



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/22/3308901

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 David 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 construction of agricultural produce storage building ("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: 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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. It is directed that the enforcement notice is varied by the deletion of the words "3 calendar months" and substitution of the words "6 months" as the period for compliance with the requirements.
2. Subject to this variation the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Application for costs

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

Ground (a) and the deemed planning application

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. The appeal site is located just outside the settlement of Kelsall and is in a rural setting where the housing to the north and west gives way to the countryside. A short distance to the east of the site is the Delamere/Utkinton Area of Special County Value. The overall character of the area beyond the settlement is

dominated by open agricultural fields with sporadic farmsteads and dwellings that are surrounded by fields enclosed by trees and hedgerows. The appeal building is constructed in block with an outer facing of brickwork and a metal roof, and forms part of a cluster of buildings at Green Lane Farm. The surrounding buildings on the farm range in both size and design and include breeze block and timber clad buildings as well as brick-built buildings.

6. The appeal building sits on the same footprint as a previous agricultural building which was demolished and replaced by the current structure. The previous building had a breeze block base with timber cladding above and a corrugated metal roof which had, in the view of the appellant, fallen into disrepair and required modernisation. In addition to the change in external materials, it is also readily apparent from images of the previous building that the eaves and ridge height of the current building are noticeably taller than those of the previous structure.
7. Due to its height, scale, massing, and location the appeal building can be clearly seen from both Green Lane which runs beyond the northern boundary of the site as well as from Common Lane to the west. The appeal building appears as an incongruous and dominant feature in the landscape despite its distance from the highway and its siting in amongst an existing farmstead. Moreover, it is visually intrusive and fails to integrate with its surroundings
8. Whilst I accept that many farm buildings are constructed in brick, I find that the appeal building appears as a large 'hybrid' structure in the sense that it neither looks like an agricultural building or a dwellinghouse of a design which is consistent with the local character. It therefore sits uncomfortably within its setting and, given the clear visibility of this substantial structure, it significantly harms the character and appearance of the area.
9. It is argued that the building is needed to house machinery, beef cattle, and farm inputs, and I observed during my site visit that the building contained a tractor, a small number of hay bales, and one cow. Although its openings are currently fitted with steel doors, steel gates and timber boarding, the Council contend that these could easily be fitted with domestic fenestration and doors. Whilst such domestic fittings have not been installed, I find the openings to be unusually small for an agricultural building of its size and height and not conducive to the stated purpose of the building. In any event, the benefits a building of this size may afford the appellant would in my view not outweigh the identified harm.
10. The appellant has suggested that in order to overcome the harm caused to the character and appearance of the area he could (i) apply vertical timber boarding on top of the facing brick and (ii) reduce the building's height. Whilst I acknowledge that the application of timber boarding would have the effect of marginally reducing the harm caused by the visual appearance of the building, it would not overcome my concerns relating to matters of height and scale, and the development would still appear as an incongruous and dominant feature particularly when viewed from Green Lane and Common Lane.
11. With regards to reducing the building's height, although alternative drawings¹ have been provided detailing the application of vertical timber boarding to the building these did not include any reduction in its height. As such, the appellant

¹ Drawing No: 1438/J220122/001.3

has not proposed a new reduced height for the building and I have no information before me which would enable me to assess whether or not any such reduction in height would overcome the identified harm to the character and appearance of the area.

12. I conclude that the development is harmful to the character and appearance of the area. It is therefore contrary to Policies ENV2 and ENV6 of the Cheshire West and Chester Local Plan (Part 1) Strategic Policies (adopted January 2015) (LP1), Policy DM3 of the Cheshire West and Chester Local Plan (Part 2) Land Allocations and Detailed Policies (adopted July 2019) (LP2), and the National Planning Policy Framework. These seek, amongst other things, to ensure that all development is of a high design quality that respects the character and protects the visual amenity of the local area whilst also protecting and, wherever possible, enhancing landscape character and local distinctiveness.
13. In its reasons for issuing the enforcement notice the Council also referred to Policy D1 of the Kelsall and Willington Neighbourhood Development Plan (made March 2017), which relates to the design of new housing. However, as the notice relates to the construction of an agricultural produce storage building the provisions of this policy are not applicable. The appellant has also referenced other policies contained within LP1 and LP2 which the development is considered to accord with. Be that as it may, this does not overcome the identified harm to the character and appearance of the area caused by the development or its conflict with the development plan when read as a whole.

Other Matters

14. The appellant has drawn my attention to permitted development rights that would be available to the appellant under Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which permits, amongst other things, the erection of a building in an agricultural unit of 5 hectares or more. The appellant therefore contends that following compliance with the enforcement notice a building of a similar size could be erected on the same or alternative location on the site.
15. However, no specific proposals have been put forward for my consideration or identified as a fallback position. In addition, the permitted development rights under Part 6, Class A are not unqualified and require any proposed building to meet several criteria and conditions. These include being reasonably necessary for the purposes of agriculture within that unit and designed for agricultural purposes, with the Council having to determine whether prior approval is required as to the siting, design, and external appearance of the building. I therefore give this consideration no weight.

Conclusion

16. For the reasons given above, I conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Ground (f)

17. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.

18. It is clear from the requirements of the notice that its purpose is to remedy the breach of planning control. The appellant has suggested lesser steps in the form of cladding the building with vertical timber boarding or reducing the buildings height. However, modifying the development in such a way would not remedy the breach. In any event, I have considered the suggested lesser steps as part of the ground (a) appeal and for the reasons already outlined concluded that these steps would not remedy the harm to the character and appearance of the area.
19. Accordingly, the ground (f) appeal fails.

Ground (g)

20. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short.
21. The appellant argues that a compliance period of three months is too short to firstly demolish the building, and either source an alternative building elsewhere or obtain planning permission and then subsequently construct a replacement agricultural building at Green Lane Farm to house livestock, machinery and farm inputs. The appellant has suggested a compliance period of twelve months.
22. In my view, a twelve month compliance period would be excessively long having regard to the on-going harm caused by the building. Having regard to the submissions from both parties, I consider that a period of six months would represent a more reasonable length of time which would strike the appropriate balance between the interests of enforcing planning control and the interests of the appellant. To that extent the appeal on ground (g) succeeds.

Conclusion

23. For the reasons given above I conclude that the appeal does not succeed, save for ground (g). I have upheld the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR