



Appeal Decision

Site visit made on 28 November 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5 MARCH 2025

Appeal Ref: APP/Q9495/C/23/3324129

Bretherdale Woodland, Bretherdale, Penrith

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Brian Curwen against an enforcement notice issued by Lake District National Park Authority.
 - The notice was issued on 10 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, operational development resulting in the erection of three timber buildings and a building consisting of two storage containers with a link wall and roof for use in association with recreational shooting at land at Bretherdale.
 - The requirements of the notice are to: a) Remove the timber building, labelled Building One in photograph 1, and associated timber structures and wooden steps from the Land; b) Remove the two timber buildings, labelled Building Two and Building Three in photograph 2, from the Land; and c) Remove the building consisting of two containers with a link wall and roof, labelled Building Four in photograph 3, from the Land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) 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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of one month and substitution with six weeks as the period for compliance.
2. Subject to the variation 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

3. The structure identified as Building Four in the notice has been removed and was not present on the land during the site visit.
4. Section 173(11) of the 1990 Act provides that "Where – (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities."
5. This provision does not apply in this case in relation to the recreational shooting taking place on the land because it is accepted by the parties that it

is taking place for fewer than 28 days per year as permitted development pursuant to Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO"). This issue is considered in further detail below. The parties' cases are put on the basis that the notice is targeting the operational development.

Ground (d)

6. An appeal on this ground is on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breaches of planning control.
7. The notice alleges operational development which constitutes four separate structures. The appellant argues that Buildings Two and Three as identified in the notice have been there for more than four years prior to its issue and are therefore immune from enforcement action. In order to succeed in this ground of appeal the appellant must prove on the balance of probabilities that the specific buildings which are the subject of the notice, i.e. Buildings Two and Three as shown in the photograph attached to the notice, are immune.
8. The appellant's evidence, which is unsworn, is that there has been a building in the location next to the gate where Buildings Two and Three are now situated for many years, and for longer than four years prior to the issue of notice. The aerial photograph dated 25 June 2018 provided by the Authority does not show a structure or building in the position of either Building Two or Three. Both buildings can be seen in the aerial photograph dated 20 September 2019. These photographs taken together suggest that the current buildings identified in the notice were erected between these dates.
9. The Landowner, John Haslem, confirms that there has always been a "small selection of huts and sheds to the right of the gate" but does not specifically state when either of the current buildings were erected. He does say that he gave permission for a wooden shed to be replaced in 2017 and that one was put up by Chris Rimmer at that time, and that the other building was already there.
10. Mr Rimmer states that he erected the "garden shed" in 2017 and that the other building was already there. Looking at the photographs it is not sufficiently clear which building is referred to as the "garden shed" as either could fit that description.
11. James Potter, the neighbouring farmer to the site, states in his unsworn evidence that one building has been there for more than 15 years and that the "second and slightly bigger shed" was put up in around 2017/2018.
12. This evidence provided by the appellant is at odds with the aerial photograph which shows that neither Building Two nor Three were in their current location in June 2018. Whilst this date precedes the immunity cut off date of 10 May 2019 by almost one year, the appellant's submitted evidence is insufficiently clear and precise regarding both buildings. I understand that these events took place several years prior to the making of the statements but the burden of proof lies with the appellant. This burden has not been discharged on balance in this case in relation to either Building Two or Three.
13. The appeal on ground (d) in relation to Buildings Two and Three does not therefore succeed.

Ground (a) and the deemed planning application

14. Building Four as described in the notice has been removed from the site and the appellant has confirmed that they would like the deemed planning application to be considered without it. The remaining development (considered without Building Four) would be part of the matters stated in the enforcement notice and I am satisfied that the deemed planning application can be varied in this way without causing injustice to the parties.
15. The main issue in relation to the deemed planning application is whether the development accords with the Spatial Strategy in the Lake District National Park Local Plan 2020 - 2035 ("the LDNPLP"); and the effect of the development on the character and appearance of the open countryside of the Lake District National Park.

Appeal Site

16. The appeal site has a lawful forestry and timber production use and is surrounded by common and agricultural land. It is located within open countryside in the eastern part of the Lake District National Park ("the LDNP") and English Lake District World Heritage Site ("WHS"), and is therefore within both a nationally and internationally designated area. The National Planning Policy Framework 2024 ("the Framework") requires that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, and the scale and extent of development within such areas should be limited.
17. National Parks have two purposes which decision-makers must seek to further; to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the National Park by the public.
18. There are no public rights of way over the appeal site which is private land. Nearby views of the development from outside of the site are limited due to the topography and landscape features, but it can be seen from wider afield. The appellant's Landscape and Visual Appraisal Statement ("the LVAS") highlights that the development can be seen from access land on Bretherdale Common and North Side, as well as from public rights of way.
19. In June 2020 the appellant submitted a notice of intention for a forestry building for storage of equipment ancillary to maintaining the woodlands. The Authority determined that prior approval pursuant to Schedule 2, Part 6, Class E of the GDPO was not required.
20. Following an enforcement complaint and investigation, planning application reference 7/22022/3148 ("the 2023 Application") sought retrospective permission for the four buildings subsequently identified in the enforcement notice, and was refused.
21. The Authority considers that the use of the land for the releasing of game birds does not amount to a material change of use of the land, and as the shooting drives take place on fewer than 28 days per year are permitted under Schedule 2, Part 4, Class B of the GPDO. In fact, much of the activity which constitutes the actual shooting drives takes place on the surrounding common and agricultural land, and not on the appeal site. The notice does not therefore

allege a material change of use but only operational development regarding the buildings.

22. However, such a temporary use of land is not permitted by Class B if the land in question is a building. As the buildings are used to facilitate the use of the land in association with the shooting drives that use does not comply with limitation B.1 (b) and is therefore not permitted under Part 4, Class B of the GPDO. Whilst the temporary use of the land can continue for 28 days each year, the operational development or use of the buildings is not permitted in association with that use.

Spatial Strategy

23. The starting point in assessing whether the appeal development complies with the spatial strategy for the area in this case must be whether the operational development is supporting a lawful use. The temporary use permitted by the GPDO as outlined above does not include a temporary use of any land which is a building. The use of the buildings in association with the shooting drives is therefore not lawful
24. The appeal site is one single planning unit, and the parties agree that it has a lawful forestry use. A material change of use of the appeal site to include the use for shooting drives with associated operational development (even as part of a mixed use with the forestry use) would require express planning permission. Such a material change of use of the overall site is not part of the deemed planning application because the notice is only targeting the operational development.
25. The site is located in open countryside. Policy 2 of the LDNPLP, the Spatial Strategy, advises that proposals in open countryside will only be supported where certain criteria are met. The most relevant criteria to consider in this case are whether there is an essential need for a rural location; whether the development helps to sustain an existing business; or whether the development is necessary for and designed to support agricultural or forestry use.
26. However, in this case Policy 2 of the LDNPDP cannot be considered in relation to the operational development as separate to the use of the whole appeal site. The use of the buildings in association with the recreational shooting on the planning unit which does not have permission is essential to, and part and parcel of, the proposal.
27. The development alleged in the notice, i.e. the buildings, do not comply with Policy 2 as a proposal for development in the open countryside because there is not an essential need for them in that the shooting drives can take place without the buildings, and they are not helping to sustain an existing business that is being run lawfully in terms of planning. The temporary shooting drive use only had permitted development rights without the buildings on the site, and weight cannot be attached to an existing business which is being run without the necessary planning consent. From the evidence before me, there is also little to show that the buildings are necessary for or designed to support the forestry use or existing business associated with that use. Indeed Building One looks like a domestic or recreational structure.

28. The alleged development does not therefore comply with Policy 2 of the LDNPDP.

Character and appearance

29. Building One is the largest of the remaining buildings, and is used to provide shelter and welfare facilities for those taking part in the shooting drives and staff. It has a domestic appearance and is single storey with various windows and doors, and clad in a light-coloured timber with roofing felt. There are also associated timber structures including steps to access the unlevel ground. These materials, and the design, are very different from the other buildings in the vicinity which are vernacular domestic buildings constructed from stone and slate.
30. Buildings Two and Three are small wooden sheds located next to the gate and described by the appellant as being used for storage, including in direct relation to game bird release and shooting.
31. The appellant's LVAS acknowledges that the buildings have characteristics which do not harmonise with the local character and landscape, and proposes environmental mitigation and enhancement measures. These measures include: staining the timber wall and replacing the roofing material so that the buildings are a darker colour overall which is recessive when viewed against the coniferous plantation which is viewed behind; rationalising the car parking behind existing trees to interrupt views; and some native tree planting.
32. The buildings cause harm to the character and appearance of the area through their discordant style and the materials used which will be evident from multiple viewpoints. The views of the additional and incongruous buildings in this location will also negatively impact on the tranquillity of the area. As all of the buildings are described as used in association with the unlawful recreational shooting use and, as the deemed planning application does not include the material change of use of the appeal site, there is no justification for the mitigation or for allowing the harm to the countryside in the initial years. The appeal development overall is in clear conflict with Policy 5 of the LDNPLP which deals with the protection of the spectacular landscape, and Policy 6 relating to the importance of local distinctiveness in good design.
33. The LVAS states by Year 15 of the proposed mitigation strategy the mature planting would screen and obscure the buildings, lowering the landscape effect to imperceptible and neutral. However, the shooting drives take place for less than 28 days a year, and are described by the appellant as ancillary at most. Notwithstanding that I do not accept that the recreational shooting drives are part of the ancillary use of the land, even if that were the case, the landscape harm outlined in the appellants landscape assessment would not be justified over so many years. The permanent features are not acceptable for such a limited and seasonal use.
34. As the development does not protect or enhance the authenticity, integrity and significance of the Lake District, and as it is at odds with the character and appearance of the local area in terms of design and materials used, it is also in conflict with Policy 1 of the LDNPDP, which seeks to conserve and enhance the national and international significance of the Lake District. Whilst mitigating measures regarding the visual effects could possibly be considered, the recreational shooting use is not lawful and such a use of the planning unit is

not sought in this appeal. There is a lack of justification for the buildings to be sited in the remote open countryside location.

Other matters

35. There are some economic benefits associated with the recreational shooting, including casual employment and income generation, and the use of the game birds in the food chain of the local area. However, these are not sufficient to outweigh the harm that I have outlined above.
36. The appellant argues that if the buildings are removed there will be increased numbers of vehicles associated with the recreational shooting attending the site (and with the engines running for longer) and external storage which will look untidy and increase the risk of crime. However, the limited use of the site associated with the recreational shooting, even taking into account the ongoing maintenance and tending of the birds, does not outweigh or justify the permanent harm caused by the operational development.

Conclusion

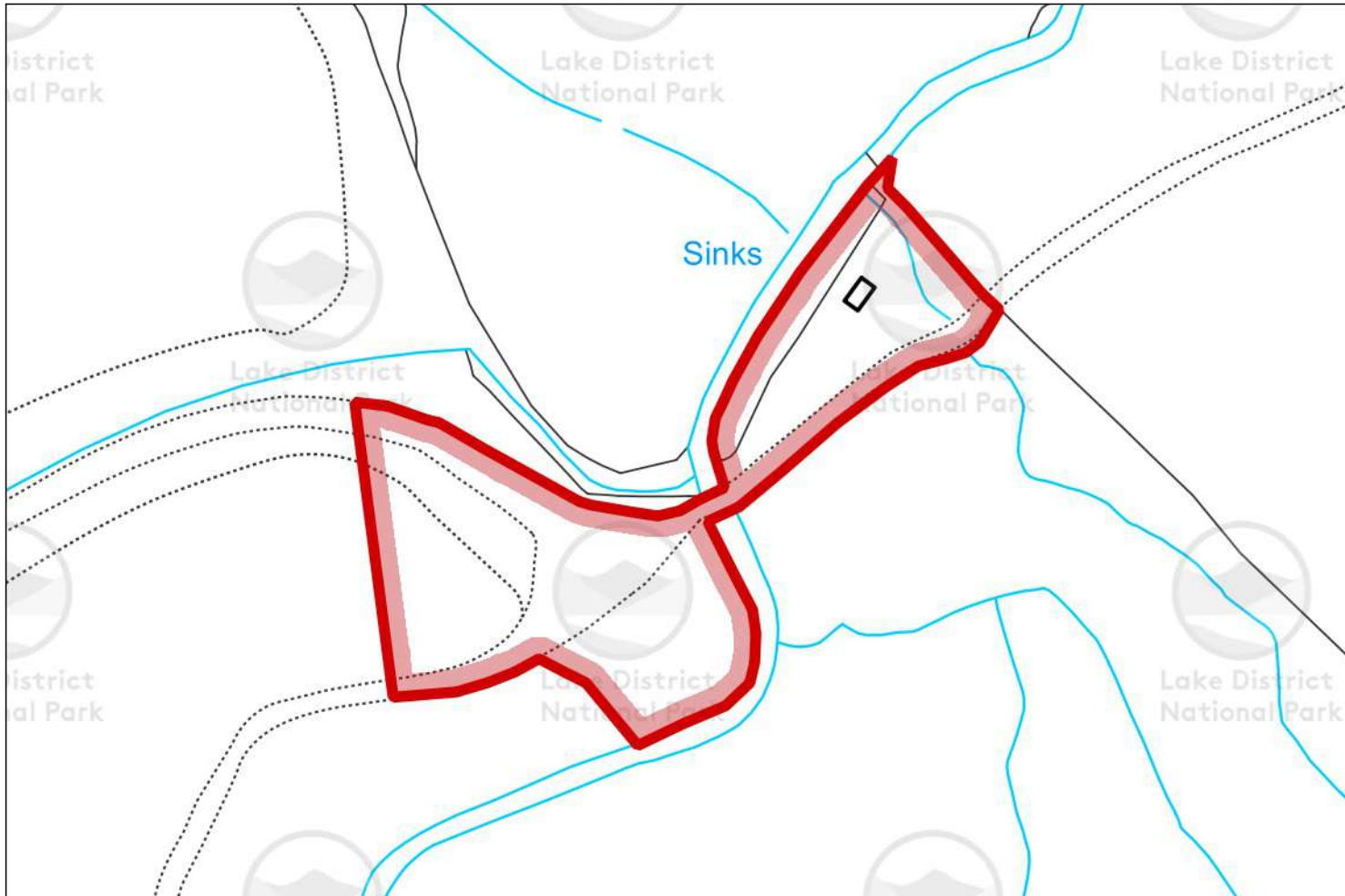
37. The development causes harm to the character and appearance of the open countryside of the Lake District and is not in accordance with the spatial strategy for the area. Neither does the development further the purpose of the National Park to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
38. The development is therefore in conflict with the LDNPDP and the Framework, and as there are no material considerations that indicate otherwise the appeal under ground (a) fails and the deemed planning application is refused.

Ground (g)

39. The appellant seeks an extension of the compliance period to two months. Taking into account all factors including the current time of year and possible weather conditions, I am satisfied that the period should be extended to 6 weeks which is proportionate in all of the circumstances.
40. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Zoë Franks

INSPECTOR



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Overview: 1:25,000

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Appeal Decisions

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: 28 February 2025

Appeal A Ref: APP/Q9495/C/23/3334529

Land at Nos. 19 & 21 Victoria Street, Windermere LA23 1AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Vincent Gregg of The Craft Baa Ltd against an enforcement notice issued by the Lake District National Park Authority.
- The enforcement notice, ref. E/2021/0033A, was issued on 1 November 2023.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 7/2017/5792 granted on 13 April 2018.
- The development to which the permission relates is change of use from residential to café (A3) and retail (A1).
- The conditions in question are nos. 5, 6, and 8 which state:
 5. Prior to the use of the external seating area to the front of no. 21 Victoria Street, details of the dividing wall between nos. 19 and 21 Victoria Street and details of any heating, lighting and tables and chairs shall be submitted to and approved in writing by the Local Planning Authority.
 6. No tables, chairs and seating shall be placed on the area to the front of no.19 Victoria Street at any time.
 8. Prior to the use hereby permitted being implemented a self closing front door shall be installed and maintained thereafter. Details of the door shall be submitted to and approved in writing by the Local Planning Authority prior to its installation.
- The notice alleges that the conditions have not been complied with in that: no details of the dividing wall and any heating, lighting, and tables and chairs were submitted to and approved by the Local Planning Authority, as required by condition 5; the area to the front of No.19 has been furnished with chairs, tables and seating, contrary to the stipulation of condition 6; and, no details of a self closing front door have been submitted to and approved by the Local Planning Authority, and no such door has been installed, as required by condition 8.
- The requirements of the notice are to:
 - i. Comply with Condition 5 of planning permission 7/2017/5792 by ceasing to use the external seating area to the front of no. 21 Victoria Street (as marked green on plan B – Appendix A) unless details of the dividing wall between nos. 19 and 21 Victoria Street and details of any heating, lighting and tables and chairs have been submitted to and approved in writing by the Local Planning Authority.
 - ii. Comply with Condition 6 of planning permission 7/2017/5792 by permanently removing all tables, chairs and seating from the area to the front of 19 Victoria Street (as marked blue on plan B – Appendix A).
 - iii. Comply with Condition 8 of planning permission 7/2017/5792 by installing an overhead door closer to the door marked in red on the attached photograph – Appendix B.
- The period for compliance with requirements i. and ii. is seven days and for requirement iii. is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f), (g) of the Town and Country Planning Act 1990, as amended (the Act). 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.

Appeal B Ref: APP/Q9495/C/23/3334530

Land at Crafty Baa, 19 & 21 Victoria Street, Windermere LA23 1AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Vincent Gregg of The Craft Baa Ltd against an enforcement notice issued by the Lake District National Park Authority.

- The enforcement notice, ref. E/2021/0033B, was issued on 1 November 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, operational development consisting of the erection of a window box and the installation of two awnings in the approximate position marked with a cross on the attached plan.
 - The requirements of the notice are to:
 - i. Remove window box from the Land,
 - ii. Remove the two awnings from the Land, and
 - iii. Ensure the front elevations (facing Victoria Street) of the buildings on the Land are reinstated to their condition before the breach of planning control took place (as shown in Appendix A).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990, as amended, (the Act). 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.
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Decisions

Appeal A

1. In relation to Appeal A, it is directed that the enforcement notice be varied by:
 - At Section 6 of the enforcement notice, deletion of the words “*For requirements i and ii above, seven days after this notice takes effect.*” and deletion of the words “*For requirement iii above,*” so that the time period for compliance with all the requirements is 28 days.
2. Subject to this variation, 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.

Appeal B

3. Appeal B 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

4. Whilst the appeals relate to separate enforcement notices, different alleged breaches of planning control, and they are proceeding on different grounds of appeal, they concern the same appellant, buildings, and land. Therefore, to minimise duplication and repetition, I have dealt with them together in one decision letter.
5. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024 and it is a material consideration in the determination of planning and enforcement appeals. Further amendments were published on 7 February 2025. However, the revisions and amendments to the Framework are not material to the matters raised in this appeal.

Background

6. 19 and 21 Victoria Street are mid-terraced properties located within Windermere’s Primary Shopping Area. They are also located within the Windermere Conservation Area. In April 2016, under planning permission reference 7/2016/5113, planning permission was granted for the change of use of No.21

from retail to use as a café. Subsequently, in April 2018, under planning permission reference 7/2017/5792, planning permission was granted for the change of use of No.19 from residential to a mixed use of café and retail, subject to conditions.

7. In summary, condition 5 of the April 2018 consent required the submission and approval of details of a dividing wall between nos.19 and 21 and the details of any heating, lighting, and chairs and tables prior to the use of the external seating area to the front of No.21. Condition 6 of the same consent prohibited the placing of tables, chairs and seating to the front of No.19 at any time, and condition 8 required the submission and approval of details for a self closing [sic] front door, and its subsequent installation and maintenance. The reason given for these conditions was in the interests of protecting the amenity of the occupiers of the adjacent dwelling 17 Victoria Street.
8. It appears to the Local Planning Authority (LPA) that these conditions have not been complied with because no details have been submitted to and approved by the LPA and yet chairs, tables, seating, heating and lighting have been installed to the front of both properties, contrary to the requirements of both conditions 5 and 6. Furthermore, no details of the self-closing front door have been submitted to and approved by the LPA, and no such door has been installed, as required by condition 8. The appellant does not dispute that there has been a failure to comply with the requirements of these conditions.

Appeal A: APP/Q9495/C/23/3334529

The appeal on ground (c)

9. The appeal is that the matters stated in the notice do not constitute a breach of planning control. The thrust of the appellant's argument in this regard is that condition 8 is invalid, and therefore unlawful, because it does not specify precisely where the self-closing front door should be installed. In addition, they assert that a self-closing mechanism exists on an inner door and that this is acceptable. This latter point is primarily a ground (a) argument, and so I will address it as such.
10. Section 70 of the 1990 Act gives local planning authorities a wide discretion to impose such conditions as they think fit. The legal, or *Newbury*¹, tests for conditions dictate that in order for a condition to be valid it must be imposed for a planning purpose, fairly and reasonably relate to the development permitted, and not so unreasonable that no reasonable planning authority properly conducting itself could have imposed it. The policy tests for the imposition of conditions are set out in both the Framework and the Planning Practice Guidance (PPG). However, the legal and policy tests are not the same, and failure to meet all or some of the latter does not necessarily render a condition invalid.
11. When seeking to understand planning conditions, consideration should be given to the natural and ordinary meaning of the words there used, viewed in their particular context, and in light of common sense. In this case, condition 8 stipulates a requirement for a '*self closing front door*'. To my mind, the obvious and only natural interpretation is that this requirement relates to the door on the front elevation of the property. The property being 19 Victoria Street, which is the

¹ *Newbury DC v SSE & Others* [1980] 2 WLR 379, [1981] AC 578, and affirmed by the Supreme Court in *R (oao Wright) v Resilient Energy Severndale Ltd & Forest of Dean DC* [2019] UKSC 53.

subject of the planning permission, as stated on the decision notice. There is only one door to the front elevation of 19 Victoria Street, and therefore there can be no ambiguity in this regard. Beyond this, the appellant has not set out any substantive argument as to why the condition does not meet the relevant legal tests, as set out above.

12. Drawing these points together, the condition is not imprecise as to be unreasonable. On this basis the condition has not been shown to be invalid and so it follows that a breach of planning control can arise from any failure to comply with its requirements. Details have not been submitted, as required by the condition, and therefore a breach of planning control has occurred.
13. For these reasons, the appeal on ground (c) does not succeed.

The appeal on ground (a)

14. The ground of appeal is that planning permission ought to be granted for the matters stated in the notice as a breach of planning control. Therefore, in this case, planning permission is sought for the mixed café and retail use of the property without compliance with conditions 5, 6, and 8 of the April 2018 planning permission.
15. From a review of the evidence before me, I consider the main issues to be whether the disputed conditions are reasonable and necessary having particular regard to:
 - The living conditions of the occupiers of No.17 Victoria Street, with regard to noise and disturbance; and,
 - The requirement to preserve or enhance the character or appearance of the Windermere Conservation Area, and linked to that, its effect on the Lake District National Park and the outstanding universal value of the English Lake District World Heritage Site.

Living conditions

16. The appeal site is located within the Windermere Primary Shopping Area (PSA), as defined by Policy 17 of the Lake District National Park Local Plan 2020-2035 (the Local Plan) which seeks to support proposals that maintain and enhance the vitality and viability of such areas. The Windermere PSA is characterised by a wide variety of typical town centre uses, including cafés, public houses, restaurants, and shops, which combine to create a busy and vibrant urban environment.
17. Victoria Street leads out of the town centre and includes a mix of both commercial and residential properties. Accordingly, the area surrounding the appeal site is less busy and has a more sedate character. At such locations a balance must be struck between the competing interests of promoting a vibrant town centre and maintaining suitable living conditions for existing and future residential occupants.
18. The proposal would allow for the retention of an outdoor seating area immediately adjacent to No.17 Victoria Street, a two-storey residential property, with only a timber wall and planting separating the two areas. The nature of the outdoor seating area to the front of No.19 is such that gatherings of people in this area would give rise to noise generating activities such as talking, raised voices, laughter and the movement of furniture, glasses and crockery.

19. These noise levels are likely to be exacerbated by customers being in high spirits and therefore levels of conversation being increasingly audible through either a number of voices being raised at any one time or louder individual voices. These effects would be particularly acute on long summer days with good weather, when the area would attract greater numbers of people for much of the day and into the late evening when neighbouring residents are likely to have windows open and therefore more receptive to noise. I also note that the café is open until 11pm each day and therefore levels of noise would be experienced by the neighbouring occupants well beyond a time at which residents could reasonably expect lower levels of background noise and disturbance. It is suggested that the seating area is not used beyond 10pm, but the appellant has not put forward a condition that would restrict its use, or demonstrated how they might ensure the area is vacated, even if such a restriction were considered to be sufficient to protect the living conditions of the occupiers of No. 17.
20. The appellant states that they are not aware of any complaints having been made in relation to noise or disturbance from the appeal site. However, this is contradicted by the LPA who advise that its enforcement investigation was triggered by a complaint about noise from customers using the outdoor space adjacent to No.17. Furthermore, as part of the appeal process, a local resident has also raised concerns in relation to noise and disturbance from customers using the outdoor seating area.
21. It is argued that sufficient controls exist under the Control of Pollution Act to enable the local council to take action if a statutory nuisance were to develop as a result of the operation of the outdoor seating area. Nevertheless, the Framework requires that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. To my mind this is a higher standard, and in any event, it would not be appropriate to rely on another regulatory regime to manage undesirable effects resulting from a planning decision. It is also suggested that sufficient management procedures are in place to deal with any issues that might arise, but I have not been provided with the details of these procedures and so it has not been demonstrated that they are a suitable means of mitigating the effects I have identified.
22. I appreciate that the site is located within a busy town centre environment where there is a general hustle and bustle of commercial activities and associated background noise. Nevertheless, the living conditions of neighbouring occupiers must be safeguarded and maintained to a high standard. Furthermore, the appellant has not put forward any alternative conditions that might curtail the activities at the site or reduce their adverse effects so as to ensure acceptable living conditions for the neighbouring occupiers.
23. Turning to the requirement for a self-closing front door, the front door of No.19 immediately leads to a staircase. Adjacent to this front door is an internal door leading to the main café area which does have a self-closing mechanism attached. However, this arrangement could allow the front door to be left open and would therefore allow noise to escape from the property. Also, there is nothing to require the maintenance of the existing self-closing mechanism on the internal door, so it could be removed at any time.
24. Compliance with the disputed conditions would provide a degree of separation between the outdoor seating area to the front of No.21 and No.17, along with other

safeguards (a self-closing door and a dividing wall) that would minimise noise and disruption.

25. Bringing all these points together, I find that the proximity of the proposal to the neighbouring residential property at No.17 Victoria Street to be such that, in the absence of compliance with the disputed conditions, there would be a significant harmful effect on the living conditions of the existing and future occupiers of this residential property. This would be contrary to Policy 06 of the Local Plan and the associated provisions of the Framework, as cited above, which together seek to ensure that development does not have an unacceptable impact on the amenity of adjoining residents. Therefore, the disputed conditions are reasonable and necessary to safeguard the living conditions of the neighbouring occupiers.

Character and appearance

26. The appeal site is located within the Lake District National Park, a designated landscape of national importance which attracts the highest status of protection. In addition, the site also falls within English Lake District World Heritage Site (the WHS), an internationally designated heritage asset of the highest significance.
27. The Lake District is characterised by its modest but dramatic mountain scenery with steep-sided narrow valleys radiating out from its centre, many of which contain long expansive lakes. Its exquisite landscape is a result of the unique fusion of natural features and human settlement. Indeed, the traditional built environment of the historic market towns and villages of the Lake District, including Windermere, are integral and authentic elements of the cultural landscape and illustrate different facets of the evolution of settlement in the area as it responded over time to changing societal, economic and cultural forces. As such, its historic townscapes and their distinctive architectural vernacular are an important component of the Outstanding Universal Value (OUV) of the WHS and make an important and significant contribution to the character and local distinctiveness of the Lake District.
28. Furthermore, the landscape of the Lake District is not just defined by its topography and natural features, but also by the form and character of the traditional buildings that contribute to its distinctive built environment, which is an important contributor to the local landscape and its scenic beauty. Paragraph 189 of the Framework affords the highest status of protection in relation to these matters, and Policy 06 of the Local Plan stresses the importance of local character.
29. The appeal site is a mid-terrace property located within the Windermere Conservation Area (WCA). The significance of the WCA is in part derived from the architectural and historic interest of the area's buildings, which initially grew from a tiny settlement clustered around an isolated railway terminus in an open rural landscape. These early buildings are good examples of typical provincial Victorian and Edwardian architecture, utilising local materials that create a distinctive Lakeland identity.
30. Victoria Street, including the appeal property, was laid out in the mid-19th century as part of a rapid expansion of the town following the arrival of the railway and the need to accommodate a growing population and increasing numbers of visitors. The appeal building forms part of a row of former cottages built in a typical, yet simple, Lakeland Victorian architectural style, utilising both local stone and slate.

Whilst not a listed building, the WCA Appraisal and Management Plan, 2011, identifies the appeal property as a building of special character. Despite some modern interventions, I agree that it is a good example of a historic building that is typical of its era and positively adds to the quality and character of the built environment. In these regards, the appeal property and its surroundings make a positive contribution to the significance of the WCA, the WHS and the surrounding townscape.

31. The development, without compliance with the disputed conditions, has introduced a seating area to the front of Nos 19 and 21. Largely comprising of fixed seating made from what appears to be reclaimed timber planks and fixed metal framed tables, the seating area has a stark and visually discordant appearance that is at odds with the quality and local distinctiveness of the surrounding built environment. Furthermore, lighting and heating units have been installed around the seating area and on the front elevation of the building with what appears to have been limited consideration to good design principles, resulting in a restless composition of cluttered features that significantly detract from the simple traditional form and character of the original building. As such, the current seating area and its associated paraphernalia appear incongruous in the street scene.
32. For these reasons, I find that the development is harmful to the character and appearance of the WCA. It also follows that the development has, to a limited degree, harmfully diminished the positive contributions that the site previously made to the landscape quality of the national park and the OUV of the WHS. Consequently, I attribute considerable importance and weight to this harm.
33. With reference to paragraphs 214 and 215 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the extent and localised nature of the development, I find that the harm to the WCA and the OUV of the WHS to be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, this harm is to be weighed against the public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use.
34. In this case the appellant has not presented any evidence of public benefits. It is suggested that without the outdoor seating area the business may be unviable, and this would have implications for local employment, but there is no substantive evidence before me in this regard. Consequently, the harm I have identified is not outweighed by any demonstrable public benefit and therefore the proposal clearly conflicts with the Framework's aim to conserve heritage assets in a manner appropriate to their significance.
35. To conclude on this main issue, without compliance with the disputed conditions, the development fails to preserve or enhance the character or appearance of the WCA, and it is harmful to the OUV of the English Lake District WHS. The development is therefore in conflict with Policy 07 of the Local Plan and the associated provisions of the Framework, which together seek to conserve and enhance the significance of heritage assets.
36. In the absence of the disputed conditions, the development would also fail to preserve the cultural heritage of the Lake District National Park in conflict with the statutory purposes for which it is designated, as prescribed by Section 5(1) of the National Parks and Access to the Countryside Act 1949, as amended. It therefore

follows that the proposal would not seek to further the statutory purposes of the protected landscape.

37. Therefore, the disputed conditions are reasonable and necessary in order to safeguard the character and appearance of the area.

Other matters

38. I note the correspondence from the Environmental Health 'Specialist' at Westmorland and Furness Council², but in relation to matters of noise and disturbance, I find their assessment and advice to be vague and ambiguous. I have therefore arrived at my own conclusion based on the evidence before me.
39. An outdoor seating area associated with the Queens Hotel exists to the rear of No.17. However, it is not clear if this benefits from planning permission. In any case, this does not justify the provision of further outdoor seating that would give rise to additional noise and disturbance to neighbouring occupiers.

Appeal A Conclusion on ground (a)

40. In failing to comply with the requirements of the disputed conditions, I have found the development to be harmful to the living conditions of the occupiers of No.17 Victoria Street, with regard to noise and disturbance. I have also found harm to the character and appearance of the WCA and the OUV of the WHS. The development also conflicts with the statutory purposes of the national park. In these regards, the development is contrary to the above cited policies of the development plan and no material considerations of sufficient weight have been advanced to overcome this.
41. Therefore, for the reasons given, I conclude that the appeal on ground (a) should fail, and that planning permission should be refused in respect of the deemed planning application.

The appeal on ground (f)

42. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires compliance with the terms of conditions 5, 6 and 8, the purpose is clearly to remedy the breach of planning control that has occurred.
43. The appellant is of the view that there are sufficient management procedures in place to deal with any issues that may arise from the development and that there is no need for a dividing wall to be erected between No.21 and No.19. They also suggest that it is not necessary to remove the existing seating.
44. However, these points do not represent lesser steps that would achieve the purpose of the enforcement notice. This would not satisfy the requirements of the conditions and so would not remedy the breach of planning control.
45. Therefore, the ground (f) appeal must fail.

² Email from Peter Adams to Peter Winter at 13:18, 21 February 2024

The appeal on ground (g)

46. 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 seven days for compliance with conditions 5 and 6, and 28 days for compliance with condition 8.
47. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the requirements of the enforcement notice against the private interests bound up in the unauthorised development. In doing so, I acknowledge that the development is harmful to the living conditions of neighbouring residents, and it is also causing harm to designated heritage assets. It is, therefore, in the public interest to remedy the breach of planning control as soon as reasonably possible and without delay.
48. The four-month compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the development. However, I accept that a seven day compliance period is too short. In my view, extending this period to the same 28 day period for compliance with the requirements of condition 8 would be proportionate and reasonable.
49. For these reasons, I conclude that a reasonable period for compliance would be 28 days, and so I will vary the enforcement notice accordingly.
50. To this limited extent, the ground (g) appeal succeeds.

Appeal B: APP/Q9495/C/23/3334530

The appeal on ground (a)

51. In pursuing an appeal on ground (a) planning permission is sought for the matters which constitute the breach of planning control, in this case the erection of a window box and the installation of two awnings.
52. Having reviewed the LPA's reasons for issuing the notice, I consider the main issues to be:
 - The effect of the development on the living conditions of the occupiers of No.17 Victoria Street, with regard to noise and disturbance, outlook, and light; and,
 - Whether the development preserves or enhances the character or appearance of the Windermere Conservation Area, and linked to that, its effect on the Lake District National Park and the outstanding universal value of the English Lake District World Heritage Site.

Living conditions

53. It can be seen from my reasoning in relation to Appeal A that I have found the seating area to the front of the appeal property to be harmful to the living conditions of the neighbouring occupiers at No.17 Victoria Street. The installation of awnings over this area creates a more hospitable environment for customers during periods of less-favourable weather, thereby increasing the potential use of the area, irrespective of whether seating is provided, and exacerbating the adverse effects I have found in terms of noise and disturbance.

54. However, having considered the position and size of the awnings, along with their orientation in relation to No.17, I am not concerned that they would result in a significant loss of outlook or light to No.17. In addition, there is no evidence before me to suggest that there would be an unacceptable increase in light pollution, and I note that there is no reference to lighting in the breach of planning control.
55. Consequently, I find that the development is harmful to the living conditions of the occupiers of No.17 Victoria Street, with regard to noise and disturbance. I do not find the development to be harmful to the living conditions of these neighbouring occupiers in relation to their outlook or light.
56. Therefore, the development is contrary to Policy 06 of the Local Plan and the associated provisions of the Framework, which together seek to ensure that development does not have an unacceptable impact on the amenity of adjoining residents.

Character and appearance

57. As part of my consideration of Appeal A, I have already set out the appeal site's context and the contribution it makes to the WCA, WHS and the landscape quality of the national park. Therefore, I will not repeat that here.
58. The development has resulted in the installation of two large awnings to the front of Nos 19 and 21 Victoria Street. Each awning is deployed and retracted using a manual mechanism. Above each awning and along their full length, a window box has been erected along with artificial flowers and foliage. Owing to their size and positioning on the elevation, they are visually prominent in the street scene.
59. The awnings and window box dissect the front elevation of the property between the ground and first floor of the building. In doing so, they harmfully disrupt the simple traditional architectural composition of the building, resulting in discordant features that visually detract from the character and appearance of the surrounding area. In addition, the awning to the front of No.21 is staggered, via the use of a timber frame, to step it forward to accommodate the bay window. This accentuates its discordant appearance and disrupts the architectural form of the bay window.
60. I acknowledge that the window boxes have been installed to hide the fixings of the awnings and that the planting of flowers may not involve an act of development. However, at the time of my site inspection, and from the photographic evidence submitted with the appeal, the flowers and foliage were in fact artificial, comprising plastic and fabric materials.
61. I have found that the development is harmful to the character and appearance of the WCA. It follows that there is also harm to the OUV of the WHS and the landscape quality of the Lake District. The harm to these heritage assets attracts considerable importance and weight. No public benefits have been advanced to outweigh this harm. Consequently, the development clearly conflicts with the Framework's aim to conserve heritage assets in a manner appropriate to their significance.
62. For these reasons, the development fails to preserve or enhance the character or appearance of the WCA and it is harmful to the OUV of the English Lake District

WHS. The development is therefore in conflict with Policy 07 of the Local Plan and the associated provisions of the Framework.

63. The development would also fail to preserve the cultural heritage of the Lake District National Park in conflict with the statutory purposes for which it is designated, as set out by Section 5(1) of the National Parks and Access to the Countryside Act 1949, as amended. It therefore follows that the development does not seek to further the statutory purposes of the protected landscape.

Other matters

64. In support of the appeal, the appellant has drawn my attention to permitted development rights set out in Schedule 2, Part 2, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), which, in their view, would allow them to erect a movable “drinking shelter”. They consider that this could result in a more visually intrusive form of development than the current arrangement and so providing a fallback position that weighs in favour of allowing the appeal. They also suggest that this could compromise highway safety.
65. However, I have been provided with insufficient evidence to demonstrate that the appellant could achieve a similar form of development that would meet all of the conditions set out in the GPDO to qualify as permitted development. Therefore, I am unable to be sure that this represents a realistic prospect. In any case, I am not persuaded that this alleged fallback would result in similar or worse effects than the appeal proposal.
66. My attention is also drawn to the presence of other retractable awnings over commercial premises in the locality. From the examples provided, these all appear to form part of well-designed shop/café frontages. Consequently, they do not share the same site specific context to the appeal and are therefore not comparable.

Conclusion on ground (a)

67. The development is harmful to the living conditions of the occupiers of No.17 Victoria Street, with regard to noise and disturbance. I have also found harm to the character and appearance of the WCA and the OUV of the WHS. The development also conflicts with the statutory purposes of the national park. In these regards, the development is contrary to the above cited policies of the development plan and no material considerations of sufficient weight have been advanced to overcome this.
68. Therefore, for the reasons given, I conclude that the appeal on ground (a) should fail, and that planning permission should be refused in respect of the deemed planning application.

The appeal on ground (f)

69. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve its purpose.
70. The requirements are to remove the window box, remove the awnings, and to reinstate the buildings and land to their condition before the breach of planning control took place. It follows that the purpose of the notice is to remedy the breach of planning control that has occurred.

71. The appellant suggests that there are sufficient management procedures in place to deal with any issues that might arise, and that there is no need for the awnings to be removed. They indicate that the window box could be removed if it is found to be visually intrusive.
72. However, the appellant's suggested alternatives would not fully remedy the breach of planning control and so they do not represent lesser steps that would achieve the purpose of the notice.
73. Consequently, the ground (f) appeal cannot succeed.

The appeal on ground (g)

74. 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 three months.
75. The appellant seeks to extend this to a period of four months to take account of the physical works involved, they also suggest that consideration would also need to be given to the viability of the business in the absence of the outdoor seating area. Beyond this commentary, there is little evidence to demonstrate why an extended period is sought or why the requirements could not be achieved within the specified period of three months.
76. Consequently, extending the compliance period would perpetuate the breach of planning control and the associated harm, without sufficient justification. Therefore, in weighing the balance between 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.
77. I am, therefore, not persuaded that there is a need to extend the period for compliance with the requirements of the notice, and I am satisfied that the period of compliance stated in the notice is a proportionate response to the breach of planning control that has occurred.
78. Accordingly, the appeal on ground (g) fails.

Overall Conclusions

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



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Appeal Decision

Site visit made on 14 January 2025

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

an Inspector appointed by the Secretary of State

Decision date: 6th March 2025

Appeal Ref: APP/Q9495/W/24/3351288

23 Eskin Street, Keswick CA12 4DQ

- 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 Collie against the decision of Lake District National Park Authority.
 - The application Ref is 7/2023/2235.
 - The development proposed is change of use from B&B (C1) to holiday let (C3). No structural changes either internal or external.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Premises Management Plan was submitted in support of this appeal. Interested parties have had an opportunity to review and make comments on the evidence submitted. Therefore, I do not consider that the Council or any interested parties would be prejudiced if I accept this information.

Main Issue

3. The main issue is the effect of the proposed change of use on the living conditions of the occupants of 21 and 25 Eskin Street in regard to noise and disturbance.

Reasons

4. Eskin Street contains a mix of traditional stone terraces and contemporary apartment blocks and dwellings. The appeal property, 23 Eskin Street (No 23), is a traditional three storey mid-terrace property with accommodation in the attic. The appeal property is currently in use as a guest house, the properties on either side 21 and 23 Eskin Street are occupied as private residential dwellings.
5. The appeal property currently operates with the capacity to accommodate 10 guests and includes owner accommodation which allows for the presence of on site management within the building. Although all of the bedrooms could be booked by a single group, ordinarily for accommodation of this type, rooms would be let by separate individuals or groups on a room by room basis.
6. The proposal is for the change of use of No 23 to allow for it to be occupied as a holiday let. Two of the bedrooms within the property would be retained as private accommodation and the appellant states that the capacity of the property as a holiday let would continue to be for up to 10 guests.
7. Under the terms of Policy 18 of the Living Lakes Your Local Plan Lake District National Park Local Plan 2020-2035 (LP) it is noted that there is no policy

- requirement for the use of the building as a guest house to include on site management. In light of this, there is potential for the building as existing to be let without on site management present. As the proposed capacity would remain unchanged the main difference between the existing and proposed uses would be the way the accommodation would be let, from individual rooms to a single unit.
8. As detailed above there would be potential for all of the rooms within a guesthouse to be booked by a large group of people rather than as individuals. However, this would be less likely than if the use of the property allowed for it to be rented as a whole on all occasions. Large groups staying in the property together would be more likely to socialise as a group and the nature of how and when this socialisation occurs is difficult to manage. While some groups may be quiet and socialise at a reasonable time, others may be louder and socialise late in the evening or early hours of the morning.
 9. There is no information before me to demonstrate that the turnover of guests between the existing and proposed use would not be similar. However, guest turnover does not have a material impact on the operational differences between each type of use.
 10. Keswick Town Council object to the development on the grounds that large holiday lets are more likely to result in incidents of anti-social behaviour contrary to Policy 06 of the LP. They supported their objection by evidence in the form of a collection of letters from local residents detailing the harmful impact that large holiday lets have on their living conditions due to anti-social behaviour. The supporting letters also state that management plans and agencies running neighbouring holiday lets are reactive and ineffective in resolving the issues arising from anti-social behaviour.
 11. The submitted Premises Management Plan includes a number of measures to manage noise, including individuals living nearby that would act as emergency contacts. However, based on the evidence before me, the measures listed would be reactive or difficult to enforce. Further, any conditions requiring compliance with a Management Plan would also be difficult to enforce in planning terms and not precise enough to meet the tests set out in the Planning Practice Guidance. As such, there is no effective mechanism before me to ensure that the use of the building as a large holiday let would not have a harmful effect on the living conditions of neighbouring occupants. The past use of 21 and 25 Eskin Street as guesthouses does not affect my assessment in this regard.
 12. For the reasons detailed above the proposed change of use would have a harmful effect on the living conditions of the occupants of 21 and 25 Eskin Street in regard to noise and disturbance. Therefore, the development is contrary to Policy 06 of the LP, which requires that development must not have an unacceptable impact on the amenity of adjoining residents due to noise or other adverse impacts.

Other Matters

13. The Council has raised no material concerns with regard to other amenity standards including overlooking, loss of light, overbearing, the principle of the proposal, impact on parking, impact on the River Derwent and Bassenthwaite Lake SAC and flood risk. As the proposal would involve minimal external works and there would be no change to the guest capacity of the property, I find no reason to

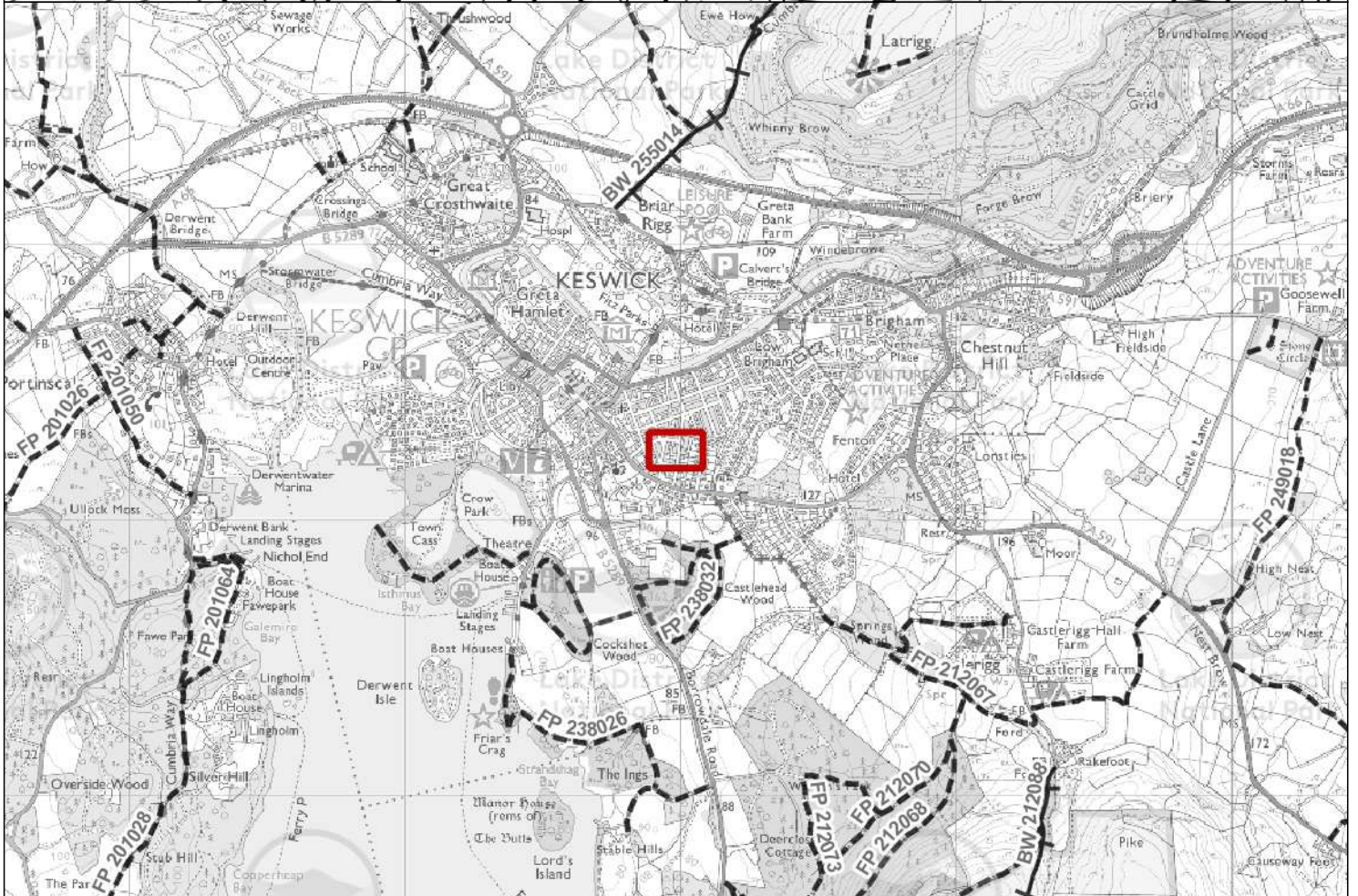
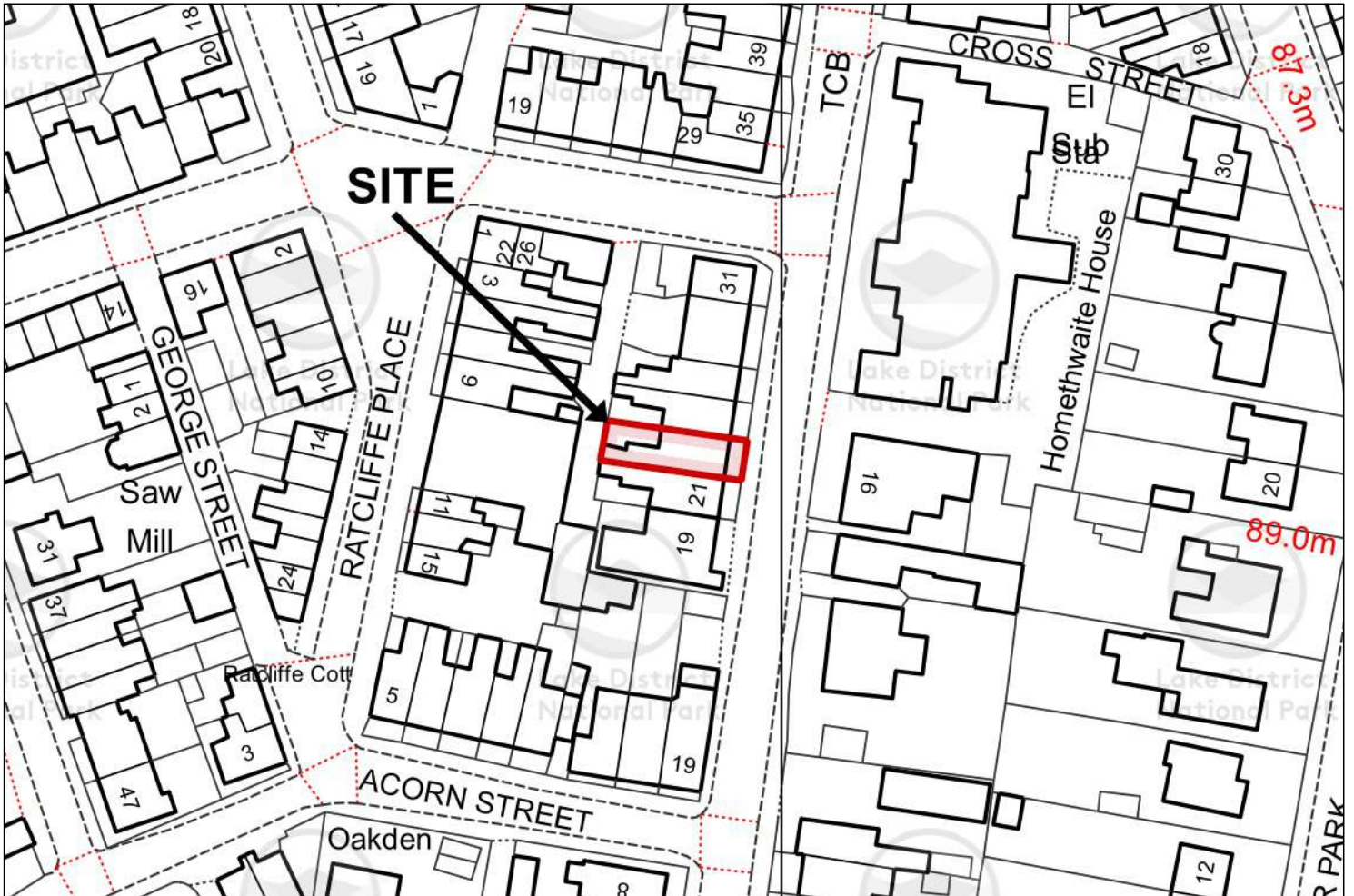
disagree with the Council. However, an absence of harm in these respects are neutral factors weighing neither for nor against the proposed change of use.

Conclusion

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

C Livingstone

INSPECTOR



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Appeal Decision

Site visit made on 25 February 2025

by **F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 28th February 2025

Appeal Ref: APP/Q9495/Y/24/3349994

Shelley Cottage, Chestnut Hill, Keswick, Cumbria CA12 4LS

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
- The appeal is made by Mr Steven Jackson against the decision of the Lake District National Park Authority.
- The application Ref is 7/2024/2002.
- The works are described as 'replace 1 window on lower hallway.1 sash. 960mm x 1150mm. Replica of original in all ways other than bottom glass pane can be removed in emergency as fire exit. Plus double glazed. Needed to fit urgently due to health and safety concerns of renting guests - so did so without realising it needed permissions.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states that the works were started and completed in May 2023. I have determined the appeal on this basis, having regard to the submitted photos of the window as installed and my observations on site.
3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024 after the National Park Authority (the NPA) issued its decision. I have had regard to the revised Framework in my determination of the appeal.
4. As part of the appeal, the appellant states that they can remove the trickle vent 'if required'. Having regard to guidance¹ and caselaw² concerning amendments in the appeal process, I have determined the appeal on the basis of the 'works' considered and consulted upon by the NPA, which includes the trickle vent.

Main Issue

5. The main issue is whether the works preserve the Grade II listed building or any features of special architectural or historic interest which it possesses.

Reasons

Special interest and significance

6. Shelley Cottage forms part of the Grade II listed building, 'Chestnut Hill House Shelley Cottage with Adjoining Stables and Coach House to North'³. It dates from

¹ Procedural Guide: Planning Appeals – England. Dated September 2024. Section 16, Paragraph 16.1.

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the 'Wheatcroft principles' set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982).

³ National Heritage List Entry Number: 1144692.

the 18th century and is constructed of roughcast render over stone with a slate roof in a long irregular plan.

7. From the evidence before me, the special interest and significance of the listed building are mainly derived from its architectural and historic interests in illustrating a group of modest vernacular structures with literary connections. Important contributors in these respects, are its use of traditional methods of construction and materials; surviving historic fabric; modest but pleasing vernacular form and style, including key features and detailing; and association with the poet Shelley⁴.
8. Pertinent to the appeal, fenestration is a key feature of the building, with its '12-paned sash windows' cited in the listed building description. From what I was able to see on my site visit, the majority of the windows within the listed building are of some age, and comprise single-glazed, multi-paned (mainly six over six with horns), painted timber, vertical sliding sash units. The windows' traditional form, materials and appearance contribute to the building's heritage merit in a positive and meaningful way.
9. No drawings and/or images of the previous window have been submitted by either party. That said, the appellant has not advanced that the previous window was modern, and the submitted evidence refers to it being a single-glazed, multi-paned (eight over eight), wooden, white, sash unit. On this basis, and with no evidence to the contrary, it is reasonable to conclude that it was a historic window, by virtue of which also contributed to the building's special interest and significance.

Works and effects

10. Paragraph 212 of the Framework sets out, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 213 goes on to state that, significance can be harmed or lost through alteration or destruction of the heritage asset or from development within its setting and that this should have clear and convincing justification.
11. The works comprised the removal of the previous window and its replacement with a double-glazed, multi-paned (eight over eight with trickle vent), white composite wood grain, sash unit, which includes a mechanism that allows the bottom window pane to be removed to permit egress in the event of an emergency.
12. On the basis of the information before me, it is highly likely that the works have resulted in the harmful loss of historic fabric. Whilst the appellant highlights that the previous window would not stay open and that it was too small to allow occupants to escape, no substantive evidence has been provided in these regards to justify its loss.
13. I have no reason to doubt the appellant's comments that the dimensions of the opening, the glazing pattern and the sash form of the replacement unit are the same as the previous window. Moreover, the lack of detail before me regarding the previous and existing unit, means I am unable to consider the differences, if any, in the dimensions and profiles of the box frame, sashes and glazing bars.
14. Nonetheless, it remains that there are aspects of the replacement unit which result in it appearing discordant and out of keeping with the traditional form and materials

⁴ Said to be where he spent his honeymoon.

of the building's historic fenestration. These include the smooth, shiny, appearance of the mainly synthetic composite timber, which does not satisfactorily capture the character of painted natural wood; the conspicuous wide white spacer strip between the two panes of glass; and the overtly modern trickle vent. In these respects the window as installed weakens the authenticity and integrity of the listed building.

15. I am aware that the window is 'subterranean' and cannot be readily seen from the adjacent public highway. Nevertheless, listed buildings are safeguarded for their inherent architectural and historic interests irrespective of whether or not close public views of the building can be gained.
16. Consequently, I find that the works fail to preserve the Grade II listed building or any features of special architectural or historic interest which it possesses, and harm the significance of this designated heritage asset.

Public benefits and heritage balance

17. In finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Given the nature and extent of the works, I find the harm to the significance of the listed building is 'less than substantial' and at the lower end of that scale. However, this should not be equated with a less than substantial planning objection and is of considerable importance and weight. Paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes securing the optimum viable use of the building.
18. It is reasonable to conclude that the installation of the window generated modest economic benefits in its manufacture and installation, and delivers minor environmental benefits in an improvement in the property's energy efficiency. Additionally, as highlighted by the appellant, the window generates social benefits in providing an emergency escape route from this floor by occupants renting the property as a holiday let. These outcomes are of a nature to be of benefit to the public at large and weigh in favour of the appeal.
19. However, from the limited information before me, I am not persuaded that the only way of securing such public benefits, particularly those relating to health and safety, is by means of the specific window as installed. Moreover, whilst I acknowledge the need for a safe exit route in the event of an emergency, there is no substantive evidence before me which demonstrates that the particular window as installed is necessary to secure the ongoing holiday-let use of this part of the listed building. In these respects, clear and convincing justification for the harm to the listed building's significance arising from the window as installed has not been provided.
20. On balance, in giving considerable importance and weight to the harm to the significance of the designated heritage asset, I find that this is not outweighed by the public benefits generated by the works.
21. Accordingly, I conclude that the works do not preserve the Grade II listed building or any features of special architectural or historic interest which it possesses. As such, they conflict with the statutory presumption set out in section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act); and the provisions within the Framework which seek to conserve and enhance the historic environment.

22. Listed building appeals are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004. Additionally, section 16(2) of the Act does not require the decision maker to have regard to the development plan when determining applications and appeals for listed building consent. Nonetheless, I note that the works also do not accord with Policy 07 of the Lake District National Park Local Plan 2020-2035 (adopted May 2021) which seeks to conserve and enhance the significance of heritage assets.

Other Matters

23. The replacement window is largely comparable in form and appearance to adjacent windows in an adjoining property, which also forms part of the listed building. However, no evidence has been submitted which confirms that the adjacent windows benefit from listed building consent. Even if this is the case, the details and circumstances of any consent are not before me, and I cannot be certain that they are directly comparable to this appeal.

24. No evidence has been provided which demonstrates that the type of emergency escape window as installed is only available in composite/ wood effect material; or that composite/ wood effect windows have been accepted and installed in other listed buildings in Keswick.

25. Keswick Town Council agreed its 'support' to the works. However, this is a neutral consideration and weighs neither for nor against the appeal.

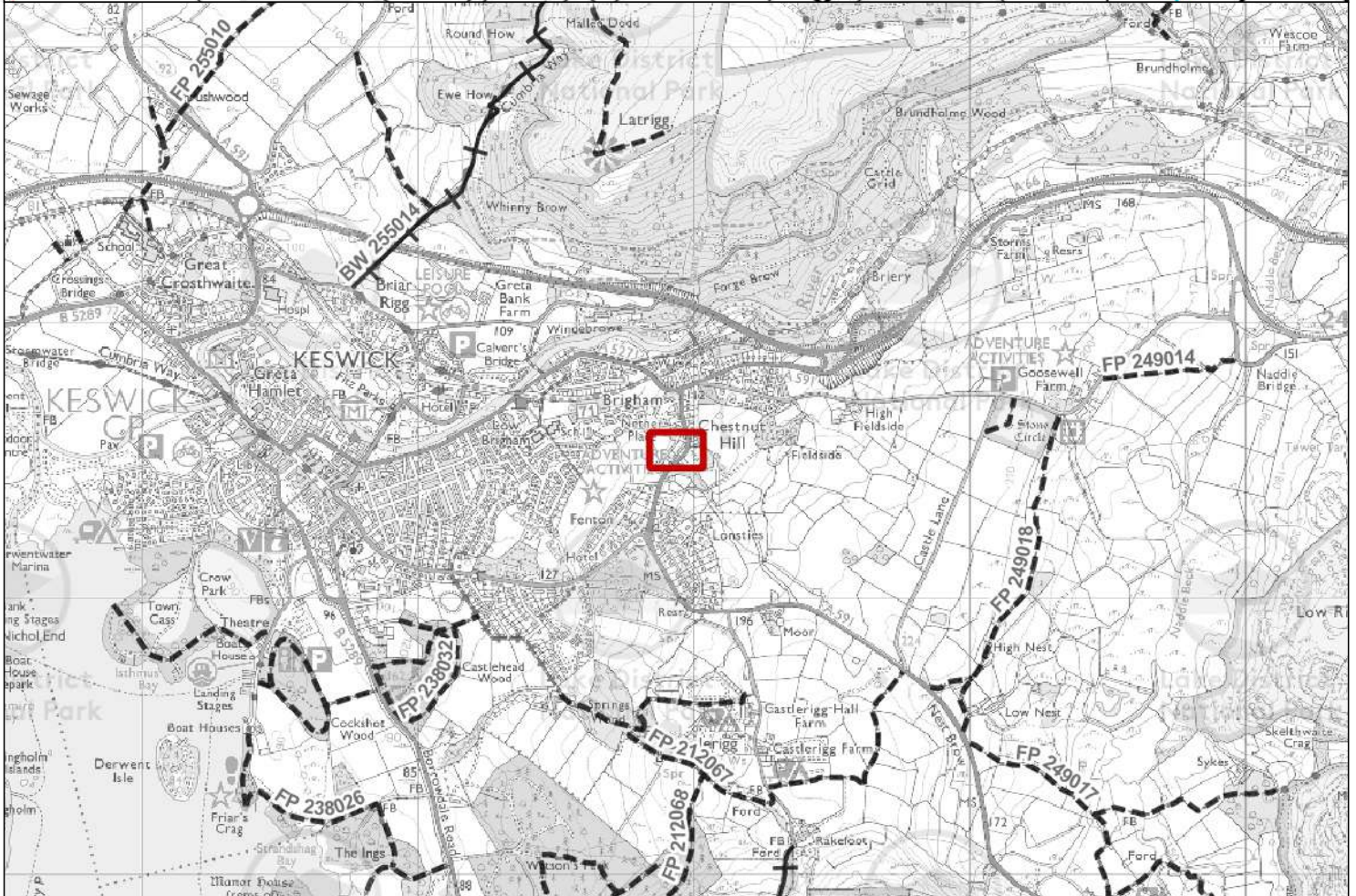
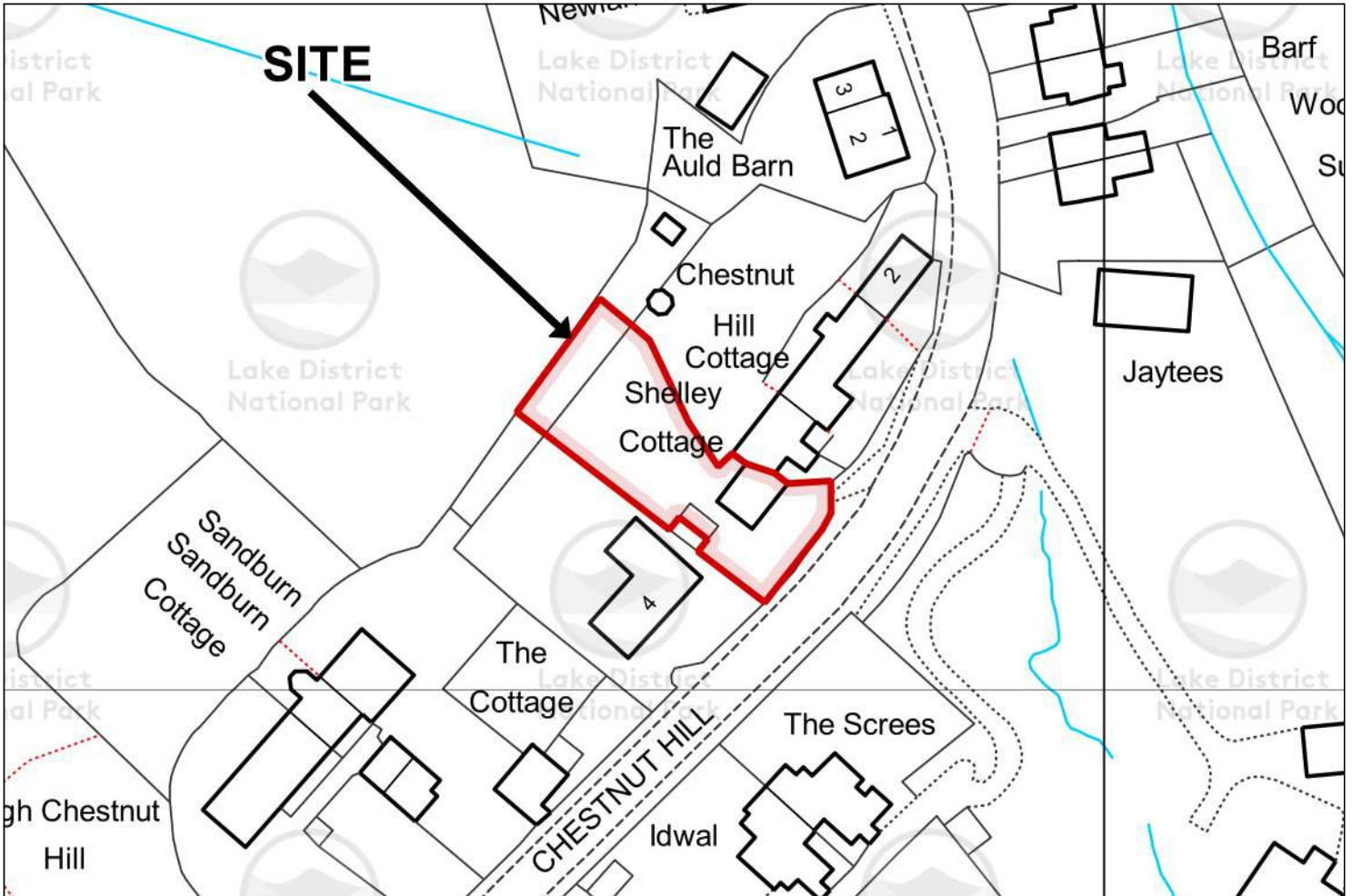
26. None of the other matters raised alter my conclusion on the main issue.

Conclusion

27. For the reasons given above, the appeal should be dismissed.

F Cullen

INSPECTOR



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Appeal Decision

Site visit made on 14 January 2025

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

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2025

Appeal Ref: APP/Q9495/D/24/3354152

Coach House, Uldale Village, Cumbria, Uldale CA7 1HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ian Follett against the decision of Lake District National Park Authority.
 - The application Ref is 7/2024/2139.
 - The development proposed is erection of two storey timber porch.
-

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.

Main Issue

3. The main issue is the impact of the development on the character and appearance of the host property and surrounding area.

Reasons

Character and appearance

4. Based on the evidence before me the appeal property was originally constructed as a barn adjacent to the Old Rectory, a large, detached dwelling. A number of conversions and developments over time have resulted in several properties forming a group arrangement, centred around a courtyard to the side of the Old Rectory. The Coach House is of a simple and attractive design and is constructed from limestone with a slate roof that reflects the lake Districts vernacular architecture. Based on the evidence before me it is understood that the principal elevation was altered in order to allow for the conversion of the building to a dwellinghouse. Following the initial conversion the property was extended to the side and this extension was finished in timber cladding.
5. The appeal is for the erection of a large two storey porch extension on the principal elevation. The pitch of the porch roof would reflect a central pitched section in the main roof of the building and the proposed external materials include timber cladding and a slate roof to match the existing dwelling.

6. Timber clad porches of the scale proposed are not a design feature present in the group that the appeal property forms part of and based on the evidence before me, are not typical within the wider area. Further, the Coach House is quite modest in terms of its scale and mass and due to its height and overall size the extension would dominate the principal elevation of the building. It is acknowledged that timber cladding is present on an existing side extension. However, the use of timber cladding to the extent proposed would detract from the traditional limestone walls of the main building. In light of these factors the development would result in a dominant and incongruous addition that would fail to respect the character and appearance of the Coach House and the surrounding area.
7. The position of the appeal property in relation to other buildings in the group, would allow for only restricted views of the development from the road. However, the Coach House and its neighbours front on to a small courtyard where the large porch would be highly visible to occupants of these neighbouring properties and their visitors. Further, the harm identified in regard to character and appearance is not lessened by previous alterations to the principal elevation, or an absence of heritage assets.
8. Several photographs were provided of buildings showing projecting sections that were higher than single storey. In the examples provided the projections were constructed from stone matching the main body of the building and appeared original. Further, none of the examples clearly show the projecting sections coming from the front elevation. As such, they do not demonstrate that a timber two storey front porch is a design element that is typical of the rural vernacular.
9. For the reasons detailed above the proposed development would have a harmful impact on the character and appearance of the host property and surrounding area. Therefore, it would be contrary to Policies 02 and 06 of the Living Lakes Your Local Plan Lake District National Park Local Plan 2020-2035 and the guidance on residential extensions provided within the Lake District Design Code The Code 2023 (LP).

Other Matters

10. My attention has been drawn to a planning approval ref. 7/2014/2038 that was granted in 2014 for the replacement of a traditional dwelling in the National Park with a dwelling of a contemporary design that utilised external timber cladding. However, this development was for the replacement rather than the extension of a dwelling and was not assessed under the current development plan.
11. The Old Rectory that forms part of the group that the appeal property is part of has a side extension that is visible from the road and is finished in render. It is acknowledged that render, as an external material, is not typical within the existing group of buildings. However, the extension is lower and subservient to the principal elevation, which remained clearly legible and unaltered. As such the circumstances that apply to the appeal before me are different.
12. The Council has raised no concerns regarding the impact of the proposal on residential amenity, access or trees. Based on the evidence before me I have no reason to disagree with the Council's assessment. However, an absence of harm in these respects are neutral factors weighing neither for nor against the proposal.

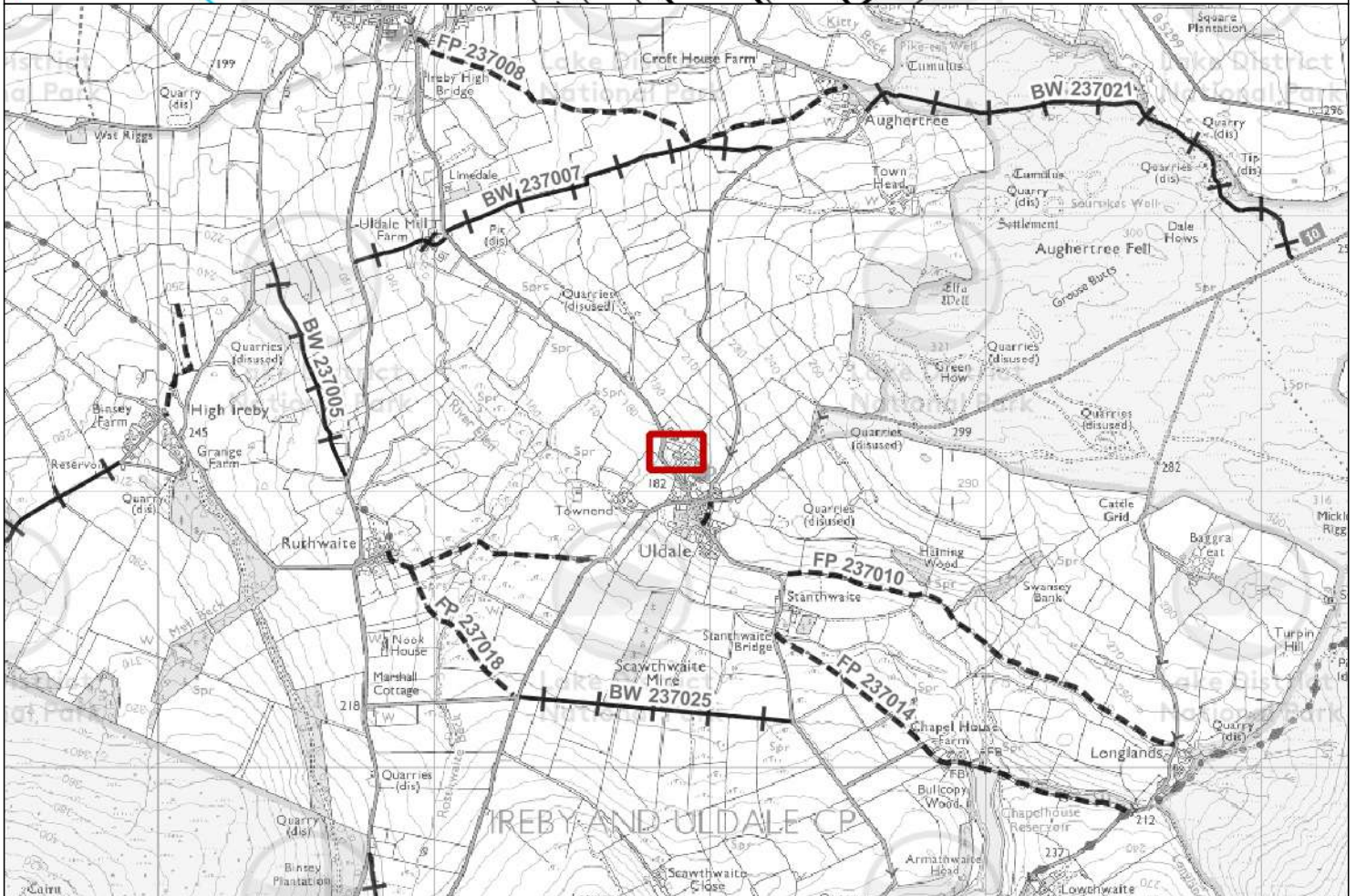
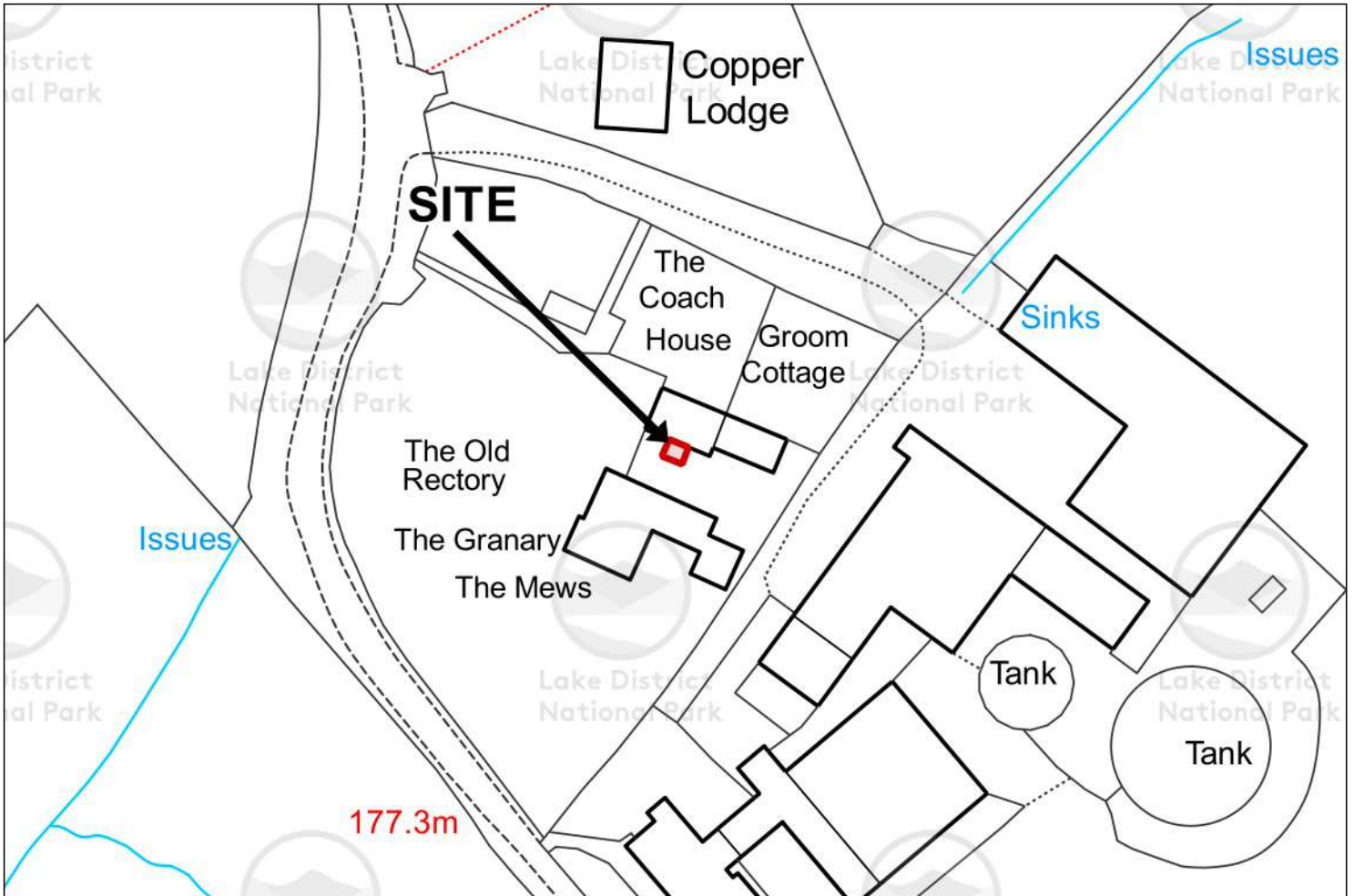
13. The appellant asserts that the proposed scheme would maximise the use of the site and it would also improve their living conditions. In so doing, the proposal would support some of the aims of the NPPF. There would also be associated economic benefits during construction. However, due to the scale of the development, these benefits would be limited.
14. The proposed development would comply with some policies in the development plan. However, in light of the harm identified above the scheme would be in conflict with Policies 02 and 06 of the LP, and therefore would be in conflict with the development plan as a whole. The benefits outlined above would not be outweighed by the harm I have identified.

Conclusion

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

C Livingstone

INSPECTOR



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Appeal Decision

Site visit made on 18 February 2025

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 4 March 2025

Appeal Ref: APP/Q9495/W/24/3354802

1 Oakland Carriage Drive, Windermere, LA23 1SA

- 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 A Hammond against the decision of Lake District National Park Authority.
 - The application Ref is 7/2024/5156.
 - The development proposed is the demolition of existing garage and lean-to and the erection of a two-storey detached dwelling and garages.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on the Lake District National Park (LDNP), Oakland as a non-designated heritage asset and the Windermere Conservation Area (WCA).

Reasons

3. This appeal scheme proposes to demolish an existing 20th Century garage in the south-east corner of Oakland's grounds and construct a two-storey dwelling with detached garages.
4. Oakland is a subdivided 19th Century villa located in the WCA. The duty under 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
5. According to the Authority, Oakland was designed in the Gothic style by Manchester based architect J. S. Crowther and is identified as a building of special interest in the WCA Appraisal and recorded in the Lake District Historic Environment Record. It is therefore a non-designated heritage asset in its own right.
6. Paragraph 216 of the National Planning Policy Framework (the Framework) states that *"the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset"*.

7. The appeal site is also within the LDNP (a UNESCO World Heritage Site (WHS)) where there is a statutory requirement for decision makers to “*seek to further*” the statutory purposes of National Parks. These are:
 - conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas designated, and
 - promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.
8. These requirements are reflected in paragraph 189 of the Framework which states “*Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks*”.
9. At the local level, Policies 01, 02, 05, 06 and 07 of the Lake District National Park Local Plan 2020-2035 (the LP) seek among other things to ensure that development reinforces the importance of local character and protects or enhances heritage assets and the Special Qualities and attributes of Outstanding Universal Value of the LDNP.
10. According to the Authority, the landscaped grounds were designed by Thomas Mawson, a renowned landscape architect noted within the WHS nomination document for his work throughout the LDNP and further abroad. I concur with the Authority that the grounds were designed to complement Oakland and the wider landscape in the Orrest Head area of Windermere.
11. When I visited the site, I was able to see first-hand the contribution the landscaped grounds make to the significance and appreciation of Oakland and in turn the WCA and LDNP. In my view, the area to the south of the house is largely unspoilt. The manicured lawn, distinctive sloping topography and mature rhododendron bushes are all distinctive and positive elements in the landscape which augment the natural beauty of the LDNP. These attributes help to frame the picture postcard views of Oakland which on days when the striking topography of the distant Lakeland fells are visible, are of the very highest order.
12. The erection of a two-storey dwelling and to a lesser extent the garages would harm both the character and appearance of the appeal site and the landscape setting of Oakland. This would conflict harmfully with one of the Outstanding Universal Values (Theme 2) ‘*A landscape which has inspired artistic and literary movements and generated ideas about landscapes that have had global influence and left their physical mark*’. This specifically references ‘*villa landscapes – their buildings, gardens and surrounding designed landscapes*’ and ‘*physical designed landscapes*’. Further detail is provided in the WHS nomination document which states “*All villas are responses to the available views, favouring lakes and distant mountains in their outlook, and seeking a moderately elevated site to secure them. Most were approached by a carriage drive and formed the centrepiece of a small estate comprising a mixture of garden and woodland*”.
13. I acknowledge that there has been some dilution of Oakland’s and the WCA’s significance through the unsympathetic sub-division of the grounds on the north-western side of the house as well as the erection of dwellings on the opposite side of Carriage Drive. I do not know the full details of these developments, but it appears that these areas were not as sensitive in landscape and visual terms. The Authority also points out that application ref: 7/2015/5507 pre-dated the WHS

designation and the associated recognition of villas as attributes of Outstanding Universal Value. In any event, it would be wrong for the existence of other unsympathetic schemes within the WCA or grounds of Oakland to set a precedent for further harmful development.

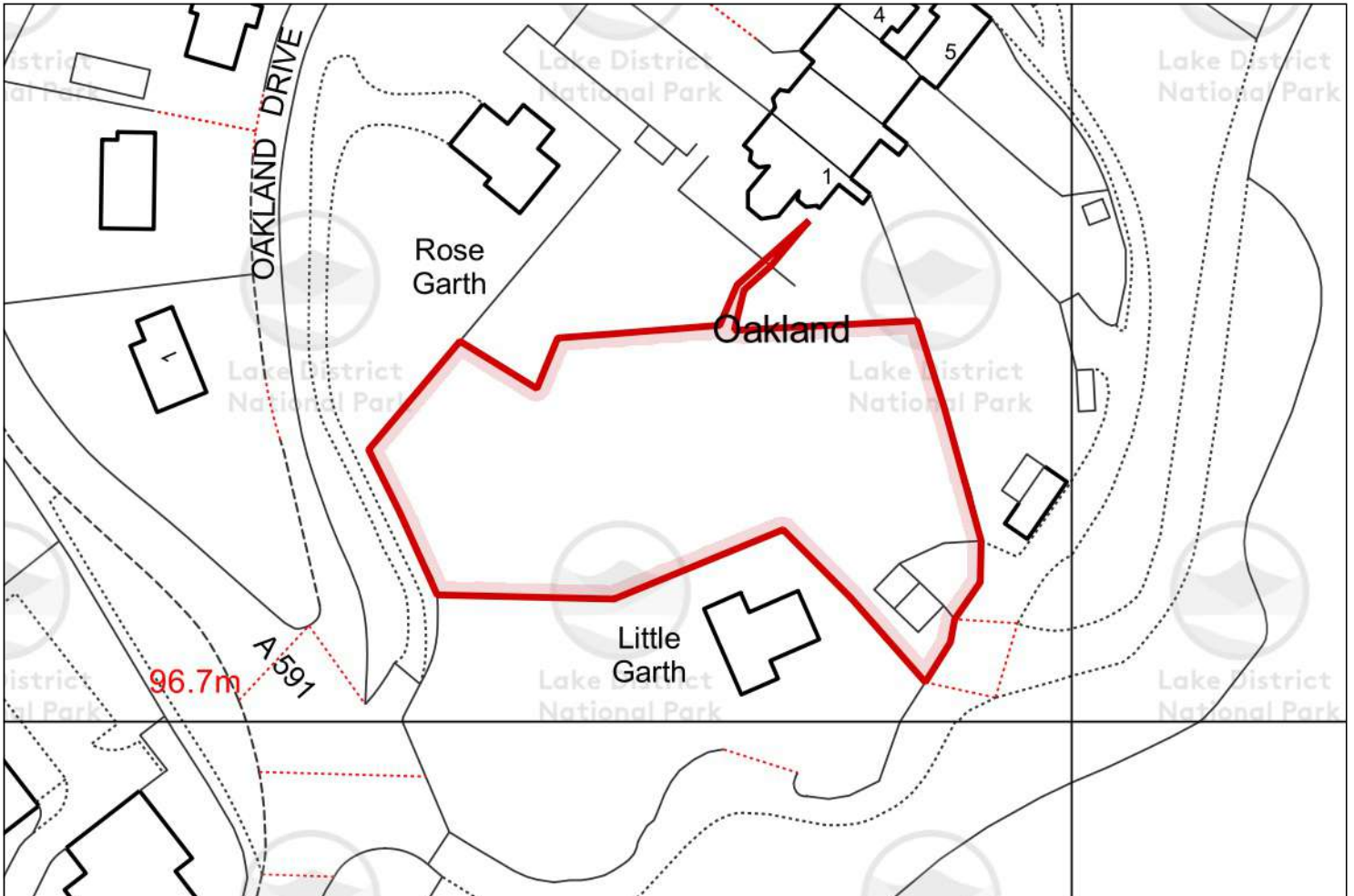
14. There can be little doubt that views of the house and grounds from Carriage Drive would be significantly and irrevocably compromised by the encroachment of new built development into this highly sensitive area. This would also rob Oakland of valuable breathing space and degrade the historic settlement pattern of this part of Windermere which the Authority explains can be traced to the introduction of the railway in the mid-19th Century which acted as a catalyst for the construction of large villas on the slopes of Orrest Head. The harm, to the settlement pattern would conflict with one of the special qualities of the LDNP which is '*Distinctive buildings and settlement character*' which specifically mentions '*distinctive spatial and townscape character*' being influenced by the settlement's history and development.
15. While I disagree with the Authority that the detailed design of the proposed dwelling would be inappropriate, this does not overcome the harm I have identified to the designed landscape setting of Oakland, the settlement pattern of the WCA nor the relevant Outstanding Universal Values of the WHS. Bearing in mind the great weight that must be afforded to conserving and enhancing landscape and scenic beauty in National Parks, the limited public benefits of the scheme which include the provision of a three-bedroom dwelling in accordance with LP Policy 15, would not outweigh the aforementioned harm.
16. I therefore conclude the development would fail to conserve or enhance the historic environment and the Special Qualities of the LDNP. It would accordingly conflict with LP Policies 01, 02, 05, 06 and 07 as well as the relevant parts of the Framework.

Conclusion

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

D M Young

INSPECTOR



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 Overview: 1:25,000

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