

Appeal Decisions

Hearing held on 17 January 2017

Site visit made on 17 January 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 08 February 2017

Appeal A

Appeal Ref: APP/Q9495/W/16/3157405

Former Radio House, Church Street, Ambleside LA22 0BT

- 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 Mr G Brindle against the decision of Lake District National Park Authority.
 - The application Ref 7/2016/5001, dated 24 December 2015, was refused by notice dated 26 February 2016.
 - The development proposed is the partial demolition, extension and alterations to convert shop and flat into three apartments.
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Appeal B

Appeal Ref: APP/Q9495/W/16/3164356

Former Radio House, Church Street, Ambleside LA22 0BT

- 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 Mr G Brindle against the decision of Lake District National Park Authority.
 - The application Ref 7/2016/5634, dated 15 September 2016, was refused by notice dated 21 November 2016.
 - The development proposed is extension and alterations to convert shop and flat into three apartments.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Application for costs

3. At the Hearing an application for costs was made by Mr G Brindle against the Lake District National Park Authority. This application is the subject of a separate Decision.
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Procedural Matters

4. The original planning application form relating to Appeal A states the site address as the 'Radio House' and in Appeal B as the 'former Radio House'. The main parties agreed at the Hearing that the site address should be that stated in Appeal B. I have therefore used this reference in my banner heading above.
5. The Statement of Common Ground in respect of Appeal B provided by the appellant is in draft form and has not been signed by the Authority. At the Hearing the parties verbally agreed that the only area of dispute in this appeal related to the issue of local needs housing which was essentially the same as that in Appeal A. The Hearing proceeded on that basis.
6. As part of late evidence, the appellant submitted an amended plan of the proposed external elevations in respect of Appeal A, Plan Ref 2014/97/05 Rev L. These changes form minor alterations to window details in the front elevation. I consider that accepting these amendments would not materially prejudice the interests of third parties. Accordingly I have had regard to this revised plan in determining Appeal A.
7. I was advised at the Hearing that in December 2016 the Authority amended the Housing Provision Supplementary Planning Document. These amendments improve the accuracy of the document and respond to the Written Ministerial Statement of 28 November 2014 and subsequent changes to the Planning Practice Guidance in respect of section 106 contributions for affordable housing in small schemes. I have had regard to this revised document in my decision.

Main Issues

8. The main issue common to both appeals is:
 - whether the proposed development should provide local needs housing in compliance with Core Strategy Policy CS18 having regard to scheme viability.
9. In respect to Appeal A the following further issues are relevant:
 - the effect of the development on the living conditions of the occupiers of neighbouring dwellings with particular regard to outlook;
 - whether the proposed development would preserve or enhance the character or appearance of the Ambleside Conservation Area;
 - the extent of and justification for the partial demolition of the building and the subsequent effect on the character or appearance of the conservation area.

Reasons

Local Needs Housing

10. The appeal premises forms a former ground floor shop with a residential flat above. Whilst proposing schemes of different design and scale, the two appeals involve extensions and alterations to the former Radio House to create three apartments.
11. There is no dispute that the appeal property has been appropriately marketed for more than 2 years without a tenant being forthcoming. It is also agreed

that the loss of a retail unit and the re-use of the property for housing purposes would comply with Core Strategy Policy CS20.

12. Policy CS18 of the Lake District National Park Core Strategy 2010(CS) concerns housing provision and permits new dwellings where they contribute towards meeting an identified local need or local affordable need with priority given to the delivery of affordable housing. The Policy goes on to state that new dwellings should also help to redress the imbalance in the local housing market and that they will be secured in perpetuity for the purpose originally intended through the use of appropriate planning controls. Paragraph 4.30.1 of the supporting text to this Policy explains that the Authority will not permit any open market housing as a result of the immense pressure on the existing housing stock in the National Park particularly by those buying second homes or homes to be used for holiday lets.
13. The Authority's Housing Provision Supplementary Planning Document (SPD) (Revised 2016) provides guidance on the application of this policy. With regard to windfall sites proposing less than four residential units, such as the appeal site, local needs housing is required. In this case as there is an existing unfettered residential unit, the Authority considers the scheme should provide two local needs housing units in order to be policy compliant.
14. There is dispute between the parties with regard to the weight to be attached to Policy CS18 as it pre dates the National Planning Policy Framework (the Framework). The appellant argues that this policy has no regard to scheme viability and is therefore inconsistent with paragraph 173 of the Framework.
15. Paragraph 54 of the Framework advises that in rural areas local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs. The Government's vision for English National Parks as set out in its 2010 Circular¹ advocates a similar approach with policies in Local Development Frameworks pro-actively responding to local housing needs. This document goes on to say that National Parks are not suitable locations for unrestricted housing.
16. Policy CS18 makes provision for housing to meet the local needs of the area and in this regard is consistent with the Framework and the above Circular. Whilst the policy does not specifically refer to viability I do not consider that this omission results in it being inconsistent with the Framework. A decision maker must have regard to all relevant material considerations in the determination of any planning application or appeal which where relevant would include paragraph 173 of the Framework and the issue of viability. I therefore consider that Policy CS18 is consistent with the Framework and should be afforded significant weight in the determination of this appeal.
17. Paragraph 173 of the Framework requires careful attention to viability and costs in decision taking. It states that the costs of requirements likely to be applied to a development, when taking account the normal cost of development and mitigation should provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
18. In the appeal cases the effect of the local occupancy restriction is to reduce the open market value of the proposed apartments resulting in the provision of

¹ UK Government Vision and Circular- English National Parks and The Broads (DEFRA 2010)

lower cost housing for persons with a local connection. In respect to Appeal A the appellant confirmed at the Hearing that a scheme for 3 open market units would create a profit level of 22.8% but in providing just one flat for local needs housing, the profit level would reduce to 6.4 %. With regard to Appeal B the 3 unit open market scheme would return a profit of 15.4 % and with one local needs housing unit there would be negative return. In respect of both appeals the schemes would not be viable if two local needs housing units were to be provided. The Authority has not disputed these appraisals and there is nothing before me to suggest that the appraisals are not robust.

19. The appellant's viability appraisals demonstrate that for the options presented, only an unfettered open market housing scheme would provide a viable proposal. It is then necessary for me to consider the consequences of allowing the development on this basis with no local occupancy restriction.
20. The Authority has brought my attention to the local needs survey for Central Lakes included in the 2014 Strategic Housing Market Assessment (SHMA). This demonstrates 693 households in housing need of which 64 households are in Ambleside. The provision of unfettered open market housing would not address this local need.
21. The Authority has a significant concern with regard to the potential for open market housing units to become second homes. I am advised by the Authority that an average of 18-19% of households form second or holiday homes in the National Park. Whilst the appellant confirmed at the Hearing that it is not his intention to sell the properties on this basis, if open market housing was allowed, there would be nothing to stop the properties being used as second homes in the future. If this happened there would be further pressure on the existing housing provision exacerbating the imbalance in the housing market. The Core Strategy in paragraph 4.27.3 explains that high levels of second home ownership results in many settlements having significantly reduced permanent resident populations. Communities can then have difficulties in providing and retaining services and facilities such as schools and shops and community viability is put at risk.
22. The Authority has raised concern with regard to the precedent that allowing a departure from the development plan would have. I consider that such a precedent, would, if repeated, cumulatively undermine the strategic objective of the development plan to address local housing needs. It would also breach the principle outlined in the Government's vision and Circular for National Parks that they are not suitable locations for unrestricted housing.
23. In the appeal cases before me, anything other than local needs housing would be contrary to Policy CS18 of the Core Strategy and the provisions of the SPD. This conflict provides substantial weight against the proposals. I consider that the appellant's argument with regard to viability does not outweigh the potential harm of unfettered open market housing which could be sold as second homes to people living outside the National Park.
24. Planning Practice Guidance advises that where the viability of a development is in question, a local planning authority should look to be flexible in applying policy whenever possible. With this in mind I have given consideration to the deliverability of just one local needs unit in the proposed scheme rather than two required to make the proposals policy compliant. However it is clear from the submitted viability appraisals that the provision of just one local needs unit

would either provide a very low profit level which would not represent a competitive return to a developer or result in the developer making a loss. The imposition of a planning condition to this effect would therefore place unjustifiable and disproportionate financial burden on the development and would fail the test of reasonableness.

25. The appellant has also referred to the advice in Planning Practice Guidance with regard to planning obligations and the circumstances in which they should not be sought. The Guidance advises that in designated rural areas such as National Parks, local planning authorities may choose to apply a threshold of five units where no specific contributions for affordable housing and tariff style planning obligations should be sought. This is in line with Government policy set out in the Written Ministerial Statement of 28 November 2014 which was given legal effect after an Order of the Court of Appeal in May 2016.
26. The appellant has argued that this should apply equally to local needs housing as to affordable housing, as the purpose of this guidance is to relieve small scale schemes from additional costs ensuring their viability. However in the appeal cases a planning obligation is not being sought. The Authority wishes to impose a planning condition to ensure that the properties are occupied by a local person. I consider this to be quite different to the purpose for which a planning obligation may be sought on a small scheme such as for the provision of local infrastructure or affordable housing. I therefore do not consider the above guidance to be applicable to the cases before me.
27. In summary planning law requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. I consider that scheme viability does not outweigh the harm of allowing unfettered open market housing which would have the potential to become second homes and fail to contribute to local housing need. On the basis of the evidence before me, the material considerations do not indicate that the appeal proposals should be determined in any way other than in accordance with the development plan.

Living conditions

28. The appeal site is bounded to the east by The Old Stamp House, a property in commercial use with a residential flat at second floor. The buildings are separated by a narrow alleyway which gives access to Old Stamp House Yard behind. The second floor flat has a lounge window on the side elevation overlooking the roof slope of the appeal building. There is also a further window to this room facing the front elevation.
29. The eaves level of the appeal building is approximately 1.1 metres below the level of the side lounge window to the neighbouring flat. The proposed development in Appeal A would raise the height of the side wall. Whilst there is some disagreement between the parties on the precise measurements, the eaves of the appeal building would be over 2 metres higher. This would result in more than half the window directly facing the side wall at a distance of just less than a metre.
30. Whilst I recognise that the side window is not the only source of outlook to the lounge, I saw on my site visit that the room is not large and in effect has a dual aspect. The outlook from the side window appears just as important to the amenity of the room as that of the front window. As a result of the height of

the proposed extension and proximity to the side window of the neighbouring flat, I consider that the appeal proposal would have an overbearing and enclosing effect adversely affecting the outlook for the occupier of the neighbouring flat.

31. Whilst the Authority did not refer to loss of daylight in their reason for refusal the appellant has provided a sunlight analysis to show the effect of the proposed development on light to the side window of the neighbouring flat. This confirms that the impact of the development on light loss would be limited but that there would be some loss of light particularly in the winter months. This would have a further negative impact on the living conditions of the neighbouring occupant.
32. Accordingly I consider that the appeal proposal would cause harm to the living conditions of the occupier of the neighbouring flat with regard to outlook and conflict with paragraph 17 of the Framework which seeks to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Character and appearance of the Conservation Area

33. The appeal building is located within the Ambleside Conservation Area and is described in the Conservation Area Appraisal and Management Plan as a Building of Special Character. The building immediately to the east, The Old Stamp House forms a Grade II listed building.
34. The conservation area encompasses the three main phases of Ambleside's evolution from the original settlement, to 17th and 18th Century development and later Victorian expansion to the south and west. The appeal building lies on the edge of the area of Victorian expansion. Listed buildings opposite the appeal site on Church Street pre date this time. The area is characterised by straight roads and a strongly held building line with properties close to the pavement providing a strong sense of enclosure. Buildings to the west of the appeal site form a Victorian terrace and in the main are two storeys but with the exception of a centrally positioned three storey gable building with piked dormers in the roof space. The buildings are constructed in local stone with slate roofs and matching quoin details. The Old Stamp House to the west of the appeal building is three storeys, taking advantage of the rising level of the road and is constructed in rough cast render again with a slate roof.
35. Saved Policy BE11 of the Lake District National Park Local Plan 1998 aims to ensure that new development preserves or enhances the character or appearance of conservation areas. This Policy pre dates the Framework and is not entirely consistent with it as it does not weigh any harm to a heritage asset against any public benefits. It was agreed by the parties at the Hearing that Core Strategy Policy CS27 and the advice in the Framework should be afforded greater weight in the determination of this appeal.
36. The appeal building appears to have been constructed a little later than the adjoining terrace to the east though it is constructed in similar materials and style. It has a flat roof single storey element which provides a gap between buildings. Appeal A proposes to increase the height of the building by around 2.4 metres to create a second floor and extend over the single storey part of the building to in effect create a continuation of the neighbouring terrace.

37. When looking east up Church Street the raised height of the appeal building would obscure much of the view of the side elevation of the neighbouring listed building, the Old Stamp House. This side elevation comprises rough cast render and has little architectural interest. The Authority has raised no concerns with regard to the effect of the proposed development on the setting of this listed building. On the basis of the evidence before me I have no reason to disagree with this assessment.
38. The proposed development would result in a larger scale building facing Church Street. I acknowledge that it would be viewed against the backdrop of higher buildings on Lake Road and I saw on my site visit that the proposal would not break the skyline. However I consider that due to the narrowness of Church Street and the proximity of buildings which creates a feeling of enclosure, the increased scale and height of the proposal would result in a more dominant building which would have an oppressive and negative affect on the street scene and the conservation area.
39. I consider that the appellant's design principle with the proposal continuing the terrace to the west would be acceptable. However the height of the appeal proposal would, rather than appearing as a 'book end' as described by the appellant, be out of scale with the adjoining two storey terrace. It would therefore cause harm to the character and appearance of buildings on this side of Church Street and the wider conservation area.
40. The Authority has also raised concern with regard to the window proportions in the front elevation. They consider that as designed the windows lack the vertical emphasis typical of Victorian design and do not mirror windows in the neighbouring terrace. The revised external elevation drawing submitted at the Hearing amends these windows, reducing the size of those proposed in the upper floor. Having regard to the size of existing windows in the building I consider that the proposed window proportions would be acceptable, having no significant adverse impact.
41. Notwithstanding the above, I have found that the scale and height of the building would cause harm to the character and appearance of the conservation area. There is a statutory duty set down in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving or enhancing the character or appearance of conservation areas when considering development proposals. The National Planning Policy Framework (the Framework) in paragraph 132 considers the impact of a proposed development on the significance of a heritage asset and gives great weight to its conservation. In paragraphs 133 and 134 a distinction is drawn between substantial harm and less than substantial harm to such an asset.
42. The Authority at the Hearing expressed the view that the proposal would cause substantial harm to the conservation area. However having regard to the scale of the proposal and the effect on the more extensive conservation area as a whole, I consider that the harm to the significance of the heritage asset would be less than substantial.
43. In line with guidance the harm must be weighed against the public benefits of the proposal. The scheme would make use of a currently vacant building in the centre of Ambleside. This would provide a use for the building and secure its regeneration and refurbishment, preventing its further decline which could have a negative impact on the conservation area. In addition it would provide

open market housing contributing to the supply of housing in the area albeit such housing would not meet the identified local need and would breach the established policy restriction on such housing in this location. Furthermore the appellant considers that the proposal would enhance the character and appearance of the conservation area. On this aspect I have already come to a different view.

44. Accordingly I consider that the benefits outlined above would be limited and would not significantly outweigh the heritage harm given the importance that this carries. Consequently I consider that Appeal A would not preserve or enhance the character or appearance of the Ambleside Conservation Area and would harm the significance of this heritage asset. The proposal would conflict with Policies CS10 and CS27 of the Lake District National Park Core Strategy 2010 and Section 12 and paragraphs 17 and 56 of the Framework. These policies seek to achieve a high standard of design and conserve or enhance the character, integrity and setting of the historic environment.

Demolition

45. The description of development in Appeal A included reference to partial demolition. The fourth reason for refusal in respect of this scheme related to the lack of information with regard the amount of demolition to be undertaken. On the basis of the further explanation given by the appellant during the appeal process and at the Hearing, the Authority indicated that they were satisfied with the proposal subject to appropriate conditions to ensure that the materials to be used in the alterations and extensions would match that of the existing building. As this matter no longer forms an area of dispute I need not consider this issue further.

Other matters

46. Interested parties at the Hearing raised concern with regard to the structural stability of the rear wall to the appeal building, proposals for rainwater goods, the erection of scaffolding, future maintenance of the building and the effect on the existing businesses in the Yard during the construction process. Many of these matters would be dealt with through Building Regulation or would form Party Wall Act considerations. Were the appeals to be allowed a condition requiring the submission and approval of a construction management plan would also address some of these concerns.

Conclusion

47. I have found that both Appeal A and Appeal B are contrary to adopted Core Strategy Policy CS18 and the Housing Provision SPD. The appellant's argument with regard to viability does not outweigh the potential harm of unfettered open market housing which could be sold as second homes to people living outside the National Park. I therefore consider that the material considerations in this case do not indicate that the appeal proposals should be determined other than in accordance with the development plan.
48. Furthermore I have found that Appeal A would cause harm to the living conditions of the occupier of the neighbouring flat and would not preserve or enhance the character or appearance of the Ambleside Conservation Area.

49. For the reasons given above, and having regard to all other matters raised I dismiss these appeals.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Steve Simms MA MRTPI

SSA Planning Ltd

Paul Liddell

Director

Graham Brindle

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jackie Ratcliffe MRTPI

Area Planner

Lake District National Park Authority

INTERESTED PARTIES:

Alison Tordoff

Joint Owner Old Stamp House Yard

Jennifer Borer

Joint Owner Old Stamp House Yard

Leslie Johnson

Lakes Parish Council

Anne Sowerbutts

Lakes Parish Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Lake District National Park Authority Housing Provision Supplementary Planning Document – amended December 2016.
2. Photographs taken by the Authority from the side window to the neighbouring flat in Old Stamp House.
3. Photographs taken by the appellant from the side window to the neighbouring flat in Old Stamp House.

4. In respect to Appeal Scheme A - Revised External Elevation Drawing Number 2014/97/05 Rev L.
5. Letter from Matthews Benjamin Estate Agents dated 22 November 2016 outlining the marketing of the property.
6. Letter from Matthews Benjamin Estate Agents dated 22 November 2016 providing updated sales values for the proposed apartments.