



Appeal Decisions

Site visit made on 28 September 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal A Ref: APP/R0660/C/21/3273330

Appeal B Ref: APP/R0660/C/21/3273331

White Lodge, Chester Road, Tabley WA16 0HF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Stuart Noble against an enforcement notice issued by Cheshire East Council. Appeal B is made by Mrs Victoria Lunn.
- The enforcement notice was issued on 22 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised formation of an earth mound, area of hardstanding, alterations to the existing driveway, the erection of a green weld mesh fence and an aerial/CCTV pole.
- The requirements of the notice are:
 - a) Remove the earth mound shown in its approximate position shaded in blue on the attached plan marked 'Plan B' by undertaking the works in accordance with the attached Arboricultural Method Statement and Tree Protection Plan in Appendix 1.
 - b) Remove the hardstanding shown in the approximate position shaded in yellow on the attached plan marked 'Plan B' in accordance with the attached Arboricultural Method Statement and Tree Protection Plan in Appendix 1.
 - c) Remove the hardstanding and the kerbstones shown in the approximate position shaded in green on the attached plan marked 'Plan B'.
 - d) Remove the fence shown in its approximate position edged in pink on the attached plan marked 'Plan B'.
 - e) Remove the aerial/CCTV pole shown in its approximate position indicated by an 'X' on the attached plan marked 'Plan B'.
 - f) Remove all resulting debris arising from steps (a), (b), (c), (d) and (e) from the land.
 - g) Cover the land shaded in blue, yellow and green in 100mm of topsoil and reseed with grass seed.
- The period for compliance with requirements (a) to (f) is 3 months and (g) is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act as amended. Appeal B is proceeding on grounds (f) and (g).

Summary of Decision: Appeal A succeeds in part and permission for that part is granted, but otherwise the appeals fail and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. I note that works to reduce the extent and alter the position of the earth mound have taken place since the enforcement notice was issued. For the avoidance of doubt, I have considered the development on the basis of the mound as it appeared at the time of my site visit, as described below.

2. The works broadly correspond with the revised plan submitted with the appellant's Tree Report¹ (Plan 2).
3. On 20 July 2021 the Government published its revised National Planning Policy Framework (the Framework), which represents the up-to-date planning policies for England and how they should be applied. Planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration where relevant to a planning application or appeal, as it is in this case. Although the enforcement notice was issued prior to its publication, policies within the Framework should be taken into account for decision making from the day of its publication. Those in relation to proposals affecting the Green Belt and heritage assets are largely unaltered.

Appeal A on ground (a)

Background and Main Issues

4. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the formation of an earth mound, an area of hardstanding, alterations to the existing driveway, the erection of a green weld mesh fence and an aerial/CCTV pole.
5. The land is within the North Cheshire Green Belt and a registered park and garden. The works are close to a listed building.
6. The main issues are:
 - whether the development is inappropriate development in the Green Belt having regard to the revised Framework and relevant development plan policies;
 - the effect on the openness of the Green Belt;
 - whether the development preserves the setting of a grade II listed building, White Lodge, and whether the development preserves a grade II registered park and garden, Tabley House, or its setting and any features of special interest which it possesses;
 - the effect of the development on protected trees;
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

The Policy Framework

7. The development plan comprises the Cheshire East Local Plan (2017), the saved policies of the Macclesfield Borough Local Plan (2004) and the Knutsford Neighbourhood Plan. Policy PG3 of the Cheshire East Local Plan is most relevant to Green Belt considerations. It is consistent with the Framework in that it seeks to ensure the Green Belt is protected from inappropriate development. Development proposals that would harm the Green Belt should be refused except where very special circumstances exist.

¹ Astra Tree Services Ltd from survey 24 October 2018.

Whether the development is inappropriate development in the Green Belt and the effect on openness of the Green Belt

8. The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. The unauthorised development has taken place on land to the north west and west of White Lodge, which is a grade II listed building accessed from Chester Road (A556). The earth mound has been developed alongside the main road and it extends for some distance along the boundary of the road with the adjoining field. The carriageway is positioned higher than the adjoining land, and so the mound forms an extended embankment. The earth mound is visible when standing in the field, or on the driveway to White Lodge, but less so from the road. I saw that, when driving or walking along the main road in either direction, the mound was not particularly discernible.
10. The weld mesh fencing extends for a relatively short distance in a northerly direction from the junction between the driveway and the main road. It is not overly prominent given its materials and dimensions. The aerial/CCTV pole is set at the access, within the field. It is fairly tall, but the pole is narrow and the structure is partially screened by mature trees.
11. An area of hardstanding has been created towards the front of the house and, at the time of my visit, it was laid with crushed stone and used for parking. I also noted the alterations to the driveway, which comprise surface treatment, widening and the addition of kerbstones.
12. The matters before me include operational development comprising engineering operations - the construction of the earth mound, hardstanding and alterations to the driveway.
13. Paragraph 150 sets out that certain forms of development are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes engineering operations. The Courts have held that openness of the Green Belt has a spatial aspect as well as a visual aspect. The absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. Equally this does not mean that the openness of the Green Belt has no visual dimension².
14. The earth mound has been created by positioning a large amount of earth to form an embankment alongside the road. As described, I consider the visual impact of the development to be limited in views from the road itself due to the difference in levels. While visible from the field and driveway to the west and north west of White Lodge, the mound is seen in the context of the road. Its appearance is that of an embankment of a type which is not unusual in association with a main transport route. As such, I do not find it to be visually intrusive.

² *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466; *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3.

15. The earth mound could be considered to have a spatial aspect as it occupies an area of land that was previously open. Nonetheless, it lies adjacent to a road that runs at a higher level. The mound is graded and forms a slope up to the level of the carriageway, or above it in parts. In consequence, I do not consider that the spatial impact is harmful. As explained, the mound appears as an embankment next to a busy main road, as opposed to a freestanding formation in an otherwise level landscape. Consequently, I do not find that the formation of the earth mound harms openness in this particular context.
16. Similarly, the hardstanding and alterations to the driveway have a limited visual impact. While apparent from the main road, the works are seen in the context of a residential property. They are not overly engineered or extensive and serve a reasonable purpose. I saw that the driveway has started to 'bed in' and grass has started to grow in the centre and along the edges. There is no spatial aspect to these operations aside from the parking of cars. However, in this context, the domestic parking associated with the residential use of White Lodge would not affect openness, in my judgement. I find, therefore, that the hardstanding and alterations to the driveway do not harm openness.
17. The second part of the paragraph 150 test is whether the development conflicts with the Green Belt purposes. The Council considers that the matters alleged amount to encroachment and are thus contrary to the stated purpose of safeguarding the countryside from encroachment. The earth mound is covered with vegetation. When standing opposite the driveway entrance and looking north, I could see the vegetation on the mound but it did not have the appearance of an urbanising or incongruous feature. In views from further south along the road, the mound is more visible at the access, as it is higher, but again it is graded and covered with vegetation. The mound blends in with its surroundings and does not represent an incongruous form of development. Even when considered cumulatively with the weld mesh fence and pole, there is limited impact. The fence enables views through it and its colour is consistent with the surrounding vegetation. The pole is fairly discreet. It is set back from the road and is not out-of-character as it is sited close to a busy main road with tall lampposts either side.
18. The hardstanding and alterations to the driveway have reduced the area of grass. However, the surface treatment of the driveway remains fairly low key and is not unacceptable in this rural context. The surface treatment could be controlled through the use of planning conditions and it would be possible to ensure that it does not result in a suburban type tarmac drive, for example, with a turning/parking area.
19. I find, therefore, that the construction of the earth mound, hardstanding and alterations to the driveway do not amount to encroachment in the countryside. The engineering operations preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Hence, these matters are not inappropriate development.
20. I shall now consider the fencing and the aerial/CCTV pole. The Framework states that a local authority should regard the construction of new buildings as inappropriate in the Green Belt unless it is for one of the specified exceptions, which are not applicable in this case. The term building is defined as follows in section 336 of the 1990 Act - "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery

comprised in a building. Applying this definition would mean that the fencing and aerial/CCTV pole, should be regarded as 'buildings' for the purposes of the Framework. The appellant indicated that these works should be considered engineering operations but does not explain why. My assessment is that the definition of building is most applicable to these matters.

21. I consider that the fencing and the CCTV/aerial pole are inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and this harm carries substantial weight.

The effect on the openness of the Green Belt

22. It is necessary to consider, separately, the effect of the fencing and the pole on openness since this was not part of the assessment as to whether those matters amount to inappropriate development, as it was for the engineering operations. The fencing is of an open mesh construction, which allows views through. It is not extensive nor prominent and its visual and spatial effect is very limited. The pole is seen in the context of the highway lampposts. It is a narrow structure with a domestic sized aerial and four small cameras. Similarly, its visual and spatial effect is very limited. I consider that these structures result in no harm to the openness of the Green Belt.

Whether the development preserves the setting of a grade II listed building, White Lodge, and whether the development preserves a grade II registered park and garden, Tabley House, or its setting and any features of special interest which it possesses

23. The registered park and garden comprises an 18th Century landscaped park with 19th Century gardens and grounds associated with Tabley House. Its significance is derived from its purpose and design, and its association with the principal building. The unauthorised development is within the designated parkland and I must consider its effect on its setting and any features of special interest that it possesses.
24. White Lodge stands on the south-western side of the historic parkland. The Lodge is an 18th Century two-storey, whitewashed brick building with a central, semi-circular archway. Its significance can be attributed to its historic association with Tabley House, and its form and architecture. I note from the listing description that the driveway from the Lodge to the west side of the House was no longer used in the later 20th Century. The land to the front of the Lodge provides views towards the listed building and enables its appreciation as a former Lodge to a country house of considerable status. The setting, therefore, makes a positive contribution to the significance of the listed building.
25. The registered park and garden includes the land to the north of the access track. This part of the parkland was given over to shelter belts, which are a feature of the majority of the Park's perimeter. The shelter belt in this location is largely focussed to the north and east of The Lodge and would remain unaffected by the development. The majority of the development is alongside the road and its overall effect on the historic landscape is limited. The development does not interrupt views towards the former Lodge and its function and purpose within the historic landscape remains evident. I am satisfied that the registered park and garden may still be interpreted as a

landscaped park associated with Tabley House and its significance is not harmed by the development.

26. The Lodge is in use for residential purposes and it has been altered and adapted to meet modern standards. Nonetheless, it retains its form and architectural appearance and can readily be interpreted as a former Lodge building, despite the absence of a connecting driveway to Tabley House. The listed building itself is unaffected by the development, but there have been alterations to land forming its setting. The driveway has been widened and resurfaced and a turning area has been laid out. These works have altered its appearance from a track to a more formal driveway. Nonetheless, the original carriage driveway would have been relatively formal as it would have been one of several serving a substantial country house. It would have had surface treatment appropriate to its use. Although the drive is now likely to be wider, with a surface treatment of a more substantial nature than that which existed historically, I do not consider the driveway alterations or hardstanding to be harmful to the setting of the listed building, or to the special interest of the historic parkland. As explained above, the works are not overly engineered and surface treatment can be controlled. Moreover, the driveway remains in its historic position.
27. The earth mound, fencing and aerial/CCTV pole are sited close to the highway and are seen in that context. In my opinion, the earth mound and fencing do not impede key views towards the Lodge nor do they undermine its historic character. The listed building can still be interpreted as a former Lodge. Hence, the works do not harm the contribution made by its setting to the significance of the listed building.
28. I conclude on these matters, that the development preserves the setting of a grade II listed building, White Lodge, and a grade II registered park and garden, Tabley House, and its setting and the features of special interest which it possesses. This would satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 197 of the Framework and would not conflict with Policy SE7 of the Local Plan which seeks to ensure development preserves the significance of heritage assets.

The effect of the development on protected trees

29. There are a number of trees on the land to the north of the driveway, which are covered by a Tree Preservation Order. The appellant's Tree Report identifies the majority as semi-mature and mature oak (T1, T3-T9) along with hawthorn (T2 and G1). Trees T7-T9 are located within the field whereas the others are situated alongside the road. The trees are identified as having high landscape value.
30. The Tree Report noted that the ground level had been raised along the eastern side of the roadside trees, which would have an adverse effect on the trees due to compaction and reduced moisture absorption. I also saw that the turning area has been constructed under the canopy of T9, which is also likely to result in compaction. The report included a number of remedial recommendations and was updated following correspondence with the Council. In particular, the method statement was updated so that the mound would be moved to the edge of the root protection areas of the roadside trees instead of the canopies, and an updated plan was provided (Plan 2). The Council confirmed that the

proposed remedial works would be acceptable, subject to appropriate supervision of the works³.

31. The appellant explains that the works were implemented. However, the Council remains concerned that the works may not have been properly carried out. In response, the appellant has provided an updated Tree Report, following a site visit in June 2021. This concludes that the majority of the trees are in good condition (T1- T2, G1, T5-T9). Two are showing signs of distress (T3 and T4), but the recent removal of earth from around the trees should improve growing conditions. T9 is within the turning circle and remains in good condition, but it is noted that any final surface should be carefully considered.
32. I conclude, therefore, that the development does not have an adverse effect on protected trees. It accords with Policy DC9 of the Macclesfield Borough Local Plan, which seeks to resist development that would harm protected trees.

Other considerations

33. The appellant argues that the best use of the Lodge is as a dwelling house and it should be afforded the amenities and enjoyment associated with that use, including outdoor amenity, privacy and security. It is contended that the site is attractive to trespassers and security measures are necessary.
34. I accept that the CCTV would provide enhanced security but it has not been shown that the cameras could not be positioned elsewhere, without the need for a pole. The fencing is likely to have a minimal effect on security as it only covers a relatively short stretch of the boundary. I find, therefore, that these considerations carry limited weight.

Conclusion

35. I conclude that the engineering operations comprising the construction of an earth mound, hardstanding and alterations to the driveway are not inappropriate development in the Green Belt, nor is there harm to designated heritage assets or protected trees as a result of these works, provided a condition relating to surface treatment is imposed. The engineering operations accord with Policy PG3 of the Cheshire East Local Plan, and the revised Framework, which seek to protect the Green Belt from inappropriate development. The ground (a) appeal in respect of these matters succeeds and planning permission will be granted. It is not, therefore, necessary to go on to consider the appeals on ground (f) and (g) in respect of the earth mound, driveway and hardstanding.
36. The fencing and the CCTV/aerial pole are inappropriate development in the Green Belt, which is harmful by definition. The Framework establishes that substantial weight should be given to any harm to the Green Belt. I have found no harm to openness, designated heritage assets or protected trees, however, lack of other harm does not weigh in favour of the development but is considered to be neutral.
37. The other considerations advanced by the appellant carry limited weight and do not clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify the development comprising the green weld mesh fence and the aerial/CCTV pole

³ Email dated 29 November 2018.

do not exist. This aspect of the development is unacceptable in principle and the harm could not be mitigated through the imposition of planning conditions.

38. I have considered the alternatives offered by the appellant in relation to the pole and the fence. These are: (i) spray the pole in an appropriate colour or replace with a timber alternative of the same size, and (ii) replace the fence with a timber post and rail fence or similar. However, as set out above, these aspects of the development are unacceptable in principle and the harm cannot be mitigated by the alternatives offered.
39. I conclude that the green weld mesh fence and the aerial/CCTV pole are harmful to the Green Belt, contrary to Policy PG3 of the Cheshire East Local Plan, and the revised Framework, which seek to protect the Green Belt from inappropriate development. As a result, the aerial/CCTV pole and green weld mesh fence do not accord with the development plan.

Appeals A and B on ground (f) – green weld mesh fence, aerial/CCTV pole

40. The appeals have been made on ground (f) and, therefore, I must consider the statutory purpose of the enforcement notice. The purposes are set out in Section 173(4) of the 1990 Act as (a) remedying the breach by making any development comply with the terms of any planning permission which has been granted, by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
41. The steps seek the removal of the unauthorised works and the restoration of the land to its previous condition. It is clear that the purpose of the enforcement notice is to remedy the breach of planning control. Consequently, on the ground (f) appeals, I must decide whether the steps required by the notice exceed what is necessary to remedy the breach identified.
42. The development has been undertaken without planning permission. To rectify the breach, the works must be removed. There are no lesser steps offered that would achieve the statutory purpose behind the notice. Consequently, the appeals on ground (f) must fail.
43. I have considered the alternatives offered by the appellants as part of the ground (a) appeal, since they would require me to grant planning permission, but have found that the alternatives would not overcome the harm identified.

Appeals A and B on ground (g) - green weld mesh fence, aerial/CCTV pole

44. The appeals on ground (g) are that compliance period specified in the notice falls short of what should reasonably be allowed. The removal of the pole and fencing is not a complex operation and I consider it likely that it would be possible to comply with the relevant steps within the three months allowed. The ground (g) appeals fail, therefore.

Conclusion

45. For the reasons given above I conclude that Appeal A should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part.

46. The requirements of the notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

47. Appeal A is allowed insofar as it relates to the earth mound, hardstanding and alterations to the driveway and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for "the unauthorised formation of an earth mound, area of hardstanding, and alterations to the existing driveway" at White Lodge, Chester Road, Tabley WA16 0HF, subject to the following condition:
- 1) Within 3 months of the date of this decision, a scheme for any further surface treatment to the driveway or hardstanding area shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The approved scheme shall be carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.
48. The appeals are dismissed and the enforcement notice is upheld for the green weld mesh fence and aerial/CCTV pole, and planning permission is refused in respect of "the erection of a green weld mesh fence and an aerial/CCTV pole", on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector