The Planning Inspectorate

Appeal Decisions

Site visit made on 29 November 2016

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 6 December 2016

Appeal A Ref: APP/Q9495/C/16/3153929
Land at 18 Ash Street, Bowness-on-Windermere, LA23 3EB

- 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 Laketime Holidays Ltd against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 10 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, operational development consisting of the erection of decking and canopy.
- The requirement of the notice is to permanently remove the decking and canopy from the land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a variation.

Appeal B Ref: APP/Q9495/W/16/3153922
The Fizzy Tarté, 18 Ash Street, Bowness-on-Windermere, LA23 3EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Laketime Holidays Ltd against the decision of Lake District National Park Authority.
- The application Ref: 7/2016/5268, dated 25 April 2016, was refused by notice dated 6 June 2016.
- The development proposed is retrospective application for temporary canopy and decking.

Summary of Decision: The appeal is allowed.

Preamble

1. The development which is the subject of both appeals is already in place. It comprises an area of decking, with a lean-to fabric canopy above it, located at the side of no.18 Ash Street. In addition to the decking and canopy, the area is enclosed to the side and rear by vertical plywood sheeting, which is not referred to in the enforcement notice. Although there is mention of the sheeting in the representations, I do not feel able to correct the allegation in the notice, by including the sheeting, without injustice to the appellants.

Main Issue

2. The main issue in both appeals is the impact of the development on the character and appearance of the Bowness Conservation Area.

Reasons

3. The site is centrally located within the Bowness Conservation Area, which here is characterised by an appealing mix of traditional vernacular buildings. Indeed the appeal site is surrounded by Buildings of Special Character as identified in the Bowness Conservation Area: Conservation Area Appraisal and Management Plan (October 2011). Ash Street is a very busy pedestrianized street, containing a mix of retail and food and drink uses and planning permission was granted retrospectively by the Authority in August 2016 for the change of use of no.18 and adjacent land (the appeal site) to Class A4 (drinking establishment).

4. The development in question occupies a fairly prominent position on the street frontage. It is basic and utilitarian in appearance and fails to respect the architectural detailing of neighbouring buildings or the facing materials which predominate in the area. I agree with the Authority that, as a structure, it fails to preserve or enhance either the character or appearance of the Conservation Area. As such, it conflicts with Policy BE11 of the Lake District National Park Local Plan and Policies CS10, CS11 and CS27 of the Core Strategy, which together seek a sympathetic and sustainable form of development which has regard to the landscape and to the historic environment.

5. In addition to no.18, the appellants also own the land and buildings sited to the rear of a shared courtyard behind no.18. These comprise a building used as a kitchen and the site of the former Postilion Restaurant, which is at an advanced stage of redevelopment, following the grant of planning permission in October 2015 (Ref: 7/2015/5742). The appeal structure was erected to provide temporary customer accommodation, pending the completion of the redevelopment. The appellants point to the benefits of maintaining their business, including the use of the rear kitchen, during the redevelopment, which is scheduled to be complete in Summer 2017. The appeal site itself has permission for A4 use and the structure was intended both to protect the customers from the noise, dust etc. of the adjacent construction site and to screen the construction site from passers by in Ash Street.

6. The simple design and materials of the appeal structure reflect its temporary nature. However, I note that the woodwork has been painted grey to match the colour scheme of no.18 itself. The fact that this is a recessive colour helps to mitigate the visual impact of the development. The appellants point out that, as a fall-back position, they could lawfully position large, strident umbrellas and outdoor heaters on the land without the requirement for planning permission, so long as they did not amount to development, as defined in S.55 of The Act.

7. I have taken account of the benefit of the appeal structure to the vitality of the appellants' business, including the continued employment of some 15 full- and part-time staff, of the benefit of screening the adjacent redevelopment site from both customers and passers by and the fact that the redevelopment appears to be well advanced. In this context, I do not consider it expedient to require the removal of the structure within 2 months, as required in the notice.

8. In the case of Appeal B, the appellants originally sought temporary permission for 3 years. However, recognising that the progress of the redevelopment scheme should make this unnecessary, have suggested a condition that would require removal of the development if the redevelopment is completed sooner.

Whilst I agree with this principle, I regard 3 years as an unduly excessive period to retain what is an unacceptable form of development and consider that 1 year should be the maximum period allowed.

9. My conclusions on the 2 appeals are as follows. In Appeal A, having found the development to be unduly harmful as a permanent structure, I shall dismiss the appeal and uphold the notice. This will allow the Authority to enforce the removal of the unauthorised development in due course. However, because of the benefits of the scheme which I identify above, I shall vary the compliance period to 12 months. This will be consistent with my allowing Appeal B for a temporary period of up to 12 months.

Formal Decisions

Appeal A

10. The enforcement notice is varied such that the time for compliance shall read:- "Twelve months after this notice takes effect".

    Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

11. The appeal is allowed and planning permission is granted for temporary canopy and decking at The Fizzy Tarté, 18 Ash Street, Bowness-on-Windermere, LA23 3EB, in accordance with the terms of the application, Ref: 7/2016/5268, dated 25 April 2016, and the plans submitted with it, subject to the following condition:

    The development to which this permission relates shall be permanently removed either:- i). within 12 months of the date of this permission; or ii). before the first use of the development subject to planning permission ref: 7/2015/5742 (including any subsequent amendment), whichever is the earlier.

B.S.Rogers

Inspector