



Appeal Decisions

Hearing held on 1 October 2024

Site visit made on 1 October 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 4 November 2024

Appeal A Ref: APP/A0665/X/24/3340319

Well Cottage Farm, Beech Road, Little Budworth, Tarporley, Cheshire CW6 9EN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Robert Blackhurst against the decision of Cheshire West and Chester Council.
 - The application ref 23/01340/LDC, dated 20 April 2023, was refused by notice dated 14 December 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described in the application as residential garden land (C3 Use Class).
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Appeal B Ref: APP/A0665/W/24/3340318

Well Cottage Farm, Beech Road, Little Budworth, Tarporley, Cheshire CW6 9EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr R Blackhurst against the decision of Cheshire West and Chester Council.
 - The application Ref is 23/01694/FUL, dated 24 May 2023, was refused by notice dated 14 December 2023.
 - The development proposed is Engineering works to create a football pitch with associated works and construction of a gate.
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Decisions

Appeal A – The LDC Appeal

1. The appeal is dismissed.

Appeal B – The s78 Appeal

2. The appeal is dismissed insofar as it relates to engineering works to create a football pitch with associated works, and planning permission is refused. The appeal is allowed insofar as it relates to the construction of a gate, and planning permission is granted for the gate at Well Cottage Farm, Beech Road, Little Budworth, Tarporley, Cheshire CW6 9EN in accordance with the terms of the application, Ref 23/01694/FUL, and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

Appeal A – The LDC Appeal

Preliminary Matters

3. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired (section 191(2) of the 1990 Act). The planning merits of the use sought are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. The onus is on the appellant to demonstrate their case and the test is one of a balance of probabilities. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
4. While I am also determining a separate appeal against the refusal of planning permission for engineering works to create a football pitch with associated works, and the construction of a gate on the same site, the existence of that appeal can have no bearing on my determination of this one.

Main Issue

5. The main issue for Appeal A is whether the refusal of a certificate of lawful use or development (LDC) was well-founded. In this case the LDC is sought on the basis of immunity from enforcement due to section 171B(3) of the 1990 Act, that is through the passage of time. For this appeal to succeed the onus is upon the appellant to demonstrate, on the balance of probabilities, that the land has been used continuously and without interruption as garden land ancillary to the residential use of Well Cottage Farm for a continuous period of 10 years prior to 20 April 2023, the date of the LDC application.

Reasons

6. When deciding whether a use is lawful, it is first necessary to identify the correct planning unit¹. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. It is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.
7. Well Cottage Farm is a residential detached property sitting within a spacious plot. It is outside of any settlement and in a rural location. The plot is rectangular in shape with the house sitting close to the road junction where White Hall Lane meets Beech Road. Beech Road runs the length of the plot to the north and White Hall Lane bounds the narrower width of the plot to the east. The appeal site is surrounded by agricultural land and some neighbouring properties. The house is set back from the highway with its side elevation facing Beech Road and the other close to the common boundary with the neighbouring farm. The driveway leads from the lane to the front of the house where a garage block has been recently constructed.

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

8. During my site visit, I saw that beyond the driveway and close to the house, the garden had a cut lawn, paving, seating areas and planted borders. At the edge of what appeared to be the more formal garden area, there was a line of low-level planting which stretched across the width of the plot with a gap in the middle and a gap to the far side for access to gravelled steps leading to the rear of the plot. The land beyond the line of planting sloped down to an area that had been levelled and on part of which was an astro-turfed football pitch bordered with a narrow, gravelled path. In addition to the football pitch, a gateway had recently been formed in the far corner for access to Beech Road.
9. The appellant's case is that Well Cottage Farm and its land are in the same ownership and form a single planning unit. Prior to the appellant purchasing Well Cottage Farm in 2020, the land is said to have been used for grazing and keeping a pet horse, and that together with the land on which the stable was sited, the use of the land was ancillary to the main residential dwelling. Having been used as such without a break between 1997 and 2020 and not having been usurped by a different use or abandoned, the appellant considers that a residential use has been established for the site as a whole.
10. To illustrate how the land was previously used, the appellant has provided an annotated aerial image which shows the land divided into three parcels. Prior to their recent works, parcel A contained the house, garage, driveway, stable block and formal gardens. The two paddocks where the previous owner grazed and exercised their horse are shown as parcels B and C. A horse is said to have been kept as a pet on the land between 1997 and 2020. Since the appellant took ownership of the property, the stable block has been demolished and all internal boundary fences and hedges have been removed. Before the recent construction of a gateway into what was parcel B, access to the paddocks could only be gained from parcel A.
11. To provide some historical context, sales particulars for the 1979 public auction of Well Cottage Farm form part of the appellant's submissions. These described Well Cottage Farm as a detached cottage together with 4 loose boxes and land extending to some 3.06 acres. The sales particulars divided the land into 3 sections: homestead and paddock; paddock; and arable. The homestead and paddock as described, are represented as parcels A and B for this appeal. The two remaining areas that formed part of the sale were located to the other side of White Hall Lane and did not form part of the appeal site. Parcel C was purchased later in 1997 from the adjoining farm for the purposes of providing grazing land for the family horse.
12. Letters to support the case have been provided which confirm that between 1997 and 2020, the previous owners used parcels A, B and C for keeping, exercising and petting a single horse and that a ride-on mower was used to cut the grass on a regular basis. The letter from the former owners' daughter confirms that her mum kept a horse "in the stable and the field" and the former owner kept a horse "on the field". Furthermore, her reply to the appellant's email refers to "keeping, exercising and moving family horse" with no mention of garden use. Representations received by the Council suggested that paddocks were at times rented to a third party and the Parish Council note that "the grazing of the horse was, for most of the

time period, under a 'livery agreement' therefore a business transaction and not for the family horse of the previous person who lived on the property".

13. Aerial images dated 2000, 2010, 2015, 2017 and 2020 show the land subdivided roughly as illustrated by the appellant. In terms of physical arrangement, parcels B and C are physically distinct from parcel A and there is little in the images that would differentiate the land in terms of appearance and function from the surrounding agricultural land.
14. From the evidence provided, it seems to me that prior to the removal of internal hedges and fences, the boundaries of the land were typical of fields and the general appearance was in keeping with adjoining agricultural land. Parcels B and C were physically separate from the land surrounding the dwellinghouse and were very different in character to parcel A which comprised the dwellinghouse, outbuildings and the attached fenced off garden area. While there may have been restricted access to the paddocks only through parcel A, to my mind, walking the horse between its stable and the paddocks would not indicate a functional link between the two particularly where the areas remained clearly physically separate and in a different use.
15. Furthermore, there were no buildings on the land, and nothing in the appearance of the land that would indicate domestic use. There is no suggestion that the land had been actively used in a domestic manner that would have signified to the Council, or for example a local resident or interested observer, that in fact the land was in use as a residential garden. While it is not uncommon for paddocks to be occasionally topped by a machine, this is not an indication that the land has been used in a domestic manner. Typically such manifestations may include the erection of structures, the siting of children's play equipment, sitting out areas or the planting of garden beds, such that the appearance of the land becomes more akin to garden than a paddock, or a level of domestic activity sufficient to change the character of the land.
16. Overall, it seems to me that prior to recent works, the use of parcels B and C remained visually indistinguishable from the surrounding agricultural land but easily distinguishable from the garden land surrounding Well Cottage Farm. Thus, it is my view that within the single unit of occupation there were two easily identifiable separate and distinct areas occupied for substantially different purposes. As such, each area, with its incidental activities, would have presented as separate planning units.
17. I find therefore, as a matter of fact and degree, that it has not been demonstrated, on the balance of probabilities, there had been a definable change in the character of the use of parcels B and C, and thus a material change of use of the land to garden land ancillary to the residential use of Well Cottage Farm, 10 years or more prior to the LDC application.

Conclusion

18. For these reasons, I am satisfied that the Council's refusal to grant an LDC for the use sought was well-founded and that the appeal cannot therefore succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B – The s78 Appeal

Preliminary Matters

19. A signed statement of common ground was submitted prior to the hearing. This provided confirmation that the gate element of the scheme was considered to be acceptable in terms of visual amenity, impact on the character of the countryside and other matters such as highways. This aspect of the scheme is said to be compliant with the provisions of the development plan and no conditions have been suggested or are deemed necessary.

Main Issue

20. The main issue concerning Appeal B is therefore the effect of the development on the character and appearance of the site and the surrounding area.

Reasons

21. Appeal B relates to engineering works to construct a football pitch on land furthest away from the dwellinghouse that was formerly used as a paddock. The playing surface is permeable green astro-turf and the pitch is some 400 sqm in area. To create the football pitch, substantial engineering works have taken place to level the land and provide a suitable subsurface for the astro-turf.
22. The appeal site is surrounded by pastoral farmland with a scattering of houses around a mile from the village of Little Budworth. According to the Council, the area falls within the category 'Undulating Enclosed Farmland' (LCA 5c) as defined by its Landscape Sensitivity Study and Guidance on Wind and Solar Photovoltaic Developments which was produced to avoid unacceptable impacts to landscape character. Photographs have been provided that show the topography of the site was previously gradual and evenly sloping towards the southwestern corner and from what I observed at the time of my visit this was typical of the area.
23. While the land may have roughly retained its profile in sloping downwards towards the south-western corner, the works have significantly altered the form and appearance of the gently undulating natural landscape within the site. The altered levelled landform is awkward against the natural topography of the surrounding area, and this is exacerbated by its scale and form.
24. The context of the football pitch is domestic and is situated away from the dwellinghouse and the built environment within its curtilage and the nature of the development is clearly at odds with its setting. Once a rural, naturally landscaped field visually associated with the wider countryside, the character of its setting has been significantly altered by the encroachment of a domestic nature into the countryside.
25. In terms of appearance, I acknowledge that the appellant's choice of coloured astro-turf acts to blend with the natural grass, however, it is an alien feature in a natural landscape. The artificial surface material has a crude and more uniform appearance than natural grass which will vary in colour, length and density throughout the year. Furthermore, together with

the white painted lines and goal posts, although not in situ at my visit but shown in photographs, and the lighting along the gravelled path, these features contribute to the overall urbanising effect and to the harm caused to the character of the countryside.

26. Views into the site from the public realm are limited, due mostly to screening provided by the mature hedge and tree lined boundaries which have been supplemented with laurel hedging and the more recent planting alongside the new gateway at the bottom of the field. It is also because the land has been levelled and sits at a significantly lower level than the adjoining lane. Nevertheless, while these may limit the degree of harm incurred by its appearance, the development is out of keeping with the character of the area.
27. The land's former character of rural countryside has been replaced by development of a domestic nature which, due to the substantial levelled area and covering with synthetic materials, has a harmful urbanising effect. I consider that the form of development and the engineering operations that have occurred to enable the development are detrimental to the intrinsic character of its wider setting in the gently undulating rural landscape.
28. Great weight is attached to protecting the rural area due to the high quality of its landscape and environment, which are identified as a key asset valued highly by the borough's residents. Accordingly, Policy STRAT 9 of the Cheshire West and Chester Local Plan (Part One) (the Local Plan) looks to restrict development to that which requires a countryside location and cannot be accommodated within identified settlements. It lists certain developments which will be permitted, particularly supporting farming and forestry and rural diversification that are sensitive to their rural location.
29. The policy also provides that the diversity of landscapes, including a range of hard and soft landscape characteristics such as open fields and pastures, woodland, or farmed land as well as built form and features, contribute to the intrinsic character and distinctiveness of the borough's countryside. Football pitches for domestic purposes do not fall within the list of exceptions.
30. Overall, I find that the development has a significant urbanising effect on previously undeveloped land that contrasts adversely with the adjacent fields and the wider countryside, fundamentally altering the rural character of the site. It is a domestic incursion encroaching into the countryside and one that is out of keeping and harmful to the character of the surrounding rural area. As such, there is conflict with Policy STRAT 9 of the Local Plan which, amongst other things, seeks to protect the intrinsic character and beauty of the countryside.

Other matters

31. While I recognise that there is local and national policy support for health and wellbeing and that the provision of the sports facility is likely to be beneficial to the occupants of Well Cottage Farm, those benefits do not outweigh the harm I have found to the character of the rural area. The appellant has referred to other development plan policies in their statement but has not provided copies or expanded on what relevance they may have

in support of the development. Therefore, I have taken the strategic policy identified in the Council's reason for refusal of the application to be of direct relevance to the development.

32. I have had regard to the Inspector's decision letter for the paddle board court in Buckinghamshire which has been used as an example of similar development in an open countryside location. However, in that case the appeal site was part of a narrow sliver of land which had been trapped by the re-routing of the B4011 and the construction of the A418 Thame bypass. Thus, it was considered that the area had a lower sensitivity to change relative to other parts of the Brill-Winchendon Hills Area of Attractive Landscape. It was further reasoned that the area's rural qualities of undulating hills and ridges and its magnificent panoramic views across the strongly scenic and rural landscape were deemed not to be a feature of the appeal site. While it is difficult to make a direct comparison between the cases in the absence of the full details, based on the available evidence, including photographs of the site, I consider that the two appeals display different circumstances and therefore I do not find the appeal to be directly comparable in terms of its rural setting. In any event, I have assessed the Appeal before me and have made a planning judgement on its individual merits.

Conclusion

33. For the reasons given, I conclude that the appeal should be allowed in part and dismissed in part by allowing the construction of the gateway. The remaining development is contrary to the development plan as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding.

S A Hanson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Robert Blackhurst	Appellant
Mrs Deborah Blackhurst	Appellant's Wife
Mr Philip Robson	Counsel, Kings Chambers
Mr Gareth Salthouse	Director, Emery Planning
Ms Emilia Critchlow	Pupil Barrister (observing for training purposes)

FOR THE LOCAL PLANNING AUTHORITY

Mr Steven Holmes	Principal Planning Officer
Ms Jenifer Weigh	Planning Enforcement Officer