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## Appeal Decision

Site visit made on 21 July 2020

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 24 August 2020**

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**Appeal Ref: APP/R0660/C/20/3244351**

**The Chase, Trouthall Lane, Plumley, Knutsford, Cheshire, WA16 9RZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
  - The appeal is made by Mr Stephen Ashworth against an enforcement notice issued by the Cheshire East Council.
  - The enforcement notice was issued on 9 December 2019.
  - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of agricultural land to a mixed use comprising agricultural land and domestic garden together with the erection of gate piers and gates, the creation of new driveway and areas of hardstanding.
  - The requirements of the notice are:
    - a) Cease the use of "the Land" as domestic garden.
    - b) Remove the area of hardstanding and driveway shown in the approximate position shown yellow on the attached plan and marked 'Plan B'.
    - c) Remove all ornamental flower beds, shrubs and plants from "the Land" and restore the land by covering with topsoil and seeding with grass seed.
    - d) Remove the gate piers and gates shown in the approximate positions marked in green on the attached "Plan B".
    - e) Restore the area of land shown in the approximate position marked in yellow on the attached plan marked 'Plan B' by covering with topsoil and seeding with grass seed.
    - f) Remove all resultant materials from the land following compliance with b), c) and d) above.
    - g) Erect a timber post and rail fence at a height of 1 metre marked in its approximate position on the attached 'Plan B' and identified as a black dashed line X - Y.
  - The period for compliance is 1 week for requirement (a) and 3 months for (b) to (g).
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Act.
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### Decision

1. It is directed that the notice be varied in Section 6(b) to 6(g) inclusive by deleting in each part "3 months" and substituting instead "6 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

### Validity of the enforcement notice

3. On a plain reading there can be no doubt that the description of the breach of planning control in Section 3 of the notice alleges "a material change of use" of the land. The notice in Section 4 also appropriately refers to the 10 year time limit for taking enforcement action against a material change of use (MCU).

4. The alleged MCU relates to all of the land area outlined in red on the attached notice plan 'A', and is described as a change from "agricultural land to a mixed use comprising agricultural land and domestic garden together with the erection of gate piers and gates, the creation of new driveway and areas of hardstanding".
5. It is argued for the appellant that the alleged breach is unclear, rendering the notice a nullity or invalid and incapable of correction. This stems from the assertion that any operational development carried out on the site cannot constitute or form part of an allegation that alleges only a MCU, and that the alleged MCU has not occurred in any event.
6. However, an enforcement notice alleging a MCU can also refer to operational development, either as a separate breach, or, as is the case here, where the Council considers that physical works were undertaken as part of the alleged MCU. Indeed, even where physical works are not expressly referred to in a MCU allegation, the notice can nonetheless require those works to be removed if they are integral to and facilitated the MCU.
7. The allegation in the notice is therefore clear and hence not invalid. I return to the question of whether particular matters referred to by the appellant have actually occurred and/or comprise part of the alleged breach in the ground (b) and (c) appeals.

### **Appeal site and background**

8. The appeal site is accessed from Trouthall Lane, it lies adjacent the side and rear of the appellant's residential property, The Chase, and is located within the countryside and the Green Belt. An open sided stable block and partially open sided storage building sit along the eastern boundary of the appeal site.
9. Further works have taken place during the appeal process after the notice was issued. However, it is the layout and use of the site which existed at the date when the notice was issued (9 December 2019) that is relevant for determining the appeal.

### **Grounds of appeal**

10. The appeal includes grounds (b) and (c). For these legal grounds of appeal the burden of proof, on the balance of probability, rests with the appellant. However, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the applicant's evidence alone is sufficiently precise and unambiguous.

### **The appeal on ground (b)**

11. An appeal on ground (b) is a claim that those matters (i.e. the matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact.
12. Taking the alleged operational development first, the appellant does not dispute that brick wall piers and timber gates have been erected. With regard to the areas of hardstanding and driveway (shown in yellow on the notice plan) there is no dispute that the internal link driveway to The Chase was newly

created. On the balance of probability I find therefore that these matters have occurred as a matter of fact.

13. With regard to the remainder of driveway area and hardstanding it is argued that these works comprised resurfacing of pre-existing areas. However, the Council's evidence, in particular the aerial photography of the site, strongly indicates that the works were newly created. The 2009 images<sup>1</sup> show what appears to be only wear to the field resulting in a mud surface. The 2010 image<sup>2</sup> appears to show only grassed areas around the buildings and towards the field entrance. The 2017 image<sup>3</sup> appears to show a mud track running from the field entrance and following a straight line close to the boundary towards the buildings, having only grassed areas around them. The track continues to the side of the buildings where it appears less worn. Different to that, the driveway as it existed when the notice was issued follows a different route; turning to the west immediately from the entrance, before splitting with one spur leading to The Chase, the other to the sizeable area of hardstanding area around the buildings<sup>4</sup>.
14. Within the images contained in the appellant's evidence<sup>5</sup> there is some evidence of loose stone laid around the buildings. However, the images are undated and appear to have been taken after the development subject of the enforcement notice had been carried out.
15. On balance I find the appellant's evidence to be imprecise, and it is significantly contradicted by the Council's which is more compelling. Consequently, I find on the balance of probability that the erection of gate piers and gates and the creation of new driveway and areas of hardstanding, as alleged, have occurred as a matter of fact. I turn to the use of the land next.
16. Historically, the land originally appears to have been in agricultural use. Whether the subsequent addition of equestrian use was ancillary to agricultural use of the land, or resulted in a mixed agricultural/equestrian use (which may or may not have been abandoned) is unclear. However, a change from any such use to a mixed use for agriculture and as a domestic garden, as alleged, would very likely be materially different in planning land-use terms. As set out earlier, the onus is on the appellant to demonstrate that at the date the notice was issued the alleged change of use to mixed agriculture/garden use had not occurred.
17. I have already found that the erection of brick wall piers, gates and the creation of new driveway and areas of hardstanding occurred as a matter of fact. In addition to these works I note that the timber post and rail fence that had previously separated the site from the garden area of The Chase had been removed, and a number of ornamental planting beds with decorative raised timber edging were created within the open grassed areas within the southern half of the appeal site. The grassed areas appear to have been maintained as lawns consistent with the lawned area within The Chase. Also, sports equipment (football goal posts/nets) were present on the land. All of these features are evidenced in the Council's submitted dated photographs.

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<sup>1</sup> Council Appendix 7

<sup>2</sup> Council Appendix 4

<sup>3</sup> Council Appendix 5

<sup>4</sup> Council Appendix 6

<sup>5</sup> Appellant Appendix C – Heritage Assessment for planning application 19/5915M

18. Although the appellant refutes any use of the land as garden there is little convincing evidence submitted in support to explain the purpose of the landscaping alterations and the presence of sports equipment. As such I find that the contradictory evidence of the Council is more persuasive as to the purpose of the alterations and use of the land. The southern half of the appeal site had acquired the appearance of a well-maintained and landscaped garden. The removal of the separating fence and the creation of the internal driveway link between the appeal site and the Chase, indicate to me a seamless amalgamation of the appeal site with the garden area of The Chase. The high imposing solid timber gates and brick piers at the appeal site entrance are also more representative of an entrance to a residential property, rather than what would normally be seen at a field entrance. In my view, all of these works when taken together had the effect of simply expanding the garden area of The Chase. Indeed, notwithstanding that there has since been some partial compliance with the notice requirements, it still did so retain such a unified character and appearance at the time of my visit to the appeal site.
19. All of these factors in combination indicate to me that the use of the appeal site changed to a mixed use for agriculture and as a domestic garden. While the appellant maintains that no change of use has occurred, I find that the balance of the evidence indicates otherwise.
20. Other than for the exceptions set out at section 55(3) of the Act, which are not relevant here, a "material change of use" is not defined in any statute or statutory instrument, it is a question of fact and degree in each individual case. In judging whether there has been a material change of use in any given case there must be a significant difference in the character of the land use from what has taken place previously. Given the previous relatively undeveloped and open character and use of the appeal site I consider the change of use of the land to be both significant and material. Hence, I conclude that the material change of use, as alleged, has occurred.
21. The appeal on ground (b) therefore fails.

### **The appeal on ground (c)**

22. The carrying out of "development" (s55(1) of the Act) includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of land. The carrying out of development without any required planning permission constitutes a breach of planning control, s171A(1)(a).
23. In an appeal on ground (c) the appellant must demonstrate on the balance of probability that the matters alleged in the enforcement notice do not constitute a breach of planning control. The relevant date is the date when the notice was issued.
24. With regard to the hardstanding area around the buildings and the access driveway that leads to them, there is no convincing evidence before me to demonstrate that any historical hardstanding had been laid to the extent of the existing area of coverage, or, if there was any, that any significant amount remained prior to the carrying out of the works undertaken by the appellant. The Council's photographic evidence referred to in the ground (b) appeal strongly suggests that no or very little material remained.

25. Moreover, the totality of the driveway/hardstanding works undertaken by the appellant is extensive, covering a large area around the buildings and incorporation of a new driveway link into The Chase. All of these works were comprised in a single project and taken together were new development of a permanent nature. Since no permission has been granted for them they amount to a breach of planning control. There is no evidence before me to indicate that the gates and piers benefit from planning permission and no argument is made that they do not constitute a breach of planning control.
26. For the reasons set out under the ground (b) appeal I have found that the alleged change of use occurred and amounts to a material change of use of the land. Consequently, it therefore amounts to development, as defined, and requires planning permission. Since no planning permission has been granted for the development it constitutes a breach of planning control.
27. The appeal on ground (c) therefore fails.

### **The appeal on ground (a)/deemed application for planning permission**

28. An appeal on ground (a) is that planning permission ought to be granted, either wholly or in part, for the breach of planning control alleged at Section 3 of the enforcement notice.
29. In this regard the appellant does not seek planning permission for the material change of use. His case is limited to seeking planning permission for the brick piers and timber gates, the areas of driveway, and the hardstanding area around the stable/storage buildings.

### **Main Issues**

30. The main issues are:
- whether the development would be inappropriate development for the purposes of the NPPF<sup>6</sup> and Development Plan Policy;
  - the effect of the proposed development on the openness of the Green Belt and its purposes;
  - the effect of the development on the character and appearance of the area, and in particular whether it would preserve the setting of the nearby Grade II listed building Beech Farm; and
  - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

### **Reasons**

#### *Whether inappropriate development*

31. Policy PG3 of the Cheshire East Local Plan (2017) (LP) closely reflects national planning policy set out in the NPPF in seeking to protect the Green Belt from inappropriate development. NPPF paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
32. Both the NPPF and LP Policy PG3 list certain forms of development which are to be treated as exceptions to being inappropriate development. In this regard,

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<sup>6</sup> The National Planning Policy Framework (2019)

although it is argued for the appellant that the operational development carried out does not affect the openness of the Green Belt, or conflict with its purposes, no argument is made that any of the development comprises one of the listed exceptions.

33. With regard to the brick wall piers and gates, they comprise a structure and thus are a building as defined (s336 of the Act). There is no evidence before me to demonstrate that they fall within any of the exceptions for buildings at (a) to (g) in paragraph 145 of the NPPF, and I have no reason to consider that they do so. I find therefore that they are inappropriate development.
34. In respect of the areas of driveway and the hardstanding area around the stable/storage buildings, I consider these to be engineering operations. NPPF Paragraph 146 provides that engineering operations are an exception to being inappropriate development, but only if they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
35. Perceptions of openness can be visual as well as spatial. Since the driveway and hardstanding areas are at ground level there is no material loss of openness in purely spatial terms. However, the coverage of these areas is extensive in the context of what was almost entirely an open rural field previously. Having an obvious urbanising form it reads visually as a loss of openness, albeit limited, with a corresponding limited amount of harm as a result. As such it also conflicts with one of the purposes of the Green Belt at NPPF paragraph 134(c) which seeks to safeguard the countryside from encroachment. Consequently, given this impact on openness and conflict with one of the Green Belt purposes, I find that the engineering operations are not an exception within NPPF paragraph 146. I conclude therefore that they are inappropriate development.
36. To conclude on this first issue, I find that all of the development for which planning permission is sought is inappropriate development which, by definition, is harmful to the Green Belt. I attach substantial weight to that harm.

*Effect on openness and purposes*

37. With regard to the engineering operations; their effect on openness and conflict with one of the Green Belt purposes, and the limited harm that results, is set out above. With regard to the brick wall piers and gates, they are a solid and substantial construction of considerable height and overall width. The appellant argues that they are a replacement and enhancement of a former access. However, there is no detail before me of what they replaced, and the Council's photographic evidence shows no physical gates or barriers of any similar size. On the balance of the evidence I find that they reduce openness spatially and visually, thereby resulting in significant harm to the Green Belt. They also conflict with the Green Belt purpose which seeks to safeguard the countryside from encroachment. I attach further weight to this harm.

*Character of the area and setting of Listed Building*

38. My understanding from all the evidence submitted is that ownership of the appeal site land has changed over time between the two residential properties either side. However, it appears that it has only ever been used for agriculture with at times some level of equestrian use. It is in the context of this prevailing

character, and that of the surrounding area, that the retention of the gates, piers, hardstanding and driveway should be assessed.

39. It is argued for the appellant that the driveway and hardstanding are necessary requirements in providing a durable access to the stables and storage buildings, and to prevent mud migrating onto the highway. Also, that the gates and brick piers are necessary both for functional egress and for security, while also being in keeping with the other properties along Trouthall Lane.
40. Given the modest size of the existing buildings on site and the need to access them for the care of horses and agricultural purposes, I consider that the hard surfaced driveway together with the extent of its coverage into the field, including the spur link to the Chase, is far in excess of what would be required, and atypical of the simple form, character and appearance of access driveways normally associated with rural fields in the surrounding area. I have not been provided with any examples of similar agricultural/equestrian development in rural fields in the Green Belt which would provide evidence to the contrary. The area of hardstanding around the buildings also appears excessive. Overall, these elements taken together have an incongruous urbanising effect, harmful to the character and appearance of the rural landscape, and in conflict with LP Policies SE1 and SE4 and saved Policy DC8 of the Macclesfield Borough Local Plan (2004).
41. I acknowledge the use of local Cheshire brick and solid timber in the piers and gates. However, while the appellant contends that they are typical of the locality and other properties in Trouthall Lane, such a feature was apparent only at the entrances to some residential properties in the surrounding area as far as I was able to see. In my view, such an imposing and grand entrance is not typical of the access gates and tracks usually associated with agricultural fields. As such, I find them to be starkly at odds and harmful to the rural character of the appeal site, and also in conflict with the Council's planning policies.
42. Turning to the Grade II listed building, Beech Farm, its significance derives largely from its 17<sup>th</sup> century form as a farmhouse, constructed on a timber frame with rendered brick infill and thatched roof. Its location was functionally and physically related to the surrounding fields in which its occupiers would have worked. As such, the adjoining land (the appeal site) being an open rural field, continues to comprise part of its historical agricultural setting. In this context the development for which planning permission is sought appears overly domestic and urbanising and conflicts with the rural character of the immediate area for the reasons previously set out. It thereby also reduces the legibility and understanding of the relationship of the farmhouse to the land around it. Consequently, I find that it adversely affects the setting of the listed building resulting in harm to its significance. It thereby conflicts with LP Policies SE1 and SE7.
43. The harm is fairly minor and in the language of the NPPF I concur with the Council that it is less than substantial. However, there are no public benefits advanced to outweigh the identified harm.

#### *Other considerations*

44. The appellant refers to pre-application advice and planning applications for the re-development of the stables/storage buildings. However, while elements of

the development in this appeal may have formed part of those schemes, those schemes are not before me. I am bound to determine this appeal on ground (a) in respect of the development for which planning permission is sought on its own merits.

45. Reference is made to the potential for refurbishment of the existing buildings and related need for a suitable access and hardstanding area. However, for the reasons set out earlier I find the existing development for such purposes to be excessive and incongruous to the character and appearance of the area.
46. The question of whether any existing agricultural buildings are lawfully capable of being converted to residential use as permitted development is not before me. No detail of such a scheme has been submitted. As such, the suggestion that it might be possible is not a fallback argument and does not amount to a material consideration of any significant weight in support of allowing the appeal.

### ***Planning balance and conclusion on ground (a)***

47. The NPPF requires that substantial weight is given to any harm to the Green Belt, and that *very special circumstances* will not exist unless any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
48. The proposed development is inappropriate development and is therefore harmful by definition. I attach substantial weight to that harm.
49. I have also previously identified some loss of openness and adverse impact on one of the Green Belt purposes which seeks to safeguard the countryside from encroachment. The additional harm arising collectively from these matters attracts a further degree of weight. Further harm, attracting additional weight, arises from the adverse effect on the character and appearance of the area and to the setting of the listed building.
50. Against the totality of all this harm are the other considerations advanced by the appellant. However, they do not clearly outweigh the identified harm. As such, very special circumstances, necessary to justify allowing the appeal, do not exist.
51. The appeal on ground (a) therefore fails.

### ***The appeal on ground (f)***

52. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
53. In this regard the notice requires the use as a garden to cease together with the removal of the physical works which were undertaken as part of the change of use, and the reinstatement of the boundary fence separating the appeal site from The Chase. Hence, the notice seeks to return the land to the condition that existed prior to the breach taking place. It is clear therefore that the purpose of the notice is to *remedy the breach of planning control, s173(4)(a)*.

54. The appellant contends that some of the driveway and hardstanding should be allowed to remain; that requiring it all to be removed and replaced with topsoil and seeded with grass is excessive.
55. This contention is based on the same arguments already advanced in the appeals under grounds (b), (c) and (a). However, I have already concluded that the matters occurred; are a breach of planning control; and that planning permission should not be granted. The appellant's arguments are not relevant to this appeal under ground (f) which relates only to whether the requirements are excessive for the purposes of remedying the breach of planning control. Consequently, requiring all of the works to be removed and restoring the land to its former condition cannot be excessive, since anything less would fail to fully remedy the breach.
56. The appeal on ground (f) therefore fails.

**The appeal on ground (g)**

57. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed.
58. The notice requires full compliance within 3 months. The appellant seeks a period of 8 months (taken as the period stated between the date of the appellant's final comments to the date given therein as 20 December 2020).
59. I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. However, I acknowledge that securing and scheduling suitable contractors to undertake the required works could take longer than 3 months. In this regard account should also be taken of the continuing uncertainty on the availability of contractors and timing of such works due to the coronavirus pandemic.
60. In light of all the circumstances I consider on balance that 6 months would be more reasonable.
61. The appeal on ground (g) succeeds to this limited extent and I have directed that the notice be varied accordingly.

*Thomas Shields*

INSPECTOR