



Appeal Decision

Site visit made on 16 April 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/A0665/C/23/3326050

Ashfield Hall Farm Chester High Road, NESTON, CH64 3RY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Jack Reed against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice was issued on 13 June 2023.
 - The breach of planning control as alleged in the notice is the erection of two new dwellings and the erection of a building for residential use on agricultural land.
 - The requirements of the notice are: 5.1 Demolish the unauthorised buildings. 5.2 Materials arising from compliance with 5.1 shall be removed from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground as 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.
-

Decision

1. The appeal is allowed in part on ground (a) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the erection of two new dwellings, subject to the conditions in the Schedule of Conditions attached to this decision.
2. The appeal is dismissed and planning permission is refused insofar as it relates to the erection of a building for residential use on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), and the enforcement notice is upheld.

Appeal Site and Planning History

3. The development consists of a single storey building containing two dwellinghouses, and an adjacent structure which is the portal frame of a large, partially built barn. It is located within a wider site which consists of agricultural land and farm, three dwelling houses, a stand-alone sandstone barn and a walled garden. These are all accessed by a private road which links to Chester High Road.
4. The appeal site previously contained two barns and was granted permission ref 18/03125/FUL on 30 April 2019 for the "Conversion of agricultural barn into two residential dwellings, alterations and single storey extension. Use of existing barn for associated domestic parking and storage. Parking associated with the conversion." ('the 2019 Permission').
5. The 2019 Permission was for the conversion of the original buildings and included a condition that the development be carried out in accordance with

approved plans which specified how the work would be undertaken and which parts would remain. The appellant accepts that this did not in fact happen and that the original structures were mostly demolished with new buildings erected.

6. It is therefore no longer possible to implement the 2019 Permission, and the dwellings on the appeal site fall to be considered as a new building, as does the portal frame.

Ground (a) and the deemed planning application, and Ground (f)

7. The main issues are:

- Whether the development is inappropriate development in the Green Belt with regards to the National Planning Policy Framework ("the Framework") and any relevant development plan policies;
- The effect on the openness of the Green Belt;
- Whether the location is suitable for a new building;
- The effect on character and appearance of the local area;
- The effect on biodiversity in relation to the lighting; and
- Whether any harm, by reason of inappropriateness and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

The Deemed Planning Application

8. The deemed planning application is for the development as alleged in the notice, in this case the as built development consisting of the erection of two new dwellings and the erection of a building for residential use.
9. The appellant has asked for the appeal on ground (a) to be considered with reference to three proposals. Permission can be granted under appeal for the whole or part of the matters alleged in the notice, and I am satisfied that the three proposals fall within this definition and can therefore be considered:
 - Proposal 1 – is for the "as built" development (dwellings and portal-frame of a barn) completed in accordance with submitted plans and including conditions.
 - Proposal 2 – is for the "as built" development completed in accordance with submitted plans as in Option A but with the portal-framed barn structure removed and the provision of a larger landscaping scheme to include the area currently covered by the portal frame.
 - Proposal 3 – also has the portal-framed barn structure removed but includes changes to the dwellings to reflect the original design of the scheme permitted by the 2019 Permission.

Whether inappropriate development

10. The Framework advises that the essential characteristics of Green Belts are their openness and their permanence.
11. Policies DM19 and STRAT9 of the Cheshire West and Chester Council Local Plan ('the CWCCLP'), which forms part of the development plan for the area, advises

that any development of land in the Green Belt must accord with Green Belt Policy as set out in the Framework. It therefore complies with national policy.

12. The development is inappropriate in the terms set out in the Framework as it does not fall within one of the exceptions set out in paragraphs 154 and 155. Whilst the permission had been granted for two dwellinghouses and associated storage on the site under the 2019 Permission this was for the conversion of existing barn buildings and not for the erection of new buildings.

Openness of the Green Belt

13. The appellant states, and there is nothing before me to contradict his version of events, that the appeal site was never completely cleared of buildings as the original buildings were not all removed at the same time. However, the completed dwellinghouses are slightly larger than the original barn, both in terms of footprint and height. Although the site was not fully cleared prior to the development, the increase in size of the buildings has reduced the openness of the Green Belt, both spatially and visually even though the views of it from the public domain are extremely limited. As the increase in size is fairly small the resultant harm to openness is limited but there is also conflict with one of the purposes of Green Belt, namely to assist in safeguarding the countryside from encroachment. The paraphernalia associated with a residential use also affects the openness of the Green Belt.
14. Therefore, in accordance with paragraph 153 of the Framework, I afford this harm substantial weight.

Location

15. Policy STRAT9 states that the countryside will be protected by restricting development to that which requires a countryside location. Housing is not specifically covered by this policy and further details are provided in Policies DM19, Proposals for Residential Development, and DM22, Change of Use to Dwellinghouses and Residential Conversions, which provide situations when residential development in the countryside will be permitted. It cannot therefore be, taking the development plan as a whole, that residential development can never be acceptable in the countryside.
16. As the development is a new building rather than the conversion of the original barns as consented it should be considered under Policy DM19. This development is in the countryside and is therefore required to fall within one of the listed types of development in order to comply with this policy. The appellant has argued that it should fall within the definition of replacement building on previously developed land, but it has, as a matter of fact, resulted in the loss of buildings that contributed to the rural character of the area through the demolition of the original barns. This is notwithstanding that the development fulfils the other criteria in Policy DM19(7). However, as the replacement buildings are so similar to the previous buildings, and the consented scheme overall, the development does still contribute to the rural nature of the area in that it sits within the wider farmstead site with a similar location and appearance to the original barn.
17. In addition, the original barn buildings had become unused and derelict, so that in the same way as the consented scheme would have secured visual improvements, the development enhances the site and setting overall in terms

of appearance and in securing an ongoing use appropriate to the wider farmstead.

18. For the reasons as set out, the development is therefore in conflict with Policies STRAT9 (and therefore STRAT1, STRAT2 & STRAT8) and DM19, albeit the harm caused by it in this respect is limited.

Design

19. The new dwellinghouses are very similar in scale, massing and design to the proposed conversion which was granted permission. Many of the original bricks were reused in the development and the footprint of the building is not very different from that of the original building, and it is in the same location with the same configuration on the appeal site. As such, the views of it from outside the site will appear very similar to those of the original buildings and are limited in any event as the single storey development is set back from the two storey dwellings nearer to the site boundary with Chester High Road.
20. The most significant differences highlighted in the notice between the development and the consented plans for conversion are: 1 Slates are used on part of roof rather than zinc; 2 The use of UPVC in window and door frames rather than powder coated aluminium; 3 The removal of the barn door and door rail and associated change to door and window on the NE elevation; 4 Changes to the design of the connecting corridor; 5 The inclusion of parapets to the north-west and south-east elevations; 6 The appearance of some of the bricks used; and 7. The replacement of cornerstones.
21. I do not accept that these differences are not material and that they would not require planning permission. However, they are not very different when considered overall in terms of the appearance and effect of the building in the immediate vicinity. Some of the original bricks have been used and the brick patterns were those agreed with the Council. The original consented scheme included a zinc element to the roof as well as additional glazed walls of the link to the south-east elevation but this does not reflect materials seen either on the original buildings or on the other buildings nearby. Slate, which is used on the roof, is a material which was already seen elsewhere in the conversion permitted by the 2019 Permission, in the original barn building before it was demolished and in other adjacent buildings. It is therefore appropriate to the character and appearance of the wider location.
22. Black UPVC has been used rather than powder coated aluminium frames, but neither of these materials are reflected elsewhere in the adjacent buildings in any event or typically found within a barn building. I accept that many of these features are at odds with the original character of the agricultural building (including the small parapets to conceal the gutters), but any conversion of a barn to a dwelling will inevitably incorporate some such features to facilitate the change of the buildings use (e.g. additional windows and doors). The original building, if converted under the consented plan, would itself have presented as dwelling houses rather than a barn. Whilst I do accept that under the 2019 Permission some more of the original elements would have been retained, some of the consented elements such as the zinc seam roof, aluminium framed windows and glazed walls would not have been any more in character with the rural setting or the nearby buildings than the development as built.

23. The original building of Barn 2 was described as a character barn but it was not protected as a heritage asset, and the buildings in the near vicinity are also not statutory heritage assets. In addition, some of the closest buildings to the development are the adjacent houses, and as such the change of use of the appeal land to residential, and change of appearance of the building to reflect the new use is not incongruous in this location. Indeed this type of change is often seen in this type of setting, and the consented scheme itself would have resulted in a building which reflected its residential use in its appearance.
24. The replacement building does not cause harm to the character and appearance of the area, and is so similar in appearance to the original brick barn that it is sympathetic to the characteristics of the site, in its relationship with the other buildings and with the key features of the landscape overall. I do not therefore find that the development is in conflict with Policies DM3 and ENV6 which seek to secure high quality design which respects local character and landscape, and protects the visual amenity of the local area.

Other considerations to justify the development

25. The appellant has put forward three proposals to be considered and as set out above. Proposals 2 and 3 both include the removal of the partially built large portal barn adjacent to the dwellinghouses. This structure replaced the previous large brick barn which had been granted a partial change of use to that of parking and storage associated with the domestic use of the converted building under the 2019 permission. Whilst currently incomplete, the original barn was, and the replacement portal frame is, much larger in terms of scale and massing than the dwellinghouses. Its height in particular make it much more visually and spatially prominent within the landscape than the other buildings in the vicinity, and when viewed from outside of the appeal site.
26. The removal of the portal frame (under Proposals 2 and 3) will have an effect on the openness of the Green Belt, and will remove a structure which is substantially larger than the additional increase in mass in the rebuilt dwellinghouses. Taken overall, the development, in association with the removal of the portal frame will increase the openness of the Green Belt, in both visual and spatial terms, and I attribute moderate weight to this consideration.
27. The removal of the portal frame and replacement with landscaping as shown on the submitted plan would, according to the matrix submitted, provide a 65% uplift in terms of BNG. The Council dispute this figure but have not provided their own assessment. I have taken account of the caselaw provided by the Appellant¹ and the weight to be attributed to the BNG for the purposes of assessing whether there were very special circumstances outweighing the harm to the Green Belt is not reduced on the basis that some of the net gain would be required in any event by reason of forthcoming legislation (which is incorrect as the deemed planning application was made before the date of the legislative requirement).
28. The size of the proposed landscaped area is a similar size to the size of the built elements occupied by the dwellinghouses in the development, and domestic gardens are also provided to the side and rear. The landscaping overall is therefore larger than that usually provided with small-scale housing

¹ NRS Saredon Aggregates Ltd v SSLUHC, [2023] EWHC 2795 (Admin)

development. The Council have queried some of the details regarding the provision of the landscaping (in particular the wild flower grassland) but any concerns can be overcome by use of a condition so that the final details would need to be approved and then implemented within a specified timescale. Likewise, details regarding the bat and bird box provision can also be secured by imposition of such a condition.

29. Whilst it is unclear as to what the exact uplift in terms of the BNG would be, it would undeniably be much more than if the large barn structure was completed with no uplift yet required for this development by the legislation. The appellant's evidence from a chartered ecologist is that the landscape scheme under Proposals 2 & 3 demonstrates a significantly greater benefit to biodiversity than the scheme consented under the 2019 Permission, and that both are positive in terms of an uplift when compared to a cleared site. There is no requirement regarding any such provision in those circumstances or if the appeal site were used for agricultural purposes. I therefore accord this benefit significant weight as a material consideration.
30. I have not been provided with the full details regarding the decision to grant the conversion of the barns although there has been reference to the benefits of the original conversion plans on several locally listed heritage assets in terms of retaining the original layout of the wider cluster of buildings. The effect of the appeal development on these assets is not referred to in the reasons for the service of the notice, but the appellant has argued that compliance with the notice will cause heritage, landscape and ecology harm when compared with a properly conditioned development as it would leave a vacant and empty gap in the wider site.
31. The significance of the various non-designated heritage assets on the wider site arises, at least in part, from the pattern and hierarchy of the buildings. The character of the location comes from the historic grouping of the buildings and uses within the wider farmstead site.
32. The notice requires removal of the development which would leave the land cleared, and if this happened the site would appear very different overall when compared with the previous structures and the relationship with the other buildings and the landscape in the vicinity. The dwellinghouses which are part of the development have the same juxtaposition and alignment with the adjacent buildings and walled garden as the previous barn building and therefore reflect the historic use and building interactions on the wider site. This helps to retain the original character of the grouping and location.
33. I appreciate that the same can also be said for the portal barn structure but the proposed delineation of the landscaping would retain this relationship and also provide additional benefits in terms of the openness of the Green Belt and biodiversity as set out above.
34. The original barn building was derelict and appears to have been unused as an agricultural barn for some time. The photographs provided show that large parts of the roof had collapsed and the inside of the building was full of debris. The development, when completed, reinstates a use in that part of the wider farmstead site, and provides a new and secure building appropriate to its character.

35. Taken overall, the benefit of the development as a building largely reflecting the scale, massing design, configuration, and built with some of the original materials within the wider farmstead settlement when compared to an empty site is positive in terms of the significance of the heritage assets, and in landscape terms. I give the heritage benefit limited weight (to recognise that the buildings are replacements rather than conversions), and the landscape benefit moderate weight. The cleared land could be used for agriculture but this would not reflect the previous built environment or original character and appearance of the wider site.
36. It is unclear from the evidence as to whether the necessary bat licences were obtained prior to the works constituting development but this is an issue dealt with under a separate regime.
37. The appellant lives in one of the appeal dwellinghouses and is a local farmer, but as I am not being asked to consider a personal permission in this case I give this consideration very limited weight. The works were undertaken during the first Covid Lockdown and I also attribute limited weight to this, as whilst face to face visits were not possible, the appellant could have raised queries with the Council and his professional advisors via email or telephone.

Green Belt Balance

38. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In addition, the development is in conflict with the CWCCLP as set out above.
39. I afford the harm to the Green Belt substantial weight and the other considerations would not outweigh this harm in Proposal 1. However, the combined overall weight of the increase in the openness of the Green Belt and biodiversity gains provided by the removal of the portal barn and provision of wildlife landscaping scheme (to be secured by condition), as well as the landscape and heritage benefits in retaining a similar structure using the original bricks within the wider cluster of buildings would clearly outweigh this harm, and the additional harm identified above. As I have not found harm caused by the design of the development changes to make it more like the scheme allowed by the 2019 Permission are not needed. Proposal 2 will therefore achieve the benefits needed to outweigh the harm that I have identified (rather than Proposal 3).
40. I therefore find that other considerations in this case clearly outweigh the harm to the Green Belt, and the other harm caused by the conflict with the CWCCLP as outlined above. Looking at the case as a whole, I consider that very special circumstances exist which justify the development of the two dwellinghouses. The appeal on ground (a) succeeds in part and permission is granted on the deemed planning application in relation to Proposal 2.

Conditions

41. The conditions set out in the Schedule are required to ensure that the development is acceptable in planning terms and I am satisfied that they meet the policy and statutory tests.

42. Condition 1 is imposed is to ensure that the details regarding biodiversity enhancement, bat and bird habitats and lighting are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the development takes place.
43. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable
44. Condition 2 is needed to provide certainty regarding the completed development, including in relation to the provision of the landscaping scheme pursuant to Proposal 2.

Conclusion

45. For the reasons above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of two new dwellings, subject to the conditions in the Schedule of Conditions to this decision, but otherwise I will uphold the notice and refuse to grant permission for the erection for a building for residential use on agricultural land. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

Ground (g)

46. The compliance period of 6 months is a sufficient period for the portal frame which has not been granted permission to be removed, and the appeal on this ground does not therefore succeed

Zoë Frank

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The building hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for: a biodiversity enhancement plan; bat and bird habitat enhancement plan; and lighting plan shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: AF130A_PROPOSAL2_B200, AF130A_PROPOSAL2_B202, AF130A_PROPOSAL2_B203, AF130A_PROPOSAL2_B204; and AF130A_PROPOSAL2_C205 Rev A.