



Appeal Decision

Site visit made on 5 February 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th March 2024

Appeal Ref: APP/M0655/C/23/3319286

Pear Tree Farm Barn, Well Lane, Lower Stretton, Warrington WA4 4PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jack W Thwaites against an enforcement notice issued by Warrington Borough Council.
- The notice was issued on 9 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to garden area with associated timber posts and rail fence, laurel hedge, timber borders, timber gate, stone paving and domestic paraphernalia.
- The requirements of the notice are
 - a) Cease the use as a garden area of the land edged red on the attached plan.
 - b) Remove and not return from the land edged red on the attached plan, the timber posts and rail fence, laurel hedge, timber borders, timber gate, stone paving and all domestic paraphernalia.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.

Decision

1. 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.

Applications for costs

2. An application for costs was made by Warrington Borough Council against Jack W Thwaites. An application for costs was also made by Jack W Thwaites against Warrington Borough Council. These applications are the subject of separate decisions.

Preliminary and Background Matters

3. Since the appeal was made, a revised National Planning Policy Framework (the Framework) has been published in December 2023. The document has not raised any new matters which are determinative to this appeal.
4. The Warrington Local Plan 2021/22-2038/39 (the Local Plan) was adopted on 4 December 2023 and the Council has provided details of the policies which now supersede the relevant policies of the Core Strategy referred to in the notice.
5. An appeal against the refusal by the Council to grant retrospective planning permission for the material change of use to garden land was dismissed on 15

December 2022 (the previous decision)¹. As this appeal relates to the same garden land, the previous decision is a material consideration.

Appeal under ground (c)

6. An appeal under ground (c) is that the breach of planning control alleged has not occurred. The burden of proof is on the appellant and the test is the balance of probabilities. The allegation is the material change of use of the land to garden area with associated timber posts and rail fence, laurel hedge, timber boarders, timber gate, stone paving and domestic paraphernalia of the land.
7. The arguments raised by the appellant under this ground relate to the associated features rather than the change of use. He maintains that planning permission is not required for physical works such as timber posts and hedges in countryside locations. He relies upon comments made by the previous Inspector about fences and enclosures in countryside locations which could be erected without planning permission. The previous decision does not however state that the garden enclosure does not require planning permission.
8. The appellant cannot rely upon permitted development rights for the garden enclosure as the dwelling which the garden serves was a barn conversion which was itself granted under permitted development rights².
9. The appellant has not established that any of the elements of the associated features do have planning permission but even if that was the case, the Council can still include those features in the allegation provided that they facilitate the unauthorised use. This principle derives from the relevant case law. In *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598, the courts held that where works were carried out to facilitate an unauthorised material change of use then those works can also properly be required by an enforcement notice to be removed. Those works can be included in the notice even if they would be otherwise immune from enforcement action or do not require planning permission. The case law is of relevance to both this ground of appeal and ground (f).
10. The allegation is that a material change of use has taken place which is included in the definition of development³. There is no evidence before me of express planning permission or permitted development rights for either the change of use or the associated features. Development has therefore taken place without planning permission. The breach of planning control alleged has therefore occurred. The appeal under ground (c) therefore fails.

The appeal under ground (a) and the Deemed Planning Application (DPA)

Main Issues

The main issues are;

11. Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
12. The effect of the development on the character and appearance of the area;

¹ APP/MO655/W/22/3304557

² Town and Country Planning (General Permitted Development) Order 2015 (as amended) Schedule 2

³ Section 55 of the Act

13. Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate Development

14. The appeal site is located within the Green Belt. Policy DC1 of the Local Plan refers to protecting Green Belt settlements from inappropriate development in accordance with their Green Belt designation. Policy GB1 of the Local Plan states that in accordance with national planning policy, within the Green Belt, planning permission will not be granted for inappropriate development except in 'very special circumstances'. The local plan policies are therefore largely consistent with the Framework.
15. Paragraph 155 of the Framework specifies that certain forms of development are not inappropriate development in the Green Belt. Paragraph 155(e) of the Framework includes material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). However, to comply with paragraph 155(e) of the Framework, proposals are required to preserve openness and not to conflict with the purposes of including land within the Green Belt. The effect on openness has spatial and visual aspects and includes both physical works and the use of land.
16. The development consists of an area of domestic garden behind the host dwelling which has been enclosed on three sides with timber gates, posts, fencing and an evergreen laurel hedge. The development has changed previously open agricultural land to form an enclosed domestic garden. The development extends the boundary of existing built form comprising the dwelling, the neighbouring barn and the curtilage of Pear Tree Farm. Whilst not visible from the road, it would be visible in views beyond the appeal site to the rear and has spatial and visible impact.
17. At the time of my site visit, the garden area was a grassed area with the patio style stone paving located next to the dwelling and a raised plant bed in one corner. However, use as a garden is likely to include domestic paraphernalia such as childrens outdoor play equipment and garden furniture. In the event of a permanent grant of planning permission, such additions would add to the visual impact which is in contrast to the surrounding countryside. Even in its current form, the development does result in a physical erosion of space and a loss of openness due to the nature and extent of the garden enclosure on three sides.
18. Whilst the existing impact is modest, the development does not preserve the openness of the Green Belt and does encroach into the countryside. The development does not therefore fall within the exception contained in Paragraph 155(e) of the Framework and is inappropriate development.

Character and Appearance

19. The appeal site is surrounded by fields separated by hedgerows and trees. Buildings are largely located close to the road within a flat and open rural landscape. Enclosure of the land by a timber fence and evergreen laurel hedge is in contrast to the openness of the surrounding open land. The development is an incongruous feature which is out of keeping in a countryside location.

20. The development does cause harm to the character and appearance of the surrounding area. It is therefore contrary to Policies DC6 and ENV8 of the Local Plan which collectively refer to making a positive contribution to local character and development being located and designed so as to not result in harmful impact to the natural environment.

Other Considerations

21. The appellant seeks to retain the development on the grounds of farm safety for his family. He relies upon two publications, *Staying Safe on the Farm - A Guide for Parents* (Farm Safety Foundation) and the Health and Safety Executive's *Preventing Accidents to Children on Farms* (the HSE Guide) which were also provided for the previous appeal. In addition, the appellant has now submitted a 2 page report written by Griffin Risk (the report).
22. The report repeats the generic recommendations set out within the HSE Guide. They include providing a securely fenced play area, keeping children away from farming activities, stopping work if an unsupervised child suddenly appears and telling older children of the dangers. The conclusion of the report states "if you require this safe play area to be removed, you will countermand a direct recommendation from the HSE." It also states that any injury occurring due to this action could result in prosecutions including corporate manslaughter.
23. How providing a safe family environment on a farm is achieved is likely to be site specific and all of the HSE recommendations will not necessarily apply to all farms. Whilst safety at farms for families is a very serious matter, it is not clear how retaining the development in its current location is a "direct recommendation" from the HSE. There is no assessment of the suitability of this location as opposed to any other location. There is no indication that the author of the report has had sight of the previous planning decision. I therefore give limited weight to the issue of farm safety.

Other Matters

24. Both parties have referred to planning applications which are currently with the Council for determination, one of which proposes a different location for a garden. However, as no decision has been made by the Council on those applications, they are not matters that either detract from or support the appellant's case.
25. Whilst the appellant has concerns about how the Council has dealt with matters arising from the development, those matters fall outside the remit of this appeal.

Green Belt balance

26. The development is inappropriate development in the Green Belt, with a modest loss of openness and encroachment. The Framework establishes that substantial weight should be given to *any* (my emphasis) harm to the Green Belt. I have also found further harm to the character and appearance of the area. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
27. On the other side of the scales, I have attached limited weight to the family circumstances. This consideration does not outweigh the substantial weight that I give to the Green Belt harm and the other identified harm in respect of

the character and appearance of the area. Consequently, the very special circumstances necessary to justify the development do not exist and the development conflicts with the Framework and Policies DC1, GB1, DC6 and ENV8 of the Local Plan. The appeal under ground (a) should therefore not succeed.

An appeal under ground (f)

28. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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
29. The requirements of the notice are to cease the use as a garden area and to remove from the land edged red on the attached plan, the timber posts and rail fence, laurel hedge, timber borders, timber gate, stone paving and all domestic paraphernalia. The purpose of the notice is therefore to remedy the breach.
30. The appellant considers that the requirement to remove associated features is excessive. However, the removal of the listed features is not excessive where those features have facilitated the unauthorised use in accordance with the case law set out in Murfitt.
31. The appellant considers that the stone paving already existed. The Council has provided a photograph showing some hard surfacing to the rear of the barn prior to its conversion to the appeal dwelling. The existing stone paving is more extensive and has a different appearance and resembles a domestic patio. There is no evidence before me to show that the stone paving existed and served a lawful purpose before the creation of the garden enclosure.
32. The stone paving has therefore facilitated the unauthorised material change of use. It is therefore not excessive to require the removal of the stone paving. The appellant has not provided any evidence to indicate that any of the other listed features which either form the garden enclosure or are within the garden do not facilitate the unauthorised use. The requirements are therefore not excessive to remedy the breach. The appeal under grounds (f) therefore fails.

Conclusion

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

E Griffin

INSPECTOR