
Appeal Decisions

Site visit made on 25 March 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 April 2025

Appeal A Ref: APP/R0660/X/24/3352676

Foden Bank Barn, Lapwing Lane, Lower Withington SK11 9AD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr G Goldrick against the decision of Cheshire East Council.
 - The application Ref 24/2623M, dated 12 July 2024, was refused by notice dated 9 September 2024.
 - 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 as the internal reconfiguration of existing outbuilding to provide ancillary accommodation to the main dwelling house (C3 Use Class).
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Appeal B Ref: APP/R0660/D/24/3351711

Foden Bank Barn, Lapwing Lane, Lower Withington SK11 9AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Gary Goldrick against the decision of Cheshire East Council.
 - The application Ref 23/1613M, dated 24 April 2023, was refused by notice dated 21 June 2024.
 - The development proposed is the conversion of the existing gym/office outbuilding to residential annexe.
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Summary Decisions:

Appeal A is allowed and a certificate of lawful use or development is issued in the terms set out in the Formal Decision below

Appeal B is dismissed

Procedural Matters

1. Appeal A and Appeal B essentially relate to the same development: to paraphrase, the conversion of the outbuilding to form a residential annexe. Although Appeal A is allowed and a certificate of lawful use or development is issued pursuant to that Decision, Appeal B remains before me. The planning application to which that appeal relates was submitted in the belief (held at that time) that planning permission was required for those works. I have subsequently determined that this is not the case. Nonetheless, the appellant is entitled to a decision on the appeal that he lodged and I must determine that appeal exactly on the basis on which it was submitted. My decision in relation to Appeal B does not affect my Decision in relation to Appeal A.

2. The Council refused the LDC for a single reason, specifically:

The existing use of the outbuilding is not ancillary to the main dwellinghouse due to creating a separate, independent residential use. The use has breached Condition 4 attached to 20/0831M. The use for internal reconfiguration of existing outbuilding to provide ancillary accommodation to the main dwelling house (C3 Use Class) is not considered lawful.

3. This reason conflates two aspects of the development: the operational development (internal reconfiguration of existing outbuilding) and the use of the outbuilding (to provide ancillary accommodation to the main dwelling house). Thus, it is not correct to cite 'use for internal configuration....': that is operational development, not a use of land.

4. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) allows the Secretary of State, or an Inspector, to modify the description of the existing use, operation or other matter sought by an LDC. I will therefore modify the description of the development for which the LDC is sought to:

Use of the existing outbuilding to provide residential accommodation associated with the main dwelling house, and the internal reconfiguration of the existing outbuilding to facilitate that use.

Background

5. In November 2011, planning permission was granted by the Council for the conversion of a barn at the property to create a dwelling house (Council ref: 11/1058M). The approved scheme also included a new single storey outbuilding. Subsequently, in April 2020, the Council granted planning permission for alterations to the outbuilding constructed pursuant to planning permission 11/1058M to create first floor accommodation (Council ref: 20/0831M). That permission was subject to conditions, one of which (Condition No 4) stated:

The extended building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Foden Bank Barn.

There is no dispute that planning permission 20/0831M has been implemented entirely in accordance with the terms of that permission.

Appeal A

6. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

7. There are two elements to the description of development for which a certificate of lawful use or development is sought: the internal works to facilitate the use of the outbuilding, and the actual use of the outbuilding. It is convenient to consider the internal works in the first instance.

The internal works

8. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

9. However, section 55(2)(a)(i) of the 1990 Act excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which affect only the interior of a building. In this case, the works undertaken only affect the interior of the outbuilding. I therefore consider, on the balance of probability, that these works do not constitute development for the purposes of section 55(1) of the 1990 Act.

The use of the outbuilding

10. Section 55(2)(d) of the 1990 Act states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken for the purposes of the Act to involve development of the land. In the specific circumstances of this case, there are three main considerations in this respect:

- whether or not the outbuilding is within the curtilage of the residential property known as Foden Bank Barn
- whether the occupation of the outbuilding for residential purposes has created a new planning unit, and
- whether the occupation of the outbuilding for residential purposes is in breach of Condition 4 imposed on planning permission 20/0831M.

Curtilage

11. In his appeal statement, the appellant cites the judgement in *Methuen-Campbell v Walters* [1979] 1 QB 525, which for many years was the leading case in relation to curtilage. The judgement in *Methuen-Campbell* is one of many cases re-visited in the comprehensive review of the case law in relation to curtilage in the judgment of the High Court in *Challenge Fencing Ltd. v SSHCLG* [2019] EWHC 553 (Admin).
12. The High Court found in *Challenge Fencing* that there is no all-encompassing, authoritative definition of the term 'curtilage'. However, the High Court identified the main principles as being, in summary:
- i) The extent of the curtilage of a building is a question of fact and degree
 - ii) The three 'Stephenson' factors of physical layout, the ownership past and present, and the use or function of the land or buildings, past and present must be taken into account

- iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration
 - iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration
 - v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant
 - vi) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself.
13. Applying the principles set out in *Challenge Fencing* to the facts of this case, the dwelling known as Foden Bank Barn is located in a defined plot that includes the main dwelling, the garden to the main dwelling, the outbuilding and an area for car parking. The outbuilding is in close proximity to the main dwelling, being separated from it by a small grass area and paths. One of these paths leads to a pedestrian gate.
14. The area described above is all within the ownership of the appellant. The area of this land is proportionate to the size of the main dwelling and the accommodation that it provides. The area is enclosed by various boundary treatments, which provide visual, physical and functional separation from the adjoining stables and paddocks that are also within the appellant's ownership. The outbuilding has historically been used as a gym and office ancillary to the main dwelling, but more recently has been used to provide accommodation in association with the main dwelling.
15. Having regard to the above and the judgement in *Challenge Fencing*, I conclude that as a matter of fact and degree the outbuilding is within the curtilage of the dwelling known as Foden Bank Barn.

The planning unit

16. The leading case for the determination of the planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This case indicates that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. In *Burdle*, Bridge J suggested three broad categories of distinction:
- a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
17. It is necessary to apply the principles established in *Burdle* to the facts of this case.

18. The starting point is the unit of occupation. As indicated above, the appeal site is owned and occupied by the appellant (and his family). I am satisfied that for these purposes the unit of occupation is constituted by the entirety of the land owned and occupied by the appellant.
19. The primary use of the unit of occupation is for residential purposes. All of the other activities that take place within this unit of occupation (the stables, the car parking and the outbuilding when used as a gym and office) are or were ancillary or incidental to that primary use. These uses and activities are all functionally linked. They are also physically linked, to the extent all the land is interconnected by gates, etc in the boundary treatments.
20. This is therefore the situation identified as category (a) in *Burdle*. Accordingly, I conclude that as a matter of fact and degree the dwelling and outbuilding are all within the same single planning unit having a primary use for residential purposes, to which all other uses or activities are ancillary or incidental.
21. There is no definition of the term 'dwellinghouse' in the 1990 Act but it is settled case law that the distinctive characteristic of a dwellinghouse is its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The outbuilding comprises two bedrooms, a bathroom, a fully functioning kitchen and a living area. The outbuilding therefore provides all the facilities required for day-to-day private domestic existence and could operate as a separate single dwelling.
22. In *Uttlesford DC v SSE & White* [1992] JPL 171. 435, it was held that the residential use of an extension or outbuilding may be regarded as part and parcel of (rather than incidental to) the use of the dwellinghouse, even if the outbuilding contains the facilities required for use as a self-contained dwellinghouse. It is therefore necessary to assess the physical and functional links between the use of the outbuilding and main dwelling and consider whether, as a matter of fact and degree, a separate dwelling and planning unit has been created in this case.
23. I am advised that the outbuilding would be occupied by family members, specifically by the appellant's grandparents. Consequently, there would be a clear functional link between the main dwelling and the outbuilding. The outbuilding is physically separate from the main dwelling, but is in close proximity and separated from it only by the small area of grass. The outbuilding and main dwelling share the same garden, the same vehicular access from Lapwing Lane and the same car parking area. They also share the same pedestrian access.
24. Furthermore, the outbuilding and the main dwelling share the same gas and water supply. There is the question over the electricity supply. I am now advised that the single electrical supply to the appeal site as a whole is via services underneath Lapwing Lane and that this feeds into the western elevation of the appeal building as a single point of entry to the appeal site. I am further advised that the only electric meter box serving the appeal site as a whole is on the external wall of this elevation of the appeal building. This single meter box serves the main dwelling house, the appeal building and the stables complex.
25. I have some difficulty in reconciling this evidence with the conversion of the former barn to a dwelling in or around 2011. At that time, the outbuilding was

single-storey and in use as a garage. It seems to me to be more practical and usual for the electricity supply enter into the main dwelling, and to have the main electricity meter there, rather than into a separate outbuilding. Nevertheless, the Council does not dispute this evidence and has no evidence of its own to contradict that of the appellant or make his version of events less than probable. I therefore accept the appellants evidence on this point.

26. Having regard to the above, I conclude that the main dwelling and outbuilding remain part of the same planning unit, and that planning unit is still occupied by a functionally single household. There has been no definable change in the character of that planning unit. Consequently, as a matter of fact and degree, a separate planning unit has not been created. Neither, on the balance of probability, has a material change of use occurred.

Breach of Condition 4 imposed on planning permission 20/0831M

27. This condition states that the extended building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Foden Bank Barn. The first point to make is that the occupation of the outbuilding by members of the appellant's family would not be ancillary to the residential use of the dwelling known as Foden Bank Barn: it would part and parcel of it. On a strict interpretation of the wording of Condition 4, occupation of the outbuilding by members of the appellant's family could be said to be in breach of that condition.
28. However, the courts take a purposive as well as pragmatic approach to the interpretation of conditions. The reason for imposing Condition 4 is stated as '*To ensure the proposed use remains ancillary to the principle use on the site*'. It is therefore clear that the purpose of Condition 4 imposed on planning permission 20/0831M is to prevent the occupation of the outbuilding as separate dwelling, wholly independent of Foden Bank Barn. Taking a purposive interpretation to the wording of Condition 4, I am satisfied that occupation of the outbuilding by members of the appellant's family would not be in breach of that condition.

Conclusion on Appeal A

29. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the existing outbuilding to provide associated with the main dwelling house (C3 Use Class), and the reconfiguration of the existing outbuilding to facilitate that use at Foden Bank Barn, Lapwing Lane, Lower Withington SK11 9AD is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

30. The site is within the Green Belt, and within the Jodrell Bank Radio Telescope Consultation Zone.
31. Paragraph 154 of the National Planning Policy Framework indicates that certain forms of development are not inappropriate in Green Belt provided they preserve the openness of Green Belt and do not conflict with the purposes of including land in Green Belt. These include material changes in the use of land.

32. The proposed development would comprise the use of an existing outbuilding. There would be no external alterations to the outbuilding. The proposed use of the outbuilding would therefore preserve the openness of Green Belt and would not conflict with the purposes of including land in the Green Belt. I am therefore satisfied the proposed development would not be inappropriate in the Green Belt.
33. The Council has stated one substantive reason for refusing planning permission, from which the main issues raised is whether the conversion of the existing gym/office outbuilding to use as a residential annexe would impair the efficiency of the Jodrell Bank Radio Telescope.
34. In its consultation response, the University of Manchester explains that the Radio telescopes at Jodrell Bank carry out a wide range of astronomical observations as part of national and international research programmes, involving hundreds of researchers from the UK and around the world. The University goes on to explain that the telescopes at Jodrell Bank are equipped with state-of-the-art cryogenic low-noise receivers, designed to pick up extremely weak signals from space. The location of Jodrell Bank was chosen in 1945 as a radio-quiet rural area away from the interference on the main university campus in Manchester.
35. The University explains in its consultation response that equipment commonly used at residential dwellings causes radio frequency interference that can impair the efficient operation of the radio telescopes at Jodrell Bank. This evaluation is based on the definition of the level of harmful interference to radio astronomy specified in ITU-R.769, the International Telecommunications Union 'Protection criteria used for radio astronomical measurements', which has been internationally adopted in the protection of parts of the spectrum for radio astronomy.
36. The University recognises that there is significant development across the region surrounding the telescopes and has carried out an analysis which takes into account the distribution of development and the effect of the intervening terrain between any location and the telescope itself. This analysis uses data provided by Cheshire East Council and Ordnance Survey, and uses the officially recognized propagation model provided by the ITU 'Prediction procedure for the evaluation of interference between stations on the surface of the Earth at frequencies above about 0.1 GHz' (ITU-P.452).
37. As a result of the above, Jodrell Bank Observatory now opposes development across a significant part of the consultation zone as a matter of principle, in order to protect the efficiency of the Jodrell Bank radio telescope's ability to receive radio emissions from space with a minimum of interference from electrical equipment.
38. This is a highly technical issue. The appellant has not provided a technical rebuttal of the scientific principles set out in the consultation response submitted by the University of Manchester. I will therefore take that evidence as being an accurate representation of the likely outcome should planning permission be granted for the proposed development.
39. The appellant also refers to a similar development at Foden Bank Farm, on the western side of Lapwing Lane and directly opposite the appeal site. Planning permission was granted by the Council in September 2022 for the use of a

garage building to be used as an ancillary annexe and the plans showed a living area, kitchen, bedroom and bathroom (Council ref:22/1959M). That permission was granted subject to a condition that details of internal materials are provided with due regard for interference with the telescopes at Jodrell Bank.

40. The appellant points out that the Council was obviously mindful of potential impacts on Jodrell Bank when granting that planning permission. The appellant considers that there is no justification for coming to a different conclusion in respect of his proposal, given that:

- the site is in the same local planning authority
- the two sites are directly opposite one another and in the same geographical position in relation to Jodrell Bank
- the development proposals are materially the same i.e. creation of annexe accommodation in an existing ancillary outbuilding
- the Council assessed the impact Jodrell Bank when granting planning permission 22/1959M and found there to be no adverse impacts
- there has been no change in circumstance since September 2022 (i.e. when 22/1959M was determined) and now to justify a different approach to this site.

41. In support of his position, the appellant cites the judgements in *North Wiltshire District Council v Secretary of State for the Environment* [1993] 65P & CR137 and *R (Midcounties Co-Operative Limited) v Forest of Dean District Council* [2017] EWHC 2050. In summary, these judgments have established that like cases should be decided in a like manner so as to ensure consistency in decision making.

42. I fully take the appellant's point in terms of consistency in decision making. However, I do not have all the details relating to planning permission 22/1959M before me. In particular, I do not have the consultation response (if there was one) from the University of Manchester in relation to that application. I therefore cannot be certain from the evidence that is before whether Jodrell Bank Observatory maintained its opposition such development as a matter of principle at that time, as it does now. For that reason, I cannot be certain that the two developments referred to by the appellant are genuinely like for like, such that consistency in decision making is material consideration in this case. I must therefore determine this appeal on the evidence that is before me, including the highly technical consultation response from the University of Manchester.

Conclusion on Appeal B

43. I conclude that the proposed development would impair the efficiency of the Jodrell Bank Radio Telescope. I therefore conclude that the proposed development would be contrary to Policy SE14 of the Cheshire East Local Plan Strategy which provides, amongst other things, that within the Jodrell Bank Radio Telescope Consultation Zone proposals that impair the efficiency of the telescopes will not be permitted.

44. The Council also cites Policy HER9 of the Site Allocations and Development Policies Document in its Decision Notice. However, I have not been provided with a copy of that policy and consequently have not taken it into account.
45. I have found that the proposed development would conflict with the development plan. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. This includes the imposition of conditions, which could not overcome the harm that I have identified above.

Formal Decisions

Appeal A: APP/R0660/X/24/3352676

46. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Appeal B: APP/R0660/D/24/3351711

47. The appeal is dismissed.

Paul Freer
INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 July 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

By reason of section 55(2)(d) of the Town and Country Planning Act 1990, the use of the existing outbuilding to provide residential accommodation associated with the main dwelling house does not constitute development for purposes of that Act, and the internal reconfiguration of the existing outbuilding to facilitate that use is excluded from the definition of development by section 55(2)(a)(i) of the same Act.

Signed

Paul Freer

Inspector

Date 14 April 2025

Reference: APP/R0660/X/24/3352676

First Schedule

Use of the existing outbuilding to provide residential accommodation associated with the main dwelling house, and the internal reconfiguration of the existing outbuilding to facilitate that use.

Second Schedule

Land at Foden Bank Barn, Lapwing Lane, Lower Withington SK11 9AD

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 April 2025

by Paul Freer BA(Hons) LLM PhD MRTPI

Land at: Foden Bank Barn, Lapwing Lane, Lower Withington SK11 9AD

Reference: APP/R0660/X/24/3352676

Scale: Not to scale

