

OFFICER REPORT

Application Ref: EPF/1574/23
Application Type: Full planning permission
Applicant: Mr & Mrs C Sullivan
Case Officer: Sukhvinder Dhadwar
Site Address: Tilegate Farm, Tilegate Road, High Laver, Ongar, CM5 0EA
Proposal: Construction of a tennis court together with perimeter fencing and landscaping
Ward: Moreton and Fyfield
Parish: Moreton, Bobbingworth and the Lavers
View Plans: <https://eppingforestdcpr.force.com/pr/s/planning-application/a0h8d000001Wq6r>
Recommendation: Approve with Conditions



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This application is before this Committee since the recommendation is for approval contrary to an objection from a Local Council and at least one non-councillor resident, on planning grounds material to the application (Pursuant to The Constitution, Part 3: Scheme of Delegation to Officers from Full Council)).

Description of Site

The application site is located on the north-west side Tilegate Road, within the settlement of High Laver.

The site accommodates a residential development which is currently being built out.

The site is accessed via two (northern/central and southern) private access road off Tilegate Road.

The application site is located within the Metropolitan Green Belt and it is not within a Conservation Area.

The site is within Flood Zone 1 (Low probability of flooding).

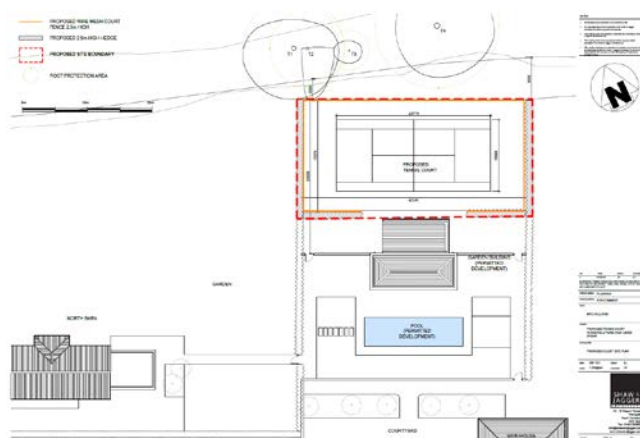
Description of Proposal

Permission is sought for the construction of a tennis court together with perimeter fencing and landscaping.

The tennis court surface measures 17m x 34m and the perimeter wire mesh fencing measures 2.5m in height.

A 2.5m high evergreen Yew Tree hedgerow is proposed on the eastern, western and the partial southern side of the court.

Figure 1



Planning History (006988)

Planning permission was refused under reference EPF/0788/23 for the construction of a tennis court together with perimeter fencing and landscaping on the following grounds:-

- (1) The proposed development would not preserve the openness of the Green Belt and would conflict with the purposes of including land within it (specifically safeguarding the countryside from encroachment). It is therefore inappropriate development which is, by definition, harmful to the Green Belt. Additionally, by reason of its large surface area (17x 34m) and associated perimeter fencing would have a significant visual, physical and spatial impact on openness contrary to Policy DM4 of the adopted Local Plan (March 2023) and the NPPF.
- (2) The proposed development would fail to relate positively to the character and context of the surrounding area, representing an incongruous development on undeveloped Green Belt land and encroaching into the countryside contrary to Policy DM9 of the adopted Local Plan (March 2023) and the NPPF.

Figure 2



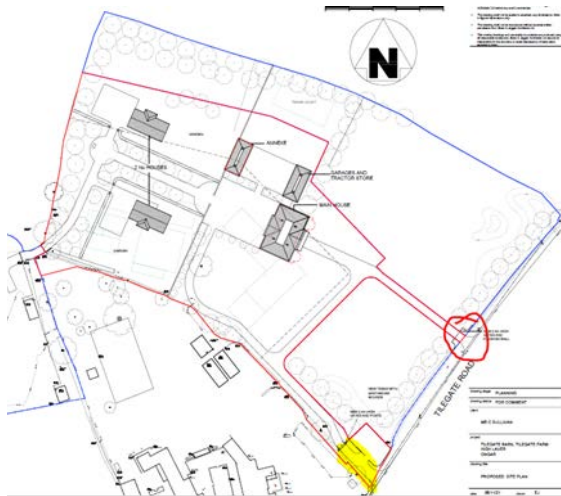
The planning history of the current works started in June 2017, when planning permission (EPF/1052/17) was granted for the demolition of existing industrial and storage workshops and equestrian buildings and replacement with three residential units plus granny annexe and outbuilding together with reconfiguration of access road and landscaping

Over the period March 2018 to October 2019 planning permission EPF/1052/17 was amended by way of six Non Material Amendments (NMAs).

The development is being built out and two of the three houses are complete and occupied.

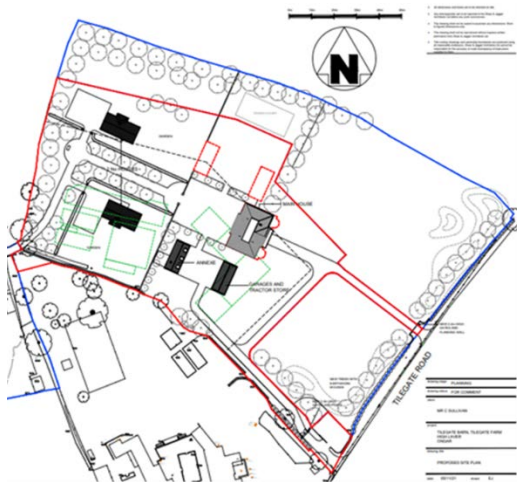
In May 2022 a Section 73 Minor Material Amendment application (EPF/3231/21) was approved creating a planning permission which consolidates the original EPF/1052/17 scheme with the subsequently approved NMAs along with some additional amendments relating to the design of the main house. This included the retention of an original secondary access road.

Figure 3



In October 2022 a Section 73 Minor Material Amendment application (EPF/1355/22) was approved for amendments to planning permission EPF/3231/21.

Figure 4



This allowed the annexe buildings to be relocated to south of the main house. Planning permission was then given under reference EPF/2883/22 for the construction of a natural pond together with new tree planting and associated landscaping Approved 6.2.23.

EPF/1355/22

Application for variation of condition 2 of EPF/3231/21. (Demolition of existing industrial and storage workshops and equestrian buildings and replacement with three residential units plus annex and outbuilding together with reconfiguring of access road and landscaping)

Approved 14.10.2022.

Approved Proposed Site Plan ((02)003 G) below:

EPF/3231/21

Application for Variation of Condition 2 for EPF/1052/17. (Demolition of existing industrial and storage workshops and equestrian buildings and replacement with three residential units plus annex and outbuilding together with reconfiguring of access road and landscaping).

Approved 30.05.2022.

NMA	Reference	Decision
NMA1	EPF/0417/18	Approved 14.3.18
NMA2	EPF/2826/18	Approved 25.10.18
NMA3	EPF/3354/18	Approved 11.01.19
NMA4	EPF/0674/19	Approved 12.4.2019
NMA5	EPF/1336/19	Approved 24.06.19
NMA6	EPF/2526/19	Approved 25.10.19
Conditions		
Discharge of Conditions 4, 6, 7, 8 and 9 of EPF/1052/17.	EPF/0307/19	Approved 29.05.19
Discharge of Conditions 3 and 5 of EPF/1052/17	EPF/3232/21	Approved 02.02.22
Discharge of condition 3 'External Finishes' on planning permission EPF/1052/17	EPF/1823/23	Approved 29.09.2023

EPF/1052/17 - Demolition of existing industrial and storage workshops and equestrian buildings and replacement with three residential units plus granny annexe and outbuilding together with reconfiguration of access road and landscaping – Approved 01.06.2017.

DEVELOPMENT PLAN

Section 38(6) Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

Epping Forest Local Plan 2011-2033 (2023):

On the 06 March 2023 at an Extraordinary Council meeting the Submission Version Local Plan was adopted by Epping Forest District Council. The now adopted Local Plan will be referred to as the Epping Forest District Local Plan 2011-2033.

The relevant policies are listed below:

- SP1 Presumption in favour of sustainable development
- SP6 Green Belt and District Open Land

SP7 The Natural Environment, landscape character and green infrastructure
DM1 Habitat protection and improving biodiversity
DM2 Epping Forest SAC and Lee Valley SPA
DM3 Landscape Character, Ancient Landscapes and Geodiversity
DM4 Green Belt
DM5 Green and Blue Infrastructure
DM9 High Quality Design
DM15 Managing and reducing flood risk
DM16 Sustainable Drainage Systems
DM18 On site management of waste water and water supply
DM19 Sustainable water use
DM21 Local environmental impacts, pollution and land contamination
DM22 Air quality

NATIONAL PLANNING POLICY FRAMEWORK (September 2023)

The revised NPPF is a material consideration in determining planning applications. As with its predecessor, the presumption in favour of sustainable development remains at the heart of the NPPF. Paragraph 11 of the NPPF provides that for determining planning applications this means either;

(a) approving development proposals that accord with an up-to-date development plan without delay; or

(b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making, but policies within the development plan need to be considered and applied in terms of their degree of consistency with the Framework.

Consultation carried out and summary of representations received

MORETON, BOBBINGWORTH & THE LAVERS PARISH COUNCIL – OBJECTION

The proposal of a tennis court together with perimeter fencing landscaping is an area outside of the Tilegate Farm redevelopment site. This application site was the subject of an application for construction of a tennis court that was **refused** by EFDC on 12 June 2023, Ref: EPF/0788/23. We understand that the applicant states that this new application has been submitted in response to EFDC's reasons for refusal.

The Parish Council has considered and reviewed both applications and the difference between this application and one that was refused under EPF/0788/23 is that the height of the yew hedge surrounding the court increases from 2.1 meters to 2.5 meters.

Regarding the previous application EPF/0788/23, the Parish Council made the following comment:

'We have no objection to the erection of a tennis in this position, providing it is:

a. retained as green belt land and not incorporated into the residential curtilage.

b. no flood light are erected.

This application, as displayed on the planning authority's website is for the erection of a tennis court together with perimeter fencing and landscaping only.

However, the letter from the applicant's agent, requests a change of residential boundary together with a change of entrance to the site.

We have no fundamental objection to the exchange of pockets of green belt land as outlined on plan No 272/01 (02) 0031.

We are not planning experts; however we believe, a potential closure of the existing entrance to the site of Tilegate Farm and the potential use of another entrance should be considered as a separate matter - probably as a different planning application. It is a highway safety consideration as to where the entrance is.

Our Parish Council's view has consistently been that the position of the entrance on the South-Western side of the site is dangerous, as it is too close to a blind bend. The existing entrance, which the applicant offers to close by a section 106 agreement, is in a far safer place for an entrance.*

** This entrance was closed in 2001 (EPF/0637/2001) "in the interest of highway safety" and the access road was re-routed. This proposed section 106 agreements would reverse this.'*

EFDC's delegated Officer report on EPF/0788/23 states:

Green Belt

Despite being in the Green Belt, the approved residential development was allowed to retain its permitted development rights when planning permission was granted.

Despite the retention of these permitted development rights, the applicant now wishes to extend the approved application site / red line / residential curtilage further north encroaching into undeveloped Green Belt Land.

This is partly because the applicant has chosen to construct a swimming pool and associated outbuildings on land within the approved application site / red line / residential curtilage which could have accommodated the tennis court which is now proposed.

It is unclear whether the swimming pool and associated outbuildings are lawful since no Certificate of Lawfulness application has been submitted to confirm this.

Green Belt serves five purposes including to assist in safeguarding the countryside from encroachment.

Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

Whilst the proposed tennis court would qualify as a facility for outdoor sport / recreation, the proposed development would not preserve the openness of the Green Belt and would conflict with the purposes of including land within it (specifically safeguarding the countryside from encroachment).

The proposed development is therefore inappropriate development which is, by definition, harmful to the Green Belt.

The proposed tennis court surface would measure 17m x 34m and would be surrounded by perimeter wire mesh fencing measuring between 1m and 2.5m in height and as such would have a significant physical and spatial impact on openness.

Unacceptable in this respect.

Permitted Development fallback position

Officers do not agree with the assertion set out in the covering letter that the submitted tennis court proposal represents a preferable outcome to the alternative PD fallback position.

Development, including that allowed under permitted development rights, should be confined to the approved developed land within the existing red lined application site rather than encroaching further into undeveloped Green Belt land to the north.

The tennis court could have been accommodated within the existing red line/residential curtilage in the northern part of the site had the applicant not built a swimming pool and large outbuildings in this location (apparently under permitted development rights, although not Certificate of Lawfulness application has been submitted to confirm that these buildings are lawful).

The approved central/northern access road and associated gates and walls are previously approved elements within the existing red line development site. The relinquishment of these elements would not compensate for the proposed further encroachment into undeveloped Green belt land to the north.

Character and Appearance

The proposed development would fail to relate positively to the context of the surrounding area, representing an incongruous development on undeveloped Green Belt land and encroaching into the countryside.

Unacceptable in this respect.

In conclusion, it appears that in application EPF/1574/23 none of these points seem to have been addressed. Additionally, the Parish Council **objects** to a 2.5m tall hedge which further impacts on the openness of the green belt and is not appropriate.

The Parish Council does not understand the purpose of resubmitting an application which fails to address the issues which were identified in under EPF/0788/23. Furthermore, our understanding is that development is not permitted under Class E in any area in front of the principal elevation of a house.

Our view is that on all these grounds above, application EPF/1574/23, Tilegate Farm, High Laver, Ongar, CM5 0EA, Construction of a Tennis Court together with perimeter fencing and landscaping should be **refused**.

Fenners Farm:

This application site was the subject of an application for the construction of a tennis court that was refused by the Council on 12 June 2023 (ref: EPF/0788/23).

The only difference between this application and the one refused under EPF/0788/23 is that the height of the yew hedge surrounding the court rises from 2.1 meters to 2.5 meters.

Given that the proposals are almost identical the previous officer report and reason for refusal still stand.

Without doubt Protection of the Green Belt was a material consideration. The Tennis Court had been shown on multiple applications, the Applicants intentions were obvious. As we can now see this decision has had a disastrous impact upon the openness of the Green Belt.

Agent's response:-

- There is no proposal to change the site's Green Belt allocation, nor is there a proposal to transfer the application site into the residential curtilage
- No floodlighting is proposed
- Land equivalent to the area of the tennis court is to be removed from the residential curtilage, along with ability to remove permitted development rights
- The existing entrance to Tilegate Farm will remain outside of the application site

Issues and considerations

Background

The previous case officer of the application under reference EPF/0788/23 for a tennis court determined that the applicant was seeking to extend the approved application site / red line / residential curtilage further north encroaching into undeveloped Green Belt Land.

He found that whilst the proposed tennis court would qualify as a facility for outdoor sport / recreation, the proposed development would not preserve the openness of the Green Belt and would conflict with the purposes of including land within it (specifically safeguarding the countryside from encroachment) and as a result refused it on the grounds listed in the history section of this report.

Plans have been amended so that the redline is around the tennis court area only. (See figure 1 above). This redline therefore falls outside of the existing curtilages of houses approved under EPF/1355/22 (see figure 4). The lawful use of the land on which this tennis court will sit is as an open field.

Given the change to the red line of the site, the current officer no longer supports the reasons for refusal made previously under EPF/0788/23. This is because whilst the area of the proposed development comprises a grass field within the Green Belt and is outside the area of the existing residential complex. It would still fall within the exceptions to inappropriate development within the Green Belt listed in paragraphs 149 and 150 of the NPPF and repeated within policy DM4 (C) (ii) of the Local Plan.

This exception allows the provision of **appropriate facilities** (in connection with the existing use of land or **a change of use**) for **outdoor sport**, outdoor recreation, cemeteries and burial grounds and allotments; **as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;**

This exception allows for the provision of appropriate facilities for an outdoor use subject to it not having an adverse impact on openness or the purposes of including land within the Green Belt. This means that a minimum amount of loss to the openness of the site would be acceptable, if the facilities provided for the outdoor sport use were the minimum necessary to accommodate the use.

The proposal will promote a sport which can only be carried out in the open air.

The proposal will involve the construction of a tennis court surface measuring 17m x 34m and the provision of a perimeter wire mesh fencing measuring 2.5m in height. These measurements reflect the standard size of a tennis court. The perimeter wire mesh surrounding the court is the minimum necessary to catch any wayward tennis balls. It is therefore considered that size of the facilities proposed are the minimum necessary to allow the sport to be played.

Once the proposed landscaping has been established the court should not be visible from long views of the site especially as the dark green colour will blend into the surrounding trees.

As the site sits outside the existing residential curtilage of the houses approved, the proposal would not further extend that defined residential curtilage. It is however appropriate to add a condition to restrict its use to the occupiers of the three dwellings that were originally granted planning permission on the site to ensure that it is not used commercially. It is therefore

considered that this change of use of the field to a tennis court would be in accordance with the stipulations of DM4(c) (ii).

Character and Appearance

The previous case officer wrote:-

“The proposed development would fail to relate positively to the context of the surrounding area, representing an incongruous development on undeveloped Green Belt land and encroaching into the countryside.

Unacceptable in this respect.”

Given my assessment of the proposal in Green Belt in above, and the numerous examples of the proposed facility in rural areas; it is my consideration that the proposal would be an expected feature in the countryside and therefore will have a neutral impact on its appearance in accordance with policy DM9 of the Local Plan. It is for this reason refusal on this ground can also not be justified.

Residential Amenity

No harmful impact in this respect.

Trees and Landscaping

The Tree Officer finds landscaping details to be acceptable subject to conditions in accordance with policies DM5 and DM9 of the Local Plan.

Highways

The proposal no longer involves the removal of the main approved central/northern access road to the site. The tennis court will be in use by the applicants, and their friends and family. It is therefore considered that the proposal will not have a significant adverse impact on highway safety in accordance with policy T1 of the Local Plan.

Conclusion

The proposal is an appropriate facility within the Green Belt which subject to conditions (requiring the consent being personal to the applicant; no additional lighting, and the structure being removed when no longer required); will have a neutral impact on the character and appearance of the site surrounding area, approval is therefore recommended.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

***Planning Application Case Officer: Sukhi Dhadwar
Direct Line Telephone Number: 01992 564597***

***or if no direct contact can be made please email:
contactplanning@eppingforestdc.gov.uk***

Conditions: (9)

- 1 The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out and retained strictly in accordance with the following approved plans:

Existing site plan, ref: (02)002A, Proposed site plan, ref: (02)003A, Proposed court site plan, ref: (02)005A, Proposed tennis court plan and elevations, ref: (02)006A, Arboricultural Impact Assessment. Protection Plan and Method Statement.

Reason: For the avoidance of doubt and to ensure the proposal is built in accordance with the approved plans.

- 3 Prior to preliminary ground works taking place, details of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and shall be provided on site prior to the first occupation and shall be retained for the lifetime of the development.

Reason: To ensure satisfactory provision and disposal of surface water in the interests of Land Drainage, in accordance with Policies DM16 & DM18 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 4 Prior to any above ground works, details of levels shall have been submitted to and approved by the Local Planning Authority showing cross-sections and elevations of the level of the site prior to development and the proposed levels of the tennis court. The development shall be carried out in accordance with those approved details.

Reason: To ensure the impact of the intended development upon the openness of the Green Belt is acceptable, in accordance with Policy DM4 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 5 If any tree, shrub or hedge shown to be retained in the submitted Arboricultural reports is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.

Reason: To comply with requirements of Section 197 of the Town and Country Planning Act 1990 as well as to safeguard the amenity of the existing trees, shrubs or hedges and to ensure a satisfactory appearance to the development, in accordance with Policies DM3 & DM5 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

- 6 Tree Protection Tree protection shall be installed as shown on Harrison Arboriculture Ltd Tree Protection Plan, Drawing No: 594-1898-8/21/2023 TPP dated 21/08/2023, prior to the commencement of development activities (including any demolition). The methodology for development (including Arboricultural supervision) shall be undertaken in accordance with the submitted Tree Survey/ Arboricultural Method Statement reports.

Reason: To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990, and to enable full and proper consideration be given to the impact of the proposed development on existing trees / hedges, so as to safeguard and enhance the visual amenities of the area and to ensure a satisfactory appearance to the development in accordance with policies DM3 and DM5 of the Epping Forest District Local Plan 2011-2033, and the NPPF 2021.

- 7 The mesh fencing to the tennis courts hereby approved shall be finished in a dark green colour and permanently retained in that form.

Reason – To minimise its visual impact on the Green Belt and immediate surroundings in accordance with policies DM4 and DM9 of the Adopted Local Plan (2023), and the NPPF.

- 8 No external lighting shall be installed on the site without the prior written consent of the Local Planning Authority.

Reason: In order to conserve protected species or their breeding sites, or resting places and residential amenities of the locality in accordance with in accordance with the NPPF, policies DM 1 and DM 4 of the Adopted Local Plan (2023).

- 9 Use of the tennis court hereby approved shall only be for purposes incidental to the enjoyment of the occupiers of the dwellings approved under reference EPF1355/22 and their families and for no other party, person or company.

Reason: In order to safeguard the character and openness of the Green Belt in accordance with Policy DM4 of the Epping Forest District Local Plan 2011-2033 (2023) and the NPPF.

Informatives: (1)

- 10 The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.