
Appeal Decisions

Site visit made on 30 January 2017

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

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

Decision date: 7 February 2017

Appeal A: APP/Q9495/C/16/3158556

Land at Denton Hill, Matterdale, Penrith, Cumbria, CA11 0LE

- 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 David Garner against an enforcement notice issued by the Lake District National Park Authority.
 - The enforcement notice was issued on 3 August 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission operational development consisting of building operations to the north east wall of the stable building, which materially affects the external appearance of the building.
 - The requirements of the notice are to permanently remove the concrete blocks from the north east wall of the stable building on the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/Q9495/C/16/3158555

Land at Denton Hill, Matterdale, Penrith, Cumbria, CA11 0LE

- 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 David Garner against an enforcement notice issued by the Lake District National Park Authority.
 - The enforcement notice was issued on 3 August 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of land for the siting of a caravan used for residential accommodation.
 - The requirements of the notice are to remove the caravan from the land and permanently cease to use the land for the siting of a caravan otherwise than as permitted by Class A in Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015, which allows a caravan to be sited for the accommodation of a person or persons employed in connection with building or engineering operations (being operations which permission has, if required, been granted) being carried out on the land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal A decision

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

Appeal B decision

2. It is directed that the enforcement notice be varied by adding the words "for residential occupation" after the words "siting of a caravan" in the
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requirements. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Appeals A & B

Reasoning

4. The site is located in open countryside on the lower slopes of Little Mell Fell and contains dilapidated buildings which were once used as a farmhouse and attached barn/stable. The buildings were abandoned in the 1970s and, what was then a mixed residential/agricultural use, reverted to an agricultural use. The land lies adjacent to a domestic property known as Lowthwaite and also adjoins open access land. A public right of way runs through the site.
5. Planning permission was granted in October 2014 for the reinstatement of the haybarn and re-roofing of the abandoned farmhouse to prevent further deterioration. Prior to this and without planning permission, repairs were carried out to the haybarn (also referred to as a stable) using concrete blocks, which materially affect the external appearance of the building and, therefore, amount to development. The planning permission did not regularize the existing repairs.

Appeal A

Ground (f)

6. The enforcement notice does not specify which of the purposes under s173(4) of the Act it seeks to achieve, ie whether it is to remedy a breach of planning control or to remedy any injury to amenity. However, as it requires the permanent removal of the concrete blocks, its purpose points towards remedying the breach of planning control. There are no lesser steps which could be taken to resolve the alleged breach and, therefore, the requirements of the enforcement notice are not excessive.
 7. An outline application was made in February 2016 for a house and wood store on the site, which the Council found to be invalid due to missing information. The Appellant suggests that the scheme is supported by Matterdale Neighbourhood Plan and Matterdale Parish Council and that the enforcement notice should be amended to reflect a programme of works for proceeding with the proposed development.
 8. However, regardless of any support for the scheme, there is no guarantee that the proposal will be granted permission and the enforcement notice requirements cannot be based on uncertain future events. Anyhow, bearing in mind the proposal is only in outline, the programme indicates that it could take up to two years or more before development commenced. It would not be in the public interest to allow the harm caused by the blocks to continue for this length of time. Consequently, this is not a viable option for lessening the enforcement requirements.
 9. In conclusion, for the reasons given, the ground (f) appeal fails.
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Ground (g)

10. The Appellant suggests that the compliance period of three months be extended to take account of the programme of works referred to under ground (f). However, as ground (f) fails, this programme provides no good reason to extend the time for compliance.
11. Three months is a reasonable time period within which to remove the concrete blocks from the barn/stable wall, taking account of any supports that may be needed to prop up the wall and to find a builder. Therefore, the ground (g) appeal fails.

Appeal B Ground (c)

12. Under this ground, the Appellant must show why the matters alleged do not constitute a breach of planning control. A static caravan was brought onto site in about April 2015 and connected to the mains electricity supply, a spring water source and an existing septic tank. It has been used intermittently since then for residential purposes. This amounts to a material change of use of the land.
13. The caravan is situated on one of the highest parts of this sloping site in a prominent position above the public right of way and near to the boundaries with Lowthwaite and the open access land. Its siting for residential occupation in this location results in a dominant feature, which is visible from both public and private vantage points. Consequently, it fails to conserve or enhance the special qualities of the area, adversely affects the character and appearance of the area and impacts on visual amenity.
14. Schedule 2, Part 5, Class A of the General Permitted Development Order [GPDO]¹ grants permission for the use as a caravan site of land which forms part of land on which building or engineering operations are being carried out (for which permission, if required, has been granted) if that use is for the accommodation of persons employed in connection with the said operations. This is on condition that the use is discontinued when the circumstances specified cease to exist, and all caravans on the site are removed as soon as reasonably practicable.
15. I understand that the Council were advised that the caravan would be occupied by persons carrying out the approved re-instatement works. It appears that the caravan was occupied periodically by the Appellant in the spring of 2015 and then resided in by his son in the summer of 2015. Thereafter, full time occupation ceased, although the Appellant continued to reside in it on occasions.
16. The evidence, including my site visit observations, suggests that the only permitted work that has been carried out in connection with the reinstatement of the buildings is the removal of debris from the farmhouse in about the summer of 2015. Whilst the Appellant states that reinstatement is ongoing on a part time basis, he fails to demonstrate what other work has been carried out. Consequently, it appears to me that no reinstatement works have taken place for well over a year.

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015

17. Therefore, the circumstances specified in Schedule 2, Part 5, Class A of the GPDO ceased to exist some considerable time before the enforcement notice was served. Accordingly, the residential use of the caravan should have been discontinued and the caravan removed from site long before service. In breach of the GPDO, this was not done.
18. The Appellant submits that the caravan is permitted to be on site under Schedule 2, Part 4, Class A of the GPDO, which allows for temporary provision on land of buildings and moveable structures, amongst other things, required in connection with and for the duration of operations being or to be carried out on that land. However, Class A of Part 4 allows for the "provision" of buildings/moveable structures and not their residential use. Therefore, the residential use to which the caravan is being put is not covered.
19. Furthermore, it must be "required" for operations and, in this regard "required" means "reasonably required", which is a matter of fact and degree². Under the circumstances set out above, the Appellant has not demonstrated that the caravan is reasonably required for the operations permitted. Therefore, on both counts it fails to meet the Part 4 conditions.
20. In conclusion, the siting of the caravan on this land for use as residential accommodation was in breach of planning control at the time the enforcement notice was issued and continues to be in breach. Consequently, ground (c) fails. However, to reflect the reasons for issuing the enforcement notice, the requirements will be varied to make it clear that it is the siting of the caravan for "residential occupation" that is to cease.

Appeal B Ground (f)

21. The enforcement notice does not specify which of the purposes under s173(4) of the Act it seeks to achieve, ie whether it is to remedy a breach of planning control or to remedy any injury to amenity. However, as it requires the removal of the caravan otherwise than as permitted by Class A of Part 5 to Schedule 2 of the GPDO, its purpose points towards remedying the breach of planning control. There are no lesser actions which could be taken to resolve the alleged breach and, therefore, the requirements of the enforcement notice are not excessive.
22. It may be that, additionally, the enforcement notice seeks to remedy injury to amenity caused by the caravan's detrimental visual effect from public and private vantage points. However, any lesser steps that could remedy injury to amenity would not remedy the breach of planning control and, therefore, could not be substituted into the enforcement notice.
23. As with Appeal A, the Appellant submits that a programme of works for the proposed dwelling would constitute more appropriate enforcement action. However, again for reasons of uncertainty in obtaining planning permission, and potentially lengthy delays before allowed works commenced, this is not a viable option.
24. The Appellant also suggests that the requirements of the enforcement notice are unreasonable because as soon as the caravan was removed, permitted works could start on the buildings under the extant permission and the caravan could be re-sited on the land. However, given the aforementioned history of

² R. (on the application of Wilsdon) v First Secretary of State [2006] EWHC 2980 (Admin) (QBD)

this site, there is no certainty that the works will re-commence any time soon. Therefore, that is not a justification for lessening the requirements of the enforcement notice.

25. In conclusion, for the reasons given, the ground (f) appeal fails.

Appeal B Ground (g)

26. The Appellant suggests that the compliance time of two months be extended to take account of the programme of works referred to under ground (f). However, as ground (f) fails, this programme provides no good reason to extend the time period for compliance.

27. Two months is a reasonable time period to remove the caravan. Therefore, the ground (g) appeal fails.

Elizabeth C Ord

Inspector
