



Appeal Decision

Site visit made on 28 April 2026

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 July 2026

Appeal Ref: APP/A0665/C/24/3349074

The Cedars, Towers Lane, Alvanley, Frodsham, Cheshire WA6 0LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr R Wood (Alvanley Farms Limited) against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice was issued on 16 January 2024.
 - The breach of planning control as alleged in the notice is the erection of a two-storey dwelling house.
 - The requirements of the notice are:
 1. Demolition of the unauthorised building; and
 2. Permanently remove all materials resulting from (1) from the land.
 - The period for compliance with the requirements is: 12 months
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), and (f) 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 and the enforcement notice is upheld. 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. The revised National Planning Policy Framework (“the Framework”) came into effect in December 2024 during the course of the appeal. The main parties were given the opportunity to comment on its implications and the comments received have been taken into account. References in this decision to paragraph numbers are those of the revised Framework.
3. Additionally, in 2025 the Environment Agency updated its flood mapping dataset (NaFRA2) which introduced revised flood risk information, altering both the extent and severity of flood zones in certain areas. Both main parties were given the opportunity to review the updated flood mapping. It is common ground that the development is now identified as being located within Flood Zone 1 and not Flood Zone 3 as stated in the reasons for issuing the notice. As a result, the Council has confirmed that it no longer seeks to defend this reason for issuing the notice. This reason has therefore played no part in my decision.

Ground (b)

4. To succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact.
5. The appellant’s case is that the erection of a two-storey dwelling house, as alleged in the notice, has not occurred. Instead, the appellant contends that the works

carried out amount to the erection of a first-floor extension to the original bungalow. In support of this position, the appellant has provided photographs taken during the building works and a statutory declaration (SD) dated 27 September 2022 from the building contractor who carried out those works.

6. In the SD the building contractor states:

“the existing dwelling is still in situ and was not demolished in order to allow for the first-floor extension to be constructed”

“the first-floor extension was built on top of the existing property”

“therefore, over 90% of the original property remain”

“In my experience with house extensions like this the most robust and economic solution is to add external structural blockwork to the existing structure which is designed specifically to carry the superstructure of the first floor and roof. The blockwork formed on new foundations immediately beside the existing walls of the property as can be seen in the photograph which is annexed to this declaration and marked exhibit PL2”.

7. The courts have held that, in principle, the retention of fabric from an original building does not preclude it being found, as a matter of fact and degree, that a new building has been formed and that the original building has ceased to exist¹. Whether that has occurred is a matter to be determined according to the facts of each case.
8. It is clear from the exhibited photograph that, notwithstanding the removal of an attached garage and storeroom, the new blockwork and brickwork was constructed around the original timber clad bungalow. It is also apparent that the blockwork and brickwork have been built upon new foundations which now carry the weight of the completed structure. Whilst it is argued that the original bungalow was not demolished and much of it remains, all the external walls are therefore new.
9. In terms of the original roof, the building contractor confirmed that *“The original roof trusses were rotten and so attic trusses were installed on top of the existing property to provide living accommodation on additional first floor level”*. Furthermore, when comparing the submitted floor plans (existing and proposed) along with my own observations from my site visit, the internal layout of the ground floor has significantly changed with no evidence provided to demonstrate that any internal walls were retained. The available evidence therefore indicates that none of the original internal walls or roof structure still exist.
10. I found no evidence of the timber clad walls of the original bungalow, or the original window openings, during my site visit. No photographic evidence has been provided to demonstrate their existence other than very early in the construction of the new blockwork and brickwork external walls. I accept that it may be possible for the original timber clad walls to be contained between the new external brick walls and the finished internal walls at ground floor level. I note though that even in such circumstances, new or repositioned openings have been created which would have necessitated the removal of part of the original walls.

¹ Oates v SSCLG & Canterbury CC [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229, [2019] JPL 251

11. Consequently, at best, the surviving original fabric would amount to parts of the original timber clad walls being subsumed into the newly constructed walls. This, along with the corresponding far greater proportion of new fabric, means that the original bungalow no longer exists as a recognisable structure.
12. It follows that the original bungalow no longer exists and a new building has been formed. Consequently, the erection of a two-storey dwelling house, as alleged in the notice, has occurred as a matter of fact and degree and the building that now exists is new. Any fabric that does remain from the original bungalow is fully incorporated into this new building. The appeal on ground (b) must therefore fail.

Ground (a) – the deemed planning application

Main Issues

13. The appeal on ground (a) is that planning permission should be granted for what is alleged in the enforcement notice. The main issues are whether:
 - the development is inappropriate development in the Green Belt having regard to the Framework and any other relevant development plan policies;
 - the appeal site is in a suitable location for new housing;
 - any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether inappropriate development in the Green Belt

14. The appeal site is located within the North Cheshire Green Belt. The Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of buildings and other forms of development should be regarded as inappropriate development in the Green Belt, subject to several exceptions set out in paragraphs 154 and 155 of the Framework.
15. Policy STRAT9 of the Cheshire West & Chester Council Local Plan Part One: Strategic Policies (LPP1) sets out a list of permitted development types. It also states additional restrictions will apply to development in line with the Framework. Accordingly, the assessment of this issue is based on the Framework.
16. In view of my conclusion on ground (b) above, where I found that the original timber clad bungalow no longer exists and a new building has been formed, the ground (a) appeal essentially seeks planning permission for the erection of a replacement dwelling. Indeed, this was how the Council determined a previous planning application² (“the 2022 application”) for the development which was refused on 11 October 2022.
17. Paragraph 154 of the Framework states certain forms of development are not inappropriate development in the Green Belt. The most pertinent of those is that provided at 154 d) which is “*the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*”.

² Council Ref: 21/02712/FUL

18. Policy DM21 of the Cheshire West & Chester Council Local Plan Part Two: Land Allocations and Detailed Policies (LPP2) set out criteria which the replacement of dwellings should meet. Criteria 4 states that in the Green Belt the replacement dwelling should not be materially larger than the existing dwelling. The explanatory text to Policy DM21 gives 10% as a general guide as to what constitutes “materially larger”. This figure is generally determined by the net increase in floorspace. However, the text goes on to state that in cases where the increase involves an increase in the overall building height, the net increase in volume (measured externally) will also be taken into account.
19. The original dwelling was a modest sized timber clad bungalow, which has subsequently been replaced by a two-storey brick-built dwelling. In the Council’s Delegated Report in relation to the 2022 application, it was stated that the development had resulted in the floor space increasing from 108m² to 170m² with the volume increasing from 462.5m³ to 627.04m³. This was calculated as being a 57.4% increase in floorspace and a 35.57% increase in volume. Whilst the appellant has not commented on these figures or provided any alternatives, it is clear that the new dwelling is significantly larger and far exceeds the 10% guide contained within Policy DM21.
20. Consequently, whilst the new building is in the same use, it is materially larger than the one it replaced and therefore the development does not meet the exception set out in paragraph 154 d) of the Framework.
21. The exception provided at 154 g) refers to the “*limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt*”.
22. Previously developed land (PDL) is defined in Annex 2 to the Framework and includes land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land. It does not include land in built up areas such as residential gardens. Although there are sporadic residential properties and other buildings in the vicinity, the appeal site is situated in the open countryside in an area consisting predominately of open green fields and is outside of any built-up area. There is no dispute that the dwelling has been constructed in the same location as the original bungalow, which was a permanent and lawful structure. The appeal site therefore meets the definition of PDL.
23. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 153 further states that when considering any planning application, substantial weight should be given to any harm to the Green Belt, including harm to its openness.
24. As I have already set out above, the replacement two-storey dwelling is significantly larger than the previous bungalow which results in significant spatial harm to openness. Due to its increased height the dwelling is also more prominent visually. Despite the presence of mature vegetation along the lane which provides some screening, the development is still visible at points along Towers Lane and

surrounding countryside. Indeed, the upper floor and roof are the most visually prominent aspects of the building when approaching along Towers Lane. The development therefore has a moderate visual impact on the openness of the Green Belt.

25. When the spatial and visual effects are taken together, there is substantial harm to openness. Accordingly, the development does not meet the exception in paragraph 154 g) of the Framework. This adds to the harm to the Green Belt identified by reason of inappropriateness in relation to paragraph 154 d).
26. The appellant has also referred to the exception under paragraph 154 c) of the Framework which provides for *“the extension of alteration of a building provided it does not result in disproportionate additions over and above the size of the original building”*. As detailed above, I do not consider that the development constitutes the extension or alteration of a building. Nevertheless, even if I had done so the development would not have met the exception set out under paragraph 154 c), as it would have resulted in a disproportionate addition over and above the size of the original building due to the significant increase in height and volume.
27. The appellant also contends that paragraph 153 of the Framework does not apply to the appeal development as the footnote indicates that it does not apply to PDL or grey belt land, where development is not inappropriate. However, for the reasons set out above the appeal development is inappropriate. Furthermore, even if the appeal site is grey belt land, I have been provided with no substantive evidence to suggest that all of the requirements of paragraph 155 of the Framework, regarding the development of homes, are met. For example, it has not been suggested that it would meet a demonstrable unmet need for the type of development concerned. As a result, paragraph 155 is not determinative in this case.
28. I therefore conclude that the development is inappropriate development in the Green Belt, having regard to the development plan and the Framework, and has a substantial harmful effect on the openness of the Green Belt. Accordingly, it conflicts with Policy STRAT9 of the LPP1 and Policy DM21 of the LPP2 insofar as they require the provisions of the Framework to apply to development in the Green Belt.

Suitable Location

29. The Council’s spatial strategy seeks to direct new housing to the main settlements which provide good access to services and facilities and as such reduce the need to travel. As a site within the countryside and outside of any designated settlement, development is limited to that requiring a countryside location under Policy STRAT9 of the LPP1 and Policy DM19 of the LPP2.
30. Policy STRAT9 sets out that “replacement buildings” will be permitted within the countryside. However, the policy goes on to state that in areas of countryside that are within the Green Belt, additional restrictions will apply to development in line with the Framework. Policy DM19 also sets out that in the countryside, outside of identified settlements, the replacement of an existing dwelling would be supported so long as it is in line with Policy DM21 of the LPP2.
31. For the reasons I have already set out in the previous main issue, the replacement dwelling is not in accordance with the Green Belt policy as set out in the Framework nor does it accord with Policy DM21 of the LPP2. The new dwelling

does not therefore fit within the types of development listed as being acceptable under Policy STRAT9 of the LPP1 or Policy DM19 of the LPP2.

32. Policy DM19 also requires, amongst other things, that the development “*is located within reasonable walking distance of local services and facilities along a safe route*”. Although the settlement of Helsby, which contains many local services and facilities, is relatively nearby, the appeal site is connected to that settlement by primarily an unlit road with no footpath available. I acknowledge that the site is located within a rural area where footpaths are less common and that on occasion people may choose to walk along an unlit rural road. However, I do not consider that a safe route to local services and facilities is available. Due to this lack of connectivity, I consider that it would be highly probable that occupants would be heavily reliant on the private car.
33. The appellant has also referred to paragraph 84 of the Framework which states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the five stated circumstances apply. As I have already outlined, in addition to being located outside of any identified settlement, I have found that the appeal site suffers from a lack of connectivity to the nearby settlement. Furthermore, given the separation distances involved and the immediately surrounding open fields there is a very clear physical and visual separation between the appeal dwelling and the nearest dwellings.
34. The appellant has sought to apply the first of the stated circumstances, that being that “*there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside*”. However, it is not disputed that there are currently no agricultural activities taking place on the wider site and that at present the dwelling is in effect an open market dwelling.
35. Policy DM25 of the LPP2 relates to essential rural workers dwelling and sets out a list of eight criteria which must all be met in order for new permanent essential rural workers dwellings to be supported. These include there being a “*clearly established existing functional need for an additional worker to live permanently at the site*”, and “*the unit and the rural land based activity concerned have been established for at least three years, and have been profitable for at least one of them, are currently financially sound and have a prospect of remaining so*”.
36. With regard to temporary rural workers dwellings, Policy DM25 states that “*where a new dwelling is essential to support a new rural based activity, whether on a newly-created agricultural unit or an established one, it should, for the first three years, be provided by a caravan, or other temporary accommodation*”.
37. The Framework does not define “essential need”. However, the Planning Practice Guidance (PPG) sets out what may be relevant to take into account when considering the need for an isolated home in the countryside. The PPG suggests, amongst other things, that this could include evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land based rural enterprise, the degree to which there is confidence that the enterprise will remain viable for the foreseeable future, and in the case of new enterprises, whether it is appropriate it consider granting permission for a temporary period.

38. The appellant has provided an agricultural appraisal and business plan which provides details of how a proposed calf rearing enterprise would operate. It concludes that the labour requirement for the proposed enterprise would require one full time worker.
39. However, whilst I have no reason to doubt the appraisals conclusion that in the event of such a business operating there would be a need for a farm worker to be readily available within close proximity to the site, there is nothing before me to instil any confidence that such an enterprise is ready to commence and then remain viable for the foreseeable future.
40. In addition to the calf rearing enterprise referred to above, the appellant also contends that a poultry company has expressed an interest in operating from the site. No information or appraisal has been provided in relation to a poultry use. Nevertheless, in both instances there are no assurances or guarantees that either the calf or poultry enterprises would begin operating from the site and remain viable for the foreseeable future. I have not been provided with a planning obligation or other form of legal agreement to indicate that an agricultural enterprise would commence operating from the site in the near future. Given these factors, it cannot be established with certainty that the development would support an economically viable enterprise.
41. I also acknowledge that the PPG recognises that there may be a degree of uncertainty with new enterprises and indicates that it may be appropriate to consider granting permission for a temporary dwelling for a trial period. In this instance I do not consider granting permission for a temporary period to be appropriate given that no agricultural activities are currently taking place, and for the reasons already set out, there are no guarantees that such activities would commence soon and be financially sound and viable thereafter. As a result, I find that the development has resulted in an isolated home in the countryside in conflict with paragraph 84 of the Framework.
42. For the reasons set out above the development is not in a suitable location having regard to the relevant local plan policies which seek to manage and control the location of new development. The development therefore conflicts with Policies STRAT1, STRAT2, and STRAT8 of the LPP1 and Policies DM19 and DM25 of the LPP2 which seek, amongst other matters, to locate new development inside the boundaries of identified settlements and to protect the countryside by restricting development to that which requires a countryside location.

Other Considerations

43. The appellant contends that if the appeal is dismissed and the enforcement notice upheld, there would be a fallback position by subsequently applying for planning permission for a temporary farm worker dwelling in the form of a mobile home. The appellant argues that if the agricultural enterprise remained profitable for the following three years, then an application for a permanent dwelling could then be made. It is therefore argued that the demolition of the existing dwelling would be unnecessary and unsustainable.
44. For the reasons already covered in the main issue above, there is currently no agricultural activity at the site and there is no certainty that such activity would resume any time soon. Put simply, there is insufficient evidence before me to demonstrate that an agricultural enterprise would be willing to occupy the wider

agricultural holding (and dwelling), let alone that it would be profitable for the following three years. For these reasons, I cannot be sure that such a proposal would be more than a theoretical prospect. I therefore attribute little weight to this alternative.

45. The appellant has also referred to the Council raising no objection to the size and scale of the dwelling (save for its impact on the openness of the Green Belt). I find no reason to disagree with this position, however the absence of any harm in this regard is a neutral factor in the planning balance. Similarly, the appellant argues that the development is policy compliant, with particular reference to Policy DM25 of the LPP2. For the reasons already set out above, I have found that the development does not comply with Policy DM25 along with other development plan policies. This therefore carries no weight.
46. In terms of the agricultural history of the site, I acknowledge the established agricultural use of the surrounding land, including the large poultry shed which still exists, and that the original bungalow had been on site since around 1969. Nevertheless, there is currently no agricultural activity taking place and it is unclear when the poultry business ceased operating on the site. Furthermore, the agricultural use of the wider site could re-commence at any point, and it has not been demonstrated that there is an essential need for the appeal dwelling in association with that agricultural use. I therefore attach little weight to this matter.

Planning Balance and Conclusion on ground (a)

47. Section 38(6) of the Planning and Compulsory Purchase Act provides that the appeal should be determined in accordance with the development plan unless other considerations indicate otherwise.
48. The appeal scheme is inappropriate development in the Green Belt to which I attach substantial weight. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other considerations.
49. There is harm arising from the inappropriate development and the erosion of the Green Belt's openness. I attach substantial weight to these harms, in accordance with paragraph 153 of the Framework. I must also add the harm caused by virtue of the development not being in a suitable location, having regard to the relevant development plan policies. Other considerations, either individually or cumulatively, only carry little weight and therefore do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.
50. Accordingly, the development conflicts with the development plan when read as a whole, and the Framework. Material considerations do not indicate that a decision should be taken other than in accordance with that plan. Having considered all matters raised, I conclude that the appeal on ground (a) should be dismissed, and planning permission be refused on the deemed application.

Ground (f)

51. An appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. It is clear that the notice here seeks to remedy the breach of planning control.
52. The appellant contends that the requirement to demolish the two-storey dwelling is excessive and that there is an obvious alternative, namely the reinstatement of the previous bungalow. There is no dispute that the previous bungalow benefitted from planning permission³ nor that it had stood on the land from around 1969. Whilst the Council have not been able to locate the original approved plans, the appellant has provided drawings which are said to reflect the previous bungalow as accurately as possible.
53. However, I have found that the previous bungalow was, as a matter of fact and degree, demolished and therefore any lawful rights attached to that building no longer exist. It was established in *Iddenden*⁴ that if a landowner pulls down old buildings and erects new ones without planning permission, an enforcement notice requiring demolition of the new is valid, even if it does not require the restoration of the old. It was also noted that if appellants had lost an established use attached to the buildings they pulled down and are thereby worse off, they can only blame themselves and not the local planning authority.
54. Furthermore, the judgement of *Hancock*⁵ held that where a building is demolished and replacement buildings erected without planning permission, the only lawful use is the use of the land and there are no existing use rights to have buildings on the site. Accordingly, there can be no reliance here on the 1969 planning permission which allowed for the erection of the previous bungalow.
55. Consequently, the requirements of the notice to demolish the two-storey dwelling are not excessive to remedy the breach of planning control. As a result, the ground (f) appeal fails.

Conclusion

56. For the reasons given above, I conclude that the appeal does not succeed. I have upheld the enforcement notice and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR

³ Council Ref: 3/6/9943

⁴ *Iddenden v Secretary of State for the Environment* [1972] 1 W.L.R 1433

⁵ *Hancock v SSCLG & Windsor & Maidenhead RBC* [2012] EWHC 3704 (Admin)