



Appeal Decisions

Site visit made on 16 August 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Appeal Ref: APP/W1525/C/21/3289723 (Appeal A)

Fox & Hounds, Church Road, Ramsden Heath, Billericay, CM11 1PW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mark Hood against an enforcement notice issued by Chelmsford City Council.
- The enforcement notice was issued on 30 November 2021.
- The breach of planning control as alleged in the notice is:
Without planning permission, the construction of a building, a storage/stage structure, a urinal enclosure, and toilet block comprising 13 no. cubicles and hand washing facilities.
- The requirements of the notice are:
 - i. Demolish the building, shown outlined in pink at the appropriate location on the attached plan.
 - ii. Demolish the urinal enclosure, shown outlined in blue at the approximate location on the attached plan.
 - iii. Demolish the toilet block, comprising 13 no. cubicles and hand washing facilities, shown outlined in green at the approximate location on the attached plan.
 - iv. Demolish the storage/stage structure, shown outlined in yellow at the approximate location on the attached plan.
 - v. Remove from the land all material resulting from the works carried out in steps (i), (ii), (iii) and (iv).
- The period for compliance with the requirements is within three months of the effective date of the Notice.
- The appeal is proceeding on the grounds set out in section 174(2)(a). Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.

Appeal Ref: APP/W1525/W/21/3283526 (Appeal B)

The Fox and Hounds, Church Road, Ramsden Heath, Chelmsford CM11 1PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990
- The appeal is made by Mr Mark Hood against the decision of Chelmsford City Council.
- The application ref. 21/00482/FUL, dated 15 February 2021, was refused by notice dated 28 June 2021.
- The development proposed is described on the application form as '*single storey side extension with glazed roof lantern to form new dining room and single storey rear extension to form new toilets.*'

Appeal Ref: APP/W1525/W/22/3306925 (Appeal C)

The Fox and Hounds, Church Road, Ramsden Heath, Chelmsford CM11 1PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990.

- The appeal is made by Mr Mark Hood against the decision of Chelmsford City Council.
 - The application ref. 22/00509/FUL, dated 10 March 2022, was refused by notice dated 22 June 2022.
 - The development proposed is described as '*proposed moveable garden structure comprising of tented marquee within the rear garden.*'
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Summary of Decisions

Appeal A

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice, as corrected, is upheld as set out in the formal decision.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is allowed, subject to the terms set out in the formal decision.

Preliminary Matter

4. Regarding Appeal B, prior to the application being refused, the appellant's agent, following discussions with the Council, revised the description of the proposal to instead read:

"Retrospective planning application for garden structures comprising of 2no. marquees, timber storage area/occasional stage and timber toilet structures comprising male urinal enclosure and 13 no. unisex cubicles and hand wash facilities."

Background

5. The various buildings referred to in the enforcement notice were erected when the Covid restrictions were in place, at the time when clientele could only purchase drinks and fayre for consumption outside the confines of the public house.

Appeal A on Ground A; the deemed planning application (DPA), Appeal B and Appeal C

Main Issues

6. These are the same for all three appeals. Given the site's location in the Metropolitan Green Belt, they concern:
 - 1) Whether the said development is 'inappropriate development' within the Green Belt and, if so, the effect on its openness;
 - 2) any other resultant harm; and
 - 3) if it is inappropriate development, whether the harm by reason of inappropriateness and by reason of 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 and Openness

7. The National Planning Policy Framework (the Framework) says in its paragraph 147 that the construction of new buildings is inappropriate development within the Green Belt which, by definition is harmful thereto, and should not be approved except where very special circumstances can be demonstrated.
8. There are some limited exceptions to this which are set out in paragraph 149 of the document. These include the provision of appropriate facilities (in connection with the existing use of land) for outdoor sport or recreation, and as long the as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
9. In the judgement of *R (Timmins) v Gedling BC* [2015] EWCA Civ 10 Lindblom LJ stated:

"The distinction between development that is 'inappropriate' in the Green Belt and development that is not 'inappropriate' governs the approach a decision-maker must take in determining an application for planning permission. Inappropriate development in the Green Belt is development 'by definition, harmful' to the Green Belt – harmful because it is there – whereas development in the excepted categories in [the Framework] is not"

Appeal A

10. All the buildings targeted by the enforcement notice are located in the pub's rear garden area, and residual to the open-air hospitality arrangements that were in place during the time of Covid restrictions. The wooden stage building with also storage facilities - a somewhat makeshift structure with a corrugated roof - is indicative of the periods during 2020 and 2021 when clientele were required to socially distance and gather outside. In utilising the stage, the open air entertainment held during these times at the appeal site would have for persons spectating and drinking at the premises necessitated the external toilet facilities in place, namely the said cubicles and the urinal enclosure. The cubicles, in particular, are more akin to those found at outside music events and not typical of a pub garden.
11. The appellant, in his representations, mentions this and indicates that the toilet facilities were erected to accommodate customer numbers. He continues, stating that:

"the structures have been invaluable during the lengthy period of national restrictions, playing an important role in allowing the pub to operate safely and remain financially viable."
12. In other words it is obvious why the structures were erected, none of which, during normal times, would have been reasonably contemplated. The contextual setting is important here, given the prominent size of the stage structure, with the consequential propensity for noise disturbance from performers. This is especially true due to the proximity to residential properties. Also, despite the Green Belt location, normal planning controls were suspended during the period of lockdown with permitted development entitlements extended so as to help the hospitality industry. However, those

- extraordinary times have now passed and such external facilities have served their purpose.
13. It cannot convincingly or realistically, be said that the stage/store structure and the toilet facilities here are associated with outdoor sport or recreation. The pub garden is incidental to the hostelry itself and is not an independent venue for recreational use in its own right. I do, though, draw a distinction between the said structures and the stand alone timber store building to the rear of the toilet cubicles which abuts the common boundary with Fox Cottage. This is used for general storage purposes and is consistent and reasonably necessary to facilitate the site's primary use and normal garden facilities thereto.
 14. In the main, though, even before considering the effect on the openness of the Green Belt, I must conclude that the development targeted, save for the timber store mentioned, represents inappropriate development in the Green Belt, for the purposes of the Framework.
 15. The stage structure, in particular, due to its location and its significant size, adversely affects the openness of the Green Belt. Further, when factoring in the location of the L-shaped block of toilet facilities, and also taking into account the urinal enclosure, this all compounds to constitute physical encroachment into the Green Belt which, by its very nature, impacts adversely upon the Green Belt's openness. I exclude from this the said store shed for the reasons I have cited.
 16. The development, the subject of the notice's Requirements ii), iii) and iv), is therefore harmful to the Green Belt, and is also contrary to the aims and requirements of policies S11 and DM6 of the Chelmsford Local Plan (LP). As the very special circumstances necessary to outweigh the general policy objection have not been demonstrated, this appeal cannot succeed.
 17. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one of the four buildings the subject of the enforcement notice, but otherwise I will uphold the notice, with corrections, and refuse to grant planning permission for the other three buildings. The requirements of the upheld notice will cease to have effect so far as is inconsistent with the permission which I will grant by virtue of s180 of the Act.

Appeal B

18. Appeal B seeks planning permission mainly for the erection of two separate marquees, also within the rear garden space, but close to the pub building. The larger of the two would measure 12m in width and run to a depth of 30m, and the adjoining smaller one would measure 5m x 5m. This would equate to an additional floorspace of some 385 sqm, albeit garden area brought under cover.
19. The remainder of the proposal also, in common with Appeal A (apart from the timber store mentioned above), seeks planning permission for the various structures in situ, which I have already found against.
20. The size of the larger marquee, the subject of this proposal, is substantial, extending some 30m into the rear garden area. When considering its disproportionate size compared to the pub building, to which it would serve as

an ancillary feature, it is clearly an excessive addition, covering a significant area of the site.

21. This marquee feature, similar to the other structures discussed, would not satisfy the stated exceptions in the Framework's paragraph 149, and would clearly impinge on the Green Belt's openness. The argument put forward as to the need for a marquee of such size – that it is necessary to ensure the financial viability of the pub – has not been backed up by way of a detailed business plan.
22. I accept that this appeal has taken some time to reach its conclusion, and any such business plan would have needed updating from the date in 2021 when it was first lodged. Nonetheless, due to the extent of the development and its location it is most doubtful that the very special circumstances necessary to outweigh the policy objections could be demonstrated, nor do I consider they can reasonably exist given its prominence and disproportionate scale.
23. I note that the appellant has suggested that a planning permission personal to him could be granted, with the structure removed, should and when his tenure end. I disagree, though, due to the marquee's size.
24. It should be mentioned here that a pub garden can be used in conjunction with the pub, unless planning conditions prohibit otherwise. No such restrictions exist in this instance. As such, any noise disturbance resulting that might arise from the use of the garden would be assessed by the Council's Environmental Health team. In this connection I note that the reason for refusing planning permission was limited to the site's location in the Green Belt, and the consequential impact on its openness. No other resultant harm was identified.
25. Accordingly, I conclude that for the above reasons, and common with those policy objections I have set out in relation to Appeal A, this appeal should similarly not succeed.

Appeal C

26. The final appeal relates to an aluminium-framed marquee of much reduced dimension. With gently sloping pitched roofs, the submitted elevational drawing shows that the structure would be to a maximum height of 3m. Compared to the marquee, the subject of Appeal B, the new proposal, to a depth of 15m, would halve the originally intended measurement. Although shown on the proposed site layout plan it appears from the description on the application form and also the appellant's supporting statement that the smaller marquee, measuring 5m x 5m, is not part of this proposal.
27. Given also the distance from the garden's side boundaries, the proposed marquee is a much more modest structure and, importantly, is reasonably proportionate to the pub building from which it operates and facilitates for. If it was attached to the building I consider that it would likely meet exception (c) in paragraph 149 ie an extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Admittedly, the marquee is to a significant depth but, given its limited height and the fact it would be set into the site, its effects would be limited.

28. Here, the marquee would not adjoin the building. That said, with reference to paragraph 84 of the Framework which, amongst other things, supports the sustainable growth and expansion of all types of businesses in rural areas and the development of accessible local services such as public houses, I consider that the merits of the proposal outweigh the impacts and the general presumption against development within the Green Belt.
29. I have had due regard to the written representations received; the overwhelming majority of which support the proposals generally, and also the letters raising objections. None of these, though, have affected my findings. The appellant is now obligated to remove the stage structure and any noise nuisance that might have previously arisen is unlikely to be repeated. Further, as I have mentioned, in the event of significant noise disturbance the Council does hold regulatory and remedial powers.
30. Regarding the suggestion that there would be increased traffic movements and additional parking pressures resulting from the development I do not consider that any increase, should it occur, would be significant. Further, I note that the local highway authority has raised no objections to the proposals. An objector has also highlighted that planning permission was previously granted in 2019 for a side and rear extension to form a dining room and additional internal toilets. This, in fact, reinforces my decision to uphold the part of the enforcement notice which requires for the external toilets to be removed.
31. Finally, the same objector has drawn my attention to a previous unsuccessful appeal from 2021 (*APP/J1915/W/21/3277099*). This related to a proposed pergola which was intended to be attached to a restaurant in Ware, Herts; a site also within the Green Belt. I have no direct knowledge of this proposal and, given that all decisions should be reached with regard to the planning merits and/or impacts of the particular development in hand, taking into account the individual circumstances involved, direct parallels are not easily drawn.
32. In conclusion I am satisfied, in terms of this individual proposal, that the very special circumstances necessary to justify the development here do exist and, on balance, the appeal succeeds and planning permission is granted.

Formal Decisions

Appeal A

33. It is directed that the enforcement notice be corrected by deleting Requirement i) and rewording Requirement v) to refer only to steps ii), iii) and iv). Planning permission is hereby granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the building referred to in Requirement i) (the store) as erected at the Fox & Hounds, Church Road, Ramsden Heath, Billericay CM11 1PW, referred to in the notice.
34. The appeal is dismissed and the enforcement notice is upheld as corrected, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the buildings referred to in Requirement ii) (urinal enclosure), Requirement iii) (the toilet block, comprising 13 no. cubicles) and Requirement iv) (the storage/stage structure), as referred to in the notice.

Appeal B

35. The appeal is dismissed.

Appeal C

36. The appeal is allowed and planning permission is granted for a proposed moveable garden structure comprising of a tented marquee within the rear garden at The Fox and Hounds, Church Road, Ramsden Heath, Chelmsford CM11 1PW, in accordance with the terms of the application 22/00509/FUL, dated 10 March 2022, subject to the following two standard conditions:

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans (drawing nos 20.112-01 Rev B, 20.112-02 Rev A and 20.112-02 Rev C)

Timothy C King

INSPECTOR