



Appeal Decisions

Site visit made on 3 May 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal A Ref: APP/A0665/C/22/3309473

Pinetrees Lodge, Kingswood Lane, Saughall, Chester, Cheshire CH1 6DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Jones against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice, numbered 22/00157/EMCOU, was issued on 4 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building for residential use, outlined in blue on the attached plan ("the unauthorised development").
 - The requirements of the notice are to:
 - 5.1 Remove the unauthorised development, including all foundations, of the building outlined in blue on the attached enforcement plan.
 - 5.2 Remove all resulting materials from 5.1 from the land outlined outline [sic] in red on the attached enforcement plan.
 - The period for compliance with the requirements is: 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (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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Appeal B Ref: APP/A0665/W/22/3302562

Pinetrees Lodge, Kingswood Lane, Saughall, Chester, Cheshire, CH1 6DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Jones against the decision of Cheshire West and Chester Council.
 - The application Ref 19/01298, undated application, was refused by notice dated 10 May 2022.
 - The development proposed is the erection of dwelling (retrospective).
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Decision: Appeal A

1. It is directed that the enforcement notice is corrected by:
 - At section 5, sub-section 5.2 of the notice, the deletion of the word 'outline'.
2. Subject to the correction above, 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.

Decision: Appeal B

3. The appeal is dismissed.

Preliminary Matters

4. With respect to Appeal A, there is a repeated word in requirement 5.2 of the notice. I shall delete the word 'outline'. Since this would not change the scope of the requirement, such a correction would not cause injustice to either party.
5. With regards to Appeal B, the appellant described the proposal as 'conversion of outbuilding for use as ancillary accommodation' on their application form. The Council, however, dealt with the application on the basis that it was for the erection of a dwelling. The appellant has provided an email indicating that they have previously agreed to the change and describe the revised wording as 'erection of dwelling (Retrospective)' on their appeal form. I shall therefore use this description in the banner heading above.

Appeal A: 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 main thrust of the appellant's case under this ground is that the building has not been used as a dwelling. In an appeal under ground (b), 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 enforcement notice alleges 'without planning permission, the erection of a building for residential use, outlined in blue on the attached plan.' The immunity period identified within the reasons for issuing the notice is identified as 4 years, which is consistent with operational development. The notice does not allege a material change of use, whether to a dwelling or to a residential use, nor does it require any residential use to cease. Although the allegation includes the term 'residential use' it is the erection of a building which is being attacked by the notice.
8. During my visit I saw that what has been erected is a partially completed building. For the purposes of the Act, building includes any structure or erection, and any part of a building. The erection of a building has therefore occurred as a matter of fact. The appellant does not dispute that the building has been constructed *for* residential use and whilst they dispute it would be a separate dwelling, that is not what the notice alleges. The fact that the building has not been used as a self-contained dwelling has implications for the ground (a) appeal, however, I see no flaw in the Council's allegation and no need to correct the notice in this case.
9. Thus, for the reasons given above, the appeal under ground (b) fails.

Appeal A: Ground (c)

10. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. As with an appeal under ground (b), the burden of proof is on the appellant, on the balance of probabilities. The appellant suggests that the works which have been carried out are of marginal difference to planning permission granted in 2015 and because the building has not been used as a dwelling, the Council cannot show that there has been a breach of planning control. The appellant has also drawn my attention to the provisions of The Town and Country

Planning ((General Permitted Development) Order 2015 (as amended)(the GPDO).

11. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land. As set out above, the enforcement notice does not allege a material change of use, rather it alleges operational development. As set out under ground (b), I have found that a building has been erected on site which, in accordance with section 55 of the Act, constitutes development.
12. Planning permission was granted on 23 June 2015 for an 'outbuilding within the residential curtilage used for domestic storage, for use as ancillary accommodation.', reference 15/01939/FUL. The permission was granted subject to the condition that the development is carried out in accordance with approved plans (condition 2).
13. The Council state that the 2015 permission allowed the 'conversion' of an existing building for ancillary purposes. The description of the proposal appears consistent with a material change of use. From the approved elevations, it is clear that the existing roof structure would be taken off and replaced with tiles at a different pitch and that the elevations would be rendered. This points towards a material change of use with works which facilitate the material change of use rather than a rebuild.
14. The appellant has provided a 'statement of truth', which asserts that the original building was not demolished. However, it is stated that removal of the rear wall of the building was undertaken, together with a section of the adjoining wall on the south side. As a result of removing the rear wall, the wall to the north of the building collapsed. New foundations were only created in respect of the kitchen and living room extension. From the appellant's own description, it appears that significant sections of the building have been removed.
15. From the photographs provided by the both the appellant and the Council, it appears that the original building was constructed from concrete panels and a grey brick, with a corrugated cement roof. I saw that the appeal building, by contrast, is a more substantial structure, predominantly constructed using breeze block and a dark blue/black brick for the chimney. As a result, the building which has been constructed bears no resemblance to the original building.
16. The appellant suggests that it should have been made clear that the previous structure would have to be retained, if that was the Council's intention. However, even if the Council had included such an informative, what has been constructed is not in accordance with the 2015 approved scheme and is substantially larger. From the evidence before me and from my inspection of the site, I find, as a matter of fact and degree, that the building which is on the site now is a new building. It is therefore no longer possible for the appellant to implement the 2015 permission. Whether the building would 'look better' or be more sensitive to the rural environment is not a matter which can be considered under ground (c).

17. Schedule 2, Part 1, Class E of the GPDO permits buildings etc incidental to the enjoyment of a dwellinghouse, subject to certain limitations and conditions. E.1 states that development is not permitted by Class E if ...(e) the height of the building...would exceed (i) 4 metres in the case of a building with a dual pitched roof. Although the appeal building is incomplete, it has been constructed with a dual pitched roof and a chimney, resulting in a structure which exceeds the height limitation set out in the GPDO. Furthermore, it is intended that the building would have habitable rooms.
18. Although the building has not yet been occupied, in order to be permitted by the GPDO the Technical Guidance advises that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. Thus, while the appellant's intention may be for the building to be used as ancillary to the main dwelling, the building is not permitted by the GPDO.
19. Although not raised by either party, from the evidence before me and from my inspection of the site, I have concerns as to whether the appeal building would meet the limitation set out in E.1(c) of the GPDO, which does not permit development where any part of the building, enclosure, pool or container would be sited on land forward of a wall forming the principal elevation of the original dwellinghouse. However, since the appeal scheme would not be permitted development for other reasons, it is not necessary for me to make a determination in this regard.
20. Thus, for the reasons given above, I find on the balance of probabilities, that the appeal scheme is development for which no planning permission granted and constitutes a breach of planning control. The appeal under ground (c) therefore fails.

Appeal A: Ground (a) and Appeal B

21. The appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Section 177(1) of the Act only allows for a grant of planning permission for the whole or part of the matters, which in the case of Appeal A, is for a partially constructed structure. Another grant of planning permission would be required to complete the building. Nevertheless, the ground (a) appeal still falls to be considered and given the overlap with Appeal B, I shall deal with them together.

Main Issues

22. The main issues of the appeals are:
 - Whether the appeal schemes are inappropriate development in the green belt having regard to the revised framework and relevant development plan policies;
 - The effect of the appeal schemes 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; and

- 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 schemes.

Reasons

Whether inappropriate development in the Green Belt

23. 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 Policy (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.
24. 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.
25. Paragraph 149c) of the Framework permits the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original¹ building. Whether a detached structure would amount to an extension of the existing building is a matter of fact and degree. For residential outbuildings, it is reasonable to take into account whether the proposal is a normal domestic adjunct. Consideration should also be given to the purpose and use of the proposed building, its relationship with the original building and its size.
26. The building is located some distance from the main dwelling, Pinetrees Lodge. The building proposed under Appeal B would comprise a substantial building with two bedrooms, a bathroom, kitchen, living room and dining hall. Although the appellant suggests the building would be used by their parents, it is not clear how their parents would occupy the building and as a result, whether it would be used as part and parcel of the occupation of the main dwelling.
27. Given the distance of the appeal building from the main dwelling and the provision of facilities, I consider its occupants are likely to seek to meet their day-to-day needs within the appeal building and not from the main dwelling. Consequently, I consider the building does not fall to be considered a normal domestic adjunct. Similarly, I do not consider the partially constructed building to be a normal domestic adjunct.
28. Although there was previously a building in this general location, as set out above, I have found that the works carried out are so substantial that what has been constructed on site is a new building. The works, both existing (ground (a)) and proposed (Appeal B), cannot therefore be considered to constitute an extension or alteration. Consequently, the appeal schemes do not fall to be considered under paragraph 149c) of the Framework.

¹ A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

29. Paragraph 149d) permits the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. However, from the evidence before me it appears that the original building was demolished. Although some elements of the building are stated to have been retained, from my inspection of the site, very little appears to have survived.
30. Furthermore, the previous building was a modest single storey building which measured 66 square metres (sqm) and 2.9m in height and was used for domestic storage. The proposed dwelling would measure 105sqm and 3.8m to its ridge, with a chimney above. Even if I were to consider the original building prior to its demolition should be used as the baseline, this is a significant increase in the overall size and massing of the original building and is materially larger than the one it replaces.
31. Although the building as constructed is unfinished, its height and floor area are also significantly greater than the original building and, in my view it is materially larger than the original building. The appeal schemes do not, therefore, fall to be considered under paragraph 149d) of the Framework.
32. Paragraph 149g) of the Framework permits 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 Framework defines previously developed land (PDL) as 'Land which is or was occupied by a permanent structure, including the curtilage of the developed land, excluding land in built-up areas such as residential gardens.
33. The appeal building is, in my view, located within the curtilage of Pinetrees Lodge and, since the appeal site is not located within a built-up area, is not precluded from the definition of PDL in this case. The appeal schemes would involve the partial redevelopment of the site and so, subject to their effect on the openness of the Green Belt, would fall to be considered under paragraph 149g) of the Framework.
34. The appeal site is located off Kingswood Lane, between the settlements of Saughall and Blacon, in a generally rural area. The site is bound by mature vegetation, with the appeal building set back from the highway. Nevertheless, the appeal building is clearly visible from a number of points along Kingswood Lane. The chimney, due to its height, is a particularly prominent feature. When approaching the site from the north, due to its distance from the main dwelling, it appears to extend development further into open countryside.
35. As set out in the Planning Practice Guidance (PPG), openness has a spatial aspect as well as a visual aspect. Significantly, the original outbuilding has been demolished, with very little of the fabric of the original building retained. Even if I were to consider the outbuilding prior to its demolition, it was modest in height and floor space and so views from outside of the site are likely to have been far more limited and in terms of its spatial effect, this is likely to have been far more limited.
36. Consequently, I find that the appeal schemes are likely to have a far greater impact on openness compared with the original building and conclude that the appeal buildings are (with respect to Appeal A)/would be (with respect to Appeal B) inappropriate development in the Green Belt.

37. 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.
38. The building is a substantial structure which, even uncompleted, 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. This is 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

39. Policy STRAT2 of the LP1 sets out a settlement hierarchy which development will be brought forward in line with and policies STRAT8 of the LP1 and R1 of the LP2 both identify named settlements which will accommodate new development. The appeal site is located outside of these named settlements, within countryside for the purposes of applying planning policy.
40. 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, to which policy R1 of the LP2 refers, 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.
41. With respect to Appeal B, the building would have all the facilities required for day to day living and, even if it were occupied by members of the appellant's family, this itself does not demonstrate that the use of the building would be ancillary to the use of the main dwelling. I note that the Council previously attached a condition to planning permission 15/01939/FUL, limiting its use to ancillary to the use of Pinetree Lodge. However, I have no substantive evidence to show that this is necessary and given the scale of accommodation I do not consider it would be reasonable to impose such a condition in this instance.
42. Policy STRAT1 of the LP1 seeks new housing with good accessibility to existing or proposed local shops, community facilities and primary schools and with good connections to public transport. Given the location of the appeal building outside of the settlements of Saughall and Blacon, its occupants would need to walk a significant 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. The appeal scheme therefore conflicts with policies STRAT1, STRAT2, STRAT8 and STRAT9 of the LP1 and policies R1 and DM19 of the LP2, the requirements of which are set out above.
43. The building which has been constructed and which is the subject of Appeal A is incapable of occupation, either as a dwelling or as an ancillary building. Were I to grant planning permission for the development as carried out, further planning permission would be required to complete the building to enable its occupation. The unauthorised development has not resulted in the creation of a new dwelling and so there is no conflict with policies STRAT1, STRAT2, STRAT8

or STRAT9 of the LP1 Local Plan Part One or policies R1 and DM19 of the LP2 in this regard.

Other considerations

44. As set out above, planning permission was granted in 2015 for the conversion of an existing building for ancillary purposes. The appellant suggests that the differences between the approved scheme and the proposed/as built are marginally different and the appeal schemes would be an improvement. For the reasons given above, I respectfully disagree. I have found that it is no longer possible for the appellant to implement the 2015 permission and so this does not constitute a fallback.
45. The appellant suggests that he contacted building control, who advised that he re-build the walls of the previous outbuilding that had become dangerous and unsafe as soon as possible. Whilst I do not have a detailed transcript of the discussion which took place, as the Council points out, Building Control officers are concerned with Building Regulations and are unlikely to have the expertise to advise the appellant on matters concerning planning permissions.
46. It is a fundamental principle that a local planning authority may not fetter its discretion to issue an enforcement notice by any form of agreement. Even if the building control officer did advise the appellant to rebuild the walls, this cannot therefore be construed as an indication that enforcement action would not be taken for any non-compliance with planning permission. Moreover, while I appreciate the collapse of some of the walls may have been beyond the appellant's control, what has been constructed is not in accordance with the 2015 approved scheme and is substantially larger. I therefore afford these matters very limited weight.
47. Although householders benefit from certain permitted development rights, Article 3(5) sets out that the permission granted by Schedule 2 of the GPDO does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of the building are unlawful. As set out above, I have found that the appeal schemes were not built in accordance with the 2015 permission and are unlawful.
48. Although, once the enforcement notice is complied with, it may be possible for the appellant to construct a building under Schedule 2, Part 1, Class E of the GPDO, I do not know what such a scheme would look like, whether it would have a greater impact on the Green Belt compared with the appeal schemes or whether the appellant would be likely to construct such a building. Consequently, I afford this matter limited weight.
49. The proposed building, Appeal B, would provide living accommodation for the appellant's parents. However, I have no substantive evidence to show that this is the only way of meeting their accommodation needs and so I afford this matter very limited weight.

Green Belt Balance

50. 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.

51. I have found the appeal schemes have a modest adverse impact on the Green Belt and I have found, with respect to Appeal B, that the appeal site is not a suitable location for a dwelling, having regard to local and national planning policy.
52. I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the developments do not exist and the appeal schemes conflict with the Framework and with policies STRAT1, STRAT2, STRAT8 and STRAT9 of the LP1 and policies R1 and DM19 of the LP2 and the development plan taken as a whole.

Conclusion

53. Therefore, for all of the reasons given above I conclude that the appeals under ground (a) and Appeal B should be dismissed.

Ground (g)

54. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant suggests that a period of nine months is required as the compliance period is likely to run into Autumn/Winter, during which time the ground is likely to be difficult to work in.
55. Given the scale of the development, and the fact that my decision will be issued in the summer months, when the weather is likely to be more favourable, I consider 6 months is sufficient to comply with the requirements of the notice. Consequently, the appeal under ground (g) must fail.

Conclusion: Appeal A

56. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Conclusion: Appeal B

57. For the reasons given above I conclude that the appeal should be dismissed.

M Savage

INSPECTOR