



Appeal Decisions

Hearing held on 9 January 2013

Site visit made on 9 January 2013

by Roger Clews BA MSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 February 2013

Appeal A – Ref: APP/J1535/A/12/2181575

Willow Park Farm, Miller's Lane, Chigwell, Essex IG7 6DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Tariq Hussain against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/0334/12, dated 16 February 2012, was refused by notice dated 25 July 2012.
 - The development proposed is to demolish existing dwelling, pool building and detached garage and erect a replacement two-and-a-half-storey detached dwelling and a detached single-storey garage block.
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Appeal B – Ref: APP/J1535/A/12/2181576

Willow Park Farm, Miller's Lane, Chigwell, Essex IG7 6DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Tariq Hussain against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/0392/12, dated 27 February 2012, was refused by notice dated 25 July 2012.
 - The development proposed is continuation of use of buildings A, B, C, E, F & G and land within the application site for the purposes of storage with ancillary office (use class B8).
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Decisions

Appeal A – Ref: APP/J1535/A/12/2181575

1. The appeal is allowed and planning permission is granted to demolish existing dwelling, pool building and detached garage and erect a replacement two-and-a-half-storey detached dwelling and a detached single-storey garage block at Willow Park Farm, Miller's Lane, Chigwell, Essex IG7 6DG in accordance with the terms of the application Ref PL/EPF/0334/12, dated 16 February 2012, subject to the conditions in the schedule on pages 8 and 9 of this decision.

Appeal B – Ref: APP/J1535/A/12/2181576

2. The appeal is dismissed.

Reasons

Appeal A – Ref: APP/J1535/A/12/2181575

Main issues

3. The main issues in Appeal A are:
 - (a) whether or not the proposed development is inappropriate development in the Green Belt or would harm the openness of the Green Belt; and
 - (b) whether or not the proposed development would respect its setting and the character and appearance of the surrounding area.

Inappropriate development?

4. At paragraph 89, the *National Planning Policy Framework* [NPPF] advises that the replacement of a building is not inappropriate development in the Green Belt, provided the new building is in the same use and not materially larger than the one it replaces. There are similar provisions in policies GB2A and GB15A(i) of the *Epping Forest District Local Plan*.
5. In this case, the existing house to be demolished has a footprint of about 265 square metres [sqm] and a volume of some 1,530 cubic metres [cum]. It would be replaced by a new house with corresponding measurements of some 367sqm and 2,749cum. While the two buildings would have the same use, there can be no dispute that the new house would be materially larger than the existing one.
6. However, there is a very large single-storey building about 3m away from the side of the existing house, containing a games room and lounge-bar area, a gymnasium and a swimming pool. There is also a double garage situated a similar distance away from the house. Because of the proximity of these buildings to the house, and the fact that they provide for domestic activities very closely related to the residential use of the house itself, I agree with the appellant that they should be considered as part of the building to be replaced for the purposes of the NPPF and Local Plan tests.
7. Considering the proposal on this basis, the total footprint to be replaced is about 625sqm and the total volume is some 3,043cum. The total footprint of the replacement development (house plus garage block) would be about 511sqm and its total volume about 3,081cum. Thus there would be a substantial reduction, of about 20%, in footprint and a marginal increase of 38cum in volume. But since the increase in volume would be only about 1.2%, the new building could not be said to be materially larger than the one it is to replace.
8. Criterion (ii) of policy GB15A requires that the replacement dwelling should not have a greater impact than the original on the openness of the Green Belt. The new house would be some 2m higher than the highest part of the existing dwelling on the site and it would have a longer roof ridge, which in combination with its increased volume would give it a significantly greater overall bulk. However, the harm which this would cause to the openness of the Green Belt would be balanced by the substantial reduction in the area of land covered by buildings. As a result, even after taking into account the substantially lower height of the pool and bar building compared with the new house, in my view the overall effect of the development on the openness of the Green Belt would

be neutral. Thus there would be no conflict with Local Plan policy GB15A(ii) or with that aspect of policy GB7A which also seeks to protect the Green Belt's openness.

9. On this basis, I conclude that the proposed development would not be inappropriate development in the Green Belt, and so would not conflict with NPPF policy 89 or with Local Plan policies GB2A and GB15A.

Effect on character and appearance

10. The house and the other buildings on the site date from the mid-1980s. While the house appears to have been designed in imitation of a rural vernacular style, overall the buildings have little architectural merit and the Council have raised no objection in principle to their replacement.
11. Miller's Lane contains buildings in a range of different styles, including traditional timber barns, simple rendered and gabled bungalows, a more formal single-storey dwelling probably dating from the 19th century, and, in and around Miller's Close, a group of two-storey houses of typical post-war appearance. At the former kennels site opposite Willow Park Farm, planning permission has recently been granted for a new dwelling in a style reminiscent of the Arts and Crafts movement.
12. In the wider rural area around Chigwell, there is a similar variety in the character of the buildings. Particularly noticeable is the presence of a significant number of large houses of fairly recent date, some standing in large grounds. These tend to espouse either an Arts and Crafts design idiom, like the new house permitted at the kennels site, or, more typically, a neo-Georgian style.
13. The proposed dwelling at Willow Park Farm would be a further example of the latter. The design is well-proportioned and the front and rear elevations would each present a pleasing symmetry, while the proposed materials (predominantly brick, stone and slate), would be similar to those found on other buildings in the area. The garage block would be built in a consistent style and would appear appropriately subordinate to the house.
14. Perhaps most importantly, it is proposed that the construction of the new dwelling would be accompanied by a re-modelling of the landscaping on the site¹. The new house would be set further back into the site than the existing house and there would be a new, more formal pattern of hard and soft surfacing, together with new tree- and hedge-planting, in front of it. All this would provide a fitting setting for the formal architecture of the house itself.
15. The Council would prefer an architectural treatment that reflects the rural vernacular. However, I consider that the proposed design would fit in appropriately with the wide variety of building styles found in the surrounding area. While the new house would make a significant architectural statement, its site is sufficiently large that it would not appear overly ostentatious.
16. For these reasons I conclude that the development proposed under Appeal A would respect its setting and the character and appearance of the surrounding area, and would not conflict with Local Plan policies GB7A, DBE1 and DBE4. In

¹ As illustrated in the Landscape Assessment by Open Spaces Consultants, dated 8 October 2012, which was submitted with the appeal.

summary, these policies, which are consistent with the NPPF, require that new development, in the Green Belt and elsewhere, respects its setting in terms of character, detailed design and external materials, is appropriately sited within the street scene and the wider landscape, and has no excessive adverse impact on rural character or visual amenity.

Conditions

17. The conditions in the schedule on pages 8 and 9 below are based on those suggested by the Council and discussed at the hearing. Condition 2 is needed for the avoidance of doubt and in the interests of proper planning. Condition 3 is necessary because the basis on which planning permission is being granted for the proposed buildings is as replacements for the existing buildings. Conditions 4 and 5 are needed to define the scope of the planning permission in accordance with the planning application, for the avoidance of doubt in future and to ensure that the residential use does not expand into the surrounding countryside.
18. Conditions 6 to 10 are necessary to ensure that the external appearance of the proposed development and the hard and soft landscaping are appropriate to its rural location in the Green Belt, and that there is no excess surface-water run-off from the driveway and vehicle turning area. Condition 11 is needed to ensure that adequate protection is given to any protected species that may be present on the site. Condition 12 is necessary in the interests of highway safety, condition 13 in order to safeguard the living conditions of neighbouring residents and condition 14 to ensure that adequate provision for car-parking is retained.
19. Finally, condition 15 is needed, notwithstanding the appellant's objections, in view of the fact that the site lies in the Green Belt and the proposed development is permitted on the basis that the replacement buildings would not be materially larger than those being replaced. Allowing extensions or outbuildings to be built as permitted development would undermine that justification. However, I see no need for the condition to prevent a hard surface being laid to the side of or behind the new house and so I have removed the reference to Class F from the Council's suggested condition.
20. The Council had also suggested a series of conditions requiring possible contamination of the site to be investigated and remediation measures to be carried out if contamination was found. But I see no reason to think that the site to be developed has been part of the working area of the farm, except perhaps in the distant past when harmful contamination is unlikely to have occurred. Consequently I consider those conditions to be unnecessary.

Appeal B – Ref: APP/J1535/A/12/2181576

Main issue

21. The main issue in Appeal B is the effect of the use for which planning permission is sought on the character and amenities of the surrounding area, which lies in the Green Belt.

Effect on character and amenities of the area

22. The buildings which are the subject of Appeal B include four large agricultural barns and two former stable blocks. They are currently used by Mr Hussain

and his son in connection with their property and development business. I saw during my site visit that the buildings contain a wide variety of vehicles, machinery and tools, building materials and accessories, domestic furniture and white goods. Parts of the stable buildings also appear to be used to provide office, kitchen and toilet facilities.

23. The access to the site is off Miller's Lane, some 200m south of its junction with Gravel Lane. While Gravel Lane is a fairly busy traffic route, I saw during my site visit that Miller's Lane is a quiet country lane, with infrequent traffic. It is subject to a weight restriction preventing its use by vehicles over 7.5 tonnes except for access to premises along it.
24. There is no evidence that the current use of the buildings involves large-scale activity or a large number of vehicle movements, and there is no record of any road accidents associated with it. I was told that Mr Hussain and his son typically leave the premises in the morning to travel to the sites where they are working, and return in the evening. There are occasional deliveries or collections of materials from the premises but these are infrequent. This account is supported by the absence of any complaints or objections from neighbours or the local highway authority in respect of the current use.
25. However, in reaching a decision on this appeal I have also to consider what could happen if Mr Hussain were to sell the property, or indeed if the nature of his business were to change. The number and sizes of the buildings involved mean that they could potentially accommodate quite a substantial storage and distribution business. TRICS figures provided to the Council by the local highway authority indicate that a comparable land-use of this size in an urban area could generate up to 80 vehicle movements a day.
26. While fewer movements would normally be expected at a rural site such as this, even half that number is likely to represent a considerable increase in the amount of traffic using Miller's Lane, on the evidence before me. Because of the nature of a B8 use it is also likely that a high proportion of the vehicles would be HGVs, which are normally prevented from using the lane. These two factors would, in my view, have a significant, harmful impact on the quiet, rural character of Miller's Lane. That impact could well be exacerbated by noise from vehicle movements and other activities within the site.
27. In reaching this view, I accept that if the buildings were to revert to agricultural use, this would also be likely to result in increased traffic movements to and from the premises and increased activity on the site. But the frequency of agricultural traffic and the intensity of agricultural activity tend to vary according to the seasons, whereas a B8 use would most likely generate constant traffic flows through the year. Moreover, unlike storage and distribution premises and their associated traffic, farming activities and agricultural vehicles are characteristic features of rural areas. For these reasons, a reversion to agricultural use would not have the harmful effects on the character and amenities of the area that a B8 use could cause.
28. If planning permission were to be granted, a condition could be imposed preventing the storage of materials outside the buildings on the site. But any resulting benefit to the openness of the Green Belt and the character and appearance of the area would, in my view, be outweighed by the harmful effects I have identified.

29. Mr Hussain submitted a Unilateral Undertaking after the hearing, the effect of which would be to prevent the buildings from being used except by a person resident at Willow Park Farm, or by a company controlled by such a person, in the event that planning permission were granted. However, this would not prevent a future increase in the intensity of the activity and frequency of vehicle movements associated with a B8 business on the site. Similarly, a personal permission preventing the use being carried out by anyone other than Mr Hussain and his son would not prevent such intensification of use from occurring in the future. In any event, on the evidence before me in this case I do not find the strong compassionate or other personal grounds which Circular 8/93 advises are needed to justify such a personal permission².
30. For these reasons, I conclude that the use for which planning permission is sought under Appeal B has the potential to cause significant harm to the character and amenities of the surrounding area, which lies in the Green Belt. Although the current level of use does not have this harmful impact, no means of ensuring that the proposed B8 use would not do so in future has been demonstrated to exist. Consequently, granting planning permission would conflict with Local Plan policies GB8A(iii) and ST4(iv), which seek to ensure that any proposed use does not have a significant detrimental impact on the character and amenities of an area.
31. Whatever the outcome of Appeal B, there is no evidence that the Council are contemplating taking action against Mr Hussain's existing use of the site. Nonetheless, I am aware that section 3 of the NPPF supports the sustainable growth of business and enterprise in rural areas, including through conversion of existing buildings, an objective that would be met by the Appeal B proposal. On the other hand, the NPPF also advises that planning should take account of the different character of different areas, protecting the Green Belt and recognising the intrinsic character of the countryside. These objectives would be compromised by the proposed development and I consider that the resulting harm would clearly outweigh any benefits in terms of promoting the growth of business and enterprise. Hence the proposal would not represent sustainable development, for which the NPPF advises there is a presumption in favour.

Conclusions

32. For the reasons given above, and having had regard to all other matters raised, I conclude that Appeal A should succeed, and planning permission should be granted subject to conditions, but that Appeal B should be dismissed.

Roger Clews

Inspector

² See Circular 11/95: *The Use of Conditions in Planning Permissions*, paragraph 93.

APPEARANCES

FOR THE APPELLANT:

Mr I Coward BA(Hons) MA MRTPI	Collins and Coward Planning & Development Consultancy
Mr W Hussain	Appellant's son
Mr C Biss RIBA	BB Partnership Ltd
Mr K Law RIBA	BB Partnership Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs K Smith BA(Hons) MA MRTPI	Epping Forest District Council
Cllr John Knapman	Epping Forest District Council

INTERESTED PERSON:

Cllr Richard Alvin	Chigwell Parish Council
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Copy of Council's letter of notification of the hearing arrangements, and list of persons notified.
- 2 Copy of decision notice, plans and committee report for application Ref EPF/1771/12 - Land adjoining Rest Harrow, The Kennels, Miller's Lane, Chigwell.
- 3 Unilateral Undertaking dated 30 December 2012 by Mrs Nasim Hussain and Svenska Handelsbraken AB Co UK to the Council [NB withdrawn and replaced by the Unilateral Undertaking referred to in paragraph 30 of this decision].
- 4 Land Registry register extract for title number EX221679: Willow Park Farm, Miller's Lane, Chigwell.
- 5 Copy of the local highway authority's response to consultation on application Ref EPF/0392/12, dated 14 June 2012.
- 6 Copy of an email from Mr M Lane, local highway authority development management officer, to Mrs Smith, dated 9 October 2012.

PHOTOGRAPHS SUBMITTED AT THE HEARING

- 1 Sheet containing two photographs of the former kennels site on the opposite side of Miller's Lane from the appeal sites.

**SCHEDULE OF CONDITIONS FOR THE DEVELOPMENT PERMITTED UNDER
APPEAL A – Ref: APP/J1535/A/12/2181575**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Except as otherwise required by any of the following conditions, the development hereby permitted shall be carried out in accordance with the following approved plans: ESA-1000, ESA-201 Rev B, ESA-210 Rev B, ESA_300 Rev D, ESA_301 Rev C, ESA_302 Rev C, ESA_303 Rev D, ESA_304 Rev A and ESA_310 Rev B.
- 3) No later than six months after the date of substantial completion of the dwellinghouse hereby permitted, the existing house, the adjacent pool and bar building and the adjacent garage as shown on drawing No ESA-201 Rev B shall all be demolished in their entirety and all materials resulting from the demolition shall be removed from the site.
- 4) No residential use shall take place except within the area inside the red line identifying the application site on drawing No ESA_300 Rev D.
- 5) The building identified as building D on drawing no. ESA-201 Rev B shall only be used as ancillary accommodation for the approved dwellinghouse and shall not be occupied as a separate residential unit.
- 6) No construction works above ground level shall take place until documentary and photographic details of the types and colours of the external finishes have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until details of levels have been submitted to and approved in writing by the local planning authority. The submitted details shall show cross-sections and elevations of the levels of the site prior to development and the proposed levels of all ground-floor slabs of buildings, roadways and access-ways and landscaped areas. Development shall be carried out in accordance with the approved details.
- 8) No development or site clearance shall take place until a scheme of soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include a statement of the methods, including a timetable, for its implementation (linked to the development schedule) and indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
- 9) The soft landscaping scheme shall be carried out in accordance with the approved details and the agreed timetable. If any plant dies, becomes diseased or fails to thrive within a period of five years from the date of planting, or is removed, uprooted or destroyed, it must be replaced by another plant of the same kind and size and at the same place, unless the local planning authority agrees to a variation beforehand in writing.
- 10) No development shall take place until details of the extent of the driveway and vehicle turning area for the development, together with the proposed surfacing materials and the means of surface water drainage, have been submitted to and approved in writing by the local planning

authority. Development shall be carried out in accordance with the approved details, and the approved surface treatment and means of surface water drainage shall be completed prior to the first occupation of the development or within one year of the substantial completion of the development hereby approved, whichever occurs first.

- 11) No development shall take place until surveys have been undertaken to check for the presence of bats and Great Crested Newts on the site and the surveys have been submitted to and approved in writing by the local planning authority. If the surveys reveal that bats and/or Great Crested Newts are present on the site, no development shall take place until details of proposed mitigation works and a timetable for their implementation have been submitted to and approved in writing by the local planning authority. All the approved mitigation works shall be carried out in accordance with the approved details and timetable.
- 12) No development shall take place until wheel-washing facilities for vehicles leaving the site during construction works have been installed. The installed facilities shall be used to clean vehicles immediately before they leave the site.
- 13) No construction/demolition works or ancillary operations, including vehicle movements on site which are audible at the boundary of the appeal site, shall take place outside the hours of 0730 to 1830 on Mondays to Fridays and 0800 to 1300 hours on Saturdays and no such works or operations shall take place at any time on Sundays or on bank or public holidays unless otherwise agreed in writing beforehand by the local planning authority.
- 14) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other Order revoking, further amending or re-enacting that Order), the garages hereby approved shall be retained so that they are capable of allowing the parking of cars together with any ancillary storage in connection with the residential use of the site, and shall at no time be converted into a room or used for any other purpose.
- 15) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other Order revoking, further amending or re-enacting that Order), no enlargement of the dwellinghouse permitted by virtue of Classes A and B of Part 1, Schedule 2 to the Order and no development permitted by Class E of Part 1, Schedule 2 to the Order shall be carried out.