



Appeal Decisions

Site visit made on 10 February 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 25 February 2025

Appeal A Ref: APP/R1038/C/24/3342342

Land at Summerley Cottage Summerley, Apperknowle, Dronfield S18 4BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Simon Easthope against an enforcement notice issued by North East Derbyshire District Council.
- The notice was issued on 1 March 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, building operations comprising the erection a building (“the unauthorised building”) located forward of the principal elevation of Summerley Cottage, shown for the purposes of identification shaded black on the attached plan ref: 22/00339/OD_A.
- The requirements of the notice are to:
 - a) Demolish the building and remove all materials arising from demolition from the Land;
 - b) Restore the Land to its former condition before the breach took place.
- The periods for compliance with requirements are a) three months, and b) four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out in the Formal Decision.

Appeal B Ref: APP/R1038/X/24/3348290

Summerley Cottage Summerley, Apperknowle, Drondfield S18 4BA

- 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 (LDC).
- The appeal is made by Mr Simon Easthope against the decision of North East Derbyshire District Council.
- The application ref 24/00307/LDC, dated 15 April 2024, was refused by a notice dated 10 July 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is erection of rear detached outbuilding with gravel drive.

Summary Decision: The appeal is dismissed

Appeal A on ground (a), deemed planning application

Preliminary Matter

1. The National Planning Policy Framework, December 2024 (NPPF) has been issued since the appeal was made and statements of case submitted. The main parties have had an opportunity to comment on the NPPF, and I have taken their submissions into account in my decision.

Main Issues

2. The main issues are:

- whether the development is inappropriate development in the Green Belt having regard to the NPPF and any other relevant development plan policies;
- the effect on the character and appearance of the area; and
- is the harm by reason of inappropriateness, and any other harm, clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Green Belt

3. The two-storey building (outbuilding) has been constructed within the curtilage of Summerley Cottage and within the Green Belt. Although the building's finishes are not complete, the plans accompanying the appeal submission show that it would provide garage space for three cars with office/storage space above. The first floor is accessed by an external stone staircase¹.
4. Paragraph 154 of the NPPF advises that certain forms of development are not inappropriate development in the Green Belt, including, at 154 g), the provision of limited infilling or the partial or complete redevelopment of previously developed land (PDL) (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).
5. PDL is defined in Annex 2 to the NPPF and includes land comprising large areas of fixed infrastructure such as large areas of hardstanding which have been lawfully developed. It does not include land in built-up areas such as residential gardens. Summerley Cottage is situated in an area of open countryside and is outside of any built-up area. There is no dispute that the building has been constructed on an existing area of hardstanding, previously constructed to form a parking/turning area for Summerley Cottage, and that it was laid at least four years before the Notice was issued. The hardstanding is thus lawful, and the unauthorised building is a partial redevelopment of that PDL.
6. Policy SS10 of the North East Derbyshire Local Plan, adopted 2021 (LP) states that the construction of new buildings in the Green Belt will be regarded as inappropriate and will not be permitted unless they are for a number of listed exceptions. However, those listed exceptions are no longer consistent with the NPPF. In particular, in how they relate to the redevelopment of PDL. I have therefore determined the appeal having regard to current national policy as set out in the NPPF above.
7. Summerley Cottage has a substantial residential curtilage and is situated in an area of open countryside characterised by scattered dwellings and farmsteads. The property has been substantially extended over a number of years, including

¹ Survey Drawing Ref: 105-30, Drawing No. 01 Rev A, dated March 2024. NYP Architectural Services Limited

the construction of a garage/stable block in its forecourt. It is set well back from the neighbouring lane, at a lower level, and is accessed by a long driveway.

8. The outbuilding has a large footprint and is two-storey in height. Thus, it has a significantly greater impact on openness than the area of hardstanding on which it has been constructed. However, its visibility is generally limited to views from the lane at the site entrance, with existing vegetation/mature hedgerows and buildings otherwise restricting views from adjoining land. Moreover, when viewed from the lane the outbuilding appears as part of a group of buildings which form a courtyard, thus its relationship to existing development limits its visual effect on the openness of the Green Belt.
9. For the reasons given above, I conclude that although the proposal would have a harmful effect on the openness of the Green Belt, that harm would be moderate. The development does not therefore conflict with paragraph 154 (g) of the NPPF and would not be inappropriate development in the Green Belt. There is no conflict with National Green Belt Policy set out in the NPPF and the need for special circumstances does not apply.

Character and appearance

10. The Council advise that the site lies in a Primary Area of Multiple Environmental Sensitivity (AMES) which has the highest category of sensitivity, and therefore most likely to be affected by change or development. It lies within the Nottinghamshire, Derbyshire and Yorkshire Coalfields landscape area and the character type is 'Wooded Hills and Valleys'. The landscape is described as mixed farming, predominantly pasture within medium to large fields, enclosed by hedgerows. The built environment comprises scattered settlements, farmsteads and hamlets. From observations during my visit to the site and the surrounding area, I would concur with that description, including that it is a valued landscape that should be protected and enhanced (paragraph 187(b) NPPF).
11. Policy SDC3 of the LP advises, amongst other things, that new development should not cause harm to the character, quality, distinctiveness or sensitivity of the landscape, or to important features or views, or other perceptual qualities such as tranquillity. Policy SS9 of the LP relates to development in the countryside and advises that in countryside locations outside the Settlement Development Limits, development proposals will be approved where it can be demonstrated that it falls within one or more of a number of listed categories, including at criteria 1.(f) it involves the change of use, re-use, limited infilling or redevelopment of vacant, derelict or previously developed land which would not have a greater impact on the character of the countryside than the existing development. In cases where development is considered to be acceptable, it will be required to respect the form, scale and character of the landscape, through careful siting, scale, design and use of materials. LP Policy LC5 advises that residential outbuildings which are ancillary to the main residential use should respect the scale, proportion, materials and overall design and character of the existing property, and outside Settlement Development Limits, proposals which either individually or cumulatively involve significant change in the scale and character of the original dwelling will be assessed as a proposal for a new dwelling.
12. The appeal site comprises a substantially extended detached residential property which is situated in the countryside where the built development is predominantly

scattered dwellings and farmsteads constructed in a simple traditional vernacular form. From Summerley Road and the site access, the dwelling is viewed at a distance and is nestled into the hillside. A garage/stable block has been lawfully constructed in its forecourt and it too has a traditional design and form.

13. The unauthorised building has a close visual relationship with Summerley Cottage. It also sits in its foreground and forms a courtyard with the existing hardstanding area and lawful garage/stables at the front of the dwelling. Thus, it has a good spatial relationship with the existing development on the site and having regard to its construction on an existing hard surfaced area there has been no loss of any landscape features.
14. I appreciate that the unauthorised building is substantial, and the steep pitched roof and dormer windows are not particularly characteristic of the local vernacular architecture. However, the two storey extensions to the side of Summerley Cottage also incorporate a similarly designed dormer window, and the character of the original cottage, including its front façade, has been significantly diminished. Furthermore, the unauthorised building has been constructed in natural materials, utilising local stone and slate. The visibility of the building from Summerley Road and the surrounding area is limited and generally restricted to views from the site access. Overall, its scale, siting and form does not appear incongruous in this location, as it is viewed as part of a larger group of buildings with the resultant character being one of a 'farmstead'.
15. I conclude that the unauthorised building does not have a harmful effect on the character of the host property and the surrounding area. There is no conflict with the development plan as a whole, including Policies SDC3, SS9 and LC5 of the LP, the aims of which are set out above. There is also no conflict with the design and landscape aims of the NPPF.

Conditions

16. The Council has not suggested any conditions that they would consider to be necessary if planning permission were to be granted. In the interests of certainty and because the building's finishes are not complete, I have attached a condition to require the building to be built in accordance with the drawing which formed part of the appeal documents.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed. I shall uphold the enforcement notice and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

Main Issue

18. Section 192(2) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or began at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the burden of proof is on the applicant to make out their

case on the 'balance of probabilities'. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful use or Development (LDC) was well founded.

Reasons

19. The proposed development is a substantial single storey outbuilding comprising a three bay garage (floor area of 56m²), an office (25m²) and a store (20m²). The outbuilding would be situated within the south eastern corner of the dwelling's rear garden. It is also proposed to construct a substantial gravel drive and turning area to provide access to the outbuilding.
20. The appellant contends that the proposed outbuilding would be permitted by Class E, Part 1, Schedule 2 of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended (GPDO). Class E makes provision within the curtilage of the dwellinghouse for any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure. The appellant also considers that the proposed drive would be permitted development by Class F, Part 1, Schedule 2 of Article 3(1) of the GPDO which permits development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or the replacement in whole or part of such a surface.
21. The Council do not dispute that the proposed outbuilding and driveway would meet the limitations and conditions set out in Classes E.1, E2, E3 of Class E and F.1 and F.2 of Class F of Part 1, Schedule 2 of the GPDO. However, the Council does not consider that the proposed outbuilding benefits from the aforementioned rights as the proposed development would not be for a use incidental to the enjoyment of the dwellinghouse as such. Furthermore, the Council believe that the proposed development conflicts with Article 3(5) of the GPDO which states that:

'The permission granted by Schedule 2 does not apply if-

- (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;*
- (b) in the case of permission granted in connection with an existing use, that use is unlawful.'*

22. It is the Council's case that some of the extensions constructed to the original dwellinghouse are unlawful. That being the case they contend that having regard to Article 3(5) any permission granted by virtue of Part 1, Schedule 2 of the GPDO do not apply in this case, and the proposed outbuilding and hard surfacing require the benefit of planning permission.

Article 3(5)

23. The GPDO grants planning permission in Article 3 for classes of development set out in Schedule 2. Certain classes of permitted development grant permission in connection with an existing building. For example, Class A of Part 1 of Schedule 2 is such a class as it permits the enlargement, improvement or other alteration of a dwellinghouse. The effect of Article 3(5)(a) is to provide that such permitted

development rights shall not apply if “...*the building operations involved in the construction of that building are unlawful*”. Thus, if the building operations involved in the construction of any part of that building are unlawful, the permitted development rights granted in connection with the existing building do not apply.

24. However, in this appeal case the classes of permitted development relied on are Classes E and F, which grant permission for certain types of development within the curtilage of a dwellinghouse. They are not for development which are in connection with an existing building, they are for the construction of any building or enclosure, swimming pool.....etc, within the curtilage of the dwellinghouse.
25. Having regard to the above, Article 3(5)(a) is not a relevant consideration for the purposes of the development proposed and the subject of this appeal.

Incidental

26. E.4 of the GPDO says that for the purposes of Class E, Part 1 “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance² advises the rules also allow, subject to conditions and limitations, a large range of other buildings such as garden sheds, other storage buildings, garages, and garden decking, as long as they can be properly described as having a purpose incidental to the enjoyment of the house.
27. I have taken into consideration *Emin v SSE & mid Sussex DC [1989] JPL 909*. This judgement confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use. The use of the building should be subordinate to the use of the house as a dwellinghouse.
28. It can be seen from my decision on Appeal A, that I have granted consent for the three bay garage, with store and office accommodation above, which has been constructed at the front of the dwelling. The appellant is clear in his submissions, that the proposed development the subject of the LDC, and this appeal, would only be required to be constructed if the enforcement notice in relation to the unauthorised building was upheld. It seems to me that, having regard to the comparable accommodation already provided by the outbuilding granted consent in Appeal A, the construction of garaging for a further three cars, additional office and storage space proposed, could not reasonably be described as genuinely and reasonably required and incidental to the enjoyment of the dwellinghouse. Likewise, if the proposed outbuilding would not be lawful, then the gravel drive and parking/turning area proposed would serve no purpose and also could not be considered to be incidental to the enjoyment of the dwellinghouse as such.

² Permitted development rights for householders: technical guidance, dated September 2019.

Conclusion

29. Having regard to the totality of the evidence presented in support of the appellant’s case and my decision to grant planning permission for the existing outbuilding constructed on the site (Appeal A), the proposal would not satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would not be permitted development by virtue of rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.
30. I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the construction of a detached outbuilding was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act, as amended.

Formal Decisions

Appeal A

31. The appeal is allowed, the enforcement notice is quashed 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 development carried out, namely the erection of a building (“the unauthorised building”) located forward of the principal elevation of Summerley Cottage and subject to the following condition:
- 1) The development hereby permitted shall be carried out in accordance with Survey Drawing Ref: 105-30, Drawing No: 01 Rev A, dated March 2024.

Appeal B

32. The appeal is dismissed.

Elizabeth Pleasant

INSPECTOR

	eference	Appellant
Appeal A	APP/R1038/C/24/3342342	Mr Simon Easthope
Appeal B	APP/R1038/X/24/3348290	Mr Simon Easthope