



Appeal Decision

Site visit made on 21 January 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th February 2025

Appeal Ref: APP/J1535/W/24/3346990

Mantin, Harlow Common, Hastingwood, Harlow, Essex CM17 9ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr R Allen of Mini Dolphins LLP against the decision of Epping Forest District Council.
 - The application Ref is EPF/2480/23.
 - The development proposed is described as 'retrospective planning application: change of use of existing domestic swimming pool to mixed-use of domestic (use class C3) and community use (use class F2(d))'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr R Allen of Mini Dolphins LLP against the decision of Epping Forest District Council. This application is the subject of a separate decision.

Preliminary Matters

3. I note that this is partly a retrospective application, and the swimming pool is already being used for a mix of domestic and community use. Although not referred to in the banner heading above, it is clear from the plans that the proposal also includes the provision of additional parking spaces. I must determine the proposal on its merits based on the submitted plans considered by the Council.
4. Within the context of this appeal under section 78 of the Act¹, it is not within my remit to formally determine whether the existing building is lawful. If the appellant wishes to ascertain whether it is lawful, an application can be made under section 191 of the Act. Nevertheless, I have had regard to the presence of the building insofar as it is relevant to my consideration of the case.
5. The National Planning Policy Framework (the Framework) was revised in December 2024. As this could affect the issues and matters in this case, the Council and the appellant were invited to make further comments, but none were received. My decision reflects the latest version of the Framework.

¹ Town and Country Planning Act 1990 (as amended)

Main Issues

6. The main issues in this appeal are:

- whether the proposal is inappropriate development in the Green Belt;
- the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance; and
- whether 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 proposal.

Reasons

Whether the proposal is inappropriate development

7. The appeal site lies within the Green Belt identified under Policy DM4 of the Epping Forest District Local Plan 2023 (LP). This states that planning permission will not be granted for inappropriate development in the Green Belt, except in very special circumstances, in accordance with national planning policy. It identifies various forms of development which are not inappropriate development in the Green Belt. Due to subsequent changes to the Framework, there are some differences between the list of exceptions in Policy DM4 and paragraph 154 of the Framework.
8. According to Policy DM4(C)(ii) of the LP, the construction of new buildings for appropriate facilities for outdoor sport is not inappropriate if it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. Paragraph 154(b) of the Framework indicates that the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport is not inappropriate if they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Whilst the pool building has a retractable roof, there is significant opportunity for swimming activities to take place indoors. Thus, it is not an exception in terms of LP Policy DM4(C)(ii) or paragraph 154(b) of the Framework.
9. There are circumstances where certain other forms of development are not inappropriate in the Green Belt under Policy DM4(D) of the LP and paragraph 154(h) of the Framework, but these are subject to preserving its openness and not conflicting with its purposes.
10. As set out in the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is the counterpart of urban sprawl and often connotes the absence of development. It is an open textured term and can have both spatial and visual dimensions.
11. The appeal site comprises a large dwelling in a sizeable plot, amongst a row of residential properties facing Harlow Common. There is a garden, driveway and large, gravel parking area in front of the house with some boundary planting. Permission was sought to use the swimming pool for a mix of domestic and community purposes with the provision of parking space for an additional two cars. A large part of the existing parking area is used by customers attending the pool.
12. The extended parking area would increase surfacing into part of the front garden. Further, due to the number and frequency of customers attending swimming

lessons and activities, the proposed scheme results in significantly more intensive use of the access and parking area for the turning, manoeuvring, and parking of vehicles than solely residential use. Despite existing and potential further boundary landscaping, the extent of use of the surfaced area by vehicles is evident from the road and neighbouring properties. The area used for this would be greater with the proposed extension of the parking area. Such features and activities reduce spatial and visual openness compared to the residential use of the site.

13. There is reference to other appeals² allowed for the construction and change of use of buildings for swimming pools within the grounds of dwellings in the Green Belt. One primarily related to the construction of an uncovered swimming pool and is therefore not comparable to the proposed commercial use of a pool within an existing building. In the other case, the Inspector found that the re-use of a domestic swimming pool for business use and the associated comings and goings would not harm the openness of the Green Belt. However, in this case, I have found that the intensity of the community use reduces the openness of the Green Belt compared to residential use. This would be exacerbated by the proposed increase in surface parking.
14. The appellant considers that the proposal meets the five purposes of the Green Belt, and I have no reason to disagree. Nevertheless, as the scheme harms openness, it does not meet the exceptions in Policy DM4(D) of the LP or paragraph 154(h) of the Framework.
15. Therefore, I find that the appeal proposal is inappropriate development which, by definition, harms the Green Belt.

Living conditions

16. The house is sited rearward of the neighbouring dwellings, with an access driveway along the western boundary and a large front parking area sited close to the adjacent property at St Margarets. The swimming pool lies to the rear of the house, with a side access path connecting it with the parking area.
17. The application form did not include proposed hours of operation, but the evidence indicates that the facility currently provides 23 hours of small group children's swimming lessons a week, with each session lasting 30 minutes. The pool is also used by a women-only support group.
18. The appellant suggests a condition restricting use of the pool by customers to 9.30am to 1pm and 3.30pm to 6pm on Mondays to Fridays and 8.30am to 1pm on Saturdays, Sundays and Bank Holidays. A further condition is suggested that would limit the number of those attending or participating in pool activities to a maximum of eight people. These would reflect the existing operation of the premises.
19. The pool has been operating for commercial use for some time. Although the Council did not seek any acoustics information, it is evident from representations from nearby residents that they are experiencing noise disturbance from its operation. This arises from vehicles arriving and departing, car doors opening and closing, talking and interactions between parents in the parking area and access path, and young children and babies crying, shouting and screaming. When the pool roof is retracted in the summer, there is also noise from instructors giving

² Appeal refs: APP/M1520/D/14/2226967 and APP/W0530/A/09/2117422

directions, singing, music and children using the pool. There is considerably more activity than would be expected with solely residential use of the site.

20. The noise is not continuous throughout the day or week and there are times when the pool is not in commercial use, including weekend afternoons. Nonetheless, the extensive opening hours, and frequency and number of people coming and going to use the pool cause significant disturbance to the occupiers of St Margarets. Due to the proximity of the main parking area and access path to the neighbouring property and the noise emanating from the use of these by customers, the proposed use makes the back garden and rear and side rooms at St Margarets less pleasant places to be. This is exacerbated when the building roof is open in the summer, causing noise to emanate from activities taking place in the pool.
21. Consequently, I conclude that the proposal unacceptably harms the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. This is contrary to Policy DM9 of the LP where it requires proposals to take account of neighbouring amenity, including addressing issues of noise likely to arise from the development.

Other considerations

22. The facility provides recreation, health and social development benefits for young children and for women recovering from illness in a small group environment close to Harlow. Several users of the facility support the proposal. There is anecdotal evidence of a shortfall in provision for children's swimming lessons at nearby public pools and the scheme increases swimming provision in the area. The proposed development also provides work for four part time employees, equivalent to one full time job. Together, I accord these benefits significant weight.

Other matters

23. The Council did not find harm or development plan conflict in relation to several other matters, including highway safety, neighbours' privacy, trees, flood risk, heritage and impacts on the Epping Forest Special Area of Conservation. However, even if I were to agree with the Council on these points, the absence of harm is a neutral matter which does not carry weight in favour of the proposed scheme.
24. The appellant has expressed general dissatisfaction with the Council's handling of the application. However, this is a matter between those parties, and it cannot have any bearing on my determination of this appeal.

Whether there are Very Special Circumstances

25. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There are also adverse impacts on openness, and harm to the living conditions of neighbouring occupiers in relation to noise and disturbance. Substantial weight should be given to the harm caused to the Green Belt, and very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
26. I give significant weight to the recreation, health and economic benefits. However, the other considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness and other harm. Thus, the very

special circumstances necessary to justify the proposed development do not exist. As such, it is contrary to Policy DM4 of the LP and the Framework.

Conclusion

27. For the above reasons, the proposal conflicts with the development plan and the material considerations, including the Framework and the very special circumstances test therein, do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

A Wright

INSPECTOR