



Appeal Decision

Hearing held on 11 March 2025

Site visit made on 11 March 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2025

Appeal Ref: APP/R0660/C/24/3346262

Nine Oaks, Stocks Lane, Over Peover WA16 8TU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr P Elliot against an enforcement notice issued by Cheshire East Council.
 - The notice was issued on 15 May 2024.
 - The breach of planning control as alleged in the notice is Without planning permission -
 1. the erection of a two storey rear extension;
 2. the erection of a single storey side extension;
 3. the erection of a first floor side extension; and
 4. the alteration to part of the roof to provide a glass lantern above the main ridge.
 - The requirements of the notice are to: a) Remove the two storey rear extension, remove the first floor side extension, remove the single storey side extension and remove the alterations made to the roof of the dwelling house including the roof Lantern. b) Grub out all foundations from the two storey rear extension and the single storey side/front extension. c) Reinstate the building to its former appearance in accordance with the details shown on the elevations of the dwelling on the attached drawing number 2530 102 marked "Plan B". d) Remove from "the land" all resultant materials and debris following compliance with a), b) and c) above.
 - The period for compliance with the requirements is 8 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.
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Decision

1. It is directed that the notice be varied by the deletion of the compliance periods in part 6 of the notice and their substitution with "12 months".
2. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act (as amended).

Relevant planning history

3. Planning permission ref: 50520P was granted on 7 December 1987 for alterations and extensions ('the 1987 permission'). In December 2020 application ref: 20/2567M for internal remodelling, extension to the rear and glazed side extension was refused by the Council. In May 2021 application ref: 21/0723M for internal remodelling, extension to the rear and glazed side extension was refused by the Council and an appeal ref: APP/R0660/D/21/3278701 was dismissed on 3 November 2021.

The appeal on ground (a) and the deemed planning application

Main Issues

4. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policy;
- The effect of the development on openness and the purposes of the Green Belt; and
- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development

5. The appeal relates to a two-storey detached dwellinghouse within a rural settlement in the Green Belt. Over Peover is classed by Policy PG 10 of the Cheshire East Local Plan Site Allocations and Development Policies Document (adopted December 2022) ('the SADPD') as an infill village which has a defined village infill boundary while being within the open countryside.
6. The Government's approach to protecting the Green Belt is set out in Section 13 of the National Planning Policy Framework ('the Framework'). Its fundamental aim is to prevent urban sprawl by keeping land permanently open. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Any harm to the Green Belt should be given substantial weight.
7. Policy PG 3 of the Cheshire East Local Plan: Local Plan Strategy 2010-2030 ('the LP') is generally consistent in the approach of the Framework for new development in the Green Belt and mirrors the approach of the Framework at Paragraph 154. This provides that the construction of new buildings in the Green Belt should be regarded as inappropriate development unless they comply with stated exceptions. It is the appellant's case that the development complies with exceptions in Policy PG 3 of the LP with regard to extensions or alterations to a building and limited infilling.

Extension or alteration of a building

8. For an extension or alteration of a building to be deemed not inappropriate in the Green Belt, it must not result in disproportionate additions over and above the size of the original building. 'Original' in the context of Policy PG 3 of the LP is not defined, however, the Framework defines 'original building' in its glossary as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.
9. The appellant claims that the original dormer bungalow was replaced by a new two storey dwellinghouse rather than extended in accordance with the 1987 permission prior to their purchase of the site some years later. They suggest this to

be the case as little more than three sections of wall remained of the original bungalow once the 1987 permission had been completed. Indeed, photographs have been provided that show different brickwork that is said to indicate the remaining parts of the original building. The appellant also refers to comments made by the planning officer at the time who, in their report to the planning committee, stated that the proposal to extend the bungalow was tantamount to a new dwelling of a size and character significantly different from the existing structure. The application, due to conflict with the relevant policies, was therefore recommended for refusal. The application was subsequently approved by the Planning Committee.

10. I note from the 1987 planning application that the description of the proposal was for 'alterations and extensions' to the dormer bungalow. The fee paid for the application corresponds to that which had been applied for. From the application drawings, for the most part, the extensions to the property consisted of adding another full storey replacing the rooms in the loft space lit by the front and rear dormer windows. In addition to this, a first floor was constructed atop the front projecting single storey element which contained a bedroom and an integral garage. The drawings show a narrow single storey extension to the side gable end and a new detached double garage to the front of the dwelling.
11. Whether the bungalow was rebuilt or not is a matter of fact and degree and planning judgement. In this case I consider that the 1987 permission was approved for what was applied for and the development implemented in accordance with that planning permission. Furthermore, as illustrated in the historic fabric review, there remains a fairly substantial part of the original bungalow retained either as originally built or reused and integrated to an extent at least within the ground floor. In the absence of cogent evidence to show that the bungalow was rebuilt, based on the appeal submissions, my view is consistent with the Council's that it is more likely that the bungalow was extended and as such, it is the original building. This stance is also supported by the Council's refusal in June 2023¹ to issue a certificate to establish whether extensions to the property would be lawful.
12. Whether or not the original bungalow remains in an extended state or whether it was replaced following the 1987 permission, the size of the property has increased substantially. It is agreed by both parties that the size of the property increased by 44% following the completion of the works which were the subject of the 1987 permission. There is also no dispute that it has been subsequently increased a further 67% to its current size. As my view is that the bungalow is the original building, compared to the original bungalow, the size of the property has increased by 142%.
13. Policy RUR 11 (1) of the SADPD states that extensions and alterations to existing buildings outside of settlement boundaries in the open countryside and Green Belt will be permitted where they would i. not result in disproportionate additions over and above the size of the original building; ii. respect the character of the existing building, particularly where it is of traditional construction or appearance; and iii. not unduly harm the rural character of the countryside by virtue of prominence, excessive scale, bulk or visual intrusion.

¹ LPA ref: 22/0920M

14. Insofar as it defines the Council's interpretation of 'disproportionate', and in the absence of any such definition in the Framework, Policy RUR 11 (2) states that matters including height, bulk, form, siting and design will be considered when determining whether or not proposals represent disproportionate additions, taking full account of any previous extensions or development to the original building or in its curtilage.
15. Policy RUR 11 (3) provides that an increase in the size of the original building by more than 30% would 'usually' be considered disproportionate. Exception to the size threshold, where it *may* (my emphasis) be acceptable to increase the size of the original building by more than 30% is provided at point (3)(i) where the building is within a village infill boundary, as is the case with the appeal property. While the appellant considers 'usually' to imply that the considerations are not 'hard and fast' rules, a more common dictionary meaning of 'usually' suggests to me that an increase of more than 30% would '*generally or normally*' be considered disproportionate.
16. However, while there are no specific criteria or parameters set out for the 30% exception, the explanatory text to Policy RUR 11 informs that due to the importance attached to Green Belts through national policy, it is appropriate to impose a less permissive approach to the term disproportionate additions in the Greenbelt than it is in the open countryside outside of the Greenbelt. It says that it is expected that applications relying on this exception would be a rare occurrence, probably limited to the odd instances of very small and unimproved properties.
17. While the building has been extended far beyond the 30% threshold, the appellant refers to the reasons for consideration as to whether the additions are disproportionate and the Council's reasons for issuing the notice. Although the Council did not raise any objection to the design and siting of the development, by virtue of the size, scale, height, relative floor space and massing, the principle of the size increase has culminated in additions to the building beyond that which could be considered proportionate to the original dormer bungalow or even the bungalow as extended previously.
18. The alterations have been significant and have completely altered the scale, mass and appearance, and more than doubled the size of the building resulting in disproportionate additions over and above the size of the original building in Green Belt terms. As I have found the development to be disproportionate, there is no requirement for me to assess it against RUR 11 (1)(ii) and (iii), that is whether the development respects the character of the existing building and whether it is unduly harmful to the rural character of the countryside. Nevertheless, I do acknowledge that these were not matters raised by the Council in its reasons for issuing the notice.
19. The development cannot therefore meet the exception criteria for extensions or alterations in Policy PG 3 of the LP or paragraph 154c) of the Framework. Consequently, subject to my conclusion below on the appellant's argument that the development comprises 'limited infill', it constitutes inappropriate development which is, by definition, harmful to the Green Belt.

Limited infilling

20. The appeal site is within a settlement defined by Policy PG 10 of the SADPD as an infill village where limited infilling will be supported within its boundaries. Policy PG

3 of the LP and Paragraph 154 (e) of the Framework also provide that one of the exceptions to inappropriate development in the Green Belt is limited infilling in villages. Policy PG 10 requires that any such development will only be permitted where it (i) is in-keeping with the scale, character and appearance of its surroundings and the local area, (ii) does not give rise to unacceptable impacts and (iii) does not involve the loss of undeveloped land that makes a positive contribution to the character of the area.

21. While there is an absence of a definition of 'limited infilling' in the Framework, Policy PG 10 defines it as being the development of a 'relatively small gap between existing buildings'. I have been provided with examples from the appellant where extensions have been considered against the 'limited infill' exceptions where it seems that the development may have been construed as 'filling a gap'. One of these decisions by the Council granted additions over the 50% threshold which applies to sites within the open countryside. Although that property was within an infill village and the proposal may have been considered to be policy compliant, the site was not in the Green Belt where, as referenced above, it is appropriate to impose a less permissive approach to the term disproportionate additions in the Greenbelt than it is in the open countryside outside of the Greenbelt.
22. Nevertheless, I am not persuaded that the appeal development as a whole could be described as filling a relatively small gap between buildings, usually along a frontage. Furthermore, the aim of the development is to expand the size of the building to make it larger. While it may be that an extension to the side could be described as filling a relatively small gap between buildings, there is nothing before me that suggests that the appeal development was constructed other than as a single operation with most of the building work towards the rear.
23. Accordingly, I do not consider that the development represents 'limited infilling' as envisaged by Policy PG 10 of the SADPD, Policy PG 3 of the LP or the Framework.

Openness and Green Belt purposes

24. Paragraph 142 of the Framework advises that great importance is attached to Green Belts with the fundamental aim of Green Belt policy being to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and permanence. Openness requires consideration of both spatial and visual aspects and consideration of the impact or harm, if any, wrought by the change.
25. The appeal property is in a spacious plot towards the edge of the built development at the eastern end of the settlement. It is set amongst other properties and set back from the public highway behind a gated and landscaped boundary. To the other side of the road is a large expanse of public open space with mature trees along the road boundary. There are limited views from public vantage points to the front of the property and there are some longer distance views towards the rear of the site from Chelford Lane. While the development is largely visually contained and largely screened from public views, they will be visible from the neighbouring properties on either side.
26. Nevertheless, the effect on openness is not just about the degree to which new development is visible from within the public realm, it is also concerned with the

spatial aspect. Additions to the property have significantly extended the building over both floors, most of which is to the rear. The development increases the footprint, volume and mass of the dwelling resulting in additional built form where there was previously none, further increasing the already extended property and the degree of built form within the site. As such the appeal development has an adverse impact on the spatial aspect and to a lesser extent, the visual aspects of the Green Belt's openness.

27. Given the locational context of the site, I consider there to be no intrusion into the countryside by encroachment. However, the scale of the development has reduced the openness of the Green Belt and although I consider the loss of openness to be localised and moderate, any loss is harmful when considered against the provisions of the Framework.

Other considerations

28. I turn now to address other considerations brought forward by the appellant that, potentially, might clearly outweigh the identified harm so as to provide the very special circumstances required to justify a grant of planning permission.
29. The appellant has suggested that if the existing building was demolished, the erection of a new dwelling could constitute 'limited infilling' in a village or the redevelopment of previously developed land (PDL), and thus fall within the corresponding exception to the general rule that the construction of new dwellings in the Green Belt is inappropriate development. Furthermore, they consider that there would be no requirement for an assessment of spatial harm or otherwise assessing the relationship to Green Belt purposes.
30. Paragraph 154 (e) of the Framework, Policy PG 10 of the SADPD and Policy H1 of the Peover Superior Neighbourhood Plan (the 'PSNP') are supportive of limited infilling within the village infill boundaries comprising a relatively small gap between existing buildings. However, what is proposed here is demolition and rebuild, which would constitute a replacement build for which there is an exception (paragraph 154 (d)). That exception allows for the replacement of a building provided that it is in the same use and not materially larger than the one it replaces. This is echoed in Policy PG 3 of the LP. In these circumstances, since the extensions that are the subject of the notice are unauthorised, any replacement build would be required to reflect the size of the dwelling as it previously stood. Therefore, I do not agree that such a proposal would result in a similar development to that which currently occupies the space. Accordingly, I afford this limited weight.
31. The appellant has provided an example of where a parcel of land was assessed as an infill site where, following demolition of the existing buildings, it was redeveloped with a dwelling. Although I am not provided with the full details of the proposal, the officer report details how the principle of the development in these circumstances was considered acceptable due to the redevelopment of PDL which was formerly in a commercial use and the Council's consideration of limited infilling in a village. Thus, the proposal would appear to have complied with the exceptions to inappropriate development set out in Policy PG 3 (3)(vi) limited infilling or the partial or complete redevelopment of PDL rather than replacement, as the new building was in a different use.

32. PDL is defined by the Framework as ‘Land which has been *lawfully developed* (my emphasis) and is or was occupied by a permanent structure.....it excludes, amongst other things, land in built-up areas such as residential gardens, parks, recreation grounds and allotments. The appeal site although defined as being within the open countryside, is within a built-up area. The appellant considers that a proposal for the redevelopment of PDL would relate to the house rather than the garden. However, in a similar manner to the suggestion of limited infilling above, what is proposed by the redevelopment of PDL would, in my opinion, amount to a replacement dwelling. Therefore, I afford limited weight to the fall-back suggestion that the demolition of the property and the erection of a new dwelling on PDL would be policy compliant.
33. At the Hearing the Council confirmed that it had received a planning application for a replacement dwelling at the appeal site for an identical building. The application was yet to be registered by the Council and consequently, although I consider it to be a material consideration and the Council anticipate validation, at this stage I am not able to attribute more than limited weight to it as a fall-back. Even if it was reasonable to assume that the existing building would be demolished, and even in the light of the Council’s acceptance of the design and appearance and siting of the existing building, the deemed application before me relates to the extensions to the property and not a complete redevelopment of the site.

Green Belt balance and conclusion on ground (a) and the deemed planning application

34. The development constitutes inappropriate development which is, by definition, harmful to the Green Belt, and there is moderate harm to openness of the Green Belt. This is a matter to which substantial weight is given².
35. The Framework advises that very special circumstances will not exist unless harm to the Green Belt, and any other harm, is clearly outweighed by other considerations. Having carefully taken account of all other considerations in this case, I find that individually and cumulatively, the substantial weight given to the Green Belt and policy conflict is clearly not outweighed to justify allowing the appeal. Consequently, the very special circumstances necessary to justify the development do not exist.
36. The development conflicts with Policy PG 3 of the LP and Policies PG 10 and RUR 11 of the SADPD which, among other things, seek to protect the Green Belt from inappropriate development and to keep land within the Green Belt permanently open.
37. For the reasons given above, I conclude that the appeal on ground (a) cannot succeed, and I refuse to grant planning permission on the deemed application.

The appeal on ground (g)

38. The appellant considers that the period specified within the Enforcement Notice falls short of what should reasonably be allowed. At the Hearing it was agreed between the main parties that 12 months would be a more appropriate time period to comply with the notice. Accordingly, I shall vary the terms of the notice. The appeal on ground (g) succeeds to this extent.

² Paragraph 153 of the Framework

Overall conclusion

39. In my determination of this appeal, I have considered the relevant judicial authority that has been brought to my attention³. I have also considered other appeal decisions, and decisions made by the Council. Although I have had regard to those previous decisions, I have found the circumstances of the cases differ from this appeal and consequently I am not bound to come to the same conclusions.
40. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal cannot succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

S A Hanson

INSPECTOR

³ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor [2016] EWCA Civ 404
Euro Garages Ltd vs. SoS for CLG and Cheshire West and Chester Council [2018] EWHC 1753 (Admin)
Samuel Smith Old Brewery (Tadcaster) & Ors, R (on the application of) v North Yorkshire County Council [2020]).

APPEARANCES

FOR THE APPELLANT

Mr Philip Robson	Counsel, Kings Chambers
Ms Caroline Payne	Director, Emery Planning
Mr Nic Folland	Barnes Wallace
Mr Paul Elliot	Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mr Thomas Higon	Senior Planning Officer
Mr Andy Cush	Senior Enforcement Officer
Mr Andrew Poynton	Senior Planning and Highways Lawyer

INTERESTED PARTIES

Mr Philip Welch	Chairman of Peover Superior and Snelson Parish Council
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