



Appeal Decision

Hearing Held on 30 November 2021

Site Visit made on 29 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Ref: APP/A0665/C/21/3271287

122 and 124 Hermitage Road, Saughall, Chester, Cheshire CH1 6AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Clarke Collings against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice was issued on 8 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single dwelling [“the unauthorised development”] shown as 124 Hermitage Road hatched on the attached plan.
 - The requirements of the notice are to:
 1. Fully demolish the building comprising of the unauthorised development.
 2. Permanently remove all foundations, services and associated materials from the land in compliance with (i) above and restore the land to its previous condition.
 - The period for compliance with the requirements is: 9 calendar months after this notice takes effect.
 - 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.
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Decision

1. It is directed that the enforcement notice is varied at section 5 by:
 - The deletion of ‘Fully’ from requirement 1; and
 - The deletion of ‘*foundations, services and*’ and ‘(i)’ from requirement 2 and substitution with ‘(1)’, so that requirement 2 says ‘*Permanently remove all associated materials from the land in compliance with (1) above and restore the land to its previous condition.*’
2. Subject to these variations, 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 1990 Act as amended.

Preliminary Matters

3. I carried out an accompanied site visit on 29 November 2021 to assist discussions at the hearing. I am satisfied that I saw everything I needed to see during my visit and there is no need for me to see the site again. I raised this matter with the parties during the hearing, who agreed a further visit was unnecessary.
4. Although not specifically raised by the appellant, since the appeal building is occupied by the appellant’s family, including his children, and in light of the current pandemic, I raised with the parties whether the period for compliance

was reasonable. During the hearing, the appellant agreed that 9 months is reasonable and pointed out that the Council has powers to extend the period for compliance. On this basis, I am satisfied that the compliance period is reasonable.

5. Although the Council did not serve a notice¹ under section 171C of the Act, it is not disputed that the appellant is the owner of the land. While the Council served a notice under section 330 of the Act² on 12 November 2020, after the enforcement notice was issued, the appellant has been able to appeal under ground (a) of section 174 of the Act. The appellant has not appealed under ground (e) and even if he had, I have no evidence to suggest that he has been substantially prejudiced.

Ground (b)

6. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control, have not occurred. The onus of proof is firmly on the appellant to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.
7. The main thrust of the appellant's case under this ground is that the notice is defective as it identifies the property and associated land as 122 and 124 Hermitage Road, whereas the unauthorised building is at 124 Hermitage Road.
8. The building is shown hatched, within an area of land edged red on the plan, which is attached to the enforcement notice. Although the Council has previously confirmed the appeal building and the main dwelling at No 122, which I shall refer to as 'the bungalow', are registered with different addresses, a matter also confirmed by Census documentation, an incorrect address does not render the enforcement notice a nullity or invalid so long as the recipient is not misled.
9. During the hearing, the appellant suggested that the enforcement notice does not tell him which building to 'knock down'. However, it is clear from the appellant's own case that he understands which building is attacked by the notice. Furthermore, from my own inspection of the site, I consider it is clear which building is being attacked by the notice. Consequently, the appellant's argument in this regard must fail.
10. The appellant does not dispute that there has been a breach of planning control, but states what was actually constructed was further accommodation to be used in connection with the bungalow. Since the deemed planning application is made on the basis that planning permission ought to be granted for the matters stated in the notice as constituting the breach of planning control, it is vital that the allegation is correct. I raised with the parties whether the allegation is correct and if not, whether it could be corrected without causing injustice to either party.
11. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. During the hearing, it was discussed whether the building which has been erected is a

¹ Planning Contravention Notice

² Power to require information as to interest in land.

dwellinghouse or comprises ancillary accommodation which forms part and parcel of the use of the bungalow at 122 Hermitage Road.

12. The appeal site comprises a substantial plot, which is located off Hermitage Road. The appellant is the sole owner of the plot, which includes the bungalow and the appeal building. The appellant states he has delayed registering land at 124 Hermitage Road until the outcome of these proceedings is known. While the Council may have given the two buildings, No 122 and 124, separate addresses, this cannot, of itself, have resulted in the creation of separate planning units. What matters is whether there is functional and physical separation.
13. The appeal building is accessed via a shared drive, which serves the bungalow, the appeal building and a building beyond. Vehicles were parked to the front of the bungalow, with a pedestrian access to the front door. Fencing to the rear of the bungalow delineates a garden area. The appeal building is located within an area bound by fencing and is accessed via a wooden gate. Although no vehicles were parked in the fenced area at the time of my visit, a vehicular gate and hardstanding would enable the parking of vehicles.
14. The appeal building is a substantial two storey building of wooden construction. Inside the building is a bathroom, kitchen, utility room, living area and a number of bedrooms. The building has all the facilities required for day to day existence. Although the appeal site is delineated by fencing, albeit some of it had been blown down by strong winds prior to my visit, fencing has created physical separation between the appeal building and the bungalow.
15. The appellant's mother and her husband reside in the bungalow. During the hearing, the appellant explained that his mother comes to the appeal building to help the children get ready for school and does the school run. He also explained that most evenings the family will eat together, sometimes in the bungalow, but usually in the appeal building.
16. While I don't doubt there is interaction between the occupants of the two buildings, this appears to be a convenience rather than a functional need. I therefore consider it highly unlikely that this would be to the extent that the appeal building is not occupied as a separate dwellinghouse. Furthermore, this points towards the appeal building being used as primary accommodation rather than ancillary to the bungalow.
17. The appeal building is positioned some distance away from the bungalow, separated by fencing and has all the capabilities and characteristics of a separate dwelling. Indeed, by the appellant's own admission in appendix 2 of the final LPA comments, he has always had a separate residential use of the land from the bungalow (No 122).
18. The appellant suggests the letter was written under the advice of the previous agent and that little weight can be given to previous applications. However, when an applicant submits an application for a lawful development certificate, they are required to sign a declaration which confirms that the facts stated are true and accurate. I therefore consider it reasonable to attach considerable weight to the information provided as part of the LDC application.
19. While the building shares services with the bungalow, this of itself cannot be determinative. Given the physical and functional separation between the two

buildings, I find as a matter of fact and degree, the appeal building is a dwellinghouse.

20. The appeal under ground (b) therefore fails.

Ground (a)

Main Issues

21. The main issues of the appeal are:

- Whether the appeal scheme is inappropriate development in the green belt having regard to the revised framework and relevant development plan policies;
- The effect of the appeal scheme on the openness of the Green Belt;
- Whether the appeal site is a suitable location for a dwelling having regard to local and national planning policy;
- The effect of the appeal scheme on the character and appearance of the area;
- 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 appeal scheme.

Whether inappropriate development in the Green Belt

22. It is not disputed that the appeal site lies within the Green Belt. Policy STRAT9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (LP1)(2015) seeks to protect Green Belt from inappropriate development and Policy DM19 of the Cheshire West and Chester Council Local Plan (Part two) Land Allocations and Detailed Policies (LP2)(2019) seeks to ensure proposals accord with the National Planning Policy Framework.
23. The National Planning Policy Framework (the 'Framework')(2021) identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt subject to a number of exceptions as set out in paragraph 149.
24. Paragraph 149(g) is the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would: not have a greater impact on the openness of the Green Belt than the existing development. The appellant's case is that the building is located on previously developed land and that the building does not have a greater impact on the openness of the Green Belt than previous uses.
25. The Framework defines previously developed land as '*land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed structure. This excludes...land in built-up areas such as residential gardens.*' The appeal site is located between but outside of, the settlements of Saughall and Blacon and, in my view, does not comprise

- land in a built-up area. However, in order to fall under this exception, it would also need to be located within the curtilage of developed land.
26. There is no authoritative definition of the term curtilage. The appellant has drawn my attention to *Collins v SSE & Epping Forest DC* [1989] EGCS 15 but in this case, the judge observed that the debate as to whether or not a building was within the curtilage of the dwelling was debate into which he need not venture. It therefore does not assist me here.
 27. In *Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR 195 it was held that the ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building. It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way.
 28. Although the ownership of the land has changed over time, it seems the appeal site has been owned as a single plot since 1929. The appellant states that the land is not a small holding and is not in agricultural use but that rural properties at that time had the expectation of a degree of self-sufficiency. I note there are restrictive covenants which prevent the construction of other buildings and prevents the placing of a caravan on the land, though this does not purport to restrict the use of the land.
 29. Furthermore, from the evidence, it is clear that a caravan has, at one time, been placed on the land and other buildings have been erected. The fact that there are restrictive covenants is not, therefore, an indicator that the land has not been used for other purposes, nor is it an indicator that the land is within the curtilage of the bungalow or any other structure, since curtilage is not a use of land.
 30. The plot of land within which the bungalow and the appeal building are located is substantial. Although size is not a conclusive test of curtilage, as found in *Skerrets of Nottingham Ltd v SSETRis* [2000] EWCA Civ 60, JPL 789³ and curtilage does not need to be confined to a small area, as confirmed in *Dyer v Dorset CC* [1988] 3 WLR 213, it was held in *Methuen-Campbell v Walters* [1979] 1 QB 525, for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building.
 31. It was established in *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310 that regard should be had to three tests of (i) physical layout of the building and the land or building said to be in the curtilage, (ii) ownership (past and present) and (iii) use or function (past and present). As set out in *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin), whether something falls within a curtilage is a question of fact and degree and thus primarily a matter for the decision-maker⁴.
 32. As set out above, I have found that the appeal building comprises a separate planning unit to the bungalow. The previous owner of the land, the appellant's stepfather, has provided a signed statement, which sets out how the site has been used since 1964. The statement describes how his father, who also previously owned the site, cleared the land to 'grow vegetables for his own use'

³ And confirmed in *Challenge Fencing Limited v SSCLG & Elmbridge BC* [2019] EWHC 553 (Admin)

⁴ Also confirmed in *Blackbushe Airport Limited v R(aoa Hampshire CC), SSEFRA & Others* [2021] EWCA Civ 938

- and built various outbuildings to contain chickens, hens, ducks, geese, rabbits and pigs, which were kept as pets or for consumption within the family.
33. Whilst the growing of vegetables and keeping of such animals can be considered incidental to the enjoyment of the dwellinghouse, it is not clear from the statement exactly where within the site the buildings were erected, where vegetables were grown or where animals would have been kept and over what time period. While these activities may point towards residential use of the site, as confirmed in *Burford*, the use of land as incidental to the enjoyment of a dwellinghouse is not determinative of the land being curtilage, nor is it necessarily the same as the planning unit⁵. It will depend upon the facts of the case⁶.
34. The appellant has provided an aerial photograph, stated to be taken in 2005, which appears to show a path from the dwelling towards the rear of the site. However, the photograph appears to show fencing within the site, subdividing the land to the rear of the bungalow. The Council has provided an aerial photograph, dated May 2011. The area within which the appeal building is located appears overgrown, with no buildings evident in this part of the site. An aerial photograph dated April 2015, appears to show less vegetation across the site, with what appears to be fencing, delineating an area to the rear of the bungalow.
35. It was held in *R (oao Sumption) v Greenwich LBC* [2007] EWCH 2276 (Admin) that the degree to which the building and claimed curtilage fall within one enclosure is relevant as an aspect of the test of physical layout. Although the overall site is bound by fencing or vegetation, the site itself is subdivided by fencing. Whilst the fencing may have been erected to protect or prevent animals from harm, it has created a physical barrier between the land to the rear of the bungalow and the rest of the site.
36. Even if the land has historically been used for residential purposes by occupants of the bungalow, given this physical separation, I am not persuaded the land formed so intimate an association with the dwelling so as to form part and parcel of the building. Moreover, I have found the land within which the appeal building is located is physically separate from the bungalow and comprises a separate planning unit. It cannot therefore be considered to be within the curtilage of the bungalow.
37. While there may have historically been other buildings within the site, I have no substantive evidence of what those buildings comprised and so cannot be sure the land on which the appeal building comprised land which was within the curtilage of developed land. I therefore find the building was not constructed on previously developed land and would therefore not fall under the exception under paragraph 149(g) of the Framework.
38. Furthermore, even if the land had been previously developed, prior to the erection of the appeal building, aerial photography shows the area as being vegetated, with no built development evident. Since the appeal building is a substantial, two-storey structure, it has a much greater effect on the openness of the Green Belt than the pre-existing development and would therefore not fall under the exception under paragraph 149(g) of the Framework.

⁵ *James v SSE and Chichester DC* [1991] JPL 550

⁶ *O'Flynn v SSCLG & Warwick DC* [2016] EWHC 2984 (Admin)

39. Consequently, I conclude that the appeal building is inappropriate development in the Green Belt.

Effect on openness

40. The Framework makes clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework sets out the purposes of Green Belt, including to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment.
41. The appeal site is located between the settlements of Saughall and Blacon. The plot is bound by mature vegetation, with the building located to the rear of the bungalow. As a consequence, there are very limited public views of the building. Nevertheless, as set out in the Planning Practice Guidance (PPG), openness has a spatial aspect as well as a visual aspect.
42. The building is a substantial structure which, despite its colour and the presence of nearby buildings, has a modest adverse impact on the related Green Belt purpose to check the unrestricted sprawl of large built-up areas and safeguard the countryside from encroachment, contrary to policy STRAT9 of the LP1 and policy DM19 of the LP2 which both seek to protect the Green Belt from inappropriate development and the relevant expectations of the Framework.

Whether the appeal site is a suitable location

43. Policy STRAT9 of the LP1 seeks to protect the intrinsic character of the countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. Policy DM19 of the LP2 supports development in the countryside, outside identified settlements in certain circumstances. However, the building does not fall within any the exceptions identified within the policy and is outside any identified settlements. It is therefore in conflict with policies STRAT9 and policy DM19.
44. The appellant has drawn my attention to policy DM21 of the LP2, which relates to proposals within the residential curtilage of a dwellinghouse for, amongst other things, annexe accommodation. However, even if I were to find that the building is within the curtilage of the bungalow and were annexe accommodation, the policy supports such development where it is for occupation by a person dependent upon an occupant of the main dwellinghouse, where it is closely related physically to, and functionally dependant upon, the main dwellinghouse, where it is in keeping with the character and appearance of, and is subordinate to, the original dwelling and in the Green Belt, would not result in disproportionate additions over and above the size of the original dwelling.
45. Whilst the appellant's mother assists with his children, I do not consider this equates to the occupants of the appeal building being dependent upon the occupant of the main dwellinghouse. Furthermore, the appeal building is two storey and is a substantial building. It is not, in my view, subordinate to the bungalow, nor is it in keeping with the design of the bungalow. Consequently, policy DM21 is therefore not relevant in this case.

46. Policy STRAT 1 of the LP1 seeks to locate new housing, with good accessibility to existing or proposed local shop, community facilities and primary schools and with good connections to public transport.
47. The appellant stated during the hearing that there are bus stops within 100 yards of the appeal site. However, I have no details of the service provided and so cannot be sure that it would be a realistic alternative to private car. Although the building is located between the settlements of Saughall and Blacon, occupants of the building would need to walk some distance to access services such as a shop or school. I therefore consider occupants of the building are highly likely to be dependent on private car.
48. The appellant drew my attention to a 'new housing estate down the road' during the hearing. However, I do not have full details of the circumstances around its approval and cannot be sure it is comparable to the appeal scheme.
49. Thus, the appeal scheme is contrary to policy STRAT 1 and STRAT 9 of the LP1 and DM19 of the LP2, the requirements of which are set out above.

Character and appearance

50. The appeal site is located off Hermitage Road, between the settlements of Saughall and Blacon and is bound by farm buildings and open countryside. Development along Hermitage Road varies in design and layout, though dwellings are generally of brick, block or render construction.
51. The appeal building is located towards the rear of the site, away from the main road. Given its location and the presence of mature vegetation around the boundary, there are very limited public views of the building from outside of the site. As such, although the materials used in construction of the building contrast with other buildings in the locality, I do not consider it has an adverse effect on the character and appearance of the area.
52. Consequently, the appeal scheme does not conflict with policy DM3 of the LP2, which seeks design that respects the character and protects the visual amenity of the local area or policy ENV6 of the LP1 which seeks development which respects local character.

Other considerations

53. The appellant asserts that, in the event the appeal is upheld, he could extend the bungalow at No 122 under the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO). Furthermore, he suggests that once he had utilised those rights, Part 4 of Schedule 2 of the GPDO would also grant planning permission for a temporary building whilst the works were being carried out.
54. The appellant has provided an example of the possible extensions that could be undertaken. However, the appellant's agent conceded during the hearing that the proposals submitted in support of this appeal would not comply with the limitations set out in the GPDO and would therefore not be permitted development. While it is asserted the appellant could carry out extensive alterations under PD rights, I cannot be sure what they would look like, or that they would have a greater impact on openness than the appeal building. I therefore afford this matter very limited weight.

55. Part 4 of Schedule 2 of the GPDO permits temporary buildings and uses. However, generally, a landowner will not usually erect a permanent building if it is merely required temporarily. The appeal building is a substantial size and is likely to have taken some time to erect. It is unlikely that a building of this size would be reasonably required while works to the bungalow are being carried out. Consequently, any structure which would be permitted is, in my view, highly unlikely to be comparable to the appeal building. I therefore afford this matter negligible weight.
56. The appellant suggests that the relationship between the occupants of the different elements of living accommodation on the site and the sole ownership of those elements is unusual should be considered 'very special circumstances on this site'. However, as set out above, I have found a new planning unit has been created. Although it would be possible to include a condition limiting the use of the building, since I have found it is within its own planning unit, I do not consider such a condition would be reasonable.
57. The appellant has indicated that he intends to register the appeal building separately, pending the outcome of this appeal. Were I to grant planning permission, it would be possible for the appeal building, or the bungalow to be occupied by individuals without a familial relationship and without the interaction which currently exists. I therefore afford this matter very limited weight.
58. Compliance with the enforcement notice would result in the appellant and his family, losing their home. Although the appellant owns the bungalow, given its modest size, and the fact that it is already occupied by the appellant's mother and stepfather, it is unlikely to be able to accommodate family without modification. Nevertheless, I see no reason why the appellant would not be able to secure accommodation elsewhere. I therefore afford this modest weight.

Green Belt Balance

59. The Framework sets out the general presumption against inappropriate development within the Green Belt. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
60. While the appeal building provides living accommodation for the appellant and his family, I have found the appeal scheme has a modest adverse impact on the Green Belt and is not a suitable location for a dwelling, having regard to local and national planning policy. Although I have found the building does not harm the character and appearance of the area, this is a neutral factor in my consideration of the appeal.
61. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the appeal scheme would conflict with the Framework and with policies STRAT1 and STRAT9 of the LP1 and policy DM19 of the LP2 and the development plan taken as a whole.

Conclusion

62. Therefore, for all of the reasons given above I conclude that the appeal under ground (a) should be dismissed.

Ground (f)

63. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The Council has made it clear that the purpose of the notice is to remedy the breach of planning control and given the requirements of the notice, I agree with this.

64. The appellant states the provision of services to the land does not affect openness and the base upon which the building is set would fulfil a useful purpose and should be allowed to remain. While the services and foundation may have a more limited effect on openness than the development as a whole, since the base and services facilitate the breach, requiring their removal would not exceed what is necessary to remedy the breach.

65. Although it is clear which building is required to be removed, the notice does not make it clear which services or which foundations need to be removed. The land to which the notice relates includes the area occupied by the bungalow, which will have its own foundations and services. Given the penalties for failure to comply with an enforcement notice, it needs to be clear what the recipient is required to do.

66. Paragraph 173(4) sets out the purposes of an enforcement notice are: remedying the breach by... discontinuing any use of the land or by restoring the land to its condition before the breach took place. In my view, it is unnecessary to require the removal of foundations and services, since requiring the land to be restored to its previous condition would have the same effect. For the avoidance of doubt, I shall therefore delete the words 'all foundations, services and' from the requirements and replace (i) with (1). I also agree the word 'Fully' is unnecessary and shall also delete it from requirement (1).

67. The building is of modular construction and it is suggested the internal fittings could be re-used either in the bungalow, or on the wider market. The appellant states he should be allowed to retain them on site until such time as they can be reused. However, there is no certainty as to how long the materials would need to be stored on site. The retention of the building in any form would not remedy the breach. Furthermore, the compliance period gives the appellant time to find a potential user for the materials off-site.

68. The appellant suggests adding a requirement 'unless a building granted planning permission by virtue of the GPDO Schedule 2, Part 4 is allowed on the land in which case the present building can be used in accordance with and subject to the terms of that permission.' However, as set out under ground (a) above, I do not consider the appeal building would constitute a temporary building under Part 4.

69. I shall vary the requirements as set out above. To this extent the appeal under ground (f) succeeds.

Conclusion

70. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Leslie Smith BA (Hons) MA Associate RTPI	LS Planning Limited
Clarke Collings	Appellant
Mr John Wills	Resident of No 122
Mrs Lilly Wills	Resident of No 122

FOR THE LOCAL PLANNING AUTHORITY

Cheryl Parker MSc MBA MRTPI	Principal Planning Officer
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