



Appeal Decision

Site visit made on 16 June 2025

by **R Major BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 July 2025

Appeal Ref: APP/A0665/W/24/3356570

The Elms, Hollands Lane, Kelsall, Cheshire West and Chester, Chester CW6 0QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Ian Thomson against the decision of Cheshire West and Chester Council.
- The application Ref is 24/01563/FUL.
- The development proposed is part change of use from agricultural storage to an indoor padel court with ancillary agriculture plant and machinery store (retrospective).

Decision

1. The appeal is allowed and planning permission is granted for the part change of use from agricultural storage to an indoor padel court with ancillary agriculture plant and machinery store at The Elms, Hollands Lane, Kelsall, Cheshire West and Chester, Chester CW6 0QT in accordance with the terms of the application, Ref 24/01563/FUL, subject to the following conditions:
 - 1) The development hereby approved shall be carried out in accordance with the following plans:
 - Location Plan (Scale 1:1250)
 - Proposed Shed layout (Scale 1:100)
 - 2) The indoor padel court hereby approved shall only be for private use in association with the residential property at The Elms, Hollands Lane, CW6 0QT (or any other name by which this dwelling may be known in the future) and shall not be used in connection with any commercial enterprise.
 - 3) The indoor padel court hereby approved shall only be used between the following hours:

08:00 - 22:00 on Mondays to Saturdays (inclusive)

09:00 – 20:00 on Sundays and Bank Holidays.

Preliminary Matters

2. I have removed the word “*retrospective*” from the description in my formal decision as this does not form part of the proposed development.
3. I observed on my site visit that the indoor padel court has been installed within the appeal building. Nevertheless, I have determined the appeal on the basis of the submitted plans.
4. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 12 December 2024. The main parties

were given the opportunity to comment on the implications of the revised Framework and I have taken into account any comments raised.

5. As per the description of the proposal on both the planning application form and the Council's decision notice, the appeal scheme seeks consent for the part change of use from agricultural storage to an indoor padel court with ancillary agriculture plant and machinery store. Consequently, the appeal before me concerns the proposed use of the building only and not the merits of the building itself.
6. Whilst the Council has claimed that the appeal building is unlawful, the lawfulness of the appeal building is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act). If the appellant wishes to ascertain whether the appeal building is lawful, they may make an application under section 191 of the Act.
7. Furthermore, any grant of planning permission by this appeal for the part change of use would not prevent the Council from taking enforcement action against any unlawful operations they believe have been carried out in respect of the appeal building.

Main Issues

8. The main issues are:
 - whether or not the proposal is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the character and appearance of the area; and
 - if the development is inappropriate, whether any 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 necessary to justify the development.

Reasons

Whether inappropriate development including effect on openness

9. The appeal relates to a large, detached building within the Green Belt. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essential characteristics of the Green Belt being their openness and permanence. The Framework goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. The Framework establishes that development in the Green Belt should be regarded as inappropriate, subject to a number of exceptions set out in paragraphs 154 and 155.
11. One such exception, at paragraph 154(h) (iv) is the re-use of buildings provided they are of permanent and substantial construction, and the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
12. Policy STRAT9 of Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (LP1) (January 2015) states that within the countryside, certain

forms of development will be permitted. This includes the re-use of existing rural buildings, particularly for economic purposes, where buildings are of permanent construction and can be reused without major reconstruction. This policy goes on to state that within the Green Belt additional restrictions will apply to development in line with the Framework.

13. I note that Policy STRAT 9 makes specific reference to “*rural buildings*”. However, I have not been made any aware of any definition of a “*rural building*” within the Development Plan and given the appeal building’s rural design, appearance and location, I consider it to be a rural building. I also observed the building to be of permanent and substantial construction and no evidence to the contrary has been provided.
14. Additionally, whilst Policy STRAT 9 states “*particularly for economic purposes*”, I interpret the use of the word “*particularly*” means that the change of use does not exclusively have to be for economic purposes.
15. As such, whilst some of the wording of Policy STRAT 9 is slightly more restrictive than the Framework insofar as the re-use of buildings in the Green Belt is concerned, I find this policy broadly conforms with the provisions of the Framework.
16. The Council contend that the appeal building is unlawful and that the appeal proposal should therefore be assessed on the basis that it seeks to retain the existing building for a mixed use. Concerns have also been raised in respect of the previous use of the building.
17. As previously stated, it is not my remit as part of this appeal to determine the lawfulness of the existing building. I must therefore determine the appeal as per the description of development on both the planning application form and the Council’s decision notice, for part change of use from agricultural storage to an indoor padel court with ancillary agriculture plant and machinery store.
18. Consequently, the part change of use of this building would accord with the part of paragraph 154(h) (iv) of the Framework which allows for the re-use of buildings provided they are of permanent and substantial construction. Furthermore, given that I have found that this is a rural building of permanent construction, and any change of use does not exclusively have to be for economic purposes, the development would also adhere to the relevant criterion within LP1 Policy STRAT 9.
19. Nevertheless, to comply with paragraph 154 (h) an assessment must also be made as to whether the proposal has an impact on the openness of the Green Belt, which can be perceived both spatially and visually, and whether it conflicts with the purposes of including land within it.
20. According to the submitted plans the part change of use would not result in any external alterations to the existing building, or result in any changes to the surrounding land, as all the works are internal. Consequently, the development preserves both the visual and spatial openness of the Green Belt and does not conflict with the purposes of including land within it.
21. In view of the above, I therefore conclude that the development would not be inappropriate development in the Green Belt, as defined by the Framework, and accords with Policy STRAT 9 of LP1.

22. Given that the proposal would not amount to inappropriate development, there is no need for me to go on to consider whether very special circumstances exist in order to justify the development.

Character and appearance

23. The appeal building is large and with its metal clad design has the appearance of a modern agricultural building. It is located within a field situated to the rear of the residential dwelling known as The Elms. To the east, northeast and southeast are a number of residential dwellings, and their associated curtilages, within the settlement of Kelsall. To the north, south and west the wider area is however characterised by grassland with mature field trees and hedges, which provide a verdant and rural setting to this countryside location.
24. Directly to the south of the appeal site runs a Public Right of Way (PRoW) and the appeal building is a visually prominent feature when walking along nearby sections of this PRoW. The appeal building is also visible from sections of the highway of Hollands Lane, between the dwellings.
25. Whilst the Council's, and interested parties', comments on the lawfulness, size and visual appearance of the building, as well as its impact on the intrinsic character and beauty of the countryside, are all noted, the appeal scheme before me seeks consent for the part change of use of the building only. Again, and to be clear, it is not my remit as part of this appeal to determine the lawfulness of the existing building on this site. Therefore, issues relating to the lawfulness, scale, size, siting and appearance of the existing building are not matters for me to consider in my determination of this appeal.
26. As detailed, the change of use for which this appeal seeks consent does not involve any external alterations to the existing building or result in any changes to the surrounding land. The appeal development does not therefore alter the impact the existing building, and its surrounding land, has upon the character and appearance of the area.
27. I therefore conclude that the appeal scheme, for the part change of use of the building, does not result in any harm to the character and appearance of the area. The development therefore accords with Policies STRAT 9 and ENV 2 of LP1, where they together seek to ensure, amongst other things, that the intrinsic character and beauty of the countryside, landscape character and local distinctiveness are protected.
28. Whilst not included in the reason for refusal, the Council's officer report infers conflict with Policy DM3 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (2019) (LP2). For the same reasons as given above, I find the proposed part change of use does not conflict with Policy DM3, where it seeks, amongst other things, to ensure that development respects the character and protects the visual amenity of the local area.
29. The Council's reason for refusal does however refer to Policy DM6 of LP2. This policy relates to the provision of new agricultural and forestry buildings. As detailed earlier, the appeal scheme is not seeking consent for a new agricultural or forestry building. I therefore find that Policy DM6 of LP2 is not relevant in the determination of the appeal scheme before me for part change of use.

30. The Council's reason for refusal also references LP2 Policy DM21, which relates to development within the curtilage of a dwellinghouse. This policy does however also refer to extending residential gardens. There appears to be no dispute between the parties that the appeal building is located outside of the residential curtilage of the dwelling known as The Elms, and there is nothing to suggest that the appeal scheme before me seeks to extend the residential curtilage to include the appeal building. Consequently, I find that Policy DM21 of LP2 is not determinative in relation to this appeal.

Other Matters

31. Concerns have been raised regarding noise from the indoor padel court and its impact on neighbouring occupiers. I have been provided with no information regarding the noise levels that would arise from the mixed use of the building or the thickness of the building's walls. In the absence of such information, I consider that the mixed use of the building would generate some degree of noise which could be heard at surrounding properties.
32. Nevertheless, the use of the building and land for agricultural purposes also has the potential to generate noise and I consider noise arising from people playing sport during the daytime is not unusual. To that effect I note that the appellant has consent for an outdoor padel court which would generate noise from sporting activities.
33. The indoor nature of the proposal would however allow this use to continue through the night. To protect the living conditions of nearby occupiers it is therefore necessary to impose conditions restricting the hours which the indoor court can be used and to ensure that it shall only be for private use associated with the residential dwelling at The Elms.
34. I note the interested parties' comments in respect of the overbearing and unsightly appearance of the building. As well as concerns regarding the appellant's intentions when prior approval was granted for the building, and the past and current use of the building contravening the original prior approval.
35. However, for the reasons detailed earlier in this decision, it is not my role as part of this appeal to establish whether the existing building is lawful or not. Should the appellant wish to ascertain whether the building is lawful they would need to make an application under section 191 of the Act.
36. Additionally, should the Council consider the existing building to be unlawful, any grant of planning permission by this appeal for its part change of use would not prevent the Council from taking enforcement action against any unlawful operations they believe have been carried out in respect of the appeal building.
37. Concerns have been raised that any approval of this appeal would set a precedent. However, each application must be judged on its own individual merits and based on the information submitted.
38. I acknowledge that some interested parties have stated that they were not notified or aware of the original prior approval application. This however is not a matter which I can consider in my determination of the appeal proposal before me.

Conditions

39. As the development has been completed and the indoor padel court has been installed, it is not necessary to include the standard time limit condition. I have however attached a condition specifying the approved plans to provide certainty (1).
40. As mentioned above, there appears to be no dispute between the parties that the appeal building is located outside of the residential curtilage of The Elms and the appeal proposal does not seek to extend the residential curtilage to include this building. The residential property at The Elms is however within the site edged blue.
41. As such, a condition (2) has been imposed which requires the indoor padel court to be used for private use only in association with the residential property at The Elms, and that it shall not be used in connection with any commercial enterprise. Furthermore, a condition has been attached which restricts the hours that the indoor padel court can be used (3). Both these conditions are necessary to protect the living conditions of neighbouring occupiers.

Conclusion

42. For the reasons given above, and having regard to all matters raised, the development accords with the development plan when taken as a whole and there are no material considerations that indicate it should be determined other than in accordance with the development plan. The appeal is therefore allowed.

R Major

INSPECTOR