



Appeal Decision

Hearing Held on 26 February 2020

Site visit made on 26 February 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2020

Appeal Ref: APP/A0665/W/19/3239271

Lower House Cottage, Kingsley Road, Kingsley, Frodsham WA6 6SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miss J Dickins and Miss S Mair of Cheshire Alpacas against Cheshire West & Chester Council.
 - The application Ref: 19/03187/FUL, is dated 20 August 2019.
 - The development proposed is a change of use of building to use for storage and processing of alpaca wool and associated external alterations to the building.
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Decision

1. The appeal is allowed, and planning permission is granted, for a change of use of building to use for storage and processing of alpaca wool and associated external alterations to the building at Lower House Cottage, Kingsley Road, Kingsley, Frodsham WA6 6SX in accordance with the terms of the application, Ref: 19/03187/FUL, dated 20 August 2019, subject to the conditions in the attached schedule.

Main Issues

2. The appeal has been made against the failure of the Council to give notice of its decision within the prescribed time period. This notwithstanding, in its appeal statement the Council sets out that, had it been in a position to do so, it would have refused planning permission on three grounds relating to: the status of the building and its relationship to Green Belt policy; the suitability of the location for the development proposed; and the effect of the proposed development on the character of the surrounding countryside.
3. Therefore, having regard to the evidence before me, the main issues in this appeal are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - Whether the appeal site is a suitable location for the development proposed having regard to the development plan;
 - The effect of the proposed development on the character of the surrounding countryside; and

- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and that amounts to the very special circumstances necessary to justify the development.

Reasons

Whether the development would be inappropriate development

4. The appeal relates to a two storey, brick built, building located in the countryside to the south east of the settlement of Frodsham. It is common ground between the parties that the site lies within the Green Belt.
5. The appeal proposal is described as a change of use of the building. Most forms of development within the Green Belt are inappropriate unless they meet one of the exceptions set out in Paragraphs 145 or 146 of the National Planning Policy Framework (the Framework). Paragraph 145 relates to the construction of new buildings and Paragraph 146 to certain other forms of development. Paragraph 146 states that the re-use of buildings, if they are of permanent and substantial construction, is not inappropriate development provided that this would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
6. It is common ground that the proposed development would potentially fall within this exception. However, the Council contend that it does not, as it considers that the building is unauthorised and only exists as a result of a breach of planning control involving a comprehensive rebuilding of a previous barn building after it had fallen into a state of disrepair.
7. There are two extant enforcement notices, served in October 2015, in respect of the building: one that relates to the unauthorised construction of a new dwelling, and the other relating to an unauthorised material change of use of the land from an agricultural use to a residential use. The latter enforcement notice was challenged at appeal¹ and the notice was upheld. The Inspector, however, corrected the enforcement notice to relate to the change of use of the building to a single dwelling house from the original wording referring to the land. An appeal in respect of the other enforcement notice, relating to the unauthorised construction of a new dwelling, was submitted out of time and did not proceed. This latter notice required the demolition of the building.
8. From the submitted evidence, the planning history of the site is not straightforward. It is not in dispute that a building has existed on the site for a considerable time. There is photographic evidence from the appellant, which is not challenged by the Council, showing a much more extensive structure existing in the late 1970's or early 1980's.
9. The Council's position is that, in effect, the building currently on the site is not the same building that existed at the time of the photograph in the appellant's evidence. The appellant argues that it is, albeit having been repaired. It is further contended that, even if this were not the case, the works were completed at least four years before the service of the enforcement notices and, consequently, would have been immune from enforcement action.

¹ Appeal Reference APP/A0665/C/15/3139372 dated 27 May 2016

10. This appeal has been made under Section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against the refusal of planning permission for a change of use. It is not open to me to make a determination on whether the appeal building is lawful in terms of Section 191 of the Act. Nor is it for me, in the context of a Section 78 appeal, to conduct an appeal into the historic enforcement notice relating to the construction of a new dwelling. However, as the status of the building is a fundamental part of the Council's first putative reason for refusal and its case in this appeal, it is necessary for me to venture into these areas in order to be able to resolve the main issues in the appeal.
11. It is not in dispute that the appeal building as it currently stands is of permanent and substantial construction. The key question is whether the appeal building has been so comprehensively reconstructed as to be an entirely different building from that which previously existed on the site.
12. From the evidence, the appellant acquired the appeal building in 2007, at which time it was in a state of disrepair, and subsequently carried out repair works on an ad hoc basis until 2010. The appellant also stated at the hearing that in 2008 the Council accepted that the works were works to repair and refurbish an existing barn, and this was not contradicted by the Council.
13. It is also stated by the appellant that following these works, further, unspecified, works were undertaken to enable the building to be occupied as a dwelling in June 2015. It was at this point that the enforcement notices were served.
14. Section 55 of the Act is clear that rebuilding falls within the definition of development but does not define what rebuilding comprises. Similarly, there is no guidance in Policy Strat 9 of the Cheshire West and Chester Council Local Plan (Part One) 2015 (the Local Plan), that addresses development in the Green Belt, regarding what constitutes major reconstruction for the purposes of the policy. Given their usual, dictionary, meanings 'rebuilding' and 'reconstruction' are essentially synonymous in this context, that is: the process of creating again something that has been damaged or destroyed. The use of the adjective 'major' in Local Plan Policy Strat 9 adds an element of wide ranging or significant extent to the works.
15. There is no evidence before me that would conclusively demonstrate the condition of the appeal building at the time it was acquired by the appellant. Several photographs were submitted by the Council that are dated August 2008 and which show works in progress. However, these only show parts of the building and do not provide a comprehensive picture of what parts of the building as a whole were extant at that time.
16. The appeal building has a roughly L-shaped plan with the longer leg (which includes a single storey garage structure) running on an axis from approximately north west to south east, and the shorter leg (which has a single storey addition to the north west elevation) on a roughly north east to south west axis.
17. What can be discerned from these photographs is that the shorter leg is in all probability part of the original, older, building. The appellant's Planning, Design and Access Statement and Heritage Statement, submitted with the application, sets out that the south east gable end of the main structure was rebuilt and that the garage attached to the north-west gable end of the building

was rebuilt on its existing foundations using the original materials. From an inspection of the building during the site visit and from the 2008 photographs it is also clear that, in addition to these works, at least part of the south west elevation of the long leg of the building has been rebuilt, as this is finished in the same brickwork used on the south east gable, which it is acknowledged is new work. The appellant also confirmed at the hearing that the whole of the roof structure was new work, replacing the original roof which had collapsed.

18. Based on the evidence that is available to me at this time and from what I saw during the site visit, it is apparent that, whilst there has been a relatively large amount of new fabric incorporated into the structure, substantial portions of the earlier building remain. I am also mindful that the Council were aware from an early date that works were being undertaken to the building, which it concluded at that time were repairs as opposed to rebuilding. It was not until such time as it considered that a change of use to residential occupation had occurred that the Council intervened by taking enforcement action. For the purposes of this appeal, I find that the appeal building has not been so materially altered that it is, effectively, a new building rather than an old building which has been repaired and refurbished. For the purposes of applying the policies in the Framework and the Local Plan, it can be considered as an existing building.
19. Following on from this, it is not in dispute that the building as it currently stands is of permanent and substantial construction. From the submitted drawings, the works required to convert it to the proposed use would not amount to what would be considered major reconstruction in terms of Local Plan Policy Strat 9.
20. In order to determine whether or not the appeal proposal is inappropriate development, the effect of the development on the openness of the Green Belt has to be considered. The Council state that, as the building had fallen into disrepair, the rebuilding of the barn failed to preserve the openness of the green belt by increasing the scale and massing of the redundant structure to a harmful degree. The Council have not elaborated on the extent of this increase in scale or massing and as set out above, there is no definitive evidence in respect of the form, extent, or appearance of the building prior to the appellant's acquisition of it. Consequently, I do not find this argument persuasive because there is no frame of reference that would enable the Council's conclusion to be reached.
21. This notwithstanding, the test in the Framework is whether the proposed development would preserve the openness of the Green Belt. The appeal proposal does not involve increasing the footprint or height of the building over and above that which currently exists. In this respect, there cannot be any effect on openness resulting from the proposed development. The appeal proposal includes the creation of some areas of hardstanding and landscaping around the building. Taken in isolation, these would alter the visual appearance of the land immediately adjacent to the appeal building but would not physically alter the openness of the Green Belt. The proposed use of the building would result in activity around the building and the parking of vehicles belonging to employees and those servicing the site. However, from the submitted evidence and what I heard at the hearing in respect of how the use would be carried out, the operations proposed would be small in scale and would not involve large numbers of employees or vehicles, and would not be

materially greater than an agricultural use of the building. In this context I find that the appeal proposal would preserve the openness of the Green Belt.

22. It is not argued that the appeal proposal would conflict with any of the purposes of the Green Belt set out in Paragraph 134 of the Framework.
23. I therefore conclude that the appeal proposal would not be inappropriate development in the Green Belt. It would not conflict with the policies in Framework, or the relevant requirements of Local Plan Policy Strat 9.

Whether the appeal site is a suitable location for the development proposed

24. The appeal site is located in an area of countryside close to, but beyond, the extent of the built up area of Frodsham.
25. Policy ECON 1 of the Local Plan seeks to promote sustainable economic growth within the Council's administrative area by supporting existing businesses and encouraging indigenous business growth. It sets out a number of criteria for assessing new sites for economic development uses, which include, among others, that proposals should be in locations accessible by a range of transport modes and which are compatible with neighbouring land uses. This policy must be read in conjunction with Local Plan Policy Strat 9 which is permissive of the re-use of existing rural buildings, particularly for economic purposes. Whilst this latter policy refers to development that has an operational need for a countryside location, this is just one part of a bullet point list setting out a range of the types of development that may be acceptable. From the wording of the Policy, it is not necessary for a proposed development to fall into every one of these categories to be acceptable, it merely needs to fit one.
26. Neither policy ECON1 or STRAT 9 contains a requirement to demonstrate that there is an operational need for a business to occupy an existing building located in the countryside, or to demonstrate that alternative sites and premises capable of hosting the proposed use have been considered.
27. The Framework seeks to ensure that the rural economy is supported through enabling the growth and expansion of all types of business in rural areas, either through conversion of existing buildings or in well-designed new buildings. It also recognises that sites to meet local business needs may have to be found beyond existing settlements and in locations that are not well served by public transport. The Framework notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
28. From the submitted evidence, the appellant is currently running an operation keeping and breeding alpaca, both for wool production and for sale. Currently alpaca fleeces are sent to a mill in the Scottish Borders for processing into yarn. The appellant wishes to be able to process their own fleeces more locally, due to transport costs and long waiting times for processing, and additionally provide this service for other small alpaca farms in Cheshire. It is also proposed to use the finished yarn to produce a range of products at the premises. Although the appeal building is located some distance from the appellant's main premises where the alpaca are kept, the proposal is clearly linked to and would represent a development of this existing business.
29. It is common ground that the site is accessible by bus and that there are continuous footways on the roads to both Frodsham and Kingsley, which are the nearest settlements. I accept that at 1.7 miles and 1.3 miles, it is unlikely

that walking to the site would be a convenient option, but these distances are suitable for cycling. Whilst there is potential to access the appeal site by alternative modes of travel, there will nonetheless be some a need to use private vehicles to access the site. Policy ECON 1 does not specifically preclude sites which would require travel using private vehicles and the Framework recognises that in rural areas the potential to maximise sustainable transport will differ.

30. From what I have read and from the discussions at the hearing, the appellant's proposed use, as set out in the application, could be carried out from a more conventional industrial unit within a settlement, and there is no fundamental requirement for a rural location. However, there is no policy requirement in the local plan, or the Framework, for the appellant to demonstrate that the use requires a rural location, or to undertake a sequential approach to site selection, or to demonstrate that other sites have been considered and ruled out. In addition, Policy Strat 9 is permissive of the reuse of buildings in the countryside or Green Belt for economic purposes. The appeal site is accessible by a range of transport options and although it is located beyond the main built up area of Frodsham, it is located on a main road and is not so remote from nearby settlements or other buildings as to be totally dependent on the use of private vehicles.
31. I therefore conclude that the appeal site, is a suitable location for the development proposed having regard to the development plan. It would not conflict with the relevant requirements of Policy ECON 1 of the Local Plan.

The effect of the development on the character of the surrounding countryside

32. Policy DM3 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies 2019 (LADP) expects new development to be of a high standard of design and sets out a number of criteria against which development will be assessed. These include, amongst other matters, having regard to any existing buildings within the site and the site's relationship with the surroundings, and seeking to ensure that new development respects, and where possible enhances, local distinctiveness. Policy DM3 also states that development in the countryside will only be permitted where it would respect the key features of LADP Policy GBC2.
33. Policy GBC2 of the LADP seeks to ensure that new development protects or enhances landscape character and distinctiveness and would integrate with the landscape character of the area. It also expects new development to preserve the special landscape character and scenic value and enhance the landscape quality of designated Areas of Special County Value (ASCV). The appeal site is within the Helsby and Frodsham Hills ASCV.
34. The surrounding countryside consists of a mix of pasture and arable farmland with areas of woodland cover of varying sizes. Fields in the area are generally small to medium sized. Outside of the larger settlements, small groups of buildings are scattered through the landscape. To the west of the site the landform rises quite steeply, whilst to the east and north east it falls towards the valley of the River Weaver. Lower House Farmhouse and its garden forms the road frontage to the east of the appeal site and this house is loosely bracketed by two other dwellings. Just to the north west, on the opposite side of the B5152, is a group of buildings in commercial use with a camping and caravan site to the rear. In the surrounding area buildings are generally

constructed of red brick or are render finished and slate roofs are common. Due to the topography and landscape features, the area surrounding the appeal site appears very rural despite its proximity to Frodsham and Kingsley.

35. The Landscape Strategy for Cheshire West and Chester Borough (Part 1) 2016 (the Landscape Strategy) identifies the area as some of the most important landscape within the district and particularly notes the hills in the area forming a prominent skyline and the extensive views from the high ground. It goes on to list the special qualities of the area.
36. The Council, although alleging harm to the countryside and the ASCV, have not identified what, if any, special characteristics of the landscape would be harmed and did not elaborate at the hearing. The Council contend that the unauthorised conversion of the premises to use as a dwelling house have given the building a residential character and that its retention is harmful. From what I saw during the site visit, I would concur that, as it currently stands, the appeal building appears more like a dwelling house than a converted barn, particularly due to the wider window openings and white uPVC window frames. From the historic aerial photograph provided by the appellant, the window openings in the building were previously fewer in number and closer to square in form, although I accept that this photograph does not show all the elevations.
37. The alterations proposed by the appeal proposal retains some of these horizontal emphasis window openings and from the available information the white uPVC frames would also be retained. A number of uPVC personnel doors would be replaced with vertically boarded timber doors and the current patio doors and glazing within the cart arches on the south west elevation would also be replaced with vertically boarded doors. It is proposed that the upper floor window openings would be blocked off with vertical timber cladding applied to the building below the eaves level, although the submitted plans show the openings being retained behind this.
38. There is no evidence that the use of timber cladding at high level above brick walls is a common construction technique for traditional agricultural buildings in the area and the photographic evidence suggests that the building historically had full height brick walls. The Design and Access Statement does little other than describe the proposed works and suggest that these would restore the agricultural character of the building. There is nothing to indicate that the earlier form of the building has been analysed to inform the design, or that local traditional farm buildings provide a design precedent. From the submitted drawings and supporting evidence, in close views, the resulting appearance of the building, whilst less obviously domestic, would be unconvincing as a traditional agricultural building.
39. That said, views of the appeal building from the main road are restricted due to the appeal building being set behind Lower House Farmhouse and because of trees on adjoining sites screening views from the road. There would be some visibility from the Public Right of Way that runs on elevated ground to the west of the appeal site. However, as a result of the distance between this and the appeal site, the form and massing of the building would be more apparent than the details of its external appearance. The appeal proposal would not alter this form and massing, and the evidence indicates that historically the building was more extensive than now. Additionally, the brick walls would remain the

predominant feature of the external appearance and a suitable slate, or dark tile, roof covering could be secured through a planning condition. In this respect the building would be consistent with others in the immediate surroundings. I note that the Council consider that the proposed new hedge on the south western boundary of the appeal site would soften the views from the Right of Way. The other proposed landscaping would be more formalised, but the area around the building is currently rough grass and contains the remains of demolished buildings and, consequently, is not a positive visual feature. The appearance of this area would be improved by the proposed development

40. There is no evidence that important or characteristic features identified in the Landscape Strategy would be prejudiced by the proposed development. Although the design approach proposed is unconventional, overall, the effect of the development on the character and appearance of the area would be neutral.
41. I therefore conclude that the proposed development would not cause harm to the character of the surrounding countryside. It would comply with the relevant requirements of the Policies DM3 and GBC2 of the LADP.

Other matters

42. Lower House Farmhouse, which is adjacent to the appeal site, is a Grade II Listed Building. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.
43. The appeal proposal would be within the setting of this building. There is limited information in respect of the significance of Lower House Farmhouse. However, the appeal proposal would not increase the size of the appeal building and whilst it would introduce some areas of hardstanding around the building, this would not affect to any appreciable extent the surroundings in which the listed building is experienced. I also note that the Council do not consider that there would be any effect on the adjacent heritage asset. The effect of the proposed development on the setting of the listed building would be a neutral one.
44. I have noted that the Council have not raised any objections to the proposal regarding either the highways or the drainage implications. From what I have read and from what I saw when I visited the site, I have no reason to reach a different conclusion.
45. I have also noted the contents of the Preliminary Ecological Appraisal and Bat Roost Surveys Report and the comments of the Council's ecologist. The building is used by roosting bats and nesting birds. The proposals incorporate a number of mitigation measures which the Council do not raise issue with. Whilst a licence will be required to carry out works at the building, this is a matter for the appellant to address. Overall, I am satisfied that, subject to a suitably worded planning condition, the development would not cause harm to any protected species or their habitats.

46. As I have found that the proposed development would not be inappropriate development in the Green Belt, it is not necessary to address the matter of whether there are other considerations that amount to the very special circumstances necessary to justify inappropriate development.

Conditions

47. I have had regard to the conditions that have been suggested by the Council. In order to provide certainty in respect of what has been permitted, I have attached a condition specifying the approved drawings. In the interests of the appearance of the appeal building and due to its location in a more sensitive landscape area, it is also necessary to attach a condition requiring details of the materials to be used in the conversion and refurbishment of the building to be submitted for approval by the Council. The submitted scheme did not include details of the proposed facilities for the storage of waste generated by the proposal and, in the interests of the appearance of the area, it is necessary for details of this to be submitted for approval by the Council. In addition to these conditions, at the hearing it was agreed that due to the presence of protected species, namely bats, at the site, it is necessary to ensure that appropriate mitigation, which was detailed in the Preliminary Ecological Appraisal and Bat Roost Surveys Report submitted with the application be put in place. It was also agreed that as the appeal site is within a more sensitive landscape, it is necessary to impose a condition requiring the proposed landscaping scheme for the site to be implemented as submitted.
48. The Council have also suggested that a condition is required to protect nesting birds during the construction period. All birds, their nests and eggs are protected by law and it is an offence under the Wildlife and Countryside Act 1981 to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built. Planning conditions should not duplicate other regulatory requirements and the Planning Practice Guidance is clear that conditions requiring compliance with other regulatory regimes will not meet the test of necessity. Whilst this condition is well intentioned, nesting birds are protected by other legislation and, therefore, the condition is not necessary and I have not imposed it.

Conclusion

49. For the above reasons, I conclude that the appeal should be allowed, and planning permission granted subject to the conditions set out above.

John Dowsett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan - Drawing Number 96/16/LP; Block Plan - Drawing Number 01/15/BP; Floor Plans and elevations (Prior to development) Drawing Numbers - 96/19/1, 96/19/2, 96/19/3 & 96/19/4; Floor Plans and elevations (Post proposed development) Drawing Numbers - 96/19/5, 96/19/6, 96/19/7 & 96/19/8; and Landscape proposals Drawing Number - SE0848-02.
- 3) Notwithstanding the details shown on the submitted drawings, prior to installation samples/details of the following shall be submitted to, and approved in writing by, the local planning authority:
 - 1) Details of any proposed new roof slate.
 - 2) Details of the proposed eaves, verges and ridge.
 - 3) Details of the proposed barn doors.
 - 4) Details of external windows, doors, cills and heads.
 - 5) Details of external services (metre boxes, antennas etc).
 - 6) Details of rainwater goods.
 - 7) Details of any air vents or flues.
 - 8) Details of any hardstanding or surface treatments.
 - 9) Details of any boundary treatments.

The works shall be carried out wholly in accordance with the approved details prior to the first use of the development hereby approved.
- 4) The development hereby approved shall not be brought into use until details of the design and location of refuse disposal and recycling facilities have been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented in accordance with the agreed details prior to the first use of the development hereby approved and maintained thereafter for the lifetime of the development.
- 5) Notwithstanding the details shown on the approved drawings, the ecological mitigation set out in Sections 6.2 and 6.3 of the Preliminary Ecological Appraisal and Bat Roost Surveys Report (Biora Limited September 2018) shall be implemented in full before the building is brought into use for the approved purpose.
- 6) The proposed planning and landscaping details shown on Landscape Drawing Number SE0848-02 Revision B shall be carried out in the first full planting season following the first occupation of the building and any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

APPEARANCES

FOR THE APPELLANT:

Mr A Gill	Counsel
Mr M Askew	Knights PLC Planning Consultant
Miss J Dickens	Appellant
Miss S Mair	Appellant
Mr S Rumbelow	Building owner

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Carter	Counsel
Mr E Bannister	Cheshire West & Chester - Planning
Mr R Charnley	Cheshire West & Chester - Planning

Documents submitted at the hearing

1. Extract from 1910 Ordnance Survey Map and photograph of building roof interior.
2. Email concerning alpaca shearing.
3. Email concerning sale of alpaca wool.
4. Copies of 2015 Enforcement Notices and Inspectors Decision Letter for Appeal Reference APP/A0665/C/15/3139372.
5. Email concerning alpaca shearing.
6. Landscape Strategy for Cheshire West and Chester Borough (Part 1) 2016.