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# Appeal Decision

Site visit made on 5 August 2024

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 20 August 2024**

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**Appeal Ref: APP/A0665/C/24/3336371**

**The Woodlands Church Road, Saughall, Chester, Cheshire CH1 6EP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Paul McHugh against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 21 November 2023.
- The breach of planning control as alleged in the notice is without planning permission construction of a two storey rear extension, a detached garage and construction of a new pond and new hardstanding track (the pond and track are outside of the residential curtilage) ["the Unauthorised Development"].
- The requirements of the notice are to:
  - i. Reduce the two storey rear extension to meet the criteria for permitted development within Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development Order) 2015 (as amended).
  - ii. Reduce the garage to meet the criteria for permitted development within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development Order) 2015 (as amended).
  - iii. Remove the hardstanding track and re-instate the land to a grassed area and remove all resulting material(s) away from the site.
  - iv. Remove the pond, refill with inert material(s) and re-instate the land to a grassed area and remove all resulting material away from the site.
- The period for compliance with the requirement is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.**

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## Preliminary Matters

1. The plan attached to the enforcement notice (the notice) is different to the title plan for the appeal property. However, the purpose of the plan attached to the notice is to identify the land to which the notice relates, which in this instance it clearly does with the red edged line.
2. The appellant argues the planning merits of the development. However, as a ground (a) appeal has not been made, I have not taken these matters into consideration in my determination of the appeal.

## The ground (b) appeal

3. This ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. In order to succeed on this ground, it would need to be demonstrated that the construction of the two-storey extension, detached garage, pond and hardstanding track as not occurred. The onus of proof lies with the appellant.

4. The alleged breach of planning control includes 4 individual components – the two-storey extension, a detached garage, a pond and a hardstanding track. The appellant does not dispute the pond has been constructed.

*The two-storey extension*

5. The two-storey extension sits on the approximate position of a previous large, detached, brick barn. The appellant confirms in the appeal form that the barn was demolished. They later argue the barn was not demolished but was 'reduced to a safe level', down to slab level on the south gable and four-courses high on the northern gable. It was then covered with stone and topped off with golden gravel.
6. The September 2019 aerial photograph shows no evidence of the barn, with the site of its footprint appearing contiguous with the surrounding yard area, although the yard appears to be covered in golden gravel, supporting the appellant's case that the slab of the barn was covered. In any event, the reduction of the barn to the extent that it was reduced to slab level, or even to four courses high, is tantamount to the demolition of the building. Due to the extent of the demolition of the previous barn, it cannot be reasonably argued the two-storey extension is a conversion and not a new build.

*The detached garage*

7. The garage is on the footprint of a previous outbuilding, described as a shippen. I note the appellant's argument that it is an upgrade to the previous building and therefore is not a new detached outbuilding. However, the previous building has been demolished and been replaced with the existing garage. Regardless of whether it is on the footprint of a previous building, it clearly amounts to the construction of a new building.

*The track*

8. The appellant argues the hardstanding track has existed for a long time as it was used to access the previous chicken sheds to the rear of the site but was overgrown with vegetation.
9. The 2003, 2005, 2010 and 2019 ariel photographs show very little evidence of the track, which supports the appellant's contention that it was overgrown. However, there is no evidence to indicate how wide or long the track was prior to it being uncovered. Based on the evidence submitted and my own observations, the track has clearly been recently resurfaced and is of a significant width. It is reasonable to conclude that the works to bring it to its current condition required more than simply removing vegetation; the appellant suggests as much by confirming in the appeal form that the track was 'reinstated'. It appears that, at the very least, the track as been resurfaced with hardcore.

*Conclusion on the ground (b) appeal*

10. Based on the evidence before me and the observations I made on site, it is evidently clear the two-storey extension, the detached garage, the pond and the hardstanding track have all been constructed as a matter of fact. Consequently, the ground (b) appeal fails.

## **The ground (c) appeal**

11. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The onus of proof lies with the appellant.

### *Two-storey extension*

12. Planning permission was granted for the 'refurbishment of redundant farm building to form accommodation to The Woodlands and erection of double garage and conservatory'<sup>1</sup>. Notwithstanding the permission was not implemented and has since lapsed, the extension is a new build, not a conversion.
13. I have found the extension to be a new build under the ground (b) appeal. No planning permission has been granted for it. The appellant argues that changes to the 'planning permission regulations' in 2020 allows the demolition of a vacant property and the rebuilding of a domestic home may not require planning permission. It is not clear what changes 'planning permission regulations' the appellant is referring to. Nevertheless, the development is an extension, not a dwelling.
14. Moreover, the appellant states they reviewed the 'Permitted development rights for householders: technical guidance' to make sure no planning conditions would be breached. However, the two-storey extension exceeds 3m in depth and therefore fails to accord with Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Accordingly, it does not benefit from permitted development rights.
15. It is argued that the infilling of the gap, including the single-storey element, between the rear elevation of the dwelling and what was previously the barn is a separate extension. However, as can be seen from the Council's site photographs taken on 20 October 2022, this part of the extension was constructed at the same time as the part that was constructed on the footprint of the barn. It is therefore one building operation. It is not permissible to separate out parts of one development and to argue that those benefit from the grant of planning permission by way of the GPDO and that other parts of the same development are to be assessed separately. As one building operation, falling within the meaning of development as set out in section 55 of the Town and Country Planning Act 1990, either the whole of the development is permitted development or none of the development is permitted development. In this instance, as part of the extension is not permitted development, none of it is.
16. The extension is development, as defined in s55(1) of the Town and Country Planning Act 1990 (the Act), by reason that it amounts to a building operation. It therefore requires planning permission. As the extension is not permitted development and does not benefit from express planning permission it is therefore a breach of planning control.

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<sup>1</sup> Council ref: 05/01929/FUL.

### *The detached garage*

17. The garage amounts to the construction a new building and is development, as defined in s55(1) of the Town and Country Planning Act 1990, by reason that it amounts to a building operation. Whether or not it replaces a previous building is irrelevant for determining whether a breach of planning control has occurred.
18. Schedule 2, Part 1, Class E of the GPDO permits buildings etc incidental to the enjoyment of a dwellinghouse, subject to a number of limitations. Class E.1(ii) states development is not permitted if the height of the building, enclosure or container would exceed 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse. The garage exceeds this and therefore is not permitted development.
19. As the garage is not permitted development and does not benefit from express planning permission it is therefore a breach of planning control.

### *The hardstanding track*

20. The track is constructed of hardcore and is extensive in length. Due to its length and width, it would have required a significant amount of hardcore to surface it.
21. There is an existing vehicular access to the side of the dwelling that allows access to the rear of the site. This access leads to the large yard area between the two-storey extension and the detached garage. The aerial photographs clearly show this access. However, the track that is the subject of the notice commences at the rear of the yard area, which is clearly defined on the September 2021 aerial photograph, and ends to the rear of the site.
22. I acknowledge that, historically, a track was used to access the previous chicken sheds to the rear of the site. However, there is very limited evidence to indicate the condition of the track at the time the vegetation was removed and what work was involved in reinstating it. Based on the aerial photographs indicating it was completely overgrown, it is reasonable to conclude it would have required substantial works involving various plant and machinery and pre-planning to strip back the vegetation and topsoil and then lay down the hardcore. Such works would likely amount to an engineering operation for the purposes of s55(1) of the Act and would therefore be development.
23. No argument has been made that the works to the track fall within any particular permitted development rights that permit the laying down of a hardstanding, including Schedule 2, Part 1, Class F. However, these permitted development rights only apply to development within the curtilage of the dwellinghouse.
24. There are various authorities on the concept of 'curtilage of a building'. The most recent relevant case as referred to me by the Council is *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359. The case was analogous to other notable court judgements, where the approach was to ask not whether the land and building comprise part and parcel of the same unit but whether the land is part and parcel of the building as a matter of fact and degree. Whilst the *Blackbushe* case was to do with common land, its

consideration of the legal concept of the curtilage of a building remains relevant to this appeal.

25. In this instance, there is no argument made that the land to the north west of the yard area, through which the track runs, is part of the curtilage of the dwelling for it to benefit from permitted development rights under Schedule 2, Part 1, Class F of the GPDO. Based on the evidence before me, I find no reason to conclude that it is
26. Similarly, no argument has been made that the track is necessary for agricultural purposes and therefore it does not benefit from permitted development rights under Schedule 2, Part 6, Class B of the GPDO.
27. Therefore, based on the evidence before me, it has not been demonstrated that the works involved in the reinstatement of the track did not amount to development under s55(1) of the Act. As planning permission has not been granted for the works to the track and it is not permitted development, it is a breach of planning control.

#### *The pond*

28. The appellant argues that the pond is not more than 2m deep and therefore does not require planning permission. However, it is not clear what this 2m depth threshold relates to. Schedule 2, Part 1, Class E of the GPDO permits 'the provision within the curtilage of the dwellinghouse of...any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse'.
29. The appellant confirms the pond is on agricultural land. Therefore, it is not within the residential curtilage of the dwelling and as such does not benefit from permitted development under Schedule 2, Part 1, Class E of the GPDO.
30. Due to its size and depth, the excavation of the pond would have required some pre-planning and the use of plant and machinery to carry out the works. Consequently, I find that these would likely have amounted to an engineering operation and therefore would be development under s55(1) of the Act. As planning permission has not been granted for the works to the track and it is not permitted development, it is a breach of planning control.

#### *Conclusion on the ground (c) appeal*

31. It has not been demonstrated that the construction of the two-storey extension, detached garage, pond and hardstanding track are not development under s55(1) of the Act. As none of these benefit from planning permission, by way of express planning permission or permitted development rights, they are a breach of planning control. The ground (c) appeal therefore fails.

#### **Formal Decision**

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

*A Walker*

INSPECTOR