that of the existing development at the appeal site should be assessed by taking the factors outlined in Policy DM6 into account. Based on the information provided by the main parties, I am not satisfied that all existing buildings and areas of land used for storage are lawful as claimed by the appellant, other than those confirmed as lawful by the LDC. The comparison should therefore be between the full extent of the proposed development and the existing buildings and areas of open storage confirmed as lawful by the LDC, which could be increased/decreased in height to a limited extent.
15. For these reasons I do not find the mathematical comparison of footprints and volumes presented², which relate to the proposed dwellings and all existing buildings and areas of storage, as determinative on this point. I have, however, taken those measurements into account.
16. The scale of the proposed dwellings would be greater than that of the existing buildings and areas of open storage confirmed as lawful by the LDC. Those existing buildings and areas of open storage are all much lower in height than the proposal. Although items could be stored at greater heights than those currently present, I am not convinced there is more than a theoretical possibility that their overall size, scale and massing would likely lawfully exceed that of the proposal while remaining functional. This is on account of the constrained layout of the lawful buildings/areas and their relationship with the appellant's dwelling, which lies outside the appeal site.
17. The 4 dwellings proposed and the areas which would form part of their curtilages would be spread out over a larger area than that which has been confirmed as having a lawful storage use. Part of the area confirmed as having a lawful storage use would be turned over to restored grassland, as would 2 other areas currently occupied by buildings/storage uses. These would comprise small parts of the proposal and would do little to reduce the impact of the proposal, as a whole, on the openness of the Green Belt in comparison to that of the existing buildings and areas of open storage. The proposal would

² Plan ref: 18.5482/M009

therefore represent the encroachment of development further into the countryside.

18. The proposal would be experienced as a relatively large cluster of residential development surrounded by thin strips of grassland to the east and west, with open fields to the north. The proposed dwellings would be quite clearly seen from the highway, where there are currently only limited views of the existing buildings and areas of open storage. The telegraph pole and 2 CCTV camera poles proposed to be removed as part of the proposal have a very small impact on the openness of the Green Belt due to their slim profiles, limited heights, and positioning down the centre of the appeal site near to the appellant's house.
19. The areas of open storage confirmed as lawful by the LDC are currently seen as a low-scale encroachment into a field. Their impact on the openness of the Green Belt could be amplified through increasing the density and height of items stored. They would remain as a compact channel of development down the centre of the field with an adverse impact on the openness of the Green Belt, surrounded by grassland. The proposed dwellings together with their necessary gardens, driveway and parking areas would be more prominent and have a much greater visual impact on the openness of this part of the Green Belt in comparison to the existing development.
20. At present, the appeal site is owned and used by the occupants of the house in front of the appeal site, but I note the appellant's claims that areas of the appeal site could be used for storage or distribution uses in a different manner without requiring planning permission. This could include a greater number of uncontrolled noisy and disruptive vehicular visits and loading and unloading during unsocial hours. The extent to which the lawful use could intensify would be limited by the physical confines of the areas covered by the LDC and the wider appeal site, which rely on an access shared with the appellant's dwelling.
21. The proposal would result in 4 separate households occupying the appeal site. As with the potential intensification of the existing storage use of the appeal site, those households could be of varying sizes, and they could attract varying numbers of vehicle movements through different hours. It is unlikely that they would attract noisy vehicle movements and activities during unsocial hours comparable to those potentially created by the existing development. However, the intensity of the use proposed, where 4 different households would occupy almost all of the appeal site, would likely exceed that of the existing lawful development. This is because the potential operations of different storage or distribution businesses would be significantly constrained by the circumstances of the appeal site, as outlined above.
22. The appeal site is in a countryside location, alongside a collection of residential and commercial properties. The appellant has provided a map of the local area showing a range of services³, including bus stops, a train station, and a primary school within 3km of the appeal site. The Council has explained that future occupants of the proposal would be able to access employment, shops, and services without relying on private motor vehicles. Although the local area appeared to be rural in nature, the evidence before me suggests the appeal site would be sustainable and appropriate to the type of development proposed.

³ Plan titled 'Proximity of Application Site to Services and Facilities'.

23. Taken as a whole, the size, scale, massing and spread of the proposed development would have a greater impact visually and spatially on the openness of the Green Belt in comparison to that of the existing buildings and areas of open storage confirmed as lawful by the LDC. This would be the case even if the areas of storage were increased in size and used more intensively without necessitating further development. The activities/use of the proposal compared to the existing development would also have a greater impact on the openness of the Green Belt on account of the vehicles, domestic paraphernalia, and infrastructure associated with 4 separate households.
24. Taking the criteria set out at B(i) – (iv) of Policy DM6 into account, although the location of the appeal site may be sustainable and appropriate to the type of development proposed, the proposal would have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. The proposal would be inappropriate development in the Green Belt and would harm the openness of the Green Belt, contrary to Policies S11 and DM6 of the LP and the Framework.

Other Considerations

25. Parts of the appeal site could be used for a more intensive and intrusive form of storage and distribution use, as outlined above. The entirety of the existing buildings and storage use of the land would be replaced by the proposed residential development, which would include the restoration of small areas of grassland.
26. I have been referred to Policies DM16, DM23, DM25, DM27, DM29 and DM30 of the LP, but detailed representations have not been made to demonstrate how the proposal may accord with these policies. The Council's officer report found that, subject to conditions, the proposal could be acceptable in respect of design, access and parking, sustainable construction and space standards, contamination, and ecology and biodiversity considerations. It would therefore appear possible that the proposal could accord with these policies.
27. The proposal would tidy the appearance of the appeal site and avoid any possibility of noise and disturbance which could be created by increased loading/unloading of vehicles associated with a storage or distribution use during unsocial hours. It would appear to be capable of complying with Policies DM16, DM23, DM25, DM27, DM29 and DM30 of the LP. In the appeal site's rural location, these would comprise modest benefits to the locality and neighbouring residents. I attach moderate weight to those benefits. They would not outweigh the substantial weight that the Framework advises I should assign to the identified harm which would be caused to the Green Belt. That harm would not, therefore, be clearly outweighed by the benefits so as to amount to the very special circumstances required to justify the proposal.

Other Matters

28. The Council has since granted planning permission⁴ for the erection of 3 dwellings at the appeal site and I have been presented with details of that planning application. Based on the information available, that scheme would have less of an impact on the openness of the Green Belt compared to the appeal proposal. It is claimed that the Council compared the volume of the

⁴ The Council's ref: 21/01335/OUT

dwelling proposed in that case to the combined volume of existing buildings and storage areas.

29. Near to the appeal site, the Council granted planning permission⁵ for the redevelopment of land at Sorata Boarding Kennels. I have seen details of that development and the Council's decision, as presented by the appellant, where the Council found that there would be a reduction in floor area and volume of buildings, structures and hardstanding which would benefit the openness of the Green Belt.
30. I have applied the policies of the development plan and the Framework when comparing the size, scale, massing, spread, visual impact and activities/use of the proposed and existing developments in my reasoning above. The Council's findings and decisions in the other cases referred to do not convince me that I should adopt a different approach when assessing the impact of the proposed and existing developments on the openness of the Green Belt.
31. I have also been referred to the Council's pre-application advice⁶, which does not prejudice my decision in this appeal. The Council advised, amongst other things, that it would be a matter for the appellant to demonstrate that the proposal would not involve encroachment into the countryside which would have a greater impact on the openness of the Green Belt than the existing development. The Council's pre-application advice does not change my findings.

Conclusion

32. The proposal would constitute inappropriate development in the Green Belt and would have a greater adverse impact on the openness of the Green Belt compared to the existing development. It would conflict with the development plan taken as a whole and there are no material considerations that indicate my decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and taking all other matters raised into account, I conclude that the appeal should not succeed.

L Douglas

INSPECTOR

⁵ The Council's ref: 17/01999/FUL

⁶ Dated 24 January 2020 and 7 October 2020