



PLANNING STATEMENT

November 2023 // FOXDALE, WYATTS GREEN ROAD, WYATTS GREEN, CM15 0PT

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1 INTRODUCTION

1.1 This Planning Statement has been prepared to support an application for the erection of a single storey outbuilding comprising a swimming pool, gym and dance studio at Foxdale, Wyatts Green Road, Wyatts Green, Brentwood, Essex, CM15 0PT.

2 THE APPLICATION SITE

2.1 Foxdale is a two storey detached dwelling located on the southwestern side of Wyatts Green Road. The property has a large gravel driveway to the front of the property, with a detached garage forward of the principle elevation. The rear garden extends circa 95m from the rear elevation, with existing outbuildings (to be demolished) located towards the centre and rear of this garden.

2.2 The main dwelling has a single storey rear extension, consented in July 2013 under 13/00590/FUL.

2.3 The property has a site area of circa 2,000 sqm.

3 THE PROPOSAL

3.1 The Applicant proposes to erect a single-storey detached outbuilding, through a householder planning application within the rear garden. The proposed building will comprise the following:

- Gym and Dance Studio
- WC
- Swimming Pool
- Plant Room

3.2 The application site contains an enlarged detached dwelling. The dwelling occupies an ample-sized, rectangular plot and has a deep rear garden. The proposed outbuilding is freestanding; its footprint is proposed to cover less than 10% of the total curtilage area.

4 BACKGROUND

4.1 In on 19th October 2023 a Section 192 application for a lawful development certificate was issued by the Council (reference 23/00976/S192) for the erection of an outbuilding under Class E of Part 1 of Schedule 2 of the Town and Country Planning

(General Permitted Development) (England) Order 2015 (as amended). The LDC confirmed that the proposed development for a single storey outbuilding including a Gym, Dance Studio, W.C, Swimming Pool and Plant Room was considered lawful as at the date of submission on 8th August 2023.

- 4.2 There has been no change to Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) since August 2023 and it is considered that the outbuilding would still be considered lawful.

5 PLANNING POLICY

- 5.1 The Development Plan for Brentwood Borough Council comprises Brentwood Local Plan 2016-2033, which was adopted on 23rd March 2022. It, therefore, carries full weight in the decision-making process. In addition, material considerations include the National Planning Policy Framework (2023) and National Planning Policy Guidance.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 5.2 The Government published the revised National Planning Policy Framework (NPPF) in September 2023, which sets out the overarching national policy framework for planning. The following NPPF principles are considered particularly relevant to the Application Scheme, and duly the development has been fully prepared to respond to such principles. National Planning Policy Framework (NPPF) 2023, including paragraphs:

- 7 Sustainable development
- 8 Three objectives of sustainable development
- 10-12 Presumption in favour of sustainable development
- 38 Decision-making
- 47-50 Determining applications
- 126-136 Achieving well-designed places
- 137-151 Protecting Green Belt land

NATIONAL PLANNING PRACTICE GUIDANCE (NPPG)

- 5.3 The National Planning Practice Guidance (NPPG) documents were published from March 2014 and are regularly updated to respond to new policy documents and legislation. The following NPPG documents are considered relevant to the Application Scheme.

- Consultation and pre-decision matters (2021);
- Design: process and tools (2019)
- Effective use of land (2019)
- Green Belt (2019)
- Housing: optional technical standards (2015)

BRENTWOOD LOCAL PLAN 2016-2033

5.4 The Brentwood Local Plan sets out the long-term vision, spatial strategy and strategic policies that will guide sustainable development in Brentwood until 2033. The document guides all development proposals and emerging planning policy. The following Local Plan policies are considered as applicable to the Application:

- Strategic Policy MG02
- Strategic Policy BE14
- Strategic Policy NE01
- Strategic Policy NE02

6 PLANNING APPRAISAL

GREEN BELT

6.1 The Site is located within the Green Belt as defined on Proposals Map, accompanying the adopted Brentwood Local Plan 2016-2033. Strategic Policy MB02 follows the NPPF principles, where permission will not be granted for inappropriate development in the Green Belt other than in very special circumstances. All development proposals will be assessed in accordance with the provisions of national planning policy.

6.2 The NPPF states that the Government attaches great importance to the Green Belt. The fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open. Therefore, the essential characteristics of Green Belts are their openness and their permanence.

6.3 Paragraph 149 of the NPPF states that a Local Planning Authority (LPA) should regard the construction of new buildings and other forms of development as inappropriate in the Green Belt with some exemptions which include:

(a) buildings for agriculture and forestry;

(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;

(c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

(d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

(e) limited infilling in villages;

(f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

(g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or*
- not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.*

6.4 While the decision of *Sevenoaks District Council v SSE and Dawe* [1997] found that an existing detached domestic outbuilding could be regarded as part of the dwelling, and therefore an extension, they need to be normal domestic adjuncts which should typically have a close physical relationship with the main house. The proposed outbuilding is some 33m from the rear of the existing dwelling and as a result, could not be considered a normal domestic adjunct and as a result, can only be concluded to be inappropriate development within the Green Belt.

VERY SPECIAL CIRCUMSTANCES

6.5 As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Therefore, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt when considering any planning application. 'Very special circumstances' will not exist unless the potential harm to the Green Belt because of inappropriateness, and any other harm, is outweighed by other considerations.

6.6 In this case, the 'very special circumstances' is the fallback of the permitted development single storey outbuilding under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and considered lawful by the Council in the consideration of 23/00976/S192.

- 6.7 Various court cases have considered the concept of a fallback development as a material consideration. It is described in *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314 as “familiar”. Paragraph 27 of that judgment by the Court of Appeal confirms that there should be a “real prospect” of a fallback development being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances. There is, for example, no legal requirement for a landowner or developer to say precisely how any available permitted development rights would be utilised.
- 6.8 In *Gambone v SSCLG* [2013] a two-stage approach was set out, where a determination must first be made concerning whether the fallback position is a material consideration, before weight is ascribed. This case law sets out two key questions:
- 1) Is there greater than a theoretical possibility that the development might take place (the “real prospect” test)?
 - 2) If there is a greater than theoretical possibility, what weight should be ascribed?
- 6.9 In order to determine the first stage of this exercise, the LPA will need to consider information on the nature and content of the alternative uses or operations in comparison to the appeal proposal, and evidence as to the likelihood of the alternative use or operations being carried on or carried out.
- 6.10 In this case, the certificate considered that a single storey outbuilding including a Gym, Dance Studio, W.C, Swimming Pool and Plant Room would be lawful. The proposed application seeks the exactly the same size building and layout, with the exception that the proposal would be located 1.8m closer to the boundary of the site than the permitted scheme. The only reason this application is required is that Class E of the GPDO only permits a height of building to 2.5m within 2m of the boundary of the curtilage and the Applicant seeks to ensure that the proposed building is not within the centre of their garden. The possibility that the permitted development outbuilding would be constructed if planning permission were refused is significantly greater than a theoretical possibility.
- 6.11 In terms of the weight ascribed to the fallback, the LPA should then consider whether the fallback be similar or significantly more harmful than the appeal scheme or would the effect be less harmful?
- 6.12 In this case, the harm is considered to the openness of the Green Belt. The proposed outbuilding is identical in size to that considered lawful under 23/00976/S192 and is

located in a similar location within the rear garden. The harm to the openness of the Green Belt, through both visual and spatial, will be the same and there will be no greater harm. Therefore, a genuine fallback exists, which is sufficient justification for a proposal which would be considered inappropriate development in the Green Belt.

- 6.13 It is this fallback position that is considered to amount to a very special circumstance that outweighs the potential harm because of inappropriateness.

RESIDENTIAL AMENITY

- 6.14 The proposed building, while closer to the northern boundary of the curtilage, it is still 42m from the closest neighbouring residential property, on the location of two existing single storey structures, which will be removed.

- 6.15 The orientation of the existing dwellings, together with the height and single storey aspect of the proposed, it is considered that the proposal would not cause a harmful impact on the occupiers of the neighbouring dwellings by way of overbearing impact, loss of privacy or loss of light and would comply with Policy BE14 (1.i), (1.j) and (1.l) of the Brentwood Local Plan.

7 CONCLUSION

- 7.1 This is an application for a single storey outbuilding comprising a Gym, Dance Studio, W.C, Swimming Pool and Plant Room.

- 7.2 While this Statement acknowledges that the proposed replacement dwelling would not meet the exceptions set out within Paragraph 149 of the NPPF and must be considered as inappropriate development, we have demonstrated that permitted development is achievable for an identical building, located 1.8m in from the proposed building's location. Moreover, there is a real prospect of these works being undertaken if planning consent is refused for this outbuilding. As a result, there is a fallback position for the Applicant, which should be a significant material consideration in determining the Application.

- 7.3 Accordingly, we make the case that other considerations outweigh the harm identified within Paragraph 148 of the NPPF. Therefore, looking at the Application as a whole, we would argue that very special circumstances exist to justify the development and request that planning permission is granted.