Planning Inspectorate

Appeal Decision

Site visit made on 15 May 2026

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2026

Appeal Ref: APP/Q9495/X/25/3364720
The Filter House, Hayeswater Gill Valley, Hartsop, CA11 0NZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development ("LDC").
- The appeal is made by Mr Mike Brett against the decision of Lake District National Park Authority.
- The application reference 7/2024/3132, dated 22 November 2024, was refused by notice dated 21 January 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended)("the TCPA").
- The use for which a certificate of lawful use or development is sought is use of Filter House, as a dwelling in the form of a holiday home.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Authority's decision to refuse to grant the LDC was well-founded.

3. The appellant bought the Filter House in early 2020 and states that it has been used as a holiday home since around 2008/2009. The building dates from around the 1920s and sits within the wider appeal site. As the LDC application is for the change in use of a building to use as a single dwellinghouse, and the date of the breach was before 25 April 2024, no enforcement action may be taken after the end of a period of four years beginning on the date of the breach[1]. I am not aware that an enforcement notice has been issued in relation to the site.

4. In order to succeed in this appeal, the appellant must show on the balance of probability that the building and appeal land have been used as a dwelling in the form as a holiday home for a continuous and uninterrupted period of at least 4 years prior to the date of the LDC application (i.e. four years prior to 22 November 2024). The words "dwelling" and "dwellinghouse" are interchangeable.

5. The Authority's reason for refusing the LDC is that the evidence suggest that the use of the building was very limited, and that it lacks the facilities for day to day living. They state that the appellant had failed to provide sufficiently precise and unambiguous evidence to demonstrate that a material change of use of the building and its curtilage to a dwelling had occurred and accrued lawfulness.

[1] Section 171B (2), TCPA

Facts

6. It is not disputed that the original use of the building for which it was constructed was as a waterworks building used in connection with the Hayeswater Reservoir. This use ended in around 2025 and it was sold to the previous owner in 2009.

7. The appellant states that he is aware from the previous owner that between 2008 and 2010 the building was installed with new windows, electrical rewiring and new lighting, a water bore hole and sink and shower, and a kitchen area with aga for cooking and heating.

8. The building is waterproof and fully secure with fitted double-glazed windows and doors, has electricity and broadband and has water including for drinking, drainage and a sewage system. It contains kitchen facilities including oven, fridge and sink with several stand-alone kitchen units in the main building. There is no information before me to show that the building is fully heated insulated. The shower room and toilet is in a small side extension and the rest of the building is one large space with no partitions or subdivision.

9. The appellant's case is that he has occupied the building as a holiday home since he purchased the property. He states that he (and his family and guests) originally slept in a tent which was pitched inside the building, and that now sleep in the two touring caravans which are now stationed inside it as "bedrooms" (and which were present during the site visit).

Reasons

10. It is not disputed that a dwellinghouse for the purposes of use class C3 may include holiday homes. However, the first question to be considered in this appeal is whether the appeal building is a dwellinghouse.

11. The distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.[2] Caselaw further tells us that both the physical state of a building and the actual, intended or attempted use of it are important, but neither is decisive. These matters have to be looked at in the round.[3]

12. Whilst it is evident that the building has many of the amenities and facilities associated with a dwellinghouse use it is not, as a matter of fact and degree, a dwellinghouse. The fact that the tent and caravans have been required, even if used alongside the cooking facilities and shower room, indicates that not all of the facilities for private day to day living are afforded as part of the building. People staying on the site are camping, and even if it would be possible to sleep without the caravan or tent during the summer months, the appellant has not argued that this could be done throughout the year. If it were possible then there would be no need for the caravans to have been taken to the site.

13. Indeed the case of Backer v SSE& Camden LBC [1983] JPL 167 draws the distinction between a residential use and use as a dwellinghouse. The Deputy Judge in that case quotes from the much earlier case of Macmillan and Co. Ltd v Rees (1946) 1 All ER 675 which dates from just after the Second World War: "*It is, no doubt true that the acts of sleeping upon premises at night and having meals*

[2] Gravesham BC v SSE & O'Brien [1983]
[3] Impey v SSE & Lake District SPB [1981] JPL 363

upon them by day are acts which may be described as 'residential' in character. But the use of premises as a dwelling-house is by no means necessarily confined to their use by the tenant for sleeping and eating. The experience of great numbers of Englishmen during the last six years provides many instances of sleeping and eating upon premises which could by no fair use of language on that account be described as dwelling-houses. In other words, to sleep in a particular premises at night, or to have one's meals upon them by day, or both, ought not ipso facto to have the effect in law of making those premises a dwellinghouse…"

14. There may have been a residential use of the appeal site but the physical characteristics of the building, and description of its actual use (including sleeping in a caravan or tent) taken together do not show on balance that the building is a dwelling, and the appeal does not therefore succeed. The building has been used to support the camping that has taken place on the site, and not as a single dwellinghouse. This is irrespective of whether the use has been for holiday purposes only, or whether it took place for a sufficiently continuous and uninterrupted period. In any event, the time limit for enforcement in relation to a material change of use of land to residential is 10 years .[4]

Conclusion

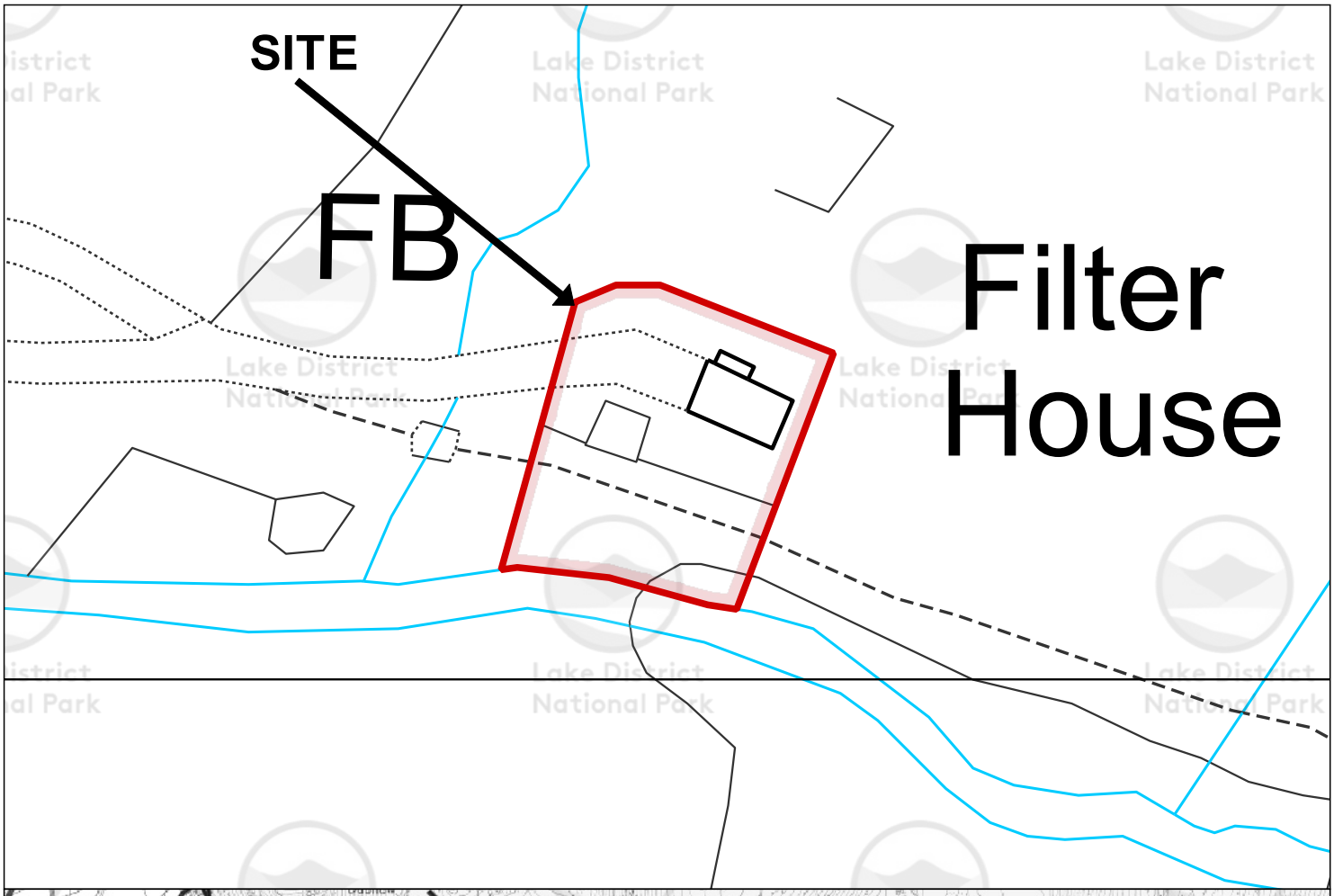
15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of the Filter House as a dwelling in the form of a holiday home is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

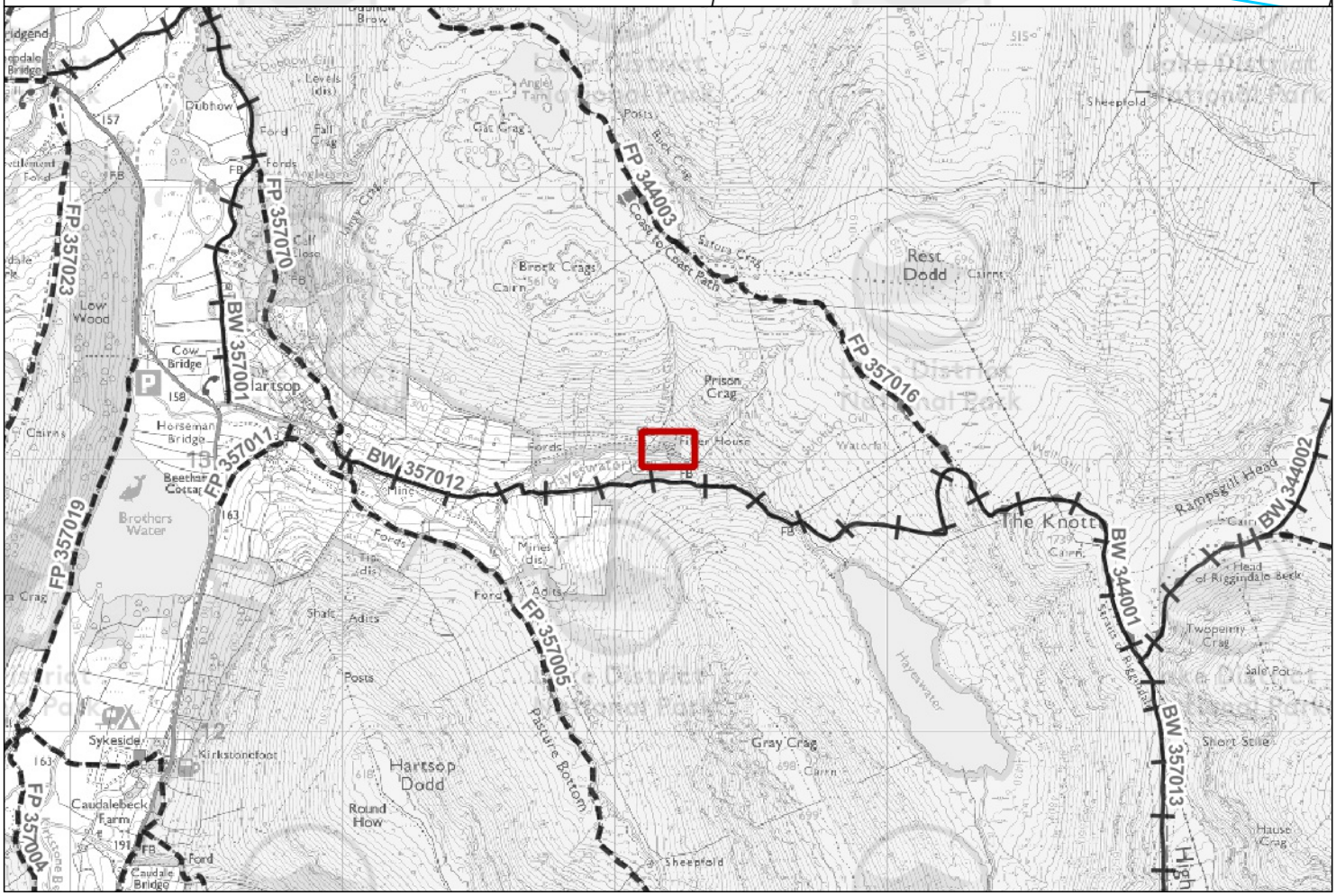
Zoë Franks

INSPECTOR

[4] Section 171B (3), TCPA

Planning Application Site Plan: 7/2024/3132





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

Date Authored: 17/06/2026

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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 20 April 2026

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2026

Appeal Ref: APP/Q9495/W/26/3377585
Land at Rosgill, Shap CA10 2QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
- The appeal is made by Mr Barry Young against the decision of Lake District National Park Authority.
- The application Ref is 7/2025/3055.
- The development proposed is the change of use of the land from agricultural to the keeping of horses with associated operational development consisting of two stables (retrospective).

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the land from agricultural to the keeping of horses with associated operational development consisting of two stables (retrospective) on land at Rosgill, Shap CA10 2QX in accordance with the terms of the application, Ref 7/2025/3055, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The works as described above has already taken place onsite. The appeal has therefore been assessed on a retrospective basis.

3. Additional information relating to animal welfare and letters in support of the development has been submitted with the appeal. Such information does not alter the scheme as submitted and the Council has also had the opportunity to comment on this. My acceptance of this information is not therefore considered to be prejudicial to any interested party, and I have taken this into account in reaching my decision.

Main Issues

4. The main issues are:

   - Whether the location is suitable for the development having regard to the development plan policies governing such proposals; and
   - The effect of the development on the character and appearance of the area, including whether it preserves the setting of the Grade II listed building, Limekiln.

Reasons

Location

5. The appeal site relates to an agricultural field to the southeast of Rosgill, on the western side of the main road (C3043) from Shap to Bampton. The surrounding landscape comprises agricultural fields which are predominantly open with scattered trees throughout the landscape. Boundaries are formed by either hedgerows or traditional stone walls. The appeal site itself is bound by stone walls.

6. The development seeks planning permission for the change of use of the land from agricultural to the keeping of horses with associated operational development consisting of two stables. The stables measure 9.14 meters x 5.78 metres and 5.48 metres x 3.65 metres. Both have a height of 2.7 metres and are finished in timber cladding with metal profiled roofing. A hardcore hardstanding area has also been formed between the two buildings and new timber fencing erected.

7. Policy 02 of the Lake District National Park Local Plan 2020 – 2035, 2021 (LP) relates to the spatial strategy and states that development within the open countryside will only be supported where the application demonstrates: an essential need for a rural location; or the location is necessary for the provision of public utilities and infrastructure; or that it helps to sustain an existing business; or it is necessary for and designed to support agricultural or forestry use; or an appropriate extension, or reuse of an existing building. It also supports development that amongst other matters, contributes towards meeting the needs of the local community, or brings benefit to the local community or delivers a prosperous economy.

8. Policy 25 of the LP relates specifically to development for the keeping of animals on a non-commercial basis. It states that development of facilities related to the keeping of animals which are kept on a non-commercial basis will only be supported where: it reuses an existing building; or it is well related to existing buildings and structures, and they satisfactorily relate to existing vehicular access and bridleways. It goes on to explain that where this is not practical or appropriate, exceptionally, the authority will only permit buildings in open countryside locations where they are demonstrably necessary for, and designed for, welfare reasons.

9. It is reasonable to consider that the stable buildings require a rural location, and the appellant has confirmed that they have no other land in their ownership/control which could be utilised for such purposes. I have no compelling evidence to the contrary nor reason to question this. The appellant has also confirmed that the development is necessary for animal welfare, and I have had due regard to the evidence provided from the professional farrier and veterinary surgeon who provide care for the appellant's horses. Such evidence provides information about why certain horses or certain animals are able to be permanently outside and why others, such as the horses in this case, require shelter for certain times and portions of the year. The evidence before me confirms that the facilities are essential for welfare and safety reasons and again, I have no reason to disagree with this.

10. The fields in which the stables are situated have been used for grazing purposes for several years and the appellant has confirmed that the fields have been rented out to various members/families of the local community for grazing purposes including horses which is said to continue and the appellant explains that some of which has been free of charge. So, they have and still are benefitting members of the local community. The letters of support received from the Parish Council and residents also confirms that the stables bring benefit to the local community.

11. Whilst non determinative, I am aware that the appellant owns a small local business that contributes to the economy by purchasing materials from several local suppliers and provides two full time jobs to Shap residents. The appellant claims that should the appeal be unsuccessful they fear all this would end as their family would be forced to move away from the area.

12. Based on the above, I find that the development whilst small scale does bring benefit to the local community and would not be at odds with the required tests of the LP as set out above with matters relating to character and appearance covered below.

13. On this basis, I consider the open countryside location to be acceptable in compliance with Policy 02 of the LP. The buildings are necessary for welfare reasons and as such, complies with the tests set out in Policy 25.

Character and appearance

14. The appeal site has a very rural appearance with features such as trees, hedging, open fields and traditional stone walls contributing positively to the character and appearance of the site and wider area. At my site visit, I observed examples of agricultural type of buildings in the area integrated within surrounding fields.

15. The western part of the field and part of the adjoining field are covered by Historic Environment Record number 14134 – Quarry. The Limekiln adjoining this in the field to the north is Grade II listed. I have a duty under Section S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have also had regard to paragraph 212 of the National Planning Policy Framework (the Framework) which states that 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

16. The appeal site is within an area of exceptionally high landscape value given its location in a National Park and a World Heritage Site. The highest level of protection is given to the spectacular landscape of the National Park by development plan policies. The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks which have the highest status of protection. Development plan policies protect the Lake District National Park and landscape by promoting a character-based approach to conserve and enhance its uniqueness and diversity.

17. Within the Landscape Character Assessment Supplementary Planning Document (SPD), the site lies within Area of Distinctive Character 27 (Lowther Valley) with distinctive characteristics including 'green grassland', 'pastoral farmland', 'strongly rural and somewhat isolated character', 'predominantly a tranquil landscape and a perceived openness and naturalness of the landscape'.

18. When approaching the site from the north along the main road, only the top of the roof is visible over the boundary wall, and the buildings can only be seen from short distance views given the slight bend in the road further north and the trees at this point which obscure views. The buildings at this point are barely perceptible

and the choice of materials means that it blends into the landscape rather well including the nearby stone walls. It is also seen against the backdrop of a larger building which sits in the background (further south) which is understood to have been the subject of a recent approval for a livestock building[1]. That building sits at a higher level in the landscape and is of a larger size which I found to be more noticeable than the appeal site buildings.

19. The buildings and fencing are more apparent when approaching the site from the south. However, the general size and scale of the buildings are considered modest and not excessive or dominant in this setting. As referred to earlier, the materials chosen also allows the buildings to sit comfortably within the landscape and do not unacceptably draw the eye. The fencing is a creosoted timber rail bar fence covering a relatively small area which I do not find harmful in this rural setting.

20. On approaching the site from the south, the development is also seen against the backdrop of built form located further north. The buildings are related to a horse stabling use and are consistent with other agricultural/stable buildings often found within a rural countryside location. The size, scale, siting and design of the development is typical of its type and is proportionate to the small-scale operations of the site. It does not therefore represent an untypical feature/use within the rural landscape. Overall, I cannot agree that the proposals are discordant and out of character with the surrounding landscape. The appeal site is still viewed as part of an open and tranquil area, and this has not been significantly diminished by the development particularly given its small scale and overall design. The rural character and natural beauty of the area is therefore conserved.

21. As set out, the western part of the field and part of the adjoining field are covered by Historic Environment Record number 14134 – Quarry. The Limekiln adjoining this is Grade II listed. The list entry[2] provides further details of this explaining, Lime-kiln, now disused. Probably early/mid C19. Snecked drystone rubble with quoins; battered sides, c.25 ft high. Central segment-headed hearth, c.8 ft wide, on north side. Ramp (extended at later date?) leads to top round west, south, and east sides.

22. When viewed from the road to the north the natural limestone geology of the area is evident and seen against the stone boundary wall on the north side of the appeal site. Its significance lies in its industrial and cultural heritage of the area.

23. While the stables are close when viewed from the north and the Limekiln and the limestone features within the field are seen against the surrounding stone walls, the stables are only just visible above the stone wall from this viewpoint, and vistas also include the larger building located at higher ground to the south of the appeal site. By virtue of the buildings modest size and limited views, I find that the buildings do not negatively affect the character, authenticity, integrity setting and views of the historic feature. Overall, I do not find the development to give rise to an unacceptable impact on the setting of the listed building.

24. For the reasons given above, I conclude that the development does not unacceptably affect the character and appearance of the area. It preserves the setting of the Grade II listed building, Limekiln and accords with Policies 01,02,05,06,07 and 25 of the LP. Such policies together, amongst other matters,

[1] 7/2025/3026
[2] 1326753

explain that development proposals should protect or enhance the authenticity, integrity and significance of the Lake District. For the same reasons, the development also accords with the SPD and Chapters 12 and 16 of the Framework relating to achieving well-designed places and conserving and enhancing the historic environment.

Conditions

25. I have considered the Council's suggested planning conditions in their Statement of Case and in light of the Framework and Planning Practice Guidance. As a result, I have amended these where necessary for clarity.

26. A plans condition is necessary in the interests of certainty and to safeguard the visual amenities of the area, the character of the landscape and setting of the adjacent listed building. A condition relating to biodiversity is also required to ensure the development delivers a biodiversity net gain on site. Whilst this development is exempt from national requirements relating to biodiversity net gain as it is retrospective, local plan policy does however require biodiversity net gain. Taking into account the site location and context as well as works complete, I find that the delivery of biodiversity net gain is necessary to make the development acceptable in the particular circumstances of this case.

Conclusion

27. For the above reasons and having had regard to the development plan as a whole, the appeal is allowed subject to conditions.

N Teasdale

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be maintained in conformity with the following submitted plans and details: Site Location Plan (1:1250); Site Layout; Plan Layout; Shelter Elevations; Biodiversity Net Gain - Assessment Report; Baseline Habitat Plan and Metric Calculator.

2) Within three months of the date of this permission a Biodiversity Gain Plan and a Habitat Management and Monitoring Plan (HMMP), including: (a) a non-technical summary; (b) the roles and responsibilities of the people or organisation(s) delivering the HMMP; (c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan; (d) a timetable for those works in (c) above to be carried out; (e) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and (f) the verification and monitoring methodology and frequency in respect of the created or enhanced habitat, including the timetable for such monitoring to be submitted to the local planning authority, shall be submitted to, and approved in writing by, the local planning authority.

   Notice in writing shall be given to the local planning authority when the:
   (a) HMMP has been implemented; and
   (b) habitat creation and enhancement works as set out in the HMMP have been completed.

   The enhanced habitat specified in the approved HMMP shall be managed and maintained in accordance with the approved HMMP thereafter for a period of 30 years commencing from the date the local planning authority receives notice and a verification report that the habitat creation and enhancement works have been completed.

   Monitoring reports shall be submitted to the local planning authority in writing in accordance with the methodology and frequency specified in the approved HMMP.

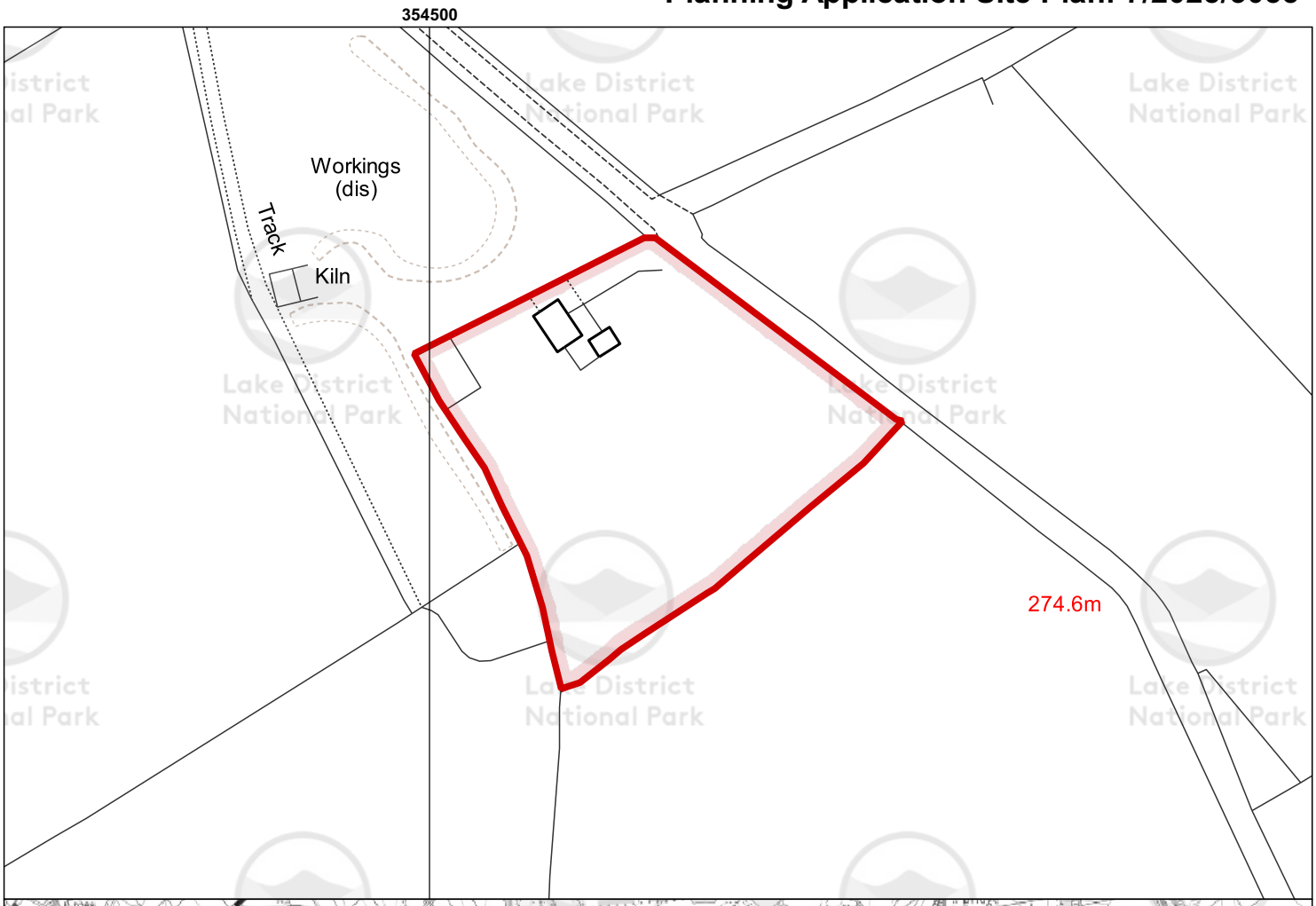
   If verification or monitoring identifies that:

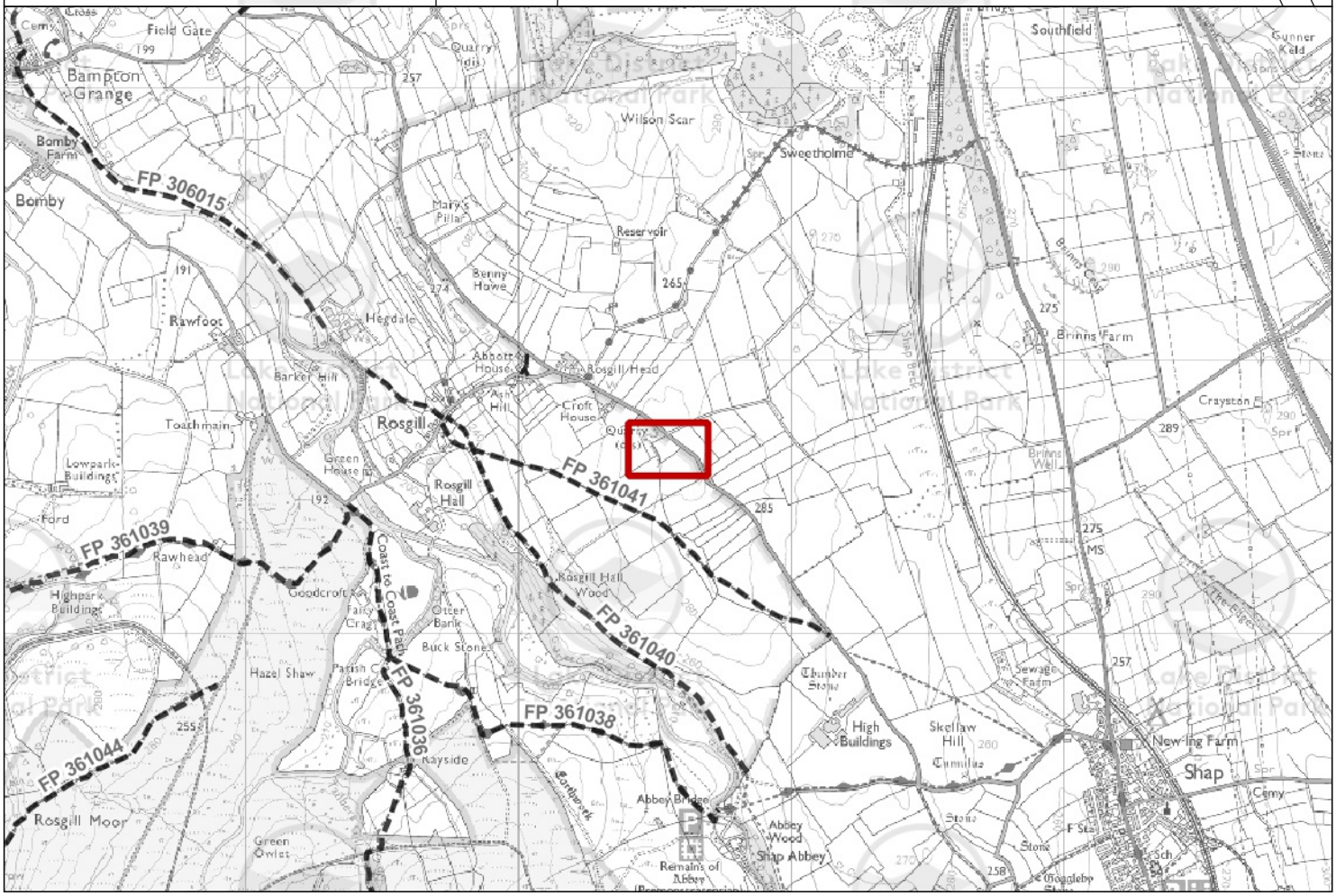
   • the target habitat condition set out in the Biodiversity Gain Plan has not been reached within the timescale indicated, or
   • the habitat has declined from its target condition within the 30 year period,

   then:
   • a scheme of remedial interventions to secure or resecure the target habitat condition, or
   • an alternative Biodiversity Gain Plan which delivers at least equivalent biodiversity net gain shall be submitted to the Local Planning Authority for approval.

   End of schedule

Planning Application Site Plan: 7/2025/3055





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Plan scale: 1:1,500
Overview: 1:25,000

Date Authored: 17/06/2026

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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 27 May 2026

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2026

Appeal Ref: APP/Q9495/X/25/3376174
Plum Tree Cottage, Lyth, Kendal, LA8 8DD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Paul Goucher against the decision of Lake District National Park Authority.
- The application ref 7/2025/5264, dated 27 May 2025, was refused by notice dated 14 August 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is described as *'land adjacent to Plum Tree Cottage being used as a garden'.*

Decision

1. The appeal is dismissed.

Procedural Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.

3. The Planning Practice Guidance states if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Main Issue

4. The main issue is whether the Authority's decision to refuse to grant an LDC was well founded with particular regard as to whether on the date of the LDC application the red edged land shown on the location plan accompanying the LDC application was lawfully a garden.

Reasons

5. The appellant has included sales particulars of Plum Tree Cottage from 2017 which refers to the appeal land as forming part of the *'gardens'* of the property. The evidence is that appellant purchased the property in October 2017. There is a photograph of the land in the sales particulars which includes a bench on part of

the land (not all the appeal land is visible), some established trees and areas of grass which appear to have been mown. The appellant states that since this time the land has been used as a garden which he has maintained and including tree and shrub care, grass cutting and new planting. The appellant has included a signed letter from the occupier of a neighbouring property known as No. 1 Sibble Howe which states *'I have been living on the Row, Lyth for 24 years and can confirm that I am aware of the land to the rear of Plum Cottage….I have witnessed this area being used as a garden by the previous owners, and I am aware of its use as such for over 10 years'.*

6. The Authority maintains that as the land is *'overgrown'* in the Google image dated 2009, it casts doubt about the use of the land as a garden at this time. There is certainly a visual difference in terms of the land at this time when compared to more recent images and photographs. Moreover, the Authority considers that as the land has included fruit trees, it remains a possibility that it may have been used as an orchard and hence could have been used for an agricultural use (i.e., an orchard) in accordance with the definition of agricultural as contained with section 336 of the Act. Such a definition includes '*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly'* (my emphasis).

7. The LDC application was made on 27 May 2025. Given section 171(B) of the Act, it is necessary for the appellant to provide sufficiently precise and unambiguous evidence, on the balance of probability, to demonstrate a continuous and uninterrupted ten-year use of the land as a garden, i.e., from 27 May 2015 until 27 May 2025.

8. While the appellant states that the land has been maintained, grass cut, and ornamental planting, laurel edging and bark chipped areas provided since he occupied it from 2017, the evidence is not sufficiently precise and unambiguous in terms of demonstrating how the land has actually been used on a day to day or week to week basis for the alleged garden use. That said, and, on the balance of probability, I do find that both the visual and written evidence is such that it is more probable than not that the land has been used as a domestic garden from 2017 until 2025. That, however, does not equate to a continuous period of ten years use as a garden.

9. The evidence before 2017 is particularly scarce. The letter from the occupier of No. 1 Sibble House refers to the land being used as a garden by the previous owner, but there is a distinct absence of any precise evidence from the point of view of describing how the land was specifically used. The appellant's Google image from April 2009 does not provide any precise visual evidence to suggest that the land was likely to be in use as a garden. Between 2009 and 2017 there is a distinct lack of any photographs or any other images of the land. Moreover, I afford limited weight to the letter written by the occupier of No. 1 Sibble House because of its lack of precision, and because it does not have the sort of weight that one would associate with say a sworn statutory declaration.

10. For the above reasons, and, on the balance of probability I therefore find that the appellant's evidence is not sufficiently precise and unambiguous to demonstrate that on the date of the LDC application, the land had been continuously used as a garden for ten years. Consequently, I am unable to conclude that the land can lawfully be used as a garden and is immune from enforcement action.

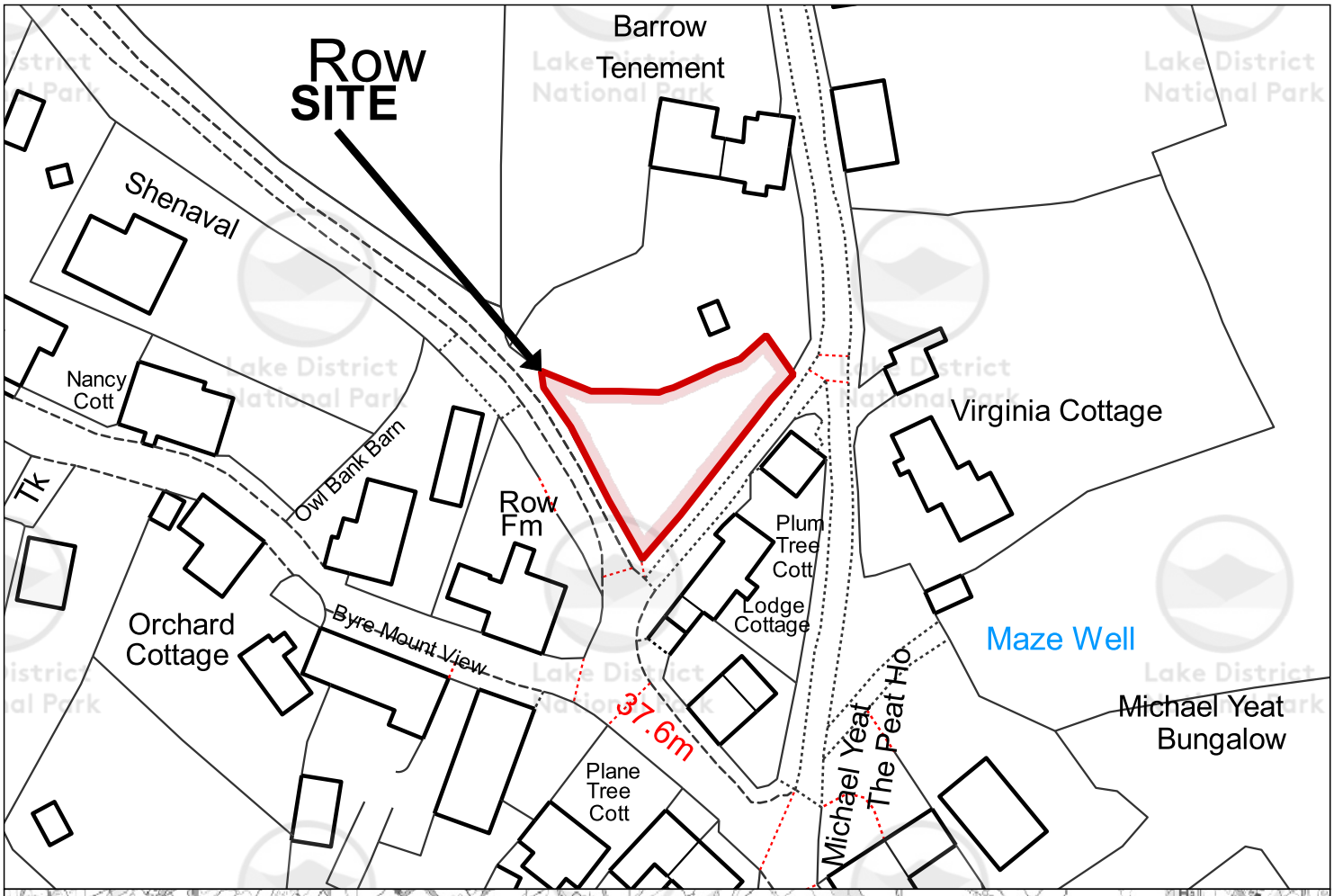
Conclusion

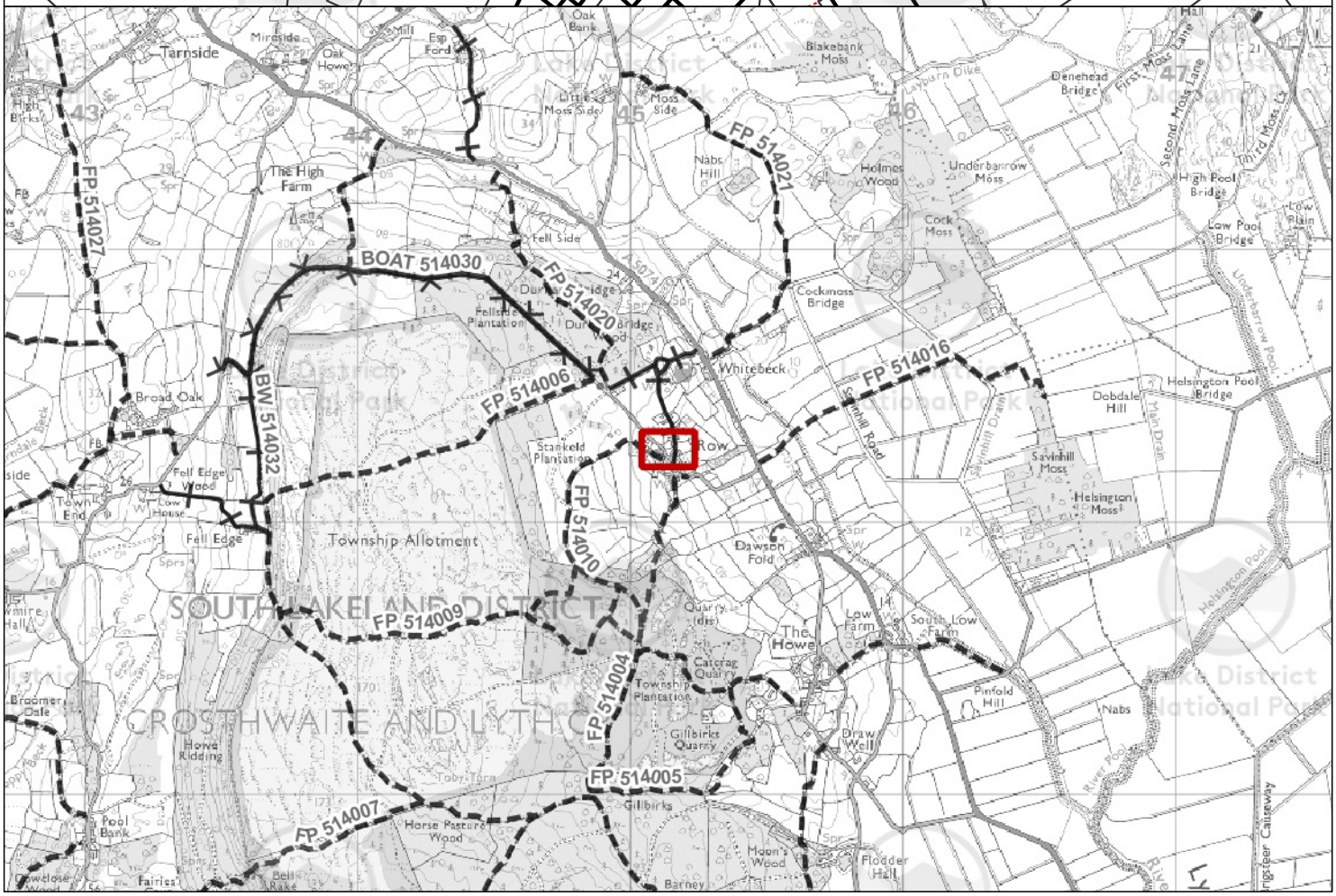
11. For the reasons given above, I conclude that the Authority's refusal to grant a certificate of lawful use or development for use of the land as a garden is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

D Hartley

INSPECTOR

Planning Application Site Plan: 7/2025/5264





0 10 20 m Plan scale: 1:1,000 Overview: 1:25,000 Date Authored: 17/06/2026

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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 30 January 2026

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2026

Appeal Ref: APP/Q9495/C/25/3362991
Land east of Bell Intake, High Dam, Finsthwaite

- The appeal is made by Mr Stephen Watson o/b Chapman House Farm under section 174 of the Town and Country Planning Act 1990 (as amended) against an enforcement notice (ref: E/2021/0094) issued by Lake District National Park Authority on 12 February 2025.
- 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 from use as agriculture to use as a public car park with onsite food and drink sales and associated operational development consisting of the laying of crushed stone to form a hard surface and the erection of a fence and gate.
- The requirements of the notice are to:
  - Discontinue the use of the Land as a public car park with onsite food and drink sales; and
  - Remove the crushed stone from the Land as identified on…Photographs A and B [attached to the notice]; and
  - Remove the food and drink trailer from the land as identified on attached Photograph A; and
  - Remove the fence and gate from the Land as identified on attached Photograph B.
- The period for compliance with the requirements is two [2] months.
- The appeal was made on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990. 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 Town and Country Planning Act 1990.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation as set out in the Formal Decision below.

PRELIMINARY MATTERS

The Appeal Site

1. The appeal site is a “U” shaped plot of land which covers some 0.15h. It formed part of a field which otherwise remains in agricultural use. The appellant is the landowner, and he still runs the farm and lives locally.

2. The site lies close to the junction of what I shall refer to as “the road” or C5049 and “the lane”. It is accessed from the lane. The site is also just under 0.5km or 0.3 miles to the northeast of the centre of Finsthwaite, a village in the southwestern part of the Lake District National Park (LDNP). The road runs through Finsthwaite from land west of Lake Windermere to the north down to the A590 in the south.

The Enforcement Notice, the Grounds of Appeal and the Evidence

3. As set out above, the notice alleges that there has been a material change of use to two named uses, a public car park with onsite food and drink sales. Accordingly, the notice should be clear as to the relationship between the uses. In his final comments, the appellant suggested that the notice should be read as alleging that the land is in a mixed or hybrid use. Land is taken to be in a mixed use where it is put to two or more primary uses with none being ‘incidental’ to another.

4. However, from the word “with” and the evidence taken as a whole, I construe the notice as alleging that the onsite food and drink sales use is incidental to the parking use. The food and drink use is facilitated by the stationing of one wooden kiosk or snack van type trailer, the like of which is often seen at rural car parks. The food and drink use appears carried out to maximise the income-generating potential of the appeal car park without significantly reducing parking spaces.

5. The food and drink is probably functionally related to what is the sole primary parking use in a normal way so as to be an incidental use. I shall decide the appeal on this basis not only because that reflects the wording of the notice and appearance of the site; it also optimises the appellant’s prospects of success on ground (a) without making any difference to any other ground.

6. Although the appeal was made on grounds (a), (d) and (g), the appellant’s “statement of truth” and statement of case on ground (a) raised what I take to be hidden appeals on ground (c) and (f). His final comments also implied a hidden appeal on ground (f) while making express reference to grounds (b) and (c).

7. An appeal on ground (b) is that what is alleged by the notice has not occurred. The appellant does not dispute that the site is used as a public car park with onsite food and drink sales, crushed stone was laid to form a hard surface and a fence and gate were erected. There is no ground (b), but there are hidden grounds (c) and (f) as set out below. I can deal with them without causing prejudice to any party because the appellant’s claims were raised in time for the Authority to comment and the notice remains no more or less onerous to comply with.

8. Grounds (c) and (d) are ‘legal’ grounds of appeal where the onus is on the appellant to make his case on the balance of probabilities. He submitted a “statement of truth” and that was signed but not in front of a solicitor. It does not amount to a statutory declaration or sworn evidence. Even so, the appellant’s evidence should be accepted if there is nothing to contradict his version of events or make that less than probable, and it is sufficiently precise and unambiguous. It should not be rejected simply if it is not corroborated.

THE HIDDEN APPEAL ON GROUND (C)

9. Ground (c) is that the matters described by the notice do not constitute a breach of planning control. That would be the case if what is alleged does not require or already has planning permission. The appellant suggests that various aspects of what is alleged are “permitted development” (PD).

10. Under Article 3(1) and Part 4, Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), planning permission is granted for the use of any land for not more than 28 days in total in any calendar year and the provision on land of any moveable structure for the proposes of the permitted use.

11. I agree with the appellant that the appeal parking and/or food and drink use could benefit from this PD right, but not that it would allow for the kiosk to “be moved around the site on every 28 days allowing all year round use”. The 28 day limit applies to the use of the land. Moving the kiosk would not change the number of days when the site is used for parking and/or onsite food and drink sales. Since there is no evidence that either use has only been carried out for 28 days in any

year, the stationing of the kiosk for the purposes of onsite food and drink sales I probably not permitted under Part 4, Class B of the GPDO.

12. The appellant has not shown that the engineering operations comprised in the formation of the chipped stone hard surface on the site were reasonably necessary for the purposes of agriculture within his holding, so as to be permitted via Part 6, Class A of Schedule 2. As discussed in relation to ground (d), the surface was laid for entirely non-agricultural purposes, and the same is true of the erection of the fence and gate.

13. The erection of the alleged fence and gate is likewise not “agricultural” PD, but the works were probably permitted, as the appellant also claims, under Part 2, Class A of the GPDO, which provides for the erection of a gate, fence, wall or other means of enclosure. The hidden appeal on ground (c) should succeed insofar as I shall correct the notice to delete the fence and gate from the allegation. However, as discussed below in relation to the hidden appeal on ground (f), the notice may still require that the fence and gate are removed from the land.

THE APPEAL ON GROUND (D)

14. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the “matters” or what is alleged by the notice.

15. Under s171B(1) of the Town and Country Planning Act 1990 (TCPA90), no enforcement action may be taken against the carrying out of building, engineering or other operations after the end of the period of four years beginning with the date on which they were substantially completed if that was before 25 April 2024. Under s171B(3), no enforcement action may be taken after the end of the period of ten years beginning with the date of a breach of planning control consisting of a material change of use of land.

16. Although the notice refers to operational development, the ‘ten year rule’ set out under s171B(3) applies to the alleged material change of use of the land from use as agriculture to use as a public car park with onsite food and drink sales. There is no dispute that the appeal car park opened in March 2021 and the kiosk was brought to the land, to facilitate the onsite sale of food and drink at the same time. The breach of planning control consisting of the making of the material change of use without planning permission thus took place less than ten years before the notice was issued on 12 February 2025. It was not too late for the Council to take enforcement action against the material change of use when they did.

17. The appellant has also pleaded ground (d) in respect of the laying of crushed stone to form a hard surface. The site was initially surfaced with chippings in 2019 when contractors working on behalf of Cumbria County Council required a storage compound in association with flood prevention or mitigation works that they were carrying out in the area. However, there is no evidence that the hard surface subject to the notice was substantially completed in 2019.

18. The November 2021 Google Street View photograph shows the entrance and the first few metres into the site as being hard surfaced but not, given the light, angle of the camera and trees in the foreground, the appearance of the land beyond. The April 2022 Street View photograph is clearer and suggests that the hard surface reached close to the appeal fence dividing the site from the field. However,

that was less than four years before the notice was issued, as indeed was the March 2021 date when the car park was opened.

19. The appellant admits to adding "small amounts" of additional stone chippings "from time to time as necessary to consolidate" the hard surface. He stated that "the site was completed and no further work has been necessary or undertaken since 25 April 2024". He has not shown that the development comprised in the alleged "laying of crushed stone to form a hard surface" was probably immune from enforcement action under the four year rule.

20. The alleged operational development does not include the stationing of the kiosk or picnic furniture. That is not surprising because the Authority accepts that the kiosk is likely to be moveable, even if it has not actually been moved. I find that the kiosk and furniture are not buildings but rather a mobile structure and chattels stationed to facilitate the alleged material change of use. They are subject to and fall foul of the ten year rule although, again, they only appeared on the site in March 2021, less than four years before the notice was issued anyway.

21. I conclude that the appellant has failed to demonstrate that, on the date that the notice was issued and on the balance of probabilities, it was too late for the Authority to take enforcement action against the material change of use of the land to use as a public car park with onsite food and drink sales or the associated operational development consisting of the laying of crushed stone to form a hard surface. The appeal fails on ground (d).

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

22. Ground (a) is that planning permission ought to be granted for what is alleged. In other words, the allegation as corrected forms the description of development for the deemed planning application: the making of a material change of use of the land from use as agriculture to use as a public car park with onsite food and drink sales and associated operational development consisting of the laying of crushed stone to form a hard surface.

Main Issues

23. The main issues are:

- The effect of the use as a public car park with onsite food and drink sales on travel to and around the area by private motor vehicle.
- The effect of the use and associated hard surface on the character and appearance of the area and the landscape and scenic beauty of the LDNP.
- Their effects on the English Lake District World Heritage Site.
- Their effects on the supply of grazing land.
- Their effects on biodiversity, and
- The public benefits of the use and associated hard surface.

24. I must consider these issues with regard to the LDNP Local Plan 2020-2035 (the Local Plan) and material considerations including the National Planning Policy Framework (the Framework). For policy purposes, I agree with the Authority that

the site lies in the open countryside. Finsthwaite may comprise or form part of a "cluster community" as defined in Local Plan Policy 2, but the site lies apart.

Reasons

Travel by Private Motor Vehicle

25. Local Plan Policy 22 states that the Authority will only support additional public parking provision that helps to reduce the need to travel by private motor vehicle and contributes to and improves sustainable transport and movement opportunities. Public parking development will only be permitted in specified locations, none of which are relevant in this case. To be "exceptionally" permitted under or compliant with Policy 22, the appeal development would need to:

- resolve an unacceptable highway safety issue or hazard [when] all other relevant regulatory measures and enforcement have been exhausted; and
- form part of a traffic management plan that integrates with other sustainable transport opportunities to manage traffic…and not lead to net increases in traffic accessing the location where it is proposed; and
- not introduce inappropriate levels of use to the location; and
- incorporate specific measures to manage traffic to the site through 'smart' parking information where such measures are appropriate in terms of scale of parking and are viable.

26. Before I assess the development against those criteria, it is worth explaining the context as set out in the reasoned justification for Policy 22. It notes that the provision of car parking is a controversial and critical issue in the Lake District, with demand for such facilities being concentrated to times when visitor demand to come to the national park is at its highest. The Authority seeks to reduce the need to travel by private vehicle, to support climate change initiatives and address visitor pressures at peak times, while recognising that opportunities are limited by the availability of public transport services and people's behavioural habits.

27. That background is relevant to the appeal. A visitor information board on the lane describes the area as "a great place to pause, relax and enjoy". The lane leads onto two signposted public footpaths: FP511083, which leads northwest to a network of paths through woodland and around the High Dam tarn (the tarn), and FP511067, which leads northeast to connect to the West Windermere way. The information board states that the footpaths also lead to the hamlets of Rusland and Satterthwaite for those wanting "a longer hike".

28. However, the only bus service runs along the road just once per day, six days per week. I agree with the appellant that few visitors to the area or even local residents would use public transport to access the local landscape; they will normally use private motor vehicle to reach the point where they wish to walk or cycle from. The Authority understands that parking spaces are required in this area, because it runs the pre-existing High Dam car park (HDCP) located further up the lane. The provision of that facility plus the information board and signposts points to the Authority not simply catering for but also encouraging travel to this location by car.

29. Compared to the HDCP, the appeal site is closer to the road but further from the tarn. The site is located so that visitors do not have to drive but may need to walk up the “steep badly surfaced” part of the lane. Those differences will be important to some but are not in my view significant for the purposes of Policy 22. The development is locationally as well integrated as it could be with what sustainable transport options there are in this area. The HDCP may have been permitted long before the current Local Plan was drafted but nonetheless the site is no more remote from “existing building groups”.

30. However, it does not follow that the appeal car park resolves any highway safety problem or does not lead to an increase in traffic. If the HDCP can attract drivers to the area, so can the appeal car park. It has increased the number of parking spaces locally by about 20 or around two thirds, but the appellant has not provided any real estimate even of its usage to date, never mind of general visitor numbers or locally anticipated parking demand.

31. Two local residents and another interested party have written in support of the appeal. They described how, before the appeal car park was developed, particularly during the Covid pandemic, visitors parked their cars on both sides of the lane. This on-street parking caused not only bottlenecks for drivers and hazards for pedestrians, but also the bank of a beck to the south of the lane to collapse. The Authority does not dispute that evidence.

32. The appellant and his supporters have not told me whether the HDCP was open during lockdown periods, when people in any event had fewer alternatives to walking outdoors for leisure. That said, I accept that there has probably been a longer-term increase in visitor numbers. The opening of the West Windermere Way and footpaths improvements have attracted more walkers, while the tarn has been publicised as a place for wild swimming at a time when that activity has grown in popularity. However, it does not follow that the HDCP would **normally** be inadequate to meet local parking needs if the appeal car park did not exist.

33. It is possible that the HDCP is too small and/or too expensive, but the appellant has not in my view substantiated either claim. He has also not shown that the provision of additional parking spaces on the site serves to redress any such problems without increasing levels of traffic. I do not have the information to conclude that, absent the appeal car park, traffic levels would normally be around the same and/or dangerous on-street parking would take place on the lane. There is nothing which could be described as a traffic management plan before me.

34. I consider that the appeal car park does not demonstrably resolve an unacceptable ongoing highway safety issue and, indeed, there is no evidence that regulatory measures and enforcement options to tackle on-street visitor parking were exhausted before the development took place. Even if the lack of public transport means there is no prospect of reducing the need to travel to or around this area private motor vehicle, the appellant has failed to show that the development does cause a net increase in traffic or inappropriate level of use in this location.

35. There is also no evidence as to what effect, if any, the use of the site for onsite food and drink sales may have on visitor numbers or traffic levels. A grant of planning permission for what is alleged would not convey permission for the erection of any buildings, but it would also not prevent the expansion of the food and drink offer through the stationing of additional mobile kiosks on the land. The

risk of that occurring could be overcome by making a split decision and approving the parking use but not the sale of food and drink, but that would be unreasonable given the modest scale of the latter.

36. I could impose a condition on any permission granted to ensure that the food and drink use remains incidental to parking and involves the stationing of no more than one mobile structure plus X picnic tables. The Authority did not suggest any possible conditions, but I could and would have consulted both parties on the necessity and reasonableness of an "incidental" restriction had an increase in food and drink sales been my only concern. However, the greater problem remains the lack of evidence regarding the traffic impacts even just of the primary parking use.

37. The Authority has not explained why it would be necessary to require the provision of "smart" parking information at this relatively small car park. Even so, I conclude that the appeal use does not reduce the need to but encourages travel by private motor vehicle. It does not demonstrably resolve an unacceptable highway safety issue or hazard arising from on-street parking. It does not form part of a traffic management plan, and it has not been shown to not lead to a net increase in traffic or introduce an inappropriate level of use to the location.

38. A grant of planning permission for the use would conflict with Local Plan Policy 22 and with the Framework. It accepts that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, but it nonetheless expects the planning system to manage patterns of growth so as to avoid and mitigate any adverse environmental impacts of traffic.

Character and Appearance

39. As indicated above, the site was previously part of a relatively flat field, the remainder of which is still laid to pasture. There is similar farmland nearby, particularly closer to Finsthwaite. Otherwise, the area is dominated by densely wooded slopes. The road is lined with trees on the site side, and it adjoins forest on the other. The appeal field also adjoins forest to the north through which the aforementioned footpaths run.

40. The site lies within the Dale Park Area of Distinctive Character (ADC) for the purposes of the LDNP Landscape Character Assessment (LCA). That document describes the ADC as having "a strong sense of enclosure…as a result of the dense cover of both broadleaved and coniferous woodland [which] cloaks an underlying rolling and hummocky topography with many rocky outcrops."

41. That description absolutely fits the setting of the site. Given its small size, and since it was previously grassed rather than treed, it did not make a significant contribution to the landscape. However, it was of a piece with the rural character of the area and, together with the adjoining field, it afforded views from the road and lane to the forest to the north. I consider that the parking of up to 20 cars and the associated human activity including the sale and consumption of food and drink all on land where grass has been replaced by a stone chipped surface collectively harm the character and the landscape of the site and its surroundings.

42. I also note that the parking use and associated hard surface are visible from the lane and, to a lesser extent, the road. Although the boundary walls are low and formed of local stone, the development does not appear sensitive or unobtrusive,

but harmfully incongruous. It can be seen even through the perimeter trees, especially in winter. It detracts from the appearance of and views across the site.

43. The LCA further describes this area as predominantly tranquil; again, I consider that to be true. The woodland to the northwest of the site is largely unspoiled except to the extent there are footpaths, and of those there are enough that visitors will be liable to dissipate. The lane will be less tranquil already not so much because of walkers but from the vehicular traffic generated by the HDCP. However, since the appeal development is liable to have increased such traffic, it is also likely to have increased noise and light pollution in the vicinity.

44. For the avoidance of doubt, I consider that standard conditions to, say, restrict food and drink sales, control the opening hours of the car park, control external lighting and/or require landscaping would not overcome the identified harm. I note submissions that more intrusive developments have taken place in similar places. Nonetheless, I conclude that the appeal use and hard surface harm the distinctive and tranquil character and appearance of the surrounding area and fail to protect or conserve the landscape or scenic beauty of the LDNP.

45. The use and hard surface conflict with Local Plan Policies 1, 5 and 6, which seek to conserve and enhance the extraordinary harmony and beauty of the Lake District landscape and expect development to give the highest level of protection to the landscape; maintain local distinctiveness, sense of space and, where appropriate, tranquillity; and reinforce the importance of local character.

The English Lake District World Heritage Site

46. The Framework defines “designated heritage assets” as including world heritage sites as well as listed buildings and conservation areas. The appeal site falls within the area of the English Lake District World Heritage Site (the WHS) and so it falls to be considered against planning policies for heritage assets. Local Plan Policy 7 seeks to conserve and enhance the significance of heritage assets in the LDNP, including the WHS.

47. Paragraph 3.07.05 of the reasoned justification for Policy 7 refers to the WHS Nomination document, which essentially shows that the significance of the WHS is aligned with the exceptional beauty and other attributes of the LDNP landscape. Accordingly, my assessment of this issue mirrors that on the previous main issue. Since the appeal use and hard surface harm the character and appearance of the surrounding area and fail to protect or conserve the landscape or scenic beauty of the LDNP, it follows that there is also a failure to conserve the special qualities of the WHS or its significance as a heritage asset.

48. I am satisfied that, given the small size of the site relative to the entire LDNP, the harm to the significance of the WHS is “less than substantial”. In accordance with the Framework, therefore, I shall in due course weigh this and indeed the other harms identified against the public benefits of the development.

Grazing Land

49. The Authority is correct that the appeal change of use caused a loss of grazing land. However, the Authority has not explained what the quality of that grazing land was or why the loss was unacceptable. On their own estimates, this 0.15ha

site only represented around 12% of the field it was part of and is now fenced off from. There seems to be no impediment to grazing on the remaining 88%.

50. I address below whether the appeal development complies with Local Plan Policy 19, which concerns agricultural diversification. Either way, however, that is a different question to whether planning permission should be refused on the basis of loss of grazing land. In my view, it should not. The Framework recognises the benefits of the best and most versatile agricultural land, but the development has not demonstrably caused a significant, if any loss of that.

Biodiversity

51. The Authority also objects that the appellant has not undertaken to secure appropriate biodiversity net gain. Under s90A and Schedule 7A of the TCPA90, a grant of planning permission must be subject to a condition to meet an objective that the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least 10%. However, s90A is not commenced, and biodiversity net gain cannot be required in respect of planning permissions granted through the route of an enforcement appeal.

52. The ground (a) appeal cannot fail due to the lack of any undertaking to ensure biodiversity net gain. Since I agree with the Authority that the grass removed from the site would only have had modest biodiversity value, I would also not refuse permission on the basis of harm to any habitats or species. A grant of permission would not conflict with Local Plan Policy 4, which supports development that conserves biodiversity.

Public Benefits

53. I accept the appellant's evidence that the parking use and associated food and drink sales, by generating a modest income, helps him with the upkeep of the farm and therefore helps to sustain the agricultural business. Visitors paying to use the appeal car park and/or buy food on the site are by definition also contributing to the wider local economy, while I have noted that the development may help alleviate on-street parking problems arising if spaces are not available or too expensive at the HDCP. There are tangible economic and social benefits of the appeal use and thus the associated hard surface.

54. Local Plan Policy 19 supports development to diversify agricultural and land-based rural businesses to help sustain not only the rural economy and communities, but also the character of the landscape and environment, shaped by farming as they are. I accept that the site forms such a small part of the wider field that the use is unlikely to compromise the long-term operation or current working of the farm business, as Policy 19 requires. Since the use does not involve any buildings, it does not need to be located within or well-related to existing building groups.

55. However, just as the appellant has not given any detailed consideration of the likely traffic impacts of the development, so he has not shown that its social or wider economic advantages are significant. His evidence of the value of the car parking use even just to his own farm is slight. I cannot find that the development helps to sustain the character of the landscape as Policy 19 requires. I also cannot attach more than moderate weight to the combined economic and social benefits as considerations in favour of the appeal.

Conclusion on Ground (a) and the Deemed Planning Application

56. The appellant has referred to other car parks in the LDNP, but I do not know the circumstances in which they were developed or permitted. I have considered the appeal use on its merits as discussed in the evidence before me and with regard to current planning policy.

57. I consider that the appeal use does not reduce the need to but encourages travel by private motor vehicle. The use and associated hard surface harm the character and appearance of the area, fail to protect or conserve the landscape or scenic beauty of the LDNP and cause less than substantial harm to the significance of the WHS. The development conflicts with Local Plan Policies, 1, 5, 6, 7, 19 and 22.

58. Drawing those points together, the development conflicts with Policy 2, which only supports development in the open countryside where it has an essential need for a rural location, the location is necessary for the provision of public utilities and infrastructure, it helps to sustain a local business, or it is necessary and designed to support agriculture and forestry. Despite its small size, the car park is not of a scale or nature appropriate to the character of the location.

59. The Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these issues. Local Plan Policy 1 similarly states that, where there is a conflict between National Park purposes, greater weight should be attached to conserving natural beauty than to the other purposes, which are to promote opportunities for public enjoyment of the National Park and foster the economic and social wellbeing of local communities.

60. The development does not cause unacceptable harm in respect of grazing land, biodiversity or any other planning matter raised. It gives rise to economic and social benefits through agricultural diversification and visitor services. However, those neutral and positive considerations do not, individually or together, outweigh the harm caused by the appeal car park. They would not justify a grant of planning permission contrary to the development plan taken as a whole and contrary to the overriding purpose of conserving the landscape and scenic beauty of the LDNP.

61. I conclude that the appeal should fail on ground (a) and the deemed planning application should be refused.

THE HIDDEN APPEAL ON GROUND (F)

62. Ground (f) is that the requirements of the notice are excessive to remedy the breach of planning control constituted or, as the case may be, the injury to amenity caused by what is alleged by the notice.

63. In this case, the notice requires that the alleged use is ceased and alleged hard surface is removed. It can be deduced that the purpose of the notice, or the outcome that the Authority seeks to achieve, is to remedy the breach of planning control. I could only vary the requirements of the notice if they are excessive to the same end. I cannot rerun questions of amenity which, in any event, have already been addressed via ground (a).

64. The appellant suggests that the notice would achieve its purpose if it simply required cessation of the parking use, on the basis that the kiosk, hard surface and fence and gate are all PD. However, I have found that it is only the fence and gate

which benefit from planning permission granted by the GPDO, and that even they may still need to be removed. An enforcement notice concerned with a material change of use can require the removal of any work that are associated with or ancillary to the use, even if they would otherwise be lawful, so that the land is restored to its condition before the breach of planning control took place.

65. The appellant's evidence, as noted in relation to ground (d), is that he installed the fence and gate when beginning the parking use. The coincidence is not surprising; the appellant would have needed to separate and keep safe his adjoining field and any livestock thereon. But that means the installation of the means of enclosure was associated with or ancillary to the change of use. It is not excessive for the notice to require the removal of the fence and gate, although they are PD, so that the breach of planning control is remedied. The hidden appeal on ground (f) fails.

THE APPEAL ON GROUND (G)

66. An appeal on ground (g) is that the period set out in the notice for compliance with the requirements falls short of what is reasonable. The appellant pleaded ground (g) on the basis that the notice was due to take effect on 26 March 2025 and so the two month period for compliance would have coincided with lambing season. That argument is not relevant because the appeal process stopped the clock. This period for compliance will begin to run from the date of this decision letter which is after lambing season.

67. Even so, with regard to the evidence submitted in support of ground (a), I find that the period for compliance falls short of what is reasonable. It is proportionate to extend the period to six months so that the use may be carried out for the duration of the summer season and there is time after that for the appellant to remove the crushed stone, trailer and fence and gate. The extension will not prevent use of the site for grazing next year but will allow the appellant to adjust his business plans before then. The appeal succeeds on ground (g).

OVERALL CONCLUSION

68. For the reasons given above, I conclude that the appeal as a whole should not succeed. I shall uphold the enforcement notice with a correction and variation.

FORMAL DECISION

69. It is directed that the enforcement notice is corrected and varied by:

- Deleting "and the erection of a fence and gate" from the allegation set out in paragraph 3, and
- Deleting two months and substituting six (6) months as the time for compliance set out in paragraph 6.

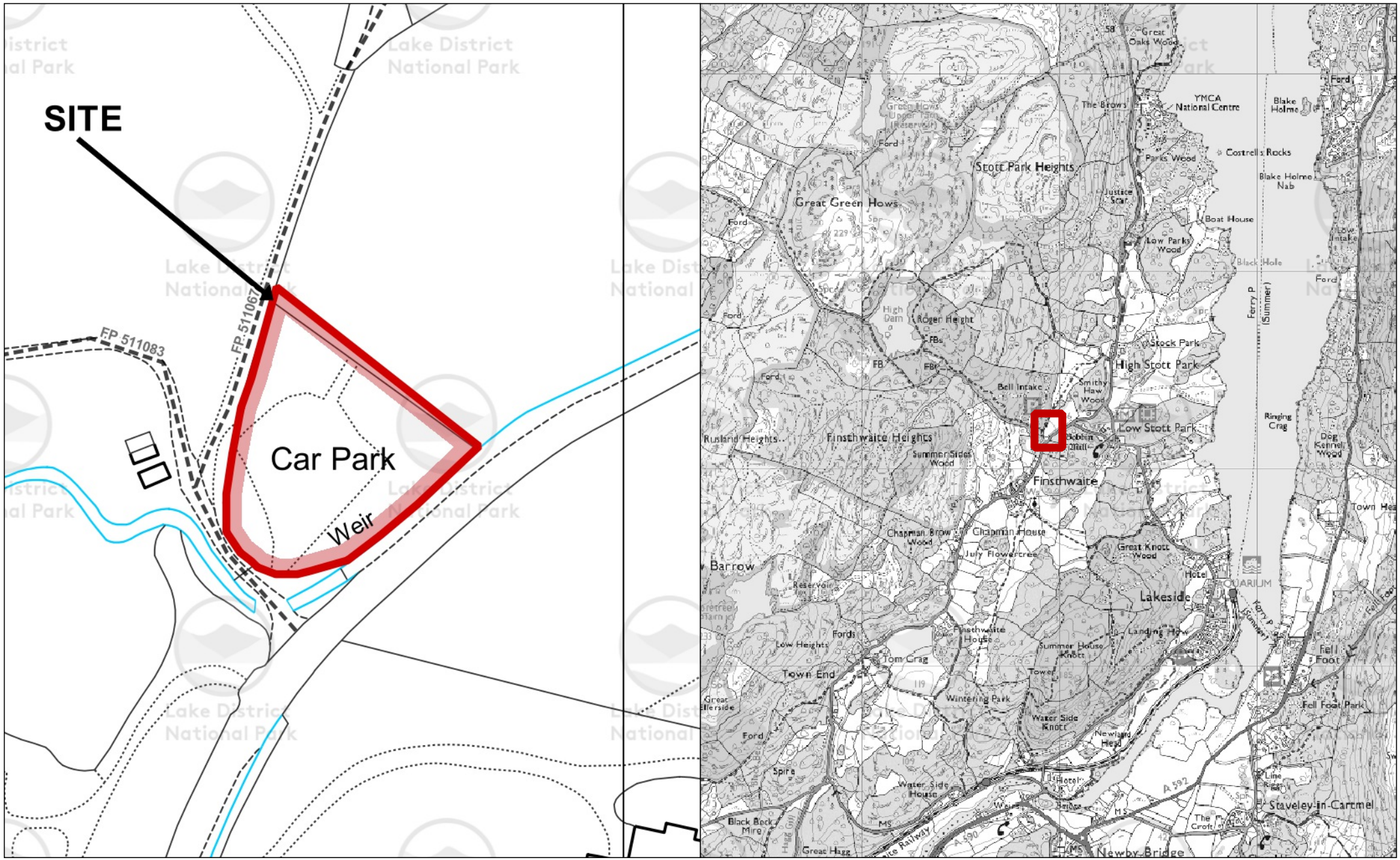
70. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Jean Russell

INSPECTOR

Enforcement Site Plan: E/2021/0094

337000



0 10 20 m

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

Date Authored: 17/06/2026

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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 27 May 2026

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2026

Appeal Ref: APP/Q9495/C/25/3374615
131 Craig Walk, Bowness-On-Windermere, Windermere, LA23 3AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Greg Taylor against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 3 September 2025.
- 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 use as short-term holiday letting accommodation.
- The requirements of the notice are to discontinue the use of the Land as a short-term holiday letting accommodation.
- The period for compliance with the requirements is one month after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Ground (c) appeal

2. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make his case on this legal ground of appeal.

3. The appeal property is located within the Bowness Conservation Area. It is a four storey mid-terraced property, has a small front garden and a back yard. There are steps to the property frontage, as the terrace is set at a higher level than Craig Walk. The appellant's completed planning contravention notice, dated 13 January 2025, states that there is *'a maximum of 12 guests overnight with a minimum stay of two nights and a maximum stay of 28 nights'*. It also states that after each stay the property is cleaned by *'my cleaner plus 1 or 2 helpers'.* I noticed on my site visit that a 9am to 6pm (seven days per week) permit holder parking scheme is in operation in Criag Walk.

4. There is dispute between the main parties in terms of whether the lawful use of the mid-terraced property is a sui generis house in multiple occupation (HMO), or a dwellinghouse falling within use class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).

5. The marketing particulars for the property in 2023, which refer to *'currently a successful HMO',* cast doubt about the appellant's claim that the property is lawfully a use class C3 dwellinghouse. Moreover, the Authority's additional evidence indicates that a license for a seven-bedroom HMO for ten occupants was provided to the previous owner of the property in 2008, 2015 and 2021, and was then

rescinded in 2025. An email from a Council licensing officer states that on *'23 July 2024 we wrote to Mr Simpson noting that we had been advised the property may not still be operating as a licensed HMO and sent a declaration to confirm the possible change of use*'. The evidence is that the previous owner did not provide a response to such an email.

6. It is noteworthy that the previous owner has commented in a letter, dated 3 October 2025, that '*I did not reside at the property at any time. It was used solely as a rental property throughout'.* The reference to '*rental property'* could have been based on either a rental to holiday makers, or a rental for HMO occupants. Neither the appellant nor the previous owner have provided detailed and precise evidence relating to the specific occupancy of the property.

7. Given the marketing particulars, I find that it is more probable than not that the appeal property was used in accordance with the Authority's HMO license. The appellant considers that the onus is on the Authority to demonstrate a continuous ten-year HMO use. On the contrary, the onus is on the appellant to provide precise evidence in terms of the lawful use of the property. The above letter does not provide sufficient precision in terms of the appellant's claim that the lawful use of the property is a C3 dwellinghouse. Moreover, the letter has only limited weight when compared to say sworn evidence in the form of a statutory declaration.

8. I find that the appellant has not provided sufficiently precise evidence to counter the position of the Authority that the property was being used for holiday-let purposes from about June 2023 (i.e., just after it was purchased by the appellant), and that prior to that time it was lawfully used as a sui generis HMO. On the balance of probability, there is insufficient and precise evidence before me to demonstrate that the lawful use of the property is a C3 dwellinghouse. The absence of any restrictive planning condition relating to the property does not change this position.

9. I note that the Authority's duty planning officer confirmed in an email of 4 May 2023 that it *'was difficult to confirm the use of the property when we have no details of how it has been occupied'*. The duty officer did then say on 5 May 2023 *'I have checked our database and agree with my colleague that the property appears to be classified as a C3 dwellinghouse'*. It is undisputed that there is no planning history relating to the appeal site. Therefore, it is understandable that based on the *'database*' the duty officer said that it *'appears to be classified as a C3 dwellinghouse*' (my emphasis). However, a consideration of what is a lawful use is not as simple as that. Indeed, that is presumably why the duty officer also said, '*for a formal determination on the lawful use you would need to submit an application for a certificate of existing development'*. There is no evidence that such a lawful development certificate was sought by the appellant prior to the property being used as a holiday-let.

10. I have been provided with photographs of the rooms and facilities inside the property. I am satisfied that the appeal property contains all the facilities and characteristics needed for viable day to day living purposes and, to this extent, to be considered as a dwellinghouse in accordance with case law[1]. Notwithstanding this finding, it is necessary that I also consider the definition of a C3 dwellinghouse as contained within the UCO, and the requirement for it to include persons forming a *'single household'*. The definition of single household is

[1] Gravesham BC v SSE & O'Brien (1983) JPL 306

to be construed in accordance with section 258 of the Housing Act 2004. This states that persons are to be regarded as not forming a single household unless *'(a) they are all members of the same family, or (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority'.*

11. The onus is on the appellant to make his ground (c) appeal. While the appellant alleges that the property has been used as a holiday let *'for over 20 years',* the evidence is not sufficiently precise to demonstrate that only those forming a *'single household'* had been occupying the property when the Authority issued the notice. The only evidence about this matter relates to the appellant's reply to the Authority's issued planning contravention notice. In this regard, the appellant stated that between 21 June 2024 and 17 January 2025 there was *'roughly a 50/50 split between family bookings and adult only bookings'*.

12. It would of course be unusual for only those forming a *'single household'* to have been occupying the appeal property on a holiday-let basis. The comment above casts sufficient doubt about any possible claim that the property has only been used by those forming a single household. In the absence of precise evidence from the appellant about this matter, I would not, in any event, have been able to find that the holiday-let use fell within use class C3 of the UCO.

13. The evidence is that as part of the reply to the planning contravention notice, the appellant also provided the following information to the Authority for the period 21 June 2024 to 17 January 2025: 55 bookings in the 30 week period; 69% of bookings were for a two night stay; 20% of bookings were for a three night stay; there were no stays longer than five nights; 82% of bookings had more than six guests; 49% of bookings had 10 or more guests and 49% of bookings were just over a weekend.

14. While section 55(f) of the Act states that a new use falling with the same use class would not constitute an act of development, and hence planning permission would not be required for it, for the reason outlined above the evidence is insufficient to support a claim that the holiday-let use falls within use class C3 of the UCO even if that were deemed to be the lawful use of the property prior to it being used as a holiday-let.

15. The appellant has not submitted precise evidence to counter the Authority's position that prior to holiday use occurring, the lawful use was a sui generis HMO. It is necessary that I therefore consider whether there has been a material change of use from a sui generis HMO to a holiday-let use. For the sake of completeness, I have also decided to also consider whether a material change of use of the land has occurred from a 'by definition' C3 dwellinghouse to a holiday-let use which does not fall within use class C3 of the UCO.

16. When considering whether a material change of use of the land has occurred, in accordance with case law it is necessary to consider whether there has been some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. In considering this matter, it is important that I focus on any off-site impacts in relative terms.

17. Even if the property had lawfully been used at full capacity as a ten person sui generis HMO, I find that the evidence of the turnover of guests who occupy the holiday-let property for short periods is such that there has been a relative and

material difference in the amount of comings and goings (sometimes in concentrated large groups) to, from and outside the property when compared to the use of the property as either a ten person sui-generis HMO or, given the claim made by the appellant, as a C3 dwellinghouse.

18. Given the turnover of guests, coupled with the need to clean the property following its use by up to three members of staff, I find that the holiday-let use has resulted in a noticeable/material difference in the frequency and turnover of pedestrian and vehicular movements to, from and outside the property in relative terms. This would be the case whether I had found that the lawful use of the property was a C3 dwellinghouse, or a sui generis HMO used by up to ten occupants. These are matters which in themselves are sufficient for me to conclude that the breach of planning control constitutes a material change of use for which planning permission is required.

19. Notwithstanding the above, I emphasise that the appellant's evidence is not sufficiently precise to counter the position of the Authority that prior to the holiday-let use occurring, it was used for a residential HMO purpose. In this regard, it is noteworthy that policy 15 of the 2021 Lake District National Park Local Plan 2020-2035 (LP) seeks to increase the supply of homes in the area to meet local community need. Policy 18 of the LP states that *'we will only support proposals for the reuse of existing buildings (excluding guest houses) for short term holiday letting where they would not utilise a building that is suitable for providing local need or affordable needs'*. In my judgement, the appeal property is suitable for providing residential accommodation to meet a local housing need both in terms of its internal configuration and its sustainable location. The evidence is that the loss of such a property to a holiday-let use would be contrary to policy 18 of the LP and, importantly, would result in the loss of a building which could be used to provide a local community need.

20. Given the above, I find that the use of the property as a holiday-let unit would have a significant planning consequence from the point of view of the delivery of housing that is needed in this location. While this is not determinative in terms of my finding that a material change of use has occurred, it is nonetheless a matter that adds to such a finding and is in accordance with case law[2].

21. For the above reasons, I find that the matters alleged constitute a breach of planning control. The use of the appeal property as a holiday-let constitutes a material change of use, whether it be from a C3 dwellinghouse use or a sui-generis HMO use, and hence an act of development in accordance with section 55 of the Act. Consequently, planning permission is required for the holiday-let use. Therefore, the ground (c) appeal fails.

Overall Conclusion

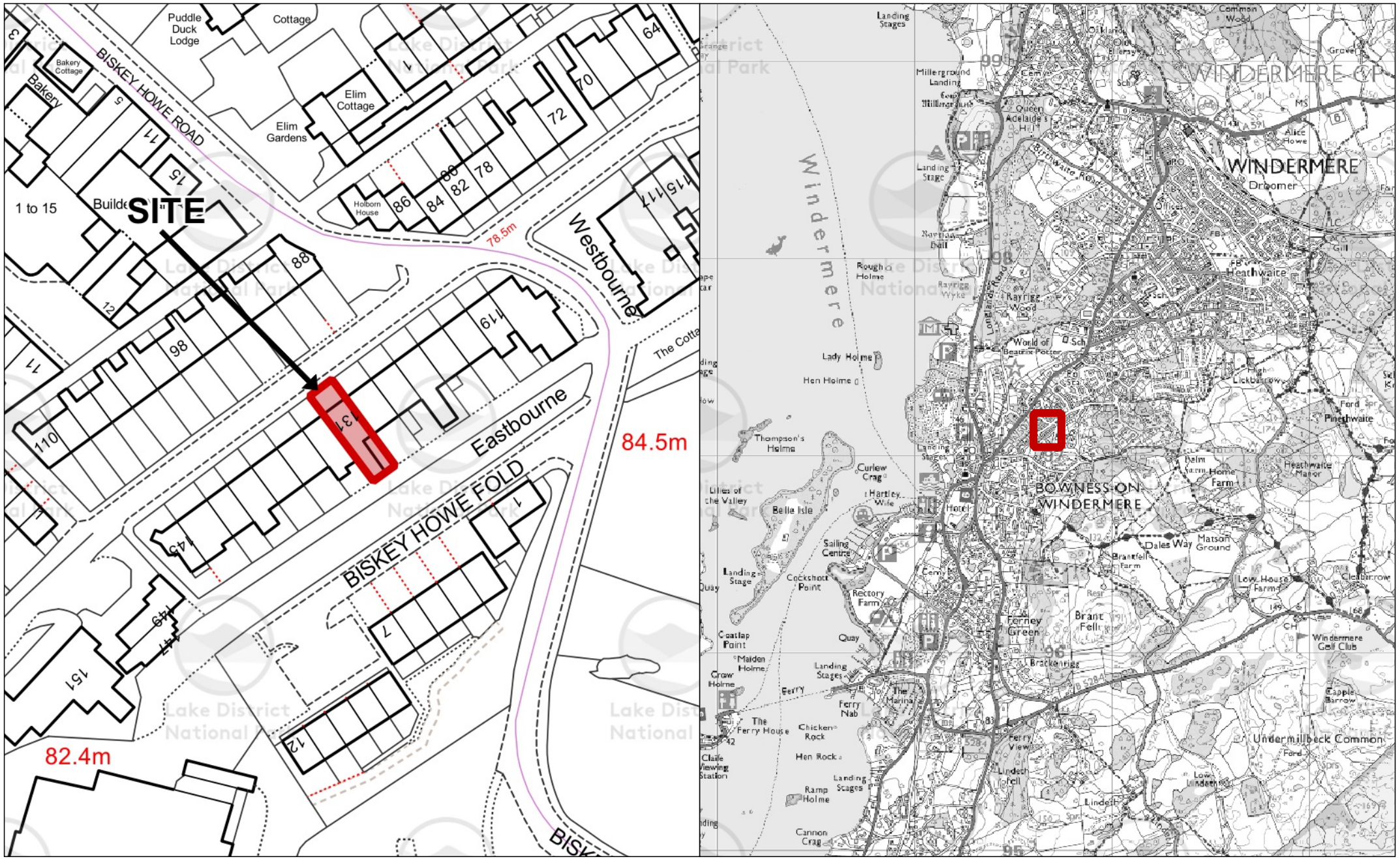
22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

D Hartley

INSPECTOR

[2] R (oao) Kensington & Chelsea RBC V SSCLG & Reis & Tong (2016) EWHL 1785 (Admin)

Enforcement Site Plan: E/2024/0042



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

Date Authored: 17/06/2026

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Lake District National Park Authority

Planning Inspectorate

Appeal Decision

Site visit made on 27 May 2026

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2026

Appeal Ref: APP/Q9495/C/25/3374745
Old Bank House, Lake Road, Ambleside, LA22 0AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Charles Bambridge (Willow Securities Limited) against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 10 September 2025.
- The breach of planning control as alleged in the notice is without planning permission, operational development consisting of building operations to install replacement window frames.
- The requirements of the notice are to restore the building to its condition before the breach took place by; i) removing the window frames from the openings in the west and east elevations of the building, which are outlined in red on the photographs included in Appendix B; and ii) in those openings arising from compliance with step i), install timber framed windows of an appearance and method of opening that restore the land to its condition before the breach took place. Photographs of the building before the breach took place are included in Appendix C.
- The period for compliance with the requirements is 12 months after the notice takes effect.
- 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). 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 Matter

2. A draft National Planning Policy Framework 'Plan-making and national decision-making policies' was issued by the Government for consultation on 16 December 2025 (Consultation Draft Framework) and with a deadline for comments by 10 March 2026. The Consultation Draft Framework has limited weight as a material planning consideration. In respect of the main issues which are pertinent to the consideration of the ground (a) deemed planning application, I have continued to afford full weight to the published National Planning Policy Framework 2024 (as amended) (the Framework) and the adopted development plan as a whole from the point of view of determining this appeal. In this case, the Consultation Draft Framework does not alter or outweigh my conclusion below for the ground (a) appeal deemed planning application.

Ground (a) appeal and the deemed planning application

Main Issue

3. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged

in the notice. I have considered the reasons for issuing the notice and the main issue is whether the window frames identified in a red colour in the photographs in Appendix B of the notice preserve or enhance the character or appearance of Ambleside Conservation Area (CA), and whether the landscape and scenic beauty and cultural heritage of the Lake District National Park have been conserved and enhanced.

Reasons

4. The appeal site falls within the CA. It is located on Lake Road and occupies a prominent position on a narrow street. The traditional Victorian building includes the Old Bank House Chocolate shop on the ground floor, and Old Bank House flats 1-5 above. The flats extend over Mr H's Tearoom. To the front of the building, the timber windows on the first and second floors have been replaced with new uPVC casement windows. The first-floor oriel window, which is a distinctive and characterful feature, has also been replaced with uPVC frames. To the rear, which is visible from King Street, uPVC frames have been installed on all four floors of the building. While such windows were previously of mixed style it is not disputed that they were finished in a timber material.

5. While the appeal building is not listed, it is nevertheless included in the Ambleside Conservation Area Appraisal and Management Plan (CAA&MP) as having a 'special character'. In other words, it is a good example of a building which has a style and materials which are befitting of the Victorian era. The front of the building is more decorative, including the first-floor oriel bay window which draws attention to all the upper-level windows. The rear elevation is simpler in character and appearance, but the consistency of the former timber windows (many with decorative glazing bars) was experienced as assimilating well with the traditional character and appearance of the property. This is even though there was previously some inconsistency to the design of such windows in the rear elevation of the property. Prior to the breach of planning control occurring, I find that the above attributes contributed positively and distinctively to the significance of the building and hence to the character and appearance of the CA when considered as a whole.

6. The building falls within an area where the buildings are predominantly of Victorian character and appearance. Indeed, the property is very traditional in character and appearance, is tall when experienced from the narrow streets, and there is some noticeable consistency to the overall height of the buildings when experienced by passers-by. Prior to the appeal window frames being installed, the evidence is that they were slender in terms of thickness and had a wooden appearance reflecting the distinctive and characterful traditional Victorian appearance of the building when appreciated within the locality and the CA as a whole. Many of the windows to the rear elevation had glazing bars which were narrow and decorative and added some distinctive visual charm and complexity to the way that the building was visually perceived from King Street.

7. I acknowledge that there are several examples of buildings in the CA (as identified by the appellant), including near to the appeal site, where window frames are uPVC. Nonetheless, this does not diminish the overall positive contribution that the appeal building made to the character and appearance of the CA prior to the unauthorised window frames and casements being installed. Moreover, it is noteworthy that section 6 of the CAA&MP refers specifically to the incremental loss

of architectural details and the use of inappropriate modern materials, such as uPVC, on both listed and unlisted buildings in the CA. In time, it remains possible that the incremental loss of architectural details and the use of modern materials will be reversed through controlling new or replacement development in the interests of preserving or enhancing the character and appearance of the CA. It does not therefore automatically follow that the existence of some buildings with uPVC window frames means that the appeal development should be allowed. There are still many traditional and architecturally impressive buildings in the CA when considered as a whole.

8. Owing to the finish, thickness and design of the window frames, I find that material harm has been caused to the traditional character and appearance of the host building and hence the way that it now contributes to the significance of the character and appearance of the CA as a whole. While the colour of the window frames is not in itself a determinative factor, they are nonetheless experienced as being a stark white colour when seen against the muted tone of the elevations of the building. In this regard, the white colour draws particular attention to the harmful and modern additions by those using both King Street and Lake Road.

9. Ambleside lies within the Upper Windermere area of Distinctive Character as defined in the Lake District National Park Landscape Character Assessment and Guidelines SPD 2021 (SPD). The evolution of the town which includes the Victorian expansion and how this influences the building character is noted as one of the distinctive characteristics of the area and creates a sense of place. The SPD specifically states that the area has distinctive, predominantly Victorian slate buildings with 17th and 18th century buildings of note within Ambleside, that are vulnerable to extensions which do not reflect existing built character and scale.

10. The appeal building is one of the above distinctive buildings. I find that the impact of the alterations on the building and street scene as identified above has resulted in a development that fails to maintain local distinctiveness and the sense of place within the landscape. To the extent that harm has been caused to the character and appearance of the host property, and the positive contribution that it makes to the vernacular architecture and landscape character of the area, I therefore also conclude that harm has been caused to the protected landscape of the Lake District National Park. In this regard, the development does not conserve and enhance the landscape and scenic beauty and cultural heritage of the Lake District National Park.

11. In the context of paragraph 215 of the Framework, I find that less than substantial harm has been caused to the significance of the CA. The harm caused is at the lower end of the spectrum of less than substantial harm caused. The appellant has referred to benefits associated with the harmful development including energy efficiency improvements, the provision of high-quality visitor accommodation, investment in Ambleside town centre, and a reduction in noise from outside traffic and late-night activity. I acknowledge these benefits, but this must be weighed against the identified harm caused to the character and appearance of the CA. Even if all the above were to be considered as public benefits, I do not find them to be sufficiently weighty to outweigh the less than substantial harm caused to the significance of the CA.

Other Considerations

12. The appellant makes the claim that replacing the unauthorised window frames would be 'unaffordable'. I do not doubt that the requirements of the notice would incur some expense on the part of the appellant. However, the claim made about affordability is not supported with any objective or precise evidence.

Planning Balance and Conclusion

13. For the above reasons, I find that the development identified in a red colour in the photographs in Appendix B of the notice does not preserve or enhance the character or appearance of the CA. Moreover, harm has been caused to the landscape character and cultural heritage of the Lake District National Park protected landscape. In terms of the latter consideration, I do not find that the appellant has suitably met the requirement to seek to further the statutory purpose of the protected landscape relative to the objectives in the SPD. The identified harms are not outweighed by the other considerations outlined above.

14. Consequently, I conclude that the development does not accord with the design, conservation and landscape requirements of policy 01, policy 05, policy 06 and policy 07 of the adopted 2021 Lake District National Park Local Plan 2020-2035, the SPD, and chapters 15 and 16 of the Framework. Therefore, the ground (a) appeal fails.

Ground (f) appeal

15. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

16. The purpose of the notice is to remedy the breach of planning control by requiring the identified unauthorised window frames to be removed and, in turn, the relevant part of the land to be restored to its previous condition. In this regard, the requirements of the notice are not excessive as they seek to remedy the breach of planning control.

17. The claim made by the appellant is that the replacement of the windows is excessive and disproportionate. This is a matter that is relevant to the consideration of the ground (a) appeal and the deemed planning application. I have concluded that planning permission should be refused in the public interest given the conflict with local and national planning policies.

18. For the above reasons, I conclude that the ground (f) appeal fails.

Ground (g) appeal

19. The appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.

20. The claim made by the appellant on ground (g) is that a period of 36 months rather than 12 months is needed because of the *'cost, complexity, and investment already made in the building'*. The appellant does not reasonably substantiate these points and, there is no objective or precise evidence before me to

demonstrate that it would not be possible to ensure physical compliance with the requirements of the notice within 12 months. Moreover, I emphasise that a period of 36 months would be tantamount to the grant of temporary planning permission.

21. On the evidence that is before me, I find that a period of 12 months strikes a reasonable and proportionate balance between ensuring that the appellant has a time to comply with the requirements of the notice and bringing the harmful development to an end in the public interest. For the above reasons, I conclude that the ground (g) appeal fails.

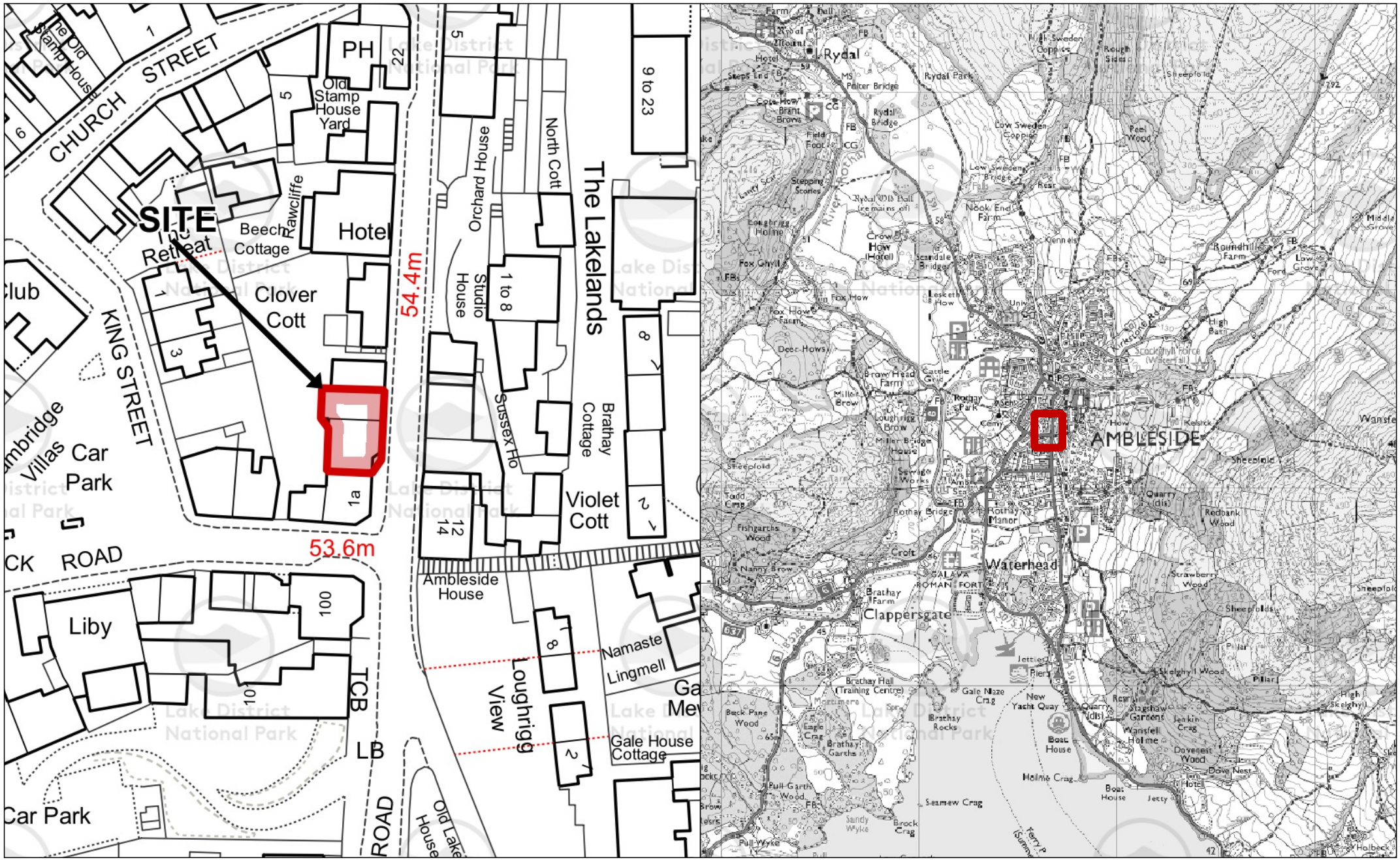
Overall Conclusion

22. 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).

D Hartley

INSPECTOR

Enforcement Site Plan: E/2024/0243



0 10 20 m

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

Date Authored: 17/06/2026

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