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## Appeal Decisions

Site visit made on 22 May 2023

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 June 2023**

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**Appeal A Ref: APP/W1525/C/22/3310935**

**Appeal B Ref: APP/W1525/C/22/3310936**

**Land Opposite Abbeyfields, Meadow Lane, Runwell, Wickford, Essex  
SS11 7DY**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Catherine Navin and Appeal B is made by Mr Len Navin against an enforcement notice issued by Chelmsford City Council.
  - The notice, numbered 11/00094/ENFA, was issued on 11 October 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the construction of a building.
  - The requirements of the notice are:
    - i. To demolish the building, as shown outlined in blue at the approximate location on the attached plan, and its foundations.
    - ii. Remove from the land all debris and other waste material resulting from the works carried out at step (i).
  - The period for compliance with the requirements is three months.
  - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
  - Appeal B is proceeding on the grounds set out in section 174(2) (f), and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice is varied by:

- The deletion of requirement 5 (i) and its substitution with:

5 (i) To remove from the site or demolish the building, as shown outlined in blue at the approximate location on the attached plan, and its foundations.

- The deletion of 3 months and the substitution of 6 months as the period for compliance.

2. Subject to the variations the appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Appeal A - Ground (a) and the Deemed Planning Application (DPA)

3. An appeal on ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

## **Main Issues**

4. The main issues are:

- Whether or not the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies.
- If the development is inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

## **Reasons**

### *Inappropriate development in the Green Belt?*

5. The Framework identifies the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The Framework also sets out that the Green Belt serves five purposes including to safeguard the countryside from encroachment which is the relevant purpose in this case.
6. Policy S11 of the Chelmsford Local Plan (2020) (the Local Plan) seeks to protect the Green Belt and states that inappropriate development will not be approved except in very special circumstances. Policy DM6 of the Local Plan relates specifically to new buildings in the Green Belt. It reflects the stance taken in Policy S11 with regard to inappropriate development and sets out exceptions where planning permission may be granted. Policies S11 and DM6 are in accordance with the Framework.
7. The Council considers the development to amount to inappropriate development in the Green Belt. However, the appellant's view is that the development could be regarded as falling within one of the exceptions which is allowed for in planning policies.
8. The appellant refers to buildings being present on the site before it was acquired by them. However, there is limited information in terms of the size of those buildings, how they were used or whether they were of permanent or substantial construction which are all matters which are relevant to consideration under Policy DM6 and the Framework. On that basis it has not been shown that the development would accord with Policy DM6 (C) as a replacement building.
9. Policy DM6 Part (A)(ii) allows for the construction of appropriate facilities for outdoor recreation, which includes stables for the keeping of leisure horses, in the Green Belt. The way in which the land surrounding the building is being used, as described by the appellant and as I observed during the site visit, is for the keeping of leisure horses. There is stabling on the land but the building which has been constructed is not in use for stabling.
10. The building is of a significant size, and it accommodates facilities which the appellant described as a 'club room' for her family and friends who keep horses on the land. Whilst these include a tack room and storage for saddles and

clothes, there is also a large recreation space with full kitchen facilities, sofas, and a television.

11. Policy DM6 (A)(ii) refers to facilities for outdoor recreation as being 'appropriate'. Whilst there is reference to stabling in the supporting text, Policy DM6 (A)(ii) does not rule out other types of facility as being appropriate, nor is there any restriction on size of buildings. However, it is necessary for a new building of this type to also preserve the openness of the Green Belt.
12. The appellant provided a diagram at Appendix A of their statement which identifies three buildings currently on the site in addition to the building which is the subject of the notice. These are labelled A, B and C and I was able to confirm at the site visit that all are in use as stables and related storage. However, in respect of the impact on openness the starting point is what was on the site before the building was constructed.
13. Both the appellant and the Council refer to aerial views of the site and the surrounding land as it appeared in 2020. At that time there were features on the site of the appeal building which the appellant refers to as buildings, debris, and structures. However, the evidence from the Council more accurately identifies these features as caravans and containers.
14. The Council has provided evidence to show that in 2021 the caravans were the subject of an enforcement notice and an injunction and that it notified the appellant of this as a new owner of the land. Notwithstanding that the appellant says that she was not aware of the correspondence from the Council, there is no evidence to show that the lawful use of the site was for the stationing of caravans and containers. On that basis the presence of the caravans and containers cannot be considered to be the baseline condition of the site of the building.
15. The aerial views of the site provided by the appellant for 2011 and 2013 do not show the caravans in situ but the later view appears to show the menage which remains on site. On this basis it is reasonable to assume that prior to the introduction of the caravans and containers the site of the building was open land which contributed to the openness of the Green Belt in both spatial and visual terms. The area occupied by the building results in a loss of openness in spatial terms. The size and massing of the building also results in it being visible from the adjacent plots and from Meadow Lane. In this regard the development results in a loss of openness from a visual perspective.
16. The appellant contends that the building could be lowered in height through the replacement of the pitched roof with a flat roof. I accept that this would reduce the visual impact of the building when viewed from Meadow Lane and the adjacent plots. However, because the building is raised from the ground it would remain visible above boundary fences and would continue to result in a loss of openness in visual terms. Furthermore, the effect in spatial terms would be unchanged.
17. I find that the building does not accord with Policy DM6 (A)(ii) because whilst it is a facility for outdoor recreation it does not preserve the openness of the Green Belt. The development does not fall within any of the other exceptions to inappropriate development which are set out in Policy DM6.

18. Drawing all of these strands together I find that the development is harmful to the openness and that it is inappropriate development in the Green Belt.

### **Other considerations**

19. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme, is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
20. The appellant says that the design and position of the building allows her to watch over her animals which is of particular importance when the horses are in foal and young animals are present. She refers to an appeal decision (App Ref: APP/C3430/A/14/2225972) (the Forrester's Lodge Stables appeal) in which the Inspector gave weight to the importance of monitoring horses especially mares in foal and new foals.
21. However, the Forrester's Lodge Stables appeal related to the siting of a temporary dwelling. Notwithstanding the facilities provided in the appeal building, that is not the same type of development which is the subject of the DPA in this case and I do not know what details the Inspector had before him in that case. Consequently, I cannot draw a direct comparison between the Forrester's Lodge Stables appeal and the appeal submitted by the appellant. Therefore, the Forrester's Lodge Stables appeal decision attracts limited weight in support of the development.
22. In respect of the appellant's appeal there is limited evidence before me to substantiate the appellant's concerns about her animals or to show that the only option to ensure the health and wellbeing of the animals is through the construction of the appeal building. For that reason, the safeguarding of horses attracts limited weight in favour of the development.
23. The appellant also refers the need for a secure building on the site following burglaries from other buildings which were not secure. However, in common with the consideration of the safety of the horses there is no evidence to demonstrate that the construction of the appeal building is the only solution to providing secure storage on the site. This matter also attracts limited weight in support of the development.
24. The appellant says that since acquiring the site she has spent time and money improving its condition. A comparison of the photographs provided by the Council of the former condition of the site and the current appearance provide some evidence of this. However, compliance with the enforcement notices issued by the Council required removal of a mobile home, waste materials etc and there is limited information regarding improvements which have gone beyond those necessary to comply with the notices. Consequently, the improvements which have been carried out carry limited weight in favour of the development.
25. The appellant says that she intends to provide horse therapy to individuals suffering from mental health problems. However, there is no evidence that this use has commenced, thus it carries no weight in support of the development.
26. The appellant says that she had no communication from the Council in advance of the service of the enforcement notice and that she has not had an opportunity to submit a comprehensive part-retrospective planning application.

27. The enforcement notice plan identifies the whole plot which appears to be in use by the appellant, however the alleged breach only relates to the building which has been identified in blue on the plan. The terms of the DPA are derived from the allegation which is the construction of a building, and I cannot correct the notice to grant planning permission for a more extensive development than is subject to the notice. Therefore, I cannot consider the merits of a comprehensive development of the site.
28. Similarly, the impact of the retention of the appeal building and the removal of building C as suggested by the appellant could also only be considered in the context of a planning application for the comprehensive development of the site which is not before me.
29. In these circumstances I am unable to attribute any weight to the benefits which may arise through a comprehensive redevelopment of the site.
30. The appellant has suggested that a condition could be imposed to link the building to the equestrian use of the land and requiring its removal upon sale or transfer of the land. This would effectively be a temporary condition and in this case, there is no clear justification for such a condition. Furthermore, such a condition would provide no clear timescale for the removal of the building and the unjustified harm which it causes to the openness of the Green Belt would continue over an undefined period.
31. The appellant provided a legal note as part of her final comments which relates to the relevance of the historic enforcement action and the conduct of the Council. With regard to the latter this is a matter between the appellant and the Council. I have referred to the previous enforcement notices where relevant to this appeal above.

### **The Green Belt balance and Very Special Circumstances**

32. The Framework makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case I find that although there are some matters which weigh in favour of the appeal, the cumulative weight of these other considerations does not clearly outweigh the substantial harm arising to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.
33. In the absence of very special circumstances the development is contrary to Policies S11 and DM6 of the Local Plan.

### **Conclusion (Appeal A - Ground (a) and the Deemed Planning Application (DPA))**

34. The development does not accord with the development plan and there are no other considerations to indicate that the appeals should be determined otherwise. Therefore, for the reasons given above, I conclude that in respect of Appeal A the appeal on ground (a) should not succeed, and that planning permission should not be granted for the DPA.

## **Appeals A and B – Ground (f)**

35. An appeal on ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
36. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the building to be demolished, I consider the purpose is to remedy the breach of planning control.
37. The appellants contend that there are 'lesser steps' which would achieve the purposes of the notice with less cost and disruption. Firstly, the appellants suggest amendments to the building as an alternative to its demolition. I have addressed this suggestion as part of my reasoning under Appeal A ground (a) above and concluded that this would not address the harm that I have found such that the DPA could be granted on that basis. For the same reasons the appeal on ground (f) does not succeed on this point.
38. Secondly the appellants have suggested that they be given more time to submit a comprehensive part-retrospective planning application for consideration. I have explained above why I have been unable to consider this alternative development under Appeal A ground (a). In a similar manner I cannot vary the requirements of the notice to allow for the retention of the building while a comprehensive planning application is determined because the requirements should align with the allegation which relates to the building only.
39. Thirdly, the appellants argue that the building is a moveable structure, and it could be taken off site as opposed to being demolished. They refer to quotes which have been obtained for the removal of the building, but these are not before me. However, notwithstanding the practicality of moving the building in its entirety or as separate elements from the site, such works would have the same effect as demolition of the building.
40. The appellants argue that the building has no foundations, however I was unable to verify whether there any below ground works during my site visit. Thus, it is necessary to include the removal of foundations in the requirements to ensure that the notice is fully complied with.
41. Drawing together all of the points made by the appellants in respect of the requirements of the notice and my observations on site, I find that the lesser step of removal of the building would remedy the breach of planning control in this case. However, I consider it appropriate in this case to retain the reference to demolition in the requirements to address any eventuality in which it proves unfeasible to remove the building from the site.
42. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeals on ground (f) succeed to that extent.

### **Appeals A and B – Ground (g)**

43. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of three months is too short because it does not allow them sufficient time to purchase other land and relocate 31 horses or to complete restoration works to other buildings on site to provide safe and secure accommodation to ensure the safety of the horses.
44. The appellants have requested a compliance period of two years. However, they have not set out why such a long period would be necessary and given my findings in relation to the Appeal A ground (a), in particular the harm to the Green Belt, I regard two years to be an excessive compliance period.
45. There are other buildings on the land which the appellants consider may provide an alternative to the appeal building and as will be seen above the appellants have asked me to consider a comprehensive development, albeit that I have been unable to do so.
46. In the light of this it is my view that the appellants should be given the opportunity to explore these options which would enable their horses to remain on the site. The current compliance period of 3 months does not provide sufficient time for them to be able to do so and for that reason I shall vary the notice to extend the time for compliance to 6 months.
47. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeed to that extent.

*Sarah Dyer*

Inspector