



Appeal Decision

Site visit made on 23 July 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 20 August 2018

Appeal Ref: APP/C9499/C/17/3184643

The Forbidden Corner, Tuppill, Coverham, Middleham, Leyburn DL8 4TJ

- 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 Colin Armstrong CMG OBE against an enforcement notice issued by the Yorkshire Dales National Park Authority (YDNPA).
 - The enforcement notice was issued on 10 August 2017.
 - The breaches of planning control as alleged in the notice are as follows:
 - a square gatehouse with parapet walls around a viewing platform.
 - a spiral staircase tower attached to the northern side of the gatehouse.
 - a rectangular tower attached to the northern side of the spiral staircase tower.The height of the building referred to above extends above the height of the paved level walking surface of the adjoining structure known as 'The Long Walk' by approximately 8.5 metres in the case of the parapet walls of the gatehouse and by approximately 6.8 metres in the case of the spiral staircase tower and the rectangular tower.
 - The requirements of the notice are as follows:
 - (i) Demolish the building to the extent that no part of the building extends more than three metres above the paved level walking surface of the adjoining structure known as 'The Long Walk'.
 - (ii) Remove the resultant rubble and material from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed and the notice is upheld as corrected and varied. See formal decision.

Matters of clarification, background information and relevant policy

Procedure

2. On behalf of the appellant the Inquiry procedure was initially requested. This request was made on the basis that, amongst other things, there was considered to be considerable public interest in the case (mainly in the form of a petition). The YDNPA considered that the written representation procedure was acceptable and that the appeal met the Planning Inspectorate guidance for this procedure. The case officer indicated to the main parties that a site visit would be arranged and that if an oral hearing was considered to be necessary the procedure would be changed.

3. Having read all of the representations (including the petition and the comments of the Forbidden Corner Manager) and having seen the appeal building and its surroundings from both near and distant viewpoints, I am satisfied that all of the issues can be considered without the need for an oral procedure. There are no matters of fact in dispute which would require the giving of evidence or cross-examination and all of the written representations are clear and unambiguous.

4. The views of those who signed the petition and all of the submissions (including those of the manager) are clear and an oral procedure, in my view, would not make any difference to the specific points raised. I am satisfied, therefore, that in proceeding on the basis of the written representations procedure, no prejudice will be caused to the cases of the appellant, the YDNPA or any other interested person(s).

Introduction

5. Since the enforcement investigations began and the notice was issued there have been changes to the appeal building. On behalf of the appellant it is indicated that the building has been completed in order that the full implications can be assessed. However, there are still the three recognisable elements; the gatehouse tower, the spiral staircase and the rectangular tower (as referred to in the notice). The latter two elements are 3m higher than initially reported and are now around 10m in height. At the site visit meeting the approximate heights were agreed and I have seen the corrected description provided on behalf of the appellant. This refers to drawings indicating exactly what has been built. I shall, therefore, correct the notice accordingly and the drawings referred to should be attached to the notice. In correcting the notice I am again satisfied that no injustice will be caused.

6. Prior to the formal site visit I was able to view the site and its surroundings from most of the distant viewpoints as set out in the Landscape Statement. I also viewed the site from viewpoints A and B as shown in the Landscape Rebuttal document with A being the view from lower ground and B being from the higher ground. I also had views from higher up the valley side and, unlike the historic buildings consultant (HBC), I did not have difficulty in identifying the site from a distance. During the site visit I was given a comprehensive tour of the folly garden and most of its features including the herb garden, the various visitor facilities. I also viewed Tugill House from close quarters externally.

Background information

7. The 'Forbidden Corner' was initially created as a private folly garden within the garden area to the west of Tugill House at Tugill Park. The house is in a remote countryside location (outside of any settlement boundary) around 3km to the west of Middleham, in lower Coverdale. It remains a private residence in a parkland setting but some of its courtyard buildings have been converted into commercial uses in association with the current use of the folly garden.

8. The folly garden was created for private use in 1995. The follies and gardens include statuary, alcoves, water features, small temples, buildings, underground cave-like structures, tunnels, chambers, planted areas and the herb garden. These are mostly hidden spaces and features behind high stone walls and/or densely planted areas. In 1997 it was opened up for public viewing on Sundays and in 1998 it also opened on weekdays. In July 2000, following the issuing of an enforcement notice by YDNPA, planning permission was granted on appeal for the change of use of the land from a mixed use of agriculture and private gardens to a use of gardens and parkland open to the public and including various structures or objects placed on the land.

9. Since then, following other planning permissions (including a ticket office, shop and café) it has become a very successful tourist destination and is included in the list of 'Top Attractions' on the YDNPA tourism website. Based on the success of the 'Forbidden Corner', Tugill Park now offers restaurant and hotel facilities; holiday cottages; a wedding venue facility and private function rooms. It has become a significant local employer providing jobs for 40 full and part-time staff and clearly contributes most positively to the economy of this rural area locally and to the National Park generally.

The appeal site and the appeal building

10. The site of the appeal structure (the subject of the notice) is at the west end of what is referred to as 'The Long Walk'. This is a raised walkway with a stone retaining wall (with curved central section) which cuts across the full width of the garden, to the south of most of the folly garden features and to the north of open pastureland. There are spurs of tree-planted areas of the folly garden to the east and west of part of the open pastureland which extends towards the southern boundary of Tugill Park and the Middleham to Agglethorpe road. The elevated walkway allows extensive views to the south over the pastureland and to the sloping south side of Coverdale beyond.

11. As indicated in the notice, the building is in three sections: the square gatehouse, the spiral staircase and the rectangular tower to the north. It is shown on Drawing Nos A001-01-120 and 121B. The gatehouse and tower comprise three floors; ground, first floor and second and these are accessed via the central spiral staircase. The building is self-contained with appropriate fire exits.

12. The YDNPA refers to the appeal building as a 'castle folly' and indicates that it was brought to their notice in March 2017. On behalf of the appellant this description as a 'castle' is disputed. The HBC in his report for the appellant simply refers to it as the *Folly/Tower* and being an irregular block of two and three storeys which is on a scale greatly below what would be perceived as a 'castle'. However, whatever the parties choose to call the building, I have considered it on its merits and on the basis of what I saw from both near and distant viewpoints and in the overall context of the Forbidden Corner and Tugill House.

13. Following the building of the appeal structure a retrospective application was submitted. However this was withdrawn when it became clear to the appellant that the application was being recommended for refusal. The appellant takes issue with the officer report indicating that it failed to acknowledge the role of the folly garden to the cultural heritage of the park and to its continuing viability as a key tourism and employment component. It is also contended that the report failed to quantify the alleged harm, or that it considered any landscape and/or visual impact analysis.

Statutory requirements and planning policy

14. The YDNP was designated in 1954 and has two statutory purposes which are set out in the National Parks and Access to the Countryside Act 1949 (the Act), as amended by the 1995 Environment Act (EA). These purposes relate to conserving and enhancing the natural beauty, wildlife and cultural heritage of such areas and of promoting opportunities for the understanding and enjoyment of the special qualities of the areas by the public. There is also a requirement that a National Park Authority shall seek to foster the economic and social well-being of local communities.

15. Section 62 of the EA specifies the duty of which certain bodies and persons must have regard to, regarding the purposes for which National Parks are designated. In reaching my decisions in these appeals I have had regard to section 11A (1) and (2) of the NPACA. This includes consideration of the Sandford Principle whereby, if there is a conflict between the two purposes, an Authority or decision-maker must attach greater weight to conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park.

16. The National Planning Policy Framework (NPPF) is also a material consideration. The revised version was issued on 24 July 2018 and I have had regard to the relevant policies and sections including *Achieving sustainable development; Decision making; Building a strong competitive economy; Achieving well-designed places* and *Conserving and enhancing the natural environment*. In relation to these appeals the

main thrust of the NPPF policies remain the same. In particular the policies reiterate and reinforce the aims of achieving a strong economy; the consideration of local business needs; the requirements relating to sustainable tourism and leisure and the requirement for good design. I have taken into account the appellant's additional comments on the revised NPPF. These are set out in the submission dated 30 July 2018 which sets out the corresponding revised NPPF paragraphs to the initial statement at sections 4 and 5. The YDNPA did not add any further comments. I have also had regard to relevant Planning Practice Guidance (PPG).

17. The relevant policies of the adopted Yorkshire Dales Local Plan - 2015-2030 (YDLP) are Policy SP1 (Sustainable Development) – to encourage and support development that is sustainable in the context of the YDNP; Policy SP2 (National Park Purposes) – to support development that will help to deliver the two statutory purposes; Policy SP4 (Development Quality) – to ensure that the design of new development is high quality and Policy T4 (Visitor Facilities) – permit new development that directly helps visitors to enjoy the special qualities of the National Park, subject to conformity with other policies in the local plan.

The Appeal on ground (a)

Main issues

18. The main issues are as follows:

- The effect of the building on the natural beauty, the heritage and cultural significance of the landscape and the special qualities of the National Park in this part of lower Coverdale.

19. The starting point in considering whether planning permission should be granted for the appeal building is section 38(6) of the Planning and Compulsory Purchase Act 2004. This states that applications for planning permission must be determined in accordance with the development plan unless other material considerations indicate otherwise.

The gist of the case for YDNPA

20. The YDNPA indicates that the appeal site lies within a significant historic landscape in the lower part of Wensleydale, with buildings which include Bolton and Middleham Castles; Bolton and Braithwaite Halls and Jervaulx and Coverham Abbeys. References are made to the landscapes around these buildings (including deer parks) showing evidence of mediaeval power embodied in the spatial relationships between castle settlement and church. Reference is made to a deer park being very close to the site at Cotescue, which is approximately 600m to the east and is associated with Coverham Abbey.

21. It is contended that, due to its scale and its position, the appeal building is perceived as a 'castle' and that it differs significantly from the other historic structures and is not considered to be a ruin. Rather, it is considered to be a completed building which has no relationship to the structure and organisation of the wider historic landscape. As such it is contended that the building visually competes with the genuine heritage buildings in this part of the YDNP; that it will alter and confuse visitors' perception and understanding of the authentic mediaeval landscape and that it introduces an unacceptable amount of pastiche and potential confusion into the historic landscape.

22. It is indicated that, although the appellant has referred to other nearby local folly buildings (The Belvedere, The Rocket and Pepper Pot and a tower at Bolton Hall), the appeal building is substantially larger and constitutes a large usable building in its own

right. It is considered by the authority to constitute a '*large mock mediaeval castle*' which provides a commanding viewpoint over this part of Coverdale.

23. Its position at the end of the already noticeable '*Long Walk*'; outside of the main walled garden and beyond the tree screening which hides the other garden follies, makes it highly visible with a significant impact on the landscape. As such it is readily seen from public viewpoints and is considered to draw the eye and compete visually with other built features in the landscape including Tugill House itself.

24. It is considered by the YDNPA to have had a harmful and disruptive effect on the understanding and enjoyment of the historic landscape and on the natural beauty of the pastoral landscape. It is considered that the proposed mitigation measures regarding additional planting (including the ivy to the walls of the building) are unacceptable and that a 10 to 15 year period is too long a period to overcome the harm currently being caused by the unauthorised works.

25. It is also pointed out that any internal or external lighting would have a detrimental effect on the '*dark sky*' quality of this part of the National Park as set out in the park's Management Plan. In particular Objective A5 of the plan is referred to as is the new draft plan (2018 – 2023) where it is indicated that there is an objective to apply for '*Dark Sky Reserve Status*'.

26. Given its prominent location, its form scale and bulk within the historic landscape the appeal building is considered to harm the historic landscape as well as undermining the understanding of the Special Qualities of the park (the landscape, historic buildings, dark sky nights and cultural heritage). It is contended that the building harms, rather than preserving or enhancing the cultural heritage of the YDNP and that it is, therefore, contrary to the statutory purposes as set out in the Act. The economic arguments put forward on behalf of the appellant are not considered to outweigh the significant harm caused by the building. The YDNPA contends that it has correctly applied the '*Sandford Principle*'.

27. In response to the appellant's case the YDNPA confirms that it recognises the role played by the '*Forbidden Corner*' in terms of it being a successful tourist attraction and a local employer. Nevertheless in applying the '*Sandford Principle*' it is not considered that these benefits outweigh the detrimental effects caused by the appeal building. With regard to the 3600 plus petition it is not considered that this accurately reflects local public opinion about the retention of the building since most signatories are visitors to the area.

28. With regard to the contribution of the folly garden to the cultural heritage of the Park the YDNPA refers to the UNESCO definition and concludes that the other nearby historic buildings fall within this definition whereas the '*Forbidden Corner*' as a relatively new addition holds no cultural heritage. It is argued that the fact that the previous Inspector indicated that the recent construction did not disqualify it from being considered as part of the cultural heritage of the park, this should not be taken as an acknowledgement or endorsement that it must be considered as part of the Park's cultural heritage.

29. It is not accepted that the Authority failed to quantify the harm in the enforcement notice or give adequate consideration to the landscape and the impact of the appeal building. Reference is made to the Planning Committee Report and in particular that it made a clear distinction between the fact that the majority of the folly garden features are contained within the walled area whereas the appeal building was prominently located on the '*Long Walk*'. As such the building is considered to be perceived as a separate entity and no planning application has been submitted for an amended scheme.

The gist of the case for the appellant

30. It is contended that the 'Forbidden Corner' contributes positively to the cultural heritage and special qualities of the YDNP and, in providing 40 jobs and a successful attraction, makes a significant contribution to the local economy. It is stressed that the YDNPA recognises it as one of its top ten tourism attractions and that following the grant of permission in 2000 the authority positively supported and granted other permissions for additional development. This support included an agreed increase in permitted visitor levels.

31. It is considered that the YDNPA has misunderstood both the function and relevance of the appeal building to the remainder of 'The Forbidden Corner' which is recognised as a folly garden. It is stressed that the building should be seen within the context of the whole garden and that it is not realistic to consider it as a 'folly' or building in isolation. It is also considered that for any visitor the building is seen as a natural extension to the garden and that even for passers-by there are other structures and features that do not lend any credence to the contention that it is perceived as a single building or entity in itself.

32. In support of this argument it is stressed that there are substantial existing buildings which are clearly intended to be linked to the appeal building and to the overall concept of the folly garden. These include the walkway; buildings adjacent to the tower and statuary on the castellated wall adjacent to the tower (not subject of the enforcement notice). It is also indicated that the YDNPA's reference to the 'competition' alleged to arise from the mere presence of the tower does not appear to establish any material planning considerations.

33. It is contended that the YDNPA has failed to appreciate that the tower is just one part of the folly garden and also failed to understand the meaning of a 'folly' as '*a costly ornamental building considered as serving no practical purpose*' (OED) or '*having the appearance of a building constructed for a particular purpose such as a castle or tower but this appearance is a sham*'. It is confirmed that the 'Forbidden Corner' is listed as an authentic 'folly garden' in various publications; that in any case many follies have been constructed in the form of a castle and that the majority of follies are complete buildings as opposed to ruins.

34. It is argued that any comparison of the appeal building with the mediaeval fortresses of Castle Bolton and Middleham is '*laughable*' (HBC Report) since it only occupies a fraction of their area and stands at less than half their height. To call it a 'castle' and also to describe it as a '*large mock-mediaeval castle*' is considered to be totally unjustified. In addition the YDNPA is wrong to argue that a folly is only valid if closely related to a '*really grand building*'.

35. It is not accepted that there is any attempt to deceive visitors or others into thinking that the tower is a historic building. The Gothick form and stone detailing gives away immediately that this is not an ancient building. In style, appearance and intention the building is a distinctive Georgian Gothick building typical of other recognised folly builders and its entire form and feel are within a national tradition, popular between 1750 and 1850. The building does not break the skyline and in this sense it could be considered to be a failure as a folly since it is not prominent within the landscape.

36. The YDNPA has not carried out a Landscape and Visual impact Assessment (LVIA) and therefore its statements are made purely on the basis of opinion. In comparison the LVIA carried out on behalf of the appellant indicates that the tower has had a minor effect on local landscape character, which will reduce to negligible as the proposed new tree planting develops. This new planting will reach heights of 10m

within a 10-15 year period and will quickly assimilate the totality of the structure. In addition the proposed Ivy cover on the south and west elevations will also assist to visually reduce the effect of the structure.

37. Visibility of the tower is generally confined to the south side of the valley with views becoming more open and expansive as one rises up the valley side. From distances of between 1.1km and 2km clear, partial and filtered views of the structure are seen. However these are seen in association with the other structures within the garden. In some views and from distances over 2km, although the tower can be seen it does not register as an identifiable object within the view. The use of Ivy (artificial at present) has allowed the building to become less visible within the landscape. There are no views from the west and only limited views from the north.

38. The tower does not compromise the horizon and is similar in height to the other tower, Fawcett Tower. From the LVIA the impact on the views (from the North and South) are considered to be '*negligible to low*' and although the receptors have a '*high*' sensitivity this only has a '*minor effect*' in the short term and will become neutral in the '*medium and long term*' as the woodland planting matures. It is considered that this change is of '*low importance*' (words in italics from Landscape Statement).

39. From the pasture land to the south the impact on the view is '*low*' with receptors having a '*high*' sensitivity resulting in a '*minor effect*' in the short term reducing to '*neutral*' in the '*medium and long term*' as woodland planting matures. The change in this case is considered to be of '*low importance*'.

40. From the opposing valley side it is accepted that there are clear views of the completed tower from a number of locations to the south and east (viewpoints indicated in Landscape Statement documents). However, the impact on the view is '*negligible to low*'; the receptors have a '*high*' sensitivity, overall having a '*minor effect*' in the short term and changing to '*neutral*' in the '*medium and long term*' as woodland planting around it matures. This change is again considered to be of '*low importance*'. Views from land to the west are not possible.

41. In summary it is contended that the appeal building accords with Policies SP1, SP2 and SP4. The tower does not adversely affect the local landscape character and adds positively to the diversity quality and local distinctiveness of the cultural landscape. It is also considered to add positively to the cultural heritage of the area which furthers the YDNP purposes whilst having no detrimental effects on its natural beauty. Recent developments at the folly garden have been of the highest quality and the appeal building accords with the criteria which require development to respond positively to the site, to its context, to its landscape setting and to its reinforcement of local distinctiveness.

42. It is indicated that the YDNPA statements are not supported by a clear analysis and research into the background of the area, its importance, the history of the site, its landscape or the nature of the local landscape character and the visibility of the building within that landscape. It is stressed that the building could will be further assimilated within the landscape by additional tree planting and ivy. It is evident that woodland has been established in this area since Norman times and that it is currently growing well both within the site and locally.

43. In taking enforcement action against the building it is contended that the YDNPA has not had regard to whether or not the alleged harm could be satisfactorily overcome. Furthermore it is argued that the YDNPA failed to apply either the '*Sandford Principle*' nor the planning balance in judging whether the alleged harm is overcome (or could be overcome by reviewing the design) by the benefits it gives to support the Forbidden Garden. These benefits, in terms of the tourism economy in the

National Park, are significant and consistent with the duty to foster the economic and well-being of local communities and support for tourism and local employment.

44. In further support of the appellants case the 3600 plus signature petition is referred to as are comments by staff at the attraction. This public and employment related support weighs heavily in favour of the retention of the appeal building.

Assessment

45. Turning first to the question of the effect of the building on the cultural heritage of this part of the YDNP, the previous Inspector did not state that the 'Forbidden Garden' was '*part of the cultural heritage of the Park*' as stated in the Landscape Rebuttal document. What he said was '*I see no reason why its relatively recent construction should disqualify it from being considered to be part of the cultural heritage of the Park*'. I agree with that statement.

46. However, I do not consider that the appeal building itself can be considered to be part of the '*cultural heritage*' of the Park. Cultural heritage is defined as the legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and preserved for the benefit of future generations. It could well be argued, therefore that the folly garden as a whole could be considered to be part of the cultural heritage of the Park. However, the appeal building is a newly constructed structure at the end of the 'Long Walk' and not within the screened parts of the folly garden.

47. It is certainly not a heritage building. It is a new building designed to look like a Gothick folly. Having seen the building from both near and distant viewpoints I can understand it being described firstly as a '*castle*' and secondly as a '*folly*'. With regard to the former description it has some of the physical and built form characteristics of a castle. These include its square tower, the stone spiral staircase, the rectangular tower and indeed the materials from which it is constructed. The opening shapes on the other hand are typical of a 'Georgian Gothick' folly and I agree with the HBC that the building has clear features that are common to such follies'. The artificial ivy also adds to the perception of the building being a folly.

48. It is evident that, even if mistakenly considered to be a '*castle*', it cannot be compared in form, size or scale to the large historic heritage features of the nearby Bolton or Middleham castles and the nearby Abbeys. Whether or not it would be perceived as such by the public would depend on their knowledge of historic buildings. On this point I agree with the HBC that the detailing around openings would indicate (to an informed viewer) that this was not a historic building. From a distance and at first sight, however, it might be perceived as such but on closer inspection it is clearly seen as a reproduction of an older building.

49. Nevertheless, from a distance, the overall form, scale and detailing could deceive and lead an uninformed viewer into thinking that the appeal building was indeed a historic structure of some significance. Clearly most follies eventually become significant in historic terms and thus irrespective of whether the appeal building is perceived as a '*castle*' or a '*folly*', a viewer could, as a matter of fact and degree, be deceived or confused about what is actually being seen. The question is, therefore, whether this confusion is harmful to the significance of the true historic structures that clearly are an important part of the '*cultural heritage*' of this part of the YDNP.

50. Having seen the building from both near and distant viewpoints I do not consider that it affects the cultural heritage significance of the more distant historic buildings. However I do find it detrimental in physical terms to the setting of Tugmill

House itself even though this is not a designated heritage asset. Because of its location at the end of the 'Long Walk' the new building is distinctly noticeable within the immediate surrounding landscape of the house. The 'Long Walk' itself appears as a major noticeable built form to the west of the house at the northern end of the pastureland and the appeal building is clearly a structure which is noticeable and, in my view, obtrusive, when seen in the context of the pastureland to the west of the house.

51. The appeal structure is much higher than the smaller and much less bulky adjacent castellated folly structure. It is also higher than the Fawcett Tower, whose prominence in the north-western corner of the site is mainly due to it being higher up on the northern slope of the land. The new tower, in my view exacerbates the physical impact of the 'Long Walk'. In doing so I consider that it detracts markedly from the overall landscape to the west of the house and in particular the open pastureland.

52. The rest of the 'Forbidden Corner', with its variety of interesting follies and features (in excess of 60 according to the guide leaflet), on the other hand, is well screened both to the north of the 'Long Walk' and to the east and west in the landscaped spurs. A lot of the folly features are underground and the whole sense of place is based on hidden corners and surprise elements, including water features. Whilst accepting the new building is a structure which is physically within the overall folly garden, in my view, it is perceived as being different in character and appearance to the rest of the follies which are much smaller.

53. I agree with the YDNPA that it is perceived as being a separate, bulky and obtrusive building which detracts from the character and appearance and the natural beauty of this part of the YDNP. It differs markedly from the other follies and in my view it is completely out-of-scale with the more appropriate and smaller folly structures at the west end of the 'Long Walk' and those to the north which, in any case, are totally screened from view. The appeal building thus *breaks the mould* of the other features by being obtrusively prominent and having the appearance of a separate building in its own right.

54. Having viewed the structure from the various distant viewpoints I acknowledge that because of its colour the plastic ivy, to some extent, softens the appearance of the building. However, it does nothing to reduce its appearance in terms of scale, bulk and height. Even from the furthest distance away, high on the southern slope of the dale, the structure is distinctly noticeable at the end of the 'Long Walk'.

55. The fact that the ivy and the substantial additional landscaping are deemed necessary to mitigate the visual impact of the new structure reinforces my view that this particular folly structure is harmful to the character, appearance and the natural beauty of this part of Coverdale. I also agree with the YDNP that the proposed mitigation measures regarding the additional planting are unacceptable and that a 10 to 15 year period is too long a period to overcome the harm currently being caused by the unauthorised works.

56. Whether the building is perceived as a 'castle' or not I agree with the YDNP that it differs significantly from the other nearby historic structures and has no relationship to the structure and organisation of the wider historic landscape. It is readily seen from public viewpoints and draws the eye to compete visually with other built features including Tupgill House and the 'Long Walk'.

57. As indicated above its position at the end of the already noticeable 'Long Walk'; (outside of the screened other parts of the garden) beyond the tree screening makes it highly visible resulting in a significant detrimental impact on the landscape. In

conclusion I consider that the building has a harmful and disruptive effect on the understanding and enjoyment of the landscape and on the natural beauty of the pastoral landscape in this part of the YDNP. As such I find that it is contrary to Policies SP1, SP2 and SP4 of the YDLP as well as to the revised NPPF policies relating to the conservation and enhancement of the landscape and scenic beauty of the National Park.

58. I acknowledge that it is evident that the benefits of the 'Forbidden Corner' in terms of the tourism economy of the YDNP are significant and consistent with the duty to foster the economic and well-being of local communities and support for tourism and local employment. However, in accordance with the 'Sandford' principle I consider that, in this instance, greater weight must be attached to conserving the natural beauty of this part of the YDNP. I conclude, therefore, that planning permission should not be granted for the structure as built and the appeal fails on ground (a).

The Appeal on ground (f)

59. On behalf of the appellant it is contended that the requirements of the notice are excessive and that the breach can be satisfied by lesser steps. It is contended that the whole of the building with the exception of the final 3m need not be demolished to achieve the outcome specified in paragraph 4 of the notice. It is stated that the appellant offered to discuss a mutually beneficial and acceptable scheme but that this offer was ignored by the YDNPA. It is indicated that remodelling of the building to comply with the notice would require a scheme to be agreed with the YDNPA to ensure that the remaining structure is sound and watertight. It is suggested that ground 5(i) of the notice be amended to allow a scheme to be agreed.

60. The YDNPA disputes that the offer to discuss a mutually beneficial and agreed scheme was ignored. It is indicated that following a meeting in September 2017 the appellant's agent had agreed to submit further proposals to amend the building. However, no further proposals were submitted and instead the appeal building was completed as found on site today. It has been indicated on behalf of the appellant that the building was completed as originally designed in order for it to be properly assessed. In any case the YDNPA does not agree that the requirements are excessive.

61. Having considered the above arguments I do not consider that the appellant's suggestion relating to a scheme to be agreed is acceptable. The judgment in *Payne v NAW & Caerphilly CBC* [2007] JPL 117 held that in those circumstances where a notice required the subsequent submission and approval of a scheme of works, it would not comply with s173 and a notice would be a nullity.

62. In the overall circumstances of this appeal, therefore, I do not consider that the lesser steps proposed are acceptable and consider that, as drafted, the requirements are necessary to overcome the breach. I accept, however, that it is still open to the appellant to put forward an alternative proposal which amends the appeal building so that it is acceptable to the YDNPA. There is no scheme before me however and any such alternative development would be a matter for the parties. I can only conclude at this stage that the appeal on ground (f) must fail.

The Appeal on ground (g)

63. It is considered that a 3 month compliance period is too short and that a 9 month period is necessary. The YDNPA considers that 3 months is sufficient.

64. Having considered all of the matters relating to this case and considering that one of the options might have been for the parties to agree a mutually agreeable alternative to what has been built I consider it appropriate to increase the compliance

period to 9 months. This will give the parties sufficient time in my view to consider whether there can be an acceptable alternative to what has been built.

65. This course of action in my view is reasonable considering the previous meeting in September 2017 when an alternative scheme based on amending the building was discussed as being a possibility. I shall, therefore, vary the notice accordingly and the appeal succeeds to this limited degree on ground (g).

Other Matters

66. With regard to the 'dark sky' issues raised by the YDNPA, it is evident from the position of the various openings that there could be the potential of harmful light pollution. However, from my inspection and based on the current usage it does not seem to me that this is a significant factor at this stage. The lighting internally appeared to be simple low level safety and exit lighting and the building seems to be being used simply as a folly and viewpoint rather than for any means of servicing or entertainment. Clearly such entertainment uses could lead to unacceptable light pollution but would need, in any case, to be the subject of further planning and/or licensing applications. However, I have found the current building to be unacceptable and the light pollution issue has not been determinative.

67. I have had regard to the appellant's reference to the planning balance '*in judging whether the alleged harm is overcome (or could be overcome by reviewing the design)*' by the benefits it gives to support the Forbidden Garden. However, I do not consider that the harm which I have identified above could be overcome by any other mitigation measures or planning conditions which would meet all of the necessary tests. It is possible that it could be overcome by altering the design but there is no '*review of the design*' before me and any other scheme is a matter for the parties.

68. In reaching my conclusions I have taken into account all of the submissions made on behalf of the appellant, by the YDNPA and by others. These include the full planning history; the detailed statements and rebuttals; the landscape submissions; the photographic submissions; the submission by the manager on behalf of the staff and the 3600 plus petition submitted in favour of retaining the appeal building and the comments on the revised NPPF. However, none of these carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other factor of such significance so as to change my decision.

69. With regard to the petition, most of the signatories are visitors from afar, although I have noted that many are from the local area. It is not surprising that visitors and locals wish to support the 'Forbidden Corner' in its future enlargement, improvement and continued success as a major Tourist attraction. However, these laudable aims and objectives cannot be at the price of harming the natural beauty of this part of the YDNP. I have given great weight to the extensive number of supporters but, for the reasons set out above, I do not consider that planning permission should be granted for a scheme which is harmful and contrary to both local and national policies which aim to conserve and enhance the natural landscape.

Formal Decision

70. I direct that the enforcement notice be corrected by deleting in full the paragraph after the third bullet point in section 3 (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL) and beginning '*The height of the building...*' and by substituting therefor the words '*as set out on Drawing Nos A001-01-120 and 121B attached to the notice*'.

71. The appeal succeeds to a limited degree on ground (g) only. I direct that the enforcement notice be varied by deleting the word '*Three*' in section 6 (TIME FOR COMPLIANCE) and by substituting therfor the word '*Nine*'.

72. Otherwise the appeal is dismissed and the enforcement notice is upheld as corrected and varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector