



Appeal Decisions

Site visit made on 16 August 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th December 2023

Appeal A Ref: APP/W1525/W/22/3311284

**Silverwood, South Hanningfield Road, Rettendon, Chelmsford, Essex
CM3 8HE**

- 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 and Mrs S and K Collins against the decision of Chelmsford City Council.
 - The application Ref 22/00851/FUL, dated 27 April 2022, was refused by notice dated 15 September 2022.
 - The development proposed is retrospective outbuilding which is used for housing plant and machinery for the equestrian facility.
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Appeal B Ref: APP/W1525/W/22/3311730

**Silverwood, South Hanningfield Road, Rettendon, Chelmsford, Essex
CM3 8HE**

- 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 and Mrs S and K Collins against the decision of Chelmsford City Council.
 - The application Ref 22/00666/FUL, dated 31 March 2022, was refused by notice dated 21 October 2022.
 - The development proposed is application for the redevelopment of a single dwellinghouse and demolition of equestrian/storage buildings.
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Decisions

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

Preliminary Matters

3. The application form for Appeal A describes the proposed development as being retrospective. However, further works are proposed to the building. I have therefore determined the appeal on the basis of the information shown on the submitted plans.
4. For Appeal B, I have used the description of development from the appeal form, as this is consistent with the amended description of development that was agreed between the main parties during the application process.

Main Issues

5. The main issues for both appeals are:

- whether the proposal would be inappropriate development in the Green Belt including the effect on the openness and purposes of the Green Belt; and
 - 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.
6. In relation to Appeal B, the following are also main issues:
- the effect of the proposed development on protected species; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Green Belt

7. Chelmsford Local Plan 2013-2036 (27 May 2020) (LP) Policies S11A and DM6 set out that inappropriate development in the Green Belt will not be approved except in very special circumstances. This is consistent with Paragraph 147 of the National Planning Policy Framework (the Framework) which also states that inappropriate development is, by definition, harmful to the Green Belt.
8. The Framework identifies at paragraph 137 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development and can have spatial as well as visual aspects. The appellant has directed me to the Samuel Smith Old Brewery case¹. I note this confirmed that “the matters relevant to openness in any particular case are a matter of planning judgement”, and I will return to openness in due course.
9. LP Policy DM6A)ii confirms that, insofar as it relates to Appeal A, new buildings for the provision of appropriate facilities for outdoor sport and outdoor recreation can be an exception to inappropriate development, as long as it preserves the openness of the Green Belt. This is broadly consistent with paragraph 149b) of the Framework which also requires such buildings to not conflict with the purposes of including land within the Green Belt. The Council has not identified any such conflict and I do not have any reason to reach a different conclusion.
10. Appeal A proposes an outbuilding which would be used in relation to the equestrian facility. While the Council disputes this, the previous appeal decision² found the building was used for this purpose and I did not observe anything at my site visit that would lead me to a different conclusion.
11. The building proposed by Appeal A would be sited on the boundary of the appeal site with Mark’s Lane. This position, away from the existing cluster of buildings that make up the site, extends the spread of the built form. This, along with the additional mass of a building where previously there was none would have an adverse effect on the openness of the Green Belt. Although

¹ R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

² APP/W1525/W/21/3281990 dismissed 14 February 2022

there would be a lower roof height than the pitched roof considered in the previous appeal, I still find there would be an adverse effect from the additional mass of built form. While the proposed building would not directly conflict with any of the stated purposes of the Green Belt, nor does Green Belt designation require any other intrinsic characteristics of the land to be considered, these would not overcome the harm to openness I have identified.

12. With respect to Appeal B, LP Policy DM6B) confirms that the redevelopment of previously developed land may also be an exception to inappropriate development and sets out criteria against which proposals should be assessed. This is broadly consistent with the principle of paragraph 149g) of the Framework. The use of the site would not alter from that at present, and I have no reason to consider it would not be an appropriate location for the development proposed.
13. The dwelling is in a prominent location due to its position on the junction of South Hanningfield Road and Mark's Lane and the topography whereby the dwelling is located at the highest point of the site. It is not in dispute the proposed dwelling would be clearly larger than the existing in terms of its footprint, volume and dimensions. The increase in height and footprint of the dwelling would have a greater spatial and visual impact than the existing single storey dwelling. This would not be mitigated by the siting of the extended footprint to the rear of the dwelling given its position on a junction. This would have a greater impact on the openness of the Green Belt than the existing development. While it would not directly conflict with any of the stated purposes of the Green Belt, there would nonetheless be a greater impact on openness.
14. It is proposed to demolish three other buildings within the site to offset the increased scale of development. On the basis of the appellant's figures, there would be an increase in floorspace and a reduction in volume when considered in relation to Appeal B. However I consider these differences would be limited and would not by themselves evidence a materially greater scale of development. However, the buildings proposed to be demolished are single storey, occupy a lower point in the site and as such as not visually prominent. They are also sited centrally within the context of the site, therefore the overall spread of development would remain the same. Consequently, I do not find that these measures would alleviate the greater impact on the openness of the Green Belt I have identified above.
15. I do not have clear evidence before me of the effect of the building proposed by Appeal A on the amount of floorspace and volume of development on the site following the demolition of outbuildings proposed through Appeal B. However, I have found harm to the openness of the Green Belt from Appeal A in its own right. Given the limited difference in the existing and proposed calculations provided through Appeal B, it is unlikely that such figures would provide a compelling reason for me to reach a different conclusion on Appeal A.
16. I must consider the proposed development on the basis of the submitted appeal. The appellant has set out that further outbuildings could be demolished to address the effects of the proposed developments. However, it is not specified which outbuildings this could apply to and it would not be reasonable or procedurally fair for me to consider and subsequently require this.

17. Landscaping of the site could be secured by condition which could mitigate the visual effects of the proposed developments, particularly in the case of Appeal A. However, this would not overcome the spatial effects which I have also found to be harmful.
18. The Council has also considered Appeal B against LP Policy DM11, which aligns with the exception set out in paragraph 149 c) of the Framework. They conclude the proposed development would be a disproportionate addition above the size and scale of the original dwelling. The appellant has not sought to argue through this appeal that the development should be considered under this exception and I have not examined it further.
19. Both Appeal A and Appeal B would therefore constitute inappropriate development in the Green Belt as they would not meet any of the exceptions set out in LP Policy DM6 or paragraph 149 of the Framework. Paragraph 147 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Each appeal would also reduce the openness of the Green Belt. In both cases, this harm would be moderate, given the existing development on the site. Nonetheless, it would cause harm and in accordance with paragraph 148 of the Framework, I give it substantial weight.

Protected Species

20. A preliminary ecological appraisal (PEA) was submitted as part of the appellant's appeal statement which appears to have been submitted in relation to a separate application to the Council. This indicates evidence, albeit low level, of bat activity on the site. However, this dates from September 2020, and this appeal was submitted in November 2022. It is generally accepted that surveys more than two years old may be unreliable. The existing dwelling is also excluded from this survey.
21. I am mindful of the advice in Circular 06/2005³ (the Circular) at paragraph 99 that, with regard to species protected by law, "It is essential that the presence or otherwise, and the extent that they may be affected by the proposed development, is established before the planning permission is granted....".
22. The appellant has made the alternate suggestion that a condition could be used to secure further mitigation given the low level of bat evidence found on the site. However, the PEA refers to a 'relatively' low level of evidence and I also note the advice was made on the basis that there would be a delay as the 2020 survey season had closed. I am not satisfied these amount to the exceptional circumstances in which it would be appropriate for a survey to be secured by condition as set out in the Circular. I also am not satisfied that a condition requiring works to stop should a roost be found would be effective as harm, albeit inadvertent, may still occur to protected species.
23. In relation to Appeal B, I therefore cannot conclude that there would not be an adverse effect on protected species contrary to LP Policy DM16 and the advice in paragraph 180 of the Framework regarding significant harm to biodiversity.

³ ODPM Circular 06/2005 Biodiversity and geological conservation – statutory obligations and their impact within the planning system

Character and Appearance

24. The existing dwelling is modest in scale and appearance. The proposed dwelling would be entirely different due to its increased size, extensive use of glazing and timber cladding. There would be a range of roof forms, eaves heights and gables evident. While the original characteristics would be largely lost, there is little of any particular architectural merit to the existing dwelling such that this would amount to harm.
25. The proposed dwelling would be modern in its design and appearance. The variations in form are a feature of its design. The use of materials and angles of roof slopes are sufficiently well related for the dwelling to appear well-proportioned and for the elevations to appear visually coherent. As such, I find the design to be of an acceptably high quality.
26. Development in the surrounding area is dispersed. It generally consists of substantial dwellings set in generous plots. There is not a strong consistency in the appearance or use of materials. Given the very limited relationship to surrounding development, the proposed dwelling would not appear incongruous.
27. The proposed development would therefore have an acceptable effect on the character and appearance of the area. It would be in accordance with LP Policy DM23 which requires development to be of a high quality design that is compatible with the character and appearance of the area. This would also be in accordance with the requirements of Section 12 of the Framework which confirms that the creation of high quality places is fundamental to what the planning and development process should achieve.

Other Considerations

28. No harm has been identified with either appeal with respect to the site access or effect on the living conditions of neighbouring occupiers. However these would be expected of any well designed development and as such are neutral.
29. I have been directed to other appeal decisions⁴ where appeals in the Green Belt were allowed. However, by its very nature, any assessment of openness is entirely dependent on the individual circumstances of each proposal, its site and surroundings. I also note both of those appeals were in other authorities and so do not raise any issues of consistency of decision making. These decisions therefore do not provide compelling evidence that would overcome my findings above. A number of other decisions have also been referred to, but there is no substantive detail as to how they would justify my reaching a different conclusion.
30. The appellant has referred to concerns raised by the Council in pre-application consultation. I have no reason to think that the proposed demolition would prevent the appellant from continuing to operate their business in an appropriate manner. Any future applications would be considered on their own merits at such a time as they were submitted.

⁴ APP/A1910/W/18/3203796 allowed 1 July 2019 & APP/H1033/A/12/2186918 allowed 9 May 2013

Conclusion

31. I have found that both Appeal A and Appeal B would constitute inappropriate development in the Green Belt and would be harmful to its openness. I afford these matters substantial weight. There would also be harm to protected species. A lack of harm to the character and appearance of the area would amount to a policy compliant scheme. The other considerations in this case do not carry sufficient weight to clearly outweigh the harm. Consequently, the very special circumstances necessary to justify the proposed development do not exist, as required by LP Policy S11 and paragraph 147 of the Framework.
32. Both proposals would conflict with the development plan taken as a whole and there are no material considerations before me of sufficient weight, including the policies of the Framework, to suggest the decision should be made other than in accordance therewith. Therefore, both Appeal A and Appeal B should be dismissed.

J Downs

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W1525/W/22/3311284	Mr and Mrs S and K Collins
Appeal B	APP/W1525/W/22/3311730	Mr and Mrs S and K Collins