



Appeal Decision

Site visit made on 30 September 2025

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07th October 2025

Appeal Ref: APP/A0665/C/25/3362634

Well Cottage Farm, Beech Road, Little Budworth, TARPORLEY, CW6 9EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Robert Kevin Blackhurst against an enforcement notice issued by Cheshire West and Chester Council.
- The notice was issued on 17 February 2025.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the land from equine use to residential use, engineering operations to alter the land levels, construction of a retaining wall, construction of a football pitch and associated works (lighting and leading steps)'.
- The requirements of the notice are to: 1. Cease the residential use of the land. 2. Remove all constituent materials forming the football pitch from the land. 3. Remove all constituent materials forming the stairs leading to the football pitch from the land. 4. Remove all electrical services including lighting and plug sockets from the land. 5. Remove all constituent materials forming the retaining wall from the land. 6. Remove all resulting materials from point 5.1 to 5.5 from the land. 7. Restore and re-level the land to its former condition.
- 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), (b), (f) 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.

Decision

1. 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 1990 Act as amended.

Preliminary Matters

2. Some of the works subject of the Notice have previously been the focus of a s78 appeal ref. APP/A0665/W/24/3340318. Additionally, the lawful status of the residential use of the site has also been considered under appeal APP/A0665/X/24/3340319. While those decisions are not binding, I have had regard to them insofar as they are relevant to the issues arising in this appeal.

The Appeal on Ground (b)

3. To succeed on ground (b) the appellant must prove that the use of the land identified in the Notice had not changed to include the alleged use for residential purposes. The burden of providing relevant facts rests with the appellant, and the test of the evidence is the balance of probability.
4. The appellant states that the plan attached to the Notice identifies land within his ownership, only part of which is covered by the football pitch. He claims that there is little evidence of residential use of the remainder of the Land.

5. Section 172 of the Act states that a local planning authority may issue a notice where it **appears** to them that there has been a breach of planning control. In consideration of an alleged material change of use of land, Bridge J in *Burdle*¹ highlighted 3 broad categories of distinction in considering the relevant planning unit. These are:

- 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
- 2) a single PU 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; and
- 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.

Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.

6. Within the appellant's site ownership, there is little evidence of the former subdivision that he refers to as parcels A, B and C. This consisted of two paddocks and the house and garden. The latter accommodated a stable building during the time of a previous owner's occupation. Unlike the historic position where two or more separate planning units could be identified, there is little to now demonstrate that more than one planning unit is in existence.
7. At my site visit, I saw that the Land subject of the Notice (excluding the football pitch) appears artificially graded to facilitate the area on which the flat pitch and its borders are situated. Elsewhere it has been levelled with the original garden areas about the house. The Land is substantially mown grass with a similar appearance to the maintained grassed areas about the dwelling.
8. A domestic scale stepped pathway, retaining structure and manicured hedge with a break for steps to provide unimpeded access across it are present on the Land beyond the pitch. Although the retaining structure might provide some physical form of separation, on the ground, the absence of any clear functional separation of uses points only to the use of the Land in conjunction with the residential use of the dwelling. If parts of the Land are used for non-residential purposes, the appellant does not disclose or demonstrate what that use is, nor suggest where it might start and stop.
9. Moreover, the Council highlights that on 23 April 2023, the appellant sought a certificate of lawfulness (LDC) for the residential garden use of the whole of the site, including the Land subject of the Notice. The application (ref. 23/01340/LDC) claimed a residential use had existed for a period of 10 years or more before the date of the application. The application was refused and the subsequent appeal² dismissed.
10. The appellant contends that, as the LDC application was unsuccessful, the land cannot be considered as residential garden. However, the question in the LDC application was limited to whether or not a residential use had become lawful by

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

² APP/A0665/X/24/3340319

virtue of s171B of the Act on, or before, the date of the application. This is distinct from any actual use or it appearing to the Council that a domestic use was taking place in the run-up to the service of the Notice in early 2025. The Council's references to grazing land in the context of that application was in relation to the historic position. There is little evidence of any current equine use of the site, or that it was taking place immediately prior to the service of the Notice.

11. In the substantial absence of evidence to demonstrate that the Land identified in the Notice is used for purposes other than in conjunction with the residential occupation of Well Cottage Farm, it seems to me that, on the balance of probability, it forms part of an extended residential garden area, as alleged. The appeal on ground (b) therefore fails.

The Appeal on Ground (a) and the Deemed Application for Planning Permission

Main Issue

12. The main issue of the effect of the development on the rural character of the locality.

Reasons

13. Policy STRAT 9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies [2015] (the LP1) seeks to protect the character and beauty of the countryside. It restricts development in the countryside to a number of listed exceptions requiring countryside locations. Policy DM21 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies [2019] (the LP2) states that the extension of residential garden land will not be supported in the countryside.
14. The site lies within the countryside. The locality is characterised by an undulating rural landscape of hedged fields in arable use, or for the grazing of commercial livestock and equines. The area benefits from mature tree cover along some hedge lines and in woodland blocks of various sizes. Built development in the area is generally limited to dispersed isolated properties or small groups of buildings.
15. The Land has been heavily engineered to provide the level surface of the synthetic pitch; an extended flat surface contiguous with the original garden; a retaining structure for that upper level; a flight of steps to the pitch; and, regraded land-forming between the pitch and the boundaries / retaining wall.
16. The introduction of the artificial landscaped areas contrasts sharply with the predominant rural character of the surrounding natural-lying fields. This is highlighted by the introduction of unnatural materials, structured features, lighting and a maintenance regime consistent with the adjoining garden area. The purposefully graded topography and uniform, evened surface appears contrived. The works to construct the pitch, steps, lighting and retaining structures, and the presence of goal posts are visibly domestic and appear directly associated with a residential use of the Land; they contrast starkly with the character of the surrounding countryside.
17. The appellant highlights that the area subject of the Notice was formerly two paddock areas (identified as areas B & C). As trodden semi-managed grassland likely left to be grazed without substantial changes to its topography, it would be distinct from the maintained character of the profiled land subject of the Notice. In

such a use, the land could accommodate a stable building. However, even if that were the case, it would be characteristic of rural land-based uses with other examples common to the area.

18. The appellant refers me to an appeal decision (ref. APP/A0665/W/24/3347732) where an extension of a garden area was permitted. However, that extension was described as small scale and close to other residential curtilages. That property had little more than a driveway as its curtilage. Furthermore, the subject land was identified as having a 'parkland' character and did not protrude into the open countryside. Those appeal circumstances are therefore distinct from the case before me.
19. In support of the proposal, the appellant highlights that the garden area is unusually small given the size of the dwelling. However, there is little evidence to support that claim or demonstrate that the original garden could not provide adequate outdoor/amenity space for the occupiers of the dwelling. Accordingly, I find this a matter of limited weight in favour of the development.
20. The appellant states that the development could be made acceptable through the use of planning conditions to landscape parts of the site and restrict permitted development rights. Notwithstanding that there is little dispute between the main parties that the effects of the appearance of the development are limited on account of the established trees and hedging about the site - whereby only glimpsed views through the hedging and field gate can be seen, that is a distinct consideration to the effects on the character of the area.
21. Additional screening would only mask the existing development further; there would be little change to the inherent domesticating character of the development that has taken place. Similarly, removal of permitted development rights would not address the existing harm arising from the contrast in character to the surrounding countryside.
22. For the reasons above, I find the alleged material change of use and facilitating works lie outside of the listed exceptions to acceptable development in the countryside. It is in direct conflict with Policies STRAT 9 of the LP1 and DM21 of the LP2 as they seek to conserve the character and beauty of the countryside, including by seeking to prevent the extension of residential gardens.

Other Matters

23. The appellant highlights that the use of the football pitch provides a benefit to the health and wellbeing of family members. However, while I have little doubt that the development could realise such benefits, there is little to suggest those benefits are exclusively dependent upon it and could not be achieved by other means, including through the use of the existing garden area. Accordingly, I find this a benefit of limited weight in the appeal.

Planning Balance and Conclusion on Ground (a)

24. The development is contrary to the adopted development plan. The considerations presented by the appellant do not outweigh the harm to the character of the countryside and there are no other material considerations indicating a decision otherwise than in accordance with the development plan. For those reasons, I conclude that the appeal should not succeed and refuse to grant planning

permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

The Appeal on Ground (f)

25. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the breach.
26. The notice alleges that there has been a change of use, and it requires the unauthorised use to cease. Additionally, it alleges facilitating works and requires their removal. The notice does not seek to 'under-enforce' therefore its primary purpose must be to remedy the breach of planning control.
27. The appellant proposes that the area up to and including the retaining structure could be incorporated into the garden without harm to the locality. Alternatively, that area, the steps and the pitch could be incorporated. In conjunction with that alternative proposal, the appellant highlights that the provision of facilities for outdoor sport and recreation and engineering operations are not inappropriate development in Green Belt areas. Notwithstanding that the site is not within the Green Belt, those matters cannot be considered in isolation of the alleged use of land and their effect on the rural character of the countryside.
28. Neither scenario would align with the development plan; moreover, they would not remedy the alleged breach of planning control.
29. The appellant contends that a previous Inspector was unable to consider the engineering works in conjunction with the material change of use. However, as described above, the works, including the regrading of the land to artificial levels, merely serves to highlight the policy inappropriate residential use of the land. As part and parcel of the alleged breach of planning control in conflict with the development plan, it does not assist the appellant.
30. The appellant asserts that there is a requirement for the steps and lighting to provide safe access to a shed used for the storage of 'garden and maintenance tools, mower', and the like. However, there is little before me to demonstrate that the domestic style shed benefits from planning permission. As development omitted from the Notice (and therefore beyond the provisions in s173(11)), I cannot be certain that it would not be the subject of alternative enforcement action by the Council. Moreover, contrary to the appellant's position, the steps and lighting are not characteristic features of the rural landscape and their retention would not remedy the alleged breach of planning control.
31. The appellant suggests that there is no tangible harm to the character and appearance of the countryside as a consequence of the retaining structure. While I agree that the effect on appearance is limited on account of the limited visibility, as a domestic scale development facilitating artificial land levels and the change of use of land for residential purposes, it forms part and parcel of the works affecting the character of the countryside. Again, its retention would not remedy the breach of planning control.
32. For the reasons above, I find that the requirements in the Notice are the minimum necessary to remedy the breach. The appeal on ground (f) must therefore fail.

The Appeal on Ground (g)

33. This ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant seeks 12 months to allow time to secure a contractor, to address cost, and account for the likely limitations to works caused by winter weather.
34. As the Notice requires only low-level works of demolition and relatively uncomplicated re-levelling of the land, I see little reason why they would necessitate a 12-month period to complete. Moreover, the appellant has not provided supporting evidence to suggest that the cost of the works would cause significant financial harm. While I recognise that adverse weather conditions might be a hindrance during the autumn and winter period, to my mind, the specified period should provide a reasonable time to complete the works even when allowing for potential pauses.
35. Accounting for the above, I find the specified four-month period provides a reasonable balance between the public interest in securing expeditious compliance with the enforcement notice against the private interest bound up in the development subject of it. The appeal on ground (g) therefore fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not 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).

R Hitchcock

INSPECTOR