
Appeal Decision

Site visit made on 7 September 2016

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 September 2016

Appeal ref: APP/Q9495/C/16/3142998

Land at Nook End Farm, Nook Lane, Ambleside LA22 9BH

- The appeal was made by Kankku (Holdings) Limited under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Lake District National Park Authority.
- The notice was issued on 15 December 2015.
- The breach of planning control alleged in the notice was: Without planning permission, operational development consisting of the installation of a metal biomass pellet feeder building, two metal flues and metal support attached to the larger flue.
- The requirement of the notice is to: Permanently remove from the land the metal biomass pellet feeder building, the two metal flues positioned within the roof of the agricultural building and the metal support attached to the largest flue.
- The period for compliance with the requirement is four months.
- The appeal was made on ground (a) as set out in Section 174(2) of the 1990 Act. Appeals on grounds (c) and (f) were added later.

Summary of Decision: The enforcement notice is varied and upheld

Appeal development

1. The appeal concerns equipment associated with the installation of two boilers inside a modern agricultural building that stands opposite the Grade 2 listed farmhouse at Nook End Farm, Ambleside. The smaller boiler is supplied from a metal pellet feeder structure built to the outside of the agricultural building. Each boiler has an external metal flue. The flue to the smaller boiler is self-supporting. The wider and taller flue to the larger boiler has a steel column support.

The appeal on ground (c)

2. An appeal on ground (c) asserts that there has not been a breach of planning control. The Appellants said the development was part of an agricultural building. The biomass apparatus was, in essence, ancillary to the agricultural use of the holding. As such, it benefitted from agricultural permitted development rights. The development fell within Class A of Part 6 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order in being at the time of the appeal development, (the Order). It was accepted however, that no application had been made to the Authority for a determination as to whether their prior approval would be required as to the siting, design and

external appearance of the building. Nor was it explained how the appeal development would have met the limitations and conditions set out in A.1 and A.2 of Class A.

3. It is of no consequence that there was no reference in the notice's allegation to the need to make an application regarding prior approval. In the absence of such an application, the appeal project cannot benefit from Order concessions.
4. Even if such application had been made to the Authority, their case makes it clear they would have concluded that the appeal biomass equipment needed specific planning permission. That was because if, according to the Appellants, the matter came to be considered under Class A, it had to be shown that the development was reasonably necessary for the purposes of agriculture within that unit. That was not done. Also, the development fails to satisfy limitation A.1(d) – Development is not permitted by Class A if – it involved the provision of a building, structure or works not designed for agricultural purposes; or limitation A.1(k) – or if any building for storing fuel for ... a biomass boiler ... (i) would be used ... for storing fuel not produced on land within the unit; or (ii) is or would be within 400m of the curtilage of a protected building, (protected building includes a dwelling). The biomass structure also fails to meet Condition A.2(1)(a) to Class A, (housing a biomass boiler and its fuel within 400m of a protected building). The appeal on ground (c) must fail.

The appeal on ground (a)

5. The Authority's objection to retention of the external pellet feeder and flues was that they are not in keeping with the old farm buildings. The bright metal finishes to all the external works are incongruous when seen against the natural finishes of surrounding buildings. They said the appearance of the highly visible biomass structures conflicted with policy CS25 of the Lake District National Park Core Strategy that says the highest level of protection will be given to the landscape. Also, the proximity of the pellet feeder structure and the boiler flues to the Grade 2 listed farmhouse adversely affected its setting and character.
6. The Appellants said the external structures were clearly subservient to the building to which they were attached. That building, which itself was not of traditional construction, and other buildings nearby, screened views to the pellet feeder store from close and distant views. The flues, whilst extending above the ridge of the building, were minor features, making a small impact that did not have the adverse effect described by the Authority.
7. Dealing first with the pellet feeder structure, I agree with the Appellants that it is hidden from most distant views. But it is quite noticeable when seen on the approach along the public right of way from Ambleside that runs between the Nook End Farm house and the building to which it is attached. Even more prominent on the approach from Ambleside are the 2 metal flues, especially the tall supported flue to the larger boiler. In my view, the incongruity presented by the pellet feeder is exacerbated by there being 2 flues. I understand that the taller flue's apparently excessive height is required in order to exhaust well above the adjoining roof. But that has made it especially stark and intrusive. The overall effect on the appearance of the immediate area is a conflict with the exhortations in policy CS25 that developments should maintain, and where possible, enhance local distinctiveness. Retention of the development as it is would also be contrary to policy CS27. That policy was drawn up to protect the historic environment of the National Park. That is in line with Government policy

on the protection of the historic environment set out in paras. 126 – 141 of the National Planning Policy Framework, (NPPF). That says the significance of a designated heritage asset, such as a listed building, can be harmed by development within its setting. The appeal development is seen to be within the setting of Grade II listed Nook End Farm. I conclude that it fails to enhance or protect the setting of the listed building.

8. National and local policy supports the installation of renewable and low carbon energy projects, (para. 98, NPPF; Core Strategy policies CS 16 and CS 27). The type of development at Nook End Farm is acceptable. But as built, its appearance is materially harmful to its setting.
9. The Appellants said that, with the imposition of appropriate conditions, particularly relating to colouring, the development could be made acceptable. That would help, but would not overcome or hide the stark incongruity of the pellet feeder and the dual flues. The s.174 appeal on ground (a) fails. Planning permission is not granted for the retention of the external pellet feeder structure, the flues and attached supports.

The appeal on ground (f)

10. The appeal on ground (f) asserts that the requirement of the notice is too onerous and that lesser steps than removal of all the works enforced against would remedy any harm caused. The Appellants were willing to remove the smaller of the 2 biomass boilers. That would see removal of the pellet fuel feeder and the smaller flue. The remaining taller flue and its support could be painted in a colour to match the building to which it was attached.
11. I consider that those suggestions would go most of the way to producing an acceptable result. Nevertheless, what looks like an excessively tall flue and its supporting structure would remain. Presumably that support would not be needed if the flue were much shorter. I assume, however, that would make the flue ineffective unless fan assisted, (if that was appropriate or permissible). It could help if the flue were to be painted in a colour to be agreed with the Authority. But painting alone would not overcome the inherent and unacceptable intrusion of the larger flue. The appeal on ground (f) fails.
12. Although there was no appeal on ground (g) – that the period for compliance was inadequate, I extend the 4 months period to nine months. That is to allow more time for any suitable rearrangement of the heating facilities at Nook End Farm to be carried out and for the possibility of coming to an agreement with the Authority on an acceptable solution.

FORMAL DECISION

13. The enforcement notice varied by the deletion of the words “four months” in line 2 of para. 6 on page 2 of the notice and the substitution therefor of the words: “Nine months.”. Subject to that variation, the enforcement notice is upheld.

John Whalley

INSPECTOR