The Planning Inspectorate

Appeal Decision

Site visit made on 28 August 2019

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 10 September 2019

Appeal A Ref: APP/A0665/C/19/3224527
Appeal B Ref: APP/A0665/C/19/3224528
Oak Bank Farm, Marsh Lane, Dutton, Northwich, WA4 4JN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Richard Bedford and Appeal B by Mrs Sally Bedford against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice was issued on 18 December 2018.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a dwelling and garage.
- The requirements of the notice are:- i. demolish the unauthorised dwelling and garage and ii. remove all associated materials from the land.
- The period for compliance with the requirements is 9 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeals are allowed and the enforcement notice is quashed.

The appeals on ground (a) and the deemed application

1. The appeal site is in open countryside within the North Cheshire Green Belt. It comprises part of a former farmstead known as Oak Bank Farm. The original farmhouse was fairly recently replaced by a new dwelling and then subsequently extended; its site was severed from that of the adjacent agricultural buildings, one of which occupied the appeal site. Here, planning permission was granted by the Council in September 2013 to convert this brick built agricultural building into a dwelling (ref: 13/01888/ FUL). Planning permission was also granted in November 2014 for the erection of a detached double garage to be sited between this new dwelling and Marsh Lane (ref: 14/04120/FUL). In the event, the agricultural building was demolished and replaced by a newly built dwelling and a garage was built somewhat larger than that which was approved. These are the subject of the enforcement notice. The appellants also own the adjoining small paddocks and a substantial, steel-framed barn.

2. Policy STRAT 9 of The Local Plan (Part One), adopted 2015, seeks to restrict development to that which requires a countryside location and cannot be accommodated within identified settlements. It indicates that in the Green Belt, restrictions will apply to development in line with the National Planning Policy Framework (The Framework). This regards the construction of new buildings as inappropriate in the Green Belt, subject to a number of exceptions.

3. Accordingly, the main issue is i. whether or not the development is inappropriate in the Green Belt; ii. the effect of the development on the openness of the Green Belt; and iii. if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

4. Considering first the new dwelling, the appellants submit that the development is merely a technical breach of policy as what now stands on the site is broadly similar to that which was approved. One of the exceptions in para.145 of the Framework is:- *d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*. However, as the dwelling is not in the same use as the agricultural building it replaced, it clearly does not accord with this exception. It therefore an inappropriate form of development which is, by definition, harmful to the Green Belt. As the previous building must have been demolished in order to allow the construction of this new building, there is a harmful impact on the openness of the Green Belt; a new dwelling now stands on what was most recently a cleared site and before that the site of an agricultural building, whose 'appropriateness' in policy terms rendered its impact on openness to be neutral.

5. Turning to the circumstances of this case, the new dwelling occupies the same site and a very similar footprint to that of the approved conversion, save for the addition of a small, single-storey wing to the south. It is similar in form to the original building, being mainly single-storey with a small part two-storey. It is faced in similar brickwork, with a slate roof. Whilst it is larger in volume than the approved scheme by some 18%, this does not appear to me to result in its being noticeably more imposing as the principal dimensions are broadly similar; the main difference is the additional small wing which is not visually prominent.

6. I accept that the dwelling is less agricultural in nature than the approved scheme, with more domestic fenestration. However, it is well screened and, in its context adjacent to the recently built farmhouse, appears subordinate and not unduly out of character. Indeed, the site appears to have been inspected during an advanced stage of construction in 2014 by a planning officer dealing with the application for the garage, who noted that 'the conversion of the barn is nearing completion'. There are no objections from local residents or the Parish Council.

7. Local Plan Policy STRAT 1 would normally resist the erection of new dwellings in the countryside as being a form of unsustainable development, particularly in this case where there would be considerable reliance on the use of the private car. However, the impact here is little different to that which would have flowed from the implementation of the authorised scheme.

8. Given the substantial weight that is given to harm to the Green Belt, the above circumstances alone would not normally be sufficient to clearly outweigh the harm by reason of inappropriateness and loss of openness. However, both the Framework and Planning Practice Guidance make it clear that there is a clear public interest in enforcing planning law and planning regulation in a proportionate way. Where relevant, regard should be had to the potential impact on health, housing needs and welfare of those affected by a proposed action.

9. It has not been disputed that the appellants bought the dwelling in good faith, believing it to be authorised and having taken appropriate professional advice. They are now in the position where they would lose their home, suffering serious financial and personal consequences, through no apparent fault of their own. They have now lived here for some four years, their child attends a local school and they manage the adjacent smallholding, including the barn, keeping chickens and pigs, albeit that this is not a commercial venture.

10. Were the dwelling to be demolished, the appellants would continue to own the cleared plot of land but, to my mind, would have little prospect of gaining permission for a new dwelling, given the restrictive policy applicable to new housing in the Green Belt. It is conceivable that the appellants could take action against the vendor or their advisors to seek financial redress. However, this is likely to be expensive and time consuming, with no clear prospect of success, further adding to any emotional distress.

11. In the specific circumstances of the present case, where the dwelling is broadly similar to the scheme that was approved and the impact on the appellants so severe, I consider it disproportionate in terms of the public interest to require the demolition of the dwelling. Accordingly, the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development is clearly outweighed by these considerations, which amount to the very special circumstances which lead me to allow the appeal in relation to the dwelling. As with the originally approved scheme, it is necessary to remove permitted development rights to ensure that no disproportionate extensions further diminish the openness of the Green Belt.

12. Having come to the above conclusion, I now turn to the garage, which I understand was almost complete when the appellants purchased the property. Given that I shall be granting permission for the house, the garage now falls to be considered as an extension to this building. Para.145 c) of the Framework regards such development as not inappropriate *provided that it does not result in disproportionate additions over and above the size of the original building*.

13. I have not been made aware of any development plan policy which might guide me on the issue of proportionality. The November 2014 permission for the garage allowed an increase in volume in the region of 20% of the approved dwelling. The garage as built appears to be an addition in volume in the region of 27% to that of what has now become the original dwelling. This to my mind does not appear disproportionate. The garage matches the dwelling in both materials and design and, although somewhat larger than that which was originally approved, is well screened by vegetation and does not appear unduly prominent. It is therefore not an inappropriate form of development in the Green Belt and, as I find no other harm, the appeals will also succeed in relation to this part of the development.

14. For the reasons given above, I conclude that the appeals should succeed on ground(a) and planning permission will be granted.

The appeals on ground (g)

15. In the light of my conclusion above, there is no need to consider this ground.

Formal Decisions

16. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a dwelling and garage at Oak Bank Farm, Marsh Lane, Dutton, Northwich, WA4 4JN, referred to in the notice, subject to the following condition:

    Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling as set out in Class A of Part 1 of Schedule 2 to the Order shall take place without the prior written approval of the local planning authority.

B.S.Rogers

Inspector