



Appeal Decision

Site visit made on 11 March 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/W1525/C/23/3334354

Land North East Of Field 2284 (also known as Twin Oaks), Maltings Road, Battlesbridge, Wickford, Essex SS11 7RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act"). The appeal is made by Ms Marina Sebright against an enforcement notice issued by Chelmsford City Council.
- The notice was issued on 31 October 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change in the use of land to a mixed use comprising storage, the siting of caravans, the operation of a manufacturing business, and a use for recreational purposes.
- The requirements of the notice are:
 - i. Cease use of the land for the purposes of storage, recreation, the siting of caravans, and the operation of a manufacturing business.
 - ii. Remove from the land all items, structures, and paraphernalia not used in connection with the lawful use of the land for agricultural purposes, including but not limited to the caravans, storage tent, materials, boat, solar panels, pergola, sheds, workbench and tools, motor vehicles, and various pieces of furniture.
 - iii. Restore the land affected by the carrying out of steps (i) and (ii) to its pre-development condition.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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 ("the DPA").

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. A revised version of the National Planning Policy Framework ("the Framework") was published in December 2024. I have taken account of the comments of the main parties on the changes made.

The Notice

2. I am required to ensure the Notice is in order, considering Section 173 of the Act.
3. The Notice alleges a mixed use of the Land, and the appellant disputes that one element, the operation of a manufacturing business, has not occurred. That is a matter normally considered as an appeal on ground (b). The parties have been afforded the opportunity to comment on these matters and no injustice would occur were I to consider this matter. I have therefore done so below.
4. Section 3 of the Notice alleges a material change of use of the land without independent reference to operational development. But Section 5ii requires the removal of various items, including a pergola and solar panels. The solar array comprises solar panels on lightweight metal frames standing on short planks of

wood. It is not fixed to the ground, and is not a building for the purposes of the Act. The pergola is a lightweight metal frame with plastic sheeting around parts of three sides, and the appellant describes it as a tent. It is screwed into decking boards which appear to have been laid on the ground, and the appellant advises it has no permanent base. Given its small size, lightweight construction and very limited affixture to the ground, I do not consider it to be a building. However, even if one, or both, are operational development for the purposes of the Act, each facilitates and is part and parcel of the use which has occurred. They may therefore be required to be removed in Section 5ii, should I uphold the Notice.

The appeal on ground (b)

5. Appeals on ground (b) are made on the basis that the matters stated in the Notice as constituting the breach of planning control have not occurred. Section 174(2)(b) of the Act is worded in the past tense, and the question is therefore whether the alleged breach had occurred before the date of issue of the Notice. The standard of proof is the balance of probabilities.
6. The appellant disputes that “the operation of a manufacturing business” has occurred as part of a mixed use of the Land, as stated in Section 3 of the Notice.
7. The Council state a boat cover manufacturing business has operated from the Land, and the photographs in evidence show a sign on the entrance gate advertising “Marina Boat Covers Ltd”. A large table with clamps under a gazebo in other photographs would also appear to be consistent with such a use, as do fabric rolls in another photograph.
8. The onus of proof lies with the appellant to demonstrate that the operation of a manufacturing business has not occurred on the Land as part of the mix of uses alleged. The appellant advises her business operates from an industrial site nearby, there is no longer any business activity on the Land, and all buildings and associated storage relating to the business have been demolished and removed. Whether or not that is the case, the evidence suggests the operation of a manufacturing business had occurred before the Notice was issued.
9. The appellant also claims that the mixed use of the Land is agricultural and recreational use, and that all storage is associated with these uses. The photographs in evidence show two polytunnel-type structures at the southern end of the Land, and these were visible at the time of my site visit, along with timber benches containing young plants grown from seeds. Two bee hives were also present on the Land, and a trellis supporting fruit plants can also be seen in the photographs. For the purposes of the Act¹, agriculture includes horticulture, fruit growing and seed growing, but at the scale at which it is occurring on the Land, it is not a primary use. Rather, it is domestic in scale and part of the recreational use.
10. The mix of uses alleged in Section 3 of the Notice also includes reference to ‘the siting of caravans’, which is not in itself a use of land. The Council advise they consider it likely the caravans have been used residentially, but that they have not been able to evidence that. They therefore accept the appellant’s view that the caravans facilitate and are part and parcel of other use(s) of the land. On that basis, as they are not an independent element of the use, I shall correct Sections 3

¹ Section 336

and 5i of the Notice by deleting the words, “the siting of caravans,”. No injustice would be caused to either party in doing so.

11. Considering all the evidence, on the balance of probabilities it has not been demonstrated that the matters stated in the Notice have not occurred, except in relation to the siting of caravans as an independent use.

12. The appeal on ground (b) therefore succeeds to that limited degree.

The appeal on ground (c)

13. Appeals on ground (c) are made on the basis that the matters stated in the Notice (if they occurred) do not constitute a breach of planning control.

14. The definition of development in Section 55 of the Act includes the making of any material change in the use of any buildings or other land. Section 57 states that planning permission is required for any development of land, with some specific exceptions, none of which apply in this case.

15. The parties agree that the lawful use of the land is agricultural use. The use which has occurred is materially different to use for agriculture, and it therefore constitutes development for which planning permission is required.

16. The appellant states there are no permanent structures on the Land, but acknowledges the presence of ‘moveable structures’, storage tents, materials, boat, solar panels, pergola, sheds, workbench and tools, motor vehicles, caravans and various pieces of furniture. These items, and others, can be seen in the photographs provided in evidence, and are items associated with the use of the Land.

17. Article 3(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for classes of development described as ‘permitted development’ in its Schedule 2. Parts 1 and 6 relate to development within the curtilage of a dwellinghouse and with agriculture respectively. But neither apply to the use of the land which has occurred, which is a *sui generis* use, and does not benefit from ‘permitted development’ rights associated with its use.

18. The matters stated in the Notice as constituting a breach of planning control are therefore development for which planning permission is required. Planning permission has not been granted, and the development is therefore a breach of planning control.

19. The appeal on ground (c) therefore fails.

The appeal on ground (a)/the DPA

Background and Main Issues

20. Appeals on ground (a) are made on the basis that planning permission should be granted for the matters stated in the Notice as constituting the breach of planning control (as corrected).

21. The appellant’s case is limited to seeking planning permission for recreational use of the Land, along with the growing of fruit and vegetables and bee keeping, and

the retention of a caravan in association with that use. She does not seek planning permission for storage or any commercial or business use of the Land.

22. I found above that the growing of fruit and vegetables and bee keeping were part of the recreational use occurring.

23. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (“the Framework”) and any relevant development plan policies;
- The effect of the development on the openness and purposes of the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on flood risk; 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.

Whether inappropriate development in the Green Belt

24. Paragraph 154 of the Framework states that development in the Green Belt is inappropriate development, subject to exceptions.

25. The development is not engineering operations, but rather the material change of use of the Land, and the exception in 154(h)ii therefore does not apply. Neither does exception 154(b), as although part of the use is recreational, the development is not the provision of appropriate facilities for outdoor recreation, such as sports pitches or equestrian facilities.

26. The exception in 154(h)v relates to material changes in the use of land (such as for outdoor sport or recreation) provided they preserve its openness and do not conflict with the purposes of including land within the Green Belt. Having found above that recreational use is only one part of a mixed use, the exception does not apply to the use as a whole. In relation to the appellant’s case for recreational use of the land only, the effect of the development on the openness and purposes of the Green Belt are considered below in relation to the second main issue.

27. The use as a whole is therefore inappropriate development in the Green Belt. Whether, on the appellant’s case, leisure use alone is inappropriate development depends on whether the development preserves the openness of the Green Belt and whether there is conflict with its purposes.

28. Paragraph 153 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Openness:

29. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence.

30. The aerial photograph and the photographs taken by the Council in 2018 show the state and condition of the site prior to the development. At that time it was an undeveloped part of an agricultural field, laid to grass, in a largely undeveloped area.
31. Although the appellant seeks to retain only the recreational use of the Land, she seeks retention of all the items listed in the Notice as part of a leisure use. In relation to the manufacturing element of the use, the Notice alleges the 'comings and goings of commercial vehicles', but the Council have not explained or evidenced this claim and I am therefore unable to afford it any weight. There would therefore be no material difference between the mixed use and the leisure use sought by the appellant.
32. Spatially, the large number of items on the Land has significantly increased the volume of enclosed spaces and objects on this small area of land, which contrasts markedly with the field as it was in its undeveloped state. The caravans, storage tent, marquee, gazebo, solar array and polytunnels have clearly created a sense of enclosure across parts of the land. The vehicles and boats have further detracted volumetrically from the sense of openness, and the smaller items have added cumulatively to that effect. Spatially, the development has therefore reduced the openness of the Land.
33. Visually, there is a marked contrast between the developed Land and the undeveloped field, with its relatively open views from the road and access, and across adjacent fields and land beyond. The developed Land is characterised by a multiplicity of items which cumulatively reduce its formerly open appearance. The number and enclosure of the larger items and the cumulative effect of the smaller ones afford the land a character which can no longer be described as open. Visually, the development has therefore reduced the openness of the Green Belt.
34. The appellant states that none of the items are permanent structures and all can be moved. But the development is the use of the Land, and the items are part of the use which has occurred. Allowing the appeal and granting planning permission for the use, or its use for only recreational and agricultural use, would continue its effects on openness.
35. Overall, the development does not preserve the openness of the Green Belt. Openness is an essential characteristic of Green Belts, and the reduction in openness is therefore harmful to the Green Belt. Upholding the Notice would assist in supporting the Green Belt purpose of safeguarding the countryside from encroachment. Therefore, the exemption in paragraph 154(h)v does not apply and the development is inappropriate development in the Green Belt.
36. Substantial weight must be given to any harm to the Green Belt, including harm to its openness. Unless very special circumstances are found to justify the development it therefore conflicts with Chelmsford Local Plan (2020) ("CLP") Strategic Policies S1 and S11. These policies protect the openness and permanence of the Green Belt where consistent with its purposes, except in relation to inappropriate development without very special circumstances. Without very special circumstances it also conflicts with Chapter 13 of the Framework, which seeks to protect Green Belt land.

Character and appearance

37. The Land is located in the rural area, outside of urban areas and defined settlements. Maltings Road is a single track rural cul-de-sac which runs from Battlesbridge into the countryside. Beyond the built-up area the road serves small and medium sized fields and a small number of other uses, and at its terminus the Maltings Industrial Estate.
38. The Land lies on the southern side in an area predominantly characterised by fields either side of Maltings Road, and with the River Crouch beyond fields to the south-east. Although it is not the only parcel of land not in agricultural use, the character of the area remains predominantly agricultural in character.
39. From the road, the caravan and domestic paraphernalia, vehicles and a boat(s) give the Land a distinctively domestic appearance, not dissimilar to a residential garden. That character stands in sharp contrast to the lawful agricultural use of the land, and is harmful to the character and appearance of the area. As described above in relation to openness, recreational use alone would have similar effects.
40. The development therefore conflicts with the relevant aspects of CLP Strategic Policies S1 and S11 and Policy DM23, which permit development that respects the character and appearance of the area and does not adversely impact on the character and beauty of the rural area.

Flood Risk

41. The Land is within flood zones 2 and 3, due to its proximity to the River Crouch.
42. The Council describe the use as 'Highly Vulnerable', and if that is the case then the Planning Practice Guidance² advises development should not be permitted, being located in Flood Zone 3. The Notice does not allege use of caravans for permanent residential use, and Annex 3 of the Framework describes storage and distribution, assembly and leisure uses as 'Less Vulnerable'.
43. The appellant states a caravan is required, but has not stated whether recreational use includes use for overnight caravan or camping use. If so, the development would be classified as 'More Vulnerable', but only if subject to a specific warning and evacuation plan, and none has been put before me. In that event it would also be necessary for the appellant to demonstrate that the sequential and exception tests were met. But I have seen no evidence that it would not be possible to locate such a use in a low (or lower) risk area. Or that the development will provide wider sustainability benefits to the community that outweigh flood risk, or that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.
44. Even if the development is a 'Less Vulnerable' use, and overnight stays in a caravan could be excluded by planning condition, paragraph 176 and footnote 63 of the Framework require all development in Flood Zones 2 and 3 to provide a site-specific flood risk assessment ("FRA"), even for small changes of use. Paragraph 181 states development should only be allowed in areas at risk of flooding where, in the light of a site-specific FRA, certain criteria are demonstrated to be met; those include the safe management of any residual risk, and an emergency plan incorporating safe access and escape routes.

² PPG Table 2: Flood risk vulnerability and flood zone 'incompatibility'. Paragraph: 079 Reference ID: 7-079-20220825

45. No flood risk assessment has been provided and it has therefore not been evidenced that the development is suitable in this location in terms of flood risk associated with use of the Land, or the risk of flooding elsewhere.
46. The appellant advises there is a pumping station on the industrial estate at the end of the road and that the banks of the river have been raised in recent years. But if flood defences are breached large areas of land can flood with little warning. Furthermore, the limited degree of built development on the land may limit any effects of increasing flood risk elsewhere, but does not demonstrate the Land is suitable for the use.
47. The development therefore conflicts with the relevant aspects of CLP Strategic Policies S1 and S2 and Policy DM18. These policies permit development only where it is demonstrated the site is safe from flooding, now and for the lifetime of the development, and does not worsen flood risk elsewhere. It also conflicts with chapter 14 of the Framework, which seeks to avoid flooding by directing development away from areas at highest risk to those of lowest risk, and ensuring development is made safe for its lifetime without increasing flood risk elsewhere.

Other Considerations

48. The Land is not the only parcel of land on Maltings Road which contains items not normally associated with agriculture. However, I have not been advised of the lawfulness of development on other land, and this matter therefore attracts only very limited weight in favour of the development.
49. The appellant claims a need for some storage on the land to facilitate agricultural use and maintenance of the land. However, I found above that the agricultural elements of the use are ancillary to the recreational use, and not a primary use of the Land. Even if agricultural use required some items to be placed on the land in association with that use, the character and scale of those items would have significantly less effect on openness and the character and appearance of the area than the development which has occurred. This matter therefore carries only limited weight in favour of the development.
50. The appellant considers she is making effective use of the land, minimising waste and pollution by using solar panels as a source of natural energy which helps reduce emissions in the area. This matter attracts a limited degree of weight in favour of the development.
51. These matters are weighed in the planning balance below.

Conclusion

52. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm, are clearly outweighed by other considerations.
53. The development is inappropriate development in the Green Belt, and harms its openness, to which I must attribute substantial weight against the development. In addition, the harm to the character and appearance of the area attracts further moderate weight, and the harm in terms of flood risk attracts significant weight against the development.

54. The matters in favour of the development attract only limited weight, and the harm to the Green Belt is not clearly outweighed by the other considerations. The very special circumstances required to justify a grant of planning permission therefore do not exist. The development therefore conflicts with CLP Strategic Policies S1, S2 and S11, and Policies DM18 and DM23, and with Chapters 13 and 14 of the Framework, which are described above.
55. For the reasons above, I conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that require a decision to be made other than in accordance with the development plan.
56. The appeal on ground (a) therefore fails.

Conclusion

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

Decision

58. It is directed that the enforcement notice is corrected by:

- In Section 3, the deletion of the words "the siting of caravans,"; and
- In Section 5i, the deletion of the words "the siting of caravans,".

59. Subject to the corrections, the appeal is 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.

Peter White

INSPECTOR