



Appeal Decision

Site visit made on 10 May 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Appeal Ref: APP/A0665/C/22/3308903

Green Lane Farm, Green Lane, Kelsall, Chester, Cheshire CW6 0QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Richard Blything against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice was issued on 13 September 2022.
 - The breach of planning control as alleged in the notice is the demolition of an agricultural building and erection of one dwelling ("the unauthorised development").
 - The requirements of the notice are:
 - 5.1 Demolish the building comprising of the unauthorised development
 - 5.2 Remove all resulting materials from the land in compliance with 5.1 above
 - The period for compliance with the requirements is: 5 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (g) 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. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Richard Blything against Cheshire West & Chester Council. This application is the subject of a separate decision.

The appeal on ground (b)

3. To succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact.
4. The appellant claims that the agricultural building has not been demolished and a new dwelling erected in its place. Instead, it is claimed by the appellant that he sought to implement the permission¹ granted on 21 November 2019 ("the 2019 permission") under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to convert the building to a dwelling. The Council however argue that the level of alterations and works undertaken to the building constitute a rebuild, resulting in the erection of a new dwelling. It is further argued that these works began around June 2018.
5. As a starting point, both parties have referred to Google Street images dated July 2011. Whilst the entirety of the building is not visible in these images, it can nevertheless be seen to be a steel framed building with a corrugated metal

¹ Council Ref: 19/03659/PDQ

roof that is largely open at one end. When compared to the building as enforced against, it is clear that various works and alterations have been undertaken to it at some point in the intervening period. In particular, the building is now fully enclosed and is constructed with brick walls and a tiled roof. Furthermore, when comparing its height with other adjacent buildings it is also apparent that its roof and eaves have been raised.

6. The appellant contends that these works took place to the agricultural building shortly after the Google Street images were taken, in around October and November 2011. The works included raising the height of the building through additional steel works and the erection of a brick outer skin. In support of this the appellant has provided copies of two invoices both dated 30 November 2011 for the '*supply of steel beams fabricated to replace stanchions on agricultural building & installed. Work completed on 4th October 2011*' and '*Hay barn – making bird & vermin proof, brick skin & insulation, repairs to roof and height increase by 1 metre, brick skin to front of shed*'.
7. The extent of the works and the dates on which they were undertaken are further confirmed by the appellant in a dated and signed statutory declaration, and in a written response to a Planning Contravention Notice served by the Council. Both documents repeat that various improvements were carried out to the building in October and November 2011, with no further works taking place to it until after the 2019 permission.
8. In addition, the Council's delegated report in relation to the 2019 permission describes the building at that time as being '*a block built barn, with facing bricks under metal sheet roof adjacent to another barn and the main farm house*'. It also adds that '*Whilst no structural report has been provided photographs have been provided that demonstrate the overall building to be of sound construction with brick work elevations in good condition*'. The existing plans and elevations submitted as part of the 2019 permission also detail an agricultural building constructed in brickwork with a metal roof. These 'existing' drawings appear to show the same building as exists on site today, albeit prior to any works to convert it into a dwelling having taken place.
9. The Council refers to a Google Earth image² which it considers demonstrates that construction on the building began around June 2018. It is surprising however that the Council has reached this view given that the Google Earth image provided is clearly date stamped June 2020. Whilst the image does show that the building's roof had been removed, the replacement of the existing roof with a tile roof formed part of the 2019 permission. In any event, all four external walls of the building appear to be in situ and complete, and therefore the image alone does not demonstrate that a new building had been erected. Comments submitted by Kelsall Parish Council also refer to works taking place post the 2019 permission, in 2020.
10. The Council has also referred to an Ecological Assessment Report which was carried out in April 2017 and submitted as part of a previous planning application³ at the appeal site. This report described the building being enforced against as a '*large, steel framed cow shed constructed on a breezeblock base with timber cladding. The building has a pitched roof clad in corrugated metal panels*'. Whilst I acknowledge that this description would not

² Appendix 6 of the Council's Statement of Case

³ Council Ref 17/03011/FUL

fit with the appellant's version of events in relation to the condition of the building post November 2011, only a small extract of the overall report has been submitted. I therefore cannot be certain as to its accuracy with regards to the identification and description of the various buildings that would have existed on the site at the time.

11. Notwithstanding the description contained within the Ecological Assessment Report, all other available evidence points to the alterations and works to the building having been undertaken and completed in late 2011. Whilst those works would have likely been unlawful at the time, there is no substantive evidence before me to suggest that any further works took place to the building prior to the 2019 permission or that the building was not used for agricultural purposes in the intervening period.
12. In the absence of any compelling evidence to undermine the credibility of the appellant's evidence, I find that the works identified by the Council amount to the conversion and alteration of an existing agricultural building, not demolition and new build. Whilst this conversion is not in accordance with the 2019 permission, the demolition of an agricultural building and erection of a dwelling has not occurred as a matter of fact.

Conclusion

13. For the reasons given above, I conclude that the appeal succeeds on ground (b). The enforcement notice is therefore quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

David Jones

INSPECTOR