

Appeal Decision

Site visit made on 13 September 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 31 October 2016

Appeal Ref: APP/Q9495/C/16/3148984

Storrs Park, Bowness LA23 3LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Michelle Rothwell against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice was issued on 11 March 2016.
 - The breach of planning control as alleged in the notice is the erection of a building being used as a dwelling.
 - The requirements of the notice are (1) Permanently cease the residential use of the building; and (2) Permanently remove the building from the land.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The ground (a) appeal succeeds, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building being used as a dwelling at Storrs Park, Bowness, subject to the following conditions:

1. The planning permission hereby granted shall expire two years after the date of issue of this decision;
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no material external alterations or extensions shall be carried out to the dwellinghouse, nor shall any building, enclosure, structure, domestic fuel oil container, pool or hardstanding be constructed within the curtilage of the dwellinghouse, without the prior written permission of the local planning authority.

Reasons

The ground (c) appeal

2. The appeal building is on a large residential plot between the east shore of Lake Windermere and the A592 between Bowness-on-Windermere and Newby Bridge. It is a flat roofed structure constructed in fairfaced blockwork with large folding glass doors in its north-east and north-west elevations.

3. Planning permission 7/2010/5180 was granted on 2 August 2010 for a five bedroom dwelling on the land and a letter from the Authority dated 24 May 2013

confirmed that this permission has been implemented. The permission therefore remains extent. The Appellant purchased the plot in January 2015.

4. The Appellant continued implementation of the permission by "...the erection of the walls of the garage and utility room as the first above ground element of the property". The building created by these works is accepted by the Authority to be "...sited in approximately the same position as the garage approved by planning permission 7/2010/5180 and is about the same size and scale as the garage shown on the approved plans". Further work was delayed by a legal dispute regarding a septic tank on the plot. During this delay the Appellant reconsidered the scheme and engaged Architects to design an alternative scheme.

5. At the date of the site visit an application had not been submitted but, in the meantime, the Appellant had "...fitted out the garage/utility to provide temporary accommodation for her family whilst the remainder of the dwelling was completed". It is maintained that "This was an alternative to bringing a caravan onto the site which would have been lawful whilst construction was taking place". In this regard the provision on land of a building required temporarily in connection with and for the duration of operations being carried out on the land is development permitted under Class A of Part 4 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

6. There are no 'operations being carried out on the land' so the appeal building is not development permitted by Class A of Part 4 of Schedule 2 of the GPDO. The Appellant maintains that the planning permission does not restrict the specific use of elements of the permitted dwelling and that the garage could therefore be used "...as a dining area, kitchen or bedroom". But condition two of the permission requires the development to be carried out in conformity with submitted plans and these specify the uses of spaces within the dwelling and its external appearance.

7. The appearance of the appeal building and its use are not in conformity with the plans approved under condition two of the permission. It cannot be claimed, therefore, that planning permission is in place for the appeal building or, with regard to its occupation for the duration of operations, that it is permitted development. The ground (c) appeal thus fails.

The ground (a) appeal

8. The main issue is the effect of the appeal building on local amenity.

9. The dwelling permitted under the extant planning permission is modern in design, form and appearance. For instance, it would be, if completed, wholly flat roofed in an area where traditional buildings have steep pitched slate clad roofs. The part of the dwelling that has been erected is the part furthest away from the lake and is single storey. It is, in this regard, likely to be, given the circumstances of the plot and its surroundings and against the backdrop of mature trees and a hillside, unobtrusive in views from the lake, and it is largely screened in views from the A592. It is, however, by itself and given its fairfaced blockwork elevations in particular, somewhat incongruous and unattractive. In its current form the appeal building does have an adverse effect on local amenity.

10. If the dwelling was to be completed as permitted the element that has been erected would retain its flat roof and its form but would be clad in local slate. A condition suggested by the Authority would require the building to be clad in this material. This would remedy its appearance but would not remedy the building's

incongruity as a relatively small building on a large plot in an area on the eastern shore of Lake Windermere where large dwellings predominate.

11. The circumstances of this case are unusual and it is understandable that the Appellant, irrespective of the time afforded by the delay caused by the septic tank issue, has resolved to pursue an alternative design for the dwelling on the plot. In this regard it is likely that the "...concern from the local community", as mentioned in the Authority's statement and given the screening of the appeal building, is a result of uncertainty rather than any significant concern for the effect of the development on local amenity.

12. Whilst the harm to local amenity cannot be allowed to subsist permanently it is reasonable, taking into account the limited harm that is being caused by the appeal building, to consider granting a temporary permission for the building as it is, without cladding it in stone. This would provide sufficient time for the design of an alternative dwelling to be realised and agreed with the Authority, for the necessary planning permission to be granted, and for the permission to be implemented. If, when the temporary permission has expired, a planning permission has not been implemented the Authority can take the necessary action to ensure the removal of the building from the land.

13. Under the ground (g) appeal the Appellant has suggested a compliance period of two years. Such a period is reasonable to allow the process set out in the previous paragraph to proceed to a satisfactory conclusion. The planning permission granted in this decision is therefore subject to a condition limiting the permission to a period of two years. To prevent any additional, potentially harmful, permitted development being carried out on the land during that period, a condition has also been imposed that withholds permitted development rights.

14. The appeal building causes some harm to local amenity and the development thus conflicts with policies in the Lake District National Park Core Strategy, which is part of the Development Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The specific circumstances of this case are the material considerations that merit determination of this appeal otherwise than in accordance with the development plan.

15. The ground (a) appeal succeeds and planning permission has been granted for the development already carried out, namely the erection of a building being used as a dwelling at Storrs Park, Bowness, subject to two conditions. The ground (f) and (g) appeals do not therefore need to be considered.

John Braithwaite

Inspector