



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/23/3315583

**Land at Billington Barn, Norley Road, Kingsley, Frodsham, Cheshire
WA6 6LT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by M&N Property & Building Limited against an enforcement notice issued by Cheshire West and Chester Council.
- The notice, numbered 22/00150/ENTPLN, was issued on 5 January 2023.
- The breach of planning control as alleged in the notice is the erection of a two-storey dwelling known as Billington Barn ("the unauthorised development").
- The requirements of the notice are to:
 - 1(a) Instruct a CIEEM registered Natural England licenced Ecologist to undertake a daytime bat survey to:
 - Check for evidence of bat use to categorise the building's bat roosting potential in accordance with the BCT (Bat Conservation Trust) guidelines (2016)
 - Carry out bat emergence/re-entry surveys to determine bat presence/likely absence of a bat roost or to characterise the bat roost type present; and
 - Produce a report of the findings and recommendations and submit a copy to the Local Planning Authority.
 - 1(b) Obtain a Bat Mitigation Licence from Natural England if it is recommended by the licenced ecologist.
 - 2 Demolish the unauthorised building, making good the party wall between the unauthorised building and Commonsides House.
 - 3 Permanently remove all materials resulting from (3) [sic] from the land
- The period for compliance with the requirements is: 12 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.

Appeal B Ref: APP/A0665/W/23/3315575

**Billington Barn (Formerly known as The Shippon), Norley Road, Kingsley,
Northwich WA6 6LT**

- 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 Neil Badrock of M&N Property & Building Limited against the decision of Cheshire West and Chester Council.
- The application Ref 22/02291/FUL, dated 19 June 2022, was refused by notice dated 20 October 2022.
- The development proposed is Retrospective application for the demolition of the former Shippon and erection of no.1 dwelling.

Decision: Appeal A

1. It is directed that the enforcement notice is corrected and varied by, at section 5 of the notice:
 - Delete requirements 1(a) and 1(b);
 - Delete the words ',making good the party wall between the unauthorised building and Commonsides House' from requirement 2.

- Delete the number '3' from requirement 3 and insert '2', so that it reads 'Permanently remove all materials resulting from (2) from the land.'
2. Subject to the correction and variations 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. There is a typographical error in requirement 3, which requires the materials to be removed from the land but refers to (3) rather than (2). It is clear from the appellant's case they understand what the Council intended and so I consider there would be no injustice to either party in correcting the notice to refer to (2).

Appeal A: Ground (a) and Appeal B

5. 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. Given the overlap with Appeal B, I shall deal with them together.

Main issues

6. 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 access to shops, services;
 - 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

7. The appeal site is located off Norley Road, between the settlements of Kingsley and Norley. 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.
8. 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.

9. The appeal site comprises a semi-detached dwelling which fronts onto Norley Road, surrounded by a cluster of dwellings. The site was previously occupied by a shippon and planning permission was granted, reference 15/00242/FUL for the conversion and alteration of former shippon to form new residential unit, part demolition of outbuilding to form home office, and construction of new garage.
10. Planning permission was subsequently granted on 21 November 2018 under reference 18/02036/S73 which sought to vary the approved drawings. A lawful development certificate, reference 19/01886/LDC was sought which confirmed that the 2018 permission had been lawfully commenced by virtue of the foundations for the porch.
11. Following the grant of planning permission, I understand that the site was sold to the appellant. During a site visit by the Council in April 2022, it was noted that the original shippon had been substantially demolished and three new walls had been constructed to first floor level. The building has since been completed and is now occupied by a tenant.
12. The appellant does not dispute that the original shippon building has been demolished and a new building constructed on site. The main thrust of their case appears to be that there are very special circumstances which should outweigh any harm to the Green Belt. Nevertheless, for the avoidance of doubt, I shall consider whether the appeal scheme would be inappropriate development in the Green Belt.
13. Paragraph 149d) of the Framework permits the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. A lawful development certificate, reference 07-3180-CERT was issued for the existing use of land as garden, dated 18 January 2008. However, the land does not include the appeal building. While planning permission has previously been granted for the residential use of the building, it is not disputed that the previous use of the building was not residential. This exception therefore does not apply.
14. Paragraph 149 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt, with certain identified exceptions, including g) 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.
15. 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 that is or was last occupied by agricultural or forestry buildings...; land in built-up areas such as residential gardens. Although the building is located within a cluster of dwellings, it is detached from the settlements of Kingsley and, in my view, is not located in a built-up area.

16. The officer report in respect of 13/05160/FUL describes the outbuilding as a 'redundant agricultural building, while the survey submitted in support of the application describes the former shippon as being used as a 'store'. It has not been demonstrated, on the balance of probability, that the building was not last in agricultural use. Consequently, it is unlikely that the appeal schemes would meet the definition of previously developed land and so I conclude this exception does not apply.
17. Thus, for the reasons given above, I find that the appeal building is inappropriate development in the Green Belt.

Openness

18. 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. The appeal site is located between the settlements of Kingsley and Norley, within a cluster of other dwellings.
19. While the building backs on to Norley Road and is visually prominent from the public domain, its position relative to other dwellings means that it does not encroach into open countryside. However, it is a substantial building which is clearly visible from the public domain.
20. As established in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466, the openness of the Green Belt has a spatial aspect as well as a visual aspect. From the evidence provided it seems that very little, if any of the original shippon building remained prior to the construction of the appeal building. Even if I were to consider the original shippon building, the roof has been raised, which has increased its overall massing, reducing spatial openness.
21. Despite the presence of nearby buildings, I consider the appeal schemes have a modest adverse impact on the related Green Belt purpose to check the unrestricted sprawl of large built-up areas, contrary to policy STRAT9 of the LP1 which seeks to protect the Green Belt from inappropriate development and the relevant expectations of the Framework.

Whether the appeal site is a suitable location

22. Policy STRAT2 of the LP1 sets out a settlement hierarchy which development will be brought forward in line with and policy STRAT8 of the LP1 of the Cheshire West and Chester Council Local Plan (Part two) Land Allocations and Detailed Policies (LP2)(2019) identifies 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.
23. 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. It sets out that certain types of development will be allowed, including replacement buildings and the reuse of existing rural buildings, particularly for economic purposes, where buildings are of permanent construction and can be reused without major construction. The policy confirms that within the Green Belt, additional restrictions will apply to development in line with the Framework.

24. The appeal site is located outside the settlement of Kingsley, around 150 metres from the settlement boundary. 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 and policy DM19 of the LP2 supports development in the countryside, outside identified settlements in certain circumstances, including the replacement of buildings on previously developed land where it is located within reasonable walking distance of local services and facilities along a safe route.
25. Although the building is located along a section of Norley Road which is served by street lighting, there is no footpath along this section and so occupants would need to walk on the road to reach the nearest footpath. While the road is wide enough for two vehicles to pass each other, it is of limited width, with limited opportunities for refuge along this section. During my visit, I had to stop a number of times and find refuge to avoid conflict with vehicles.
26. This, to my mind, does not constitute a safe route, contrary to policy DM19 of the LP2. As a consequence, while I note that there are a range of facilities within Kingsley, I consider occupants of the building, particularly occupants with buggies or wheelchair users, would be deterred from walking to them, or to the bus stop on Top Road.
27. While I note that there has been an increased shift towards home working, which may reduce the need to travel for work, particularly since the Covid-19 pandemic, occupants are still likely to need to travel to access services and facilities. Occupants of the dwelling are therefore highly likely to be dependent upon private cars, contrary to policy STRAT 1 of the LP1.
28. The appellant has referred me to appeal decisions, reference APP/A0665/W/17/3184576, which concerned a site located along a country lane and APP/A0665/W/20/3247387, which concerned a site located off a cul-de-sac, adjacent to the settlement of Norley. Whilst I note the findings of the Inspectors in those cases, Norley Road is not, in my view, a typical country lane or a cul-de-sac but links the settlements of Norley and Kingsley and appears well used. The appeal scheme, in my view, is therefore not comparable to the appeal schemes referenced above.
29. I note that in considering the 2015 application, the Council recognised that the conversion would be contrary to sustainable development principles set out in STRAT1 of the LP1. However, the Council concluded that policy STRAT9 of the LP1 allows for the reuse of existing rural buildings in the countryside, provided that buildings are of permanent construction and can be reused without major reconstruction. Since the original shippon building has been demolished, the appeal scheme would not comply with this criterion.
30. 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.

Other considerations

31. As set out above, planning permission has been granted a number of times for the conversion of the original shippon building to a dwellinghouse. Indeed, the building which has been constructed reflects the details which have previously been approved by the Council.

32. Permission 15/00242/FUL dated 3 December 2015 permitted the conversion and alteration of former shippon to form new residential unit, part demolition of outbuilding to form home office, and construction of new garage. Condition 2 requires that the development permitted is carried out in accordance with approved plans. From the plans, it appears that the Council has used the word 'conversion' to describe a material change of use and works which would facilitate that material change of use.
33. However, although the permission allowed certain works, it did not permit the complete demolition and rebuilding of the original shippon building. Planning permission was granted on this basis that it was an existing rural building of permanent construction which could be reused without major construction, in accordance with policy STRAT9.
34. The purpose of limiting development in this way is to protect the intrinsic character and beauty of the Cheshire countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. Had the original applicant advised the Council that the development could not be completed without demolishing the original building and erecting a new one, it is unlikely that planning permission would have been granted.
35. The appellant has drawn my attention to a structural survey submitted in support of a previous application at the site, reference 13/05160/FUL, which concluded 'the building (The Shippon) is suitable for conversion without recourse to significant reconstruction. The survey also stated 'it is recommended that the front and rear wall be rebuilt above first floor level and that ties be inserted at first floor level to restrain elevations'.
36. The appellant asserts the survey makes it clear that a proportion of 'new build' would be required to facilitate the conversion of the building. Even if this is the case, it does not state complete demolition is required. The appellant purchased the site in September 2021, during which time it is stated to have been apparent that the original shippon building had been demolished. However, it is not clear from the appellant's evidence why they chose to demolish the structure.
37. While the enforcement procedure is intended to be remedial rather than punitive, a grant of retrospective planning permission should not afford any advantage. A building which is incapable of conversion would be unlikely to be granted planning permission for rebuild in this location and I see no reason why permission should be granted just because the appellant has carried out the works without the benefit of planning permission. I therefore afford the previous planning permissions at the site very limited weight.
38. The appellant states that the property provides a small starter home. While I have no substantive evidence to show that this property would be any more affordable than others on the market, the appeal scheme would result in the provision of an additional dwelling, which given the Government's objective of significantly boosting the supply of homes, I afford modest weight.
39. The appellant points out that a small number of construction jobs would be created. However, the building has already been constructed and so there would be no further benefit to the economy arising from the grant of planning permission. Occupants of the dwelling are likely to spend money in the local

area, which would have benefit to the local economy. However, the contribution that one household would make is very limited and so I afford this matter very limited weight.

40. The appeal building is occupied and is let out to a tenant on a 10 year lease. In the event that the enforcement notice is upheld and planning permission is refused, the tenant would lose their home. However, it has not been demonstrated that the tenant's housing needs could not be met elsewhere within the local area. I therefore afford this moderate weight.
41. The appellant states they purchased the property outright using their own savings. Should the dwelling be demolished, they would be left with a piece of land which they will get no financial return on, which is impacting on their mental health and well-being and could impact those employed by the appellant, with jobs on the line. Although advanced under ground (f), these are matters which I consider should be dealt with under ground (a).
42. The Council's enforcement team investigated building works on the site in early 2022. Following a further visit in April 2022, the appellant was advised to cease works. The Council advise that they made it clear any further works were carried out at the appellant's own risk. The appellant is therefore likely to have been aware of the implications of carrying out further development. Furthermore, the appellant has not quantified the loss of jobs. I therefore afford these matters modest weight.
43. The appellant has drawn my attention to appeal reference APP/A0665/C/19/3224527 and 3224528, which concerned the construction of a dwelling and garage in the Green Belt. In that case, the appellants bought the dwelling in good faith, believing it to be authorised and having taken appropriate professional advice. They were in the position that they would lose their home, had lived there for some four years, their child attended the local school and they managed an adjacent smallholding.
44. The Inspector in that case, found that the harm resulting from the development was clearly outweighed by these considerations, and would amount to the very special circumstances which led them to allow the appeal in relation to the dwelling. However, unlike the case referred to above, there is no apparent need to manage nearby land, nor is there an apparent need for the appellant to live locally so that occupants of the property can attend a local school.
45. It is stated that there has been a shippon building on the footprint of the site since at least 1911. Although advanced under ground (f), the appellant points out that the removal of the dwelling would alter the character and appearance of the built-up frontage and Norley Road. While the removal of the building would have an effect on the street scene, the original building was not listed, nor is the appeal site in a conservation area.
46. The building which has been erected is not, in my view, so exceptional in its design that its removal would harm the character and appearance of the area. Although the site would still contain the other various elements permitted by the planning permission, the space created by the demolition of the building would not, in my view, be harmful.

47. It is asserted that there are no environmental impacts on biodiversity, heritage, land or air quality. However, the absence of harms are neutral factors in my consideration of the appeal.

Green Belt Balance

48. 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. As established in *R (Basildon DC) v First Secretary of State and Temple* [2004] EWH 2759 (admin), very special circumstances are a matter of judgement for the decision maker, not law.
49. Paragraph 11 of the Framework states that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
50. I have no evidence to show that the policies of the development plan are out of date. Furthermore, I have found the appeal schemes have a modest adverse impact on the Green Belt and that the appeal site is not a suitable location for a dwelling, having regard to access to shops and services and the likely over-reliance on private car. The presumption in favour of sustainable development under paragraph 11d)ii. does not therefore apply.
51. I have considered the planning history of the appeal site in detail. While the building which has been erected on site is very similar to the details which have previously been approved, I consider only limited weight can be attached to previous permissions, since they can no longer be lawfully completed and the circumstances justifying their approval have changed.
52. Upholding the enforcement notice would result in the tenant losing their home and the appellant being required to demolish their property. Under the Human Rights Act 1998, Article 8 affords the right to respect for private and family life, home and correspondence and Article of the First Protocol affords the right to respect for property. These are qualified right, and interference may be justified where in the public interest¹.
53. Drawing everything together, 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 policy DM19 of the LP2 and the development plan taken as a whole. Upholding the notice and refusing planning permission is therefore necessary and proportionate.

¹ Article 14 also sets out 'the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, natural or social origin, association with a national minority, property, birth or other status.

Conclusion

54. Thus, for all of the reasons given above I conclude that the appeal under ground (a) and Appeal B should be dismissed.

Ground (f)

55. 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.

56. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.

57. I have considered some of the appellant's points advanced under ground (f), under ground (a) above, since they concern the planning merits of retaining the appeal building. I shall therefore not repeat them here.

58. The appellant suggests that it is unreasonable to require them to remove any material used in the construction of the dwelling that has been reclaimed from the original shippon building. However, since the materials have been incorporated into the new building, in order to remedy the breach, it is necessary to require the materials are removed from site.

59. Section 5, requirement 1(a) of the notice requires the appellant to instruct a CIEEM registered Natural England licenced Ecologist to undertake a daytime bat survey. The appellant suggests it is excessive to require the ecologist to be CIEEM registered as Natural England accept experience and references to issue a licence if not registered with CIEEM.

60. While the appellant does not object to the inclusion of requirements 1(a) and 1(b) to carry out a survey or secure a bat licence, I consider they go beyond remedying the breach. Deleting the requirements would not remove the appellant's need to comply with legislation concerning the protection of bats and it is clear from their submission that they are well aware of their obligations in this regard. I consider therefore, there would be no injustice to either party in deleting requirements 1a and 1b in their entirety.

61. The enforcement notice requires the appellant make good the party wall between the unauthorised building and Commonsides House. The appellant suggests that the requirement is unreasonable and excessive as matters pertaining to Party Walls are outside of the planning process.

62. Section 173 of the Act sets out the purposes of an enforcement notice, including 'restoring the land to its condition before the breach took place'. There is no scope for an enforcement notice to require improvements to the land. Furthermore, it is not clear what is meant by the term 'make good' and so I find this part of the requirement ambiguous. Removing the building would remedy the breach and so requiring the appellant to 'make good' the party wall would exceed what is necessary to remedy the breach. I shall therefore delete this part of the requirement.

63. The appeal under ground (f) succeeds to the extent set out above.

Ground (g)

64. 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 requests that the time limit for compliance is no less than 24 months.
65. The appellant raises matters regarding the Party Wall. I understand that the occupants of Commonsides House may not have not been receptive to the appellant previously on other matters. However, there are procedures to allow an owner to carry out works to party walls. Whilst these are outside of the planning system, I see no reason why this would prevent the appellant from complying with the requirements of the enforcement notice within the compliance period.
66. The appeal building is currently occupied by a tenant, who would need to find suitable alternative accommodation. The appellant states they would need to find suitable storage for the internal fixture and fixtures [sic] that have been installed in the dwelling, as well as the construction material. Although the appellant will need to wait until the tenant has vacated the property to carry out the works required by the notice, there is nothing to stop them from making the necessary arrangements for the storage of materials prior to the tenant moving out.
67. Twelve months, in my view, is likely to be sufficient time to enable the tenant to secure alternative accommodation, to make arrangements for the storage of fixtures, fittings and building materials and to carry out the works to demolish the building. Although the compliance period would extend over the winter months, given the compliance period would run until June of next year, I consider there are likely to be sufficient periods of good weather to carry out the demolition works.
68. Although I have concluded that the requirements regarding bats should be deleted from the notice, the appellant would still need to comply with the relevant legislation. However, I see no reason why 12 months would not be sufficient to carry out any investigation required and secure a bat licence, if required.
69. Thus, for the reasons given above, I consider the compliance period is reasonable and proportionate.

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 and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR