The Planning Inspectorate

# Appeal Decision

Site visit made on 17 December 2019

**by J Hunter BA (Hons) Msc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30th January 2020**

**Appeal Ref: APP/A0665/W/19/3238561**
**Kelsall Lodge, Chester Road, Kelsall, Tarporley CW6 0SP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Ms S Wrench against the decision of Cheshire West & Chester Council.
- The application Ref 19/01058/S73, dated 17 March 2019, was refused by notice dated 2 October 2019.
- The application sought planning permission for a log cabin for use as dependant relatives' suite without complying with a condition attached to planning permission Ref: 06-0766-FUL, dated 6 September 2006.
- The condition in dispute is No 5 which states that: *When the cabin hereby approved ceases to be occupied by the dependant relatives of Mr T Fox and Ms S Wrench the use hereby permitted shall cease and the land shall be returned to its former use of garden, unless otherwise agreed in writing with the Local Planning Authority, and all materials and equipment brought to the site in connection with the use shall be removed.*
- The reason given for the condition is: *The development is not in accordance with the general policy or practice of the local planning authority and permission has only been given in view of the particular circumstances of the applicant.*

## Decision

1. The appeal is dismissed.

## Background and Main Issues

2. The appeal property is a detached log cabin located within the grounds of a Grade II listed building within the Green Belt.

3. The Council has consistently maintained its position that the proposal constitutes inappropriate development in the Green Belt and an initial planning application made in 2005 was refused. A revised scheme was later submitted, and the Council granted planning permission in 2006 on the basis that there were very special circumstances that justified the development.

4. The very special circumstances in this case were that the proposed cabin was needed to accommodate elderly relatives of the original applicants. It was considered that whilst an extension to the host dwelling would normally have be preferable, the listed building could not be extended in that way that would offer sufficient accommodation without causing harm to the character of the heritage asset. Consequently, planning permission was granted on the basis

that the special circumstances applied to the applicants' family only and a condition requiring the removal of the cabin when no longer needed was imposed.

5. The condition (no 5) subject to this appeal states "*When the cabin hereby approved ceases to be occupied by the dependant relatives of Mr T Fox and Ms S Wrench the use hereby permitted shall cease and the land shall be returned to its former use of garden, unless otherwise agreed in writing with the Local Planning Authority, and all materials and equipment brought to the site in connection with the use shall be removed.*"

6. In the context of the above, I consider that the main issues in this appeal are whether the deletion of condition 5 of planning permission 06-0766-FU would lead to:

- inappropriate development in the Green Belt;
- the effect of the development upon the openness of the Green Belt and the purposes of including land within it;
- if the removal of the condition would lead to inappropriate development 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 development.

**Reasons**

*Site and Proposal*

7. The appeal property comprises a detached log cabin located within the residential garden of a Grade II listed detached dwelling. The site is within the Green Belt.

8. The appellant is seeking to remove the occupancy restriction from the log cabin so that it can remain on the site as ancillary accommodation to the host dwelling.

*Whether the deletion of Condition 5 would lead to inappropriate development in the Green Belt.*

9. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

10. The existing planning permission allowed the erection of the log cabin but not on a permanent basis. Condition no 5 requires the building to be removed once the personal circumstances which led to it being erected are no longer applicable. The proposal is to remove this condition and if the appeal were to be allowed it would be tantamount to the erection of a permanent, and, to this extent, a new building, which would not meet any of the exceptions as outlined in paragraph 145 of the Framework.

11. I acknowledge the appellant's reference to Policy STRAT 9 of the Cheshire West and Chester Local Plan (Part 1) (LP) makes provision for the re-use of buildings within the rural areas provided they are of permanent and substantial construction. Paragraph 146 (d) of the Framework allows for the re-use of

buildings in the Green Belt provided that the buildings are of permanent and substantial construction and they preserve its openness and do not conflict with the purposes of including land within it.

12. Whilst I accept that the building is of substantial construction, there is no planning permission for the cabin to be permanent and even though it has been in situ for ten years or more the intention has always been that the land be returned to its former garden use once the very special circumstances for the original applicant were no longer applicable. The Council deemed that the building was inappropriate development in the Green Belt during the original application process and planning permission was only granted on the basis of very special circumstances and that the use would be temporary.

13. I consider that the proposal does not meet any of the exceptions set out in paragraphs 145 or 146 of the Framework and would therefore amount to inappropriate development in the Green Belt.

*Openness*

14. In visual terms, the appeal property is set well back from the main road within a spacious plot against a woodland backdrop. The position of the cabin relative to the host dwelling and the boundary landscaping means that it is not conspicuous when viewed from public areas although it is visible from the public footpath which runs along western boundary of the site.

15. I acknowledge that the cabin has been in position for over ten years; however, there is no doubt that in spatial terms, due to the footprint, mass and bulk of the cabin, on land which was previously open, it has an impact on the openness of the Green Belt However, the existing planning permission essentially grants temporary permission until such a time that the very special circumstances used to justify the permission are no longer relevant. Thus, ensuring that openness is preserved in the longer term.

16. Therefore, the removal of the condition would allow the retention of a building that in visual and spatial terms causes permanent harm to the openness of the Green Belt. This weighs against the proposal.

*Other Considerations*

17. The appellant suggests that as the proposal constitutes a minor material amendment to the original consent. There is no statutory definition of minor material amendment; it is a matter of planning judgement. However, the proposal would essentially replace what is currently a temporary building, albeit of substantial construction, with a permanent dwelling, I do not consider this to be a matter of minor material consequence.

18. The appellant has submitted a press article relating to the removal of a restricted occupancy condition from an agricultural worker's dwelling and draws comparisons between that case and this appeal property in the context that as the cabin has been in situ for some time any harm has already occurred. Whilst I do not have the precise details of the other case referred to it would seem that the case relates to a dwelling with permanent planning permission, albeit with the occupancy restricted. This appeal relates to a cabin that only has planning permission for as long as the very special circumstances exist and where the intention of the original planning permission was that the land would be restored to its original use thereby making any harm, temporary. The case

is not, therefore, directly comparable to the current appeal proposal which limits the weight which I can attach to it in my decision.

19. I note that there is a further condition (no 4) which ties the existing cabin to the host dwelling. The appellant asserts that this condition would be sufficient to ensure that the cabin could not be sold as a separate entity. I accept that this is the case however, the purpose of the condition 4 and that subject to this appeal are entirely different. The latter is designed to ensure that inappropriate development and by virtue harm to the openness of the Green Belt caused by the log cabin is not permanent. I acknowledge the appellant's submissions that family circumstances have changed, and they are reviewing options for the future of the property, including the cabin. However, this change in circumstance would not justify the harm that I have identified arising from the inappropriate development in the Green Belt.

**Planning Balance**

20. I have found that the removal of condition no 5 of planning permission ref: 06-0766-FU would lead to inappropriate development in the Green Belt and that it would have a harmful impact on the openness of the Green Belt. Collectively, the harm arising from the development without the imposition of the condition carries substantial weight in the overall planning balance. Against this has to be balanced the other considerations as outlined above. The substantial weight to be given to Green Belt harm, arising from the development is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances. For these reasons, I conclude that the proposal would not accord with the Green Belt aims of the Framework or Policy STRAT 9 of the LP.

**Conclusion**

21. In light of the above reasons, I consider that Condition no 5 of planning permission ref: 06-0766-FU is necessary and therefore I conclude the appeal should be dismissed.

*J Hunter*

INSPECTOR