



Appeal Decision

Inquiry Held on 27 & 28 July and 1 October 2021

Hearing Held on 27 July 2021

Site visit made on 28 July 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Appeal Ref: APP/A0665/C/19/3226746

Land at Dones View Farm, Northwich Road, Dutton, Northwich

- 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 Barry Michael Devine against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice, numbered 18/00342/EOPDEV, was issued on 18 March 2019.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a new building (hatched in red on the attached plan) and the erection of a boundary wall and fence (shown in green on the attached plan).
- The requirements of the notice are (i) Demolish the unauthorised building; (ii) Remove or reduce the height of the fence, wall and brick pillars to a maximum height of 1 metre; and (iii) Permanently remove all associated materials from the land in compliance with (i) and (ii) above.
- The period for compliance with requirements (i) and (ii) is 6 months from the date the notice takes effect. The period for compliance with requirement (iii) is within 1 month after compliance with requirements (i) and (ii).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (d) of the Town and Country Planning Act 1990 as amended (the Act).

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Application for costs

1. At the Inquiry an application for costs was made by Mr Barry Michael Devine against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Preliminary matters

2. The Inquiry sat for 3 days. Except for the evidence in chief of Mr Barry Michael Devine, which was given at the Hearing, the evidence on grounds (b) and (d) was affirmed at the Inquiry.
3. The Revised National Planning Policy Framework (the Revised Framework) was published in July 2021, shortly before the Inquiry opened. It was agreed that the revisions did not have any significant implications for the issues in the appeal.

4. A document submitted by the appellant prior to the Inquiry entitled 'Comment' was not included in the list of Core Documents (CDs). A copy was provided for the Council during the Inquiry.
5. For the purposes of the appeal on ground (b), where any building or fabric is described as new, that means it post-dates the appellant's purchase of the appeal site in 2000. Whether any building operation was substantially completed sufficiently long ago to achieve immunity from enforcement action is considered separately in the appeal on ground (d).

The notice

6. An agreed corrected plan with a green line to accurately show the boundary wall and fence was submitted during the Inquiry. The building is not hatched in red on this plan, as stated in the allegation in the notice; however, the notice can be corrected to resolve this without causing uncertainty or injustice.
7. Requirement (iii) of the notice is intended to only apply to materials arising from the demolition of the building and the reduction in height of the fence, wall and brick pillars in compliance with the other requirements of the notice. Varying requirement (iii) to clarify this would make the notice no more onerous than first issued and, having sought the views of the parties, I am satisfied it would not give rise to injustice.

The appeal on ground (b)

8. The appeal on this ground only relates to the alleged erection of a new building. The appellant states the building is not new, and has not been rebuilt, but has been repaired over time, as needed or to improve it. However, to succeed on this ground, it is necessary for him to show, as a matter of fact and degree, that a new building has not been erected.
9. The appellant carried out many of the works to the building in an incremental manner, in his own time and over several years. It is therefore understandable that few records were kept, making it harder for him to recall details. However, that does not remove the burden of proof on him to show that those works have not, cumulatively, resulted in a new building.

The eastern wing

10. The building was 'L' shaped when the appellant bought it and he states that he built the eastern wing, giving the building a square 'U' shape, between 2001 and 2004. The eastern wing is therefore a new building.

The northern and western wings - the base and floor

11. A new concrete floor and damp-proof course were laid over the original base. This floor is deeper in a part formerly occupied by milking pens, where drainage channels were filled to create a level floor. This operation introduced new fabric and while filling the drainage channels may have been an improvement that allowed more flexible use, there is no evidence that the original base needed repair.

The northern and western wings – the walls

12. The southern gable of the western wing, described as the pig pen, was originally constructed of single skin brickwork. This gable was rebuilt, and a

- new roof added in or around 2007. Subsequent elevational changes, including large openings, are recorded in photograph 1 of CD 5.1.
13. All internal walls in these wings are in new blockwork. While they may follow the layout of previous partitions, they have replaced original fabric throughout. The elevations of both wings have changed considerably since 2000, including the removal of areas of render and alterations to door and window openings. Some openings had been bricked up prior to 2000, recorded in photographs¹ mostly taken in 2000 and 2001. The appellant confirms he reinstated as many as a dozen old openings, made one or two new ones, and blocked others up but had not recorded those changes. Variations in brickwork visible in several photographs in CDs 5.2, 5.3 and 5.4 that are no longer apparent indicate that numerous openings that existed in 2000 have since been altered or bricked up.
 14. The appellant states that bricks reclaimed from the original inner skin of the external walls were used to replace those in poor condition in the outer skin, including areas previously beneath render, between 2001 and 2010. However, in cross-examination he affirmed he had sourced bricks from elsewhere to use alongside re-used bricks in the works he carried out between 2001 and 2003. Furthermore, his Schedule of Works² states that original inner brickwork was replaced in 2007 or 2008. This is corroborated by the statement of Andrew Devine, one of the appellant's witnesses, who affirmed in cross-examination that the inner skin of the external walls was replaced in 2007.
 15. There is ambiguity in the evidence presented. This is because it is unclear as to whether existing bricks had been available for re-use in any of the alterations to door and window openings the appellant made before 2007. When the appellant was questioned on this in cross-examination, he referred to paragraph 11 of his witness statement (CD 3), but that only states the works were carried out before 15 July 2015.
 16. Some 5,000 bricks were brought onto site and the appellant affirmed these were used to build the eastern wing. A Council witness saw white patches in the western elevation of the western wing in March 2018³. She considered this to be efflorescence, which is generally found in new brickwork, although the appellant suggests it could have been frost. No other signs of frost are apparent in any of the Council's 14 photographs taken that day.
 17. It is difficult to gauge the proportion of new outer brickwork in these wings by observation. There are no visual clues as to which bricks have been there all along, which were previously inside the building and which were purchased by the appellant. Nor was there any sign of efflorescence when I visited the site. The brickwork looks new, although the appellant explained how he used his skills to clean original and re-used bricks chemically. Roughly half of the bricks in the original inner skin were rendered unusable during removal and only the best ones, approximately 20% of the total, were re-used in the outer skin. Overall, the appellant estimates that a quarter of the external brickwork in the northern and western elevations was replaced. However, the ambiguity in his evidence regarding when the inner skin was replaced means that caution must be exercised when estimating the proportion of re-used original bricks in the outer skin.

¹ Photographs 10, 12, 18, 24 - 27 (CD 5.2); 34, 38, 39 & 45 (CD 5.3); 48, 51 & 53 (CD 5.4); and 59b (CD 5.6)

² CD 8, pages 440-442

³ CD 12.2, paragraphs 3.1 & 3.2, and CD 14.1.3

18. The appellant's evidence shows that in some areas, the changes he made were significant. When questioned in cross-examination about the large area of render that had been on the western elevation of the western wing, he affirmed that he had eventually knocked the entire wall down. There was also significant change to the eastern elevation of the same wing. The 'before' and 'after' images in photograph 60 (CD 5.6) show that there were 3 doors, a larger opening, and one window where there are now 5 window openings. Annotated drawings⁴ give further indication of the scale of change in this part of the building. This evidence suggests that, even if none of the remaining original brickwork in that part of the building had been replaced, it would be a small proportion of what is there now. It is therefore apparent that, as a matter of fact and degree, only a small amount of original fabric remains in the walls in this part of the building.
19. These are major elevational changes from what existed in 2000 that have unified the brickwork throughout. They incorporate a significant amount of material that was previously elsewhere, either within the building or off-site.

The northern and western wings – the roof

20. The appellant decided in 2015 that the original roof trusses were "in places unsafe"⁵ but this is not explained in detail. While those words may suggest only partial repairs were necessary, the entire roof structure, incorporating new timbers and steels, was replaced during 2016 and 2017.
21. Evidence as to whether, or how many, original slates were re-used in that building operation is contradictory. The appellant states in writing that he re-used all the original slates. When questioned on this in cross-examination, he made a significant change, affirming that he had re-used those that were serviceable, estimating they form about a quarter of the slates now present.
22. In contrast, the statement of Andrew Devine said 'almost new' slates had been sourced. He affirmed in cross-examination that the slates now on the roof are not original. His account has not changed, and it tallies with the evidence of a letter from the roofing contractor engaged in the work, which states the appellant had agreed it would "supply and fit all batons and slates".
23. It has thus not been demonstrated that the slates placed on the roof in 2016 and 2017 were re-used originals. It is more likely they were new to the site.

Whether these changes constitute a new building

24. The courts have held that, in principle, the retention of fabric from an original building does not preclude it being found, as a matter of fact and degree, that a new building has been formed and that the original building has ceased to exist⁶. Whether that has occurred is a matter to be determined according to the facts of each case.
25. It is not known what works the appellant contemplated and intended to carry out when he bought the building, although he began using it for his building and joinery business after making the roof watertight. Nevertheless, the 5

⁴ CD 7.1, pages 443 & 444 of the appellant's proof of evidence

⁵ CD 6.2 paragraph 10

⁶ Oates v SSCLG & Canterbury CC [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251

- applications he made in 2018⁷, after he had retired, confirm it was then his intention that the building should become a dwelling.
26. The elevations and floor plans from those applications are marked 'existing + proposed', indicating that any structural or elevational changes the appellant deemed necessary for residential use had already been carried out. Except for a porch, since removed, and the insertion of doors and windows, the drawings show the building as it is now. It would require a substantial leap of imagination to view this repurposing of the building as an unplanned consequence of nothing more than repairs and improvements.
27. However, it is necessary to determine whether, and if so to what extent, the original building has survived or whether what the appellant describes as repair and improvement has resulted in a new building. It is the building that existed when the notice was issued, taking account of the cumulative effect of the works since 2000, that must be considered.
28. The entire eastern wing is a new building. The appellant's annotated plan⁸ indicates it is a significant proportion, possibly a third, of the total fabric. The walls of the northern and western wings have been greatly altered, particularly in the western wing, where the southern gable is rebuilt, with an inner skin added, and an entire section of wall has been replaced in the west elevation. The collective evidence indicates, as a matter of fact and degree, that the entire roof structure of these wings, including the slates, is new.
29. Everything that can be seen from inside the northern and western wings, including the walls, the floor, and the roof structure, is new fabric. The appellant contends that most of the original outer brickwork of these wings remains in place and he estimates that approximately a quarter of the brickwork in these wings is new or re-used. While that estimate was made in good faith, it is not supported by other evidence and its credibility is undermined by ambiguities exposed in cross-examination.
30. As a matter of fact and degree, only an indeterminate, but nevertheless small, proportion of the building's original fabric may have survived in the walls of the northern and western wings. This, and the corresponding far greater proportion of new fabric, mean that the original building no longer exists as a recognisable structure.
31. There is no doubt that the original base of the northern and western wings supports the building above it. Neither can it be doubted that the remaining original fabric in the outer skin of the external walls of the northern and western wings contributes in some way to the structural integrity of the building. However, the proportion of original brickwork is not quantified and, consequently, the degree of support it may provide to the building is uncertain. It has therefore not been demonstrated that the remaining original fabric provides anything more than modest support to the building now existing.
32. Although the building works undertaken between 2000 and 2018 have been presented as apparently unconnected repairs and improvements, the outcome is a unified building. While the northern and western wings broadly follow the form and mass of the original building, they are significantly different in terms of their fabric. When the elevational changes to those wings and the

⁷ 18/00384/FUL, 18/01751/PDQ, 18/02815/FUL, 18/03836/PDQ and 18/04939/PDP

⁸ CD 7.1, page 439 of the appellant's proof of evidence

construction of the entire eastern wing are also considered, there can be no doubt that a different, and therefore new, building now exists. What fabric remains from the original building is fully incorporated in this new building.

33. I have been referred to the Janeland⁹ appeal decision. In that case, it was decided that a replacement roof, the addition of an outer skin to the walls and rebuilding 2 extensions had not resulted in a new building.
34. Full details of the building operations at Janeland are not before me and in any event, each case must be determined according to its facts. However, the decision letter suggests there were some significant differences from the facts of this appeal, not least that the original walls were retained, apparently unchanged. While the entire roof was replaced, the original structure had been infested with woodworm and rotten in places, suggesting a need for more extensive work than has been demonstrated in this appeal. Furthermore, while two extensions were rebuilt, they had been relatively lightweight and in need of significant repair or improvement. The Janeland decision therefore does not alter my findings on the facts pertaining to the appeal site.
35. A comparison was also drawn with a nearby site, known as Woodbank Farm. Aerial images confirm a building there was largely, if not entirely, demolished and rebuilt between June 2016 and April 2018. I viewed this site from the road in connection with the appeal on ground (a) and noted the apparent similarity between the building there and the one that now exists at Dones View Farm. While I was advised the Council had opened an enforcement investigation relating to Woodbank Farm, no details were provided. Furthermore, while the Council granted planning permission for the redevelopment, details of the scheme and the reasoning for its approval were not provided. Accordingly, this does not alter my findings on the facts pertaining to the appeal site.
36. For these reasons, the allegation set out in the notice, the erection of a new building, is correct and the appeal on ground (b) must fail.

The appeal on ground (d)

37. To succeed on this ground the appellant needs to show, on the balance of probability, that the building operations comprising the erection of the building and/or the boundary wall and fence were substantially completed on or before 18 March 2015 (the Relevant Date), 4 years before the date on which the notice was issued.

The new building

38. The building lacks heating and sanitation, electric work is incomplete, and doors and windows have yet to be inserted. The appellant has documented building operations that were undertaken after the Relevant Date, the most significant being the entire roof over the northern and western wings. Other works undertaken after the Relevant Date include the final restoration of bricked up windows, alterations to the south gables of the eastern and western wings, and the replacement, re-pointing, and cleaning of brickwork throughout. While the appellant states these works did not continue beyond 2017, another statement indicates that building works were still being undertaken in 2019¹⁰. The author of that statement was not called as a witness, so it was not possible

⁹ APP/M1710/C/16/3148814 - Janeland, Willis Lane, Four Marks, Alton GU34 5AP

¹⁰ Letter from Martin Moorhouse, dated 11 April 2019 (CD 4)

to test this ambiguity, and greater weight must be afforded to the evidence that was affirmed.

39. Nevertheless, significant building operations that were part of the erection of the new building were undertaken after the Relevant Date. Evidence of the appellant's intentions for the building at that time was not presented. However, he affirmed that his retirement in 2015, the year of the Relevant Date, had given him more time to devote to 'the project'. A precise retirement date was not given, and the nature of 'the project' was not explained. However, in the context of the appellant ending his business use of the building, it is reasonable to assume the project was concerned with its future use.
40. The possibility that the changes to the structure deemed necessary for residential occupation, which were part of the erection of the new building, had been achieved without forethought is too slight to be given significant weight. In contrast, the building operations carried out from 2015 to 2017 would be consistent with an objective of creating a building suitable for residential use. That intention was repeatedly stated in the 5 applications made in 2018, after those works had been completed.
41. The construction of the eastern wing in its original form was substantially completed before the Relevant Date. While there is little or no evidence of that original form to compare with what existed when the notice was issued, the appellant's Hearing Plan (CD 7.1) indicates that significant elevational changes were undertaken. Nevertheless, by 2018, and like the rest of the building, any structural and elevational changes to the eastern wing that the appellant deemed necessary for future residential use had been carried out. This must be assumed to include the replacement of roof tiles with slates¹¹.
42. The building works that resulted in the northern and western wings becoming a new building were not substantially completed on or before the Relevant Date. As a matter of fact and degree, and considering the changes made to it from 2015 onward, the eastern wing is not an extension to a building that no longer exists as a recognisable structure. Rather, it is part of the new building.
43. For these reasons it has not been demonstrated that the new building was substantially completed on or before the Relevant Date.

The boundary wall and fence

44. While the appellant states that the road frontage to the east of the entrance has always been fenced, that does not demonstrate the present fence was substantially completed on or before the Relevant Date. The appellant states there was always a 2m high fence to the west of the entrance, behind the hedge and 'some 8m from the road'¹². However, this is further from the road than the fence now in place, which must therefore be new.
45. Images provided by the Council show there used to be a post and rail fence along the road frontage to the east of the entrance, with a return leading to the original entrance gate. There is no evidence of the boundary fence that has replaced it, or that to the west of the entrance, earlier than an image dated March 2019¹³, after the Relevant Date. While that image shows the completed

¹¹ Google Street View images dated April 2009 provided by Wendy Alam and CDs 14.2.7 & 14.2.8 dated June 2018

¹² CD 3 paragraph 13.

¹³ CD 15.10

brick walls leading to the entrance gate, a photograph taken by the Council in March 2018¹⁴, after the Relevant Date, confirms that one of them was only part built then. Accordingly, it has not been shown that the boundary wall and fence were substantially completed on or before the Relevant Date.

46. For these reasons, the notice's allegation that the building and the boundary wall and fence were not substantially completed on or before the Relevant Date is correct and the appeal on ground (d) must fail.

The appeal on ground (a)

47. The appeal on this ground and the deemed planning application (DPA) solely relate to the erection of the boundary wall and fence.

48. The main issues in this appeal are:

- Whether the boundary wall and fence are inappropriate development in the Green Belt having regard to the Revised Framework and any relevant development plan policies.
- Their effect on the openness and purposes of including land in the Green Belt.
- Their effect on the character and appearance of the area.
- If they are inappropriate development, 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 proposal.

Whether the boundary wall and fence are inappropriate development

49. The definition of a building in section 336 of the Act includes "any structure or erection" and the boundary wall and fence are therefore buildings for the purposes of this assessment. New buildings are inappropriate development in the Green Belt unless one or more of the exceptions listed in paragraph 149 of the Revised Framework applies.
50. None of those exceptions is claimed, and no exception provided by policy STRAT 9 of the Chester West & Chester Council Local Plan (Part One) Strategic Policies (the Development Plan) is suggested. The wall and fence are thus inappropriate development in the Green Belt.

The effects on the openness and purposes of including land in the Green Belt

51. Paragraph 137 of the Revised Framework confirms 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.
52. Northwich Road passes through relatively flat countryside and has limited footways and only sporadic built development along its length. Heading west from the A49 junction, the footway and streetlights end opposite the site. Accordingly, and although it is the main road between Runcorn and Northwich, the road has a rural character in the vicinity of the appeal site, with views of fields and woodlands that emphasise the open character of the Green Belt.

¹⁴ CD 14.1.1

53. Although the wall and fence are relatively minor forms of development, with a corresponding limited spatial effect on the openness of the Green Belt, their visual effect on openness is significant. This is because their solid form and height, presented along the road frontage and flanking the access, create a sense of enclosure at odds with the visual characteristics of the Green Belt.

The effect on the character and appearance of the area

54. Viewed in isolation, the wall and fence are urban features in a rural landscape, in contrast with the softer boundaries of trees and hedges prevalent on Northwich Road that allow views of countryside. As such, they fail to respect local character or achieve a sense of place, in conflict with policy ENV 6 of the Development Plan, which requires development to be of high-quality design.

Whether very special circumstances justify the development

55. I saw other examples of walls and fences in the surrounding area identified by the appellant. These are mainly at sites on Northwich Road, Higher Lane and Marsh Lane, including the dwelling next to the appeal site.
56. These features, and their effect on the character and appearance of the area cannot be denied. While some, or all, may have been development requiring express planning permission, by reason of their height and proximity to the highway, there is no evidence of that conclusion being drawn in any instance. Neither is there any evidence that any such feature was granted planning permission. It has therefore not been demonstrated that any of these walls or fences is a precedent for the DPA.
57. Apart from these other examples, no evidence was presented to suggest that very special circumstances might exist.

Conclusion on ground (a)

58. The boundary wall and fence are inappropriate development and cause harm to the openness of the Green Belt. This is a matter to which substantial weight is given. Furthermore, they are harmful to the character and appearance of the area and, as cited above, there is conflict with the Development Plan as a whole and national planning policy.
59. Set against this, I attach little weight to the other walls and fences found in the locality. While there is no evidence that the wall and fence have an adverse effect on highway safety, that is neutral in the balance. Accordingly, and taking all relevant factors into consideration, the substantial weight to Green Belt harm is not clearly outweighed and there are no very special circumstances to justify the DPA.
60. Consequently, the appeal on ground (a) should not succeed.

Conclusion

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

Formal Decision

62. It is directed that the enforcement notice is corrected and varied by:

- Correcting the allegation in section 3 by the deletion of the words “new building hatched in red” and the substitution of the words “a new building marked by the inner red line”.
- Varying section 5. (iii) by the deletion of the words “associated materials from land in compliance with (i) and (ii) above” and the substitution of the words “materials arising from compliance with (i) and (ii) above from the land”.

63. It is further directed that the plan accompanying the enforcement notice is substituted by the revised plan attached to this decision.

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

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kate Olley of Counsel
She called
Barry Michael Devine
Andrew Devine
Chris Singleton
Mark Young
Chris Forster
Martin Deve
Wendy Alam
Harry Dennett

FOR THE LOCAL PLANNING AUTHORITY:

Mark Howells of Counsel	
He called	
Lynsey Logue BSc (Hons) MSc	Planning Officer, Cheshire West & Chester Council
Catherine Reay MSc	Principal Planning Officer, Cheshire West & Chester Council

Documents submitted at the Inquiry

- 1 Letter of notification of the appeal dated 26 May 2020
- 2 Notice of the Inquiry published 8 July 2021
- 3 Photographs of a site notice giving notification of the Inquiry
- 4 Amended enforcement notice plan
- 5 Appeal decision APP/M1710/C/16/3148814
- 6 The appellant's application for costs
- 7 The Council's reply on costs



Plan

This is the plan referred to in the decision dated: 23 November 2021

by Mark Harbottle BSc MRTPI

Land at: Dones View Farm, Northwich Road, Dutton, Northwich

Reference: APP/A0665/C/19/3226746

Not to Scale

