



Appeal Decisions

Inquiry Held on 17 and 18 December 2024

Site visit made on 16 December 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 30 December 2024

Appeal A: Ref APP/A0665/C/24/3349943

**Oakwood Farm, Parkgate Road, Saughall, Chester, Cheshire CH1 6EY
shown edged red on the plan attached to the notice ("the land")**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Peter Townsend against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice was issued on 15 July 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to residential use and the erection of a residential garage ("the unauthorised development").
- The requirements of the notice (Section 5) are to:
 - 5.1 Cease the residential use of the land.
 - 5.2 Demolish the building (the unauthorised development).
 - 5.3 Remove all materials associated with the demolition from the land.
- The period for compliance with the requirements is 4 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (d) (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been made on ground (a), the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Appeal B: Ref APP/A0665/C/24/3349978

**Oakwood Farm, Parkgate Road, Saughall, Chester, Cheshire CH1 6EY
shown edged in red on the plan attached to the notice ("the land")**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Peter Townsend against an enforcement notice issued by Cheshire West & Chester Council.
- The enforcement notice was issued on 15 July 2024.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building ("the unauthorised development").
- The requirements of the notice (in Section 5) are to:
 - 5.1 Demolish the building (the unauthorised development).
 - 5.2 Remove all materials associated with the demolition from the land.
- The period for compliance with the requirements is 4 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (c) (f) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decisions

1. Appeals A and B are each allowed, and the respective enforcement notices are quashed.

2. *Appeal A* - planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land for residential use and the erection of a residential garage at Oakwood Farm, Parkgate Road, Saughall, Chester, Cheshire CH1 6EY, as shown on the plan attached to the notice.
3. *Appeal B* - planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building on land at Oakwood Farm, Parkgate Road, Saughall, Chester, Cheshire CH1 6EY referred to in the notice, subject to the conditions in the attached schedule.

Procedural Matters

4. The appellant suggested that the accompanied site inspection might take place in the early afternoon the day before the opening of the Inquiry. The Council agreed, and I found it helpful to view the site before hearing evidence (and in good light, given the time of year).
5. As regard the deemed planning applications (DPAs), my power to grant permission under the Act is limited to matters forming whole or part of the notice allegation. Accordingly, as the allegation in Appeal B simply states that a building has been erected (thereby comprising operational development alone), it is not within my purview to grant consent for a material change of use of the land. Indeed, the building which has been constructed might be used for various purposes and any application for a material change of use of the land would be a matter lying beyond my determination of the appeal. Accordingly, the main issues in my determination of the DPA are limited to those pertinent to the operational development and not any intended particular use.
6. In his Inquiry closing submissions, the Appellant has conceded that ground (c) cannot succeed in respect of Appeal B. Therefore, as I am tasked with dealing with the principal matters of dispute between the parties, I shall not address the common ground that now exists on that issue.

Appeal A; grounds (c) and (d)

7. For an appeal to be successful on ground (c), the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. For success under ground (d), the appellant must demonstrate (under the same burden and to the same standard of proof) that any breach that did occur was immune from enforcement action on the date the notice was issued (for instance, through the passage of time).
8. Essentially it is argued by the appellant that the land subject of the notice has long been part of the residential curtilage of the dwelling at Oakwood Farm, being the lawful use of the land through the passage of time at the date the notice was issued, and that the garage has been lawfully erected under permitted development rights pursuant to that use. In particular, lawfulness of the operational development is said to be derived from Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). That provision affords general planning permission to buildings incidental to the enjoyment of a dwellinghouse and situated within its curtilage.

9. Having carefully considered all of the evidence before me, I do not find that the appellant has met his burden of proof for success under these grounds of appeal. While he has given evidence that he has used the land as a garden area to his house since March 2013, and that the grassed area was occupied by what he believes to have been a dog kennel similarly in intimate association with the residential occupation of the dwelling, there are a number of plans submitted under planning applications submitted by him (or on his behalf) over the relevant years which indicate that the land fell outside of the domestic curtilage. Taking all together, I consider that the true curtilage boundary – certainly up until the erection of the fence upon the appeal site in 2015 – existed along the edge of the access road closest to the dwelling which the photographic evidence shows marked with a natural barrier formed by a row of hedges and trees. Accordingly, given that the appeal site had not been used continuously for 10 years for residential use¹, the appeals under grounds (c) and (d) must fail in respect of that use.
10. Further, as the Class E right relied upon for the operational development is contingent on the land being lawful residential curtilage, it cannot apply in this case. In any event, it is an established legal principle that evidence on legal grounds should be sufficiently precise and unambiguous in meeting the appellant's burden of proof. Even had the issue of the curtilage not been determinative, the ground (c) garage appeal would have failed on the insufficiently precise and unambiguous measurements provided by the appellant in relation to the distance to the boundaries since I was presented with at least 2 different versions, and this was particularly unsatisfactory given that the argument hinged on figures that were very close to the particular parameter in question².
11. As the garage constitutes a breach of planning control, immunity would exist under ground (d) only were it substantially completed at least 4 years before the issue of the notice³. Therefore the relevant date is 15 July 2020. The appellant's evidence under sworn affirmation is that substantial completion took place by May 2020 and that has been corroborated by a statutory declaration from the builder, Amir Vaeznia (albeit I gave that evidence lesser weight as, unlike then appellant, the witness was not available for questioning at the Inquiry). While I accept that evidence that the structure as at the relevant date would have had some limited functionality in relation to an incidental building (for storage for example, notwithstanding a missing window and yet unaffixed roof tiles which, applying common-sense, would have likely affected the degree of weatherproofing) I do not consider that at that time the garage was 'a fully detailed building of a certain character' in the *Sage*⁴ sense. And, in particular reference to that case law, at the relevant date it is very clear in my judgement that that the appellant had stopped short of what he contemplated and intended when he began the development, as clearly the roof tiles were intended to be added to the battens (as they subsequently were) and the window propped up against the outside of building in the 14 July 2020 photograph was later installed.
12. For all these reasons, Appeal A does not succeed on grounds (c) or (d).

¹ Section 171B(3) of the Act.

² Development is not permitted under Class E where the building is within 2m of the curtilage boundary, where the height of the building is over 2.5m (as it uncontroversially is in this case).

³ By virtue of Section 171B(1) of the Act before the changes made by The Levelling up and Regeneration Act 2023.

⁴ *Sage v SSETR & Maidstone BC* [2003] UKHL 22.

Appeals A and B; ground (a) and the DPAs

Main Issues

13. The main issues in the DPAs are:

- Whether or not the appeal schemes constitute inappropriate development in the Green Belt (Appeals A and B); and
- The effect of the development on the character and appearance of the area (Appeal B).

Reasons

Green Belt

14. The appeal sites are located within the North Cheshire Green Belt.

15. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

16. Paragraph 154 of the Framework says that development in the Green Belt should be regarded as inappropriate – with some exceptions. One of those exceptions is limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.

17. Mr Leonard on behalf of the Council gave evidence at the Inquiry that neither of the appeal developments cause substantial harm to the Green Belt. I have no good reason to disagree with this common ground between the parties. Therefore the determinative issue, as far as the effect on the Green Belt is concerned, is whether or not the appeal developments have occurred on previously developed land (PDL).

18. The glossary of the Framework defines PDL as:

"Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Previously developed land excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape."

19. Between January 2007 to towards the end of 2009 Oakwood Farm was used by a highway contractor (Carillion) on behalf of the Highways Agency as a highway works depot to support improvement works to the A494/A540/A5117. The use was referred to in the 2010 Marketing Particulars. It is uncontroversial that this constituted lawful development, with Mr Leonard acknowledging during cross-examination the application of permitted development rights for statutory undertakers. As part of that lawful development, large areas of hardstanding were put down across the site (as seen in the June 2009 aerial photography). Although the Council says that the land was restored, I am satisfied from a careful consideration of all the evidence (including the aerial photography of the site over time and what was said in the 2014 Design and Access Statement⁵ about remaining hardcore and tarmac) that this 'restoration' did not – as a matter of planning judgement and fact and degree – remove all the surface structure that had been developed upon the land at Oakwood Farm and that it has not, in effect, blended into the landscape. I also find it likely that the building which Building B replaced was used as part of the highway depot operations, and I have seen no substantive evidence that it was put to an agricultural purpose subsequently. Consequently, I would not say as a matter of fact and degree that the land was last occupied by an 'agricultural building'.
20. For these reasons, I find Oakwood Farm to be PDL and the implications of the definition in the Framework (with relevance to the parts of the land targeted by the notices) is that it is not necessary for all parts of that PDL to have been developed. Therefore, as the appeal sites constitute PDL, the appeal schemes are not inappropriate development in the Green Belt.

Character and appearance (Appeal B only)

21. The Council stated in the notice that it considers the general form of the building to be acceptable, and as built it shares similar characteristics with the dwelling at Oakwood Farm and with the existing holiday accommodation on the wider site. I agree, and for those reasons find it entirely acceptable and in keeping with nearby built-form within a cluster of development. Its height within that cluster – which also includes a very large and tall existing building (Building C on the notice plans) – is similarly congruous and does not adversely affect the streetscene or views within the site's wider context, causing no harm in any way to the character and appearance of this countryside area.

Planning Conclusions

Appeal A

22. There is no harm to the Green Belt, and accordingly no conflict with the Framework or Policy STRAT 9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (SP). Since the development does constitute an extension of a residential garden curtilage in the countryside, there is conflict with Policy DM 21 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (LADP). However, within the context of the land being PDL within the countryside I give the conflict limited weight and I find it outweighed by the Framework's encouragements to make efficient use of land and suitably re-use PDL. This small extension of the residential curtilage does that, while causing no harm.

⁵ CD7-27

Appeal B

23. There is no harm to the Green Belt, or to the character and appearance of the area. Accordingly there is no conflict in these respects with the Framework or with Policies ENV 2 and ENV 6 of the SP or Policy DM 3 of the LADP. While there is a conflict with Policy STRAT 9 of the SP - in as much as a current requirement for the development in a countryside location has not been sufficiently demonstrated - I give that conflict limited weight as the development does not harm the intrinsic character and beauty of the Cheshire Countryside (being the stated policy objective). Again, I find the conflict with policy outweighed by the Framework's encouragements to make efficient use of land and suitably re-use PDL.

Conditions

24. I am giving unconditional planning permission in respect of the Appeal A development since it is acceptable without the imposition of conditions.
25. I am imposing a single condition in respect of the Appeal B development, which meets the tests in ensuring an adequate level of car parking is provided while promoting sustainable transport and protecting air quality.
26. Because the DPAs are made in respect of the developments as alleged and built, there is no mechanism for incorporating any revised plans into the deemed permissions granted.
27. Further to my earlier comments as regards Appeal B, and as I am not granting permission for any material change of use, I am not imposing suggested conditions restricting a permitted use.

Conclusions

28. For the reasons given above I conclude that Appeals A and B should succeed on ground (a). The notices are quashed and planning permission granted in respect of the development in each case. The appeals on grounds (f) and (g) do not therefore need to be considered.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Jack Smyth (No5 Chambers)

He called:

Peter Townsend,
appellant.

Justin Paul (J10 Planning
Ltd), agent for the
appellant.

FOR THE LOCAL PLANNING AUTHORITY: Elana Kaymer (Kings Chambers)

She called:

Brian Leonard, Principal
Planning Officer
(Enforcement)

INTERESTED PERSONS: none

Appeal B - Schedule of Conditions

1. The development hereby permitted shall be demolished and all resultant materials and waste shall be removed from the land within 4 months 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 including:
 - Details of parking for cars and secure covered cycle parking (including the number, type and design of each parking facility); and
 - Details of electric car charging infrastructure;

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 retained.

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.