
Appeal Decision

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 Ref: APP/Q9495/C/16/3153281

Brackenfold, The Hoo Lane, Ambleside Road, Windermere, LA23 1PT

- 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 Mr Peter McDonald against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 2 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, operational development consisting of the erection of a tree house.
- The requirement of the notice is to permanently remove the tree house.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (f) 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.

The appeal on ground (a) and the deemed application

1. The development in question is referred to by the appellants as a "flora and fauna observation deck". However, no issue is taken with the Authority's use of the term "tree house"; it is quite clear which development is the subject of the notice.
2. The main issue is the impact of the development on the character and appearance of the area.
3. Core Strategy Policies CS02 and CS03 require development to be appropriate in scale and nature to the character and function of its location, relate well to the form of the settlement and existing buildings and protect, maintain or enhance the local distinctiveness, character and landscape setting of the settlement. Policy CS10 supports design that reinforces the importance of the local character and distinctiveness of rural settlements and the landscape. Policy CS11 applies the principles of sustainable development and seeks to avoid adverse impacts on the special qualities of the National Park. Policy CS25 requires the type, design and scale of development, and the level of activity, to maintain, and where possible enhance local distinctiveness, sense of place and tranquillity.
4. The tree house is located in a privately owned area of predominantly deciduous woodland which abuts the residential curtilage of a detached dwelling known as Brackenfold. Brackenfold is part of a long-established, low density residential area on the periphery of Windermere, set on the steep, wooded slopes which rise up to the east of the A591.

5. The tree house is set back a short distance from the western edge of the woodland. It comprises a wooden platform attached to the trunks of trees which protrude through the deck. The platform is enclosed by timber safety railings and has a small covered area with a double pitched corrugated metal roof. The site is steeply sloping and the platform is around 4.5m above the ground at its eastern edge, where it is closest to the ground, and where the timber access ladder is located.
6. I was advised at my site visit that the tree house is not visible from any public vantage points to the east of the site. However, I saw that it is visible from a much lower level to the SW, along a short section of The Hoo Lane, which here is also a public right of way. It must also be visible from some of the neighbouring dwellings or their gardens along this part of The Hoo Lane, which are also at a much lower level. However, even though my visit was at a time of year when most leaf fall had taken place, the tree house was partially screened by trees. Moreover, to my mind, the context of this view is of a low density, wooded, residential setting, rather than that of a rural landscape.
7. In this situation, I consider the tree house to be visually unobtrusive and of an appearance compatible with its setting, taking account of its simple form and unstained timber construction, save for the unacceptably discordant, shiny corrugated metal roof. I anticipate that this latter feature would still be visible in the leafier months and I find this particular aspect of the development to be unduly harmful to the character and appearance of this wooded setting because of its inappropriate design and materials.
8. The use of the tree house would introduce a level of activity which would not normally be found in a woodland. However, this wood is already laid out with formal paths and is used for domestic activity, including family camping and creating sculptures, apparently without concern to the Authority. It is hard to imagine that the additional private use of the tree house would be such as to cause undue disturbance either to nearby residents or to the tranquillity of the woodland.
9. The Authority is concerned that the approval of this development could serve as a precedent for other similar development. However, I have judged this scheme on its site specific merits, which do not appear to me to be widely applicable.
10. Taken as a whole, including the metal roof, the development conflicts with Core Strategy Policies CS02, CS03, CS10, CS11 and CS25, which seek to promote sustainable development of high design standards, which is appropriate to its setting and protects the distinctive National Park landscape. The identified harm and the conflict with the provisions of the development plan lead me to conclude that the appeal on ground (a) and the deemed application should fail.

The appeal on ground (f)

11. The appellant has suggested a number of alternatives to removal of the entire structure. Bearing in mind that the only part of the development to which I take exception is the corrugated iron roof, the removal of this part of the structure would in my view make the development acceptable. Accordingly, I shall vary the notice such that only the corrugated iron roof sheeting needs to be removed. On compliance with the requirements of the notice, the

remainder of the development would become lawful by dint of S.173(11) of The Act.

Formal decision

12. The enforcement notice is varied by replacing the requirement in section 5 with "Permanently remove from the Land the corrugated iron roof sheeting which presently forms the roof of the tree house."

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.

B.S. Rogers

Inspector