



Appeal Decision

Site visit made on 11 June 2025

by **S Rawle BA (Hons) Dip TP Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 24th June 2025

Appeal Ref: APP/C1570/W/25/3358441

Mandal, Chelmsford Road, Hatfield Heath CM22 7BG

- 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 Matt Lawler against the decision of Uttlesford District Council.
 - The application Ref is UTT/24/1176/FUL.
 - The development proposed is the demolition of existing dwelling and erection of new detached dwelling and detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant confirmed on the appeal form that the description of development has not changed. Consequently I have included the description of development included on the application form, rather than on the refusal notice or the appeal form.
3. During the appeal process the appellant submitted a revised plan which excluded an outbuilding and swimming pool from the proposed development. The Planning appeals: procedural guide (the procedural guide) makes it clear that the appeal process should not be used to evolve a scheme. However, it sets out that where amendments are proposed despite the general principle it will be necessary to decide whether exceptionally to accept them.
4. There are two tests to consider which are the substantive and the procedural tests. The proposed amendments would result in the removal of development described in the delegated officer report as a swimming pool and games room with a footprint of 232.5m² a gross internal area (GIA) of 208m² with a volume of 774m³. Consequently, the removal of a building with such dimensions would result in a substantive and material amendment to the proposal.
5. Moreover, although it is clear that the Council are aware of the proposed change as they make reference to it in their appeal statement, I am unaware that any formal re-consultation has taken place. Consequently, I am concerned that some interested parties who may have wanted to comment on the amended scheme may not have had the opportunity to do so. As a result, I consider that to accept the amended plan as part of the appeal process could lead to procedural unfairness.
6. In reaching that view, I have taken account of whether anyone would be prejudiced by that procedural failing as the appellant is intending to reduce development on the site rather than increase it. However, the swimming pool and games room

proposed as part of the originally submitted plans was previously approved development under a certificate of lawful use or development¹ (CLUD) but that has not yet been built. Even if I was persuaded to remove this element from the proposed development, it would be physically possible to carry out both the remaining elements of the proposed scheme and the swimming pool and games room development.

7. As pointed out by the Council, removal of permitted development rights immediately would be recommended upon the issue of planning permission for residential development on the appeal site as this would be the only way to ensure that no additional structures in the garden areas would be constructed in the meantime i.e. before commencement of the permitted development.
8. A CLUD can only be revoked in very limited circumstances. However, a planning application may be determined having regard to a planning obligation whereby the appellant agrees to not implement a previously granted but unimplemented CLUD. I am not satisfied that imposing a planning condition to remove the rights granted as a result of a CLUD would be reasonable and would therefore not meet the tests set out in the Framework or the relevant Planning Practice Guidance (PPG). Further, any attempt to remove permitted development rights by condition would only take effect once any permission granted is implemented and so would not satisfactorily address this matter.
9. Ultimately, given that no obligation has been provided in relation to this matter, if I were to accept the revised plans and ultimately granted planning permission on that basis there would be nothing to prevent the appellant from implementing both the permission granted by me and the CLUD. That could be something that interested parties may very well want the opportunity to comment upon and the inability to do so could cause procedural unfairness. However, even if a mechanism could be found to prevent this occurring, given that there has been no formal re-consultation on the changes it would still, in my view, fail the procedural test.
10. Consequently, I have found that the proposed amendments fail both the substantive and the procedural tests and therefore it would not be appropriate for me to determine the appeal on the basis of the amended plan.

Main Issues

11. The main issues are:

- Whether or not the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- The effect of the proposed development on the character and appearance of the area; and
- Whether or not the harm by reason of the proposal being inappropriate development within the Green Belt, 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.

¹ UTT/22/3173/CLP

Reasons

Inappropriate Development

12. The National Planning Policy Framework (the Framework) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraphs 154 of the Framework. This includes the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces. It also includes the partial or complete redevelopment of previously developed land which would not cause substantial harm to the openness of the Green Belt.
14. The explanatory text that accompanies the Uttlesford Local Plan adopted in January 2005 (ULP) sets out that within the Green Belt development will only be permitted if it accords with national planning policy on Green Belts and preserves openness. Although it refers to outdated national policy it is not inconsistent with the Framework. Saved Policy S6 of the ULP sets out those villages where certain development will be permitted which are excluded from the Green Belt and four sites identified as major development sites within the Green Belt. The appeal site does not fall within any of these areas and consequently national planning policy applies.
15. Based on the appellant's figures, the existing house and other buildings has a footprint of 193.5m², a GIA of 205.2m² and a volume of 803m³. The proposed house and garage would have a footprint of 386m², a GIA of 573.75m² and a volume of 2010.4m³. It is common ground between the main parties that based on those figures the proposal would be materially larger.
16. The exercise I am required to undertake is primarily an objective one by reference to the size of the existing buildings in comparison to the size of the proposed buildings. The proposed replacement buildings would have a greater footprint than the existing building which would result in a substantial increase in both floor space and volume. Consequently, the proposed new buildings would be materially larger than the buildings it would replace. Moreover, the figures set out above does not even include the swimming pool and games room which would add to the overall footprint, floorspace and volume figures. Consequently, the appellant cannot rely on the exception set out in paragraph 154 d).
17. Again, it is common ground that the appeal site is previously developed land. I therefore now turn to consider the impact of the proposal on openness. In this assessment I have also taken account of the introduction of the swimming pool and games room as it has not yet been constructed but for the reasons set out above forms part of the proposed development. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects.
18. Spatially, the overall increase in floor space and volume would be significant. The footprint of the building would also be increased and by occupying space that was previously undeveloped, the proposed development would harmfully reduce the openness of the site.

19. Visually, the house would have a significant presence in public views from Chelmsford Road and notwithstanding the proposed new trees, the increase in development on the appeal site would be readily apparent from the public realm. As a result, both in spatial and visual terms there would be substantial harm to openness. Consequently, the appellant is unable to rely on the exception contained in paragraph 154 g).
20. I therefore conclude that the proposed development would amount to inappropriate development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances. I also find that the proposed development would result in substantial harm to openness to which I afford substantial weight. Further, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Given that the appeal site is outside the settlement boundary and is therefore considered to be within the countryside and is next to agricultural fields, the proposal would not accord with the Green Belt purpose of assisting in safeguarding the countryside from encroachment. Consequently, the proposal conflicts with the Framework and it follows that it would also not accord with the ULP.
21. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, the substantial harm to openness and any other harm resulting from the proposal is clearly outweighed by other considerations. I will now consider other issues and considerations before undertaking an overall balancing exercise.

Character and appearance

22. Although the appeal site falls outside the settlement boundary and is the first plot on the south side of Chelmsford Road it is the first in a long row of dwellings on the same side of the road. There are also existing dwellings on the opposite side of the road. As a result, the appeal site is part and parcel of an established residential area. I also agree with the appellant that the area comprises a varied mix of house types, styles and ages including some with a more contemporary design.
23. As a result of the mix of house styles and designs there is no typical house type, and certainly two-storey houses are a common feature in the streetscene which do not detract from the existing character and appearance of the area.
24. The proposal would involve the introduction of a detached flat roofed dwelling with a contemporary architectural design. The proposal would be of a high-quality architectural design. Although the design and materials would be more contemporary than the existing appeal property and some dwellings nearby, it would not appear unacceptably incongruous. Given that it is detached and would be set in from the common boundary it is unnecessary for the proposed dwelling to attempt to replicate any of the design elements of the neighbouring house. Rather it would introduce an interesting variety of design into this location which even though it would represent the first dwelling on the southern side of Chelmsford Road it would not harm the character and appearance of the area.
25. Further, notwithstanding the impact the proposal would have on the openness of the Green Belt, in terms of the impact it would have on the character and appearance of the area, the proposed scale and massing would not be visually intrusive and would not be unacceptably detrimental to the sensitive peripheral area of the settlement. Moreover, it would not harm the entrance or egress at the rural

edge of the settlement nor would it be detrimental to the visual interest of its surroundings. Rather it would introduce an interesting variety of house design into this location which would not harm the character and appearance of the area.

26. Moreover, although the proposal would introduce a garage that would sit forward of the front elevation of the main building, due to the position, height and flat roofed design, it would appear subservient to the proposed dwelling and would not appear unduly incongruous in the streetscene.
27. I therefore conclude that the proposed development would not unacceptably harm the character and appearance of the area and would comply with saved Policies H7 and GEN2 of the ULP which among other things seeks to ensure that development is compatible with the scale, form, layout, appearance and materials of surrounding buildings, it safeguards important features in its setting and replacement dwellings outside development limits will protect the particular character of the countryside in which it is set. The proposal would also comply with the Framework which seeks to ensure that developments are sympathetic to local character.

Other Considerations

28. The appeal site has a significant planning history, but of particular relevance is that in addition to the swimming pool and games room approved by the CLUD mentioned above, the appellant has also had confirmation that prior approval was not required for a single storey rear extension² and other outbuildings have been approved by a CLUD³.
29. As outlined above, the proposed swimming pool and games room forms part of this proposal and consequently that element has a neutral bearing on any comparison between the proposal and any potential fall back.
30. However, I am satisfied that there is a greater than a theoretical possibility that the single storey extension and the other outbuildings might take place, and I attach significant weight to the existence of these other buildings that could be constructed in the future. In relation to these two elements, I am satisfied that they do represent a legitimate fall-back if planning permission is not granted for the proposed development.
31. However, although the existing buildings on the appeal site and the elements which form part of the legitimate fall back would have a slightly smaller footprint, the proposed development would have a greater GIA and volume in comparison to the proposed development. Bearing in mind the two-storey nature of the proposal and having taken a holistic approach as advocated by the appellant the fall-back position would still have a greater impact on openness and would result in greater harm to the Green Belt.
32. Moreover, like the point I made earlier, it would be physically possible to carry out both the proposed development and some of the elements that form part of the legitimate fall-back. For the same reasons I have outlined above, as no planning obligation has been provided to ensure that could not happen and as I do not consider a condition that would extinguish the existing development rights would be reasonable, there would be nothing to prevent the appellant from implementing

² UTT/23/1436/PDE

³ UTT/23/1864/CLP

both the proposed development and some of the elements that form part of the legitimate fall-back.

33. I note that the Council have suggested a condition to remove permitted development rights, but that would only take effect once the permission is implemented and so would not address this matter. Consequently, if I had not found that the proposal would have a greater impact on the Green Belt than the fall-back position, I would have taken account of this matter in the determination of the appeal as it would have reduced the weight of the fall-back position. However, given my findings in relation to Green Belt harm it is not necessary to undertake that exercise.
34. The Council acknowledge that they only have 3.46 years of housing land supply. However, given that the appeal proposal would replace an existing house, it would not increase housing supply and so that is a neutral factor. That said, the proposal would provide a self-build unit and would have limited economic, social, and environmental benefits. For example, it would provide some jobs and create demand for materials during the construction phase, it would provide a house better suited to the needs of the appellant and his family who in turn would support services and local facilities. I also accept that there would be some opportunities to enhance biodiversity. Collectively these matters attract moderate weight.

Green Belt Balance

35. The proposal would have some benefits which I afford moderate weight. On the other hand, I have found that the proposal would result in harm to the Green Belt by virtue of its inappropriateness, its impact on openness and it would conflict with one of the purposes of including land within the Green Belt. As required by the Framework I have afforded these harms substantial weight.
36. Furthermore, although I have found that the proposal would not harm the character and appearance of the area, this is a neutral factor in the determination of the appeal.
37. I have found that the proposal is inappropriate development in the Green Belt, having undertaken a balanced judgement, the resulting harm and any other harm, would clearly not be outweighed by the other considerations. Consequently, the very special circumstances necessary to justify the proposed development do not exist. It follows that the application of policies in the Framework that protects the Green Belt provides a strong reason for refusing the proposed development.

Planning Balance and Conclusion

38. As set out above, based on the available evidence the Council can only demonstrate a housing land supply of 3.46 years. This is below Framework requirements and as a result Paragraph 11(d) of the Framework is relevant.
39. However, for the reasons set out above, the application of policies in the Framework that protects the Green Belt provides a strong reason for refusing the proposed development. Consequently, the presumption in favour of sustainable development, as set out in paragraph 11(d) of the Framework is disengaged and the scheme should be considered under a normal planning balance.

40. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.⁴
41. In this case, the proposal conflicts with the development plan when considered as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal should therefore be dismissed.

S Rawle

INSPECTOR

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990