Planning Inspectorate

Appeal Decision

Site visit made on 2 January 2025

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/Q9495/W/23/3333663
Adjacent to Wellbank Cottage, Bootle Station, Millom, Cumbria LA19 5TB

- 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 Roy Nuttall against the decision of Lake District National Park Authority.
- The application Ref is 7/2023/4057.
- The development proposed is change of use and the conversion of an existing construction workshop/storage facility to form a single dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission (ref 7/2018/4086) was granted in November 2018 for construction of a new portal frame building for building materials, vehicles, plant and equipment and household storage. The permission was subject to conditions, including that if the building was not used in association with the appellant's business it should be removed within 12 months. The appeal seeks to retain the building in residential use, once the appellant retires.

3. On 12 December 2024, the revised National Planning Policy Framework (the Framework) was published. However, the changes are not directly relevant to the main issue and I am satisfied that the interests of neither party would be prejudiced by my taking it into account in determining the appeal.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area, with particular regard to the Lake District National Park (the NP) and the English Lake District World Heritage Site (the WHS).

Reasons

5. The appeal site is part of a loose cluster of buildings that comprises 2 detached dwellings and outbuildings. The group is widely separated from both the Rural Service Centre of Bootle and Bootle Station, and it is surrounded by farmed land. Between the settlements, Church Lane is a typical rural road enclosed by hedgerows, unlit, without footways and with only scattered development. Consequently, the appeal site is in the open countryside.

6. Policy 02 of the Lake District National Park Local Plan 2020-2035 Adopted May 2021 (the LP) sets out the Authority's spatial strategy. This supports the overall vision for the Lake District and it directs development in accordance

with the settlement hierarchy. Outside of settlements, proposals in the open countryside are supported in certain circumstances including where there is a demonstrable essential need for a rural location, it helps to sustain an existing business, or it would be the appropriate reuse of an existing building. Proposals for the reuse of buildings are supported where, among other things, the building contributes to the landscape character or historic environment and the proposal would significantly enhance landscape character.

7. In this case, there is no demonstrable need for a rural dwelling in this location and the change of use to residential would not support an existing business.

8. In terms of landscape character, the appeal building is in Area 52 Ravenglass and Bootle Area of Distinctive Character[1], in the south west of the NP and in WHS Eskdale Valley. It is a low-lying, open landscape between the high fells and the sea, characterised by more intensively farmed land and improved pasture. The remoteness of the Eskdale Valley and the long history and continuing influence of agro-pastoral farming, the dominant land use, is illustrated through field patterns, farmsteads and buildings and the relative absence of modern development.

9. The appeal building is a substantial portal frame building with timber boarding above concrete panels and a metal sheet roof. It was permitted for the purposes of sustaining an existing business and it is typical of modern agricultural buildings. It is not a traditional rural building. Its functional design and modern materials are of no architectural merit or historic interest and it does not contribute to sense of place or the local distinctiveness of the Lake District landscape.

10. The proposal would retain the existing large building including its external materials. The existing metal access door and roller shutter door would be removed. A large number of new openings would be created to all elevations, with extensive curtain wall glazing to the gable ends. Externally, a smaller storage shed to the north elevation would be removed and replaced with a patio area, accessed via steps leading down from a recessed glazed balcony area in the north-east corner of the building. A large expanse of the existing concrete yard would be retained, with limited new planting.

11. The nearby dwellings are traditional in form and external materials, with chimneys, domestic-scale glazing, pitched slate roofs, render, stone walls and stone dressing. In contrast, the proposal would clearly be the conversion of a modern utilitarian building. By virtue of its uncompromising scale and bulk, contemporary materials and extensive glazing, the proposal would be poorly related and out of keeping with the neighbouring dwellings and their subservient outbuildings. Moreover, as the generic design and materials are ubiquitous throughout the UK, it would not be sympathetic to local character and history, including the surrounding built environment and landscape character. The proposal would not respect or reflect the Lake District rural vernacular, and it would not enhance the character of the landscape.

12. Local topography and hedgerows provide some screening in views from the wider area. However, while the appeal building is not readily apparent from Bootle, it is visible from Church Lane and the Public Right of Way that passes between the appeal site and Wellbank Cottage. The proposal would be a readily

[1] Lake District National Park Landscape Character Assessment and Guidelines, Revised April 2021

visible and discordant feature in juxtaposition with the neighbouring dwellings and, in more panoramic views, against the backdrop of the fells. The extent of glazing would render the proposal more conspicuous than the existing building, including overnight when the light spill would be visually obtrusive and incongruous in the rural landscape. The proposal would be a dominant feature that would not harmonise with or be integrated into its surroundings. On the basis that it would fail to conserve the landscape and scenic beauty of the NP, it would harm the significance of the WHS.

13. The Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in NPs, which have the highest level of protection in relation to these issues. Moreover, the WHS is a designated heritage asset of the highest significance, internationally recognised to be of Outstanding Universal Value. In accordance with Framework paragraph 212, I therefore attach great weight to the conservation of the WHS. Given the scale and nature of the proposal, I find the harm to be at the lower end of less than substantial but nevertheless of considerable importance and weight.

14. In such circumstances, the Framework advises that the harm should be weighed against the public benefits of the proposal. The 1-bed dwelling would make a small contribution to the Government's objective of significantly boosting the supply of homes. There would be limited economic benefits during the conversion works and future occupiers would make a limited contribution to the local economy and community. As the building is currently in use, the proposal would not be the development of an underutilised building. Even if it was conveniently located in relation to services, facilities and public transport, compliance with the requirements of policy in this regard is not a benefit. The local occupancy restriction is similarly a policy requirement and not a benefit. The collectively limited public benefits are not sufficient to outweigh the harm, taking into account the considerable importance and weight that must be attributed to the harm to the significance of the WHS.

15. I understand that the appellant's business will cease once he retires and he will no longer require the appeal building. Nevertheless, the proposal would result in a loss of employment space. The proximity of the mixed development site further along Church Lane does not demonstrate that the appeal site is unsuitable for employment use and that there would be no demand for it. Employment land and buildings elsewhere do not provide a justification for the proposed residential conversion.

16. Therefore, I conclude that the proposal would harm the character and appearance of the area, with particular regard to the NP and the WHS. It would conflict with the aims of LP policies 01, 02, 05, 06 and 16. These require, among other things, that proposals protect or enhance the authenticity, integrity and significance of the Lake District; conserve and enhance the extraordinary beauty and harmony of the landscape and its Special Qualities; and significantly enhance landscape character, having regard to local character and distinctiveness.

17. The Council's reason for refusal also cites conflict with LP policies 15, 20 and 18. Policy 20 relates to renewable and low carbon energy and the requirements could be addressed by the imposition of planning conditions. The inclusion of '18' appears to be a typographical error. Policy 15 is a housing policy that sets out how the Authority will meet its housing figure target including through,

among other things, new local occupancy homes. Notwithstanding that the appeal is unacceptable for other reasons, the evidence does not robustly substantiate the conflict with this policy.

Other Considerations

18. There are no third party objections to the proposal and the Parish Council supports it. There would be no harm to neighbouring residential amenity or the safe operation of the highway. The proposal would not be at risk of flooding or contribute to flooding. Details of renewable energy sources and energy efficiency could be secured by the imposition of planning conditions. These are neutral matters that weigh neither for nor against the scheme.

19. The appellant considers that the proposed local occupancy dwelling would be preferable to a holiday let. However, I am not aware that a tourism use would be a realistic fallback position. Theoretical alternative uses do not weigh in favour of the scheme.

Conclusion

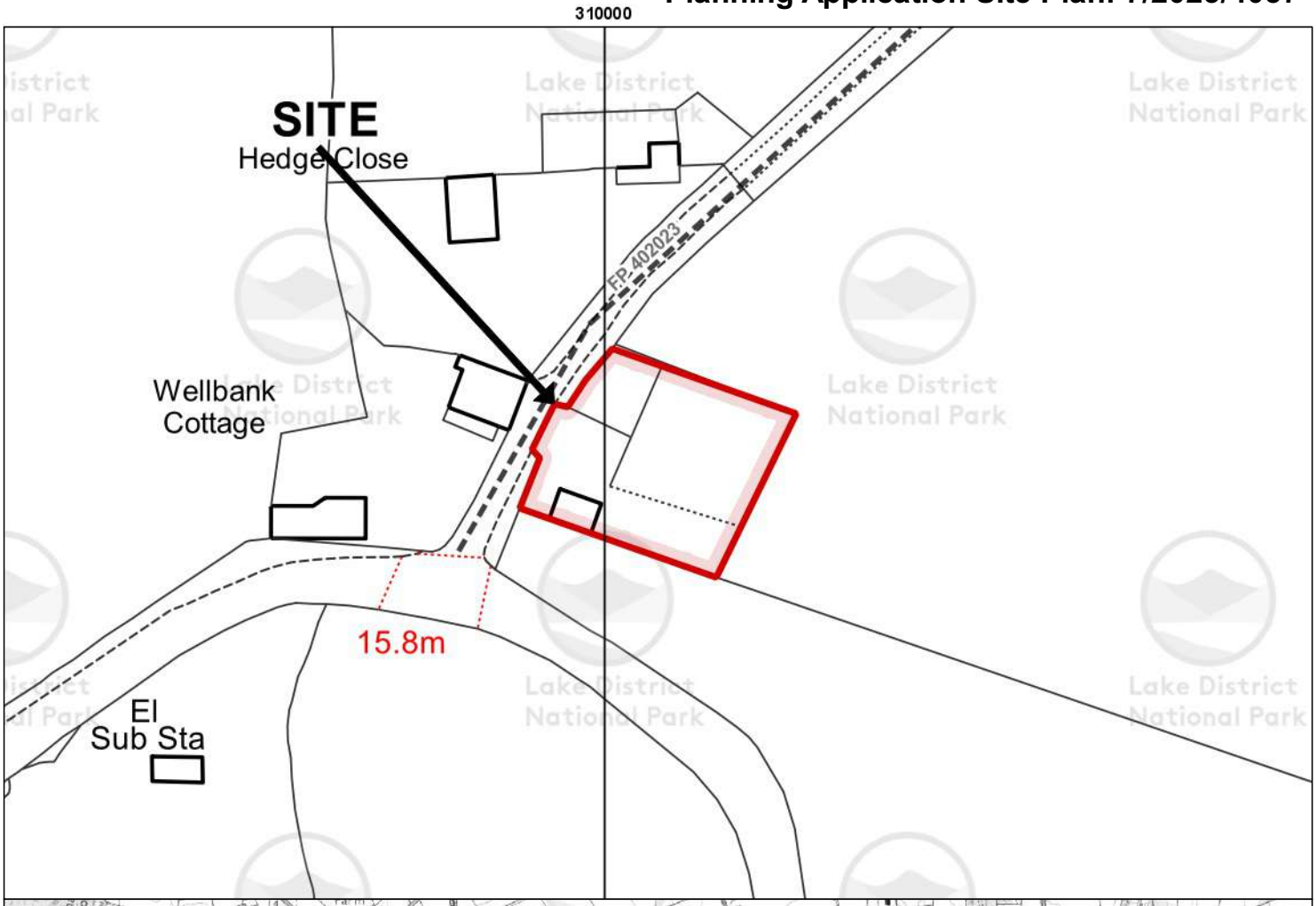
20. For the reasons set out above, I conclude that the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict.

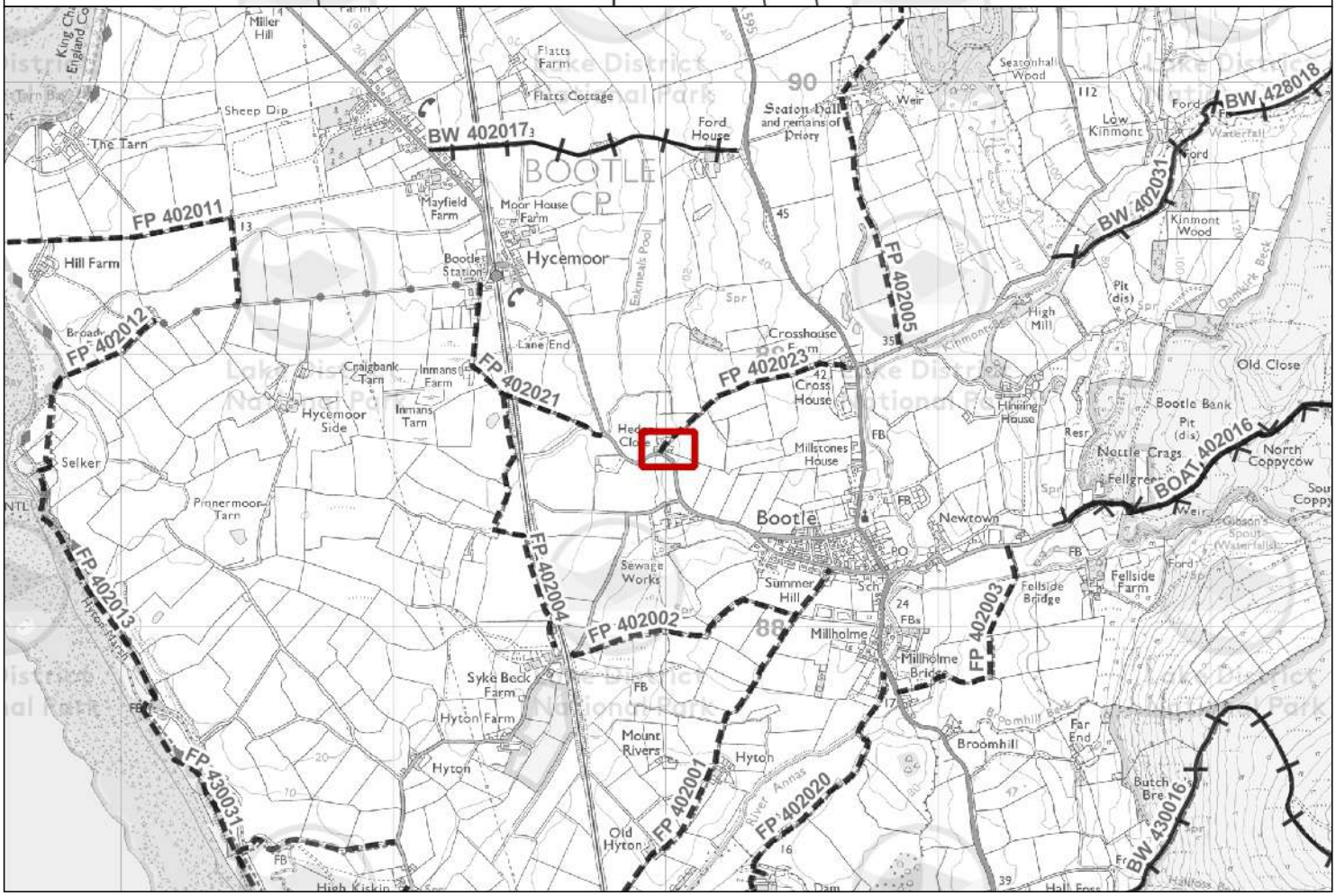
21. Therefore, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR

Planning Application Site Plan: 7/2023/4057





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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2024

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025

Appeal Ref: APP/Q9495/W/24/3351003
Greta Lodge, Southey Hill, Keswick, Cumbria CA12 5ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Struthers against Lake District National Park Authority.
- The application Ref is 7/2024/2102.
- The development proposed is the replacement of existing timber sash and casement windows with uPVC windows in 'heritage' georgina styles reproducing the appearance of the existing windows in keeping with the setting in Keswick Conservation Area.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 12 December 2024. As the changes do not materially affect the main issues in this case, the parties have not been invited to comment further. Where references are made to paragraph numbers of the Framework, these are references to the most recent version.

3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. In response to the appeal, the Council has prepared an appeal statement outlining its view that permission should be refused. I have had regard to this statement and the suggested reasons for refusal within it in framing the main issue below.

Main Issue

4. The main issue is the impact of the proposed development on the character and appearance of Greta Lodge, including whether it would preserve or enhance the character or appearance of Keswick Conservation Area (KCA) and whether it would preserve the setting of the Grade I listed Greta Hall[1].

Reasons

Significance and Setting

5. Greta Lodge is a large detached Georgian dwelling that occupies an elevated position on Southey Hill, within the KCA. The property is accessed via a private drive which is shared with three neighbouring properties, which are all set in established gardens which include a variety of mature trees.

6. The appeal site is located within Character Area 5 of the Keswick Conservation Area Appraisal and Management Plan, 2022 (KAMP). The significance of the KCA is, in part, derived from the architectural and historic interest of the area's buildings, which include a number of well-preserved listed and non-listed buildings of notable historical importance,

[1] Listing NGR: NY2652223789

including Greta Hall which neighbours the appeal site. These buildings include good examples of Georgian and arts and crafts architecture as well as early examples of planned social housing developments. The utilisation of local materials and preservation of period features reflect their historic origins, which includes window types and fenestration patterns. These factors all contribute positively to the architectural and historic significance of the KCA as a whole.

7. Neighbouring the appeal site is Greta Hall which is a substantial Grade I listed Georgian property. It was designed and constructed as an observatory and has connections to famous writers S.T Coleridge and Robert Southey who both lived there and were inspired by the area. The building is highly valued in terms of its architectural, historical and artistic heritage interests both in its own right and in terms of its contribution to the significance of the area as a UNESCO World Heritage Site and the KCA, and it is identified as a key characteristic of the KCA within the KAMP.

8. There is some dispute between the main parties regarding the relationship between Greta Lodge and Greta Hall. Within the KAMP Greta Lodge is noted as originally being 'an ancillary building to the hall' but concedes that the erection of more recent dwellings on the grounds has weakened their relationship. Within their Appeal Statement the Council recognise that both properties date from the Georgian period and attribute their shared architectural style and design features, which include timber sash and case windows, as factors which unify them.

9. However, the appellant asserts that the buildings have always been in separate ownership. They note that the high boundary wall and planting between the two properties creates a distinct separation between them, and the appeal property is a standalone building. This stance is supported by a Planning Report relating to a previous development on the appeal site dating from 2017[2]. The officer considered that Greta Lodge 'plays a limited role in the significance of the setting of the listed building.' Further, within the same report the officer stated that the appeal property did not have a significant role within the conservation area.

10. The 2017 Planning Report detailed above pre-dates the current development plan and the KAMP. The KAMP recognises the importance of Greta Hall as a heritage asset and its relationship with the appeal property. I am not certain that this information was before the officer to educate their assessment. There is no substantive evidence before me to demonstrate that Greta Hall and Greta Lodge were once a single unit or not. However, the early use and ownership of Greta Lodge is not a sole determining factor when considering its contribution to the setting of its neighbour. I also attach very limited weight to whether Greta Lodge was included in historical depictions of Greta Hall.

11. In the context of the appeal before me, shared architectural history, detailing and external materials as well as their extensive mature gardens, unify the appeal property and Greta Hall. In light of these factors Greta Lodge relates positively to the experience of Greta Hall and makes a favourable contribution to the setting of this listed building and, thereby, the understanding of its significance. The visibility and proximity of 20th century housing developments in relation to Greta Hall further emphasises the important positive impact that Greta Lodge has on its setting.

Effect of the Proposal

12. The majority of the existing windows on Greta Lodge are painted timber sash and case, with multiple panes and finely detailed slim astragals; all of which are compatible with the age and style of the building. In this regard they are a key component of the property which add to its architectural merit. The appeal scheme would result in the loss of the existing windows and allow their replacement with UPVC.

[2] 7/2017/2063

13. Most of the replacement UPVC windows would replicate Georgian windows with multiple panes, chamfered putty lines and astragal bars. The proposed windows would also have a wood-grain effect. It is acknowledged that in selecting this design the appellant aims to replicate the existing windows as closely as possible. However, in this instance the introduction of windows constructed from a man made material would not reflect the traditional palette of materials that define the KCA. Further, the wood grain effect would not truly replicate painted timber windows which would not have the same uniformity and would be unlikely to show the wood grain after being painted. There is also insufficient technical information to clearly demonstrate that the proposed windows would replicate the fine detailing of the existing windows which include delicate narrow astragals.

14. While not clearly visible from the public realm, as detailed above, the quality of the architecture is a defining feature of the KCA and this is not limited to buildings close to public vantage points. Although not listed, the appeal property is a well preserved example of Georgian architecture that utilises a palette of traditional local materials. As such, it makes a positive contribution to the KCA as existing. The proposal would erode the historical architectural character of the building and, in doing so, would fail to preserve the character and appearance of the KCA.

15. As noted above, the appeal property also forms part of the setting of Greta Hall the neighbouring Grade I listed building. The appeal scheme would result in the loss of the existing timber sash and case windows which are a key contributor to the historical architectural merit of the building and unifies the appeal property and Greta Hall. As detailed above the replacement of the windows with UPVC would harm the historical architectural character of Greta Lodge and as such would also fail to preserve the setting of Greta Hall and the contribution the appeal property currently makes to its significance.

16. As such, the proposal would harm the character, appearance and significance of the KCA as a whole and the setting of a Grade I listed building. Paragraph 215 of the Framework explains that where, as I find in this case, the harm to the significance of the KCA and Greta Hall through development within its setting would be less than substantial, that harm should be weighed against the public benefits. The proposed development may result in improved energy efficiency and lower maintenance and living costs, for the appellant there would also be economic benefits associated with the installation of the replacement windows. However, any specific public benefits there may be in this case, would be insufficient to outweigh the great weight I must attach to the harm I have identified to the designated heritage assets.

17. The Lake District National Park Authority Lake District Design Code, The Code 2023 states that high quality UPVC sliding sash windows are available that convincingly replicate traditional window types. However, it goes on to state that they would be considered on a case by case basis. It is acknowledged that there may be occasions where the use of UPVC in conservation areas is acceptable. In this instance, given the harmful impact of the development on the KCA and the setting of the neighbouring Grade I listed building the proposed use of UPVC windows would not be appropriate.

18. In conclusion I find that the proposed development would fail to preserve the character and appearance of the KCA and the setting of the Grade I listed Greta Hall. Therefore, it would conflict with s72(1) and s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Policy 07 of the Living Lakes Your Local Plan Lake District National Park Local Plan 2020-2035 which seeks to ensure that development affecting heritage assets should be sympathetic to the character, form, setting and original purpose. The scheme would also fail to respect the Framework insofar as it relates to achieving well-designed places and conserving and enhancing the historic environment.

Other Matters

19. The current owners of Greta Hall have submitted representations which support the proposed development. While their support is a material consideration it is of insufficient weight to outweigh the harm to the identified heritage assets and the development plan as a whole.

20. In support of the appeal my attention has been drawn to examples where planning permission has been granted for the use of UPVC windows or other contemporary materials in the Conservation Area. The application to replace four timber windows at 87a Main Street Keswick with UPVC windows was approved prior to the adoption of the KAMP. Full details of the other planning applications referenced were not provided. Therefore, I cannot be certain that the circumstances in these instances were directly comparable to those before me.

21. I note that the appellant is aggrieved with the Council's handling of their application. However, this is a matter between the parties that does not fall within the remit of this appeal. I have therefore given it no weight in my determination.

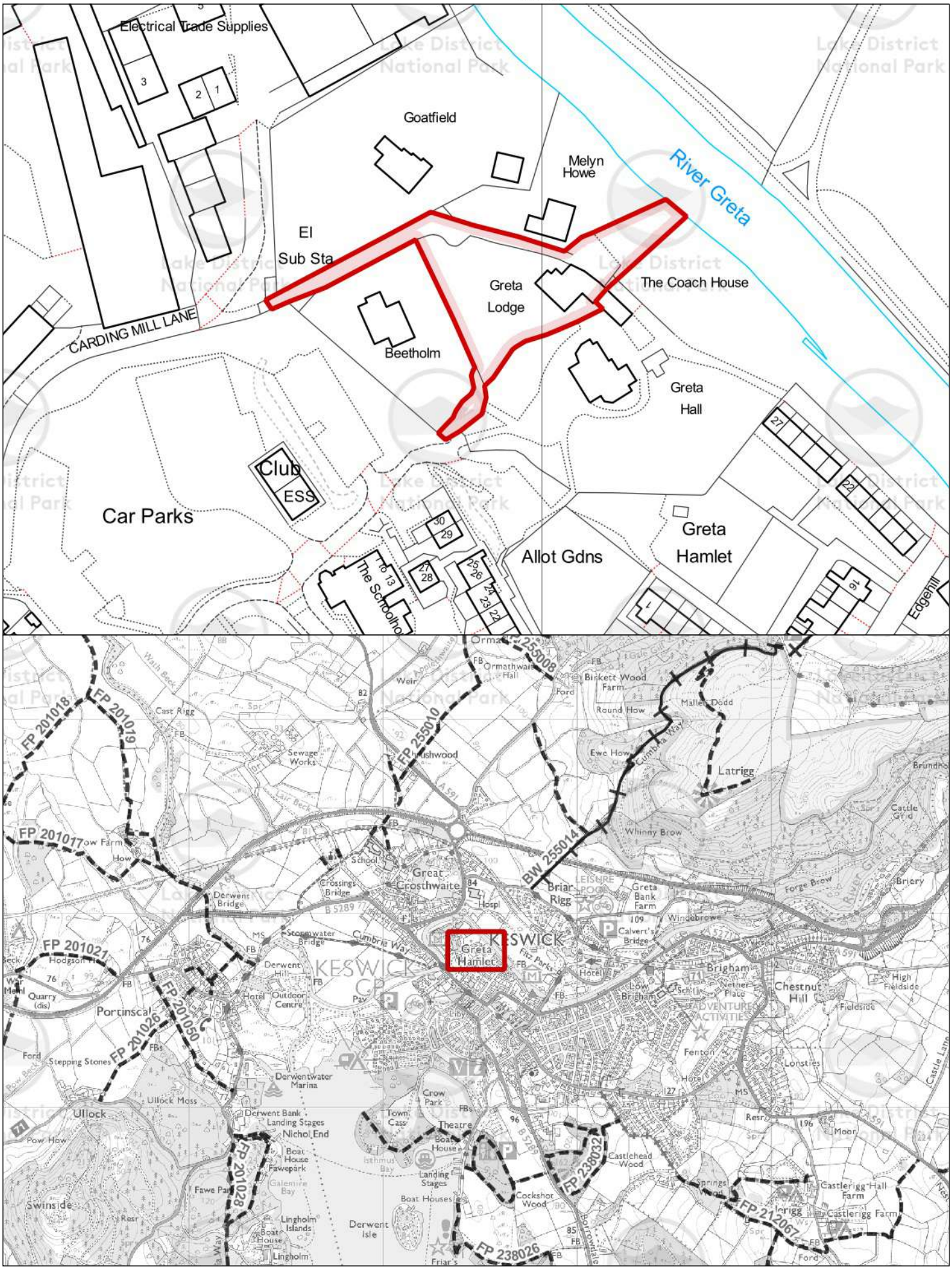
Conclusion

22. For the reasons given above the appeal should be dismissed.

C Livingstone

INSPECTOR

Planning Application Site Plan: 7/2024/2102



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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 19 December 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2025

Appeal Ref: APP/Q9495/W/24/3353377
Bordriggs Farm, Kendal Road, Bowness-on-Windermere LA23 3HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Grant Smith (Bordriggs Farm Windermere Ltd) against the decision of Lake District National Park Authority.
- The application Ref 7/2024/5076 dated 8 February 2024 was refused by notice dated 4 June 2024.
- The development proposed is the erection of up to 5 no. dwellings with associated infrastructure and ancillary facilities in outline with access defined.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved other than access. Nonetheless, the evidence includes an indicative site layout plan showing plots to accommodate five dwellings. It also includes a control parameters plan which broadly accords with the indicative site layout plan which identifies a build zone for the proposed dwellings. In combination, the plans therefore provide a reasonable indication of how the site would be likely to be developed and I have considered the proposal on the basis of the provision of 5no. dwellings.

Main Issues

3. The first main issue is the effect of the proposal on the setting of the Grade II listed Bordriggs Farmhouse with attached farm buildings and separate barn to south (Bordriggs Farm). The second is the effect of the proposal on the English Lake District World Heritage site (WHS).

Reasons

4. Bordriggs Farm sits adjacent to Kendal Road to the south of the main body of Bowness-on-Windermere where the land begins to open out. Although there are some properties to the north and east, the farm, which does not appear to have remained in agricultural use, retains open land to its elevations away from Kendal Road affording the buildings a particularly open setting.

5. As a result of that open land, Bordriggs Farm is currently experienced within a peaceful and pastoral setting, as it has always likely to have been. The land also aids the historical understanding of the buildings as part of a farm grouping. The

open land surrounding Bordriggs Farm therefore contributes positively to its setting and therefore significance. That positive contribution would be substantially undermined through the provision of residential dwellings and the associated built form on the site in the manner proposed. The scheme would therefore cause significant harm to the setting and therefore the significance of Bordriggs Farm.

6. The control parameters plan shows that the open land to the north of Bordriggs Farm would be kept, forming a retained/enhanced landscape area and that there are proposals to limit the height of the dwellings. However, much of the open land within the proposed build zone can be clearly viewed from public vantage points on Kendal Road which is elevated in comparison to the appeal site. Omitting those areas from the scheme or limiting the height of the dwellings would not absolve the scheme of the harm that is identified above. I am required to have special regard to the desirability of preserving the setting of a listed building.

7. The Outstanding Universal Value of the WHS is amongst other things based on the attribute of a landscape of exceptional beauty, shaped by a distinctive and persistent system of agro-pastoral agriculture which give it its special character[1]. Bordriggs Farm and its open surrounding land therefore contribute positively to the significance of the WHS. The proposal, through development of that open land which would erode the setting of Bordriggs Farm would subsequently cause significant harm to the heritage significance of the WHS.

8. The proposal would therefore conflict with policies 01, 02, 05, 06 and 07 of the Lake District National Park Local Plan (2021) which amongst other things require well designed proposals that protect heritage assets and that the extraordinary harmony and beauty of the Lake District landscape and its special qualities, including the attributes of outstanding universal value, will be conserved and enhanced.

9. The heritage harms would be less than substantial and the Framework[2] requires that these harms be weighed against the public benefits of the proposal.

10. The appellant identifies a need for local occupancy housing which could be delivered to suit the greatest need in terms of type at this windfall site in a rural service centre. The site could be enhanced to provide increased biodiversity. There would be local economic and social benefits. These could all be provided on a site within walking distance of the good range of services and facilities available within Bowness-on-Windermere.

11. However, the public benefits associated with the scheme would not outweigh the harm that would arise to two designated heritage assets.

12. The appeal site would contribute towards housing supply and there is the potential for the site to provide plots for self-build and custom housing for which there appears to be a need, although it would be difficult to secure that type of housing in the absence of a planning agreement or unilateral undertaking, neither of which are before me. However, this matter, nor any increased housing need within Westmorland and Furness arising from changes associated with the publication of the revised Framework or changes to the standard method for calculating housing supply lead me to a different conclusion.

[1] The English Lake District (United Kingdom of Great Britain and Northern Ireland) Statement of Outstanding Universal Value.
[2] National Planning Policy Framework 2024.

Other Matters

13. There is nothing to indicate that there are active proposals to plant up the area within the setting of Bordriggs Farm if this development were not to proceed. In any event, a planting scheme would be likely to have a very different resultant appearance to the residential scheme before me. I therefore afford this matter limited weight.

14. I accept that the site would have limited visibility from the west due to the topography and that the density of the development would be likely to be low. These matters however do not alter the harm identified and are afforded limited weight.

Planning Balance and Conclusion

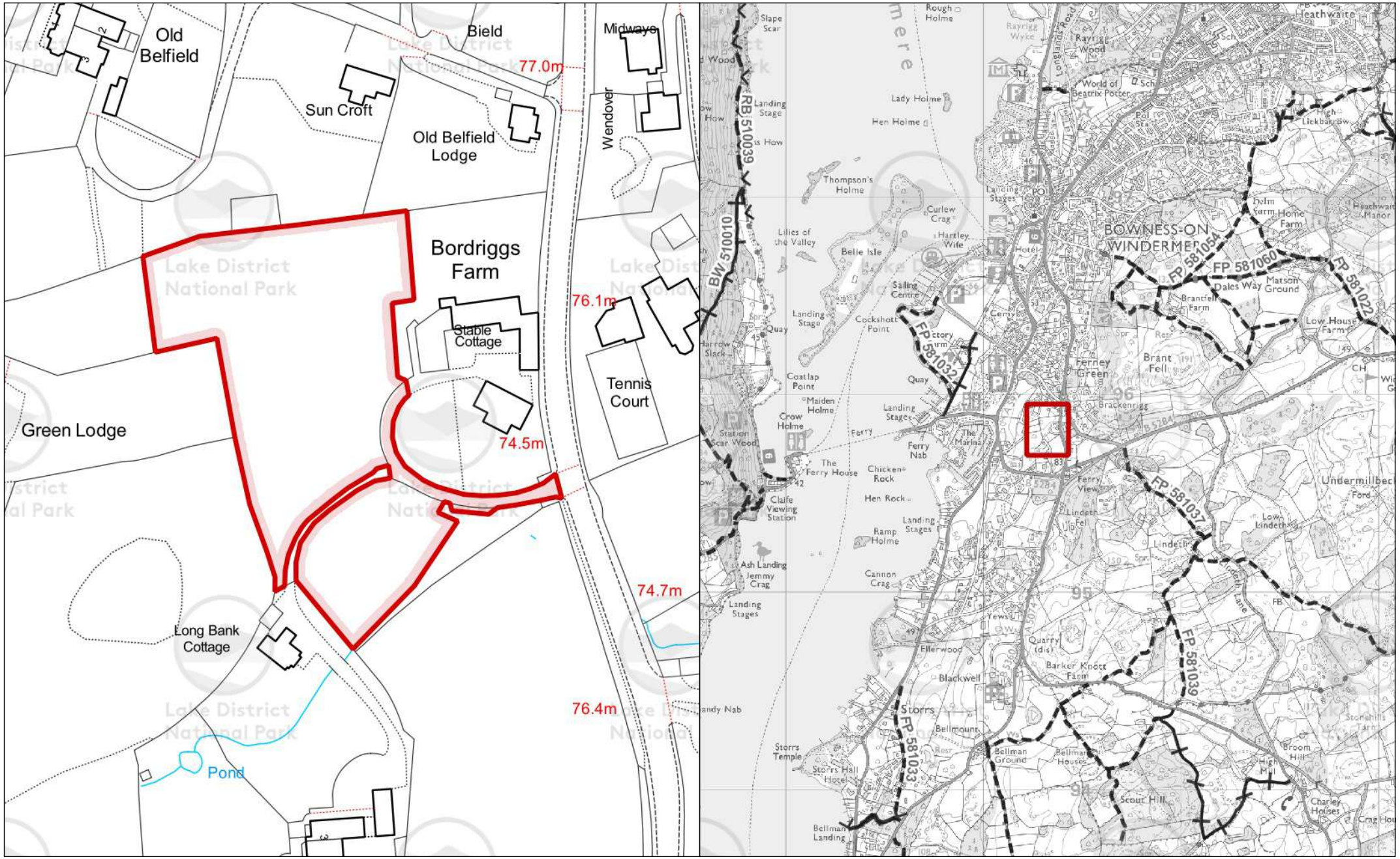
15. The public benefits associated with the scheme would not outweigh the harm that would arise to the significance of the Grade II listed Bordriggs Farm and the WHS.

16. There is nothing to indicate that the decision should be made otherwise than in accordance with the development plan with which the proposal would conflict. I therefore conclude that the appeal should be dismissed.

T Burnham

INSPECTOR

Planning Application Site Plan: 7/2024/5076



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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2024

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2025

Appeal Ref: APP/Q9495/C/23/3333633
Land at Croft House, Berrier, CA11 0XD

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
- The appeal is made by Mr Roger Savage against an enforcement notice issued by the Lake District National Park Authority.
- The notice was issued on 27 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land and building from use as agriculture to use for the landing and take-off of gyrocopters/gyroplanes for commercial use, and for agriculture.
- The requirement of the notice is to: (1) Discontinue the use of the Land and building for the landing and take-off of gyrocopters/gyroplanes for commercial use.
- The period for compliance with the requirement is two months.
- The appeal is made on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990, as amended (the Act).

Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The enforcement notice alleges that there has been a material change of use of the land from use as agriculture to use for the landing and take-off of gyrocopters or gyroplanes for commercial use, and for agriculture; resulting in what I would describe as a mixed use. I make two observations about the allegation, with the first being that, while an enforcement notice does not strictly need to specify what the material change of use is from, it is important in this case that the Local Planning Authority (LPA) considers the pre-existing use to have been agriculture alone.

3. My second observation is that, for there to be a material change of use of land, there has to be a significant change in the character of the activities taking place. In that sense, it may not necessarily matter whether activities are carried out on a commercial or non-commercial basis. It is more important to focus on the nature of the activities, in this case the landing and taking off of gyrocopters or gyroplanes, and the extent of those activities and any consequent effects in planning terms.

4. I make this point because the evidence shows that, in 2012, the LPA gave a view that the use for the landing and take-off of gyrocopters/gyroplanes by the appellant for personal use, and in association with his aerial photography business, had been carried out for a period of at least 10 years and so was probably immune from enforcement action. Without sight of all the evidence that informed that view, I am not bound to agree with this, and I make no determination as to the lawfulness of the use in 2012. Nevertheless, whilst I note that the LPA has made no formal determination in this regard, it does not appear to have changed its previous opinion.

5. In 2012, the LPA understood that the gyrocopter/gyroplane element of the mixed use was carried out by the appellant alone for the purposes of personal recreation and his own aerial photography business. Since then, the LPA considers that things have changed insofar as the flights now involve paying customers visiting the site. The LPA is concerned that there has been an increase in taking off and landings, and in associated activity, such as people driving to the site, and in associated effects upon the area such as noise and disturbance to nearby residents.

6. The inclusion of the term 'commercial' in the allegation is therefore unhelpful because whether the gyrocopter/gyroplane element of the mixed use was personal or commercial does not necessarily denote any difference in the character of the activities taking place. This point is especially relevant because, even when the use was 'personal', there was a commercial element in that some of the flights were for the purposes of the appellant's aerial photography business.

7. I make no judgment as to the significance of any effects of the 'commercialisation' of the use, if indeed that has happened at all. However, it is clear to me that the alleged breach of planning control has been misdescribed. The LPA is not concerned about a change of use from agriculture to agriculture plus the gyrocopter/gyroplane use. Although they have not expressed it in these terms, the LPA is plainly concerned that there has been a material escalation or intensification of the gyrocopter/gyroplane element of the mixed use. The reasons for issuing the notice refer to the level as well as type of activity on the site.

8. It follows that the notice misdescribes the breach of planning control and I must consider whether it can be corrected without injustice being caused to the LPA or appellant. It is important that the alleged breach of planning control is expressed correctly to ensure that the parties can set out their respective cases in full, with the appellant having understood what is alleged and having had a fair opportunity to pursue all relevant grounds of appeal.

9. The parties were consulted over whether the allegation could be corrected in this respect. Both parties were of the view that there would be injustice in me correcting the allegation. I agree. If I were to delete the word "commercial" from the notice, so that it is simply focussed on the introduction of the mixed use, that would cause injustice to the LPA because the purpose of the notice is plainly to address the (purported) effects of the use being intensified via commercialisation.

10. However, if I correct the notice so that it alleges a material change of use through the intensification of the gyrocopter/gyroplane element of the mixed use, that will cause injustice to the appellant. It would undermine their case for the grounds of appeal he has pleaded, when it is too late for him to plead ground (a)[1] or to provide substantive evidence in support of a case on ground (c)[2] to the effect that any intensification, if it occurred, did not result in a material change. Therefore, I am unable to correct the notice without causing injustice to either party.

Conclusion

11. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open

[1] That planning permission ought to be granted; ground (a) gives rise to a deemed planning application for which a fee must be paid early in the appeal proceedings
[2] That the matters alleged, if they occurred, do not constitute a breach of planning control.

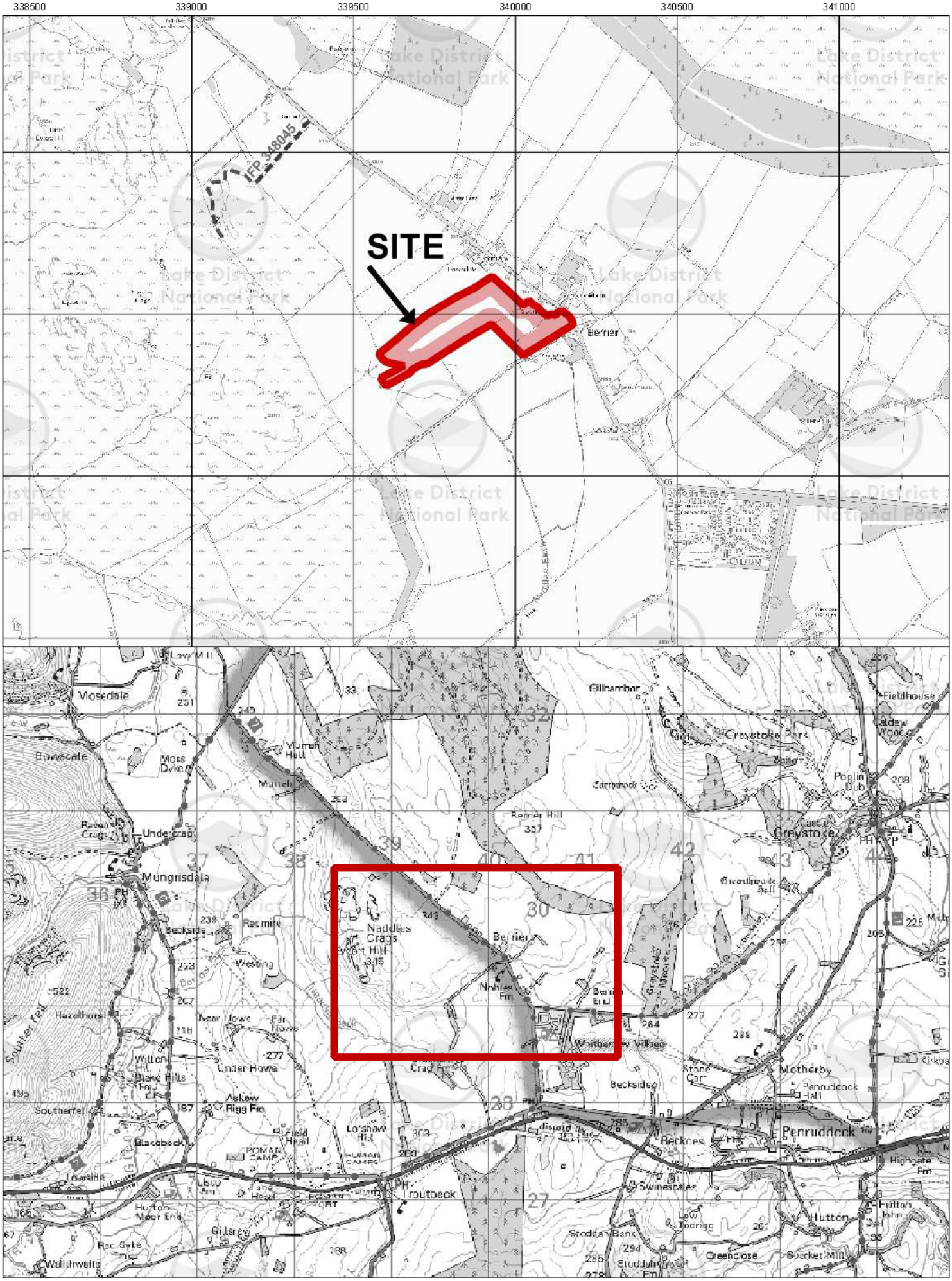
for me to correct the error in accordance with my powers under section 176(1)(a) of the Act since injustice would be caused were I to do so. The enforcement notice is therefore invalid and will be quashed.

12. In these circumstances, the appeal on the grounds set out in section 174(2) (b) and (d) do not fall to be considered. Without prejudice, it is open to the LPA to issue a fresh notice having regard to section 171B(4)(b) of the Act and/or for the appellant to apply for a Lawful Development Certificate under section 191 of the Act to seek to ascertain the lawfulness of the existing use of the land.

J M Tweddle

INSPECTOR

Enforcement Site Plan: E/2017/0177



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Plan scale: 1:15,000
Overview: 1:50,000

Date Authored: 18/02/2025

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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 14 January 2025

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2025

Appeal Ref: APP/Q9495/C/23/3332910
Land to the west of The Dove Cot, Halfway House, Brathay, Ambleside LA22 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs E Coupe against an enforcement notice issued by the Lake District National Park Authority.
- The notice was issued on 20 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of an outbuilding to a dwellinghouse, occupied for holiday letting purposes.
- The requirements of the notice are to discontinue the use of the land as a dwellinghouse.
- The period for compliance with the requirement is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (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. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024, and further minor amendments were published on 7 February 2025. However, with the exception of paragraph numbering, the policies that are material to this appeal have not fundamentally changed from the previous iteration. I have therefore had regard to the revised Framework in my consideration of this appeal, and I am satisfied that no party would be prejudiced in me doing so.

3. The appellant suggests that the allegation is incorrectly described because the outbuilding was initially converted to an annex for occupation in association with The Dove Cot. However, the term ‘outbuilding’ does not, to my mind, indicate an alternative use beyond that associated with, or ancillary to, the residential occupation of The Dove Cot. Even if this were to be incorrect, I am satisfied that it has not prejudiced the appellant’s case in any way. It is common ground that a material change of use to a dwelling, occupied for holiday letting, has occurred without the benefit of planning permission and when such permission was required. It is therefore not necessary to correct the allegation.

Background

4. The appeal property is a former stable building associated with The Dove Cot. In 2012 a Lawful Development Certificate[1] was granted for use of The Dove Cot as a dwelling.

[1] LPA Ref. 7/2012/5250

5. The appeal property was initially converted to a self-contained annex, in February 2021, and let as additional holiday accommodation in association with The Dove Cot. In February 2023, the appellant started to let the former stables as a single bedroomed holiday let independently from The Dove Cot.

The appeal on ground (a)

6. The appeal on ground (a) is that planning permission ought to be granted for the matters alleged in the notice. Therefore, in this case, planning permission is sought for the material change of use of an outbuilding to a dwellinghouse, occupied for holiday letting purposes.

7. From a review of the evidence before me, the main issues are:

- Whether the development is in an appropriate location with regard to matters of flood risk, and;
- The effect of the development on highway safety.

Flood risk

8. The appeal site is located to the north of the River Brathay, in reasonably close proximity to the riverbank and falls within both Flood Zones 2 and 3, which are zones with a medium to high probability of flooding. The proposal relates to a dwellinghouse to be occupied for holiday letting, which is classified as being more vulnerable to the effects of flooding[2].

9. Policy 03 of the Lake District National Park Local Plan 2020-2035 (the Local Plan) seeks to increase the resilience of the Lake District to all types of flooding. It goes on to state that development proposals in accordance with the approach to managing flood risk in the Framework and the associated Planning Practice Guidance (PPG) will be supported.

10. The Framework advises at paragraph 170 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. In this case, because the proposal involves a change of use, the sequential and exception test of the Framework do not apply. However, it is still necessary to demonstrate that the proposal would be safe with appropriate mitigation measures to minimise associated flood risks.

11. To this end, paragraph 181 of the Framework requires the submission of a site-specific flood-risk assessment (FRA). It goes on to state that, development should only be allowed in areas at risk of flooding where, in light of this assessment it can be demonstrated that:

a) *within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*

b) *the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*

[2] NPPF, Annex 3: Flood risk vulnerability classification

c) *it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*

d) *any residual risk can be safely managed; and,*

e) *safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

All of the above criteria must be satisfied for a development to be considered safe.

12. The FRA[3] that was initially submitted with the appeal confirms that the property is laid out over five levels, with the lounge area at 46.63 metres Above Ordnance datum (AOD), the kitchen at 46.83 metres AOD, the dining area and entrance at 47.03 metres AOD, the bedroom at 47.23 metres AOD, and the en-suite and utility room at 47.43 metres AOD. The report also confirms that the river flood level for a 'design flood' with a 1% annual probability is modelled at 47 metres AOD. This would result in flooding of the lounge and kitchen areas. When adjusted to take into account climate change, the flood level rises to 48.25 metres AOD. This would result in the whole property being flooded with water depths of between 1.62 metres and 0.82 metres. This presents a significant safety concern for current and future occupiers.

13. The FRA along with a supplementary FRA[4], provides some commentary in relation to potential flood resistance measures that could be deployed to improve the flood resilience of the building. However, these reports lack a coherent and robust set of recommendations in relation to resilience and resistance measures, and it is not clear if any of the suggested measures have been assessed in the context of the appeal building. For example, it is suggested that further structural investigations and interventions may be required to ensure the building can be made flood resilient. In addition, it has not been demonstrated how the development could quickly be brought back into use, following a flood event, without significant refurbishment.

14. The PPG advises that when considering whether a development can be made safe for its lifetime[5], residential developments can be assumed to have a lifetime of at least 100 years, unless there is specific justification for considering a different period. The FRAs accompanying the appeal have only modelled flood levels up to the year 2080 and the suggested flood resilience and resistance measures, if sufficient, are only proposed to protect the property to flood levels modelled up to the 2050s. This would potentially protect the property for a 25 to 35 year period, but beyond this flood levels are likely to be much higher, and therefore the proposal would not be safe from the risk of flooding for its entire lifetime.

15. The flood map data shows that the public highway that serves the site, to the immediate east and west, would be covered by flood water during a flood event. The FRAs suggest that the owner, on receipt of a flood warning, would inform any guests giving time to evacuate before flood levels increase. However, the November 2023 FRA states, at paragraph 5 f., that there are no flood warnings available for this location.

[3] Flood Risk Assessment for The Stables, by Rubicorn Project Consultancy Ltd, dated 10 November 2023
[4] FRA titled 'NPPF Paragraph 173 for The Stables', by Rubicon Project Consultancy Ltd, dated 14 March 2024
[5] PPG Paragraph: 006 Reference ID: 7-006-20220825

16. Furthermore, the PPG[6] states that residents should have the ability to safely access and exit a building *during* flood conditions (my emphasis). Based on the information submitted, it is not possible to confirm what depths and velocity of water is likely along the adjacent highway during a flood event. Therefore, it has not been demonstrated that safe access and escape routes are available to existing and future occupiers of the development, and the proposal does not include details of an emergency plan. In the absence of evidence to the contrary, there is a significant risk that residents could become stranded during a future flood event with no means of escape, and with emergency services unable to reach them by road. In order to minimise the flood risk to residents, it is suggested that the occupancy of the dwelling be limited to the months of April to September. However, there is no evidence before me to confirm that this would result in a lower risk, or that this measure would fully address the concerns I have identified.

17. In all these regards, I find the FRAs to be woefully deficient, and lacking any conclusive analysis, or firm recommendations, that would sufficiently address the identified, and site-specific, flood risks in this case.

18. Bringing all these points together, it has not been sufficiently demonstrated that the development is appropriately flood resistant and resilient, that residual risks can be safely managed, or that safe access and escape routes are available along with other emergency procedures or plans being in place to ensure the safety of existing or future occupants during a flood event. As such, it has not been demonstrated that the development would be safe from flooding for its lifetime. Consequently, I find that the development is not in an appropriate location with regards to matters of flood risk.

19. Therefore, the development is in conflict with Policies 02 and 03 of the Local Plan, and the associated provisions of the Framework and PPG, which together, among other things, support sustainable development, and seek to increase resilience, mitigate the risks associated with flooding, and to ensure that developments can be made safe for their lifetime.

20. I acknowledge that the appeal property could potentially be used as additional accommodation associated with, and ancillary to, The Dove Cot without the need for planning permission. However, to my mind that does not justify granting permission for a second separate unit of accommodation with the associated flood risks that have been identified. Doing so would place an additional, and separate, household at significant risk of flooding.

Highway safety

21. Vehicular access to the appeal property is via an existing access which serves The Dove Cot, directly off the A593 public highway. This is a busy and winding road which connects Ambleside with Skelwith Bridge.

22. The LPA's position on this issue is that the existing access is substandard due to limited visibility, in both directions, when leaving the site. Despite this, I have not been referred to any specific visibility standards or requirements in this regard. Nor have I been provided with any comments or professional assessment from the local highway authority.

[6] PPG Paragraph: 005 Reference ID: 7-005-20220825

23. Nevertheless, during my site visit I observed that the existing vehicular access is located on the inside of a bend in the alignment of the highway. As a result, the inter-visibility between a vehicle leaving the appeal site and vehicles approaching from both the west and east is severely constrained.

24. The visibility from the access is constrained to such a degree that a driver exiting in a forward gear is unlikely to be able to safely see oncoming vehicles, including cyclists, until a large part of the vehicle had manoeuvred onto the carriageway. This gives rise to a significant risk of collisions with other vehicles and, as such, this results in an unacceptable adverse impact on highway safety. In reaching this finding, I acknowledge that the vehicular access is an existing arrangement that is currently in use. However, the proposal would intensify the use of this access, through the creation of a separate dwelling and therefore resulting in additional independent vehicular movements using the access. Consequently, this jeopardises highway safety to an unacceptable degree.

25. The appellant highlights the fact that no highway safety concerns were raised when planning permission was granted in 2013 for the replacement of The Dove Cot with a three bedroomed house[7]. However, that proposal would not have increased the number of households using the access and therefore it is not comparable to the appeal proposal.

26. To conclude on this main issue, I find that the development would have an unacceptable adverse effect on highway safety. It therefore conflicts with Local Plan Policy 02 which only supports the reuse of buildings for residential use where suitable access arrangements can be secured. In this regard, it also conflicts with the Framework's aim to ensure safe and suitable access to the site for all users, and to ensure that development does not have an unacceptable impact on highway safety.

Other Matters

27. My attention is drawn to a previous appeal decision[8] relating to the former outbuilding associated with Half Way House, which is now known as The Dove Cot. However, the issues raised in that appeal are of little relevance to the case before me. That appeal decision is of some vintage and therefore since it was decided the local and national policy context has changed considerably. It does not, therefore, assist me in the determination of this appeal.

28. Related to this, the appellant argues that the property is not suitable as a local occupancy dwelling and therefore this adds weight in favour of the appeal, with support from Policy 18 of the Local Plan. This policy supports sustainable tourism proposals, including proposals for the reuse of existing buildings for short term holiday letting, and only where the building is not suitable as a local occupancy dwelling. Much is made of this argument by both main parties.

29. Nevertheless, this policy cannot be viewed in isolation. Given the risks I have found, associated with both flooding and highway safety, it is clear that the appeal property is not suitable for use as a separate dwelling, regardless of whether this is as an unrestricted dwelling, for holiday letting purposes, or local occupancy. In each scenario a separate unit of accommodation would be established and would be unacceptable from a highway safety and flood risk perspective.

[7] LPA Ref. 7/2013/5424
[8] Appeal Ref. APP/Q9495/A/06/200558

30. In determining the appeal on ground (a) I have had regard to the Planning Policy Statement (PPS) on Green Belt protection and intentional unauthorised development issued by the Secretary of State on 31 August 2015. It makes 'intentional unauthorised development' a material consideration to be weighed in the determination of planning applications and appeals, including enforcement appeals. The PPS remains extant although it is not incorporated into the Framework or PPG. However, permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of 'intentional unauthorised development' must be supported by evidence of something more – that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.

31. In this case, the appellant entered into formal pre-application discussions with the LPA to seek a view as to whether it would be acceptable to convert the stables to a holiday let unit. The LPA provided a detailed written response[9] in December 2019, which indicated that planning permission would be required for the conversion of the building to a dwelling, but that this would be unacceptable due to flood risk. Despite this clear advice, the appellant subsequently went on to convert the building to a holiday let without the benefit of planning permission. Accordingly, it is apparent that the appellant decided to proceed with the unlawful development intentionally. Therefore, I give the PPS weight in the determination of this appeal.

32. I acknowledge that the proposal would not result in harm to the character or appearance of the surrounding area and there would be no adverse effects on the living conditions of nearby residents. Nevertheless, these are neutral considerations that weigh neither for nor against the appeal.

Ground (a) conclusion

33. It has not been demonstrated that the development would be safe from flooding for its lifetime. I have therefore found that the development is not in an appropriate location with regards to matters of flood risk. The development also poses a significant and unacceptable adverse risk to highway safety. In these regards, the development is contrary to the above cited policies of the development plan and associated national policies. The other matters and considerations advanced in favour of the scheme are of insufficient weight to justify a decision other than in accordance with the development plan.

34. For these reasons, I conclude that the appeal on ground (a) should fail and therefore planning permission is refused in respect of the deemed planning application.

The appeal on ground (f)

35. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control.

36. In this case, the notice requires the appellant to discontinue the use of the land as a dwellinghouse. It follows that the purpose of the notice is to remedy the breach of planning control that has occurred, and as explicitly stated within the notice itself.

[9] LPA Ref. 7/2019/E0267

37. The appellant points out that use of the building as annexed accommodation as part of the adjacent holiday letting property, The Dove Cot, does not involve development. However, if this is to be considered a lawful use of the appeal building, compliance with the requirement of the notice would not preclude this. The requirement simply requires the use of the appeal building as a standalone dwellinghouse to cease. It does not seek to discontinue a lawful use that would be ancillary, or incidental, to The Dove Cot. Furthermore, the appellant has not put forward any lesser steps that would remedy the breach of planning control.

38. For these reasons, the ground (f) appeal does not succeed.

The appeal on ground (g)

39. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is two months. The appellant seeks a period of six months in order to prevent the need to cancel bookings.

40. In relation to this ground of appeal I must balance the public interest in securing expeditious compliance with the requirements of the enforcement notice against the private interests bound up in the breach of planning control. In doing so, I appreciate that compliance will inevitably result in the cancellation of some holiday bookings. This will be inconvenient for those prospective visitors, and will result in a loss of income for the appellant.

41. Nevertheless, I am mindful that the development is located in an area at risk of flooding, and occupants are not sufficiently safe from the risks associated with a flood event. The development has also compromised highway safety to an unacceptable degree. These matters pose very real threats to life and limb, and it is therefore in the public interest to remedy the breach of planning control as soon as reasonably possible and without delay. These are compelling reasons not to extend the compliance period beyond the current specified period of two months.

42. Consequently, extending the compliance period to six months, as suggested, would unduly perpetuate the breach of planning control and the associated harm, without sufficient justification. In weighing the public and private interests, I consider that the public interest of expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance.

43. For these reasons, I find the period of compliance, as stated in the notice, to be a proportionate and reasonable response to the breach of planning control that has occurred.

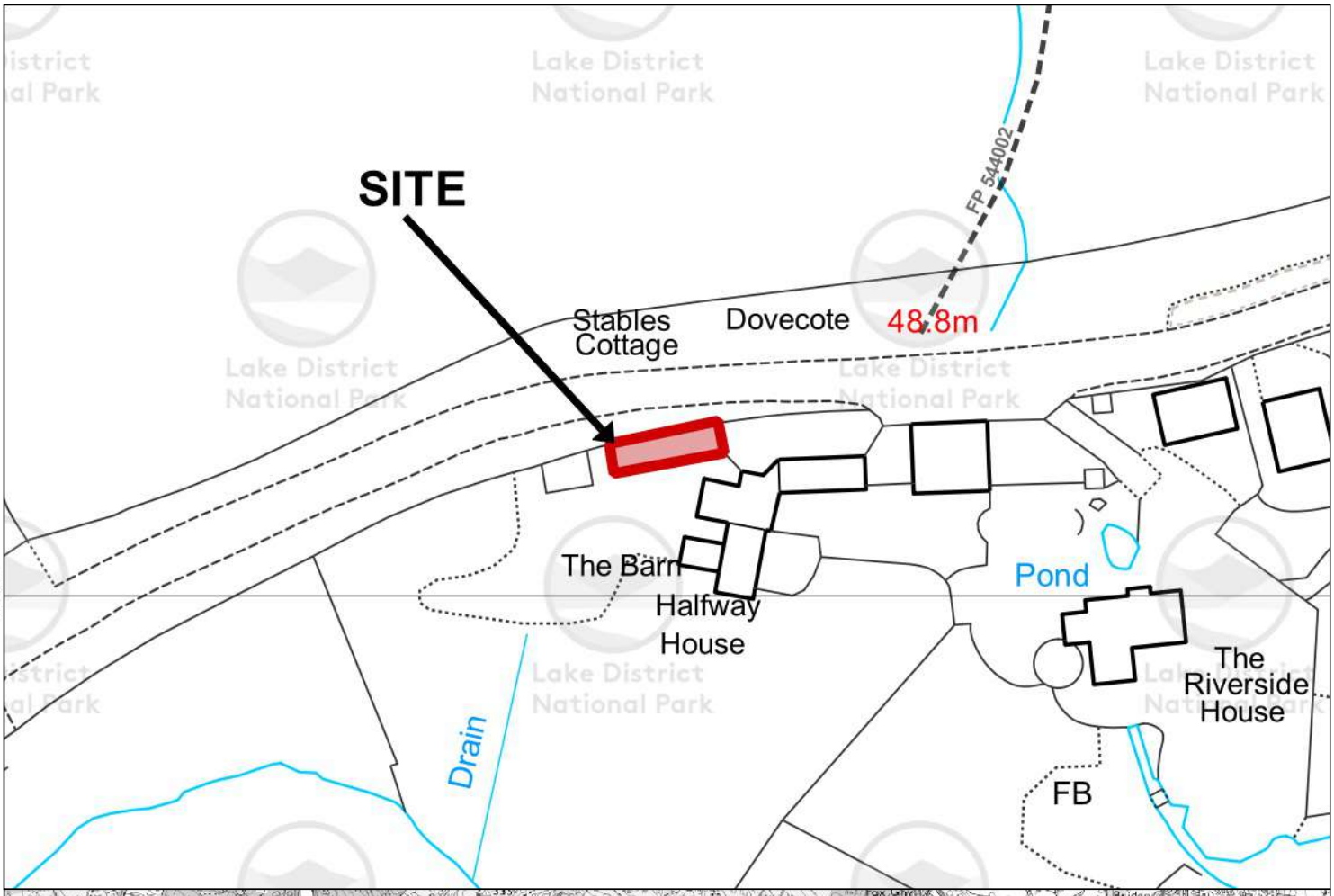
44. Accordingly, the appeal on ground (g) fails.

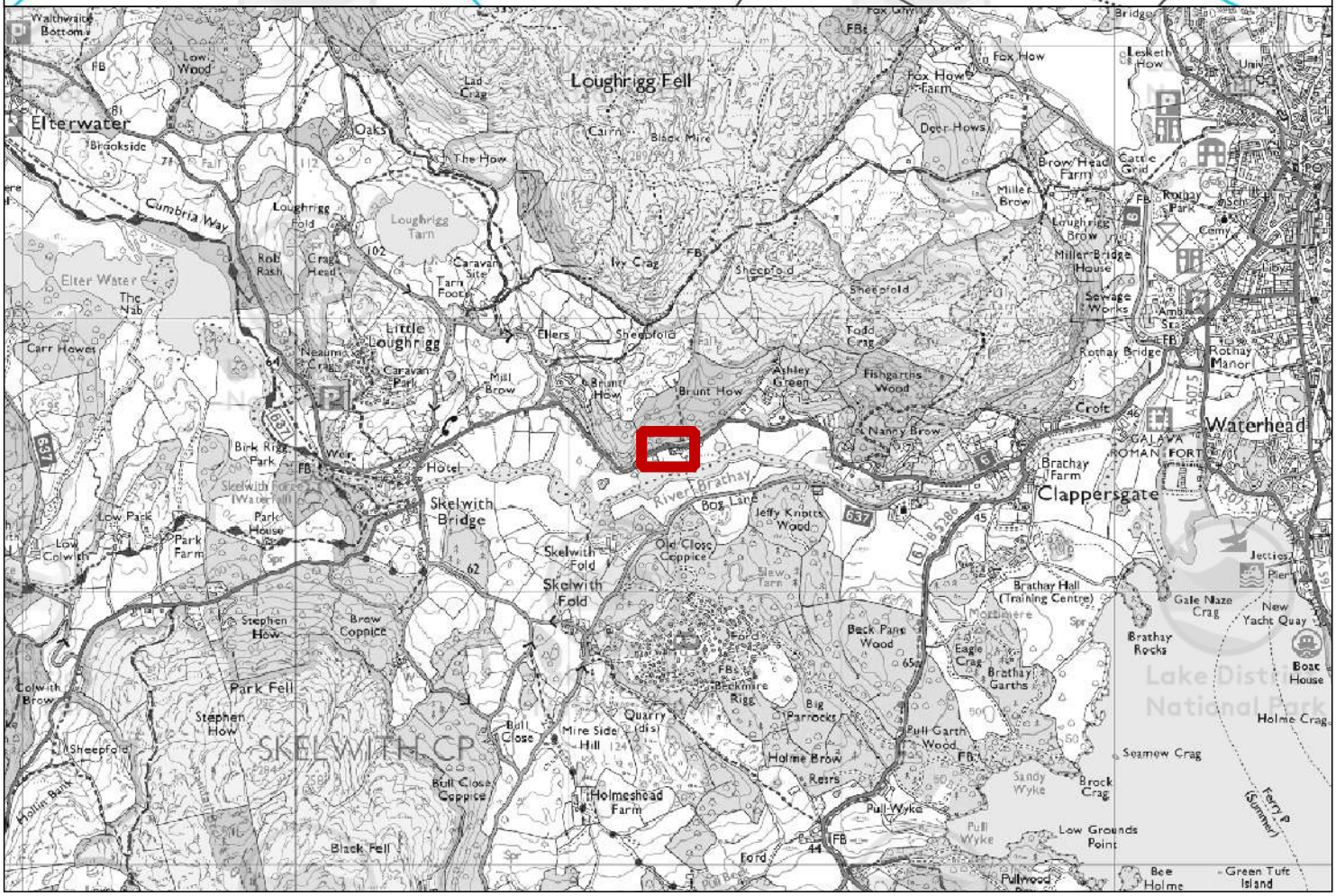
Conclusion

45. 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.

J M Tweddle
INSPECTOR

Enforcement Site Plan: E/2021/0037





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Lake District National Park Authority

Planning Inspectorate

Appeal Decisions

Hearing held on 10 December 2024

Site visit made on10 December 2024

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal A Ref: APP/Q9495/C/24/3345465
The River House Retreat, The River House, Clappersgate, Ambleside LA22 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Timothy Coupe against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land to residential, including the residential occupation of a caravan, and the carrying out of associated works to facilitate the residential use including the erection of timber decking with steps, the installation of steel box section posts and the construction of a concrete blockwork wall to the underside of the caravan.
- The requirements of the notice are to remedy the breach of planning control by:
    i. Discontinuing the residential use of the Land, including the residential occupation of the caravan; and
    ii. Restoring the land to its condition before the breach took place, by:
        a. Removing the caravan from the Land; and
        b. Removing from the Land the timber decking and steps, the steel box section posts and the concrete blockwork wall to the underside of the caravan.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Appeal B Ref: APP/Q9495/C/24/3345466
The River House Retreat, The River House, Clappersgate, Ambleside LA22 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Timothy Coupe against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land to residential, including the erection of a building, and the carrying out of associated works to facilitate the residential use including the erection of timber decking with steps, the installation of steel box section posts and the construction of a concrete blockwork wall to the underside of the building.
- The requirements of the notice are to remedy the breach of planning control by:
    i. Discontinuing the residential use of the Land, including the residential occupation of the building; and
    ii. Restoring the land to its condition before the breach took place, by:
        a. Removing the building from the Land; and
        b. Removing from the Land the timber decking and steps, the steel box section posts and the concrete blockwork wall to the underside of the building.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Applications for costs

1. An application for costs was made by Mr Timothy Coupe against the Lake District National Park Authority (the NPA). This application is the subject of a separate Decision.

Preliminary Matters

2. At the start of the Hearing, it was agreed between the parties that there is a hidden ground (c) appeal with respect to Appeal A only. I will deal with this below.

3. The NPA stated that both Notices should be amended to clarify that the alleged breach of planning control being attacked is the formation of a separate residential unit rather than there being a material change of use of the Land to residential. The appellant argued that those are two materially different allegations and to change the Notices would cause him injustice.

4. The powers transferred to Inspectors in enforcement appeals include to correct any defect, error or misdescription in the Notice under s176(1)(a) of the 1990 Act and/or vary the terms of a Notice under s176(1)(b) of the 1990 Act where the Inspector is satisfied that doing so would cause no injustice to the appellant or the local planning authority. The courts interpret the power to correct notices widely. In the *Simms* case[1] it was held that the words of s176 propound only one test; namely, whether the change would cause injustice. There is no test that the correction should not go to the substance of the matter.

5. The existing Notices served by the NPA clearly relate to the making of a material change of use of the Land to residential use including either the residential occupation of a caravan or the erection of a building with associated works to facilitate the residential use. The NPA's suggested change to the Notices would introduce materially different allegations; being the material change of use of the land to a separate independent residential unit. Appeals should be assessed against the terms of the specific allegation or allegations and therefore it follows that the evidence submitted at appeal should be based on the allegation or allegations in question. In this case the appellant's case is built on what is alleged in the Notices and consequently, to materially change the allegations would cause him injustice. In this case there is no indication in the wording of the allegations set out in paragraph 3 of both Notices that the matter is the formation of a separate residential unit and therefore I shall determine these appeals on the basis of the allegations before me.

Appeals A and B on ground (b)

6. The ground of appeal is that the breaches of control alleged in the enforcement notices has not occurred. In order to succeed on this ground, it will need to be demonstrated that the making of a material change of use of the Land to residential use has not occurred as a matter of fact.

7. The appellant contends that there has not been a material change of use to residential as the land was already in residential use comprising part of the curtilage of River House. The NPA argues that the land was previously used as domestic garden incidental to the enjoyment of River House as a dwelling, but the residential use the subject of these appeals is neither incidental nor ancillary to the

[1] Simms v SSE & Broxtowe BC [1998] JPL B98

occupation of River House. On 28 July 2014 the NPA issued a lawful development certificate (LDC) with respect to the siting of a caravan within the curtilage of The River House to be used for purposes incidental to the enjoyment of The River House. On granting the LDC the NPA reasoned that:

> *"on the available evidence and on the balance of probability the caravan would be sited within the domestic curtilage of River House which is a dwellinghouse. The use of land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development that requires planning permission by virtue of section 55 (2)(d) of the Town and Country Planning Act 1990".*

8. It is clear to me that there has not been a material change of the land to residential because the land in question was already in residential use as land which comprised part of the curtilage of The River House. The NPA has confirmed that their case is that the Land was previously used as domestic garden incidental to the use of River House as a dwelling. However, the NPA then goes on to state that the residential use has introduced a second self-contained element of the use that is neither incidental nor ancillary to the occupation of The River House. That is not the allegation set out in the Notices and is not therefore a matter to be determined in these cases.

9. There is no dispute between the main parties that the Land in question is as a matter of fact residential land and therefore irrespective of whether there is a caravan or building on the Land, the alleged breaches of planning control set out in the Notices have not occurred. The NPA suggested at the Hearing that the allegations should be changed to allege the making of a material change of use of the Land to a separate independent residential unit but that cannot be done without causing injustice to the appellant. Therefore, in these circumstances the appeals on ground (b) must succeed.

Conclusion

10. For the reasons given above I conclude that the appeals should succeed on ground (b). Accordingly, I direct that the enforcement notices should be quashed. In these circumstances the appeals under the various grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

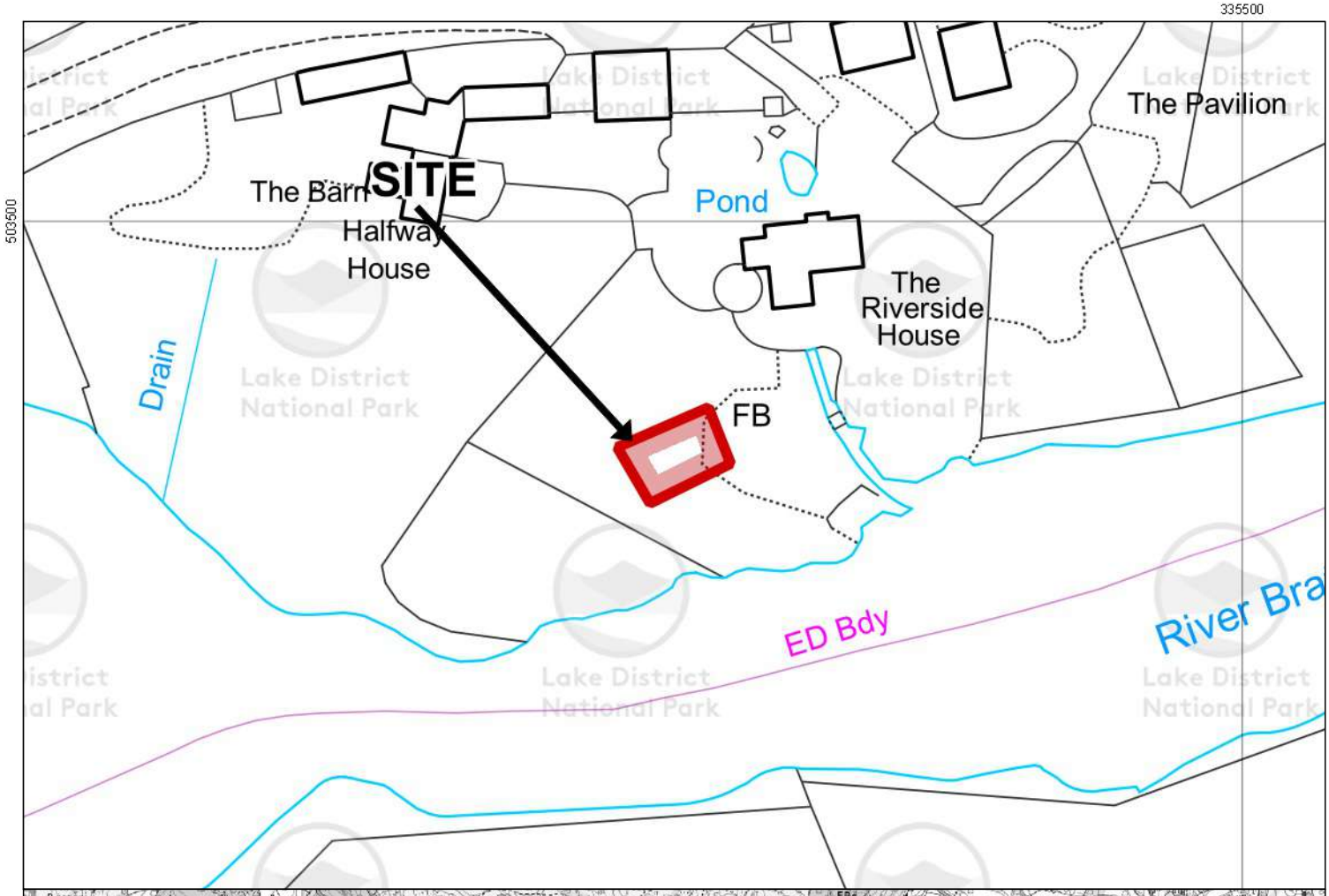
Timothy Coupe Appellant

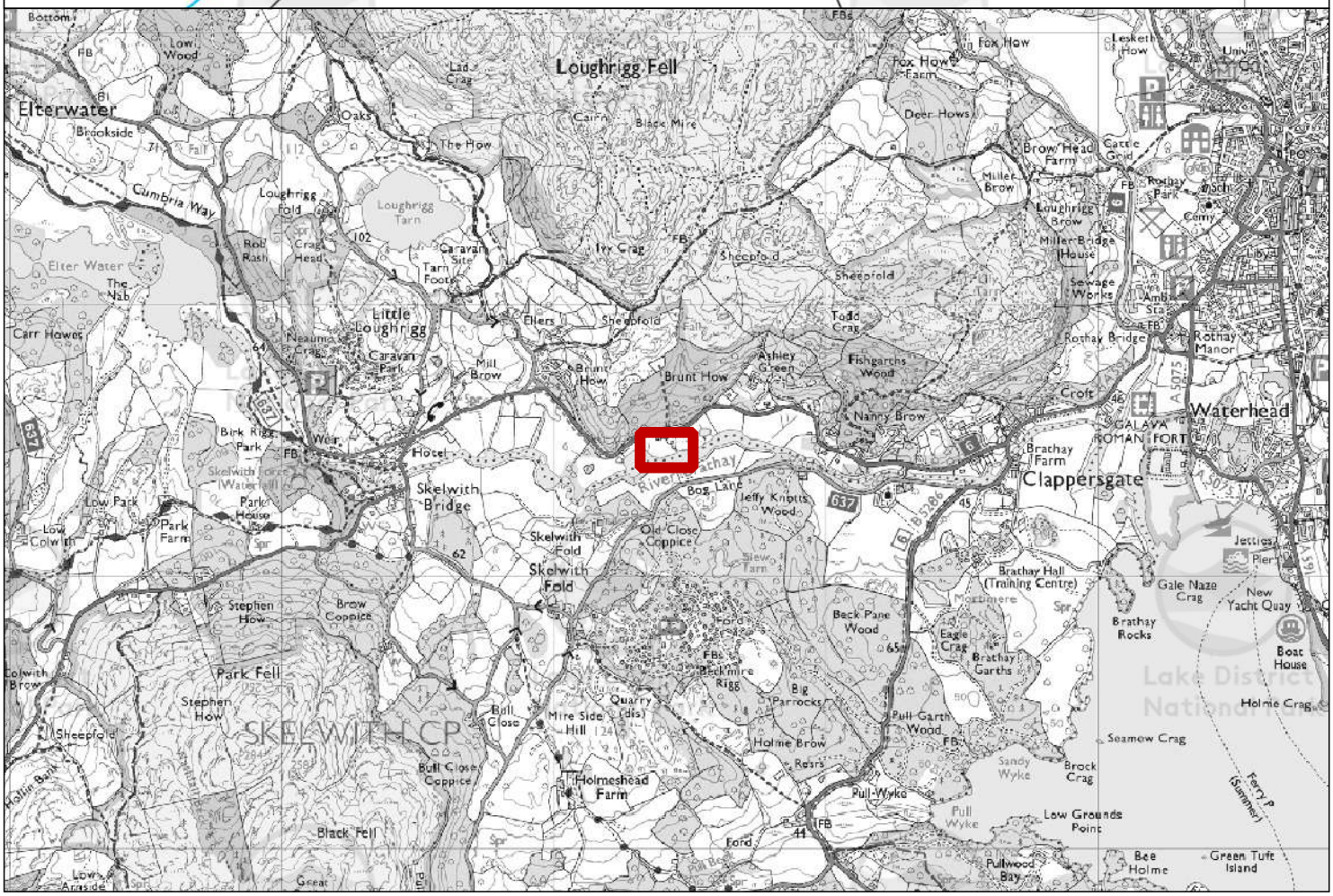
FOR THE LOCAL PLANNING AUTHORITY:

Julie Birkett, Planning Manager

Michael Hyde, Consultant

Enforcement Site Plan: E/2019/0297





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Plan scale: 1:1,000
Overview: 1:25,000

Date Authored: 18/02/2025

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Lake District National Park Authority

Planning Inspectorate

Costs Decision

Hearing held on 10 December 2024

Site visit made on 10 December 2024

by A A Phillips BA (Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Costs application in relation to Appeal A Ref: APP/Q9495/C/24/3345465
The River House Retreat, The River House, Clappersgate, Ambleside LA22 9NQ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Timothy Coupe for a full award of costs against Lake District National Park Authority.
- The appeal was against an enforcement notice alleging without planning permission, the making of a material change of use of the Land to residential, including the residential occupation of a caravan, and the carrying out of associated works to facilitate the residential use including the erection of timber decking with steps, the installation of steel box section posts and the construction of a concrete blockwork wall to the underside of the caravan.

Appeal B Ref: APP/Q9495/C/24/3345466
The River House Retreat, The River House, Clappersgate, Ambleside LA22 9NQ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Timothy Coupe for a full award of costs against Lake District National Park Authority.
- The appeal was against an enforcement notice alleging without planning permission, the making of a material change of use of the Land to residential, including the erection of a building, and the carrying out of associated works to facilitate the residential use including the erection of timber decking with steps, the installation of steel box section posts and the construction of a concrete blockwork wall to the underside of the building.

Decisions

1. The applications for an award of costs with respect to both appeals is allowed in the terms set out below.

The submissions for Mr Timothy Coupe

2. The costs application was made orally at the hearing.

3. His case is that the National Park Authority (the NPA) cannot sit on the fence with respect to the two enforcement notices served because they are inconsistent with one another. They should make allegations that stick and should understand what they are alleging. Therefore, because the NPA has not decided whether the unit in place is a caravan or a building he has had to defend both Notices at double the cost. The appellant argues that both allegations could have been included in the same Enforcement Notice. There is also inconsistency in the approach taken in the light of a previous lawful development certificate (LDC) issued.

The response by Lake District National Park Authority

4. The response was made orally at the hearing.

5. It is not unreasonable to serve enforcement notices in the alternative. If the appellant did not agree with a Notice, he would have had to appeal in any case and the cases are so interlinked that no additional time or costs have been incurred by appealing against both notices.

Reasons

6. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

7. As I have set out in the main decision the NPA suggested that the Notices should both be amended to clarify that the alleged breach of planning control is the formation of a separate residential unit rather than there being a material change of the use of the Land to residential. Those are materially different allegations.

8. The powers transferred to Inspectors in enforcement appeals include to correct any defect, error or misdescription in the Notice under s176(1)(a) of the 1990 Act and/or vary the terms of a Notice under s176(1)(b) of the 1990 Act where the Inspector is satisfied that doing so would cause no injustice to the appellant or the local planning authority.

9. The existing Notices served by the NPA clearly relate to the making of a material change of use of the Land to residential use including either the residential occupation of a caravan or the erection of a building with associated works to facilitate the residential use. Appeals should be assessed against the terms of the specific allegation or allegations and therefore it follows that the evidence submitted at appeal should be based on the allegation or allegations in question. In this case the appellant's case is built on what is alleged in the Notices and consequently, to materially change the allegations would cause him injustice.

10. It is evident that at some stage the NPA determined that the Notices did not serve the purposes for which they were intended – relating to the creation of a separate independent residential unit – but rather than withdrawing the Notices they continued the appeal process. The Authority should have known that the Land in question was residential land already and therefore that amending the Notices as they suggested would cause injustice to the appellant.

11. By continuing the appeal process and defending their action to take enforcement action against inaccurate allegations the Authority acted unreasonably, causing the appellant to incur unnecessary costs in the appeal process.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs with respect to both appeals is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Lake District National Park Authority shall pay to Mr Timothy Coupe, the costs of both

appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to the Lake District National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR