



Appeal Decision

Site visit made on 27 March 2023

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/A0665/C/22/3312842

Land at 17 Hill Top Road, Acton Bridge, Northwich, Cheshire, CW8 3RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr David Cunningham against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 7 November 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwellinghouse and residential garden, that includes an existing outbuilding, to a mixed use of a dwellinghouse, garden and siting of shepherd's hut for holiday and short term let accommodation and partial use of the existing outbuilding for bathroom facilities in association with the holiday and short term let accommodation ("the unauthorised development").
- The requirements of the notice are to cease the use of the shepherd's hut for holiday and short term let accommodation.
- The period for compliance with the notice is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the 1990 Act as amended.

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

Preliminary Matter

1. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities, with the onus of proof being on the appellant. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

The ground (b) appeal

2. The ground (b) appeal is that the matters alleged have not occurred as a matter of fact. The appeal site comprises the dwelling at No 17 Hill Top Road and its associated garden. A shepherd's hut has been sited towards the rear of the garden, which includes a bed, sink and small kitchen area. A previously existing outbuilding has been altered and fitted out with a shower room and toilet.
3. There is no disagreement that the hut is used for holiday and short term let accommodation. The dwelling is also used for holiday and short term let, but it is agreed by the appellant and the Council that, due to the variation in booking durations, the use of the house remains as a dwellinghouse and there is no breach of planning control at present in this regard. The dispute concerns the extent and nature of the use of the shepherd's hut, which the appellant argues

is comparable to the house, whereas the Council believes it to be more intensive. The Council has served the notice as it appears to them that there has been a breach of planning control, as alleged.

4. It follows, therefore, that the allegation should be that of a mixed use, which is two primary uses operating within the same planning unit. One is not incidental to the other, although there may be incidental uses associated with each primary use. The notice targets the shepherd's hut and requires its use for holiday and short term let to cease. The use of the dwelling for holiday or short term let is not included in the allegation and there is no requirement to cease any such use. The Council's approach is logical and, on the evidence before me, there is no reason to alter the notice to address any error or misdescription.
5. I am satisfied that the matters alleged have occurred as a matter of fact. The appeal on ground (b) fails, therefore. Whether or not the use of the shepherd's hut amounts to a material change of use requiring planning permission is considered below under ground (c).

The ground (c) appeal

6. The ground (c) appeal is that the matters alleged do not constitute a breach of planning control. The appellant argues that there has been no change of use as the shepherd's hut is ancillary to the main residential use of the land.
7. The concept of a material change of use is not defined in statute. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously. The starting point is to define the planning unit, which 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.
8. The main parties agree that the planning unit comprises the dwelling and its garden, which accords with the red line of the enforcement notice plan. Prior to the siting of the shepherd's hut and its use for holiday and short term let accommodation, the garden area and outbuilding would have functioned as such. The garden would have been used, for example, as an area to sit and relax, carry out gardening activities or as a place for children to play. Crucially, the use of the garden and outbuilding would have been part and parcel of, or incidental to, the residential use of the dwelling which would have been the focus of activity.
9. The use as holiday and short term let accommodation differs in that it is focused on the shepherd's hut, part of the converted outbuilding and within rear garden where a hot tub has been sited. There is no association with the residential use of the house as the shepherd's hut can be let and occupied independently. I appreciate that some parts of the planning unit are shared, such as the access, parking area and garden, but this does not imply functional dependence.
10. The shepherd's hut is let on a regular and frequent basis during the summer months. This gives rise to a level and type of activity which is more intensive and significantly different from the previous use. The users of the hut would be spending a considerable amount of time in the former rear garden area,

especially during the evening and at night. They would be reliant on the facilities within the outbuilding, as opposed to facilities in the house. It is likely that a car would be parked off the road, utilising the access between Nos 15 and 17. The more intensive use of the garden, outbuilding, access and the occupation of the hut by people independent to the occupiers of the dwelling would have planning consequences. I consider, therefore, that the use of the shepherd's hut to use for holiday and short term let gives rise to a significant difference in the character of activities such a material change of use has occurred.

11. Whether or not the shepherd's hut could be considered to be a caravan under the Caravan Sites Act 1968 is irrelevant since the allegation concerns a material change of use. I appreciate the notice does not require the removal of the hut, but this is not an acceptance by the Council that it causes no harm.
12. I conclude on this matter that the matters alleged constitute a material change of use, as a matter of fact and degree, for which planning permission would be required. In the absence of any planning permission for the use, a breach of planning control has occurred, and the ground (c) appeal must fail.

The ground (a) appeal and the deemed planning application

Main Issues

13. 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 material change of use of the land to a mixed use of a dwellinghouse, garden and siting of shepherd's hut for holiday and short term let accommodation and partial use of the existing outbuilding for bathroom facilities in association with the holiday and short term let accommodation.
14. The appeal site lies within the North Cheshire Green Belt. The main issues are:
 - Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies;
 - The effect on the openness of the Green Belt;
 - The effect of the development on the living conditions of neighbouring occupiers, with regard to noise and disturbance, and privacy;
 - 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.

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

15. The appeal site comprises a semi-detached dwelling and its associated garden, where a shepherd's hut has been sited for holiday use. The site lies close to the railway station, a public house and is within a cluster of development along Hill Top Road.
16. 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.

17. As set out above, the matters before me concern a material change of use of land. Paragraph 150 of the Framework advises 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 material changes in the use of land (such as for outdoor sport and recreation, or cemeteries and burial grounds). 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 dimension.
18. As explained above, a shepherd's hut has been sited in the garden of the appeal site. It is located adjacent to the rear boundary fence, shared with a neighbouring property, and is accessed via the driveway alongside No 17. There is also a route through to a public footpath, which runs across an adjoining field. The hut is visible from the public footpath and there are likely to be views from neighbouring properties. While the hut is of relatively modest proportions, it occupies space that was previously open and, thus, it has a spatial impact. A hot tub has been located alongside the hut and an existing outbuilding has been adapted to provide WC and washing facilities for the users of the hut. The alterations to the outbuilding have a neutral effect on openness since the building was there previously. The hot tub itself has a negligible impact of openness as it is fairly compact. However, it contributes to the visual impact of the development.
19. In my judgement, the siting of the shepherd's hut on the site, which is necessary for the unauthorised use, does not preserve openness. In addition, the development represents encroachment into the countryside because it introduces a commercial form of development, and visual clutter, which would conflict with the Green Belt purposes. Hence, it would not fall within the exceptions set out in the Framework.
20. Policy STRAT9 of the Local Plan Part 1¹ concerns development within the Green Belt. The policy seeks to enable the expansion of established businesses, proportionate to the scale and nature of the setting. In this case, the use of the shepherd's hut is not necessarily an expansion of an established business since it forms part of a new enterprise. Policies ECON3 of the Local Plan Part 1 and DM9 of the Local Plan Part 2² seek to support the visitor economy and enable small scale development that is appropriate to a countryside location, subject to additional controls within the Green Belt. Although the development would benefit the rural economy it would not comply with local and national Green Belt policy for the reasons explained.
21. I conclude that the development is inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and this harm carries substantial weight.

¹ Cheshire West and Chester Local Plan: Part One (Strategic Policies 2015).

² Cheshire West and Chester Local Plan: Part Two (Land Allocations and Detailed Policies 2019).

Living Conditions

22. The part of the garden where the shepherd's hut is located adjoins the rear gardens of Nos 9, 15 and 19. The use of the hut for the matters alleged will inevitably introduce a level of activity into the rear garden, over and above that which would normally be expected if the use were to remain as residential garden. This is because the visitors' day and night-time activity would be focused on the hut and associated garden/hot tub. It would be probable that the visitors would be making full use of the facilities available, which would likely lead to noise and disturbance, for example, talking or playing music, activating external lights and using the bathroom facilities in the outbuilding. This may well extend into the late evening. In addition, the vehicular use of the access and parking area would create disturbance from people arriving and leaving, due to noise from car doors and the effect of headlights.
23. The part of the garden where the hut and hot tub are located are screened and there are limited views into the adjoining gardens. I do not find any material loss of privacy, therefore.
24. The appellant indicates the shepherd's hut could be used for holiday accommodation in conjunction with the lawful use of the main house, since the notice does not require its removal. However, the lawful use is residential. The correct fallback position is the retention of the hut for uses incidental to the residential use of the main dwelling. While this type of use may have some impact on neighbours, it would not be of the same intensity and scale as the use of the hut in its own right for holiday let purposes. This consideration carries limited weight, therefore.
25. I appreciate that the site is relatively close to the mainline railway, and the public house, and there will be a level of background noise. However, I do not consider this to be any way comparable with the activities resulting from the unauthorised use. Nor do I accept that noise from existing uses is likely to be the main source of noise and disturbance reported by neighbours and the Parish Council.
26. The appellant points out that fears and perceived impacts need to be justified objectively and cites an appeal related to a change of use to a children's home (Ref APP/M6825/A/20/3247517). In this case, the use is operating and due to the location of the hut in relation to the adjoining gardens, and the nature of the unauthorised use, I consider that the concerns described by the Council are valid and relevant. I am directed to a recent development for a two-storey extension at No 9 Hill Top Road (Ref 20/03297/FUL). It is argued that this led to overlooking of the appeal site. That development is not similar to the matters before me and, in any event, I do not agree with the Council about loss of privacy.
27. The appellant has offered to relocate the hut to a more suitable position within the garden. While this may alleviate the impact on one neighbour, it may simply result in harm to a different neighbour. Moreover, it would not address the Green Belt concerns. Also, the appellant has suggested any harm could be mitigated through planning conditions to ensure the shepherd's hut was used in connection with the use of the residential dwelling, so they would be let as a single entity. If the planning unit remains in residential use, then a material

change of use will not occur and a conditional planning permission would not be required.

28. I conclude on this issue that the development would have an adverse effect on the living conditions of neighbouring occupiers due to noise and disturbance. It would not accord with Policies SOC5 of the Local Plan Part 1 and DM2 of the Local Plan Part 2, which seek to safeguard the amenity of existing and potential occupiers and to minimise the adverse impact of noise. The impact is relatively localised and I consider the harm identified carries moderate weight.

Other considerations

29. The development would provide some minor benefits to the rural economy, which weighs in its favour. I appreciate that there is demand for the services offered but such demand could be met through different means, and it is not necessary to locate the business in the Green Belt. In my judgement, the totality of the other considerations advanced carry moderate weight at best.

Conclusion

30. I conclude that the development is inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, there would be moderate harm to the living conditions of neighbouring occupiers. The other considerations advanced by the appellant carry moderate 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 do not exist. The development is unacceptable in principle and the harm could not be mitigated through the imposition of planning conditions, therefore.
31. The development would be harmful to the Green Belt and contrary to Policies STRAT9, ECON3 and DM9 of the Local Plan, which seek to protect the Green Belt from inappropriate development. There would also be harm to the living conditions of neighbouring residents, contrary to Policies SOC5 and DM2. As a result, the development would not accord with the development plan taken as a whole.

The ground (f) appeal

32. The Section 173(4) of the 1990 Act sets out the two purposes of an enforcement notice – (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury caused by the breach. The notice requires cessation of the unauthorised use. Its purpose is to remedy the breach of planning control. What must be considered is whether the step required exceeds what is necessary to achieve that purpose.
33. The notice does not require the removal of the hut in recognition that it could be used in association with the lawful residential use of the dwelling. Nonetheless, the cessation of the unauthorised use is necessary to achieve the statutory purpose behind the notice. The ground (f) appeal fails, therefore.

The ground (g) appeal

34. The ground (g) appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant is seeking six months to enable the cancellation of bookings.

35. I accept that the appellant will need longer than one month to make the necessary arrangements with customers. However, I find the six months sought to be excessive and I must consider the ongoing impact on the Green Belt and the living conditions of neighbours. I consider three months to be proportionate and reasonable in this instance and I shall vary the notice accordingly. The ground (g) appeal succeeds to this limited extent.

Conclusion

36. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

37. It is directed that the enforcement notice is varied by the deletion of one month and the substitution of three months as the period for compliance. Subject to the 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 1990 Act as amended.

D Moore

Inspector