
Appeal Decisions

Site visit made on 16 January 2018

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

Decision date: 13 February 2018

Planning Appeal A Ref: APP/M0933/W/17/3177676

High Thorn Farm, Selside, Kendal, Cumbria LA8 9JX

- 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 Raymond Crawford against the decision of South Lakeland District Council.
 - The application Ref SL/2017/0173, dated 20 February 2017, was refused by notice dated 5 May 2017.
 - The development proposed is the retention of repositioned former Duck Hut and landscaping incorporating change of use to 1 no. 1 bedroom fishing lodge.
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Planning Appeal B Ref: APP/M0933/W/17/3177755

High Thorn Farm, Selside, Kendal, Cumbria LA8 9JX

- 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 Raymond Crawford against the decision of South Lakeland District Council.
 - The application Ref SL/2017/0039, dated 19 January 2017, was refused by notice dated 5 May 2017.
 - The development proposed is the siting and landscaping of 3 no. self catering fishing lodges.
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Enforcement Appeal C Ref: APP/M0933/C/17/3178939

Land to the east of High Thorn Farm, Selside, Kendal, Cumbria LA8 9JX

- 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 Raymond Crawford against an enforcement notice issued by South Lakeland District Council.
 - The enforcement notice was issued on 30 May 2017.
 - The breach of planning control as alleged in the notice is the material change of use of land from agriculture to that for the mixed use of agriculture and the stationing of touring caravans, facilitated by; (i) Installation of electric hook ups and associated underground electric cables; and (ii) The formation of a hard surfaced area by the laying of hard core, including former road finings.
 - The requirements of the notice are (a) Cease the use of land as a touring caravan site and for the siting and storage of caravans; (b) Remove the electric services and hook up points associated with the touring caravan site; (c) Break up and remove from the land materials used to create the hard surfaced area for the siting of touring caravans; and (d) Restore the area to its condition immediately before the laying of the hard surfaced area and seed it with grass.
 - The period for compliance with the requirement (a) is 2 weeks, with requirements (b) and (c) is 3 months, and with requirement (d) is 4 months.
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- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Enforcement Appeal D Ref: APP/M0933/C/17/3179472

Land to the east of High Thorn Farm, Selside, Kendal, Cumbria LA8 9JX

- 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 Raymond Crawford against an enforcement notice issued by South Lakeland District Council.
 - The enforcement notice was issued on 27 June 2017.
 - The breach of planning control as alleged in the notice is i. The erection of two buildings; ii. Use of building for residential purposes; iii. Installation of associated infrastructure; and iv. The formation of a hard surfaced area by the laying of hard core, including former road finings.
 - The requirements of the notice are (a) Demolish buildings 1 and 2; (b) Disconnect and seal off all services; (c) Remove all materials resulting from the demolition of the buildings from the site; (d) Break up and remove from the site the base and compacted materials used to form the hard surfaced area under and around the buildings; and (e) Restore the area to its condition before the erection of the buildings and the laying of the hard surfaced area and seed it with grass.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.
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Decisions

Planning Appeal A Ref: APP/M0933/W/17/3177676

1. The appeal is allowed and planning permission is granted for retention of repositioned former Duck Hut and landscaping incorporating change of use to 1 no. 1 bedroom fishing lodge at High Thorn Farm, Selside, Kendal, Cumbria in accordance with the terms of the application Ref SL/2017/0173, dated 20 February 2017, subject to the following conditions:.

1. The building hereby permitted shall not be occupied other than as holiday accommodation ancillary to High Thorn Fishery. It shall not be used at any time as a sole or principal residence by any occupants, or be occupied independently by any family, group or individual for more than three weeks (cumulative) in any one calendar year.

2. A register of all occupants of the accommodation hereby permitted shall be maintained at all times and shall be made available for inspection by the Local Planning Authority on request. The register shall comprise consecutively numbered pages, which shall be kept in order, and each entry shall contain the name and address of the principal occupier together with the dates of occupation.

Planning Appeal B Ref: APP/M0933/W/17/3177755

2. The appeal is allowed and planning permission is granted for the siting and landscaping of 3 no. self catering fishing lodges at High Thorn Farm, Selside, Kendal, Cumbria in accordance with the terms of the application Ref SL/2017/0039, dated 19 January 2017, subject to the following conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: HTF/PAFL/5/LOSLP, HTF/PAF/5/BPL1, HTF/PAF/5/BPL2 and HTF/PAF/5/BPL3.
3. All hard and soft landscape works shall be carried out in accordance with approved details shown on drawing number HTF/TCP/7/LOSLP. The works shall be carried out within the first available planting season (1 November to 31 March inclusive) following commencement of the development hereby permitted. Any trees/shrubs which are removed, die, become severely damaged or diseased within five years of their planting shall be replaced in the next planting season with trees/shrubs of similar size and species to those originally unless the Local Planning Authority gives written consent to any variation.
4. The lodges shall be sited in accordance with plan Nos. HTF/PAFL/5/LOSLP, HTF/PAF/5/BPL1, HTF/PAF/5/BPL2, HTF/PAF/5/BPL3. Any material change to the position of a lodge, or its replacement by another lodge in a different location shall only take place with the express planning permission of the Local Planning Authority.
5. No more than three lodges, each falling within the definition of a caravan as set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time.
6. The caravans shall not be occupied other than as holiday accommodation ancillary to the High Thorn Fishery. They shall not be used at any time as sole and principal residences by any occupants.
7. A register of all occupants of the accommodation hereby permitted shall be maintained at all times and shall be made available for inspection by the Local Planning Authority on request. The register shall comprise consecutively numbered pages, which shall be kept in order, and each entry shall contain the name and address of the principal occupier together with the dates of occupation.
8. The caravans shall be painted or stained in a dark brown colour as shown on drawing number HTF/PAFL/2/VISA.

Enforcement Appeal C Ref: APP/M0933/C/17/3178939

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

Enforcement Appeal D Ref: APP/M0933/C/17/3179472

4. The appeal is allowed, 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 'i. The erection of two buildings; ii. Use of building for residential purposes; iii. Installation of associated infrastructure; and iv. The formation of a hard surfaced area by the laying of hard core, including former road finings' on land to the east of High Thorn Farm, Selside, Kendal, Cumbria as referred to in the notice, subject to the following conditions:

1. The principal building hereby permitted shall not be occupied other than as holiday accommodation ancillary to High Thorn Fishery. It shall not be used at any time as a sole or principal residence by any occupants, or be

occupied independently by any family, group or individual for more than three weeks (cumulative) in any one calendar year.

2. A register of all occupants of the accommodation hereby permitted shall be maintained at all times and shall be made available for inspection by the Local Planning Authority on request. The register shall comprise consecutively numbered pages, which shall be kept in order, and each entry shall contain the name and address of the principal occupier together with the dates of occupation.

Procedural matters

5. An application for costs has been by Mr Raymond Crawford against South Lakeland District Council, in relation to Planning Appeal B. This application is the subject of a separate Decision.

The site and surroundings

6. The land that is the subject of the appeals, known as High Thorn Fishery, is in a countryside location to the north-east of the main farm buildings at High Thorn Farm and to the south and west of a country lane. The fishery is two ponds, one large, one small. The large pond is in a significant depression in the landscape; ground levels rise up from a track around the pond to the farm buildings and the lane. The smaller pond is to the south-east of the large pond; ground levels between the two ponds and around the small pond being relatively flat. To the south-east of the fishery the landscape opens out to lower rolling landforms. A public footpath crosses the field to the south of the small pond.

Reasons

The ground (b) appeal in Enforcement Appeal D

7. The first element of the breach of planning control alleges the erection of two buildings; the larger building is the subject of Planning Appeal A and the second element of the breach of planning control. It is intended that the building is used as a holiday fishing lodge and has been built for residential purposes. The Appellant maintains that the building has not, as alleged in the second element of the breach of planning control, been used for residential purposes though he admits that it has been used for overnight accommodation by an agricultural worker whilst ducklings were being reared, and later for agricultural storage. The building is set up to be used for residential purposes and on the Appellant's own admission has been so used. This may only have been for temporary periods but the breach of planning control has occurred.

8. The ground (b) appeal also relates to the fourth element of the alleged breach of planning control; the formation of a hard surfaced area. There is a hard surfaced area associated with the buildings but the history of its formation is confused with the laying of a track into the fishery from an access off the lane and by the laying of other hard surfaced areas around the ponds. Nevertheless, the hard surfaced area is associated with, and facilitates access to, the two buildings. It cannot be claimed that the breach of planning control has not occurred.

9. The second and fourth elements of the breach of planning control have occurred and the ground (b) appeal thus fails.

The ground (a) appeal in Enforcement Appeal D and Planning Appeal A

10. The enforcement notice alleges, amongst other things, the erection of two buildings. The larger of the two buildings is the subject of the planning appeal, a 'hut' that has previously been used for the rearing of ducks, and the smaller building is a toilet block. The Appellant wishes to retain the larger building in its current position and, notwithstanding the description of the development in the planning application and to avoid confusion, the ground (a) appeal and the planning appeal are taken to be the same. The Council has made no reference to the smaller building or to the other elements of the alleged breach of planning control in their appeal statement; the focus of this document being alleged harm caused by the larger building to the character of the landscape.

11. The main issues are; first, the effect of the development on the character of the landscape; and second, whether the development is sustainable.

The first issue – the character of the landscape

12. High Thorn Fishery is an established element of the diverse business enterprise that is centred at High Thorn Farm, where a granary building has been converted to create three fishing lodges. The access off the lane and the track that descends from there to the level of the ponds before extending to circumnavigate the larger pond, and other factors such as the introduction of fishing platforms, contribute to a developed character around the larger pond. The development is seen in the context of this developed character rather than the undeveloped character of the surrounding landscape.

13. The two buildings can be viewed from the lane from the north but these are, principally from moving vehicles, glimpsed views at best. A landscape plan submitted with the planning application proposes the planting of hawthorn hedges alongside the lane and these, in time, would significantly screen the development. Only the tops of the buildings, against a backdrop of trees that stand to the east of the larger pond, can be seen from the lane in views from the south-east. The buildings, given their location close to and at the same level as the larger pond, do not interrupt any views, including from the footpath, across the wider landscape.

14. The development, taking into account the developed nature and topography of its immediate surroundings, does not have a significant adverse effect on the character of the landscape. The development does not thus conflict with policies CS1.1, CS7.4, CS7.6 and CS8.2 of the South Lakeland Core Strategy (SLCS).

The second issue – sustainable development

15. The thrust of local planning policy on sustainable development in rural areas is towards the preservation of the landscape and the special qualities and distinctiveness of the area. The development, following the conclusion on the first issue, would not undermine and would thus preserve the landscape and the special qualities and distinctiveness of the area. The development, which would enhance tourism opportunities and would support a rural business and which does not harm the character of the area, is sustainable development. The development, in this regard, does not conflict with local or national policy.

Conditions

16. The Council has suggested the same two conditions for the permissions that would be granted by allowing the ground (a) enforcement appeal and the planning

appeal. These have been imposed on both permissions and are required to ensure that the main building, the 'duck hut', is used only for holiday accommodation.

17. The description of the development that is the subject of the planning permission clearly indicates that it is for the retention of the building that is a subject of Enforcement Appeal D. There is therefore no need to impose a condition to ensure that both permissions could not be implemented resulting in two buildings being erected. In this regard two permissions must be granted because the permission resulting from allowing the ground (a) enforcement appeal covers development other than the principal building.

Conclusion

18. The 'duck hut' does not cause any material harm to the character of the landscape and is sustainable development. The ground (a) appeal in Enforcement Appeal D and Planning Appeal A are therefore allowed and planning permission has been granted, subject to conditions, in both cases.

Planning Appeal B

19. The main issue is the effect of the proposed development on the visual amenity of the area and the character of the landscape.

20. The lodges, which would be timber clad static caravans, would be located on hardstandings alongside the track that circumnavigates the larger lake. They would be dispersed around the lake rather than being grouped in one location. Though they would be glimpsed from the lane they would be seen in the context of other development around the lake and these glimpses, in time, would be reduced by the hawthorn hedges that would be planted as part of a landscaping scheme for the site. In views from the lane to the south-east and from the public footpath, the lodges would be seen against the backdrop of the planted steep banks that slope up to the lane. The three lodges would be quickly assimilated into their surroundings and would not have any significant adverse effect on the visual amenity of the area or the character of the landscape. The three lodges do not conflict with SLCS policies CS1.1, CS7.4, CS7.6 and CS8.2 or with saved policy T6 of the South Lakeland Local Plan (SLLP).

21. The proposed three timber lodges would not harm the visual amenity of the area or the character of the landscape and there is therefore no reason to withhold planning permission. In this event the Council has suggested seven conditions, all of which have been imposed. Condition one, not suggested by the Council but necessary nevertheless, is the standard time limit condition, and conditions two, four and five are for the avoidance of doubt and in the interests of proper planning. Condition three will ensure that the site is properly landscaped, conditions six and seven will ensure that the lodges are used only as holiday accommodation, and condition eight is in the interests of visual amenity.

Enforcement Appeal C

22. The main issue in the ground (a) appeal is the effect of the proposed development on the visual amenity of the area and the character of the landscape.

23. The hard surfaced area has been established on flat ground between the two ponds. This is the most open part of the fishery and is the closest part to the footpath that crosses the field on the opposite side of the smaller pond. Touring caravans, invariably white in colour, in this location would be prominent in views

from the lane, particularly from the south-east, and from the footpath. In these views the touring caravans, even for short periods during summer months, would be prominent and visually intrusive and would be significantly harmful to the character of the landscape. The unauthorised development conflicts with SLCS policies CS1.1, CS7.4, CS7.6 and CS8.2 and with SLLP saved policy T6.

Other matters

24. Vehicular access to the hard standing area is from the entrance to the fishery on the lane. There is a sharp bend in the lane to the north of the entrance and visibility for drivers of vehicles exiting the site, of vehicles approaching the fishery from the A6, is sub-standard. However, traffic on the largely single track country lane is light and the speed of vehicles approaching from the A6 is suppressed by the width of the lane and the sharp bend. Consequently, it is unlikely that the use of the entrance for access to the fishery by four touring caravans would be detrimental to highway safety.

Conclusion

25. The unauthorised operational development facilitates the stationing of touring caravans in a prominent location resulting in significant harm to the visual amenity of the area and to the character of the landscape. Conditions would not overcome objections to the stationing of touring caravans in this location and planning permission must therefore be withheld. The ground (a) appeal thus fails.

John Braithwaite

Inspector