
Appeal Decisions

Hearing Held on 28 September 2021

Site visit made on 28 September 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Appeal A Ref: APP/A0665/C/20/3260779

Land at Smithy Farm, Ryecroft Lane, Bruen Stapleford, Chester CH3 8HH

- 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 Mrs R Chesworth against an enforcement notice issued by Cheshire West & Chester Council.
 - The enforcement notice was issued on 17 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building for residential purposes, outlined and hashed in blue on the attached plan.
 - The requirements of the notice are:
 1. Demolish the building comprising of the unauthorised development.
 2. Permanently remove all associated materials from the land in compliance with (i) above.
 - The period for compliance with the requirements is twelve calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) 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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Appeal B Ref: APP/A0665/W/20/3260786

Smithy Farm, Ryecroft Lane, Bruen Stapleford, Chester CH3 8HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs R Chesworth against the decision of Cheshire West & Chester Council.
 - The application Ref 20/00440/FUL, dated 3 February 2020, was refused by a notice dated 14 August 2020.
 - The development proposed is extension and alteration of existing outbuilding to form residential annexe.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by:
 - deleting the word "hashed" in paragraph 3 and substituting it with "hatched"; and
 - deleting "(i)" from paragraph 5.2. and substituting it with (1).

2. Subject to these corrections the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Application for costs

4. At the Hearing an application for costs was made by Mrs R Chesworth against Cheshire West and Chester Council. This application is the subject of a separate Decision.

Procedural Matter

5. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given an opportunity to comment on any relevant implications for the appeals and have not therefore been prejudiced.

Enforcement Notice

6. There are a couple of typographic errors in the enforcement notice. In paragraph 3 the word "hashed" should read "hatched" and in paragraph 5.2. the reference to (i) should read (1.). Accordingly, in the interests of accuracy I have corrected the notice.

Appeal A on ground (b)

7. The appeal is whether as a matter of fact when the notice was issued a building had been erected on the Land for residential purposes. The burden of proof falls on the appellant to make out her case.
8. It is the appellant's case that the operations that have taken place on the Land are an extension, alteration and conversion of an existing building as opposed to the erection of a building. However, the Council consider that the original building has been substantially reconstructed and extended, and to the extent that a new building has been constructed on the Land.
9. There is no dispute between the main parties that a building previously existed on the Land. Furthermore, it is agreed that some of the original walls of that building remain and have been incorporated in the building operations that have taken place. As a matter of fact new external and internal walls, and a new roof have been constructed. Section 336 of the Town and Country Planning Act, 1990 (the Act) defines a building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.
10. The structures that have been erected and operations undertaken form part of a building and are therefore a building for the purposes of the Act. The building is occupied as a single dwellinghouse. Accordingly, the breach of control alleged in the enforcement notice has occurred as a matter of fact. The appeal on ground (b) therefore fails.

Appeal A on ground (a), deemed planning application and Appeal B

Background

11. The appeal site was originally occupied by a single storey brick structure which the appellant believes was constructed as a garage over 50 years ago and converted shortly after to provide some living accommodation for a relative. Council Officers confirmed at the hearing that there was evidence of a kitchen and toilet/shower in part of the building when they investigated a complaint relating to the unauthorised works in June 2018. However, there is no evidence that the original building had been in continual use for residential purposes. In addition, I heard at the hearing that the building, and a previous extension to it, had also been used in the past for storage and to house cattle.
12. The terms of the appeal on ground (a) (Appeal A) derive directly from the alleged breach of planning control set out in the notice. However, although the unauthorised two-storey, three bedroom dwelling is currently being rented out, it is the appellant's case that she wishes to utilise the dwelling as an annexe to Smithy Farm. The appellant's son intends to move into the existing farmhouse and the appellant would then move into and occupy the annexe. The appellant suggests that a condition could be imposed on any planning permission granted to restrict the use of the building to use as an annexe in connection with Smithy Farm.
13. Appeal B relates to the Council's decision to refuse an application to convert and extend the original single storey building to provide a one bedroom residential annexe, with the upper floor being accessed externally and utilised for storage. The Statement of Common Ground confirms that the scale and form of both the unauthorised building and the development proposed in Appeal B are the same, but that the internal layout and proposed fenestration in the development proposed in Appeal B would be different.

Main Issues

14. The main issues in both appeals are:
 - Whether the development is acceptable in principle in this location having regard to local and national planning policy; and
 - The effect on the character and appearance of the area.

Reasons

Acceptable in principle

15. The appeal site forms part of a small holding at Smithy Farm, which includes the original farmhouse, farmyard and associated farm buildings. However, Smithy Farm no longer operates as a commercial enterprise, although until recently the appellant's son had kept a small number of cattle there. The original farmhouse is currently occupied by the appellant and her son resides at nearby Barrow, where he farms 50 hectares of land.
16. It is the appellant's case that the unauthorised works to the building, and those works proposed in Appeal B, comprise the conversion and extension of an existing building situated within the residential curtilage of the existing farmhouse. Consequently, she believes that the proposed developments would comply with Policy DM21 of the Cheshire West and Chester Local Plan (Part

Two), (LP2) which makes provision for annexe accommodation within the curtilage of a dwellinghouse.

17. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of curtilage. The Technical Guidance¹ defines "curtilage" for the purposes of Part 1 of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended as land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.
18. Generally, to fall within the curtilage of a building, it is enough that the land serves the purpose of the building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, physical layout, past and present relationships of ownership and function, must be taken into account. I have had regard to relevant case law, including *Challenge v SSHCLG and Elmbridge* [2019] EWHC 553 (Admin), and it is apparent that whether or not something falls within a "curtilage" is a question of fact and degree and, thus, primarily a matter for the decision maker. It is also possible for the extent of curtilage to change over time.
19. The residential property at Smithy Farm has a front and side garden which is laid as lawn and enclosed by a mixture of fencing and shrub planting. In addition, part of the side garden is bound by a series of small brick outbuildings, which are likely to have originally been in use as a privy or coal store. However, the rear/southern elevation of the farmhouse fronts directly onto the former farmyard, now in use as a parking area. The farm buildings, including the appeal building, are situated on the opposite side of the farmyard, away from the dwelling, and are contiguous with the adjoining farmland.
20. From the evidence before me, the appeal building has previously been used both in connection with the residential use of Smithy Farmhouse, but also as part of the wider agricultural use of the farm. The nature of its use appears to have depended on the specific needs of Smithy Farm at a particular point in time. I have had regard to an extract from the historic tithe map, dated 1823, and various ariel images,² including the undated historic photograph produced by the appellant at the hearing. Smithy Farmhouse has a clear and visually distinct residential curtilage which extends to the enclosed lawned garden described in the paragraph above. Despite the ownership and previous uses of the appeal building, its position is divorced from the farmhouse by the yard, and it is more visually connected with the adjacent farm buildings. As a matter of fact and degree, I conclude that the appeal building is not situated within the residential curtilage of Smithy Farmhouse and consequently Policy DM21 of LP2 is not a relevant consideration in these appeals.
21. The appeal site lies in an area of open countryside, in an isolated location, away from any identified settlements. Policies STRAT1 and STRAT9 of Cheshire West and Chester Local Plan (Part One), (LP1) advise that proposals for residential development will only be supported where necessary to meet the minimum levels of housing development for new housing or where the proposal

¹ Permitted Development Rights for Householders: Technical Guidance, September 2019.

² Appendix 4, Council's Statement of Case (s78).

is for a form of residential development identified within Policy DM19 of LP2. Policies DM19 and DM22 of LP2 make provision for the change of use and conversion of a building in the countryside, subject to several listed criteria.

22. The appeal site was previously occupied by a single storey brick building with a floor area of approximately 95m². I understand that a flat roof extension had previously existed alongside the eastern elevation of this building. However, from the evidence before me, including the Council's aerial images, the extension was removed some years ago and only a concrete base has been visible in this location since October 2010. The previous extension cannot therefore be said to have formed a part of the new building works.
23. The unauthorised development and that proposed have been extended to encompass the area occupied by the former extension/concrete base, and consequently the ground floor area of the original building has been almost doubled. Whilst the brick walls comprised in the original south and western elevations of the building do remain, there have been significant alterations to the fenestration within them. In addition, new walls have been constructed to extend the building's original southern elevation and to form the north and eastern elevations to the new building. Moreover, a first floor has been added which has resulted in a significant increase in the height of the original building, and a whole new roof structure has been constructed to encapsulate the new external walls and floor space.
24. Even though parts of the original building remain, the extent and scale of the new works set out above, and observed on my site visit, lead me to conclude that the original building was not capable of conversion into the residential use that has taken place or that proposed, without major reconstruction. Consequently, there is conflict with Policies DM19 and DM22 of LP2 which require the original building to be of permanent and substantial construction and suitable for, and capable of conversion to residential use without significant loss of existing fabric, or major or complete reconstruction.
25. However, as set out in the background section above, the appeals in this case are for the use of the building as a residential annexe to Smithy Farm. The appellant is seeking to move into the building which would allow her son to move into the original farmhouse. There would therefore be a family connection between the occupiers of the annexe and the farmhouse, and the proximity of the two properties would allow the appellant's son to lend support to his mother in future years.
26. However, from the evidence before me, the building would not function as a residential annexe. With the exception of its means of access/driveway, and some utilities, the accommodation would not share any of its day to day living facilities with the original farmhouse. The appellant advised at the hearing that she would be cooking her own meals and continue to live an independent life. She wished to have enough bedroom space so that she could have visitors to stay and so that in her later years a carer would be able to spend the night and support her. From the evidence presented, other than proximity, there would be no interdependence between the new dwelling and Smithy Farmhouse.
27. In addition, the scale of the accommodation provided is not subservient to the original farmhouse. Whilst the layout of the internal accommodation differs in each of the appeal proposals, the existing unauthorised dwelling confirms that the scale of the accommodation is such that it provides enough space for a

large open plan kitchen/dining area, separate snug, utility room, bathroom and double bedroom at ground floor level, with two double bedrooms and a bathroom at first floor.

28. Furthermore, the building is separated from the original farmhouse by the farmyard, and thus physically divorced from it. Its living room/patio doors open onto outside space which is not overlooked by occupiers of the farmhouse. Consequently, the living conditions for the occupiers of Smithy Farmhouse have not been compromised by the erection of the new dwelling. In addition, the occupiers of the building are not dependant on the original farmhouse for their day to day living needs.
29. For the reasons set out above, the characteristics, scale and physical layout of the building are such that, as a matter of fact and degree, the unauthorised building and that proposed in Appeal B would not function as a residential annexe and instead would be a new isolated dwelling in the countryside.
30. I note that the appellant is willing to accept a restrictive condition, limiting the occupancy of the building for purposes incidental to the use of the dwelling known as Smithy Farmhouse. However, I do not consider that the use of such a condition restricting occupancy would be reasonable or meet the six tests set out in paragraph 56 of the Framework. Taking into account the divorced nature of the building and the absence of any interdependency between the two properties, it would be difficult to prevent separation of the building from Smithy Farmhouse in the future. Furthermore, given the location of the building, I consider that such a condition would be difficult to monitor and enforce and would put an undue onus on the Council.
31. I recognise that the development could provide accommodation for the appellant and I appreciate her desire to continue to live on the farm and close to her son. However, the building would remain long after the personal circumstances of the appellant ceased to be material.
32. I conclude that the development proposed in these appeals would not constitute an annexe to the existing house. The unauthorised development and that proposed in Appeal B are not therefore acceptable in this location, having regard to local and national planning policy. There would be conflict with the development plan, in particular with Policies STRAT1 and STRAT9 of LP1 and Policies DM19 and DM22 of LP2. I also find conflict with paragraph 80 of the National Planning Policy Framework, which aims to promote sustainable development in rural areas and requires new housing to be located where it will enhance or maintain the vitality of rural communities.

Character and appearance

33. Smithy Farm is situated in an area of countryside predominantly characterised by a flat agricultural landscape, with sporadic farmsteads surrounded by fields and lanes enclosed by trees and hedgerows.
34. The appeal building forms part of a cluster of buildings at Smithy Farm. It is constructed in brick with a slate roof to match the adjacent former farm buildings and dwelling. Although, by reason of its scale and height it is a more dominant building than the single storey building it has replaced, the new building has a relatively simple robust form and it not overtly domestic in appearance. In addition, it is set back from the road and is well related to the

other farm buildings within the farmstead. It is not therefore unduly prominent from Ryecroft Lane, nor from views across the surrounding open countryside.

35. I conclude that the unauthorised development and that proposed in Appeal B would not have a harmful effect on the character and appearance of the area. There is no conflict with the development plan, and in particular with the landscape and design aims of Policies ENV2 and ENV3 of LP1, and Policy DM3 of LP2.

Other matters

36. The appellant has drawn my attention to permitted development rights that would be available to the appellant under Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended. However, no specific proposals have been put forward for my consideration or identified as a fallback position. In addition, I am not aware of any permitted development rights available in this Class that would allow for a two-storey building of the height constructed in these appeals. I therefore give this consideration little weight.
37. I have also taken into consideration another decision made by the Council and drawn to my attention by the appellant³. However, from the evidence before me, that decision related to a rear extension as opposed to a new building. It was in the Green Belt and there was a realistic fallback position. The planning considerations in that proposal are not therefore directly comparable to the matters for consideration in these appeals. I therefore give this consideration little weight.

Conclusion

38. Although I have found that the developments proposed would not have a harmful effect on the character and appearance of the area, taking into account local and national planning policy they are not acceptable development in this location in principle. There are no material considerations which would merit a decision otherwise in accordance with the development plan and the Framework. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that Appeal A on ground (a) and Appeal B must fail.

Appeal A on ground (f)

39. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
40. 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. The Council confirmed at the hearing that the purpose of the notice in this case is to remedy the breach of planning control.
41. The appellant has advanced three alternatives to the breach of planning control which she considers would overcome the planning harm at less cost and

³ Local Planning Authority Ref: 18/04773/FUL

disruption to her than total demolition. Those alternatives include granting permission for the unauthorised building to be used as a residential annexe to Smithy Farm as constructed, or as proposed in the development the subject of Appeal B. The third suggestion is that the building should be restored as near as possible to the form that existed prior to the unauthorised development commencing.

42. However, the planning merits of the development as a residential annexe were considered in Appeal A on ground (a) and Appeal B. Both schemes were found to conflict with the development plan and are not therefore options before me. Restoring the building as near as possible to the form that existed prior to the unauthorised development commencing would not remedy the breach of planning control, which can only be achieved by demolition of the building. In addition, it would be excessive to require new building works to be undertaken to reconstruct the original building.
43. The appellant also believes that it is excessive to require all the materials resulting from the demolition of the building to be removed from the site as they are capable of re-use. However, no specific details have been provided as to how the demolition materials would be utilised. In any event, this lesser step would not remedy the breach of planning control, as the purpose behind the notice can only be achieved by complying with its requirements. Therefore, the appeal on ground (f) must fail.

Appeal A and Appeal B – Overall Conclusions

44. For the reasons given above and having taken into account all other matters raised, I conclude that the appeals should not succeed. I shall uphold the enforcement 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

APPEARANCES

FOR THE APPELLANT:

Mrs Rosamund Chesworth

Appellant

Mr Mark Chesworth

Appellant's Son

Mr Leslie Smith BA (hons), MA, MRTPI

LS Planning

FOR THE LOCAL PLANNING AUTHORITY:

Steven Holmes

Senior Planning Officer

Jennifer Weigh

Planning Enforcement Officer