



Appeal Decision

Site visit made on 22 November 2022

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/W1525/W/22/3300266

The Gallops, Elm Lane, Roxwell, Chelmsford CM1 4NJ

- 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 J Ansett against the decision of Chelmsford City Council.
 - The application Ref 21/02121/FUL, dated 24 December 2021, was refused by notice dated 7 March 2022.
 - The development proposed is change of use of land to residential garden and construction of outbuilding. Retrospective application for construction of car port and outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During my site visit I observed that the car port and an outbuilding had already been constructed. The proposed development includes two outbuildings in addition to the car port and so I have used the description provided on the Appeal Form and Decision Notice in the banner heading as this more accurately describes the proposed development. I have determined the appeal before me on this basis.

Main Issues

3. The main issues in this appeal are: -
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework 2021 (the Framework) and relevant development plan policies, including any relevant effects on the openness of the Green Belt,
 - The effect of the proposed development on the setting of Mountneys, a Grade II Listed Building, and: -
 - 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 proposal.

Reasons

Whether Inappropriate Development

4. There is no dispute between the parties that the land is within the Metropolitan Green Belt. Policies S1, S11, DM10 and DM6 of the Chelmsford Local Plan (2013-2036) – 2020 – (the Local Plan) seek to protect the Green Belt against

inappropriate development. Policy DM6 of the Local Plan identifies types of development that are not inappropriate in the Green Belt.

5. Paragraph 149 of the Framework establishes that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions. These exceptions include: -
 - The provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
 - limited infilling or 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.
6. Policies S1, S11, and DM6 of the Local Plan are broadly consistent with the aims of those parts of the Framework which seek to protect the Green Belt from inappropriate development.
7. Policy DM10 of the Local Plan allows the change of use of buildings but does not permit the change of use of land within the Green Belt. The Local Plan predates the Framework, and Paragraph 150 of the Framework identifies that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The Paragraph provides a limited list of such development, including material changes in the use of land (such as changes of use for outdoor sport or recreation).
8. The proposal would introduce three structures into the appeal site, two of which, the car port and one of the buildings, are already built. A third building is proposed to the west of Elm Lane, roughly level with the dwelling. All of these buildings are substantial in size and I have no evidence before me to suggest that there were, previously, any structures in these areas of a similar, or greater size. Even were I to consider the land to be previously developed land, the proposal would still need to preserve its previous openness.
9. The extent of a building's curtilage is a matter of judgement, based on circumstances regarding the physical layout, the past and present ownership, and the past and present use and function of the land. Whilst within the ownership of the appellant, the land within the appeal site, to the west of Elm Lane and to the south of the fence are separated from the dwelling and its immediate land by the access track, and a fence. The land south of the fence and to the west of the track are laid out to grass, with no identified previous use as garden or other residential use. I note that an evergreen hedge separates the land immediately to the front of The Gallops from the track. I am not, therefore persuaded that the land on which the buildings are, or would be, sited form a part of the building's domestic curtilage. Further, I am mindful that the 2017 permissions (Council Refs 17/01214/FUL, 17/01215/LBC and 17/01214/NMAT/1) identified the extent of the garden plot for the dwelling and the proposed buildings lie outside of this, notwithstanding that the layout of the site at the time of my visit does not accord with the approved drawings.

10. The buildings are noted by the appellant as being ancillary to the residential use. There is no evidence before me to suggest that any of them, or the land with which they are associated would have a planning use for either outdoor sport or leisure, beyond those uses normally associated with a domestic dwelling.
11. The Green Belt serves five purposes, including, amongst others, to assist in safeguarding the countryside from encroachment.
12. The use of the land associated with the development as a private garden would be likely to encourage the encroachment of domestic activity and paraphernalia into the area, with a domesticising effect. This would detract from the quieter, more rural appearance of the land and amount to encroachment into the countryside. The proposal would, therefore, be in tension with the purpose of the Green Belt in safeguarding the countryside from encroachment.
13. The openness of the Green Belt has both a visual and spatial dimension. Although open on two sides, the car port has a solid appearance. Whilst the existing planting along the western and eastern boundaries of the site would largely screen the buildings from the wider countryside, they would be clearly visible to anyone passing on the public footpath. The buildings would be readily apparent, and therefore obvious, to observers on that footpath. In visual terms therefore, the increase in built form within the site would result in a reduction in the visual openness of the Green Belt as well as spatial openness and, given the scale of the impact this would constitute significant harm.
14. I conclude that the proposal would amount to inappropriate development in the Green Belt having regard to the Framework, and the effects on the openness of the Green Belt.

Effect on setting of listed building

15. The Gallops forms part of a group of converted former farm buildings now in residential use, grouped to the west of Mountneys (the LB). The LB is a rural house and its setting in amongst open countryside and the grouping of agricultural buildings associated with it, which are curtilage listed, are reflective of this.
16. The proposal would introduce three substantial buildings into the open rural scene outside of the former grouping, that would be unrelated to the layout of the former agricultural buildings. In doing so the additional buildings would undermine the open, rural setting of the LB and the relevance of the former agricultural buildings to it in forming an agricultural group.
17. The undermining of the rural setting of the LB and diminution of the relevance of the group of buildings to each other, which would be clearly visible from the footpath, would amount to harm. I therefore conclude that the proposal would, therefore, fail to preserve or enhance the setting of the LB.
18. Accordingly, the proposal would not comply with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990. It would be contrary to Policy DM13 of the Local Plan, which, amongst other things, seeks to prevent new development within the setting of a listed building from adversely affecting the significance of the listed building, including views to and from the building, landscape or townscape character, land use and historic associations.

19. Whilst predating the Framework, this policy is in close conformity with the aims of Section 16, with which the proposal would also be in conflict, and therefore carries significant weight.
20. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence of its siting and design the appeal scheme would have a harmful impact on the setting of the LB insofar as it would undermine the important features of the building's setting. The proposal would not lead to the loss of any buildings that make a positive contribution to the setting. As such, whilst material, I find that the harm would be less than substantial. Paragraph 202 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. A similar test is required by Policy DM13 of the Local Plan.
21. The development would provide additional internal space and facilities for use with the dwelling, and shelter for parked vehicles on land that would otherwise only seem to provide landscaping and occasional out-door domestic use. These, however, are private benefits.
22. The proposal would provide minor likely public benefits to the local economy in terms of short term employment in the construction industry. However, benefits would be limited by the scale of the development and so they attract limited weight.
23. The benefits of the proposal would be of limited weight overall. The proposal would result in harm to the significance of a designated heritage asset. However, the harm must be considered in the context of the special attention I must pay to the desirability of preserving or enhancing the setting of the LB. I afford considerable importance and weight to this statutory duty. This does not amount to a direction to refuse proposals that harm, and thus fail to preserve, designated heritage assets, but it provides a strong presumption in favour of preservation. On the evidence before me I therefore conclude that the public benefit, in this case, has not been demonstrated to outweigh the less than substantial harm identified to the setting of the Grade II Listed Building and the consequent conflict of the harm with Development Plan policy.

Other considerations

24. As above, the appellant has suggested that the proposal would make more effective use of the land. However, the development of the Green Belt is protected to maintain its openness and fulfil the other functions of Green Belt, except under very specific situations. In effect this places its Green Belt function as an effective use of the land. I therefore give this consideration very limited weight.
25. The appellant has drawn my attention to four developments where planning permission has previously been granted¹. Whilst I do not have full details of the planning history of these developments, three of these sites are located in areas of urban development, outside of the Metropolitan Green Belt. The fourth example, at Quarles Elm Lane was determined some time ago and planning policy, both local and national, has changed in the intervening period. I

¹ Council refs 02/00759/FUL, 21/01710/FUL, 21/01674/FUL and 21/01378/FUL

therefore do not consider that these developments present a similar contextual comparison to the case before me. I have, in any case, determined this appeal on its own merits.

Green Belt balance

26. Policy S11 of the Local Plan and Paragraph 147 of the Framework states that inappropriate development will not be permitted unless very special circumstances can be demonstrated. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
27. The appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. There would also be significant harm to the openness of the Green Belt. Paragraph 148 of the Framework requires substantial weight to be given to any harm to the Green Belt. In addition, there would be other harm arising from the effect on the setting of the LB.
28. Alternatively, the other considerations identified are collectively of only limited weight in favour of the proposal.
29. Accordingly, the harm to the Green Belt is not clearly outweighed by other considerations and therefore the very special circumstances necessary to justify the development do not exist. The proposal would therefore be at odds with Policies S11 and DM6 of the Local Plan and Section 13 of the Framework.

Conclusion

30. The proposal would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

I A Dyer

INSPECTOR