



Appeal Decisions

Site visit made on 9 September 2025

by **R Merrett BSc(Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 October 2025

Appeal A Ref: APP/M0655/C/24/3351243

Appeal B Ref: APP/M0655/C/24/3351244

Land on the east side of Park Lane, Higher Walton, Warrington WA4 5LG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr R Mills (Appeal A) and Mrs J Mills (Appeal B) against an enforcement notice issued by Warrington Borough Council.
- The notice was issued on 6 August 2024.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of land to a residential garden with ancillary chalet, shed, decking, and residential paraphernalia including garden furniture and planters.
- The requirements of the notice are to reinstate the land to its original condition prior to the breach taking place by ceasing the unauthorised use of the land as a residential garden and removing the ancillary chalet, shed, decking and residential paraphernalia, including garden furniture and planters.
- The period for compliance with the requirements is two calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (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.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decisions.

Preliminary Matters

Background

1. The appeal site, which is roughly rectangular shaped, is adjacent to a cluster of buildings which comprise Daintith Farm along with former agricultural buildings historically associated with that property. In more recent times these buildings, together with external ancillary space, have been converted into separate residential properties. They include Dairy Cottage, Daintith Barn and Firs Cottage. All of these properties are Grade II listed buildings.
2. The site forms a discrete area, physically separated from Dairy Cottage, immediately to the north-east and Daintith Farm to the south-east by continuous boundary features. It can be accessed from Park Lane, via a short cobbled driveway and gates leading directly into the grounds. This is the only means of access to the site. It was apparent from my visit that the appeal site grounds, which include the buildings and structures targeted by the notice, are relatively unkempt and poorly maintained.
3. The planning history of the site goes back to the early 1970s when planning permission was granted for a tree nursery and landscape maintenance depot there¹. Since then, it has been the subject of a failed appeal for stables in July 1997; an unsuccessful proposal for a café and leisure facility in October 2013 and

¹ Planning permission reference 74/0750, granted 31 October 1974.

an unsuccessful appeal for a new dwelling in January 2021. A proposal for a brick wall and formation of access, in relation to the western boundary of the appeal site, next to Park Lane, was granted planning permission in May 1998².

Approach

4. In keeping with the conventional approach to dealing with enforcement appeals, I shall address the legal grounds of appeal, namely grounds (c) and (d) prior to the question of whether planning permission should be granted (ground (a)).
5. However, in this case, the ground (d) appeals relate only to the alleged use of the land and the ground (c) appeals only to the buildings. For clarity I shall therefore deal with the ground (d) appeals and the question of the lawfulness of the residential garden use first of all, as this provides context to the consideration of the ground (c) appeals and the question of the lawfulness of the buildings.

The appeals on ground (d)

6. The ground of appeal is that at the date when the notice was issued no enforcement action could be taken in relation to the alleged breach of planning control. The appellants' ground (d) appeal is confined to the use of the appeal site as a residential garden.
7. In order to succeed on this ground, in accordance with s171B(3) of the 1990 Act, it would be necessary for the appellants to show, on the balance of probability, that the use of the site as a residential garden had commenced at least 10 years before the notice was issued, that is by 6 August 2014, and had continued in such use over a ten year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity.
8. The onus rests with the appellants to demonstrate, on the balance of probability, that the use has been continuous over this period, with the exception of any non-material breaks in occupation.
9. In cases where there is a dispute as to whether a material change of use has occurred it is necessary to ascertain the correct planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. 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 separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key.
10. In terms of the unit of occupation, the Council says the land ownership of the appeal site is associated with Dairy Farm, immediately to the north-east. However, the identities of the appeal site owners (the appellants) and the occupier of Dairy Cottage appear to be different.
11. Notwithstanding this, there is strong physical separation between these respective areas. Notably a continuous tall, brick boundary wall separates the appeal site from the grounds of Dairy Cottage. From the evidence it also seems to me that a functional relationship between Dairy Cottage, which already appears to have its own garden, and the appeal site, in terms of any ancillary residential use of that

² Planning permission reference 98/37560, granted 20 May 1998.

land in connection with the cottage, is tenuous or lacking. As a matter of fact and degree, I conclude the appeal site now forms a single discrete planning unit.

12. For the argument that the appeal site has continued in residential garden use to succeed, I would expect to see evidence of how its past domestic related use had occurred, for example in terms of the mowing of grass; growing of flowers and vegetables or for general relaxation purposes or children's play.
13. In support of this element of the appeal the appellants have submitted Google street view images of the area around the site entrance, and refer to the site having been described as, or inferred to be, garden land in various documents relating to previous planning applications and appeals.
14. The earliest document referred to is the Inspector's decision in relation to the unsuccessful appeal for the stable building in July 1997. At paragraph 5 the Inspector refers to the stables as being an extension within an existing residential curtilage. The supporting plan indicates the proposal to be associated with Dairy Cottage.
15. The development description for the 1998 planning permission referred to a 'brick wall to garden....' The address of the development was Dairy Cottage, with that property included within the site location plan boundary. The supporting plan denotes parts of the existing appeal site as proposed for 'garden' and 'grass' and shows an access road crossing the site between Park Lane and the rear of Dairy Cottage.
16. It seems to me the aforementioned evidence shows that the appeal site could in the past have been used for residential garden purposes in connection with Dairy Cottage, prior to it being severed from that property by the continuous brick boundary wall, resulting in the formation of the present discrete planning unit. However, this fails to demonstrate the necessary continuity of use for the requisite period. Rather it tends to indicate that any previous residential garden use there was given up.
17. The appellants refer to an objector, in relation to the most recently failed appeal for the dwelling on the site, saying the land had not been used for anything other than residential purposes. However, this information is too brief and vague to support the appellants' case.
18. The Google street view images are dated from 2010, 2012 and 2022. Although they are said to show the appeal site enclosed by domestic style fencing, I do not agree this is clearly shown to be the case. In any event, the boundary treatment is not indicative of the residential garden use of land.
19. The Council has provided evidence that it says contradicts the appellants' assertions, regarding the residential use of the land. This includes a series of aerial photographs taken between 2005 and 2023. With the exception of the most recent 2023 image, which shows the existing buildings and structures together with a small number of vehicles parked near the site entrance, it seems to me the remaining images generally depict the appeal site as naturally vegetated to varying degrees. I am not persuaded any of the photographs indicate the site to be in residential garden use and / or used in association with Dairy Cottage. Indeed, it appears likely that a boundary feature, separating the two parcels of land, is in place over the time period covered by the images.

20. In my view, references to the existing condition of the site as 'vacant disused' or 'vacant brownfield' land, on planning application forms relating to proposed developments in 2012, 2013 and 2020 serve to corroborate this point.
21. I have also had regard to the habitat survey documentation, dated September 2012, which accompanied the planning application for the café facility. The accompanying photographs show the site to be substantially naturally vegetated and overgrown. There is reference to hardstanding within the central part of the site having become vegetated through disuse; and no reference to any type of use that might be associated with a garden serving an adjoining dwelling. This serves to strengthen my view regarding the lack of evidence of residential use of the site.
22. I have also had regard to the comments made by the neighbouring resident of Daintith Farm, who sets out a chronology of developments and changes, including at the appeal site. The resident states that the appeal site has not been used as a garden for Dairy Cottage since at least 1998. Whilst I appreciate the statement is subjective, I note the appellants have had the opportunity to rebut this evidence but have not done so.
23. Drawing the above considerations together, the continuous use of the appeal site as a residential garden for the requisite period has, on the balance of probability, not therefore been demonstrated. The residential garden use is unlawful and accordingly the ground (d) appeals therefore fail.

The appeals on ground (c)

24. The ground (c) appeal is that the matters alleged do not constitute a breach of planning control. The appellants' case is that the appeal site forms part of the residential curtilage of Dairy Cottage, and accordingly the buildings erected thereon would therefore benefit from permitted development rights under Article 3, Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
25. Under Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, subject to various provisos.
26. I have concluded above that the use of the appeal site as residential garden land would not be lawful. For the avoidance of doubt curtilage is not a use of land. Nevertheless, because of its physical and functional separation, and the lack of evidence to the contrary, I am not persuaded that the appeal site can be said to be within the curtilage of the adjacent Dairy Cottage, at least at the present time. The aforementioned permitted development rights do not therefore apply. Accordingly the ground (c) appeals fail.

The appeals on ground (a)

27. The appellants have clearly stated, as part of the representations, that planning permission for the change of use is sought on the basis of the chalet, shed and other domestic paraphernalia being removed; and that the requirements of the notice, other than with regard to the residential garden use itself, would be met.
28. It is therefore clear that planning permission is sought only in relation to the residential garden use element of the various developments targeted by the notice. For the avoidance of doubt my assessment of whether planning permission should

be granted is therefore confined to the question of the residential garden use. It assumes planning permission will not be forthcoming and that the notice will be upheld in relation the other developments.

Main Issues

29. The main issues are:

- Whether the residential garden use would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
- the effect of the residential garden use on the character and appearance of the area;
- the effect of the residential garden use on heritage assets;
- the effect of the residential garden use on biodiversity;
- if the residential garden use is inappropriate, whether the harm to the Green Belt by way 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

Green Belt

30. Paragraph 142 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 153 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
31. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect³. This specific assessment is not about the quality of the development, in itself, or its effect on the character and appearance of the area.
32. Paragraph 154 of the Framework establishes that development within the Green Belt is 'inappropriate' unless certain exceptions apply. Such exceptions include material changes in the use of land, as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
33. The proposed development would not include any operational development, such as building or engineering works. Whilst the development could lead to some residential related items and vehicular movements on the site, which take up space, such features would likely be transitory, coming and going with varying degrees of frequency.
34. In addition, the site is relatively small and substantially enclosed, either by woodland, adjacent residential properties or other boundary features. The proposed garden use is unlikely to result in a perception of visual harm to

³ *Turner v SSCLG & East Dorset Council* [2016].

openness. Overall I consider the openness of the Green Belt would be preserved and I do not consider the development would conflict with the various Green Belt purposes.

35. The proposed residential garden use would not therefore be inappropriate development, and accordingly there would be compliance with Policy GB1 of the Warrington Local Plan 2023 (LP), insofar as it seeks to resist this, except in very special circumstances.

Character and Appearance

36. The Council has set out that the materials used in the built developments are at odds with and fail to respect those used in the surrounding area including in relation to the listed buildings. These concerns may however be set aside given the appellant does not seek to retain the buildings through the grant of planning permission.
37. The land currently has a naturally vegetated appearance and quiet and informal character. It is located within a verdant and very peaceful rural setting. Its use as a residential garden could potentially result in change to that character and appearance through increased attendance, domestication and formality, albeit that the visibility of the site is limited. Nevertheless, despite the stated proposed garden use and the stated intention for it to be part of Dairy Cottage, it is unclear from the evidence how the appellants, who live elsewhere, are connected with that property and their interest in such a garden. There is also an absence of drawings to demonstrate proposed use and how that use relates to Dairy Cottage.
38. It is unclear whether the occupier of Dairy Cottage, who apparently intends to use the land as part of their garden, is genuinely seeking additional garden land for their own use, despite already benefitting from a significantly sized existing private garden⁴, or whether the appeal site could end up being used for leisure purposes by persons not residing at that site. If so, this could in turn have implications for the nature and intensity of use and frequency of comings and goings, such that it could become more than an incidental garden for an adjacent dwelling.
39. In these circumstances, visitors would probably be far less likely, than residents, to feel a sense of a stake in the local community. It follows, in my view, that some site users may lack a sufficient sense of responsibility towards and respect for the living conditions of nearby residents.
40. Therefore, whilst I accept the appearance of the area is unlikely to be harmed due to the garden use alone, from the evidence before me I am unable to conclude the development will not result in increased noise disturbance harmful to the tranquil character of the area and, related to this, to the amenity of neighbouring occupants. Accordingly, I find conflict with Policy DC6 of the LP, which seeks to secure good design.
41. This conclusion does not rule out the possibility of a satisfactory case being made for the proposed development, following the presentation of further evidence. This however would be a matter for further discussion with the Council, and a potential future planning application.

⁴ See paragraph 66 of Council's statement of case, which is undisputed by the appellants.

Heritage

42. As set out above the appeal site sits adjacent to a cluster of Grade II listed buildings. The significance of these heritage assets was considered by the Inspector who dismissed the appeal regarding a proposed new dwelling on the site in 2021⁵.
43. That Inspector described Daintiths Farmhouse and the former dairy wing (now Dairy Cottage) as two storey buildings, in red sandstone and brick respectively. The adjacent barn, now converted into two dwellings, is also constructed in brick. They identified that the significance of these heritage assets derives in part from their well-preserved early traditional rural farmstead character and positive contribution to rural distinctiveness. They found the site remains physically and visually related to the historic group of buildings. I have no reason to disagree.
44. I have a duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the proposal on the setting of the listed buildings. I consider that the appeal site contributes to the setting of the buildings as a whole, which are partially visible from and across the site, despite the heavy seclusion of Daintiths Farm itself, due to boundary vegetation. However, I am not persuaded the proposed residential garden use, in itself, would result in harm to the significance of the listed buildings from development within their setting.
45. I conclude the residential garden use would not be in conflict with Policy DC2 of the LP, with the Council's Design and Construction Supplementary Planning Document 2010 or with the Framework insofar as they seek to protect heritage assets.

Biodiversity

46. The previous Inspector concluded that the proposed development in that case would not result in significant harm to biodiversity. The development in this case would constitute a garden and is arguably less intrusive than a new dwelling. I concur that there would be no significant harm to biodiversity and that potentially biodiversity gain could be achieved through the imposition of a planning condition. Accordingly, there would not be conflict with Policy DC4 of the LP insofar as it seeks to protect and restore biodiversity.

Conclusion regarding ground (a) appeal

47. I am unable to conclude the development would not result in harm to the character of the area, and related to this that it would not result in harm to the amenity of neighbouring occupants. Accordingly, I find conflict with Policy DC6 of the LP.
48. I have not found harm to the Green Belt, to heritage assets or to biodiversity interests. However, these 'absences of harm' are neutral in the planning balance and do not weigh in favour of the appeal.
49. For the above reasons I conclude the proposed development is in conflict with the development plan when read as a whole.

⁵ Appeal reference APP/MO655/W/20/3259988.

The appeals on ground (f)

50. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and include remedying the breach of planning control (s173(4)(a)). The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
51. With regard to the unauthorised development, the objectives of the notice are to discontinue the alleged residential garden use and to remove the ancillary chalet, shed, decking and residential paraphernalia, with a view to reinstating the land to its original condition. It follows that the purpose of the notice is to remedy the breach of planning control.
52. The appellant's ground (f) appeal is that it is far from clear what the original condition of the site was. The condition the land should be returned to is therefore uncertain and accordingly the notice is flawed for that reason.
53. The requirement can only go so far as to restoring the land to its condition before the breach took place [my emphasis]. I suspect this is what the Council had intended, despite its use of the word 'original'. There is nothing to persuade me the appellants, as the landowners, will not have the best knowledge of what that previous condition was. Accordingly, I consider the notice may be corrected by simply omitting the word 'original', without causing prejudice to the appellants' case. The ground (f) appeals succeed to that extent.

The appeals on ground (g)

54. The ground (g) appeal is that the compliance period falls short of what should reasonably be allowed. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, whilst maintaining public confidence in the planning system.
55. The appellants' case is that the compliance period of two months is too short a time to engage appropriately qualified persons to undertake the restoration work professionally. They do not suggest a more appropriate timescale.
56. I concur that professional contractors are likely to be required which will mean a lead in time before they are appointed and able to commence work. I conclude, taking into account the Council's reasons for issuing the notice, the aforementioned considerations, and the relatively limited scale of development, that extending the compliance period to four months would be reasonable and would not result in a disproportionate burden. Accordingly the ground (g) appeals succeed to this extent.

Conclusion

57. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

58. It is directed that the enforcement notice is corrected by:

The deletion of the word “original” in Section 5.

59. It is directed that the enforcement notice is varied by:

The deletion of the words “two calendar months” and the substitution of the words “four calendar months” as the time for compliance, in Section 6.

60. Subject to the correction and variation the appeals are 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.

R Merrett

INSPECTOR