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## Appeal Decision

Site visit made on 16 September 2020

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

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

**Decision date: 05 October 2020**

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**Appeal Ref: APP/A0665/C/20/3254706**

**Land at Kingslee, Worthenbury Road, Crewe By Farndon, Chester CH3 6PA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Mark Chantler against an enforcement notice issued by Cheshire West & Chester Council.
  - The enforcement notice was issued on 20 May 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission the change of use of land from agricultural use to residential use and associated residential development (hardstanding, access, gates, brick pillar gateways and tennis courts) ("the unauthorised development").
  - The requirements of the notice are:
    - 5.1 Cease the residential use of the land outlined in red on the attached Enforcement notice plan.
    - 5.2 Remove all hardstanding within the red line on the attached Enforcement notice plan by removing the hardstanding, gravel and all foundations.
    - 5.3 Remove the tennis court and associated development (steps, boundary fence, gates, nets and lighting) and removal all foundations and services.
    - 5.4 Remove the brick pillars, metal pillars and gates and all associated foundations from the land outlined in red on the attached Enforcement notice plan.
    - 5.5 Remove all resulting materials from points 5.2 to 5.4 from the land outlined in red on the attached Enforcement notice plan and restore the land to its previous condition of grassed fields.
  - The period for compliance with the requirements is 10 calendar months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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### Decision

1. It is directed that the enforcement notice be corrected at paragraph 3 by inserting the word 'material' before the word 'change'.
2. Subject to the correction above the appeal is dismissed, the enforcement notice upheld, and planning permission is refused on the application deemed to have been made under section 177 (5) of the 1990 Act.

### The Enforcement Notice

3. The meaning of development in section 55 of the 1990 Act includes "the making of any material change in the use of any buildings or other land". I will correct the alleged breach of planning control by inserting the word 'material'. Such a correction to the description will not cause any injustice because the

Council's evidence was clear that the notice was directed at such a breach and the appellant's do not dispute that the development requires planning permission.

### **Appeal on ground (b)**

4. The main issue is whether as a matter of fact the Land was in residential use. The burden of proof falls on the appellant to make out their case.
5. The appellant's case is that the Plan attached to the Enforcement Notice extends beyond the area where the unauthorised development has taken place and encroaches to areas of hardstanding that are within the curtilage of Kingslee and form part of consented development under earlier planning applications 13/02155/FUL and 15/01660/PMB. Although this argument might be more relevant to an appeal on ground (c), that matters alleged do not constitute a breach of planning control, I have considered all of the evidence and made a determination under ground (b) as appealed.
6. The appellant has not provided any evidence to support their view that the Plan attached to the Enforcement Notice includes land at Kingslee which is authorised for residential use. However, a Plan has been provided at Appendix 1 of the appellant's statement of case which identifies a smaller area of Land which it is believed the notice should cover. On the other hand, the Council has provided as appendices to their statement of case, copies of the red line plans that accompanied the applications referred to by the appellant, as well as aerial images and historic photographs and maps of the appeal site.
7. Planning permission was granted in 2013 (Ref, 13/02155/FUL) for an orangery, open porch, raised terrace with new access to cellar, roof and window alterations, lowering of front boundary wall and improvements to existing access at Kingslee. The red line site plan attached to that application did not include any of the Land referred to in the enforcement notice, albeit it included the property of Kingslee and a substantial amount of surrounding garden land. The Land the subject of this appeal was included within a blue line, i.e. land within the appellant's control. Similarly, application ref, 15/01660/PMB, which established that prior approval was not required to convert a barn at Kingslee into two residential units, did not include any of the Land the subject of the appealed enforcement notice. The onus is on the appellant to make out their case on this legal ground, and I have not been provided with any substantive evidence that would cast doubt on the information provided by the Council. Furthermore, no evidence has been provided which would support the appellant's case that the Plan attached to the notice includes land which has permission for residential use.
8. In addition, the retrospective planning applications submitted to the local planning authority by the appellant to change the use of land at Kingslee to residential use have been for an area of land which almost entirely corresponds with the Land identified in the notice. The only exception is that the Plan attached to the notice includes an additional slither of Land to the south of Kingslee's original garden area. The Council advise that this Land was included in the notice as the appellant had indicated that it was being used as part of the residential property as a wildflower meadow. On my site visit I saw evidence of that wildflower meadow and I also noted that part of this area of Land was in use as a children's play area, with a trampoline, swing and see-saw situated on it.

9. From the evidence before me, on the balance of probability, all the Land was in residential use and a material change of use has occurred. The appeal on ground (b) therefore fails.

### **Appeal on ground (a), deemed planning permission**

#### *Main Issue*

10. The main issue in this case is the effect on the character and appearance of the countryside.

#### *Reasons*

11. The appeal site lies outside of an established settlement and in an area that is identified as countryside in the Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies Plan, (LP (Part Two)). Policy STRAT 9 of the Cheshire West & Chester Council Local Plan (Part One), (LP (Part One)) Strategic Policies seeks to protect to intrinsic character and beauty of the Cheshire countryside and protect it by restricting development to that which requires a countryside location and cites a number of types of development that will be permitted. Furthermore, it advises that development must be of an appropriate scale and design not to harm the character of the countryside. Policy DM 21 of the LP (Part Two) advises that in the countryside, outside of identified settlements, proposals for the extension of residential garden land will not be supported.
12. Kingslee is a substantial dwelling, formerly a farmhouse, whose associated barns have been converted to residential use. It is situated in an area of open countryside which, taking into account the findings of the Landscape & Visual Appraisal<sup>1</sup> which accompanied the appeal documents, and my own observations on my site visit, is characterised by flat plains of agricultural land frequented with abundant hedgerows, hedge trees and scattered settlements in the form of freestanding farmsteads and nucleated hamlets. Overall, the area has a rural and tranquil character.
13. From the evidence before me, including the historic photographs, site history and satellite images provided by the Council, the development for which permission is sought has significantly altered both the character and appearance of the Land. What was once rough pasture with some small ancillary agricultural buildings on it, is now a manicured lawn which forms part of an extended designed landscape garden. The extended garden area includes formal planting in large circular flower beds, a gravel walkway aligned with new tree planting and ornamental trees and hedges. In addition, a tennis court has been constructed with an artificial surface and enclosed by a low brick wall with stepped access and chain link fencing, approximately 2m in height. Furthermore, a new entrance has been created which includes a lengthy tarmac access road with new entrance gates at Wetreins Lane and a substantial new formal gateway with brick pillars within the site.
14. Development plan policies set out above make it clear that outside of established settlements proposals for extensions to residential garden land will not be supported. Whilst I appreciate that the Land has limited visibility to public viewpoints, that consideration does not mitigate the harm caused by an erosion of the agricultural character of the Land and encroachment of

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<sup>1</sup> Landscape & Visual Appraisal, Kingslee, Prepared by Tyler Grange, 10 August 2020.

residential development into the open countryside. Landscaped gardens, siting of play equipment, tennis courts, fencing and the substantial brick pillared gateway all have an urbanising impact on the character of the area and detract from its intrinsic rural qualities. In this case, a substantial area of land formerly characterised and appearing as part of the surrounding agricultural landscape now has a domestic appearance which has a harmful effect on the landscape characteristics of the area.

15. I recognise that the tarmac finish to the access road is similar to the surface of Wetreins Lane. However, Wetreins Lane is public highway. The surface dressed access road which now serves Kingslee runs within an agricultural field, and its point of access is demarked by elaborate metal gateposts and a splayed entrance. I recognise that the access in this location may not impact on the production of silage within this field. However, the access road has a formal and residential appearance, which in this location has eroded the original agricultural character of the landscape and the rural qualities of the area.
16. The appellant has suggested a number of landscaping proposals, including a new beech hedgerow, additional native hedgerow and tree planting and an extension to the wildflower meadow planting, all with the aim of softening the appearance of the access road, the entrance gateways and to provide additional screening to the site. However, neither the new planting nor the inherent net gains to biodiversity and ecological enhancements proposed by the appellant would outweigh the harm caused to the character of the area from the residential use of the Land and resultant encroachment of development into the open countryside.
17. The development would have a harmful effect on the character and appearance of the area. It would conflict with the development plan, and in particular with Policy STRAT 9 of LP (Part One) and Policy DM 21 of LP (Part Two), the aims of which are set out above.

#### *Other Matters*

18. I appreciate that the new access, which provides an alternative means of vehicular access to Kingslee, does not raise any highway safety concerns. I have also taken into consideration the Technical Note which accompanied the appeal documents and is dated 8 May 2019. However, the absence of any harm does not provide any positive benefit in the planning balance. Furthermore, although the Technical Note advises that there would be some marginal highway safety benefit from providing an alternative means of access to the site for occupiers and visitors to the property, I note that the Council's Highway Development Control Officer states that the proposed development is not considered to have an unacceptable impact on, or benefit to, highway safety. I therefore give this consideration little weight.
19. The appellant has cited examples of other development in the area which is considered by them to be similar to their proposal, and which has been granted consent by the local planning authority. Whilst some details of those other examples have been provided, I do not know the exact planning circumstances of them. However, from the evidence before me it would seem to me that those other examples included the development of barn conversions, listed buildings or were on previously developed land. The considerations for each of

these is not therefore directly comparable to those in this appeal case, which I have determined on its own merits.

### **Conclusion**

20. For the reasons given above the change of use is contrary to the development plan when read as a whole and the use is unacceptable. There are no material considerations to overcome the conflict with the development plan and the appeal on ground (a) must fail.

### **Appeal on ground (f)**

21. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
22. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control and injury to amenity.
23. The appellant has not provided any information in support of this ground of appeal nor has he advised why the requirements are excessive to achieve the purpose of the notice. Therefore, there are no lesser steps available to me that would achieve the statutory purpose of the notice. The appeal on ground (f) must fail.

### **Appeal on ground (g)**

24. The issue is whether the compliance period of 10 calendar months is reasonable. The appellant considers that a timeframe of 18 months would more appropriate, particularly as initial enquiries with several contractors has confirmed the impact of furloughing staff has delayed existing contracts from being completed.
25. However, current Government guidance indicates that construction related works can safely continue and therefore there are no COVID-19 restrictions that would prevent those works being carried out. Taking into account the requirements, the harm that I have identified and in the absence of any substantive evidence that would indicate otherwise, I am satisfied that 10 calendar months is a reasonable timeframe within which to comply with the notice. The appeal on ground (g) therefore fails.

### **Overall Conclusion**

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

*Elizabeth Pleasant*

INSPECTOR