



Appeal Decisions

Site visit made on 11 January 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal A Ref: APP/W1525/C/21/3285804

Appeal B Ref: APP/W1525/C/21/3285805

Land at Hillview, Meadow Lane, Runwell, Wickford, Essex SS11 7DX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr R Draper (Appeal A) and Ms L Draper (Appeal B) against an enforcement notice issued by Chelmsford City Council.
 - The notice was issued on 23 September 2021.
 - 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 to:
 - i. 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: 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Additionally, Appeal A is also proceeding on ground (a) and 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.
-

Decisions

1. The appeals are dismissed, the enforcement notice is upheld and with respect to Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appellant was not in attendance at the arranged time for the site visit. In arriving for the site visit and then waiting for the attending Council officers to try and find the appellant, I saw the building and the appeal site. Both main parties were written to after the visit to ask if they had any comments about me proceeding to a decision because I consider that I saw all that I needed to. Their views were considered.
3. In addition to the grounds pleaded on the appeal form, the appellants' statement sets out appeals on ground (b) that what is alleged has not occurred; and (f) that the steps required by the notice to be taken exceed what is necessary to achieve the purpose of the notice. I will consider those grounds. Additionally, although not explicitly stated, I consider that some of what the appellant says indicates an appeal on ground (c), that the matters do not constitute a breach of planning control. Although what is said about this is ambiguous, I will consider the appeal on that basis as well.

4. The appellant states that 2 notices have been issued and it is unclear to them which is relevant. The Council has clarified that the appellant has become confused with the reference number for the investigation and then a further reference number for the notice itself. From what the appellant states and the grounds pleaded, it seems clear that the notice as set out above is what the appellant has considered when lodging their appeal. Furthermore, the notice being referred to by the Council was also uploaded with the other appeal documents by the appellant when the appeal was submitted.
5. The Council and the appellant have been given an opportunity to comment on the December 2023 changes to the National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (PPTS).

The Appeals on ground (b)

6. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact.
7. The appellant is not suggesting that the building doesn't exist as a matter of fact but queries how it is described. They also confirm that this is a replacement building. Whatever the building is used for, and I go on to consider that below, it does exist as a matter of fact and as alleged.
8. The appeal on ground (b) therefore fails.

The Appeals on ground (c)

9. Under ground (c) the onus is again on the appellant, to demonstrate that alternatively, if what is alleged has occurred, that it does not constitute a breach of planning control.
10. The appellant ambiguously suggests that the building could be reduced "and be permitted development". No specific permitted development rights within the GPDO¹ that would apply to the construction of buildings on residential caravan sites have been drawn to my attention and I am not aware of any.
11. The appellant refers to the site being developed on 2 residential "plotland dwellings" and that a caravan site should be regarded as a "distributed dwellinghouse" which should have the same permitted development rights as a house. However, from the submitted evidence and what I could see of the site, the building has not been constructed within the curtilage of a dwellinghouse. As such, permitted development rights as set out in Schedule 2, Part 1 of the GPDO would not apply. Even if they did apply, the building at 8.5m high would exceed the permitted tolerances for such development.
12. The appeal on ground (c) therefore fails.

Appeal (A) on ground (a)

Main issues

13. Under this ground of appeal, I have to consider whether planning permission ought to be granted for the matters stated on the notice as the breach of

¹ Article 3 & schedules within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

planning control. The appellant's submissions confirm that the building is intended to be used as a day room for the residential caravan site. It is also confirmed that the residential site is occupied by Gypsy and Travellers.

14. The appeal site is within the Green Belt. The first main issue is therefore whether the development is inappropriate development within the Green Belt having regard to the framework and relevant policies within the LP. The second is the effect of the development on the openness of the Green Belt. The final main issue is, if the development is inappropriate development, 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

Inappropriateness

15. Meadow Lane is a residential area containing a number of buildings and residential sites positioned alongside the road, on the northern fringe of Wickford. Policy DM6 of the Chelmsford Local Plan, adopted 27 May 2020 (LP), relates to new buildings in the Green Belt. This policy at part C permits replacement dwellings but only if a number of criteria are all met, including at (ii) "that the new building is in the same use as the existing" and (iii) that "the new building is not materially larger than the one it replaces". This is consistent with the Framework criteria relating to replacement buildings in the Green Belt.
16. From the Council's photographs the new building looks substantially larger than the previous structure. The walls have been built outside of the external walls of the original building. The appellant has also confirmed that the original building was around 6.5m high whereas this replacement is about 8.5m high. Even if the height of the building were to be reduced to 4m, the footprint is larger. Whilst I am told by the appellant that the building is used in a similar way to the previous one, it is substantially larger and therefore does not fulfil the criteria for replacement buildings in LP Policy DM6 or the Framework.
17. In relation to the first main issue, the building is inappropriate development within the Green Belt having regard to the Framework and LP Policy DM6.

Openness

18. The area along both sides of Meadow Lane includes a range of residential developments with little uniformity and much of it looks to include residential caravans. The site is on the higher part of the road and close to the edge of the developed area. The site itself includes a range of other structures and there is a caravan close to it. The site is more enclosed than many of the other sites I saw along Meadow Lane.
19. The building is substantially larger, covering a greater ground area than the building it replaced. It therefore takes up a greater volume of space. Notwithstanding the degree of enclosure around the site, the building is also prominently positioned so that it can be seen from Meadow Lane. It is also not clear from the information provided how it would be feasible to reduce the height of the building from 8.5m to 4m as suggested by the appellant. I cannot determine what such a building would look like precisely. Even with a reduction in height, it is not clear what difference that would make to the

volume and bulk of the building. From the evidence submitted, the building even if it were reduced in height, would have a greater volume and impact upon the openness of the area when compared to the building that it replaced.

20. For these reasons, the development has had a harmful effect in reducing the openness of the site and therefore the Green Belt. This would not comply with LP Policy S11 which seeks to protect the openness and permanence of the Green Belt and those are essential characteristics of the Green Belt as set out in the Framework.

Overall planning balance and very special circumstances

21. The Framework states that substantial weight should be given to any harm to the Green Belt. It says that inappropriate development should not be approved except in very special circumstances. Furthermore, the Framework makes it clear that very special circumstances will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
22. Notwithstanding the appellant referring to the appropriateness of this area being included in the Green Belt, it is not for me in this decision to undertake a critique of Green Belt policy or whether it should apply here. As I state above, the LP policies are consistent with the advice in the Framework which confirms that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise.
23. Day rooms are an important part of Gypsy and Traveller culture, complimenting their lifestyle when occupying caravans on sites like this, providing space for important utilities. The Public Sector Equality Duty (PSED) contained in the Equality Act 2010, sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and have the protected characteristic of race. I am given very little detail about the circumstances of how the appellants use the day room or why the previous building or a replacement building of the same size would not have satisfied those requirements. I do however give moderate weight to the need for the building.
24. I have also been referred to permitted development rights as I explained in other grounds of appeal, above. The appellant suggests that residential caravans should have such rights like nearby 'plotlands' dwellings. However, in law there are no such permitted development rights for residential caravan sites. The discrimination is therefore in accordance with the law and due to the type of housing, not the specific people or ethnic group that the occupants are part of. This therefore has limited weight in the appeal.
25. The appellants have instructed an agent to deal with the case on their behalf and so their difficulties with understanding the notice and the paperwork also has limited weight in my decision.
26. As I refer above, I am not clear what precisely the building would look like if it was reduced in height. From the information provided it has not been demonstrated that there would be any benefits to the character and

appearance of the area or in terms of the Green Belt. As such, the suggestion to reduce the height has limited weight in my decision.

27. These other considerations do not clearly outweigh the substantial harm that I have identified with respect to the Green Belt due to inappropriateness and the effect upon openness. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

28. For these reasons, having had regard to the development plan as a whole and all other material considerations, I conclude that appeal A on ground (a) should fail and consequently, the deemed planning application shall be refused.

The Appeals on ground (f)

29. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The notice requires the demolition of the building and removal of the debris and waste resulting from that. The purpose of the notice is therefore to remedy the breach of planning control.
30. The appellants consider that the building should be reduced to 4m in height in order to make it permitted development within the terms of the GPDO. I have already determined that, based upon the evidence provided, such rights do not appear to apply to the appeal site. Even if they did, the GPDO does not retrospectively grant permission for development already carried out and the proposed alternative requirement would not therefore achieve the purpose of the notice. I have however considered the merits of reducing the height of the building, within the appeal under ground (a) above.
31. There are no obvious alternatives to achieving the purpose of the notice. The appeal on ground (f) therefore fails.

The Appeals on ground (g)

32. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The period is 3 months.
33. The appellant has provided no justification for an extension of the period for compliance to 9 months. It is not therefore clear why the building could not be demolished in that time and then the materials removed.
34. I consider that 3 months strikes a reasonable and proportionate balance between securing compliance whilst allowing the appellants sufficient time to carry out the necessary work.
35. The appeal on ground (g) fails.

Conclusion

36. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood
INSPECTOR