
Appeal Decision

Site visit made on 6 December 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 22 December 2016

Appeal Ref: APP/R0660/W/16/3158701
Birchways, Kings Lane, Cranage CW10 9LX

- 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 Paul Watson against the decision of Cheshire East Council.
 - The application Ref 16/2891C, dated 13 June 2016, was refused by notice dated 9 August 2016.
 - The development proposed is 'Change of use from previous orchard to residential curtilage'.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from previous orchard to residential curtilage at Birchways, Kings Lane, Cranage CW10 9LX in accordance with the terms of the application, Ref 16/2891C, dated 13 June 2016, and the location plan and drawing number 16/00421E submitted with the application.

Procedural Matters

2. The description of the proposed development in the header of my decision is drawn from the application form but excludes wording that does not describe an act of development. For the same reason I have excluded the word 'retrospective'.
3. At the time of the Council decision the change of use subject to appeal had already taken place. Fencing, which is not identified as forming part of the development subject to appeal¹, has also been erected along 3 sides of the appeal site and alongside the pre-existing garden of Birchways. To assess any implications that the fencing may have, I sought clarification from the Council about whether the normal permitted development rights for such development apply at the appeal site². I allowed an opportunity for both main parties to comment on the information that I received, and have taken their comments into account in my decision.
4. The fact that the change of use has already taken place has not affected my decision, which I have made on the basis of the planning merits of the case.

¹ See question 3 of the application form and question E of the appeal form

² See Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Main Issue

5. The main issue is the effect of the change of use on the openness and character of the surrounding countryside.

Reasons

6. The appeal property is one of two neighbouring detached dwellings (Birchways and Pump Cottage) set within gardens. Land to its rear is occupied by woodland, covered by Tree Preservation Order, and an open field and golf course exist to the north-west of the site. The area is designated as 'open countryside' in the Congleton Local Plan First Review (CLPFR) 2005 and has a rural character.
7. The National Planning Policy Framework (the 'Framework') stresses the need for planning decisions to recognise the intrinsic character and beauty of the countryside.
8. Policy PS8 of the CLPFR states that development in the open countryside will only be permitted if it would be for one or more of a number of specified purposes. The change of use subject to appeal is not for any of these purposes and therefore does not comply with this Policy. However, by setting a presumption against development proposals which fall outside the types listed in it, irrespective of the impact that they may have or benefits that they may bring, Policy PS8 is more restrictive than the Framework. In accordance with paragraph 215 of the Framework, I have therefore given reduced weight to Policy PS8. This point has not limited the weight that I have given to the need to preserve the character of the area.
9. The change of use subject to appeal covers a strip of land running across the entire width of the appeal property. By expanding the size of the garden, it has had a domesticating effect on this area. It has also led to a need to enclose the area for security purposes and could lead to pressure for further domestic structures to be erected on the land.
10. However, the area of the appeal site is of limited depth and size and is at the rear of the plot when viewed from Kings Lane. Views towards it from parts of Kings Lane are also interrupted by the buildings at Birchways and Pump Cottage and by existing vegetation. Whilst the fencing referred to earlier can be seen in some views towards the site, including from Kings Lane, this fencing is not part of the change of use subject to appeal. Even if the fencing were to be removed there is no reason why an alternative boundary treatment which is of a suitable design and appearance could not be implemented.
11. Whilst I understand that trees forming part of an orchard may have been removed, there is no suggestion that these were subject to statutory protection and dismissal of the appeal would not be likely to lead to their replacement.
12. For the above reasons, I consider that the change of use has not caused substantive harm to the openness or character of the surrounding countryside and does not conflict with the provisions of the Framework related to this matter. By extending the depth of the area of private space at the rear of the house it has also made the property more attractive for occupation for example by larger families.

13. These circumstances, and the reduced weight which is attributable to Policy PS8, mean that a decision which is not in accordance with this Policy is justified in this case. If the erection of 7 houses and a hotel on land next to the appeal site were to proceed in accordance with currently approved plans this would further limit the prominence of the development subject to appeal from public viewpoints.
14. No conditions have been suggested by the Council. As the development has already been carried out I have not included any condition specifying by when development must start or specifying the approved plans. The approved plans are however listed in my formal decision. Whilst I have considered whether a condition should be imposed restricting permitted development rights for domestic buildings and other structures, these rights are subject to limitations and such a condition would not comply with the advice in the Planning Practice Guidance³ that such rights should only be removed exceptionally.
15. For the reasons given above I conclude that the appeal should be allowed.

Jonathan Clarke

INSPECTOR

³ Paragraph: 017 Reference ID: 21a-017-20140306