
Appeal Decision

Site visit made on 14 July 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/U1105/C/19/3234227

Land at Ladram Bay Holiday Park, Ladram Bay, Otterton, Budleigh Salterton, Devon EX9 7BX

- 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 FWSC (Ladram) Limited against an enforcement notice issued by East Devon District Council.
- The enforcement notice was issued on 26 June 2019.
- The breach of planning control as alleged in the notice is: without the benefit of planning permission and where no permitted development rights exist, the construction on the Land in the approximate location shown by a blue line on the Plan A attached, of a raised platform with associated balustrade, storage areas and supporting structures shown on the plan B attached.
- The requirements of the notice are to:
 - I) Permanently remove from the Land the raised platform, balustrade, storage areas and all supporting framework above and below the raised platform
 - II) Permanently cease the use of the raised platform as a seating area
 - III) Permanently cease the use of all storage areas beneath the raised platform
 - IV) Remove from the Land all materials and debris associated with the compliance with steps I), II) and III)
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Procedural matters

1. The Planning Inspectorate initially made arrangements for this appeal to be determined following an accompanied site visit which was scheduled for 31 March 2020. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the Coronavirus Restrictions") and related guidance.
2. The file was subsequently reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the basis of an unaccompanied site visit, as the development at issue is visible and accessible from the public realm. The parties were contacted on 9 June 2020 and agreed that as the appointed Inspector I could proceed on that basis.
3. I conducted an unaccompanied site visit on 14 July 2020. Visibility was good, and I was able to stand on the raised platform, and to view it from a number of vantage points on the beach and from the South West Coast Path. I am satisfied that I was able to see all that I needed to see to inform my decision.

The terms of the Enforcement Notice

4. The Appellant's Appeal Statement contains a number of references to the use of the appeal site for open-air storage, prior to the construction of the raised platform here at issue. In response the Council does not dispute that such use may have taken place but points out, rightly, that it is not relevant to the allegation of unauthorised *operational* [my italics] development.¹
5. In fairness to the Appellant, it seems to me that the points made about the prior use of the appeal site have been occasioned by the Council's unnecessary inclusion on the notice of requirement 3, which specifies the permanent cessation of "the use of all storage areas beneath the raised platform". The breach of planning control alleged by the notice relates solely to operational development (that is, the construction of the decking and associated structures), and the first requirement of the notice is to permanently remove "the raised platform, balustrade, storage areas and all supporting framework above and below the raised platform". That being so, there is no need for separate requirements to "cease the use" of the platform itself and the storage areas created beneath it: the permanent removal of the structure in its entirety would be sufficient to prevent any possible future use of parts of it, because no parts would remain.
6. In the interests of clarity I shall therefore delete requirements 2 and 3 from the notice, and make consequent adjustments to the number and wording of requirement 4. I am satisfied that this correction would cause no injustice to either the Appellant or the Council. That is because my determination of this appeal is confined to considering the *operational development* that is alleged by the notice to have breached planning control: I will be making no finding on the lawfulness of any pre-existing, or future, use for open-air storage.

The appeal on ground (c)

7. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control.
8. The extent of the Appellant's case on this ground is that planning permission is not required to use the storage areas beneath the main platform structure for storage purposes associated with the use and enjoyment of the beach. However, as discussed above, the notice does not allege any change in the use of the land: rather, it is concerned with the operational development that has taken place upon it. The Appellant does not dispute that a raised platform with associated balustrade, storage areas and supporting structures has been constructed on the land, nor that this construction amounted to development requiring planning permission. The development does not fall within any of the statutory exceptions to the requirement for planning permission, and does not constitute Permitted Development.²
9. I find that the matters alleged by the notice amount to development for which planning permission was required, but not obtained. I conclude that the appeal on ground (c) must therefore fail.

¹ For the purposes of planning control, Development is generally categorised as either "operational development" or "material change of use". This is because S.55 of the *Town and Country Planning Act 1990* ("the Act") provides that "...*development*" means the carrying out of building, engineering, mining or other operations in, on, over or under land, OR [my emphasis] the making of any material change in the use of any buildings or other land.

² Development permitted under the terms of *The Town and Country Planning (General Permitted Development) (England) Order 2015*

The appeal on ground (d)

10. The ground of appeal is that at the date when the notice was issued, it was too late for the Council to take enforcement action. Section 171B of the Act provides that where (as here) there has been a breach of planning control consisting of the carrying out of operational development without planning permission, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. To succeed on ground (d), then, the Appellant would need to demonstrate that on the balance of probabilities, the operational development attacked by the notice had been substantially completed before 26 June 2015.
11. The extent of the Appellant's case on this ground is that the storage area has been used for more than ten years for that purpose, and is consequently immune from enforcement. This is supported by a letter from the Managing Director of Ladram Bay Holiday Park, which states that the area now identified as the under-decking storage area has been used for the storage of boats, kayaks and other related equipment associated with the use and enjoyment of the beach, as part of the wider holiday park operation, "for at least 10 years since [sic] the Enforcement Notice was served".
12. The Appellant has not made any mention of, or provided any evidence concerning, the time period in which the operational development attacked by the notice was constructed. It has not disputed the Council's view, as stated in paragraph 4 of the notice, that the raised platform and associated balustrade, storage areas and supporting structures were substantially completed "less than four years ago".
13. The evidence before me then, while limited, indicates that on the balance of probabilities, the operational development here at issue was not substantially completed before 26 June 2015 and so the time limit for taking enforcement action had not expired when the notice was issued on 26 June 2019. I therefore conclude that the appeal on ground (d) must fail.

The appeal on ground (a) and the Deemed Planning Application

14. Under this ground of appeal, planning permission is sought for the development that is the subject of the notice. The main issue is the impact of the development on the character and appearance of the area.

The site and its setting

15. Ladram Bay is part of the Dorset and East Devon Jurassic Coast, which was inscribed on to the World Heritage List in 2001. It is also part of the East Devon Area of Outstanding Natural Beauty (AONB) and Coastal Preservation Area (CPA). The bay contains a pebble beach, backed by red Devonian sandstone cliffs. Just off the beach are two equally high, equally red stacks. Behind the beach is Ladram Bay Holiday Park, which provides holiday lodges, caravans, shops, restaurants and other amenities, and sits on a series of terraces cut into the landscape on the cliff-top above Ladram Bay, amid gently undulating agricultural fields.
16. The only access to the beach is via a slipway that occupies a small chine in the cliffs below the main holiday complex, identified in the Appellant's Landscape and Visual Appraisal (LVA) as "the Combe". There is a shop set in a recess on the northern side of the Combe, originally accessed by a narrow pedestrian

ramp, which sells a range of beach paraphernalia and serves food and drink. There is also a small timber structure on the south side of the Combe. The South West Coast Path runs directly past the beach, through the holiday park at the top of the Combe, and along the Jurassic Coast.

The development

17. The structure that is the subject of the Notice abuts the shop and access ramp, providing a level platform wide enough to contain tables and chairs. This platform continues around the corner of the cliff at the mouth of the Combe, and at the time of my site visit this part also contained tables and chairs, overlooking the beach. A timber post and four-rail fence runs around the outside edges of the platform. The area beneath the platform, which was formerly a part of the slipway used for open storage, has been enclosed with wooden slats to provide secure storage space.

The Policy context

18. The Government's National Planning Policy Framework (NPPF) notes that World Heritage Sites are internationally recognised to be of Outstanding Universal Value, and advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation: the more important the asset, the greater the weight should be. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification. The NPPF also states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which (alongside National Parks, and the Broads) have the highest status of protection in relation to these issues.
19. This national approach is reflected in the Development Plan for the area. The East Devon Local Plan 2013 to 2031 (adopted January 2016) contains policies stating that when considering development in or affecting an AONB, great weight will be given to conserving and enhancing their natural beauty (Strategy 46); and that development will only be permitted where it respects the key characteristics and special qualities of the area in which it is proposed, and does not adversely affect important landscape characteristics (Policy D1). Strategy 44 advises that the CPA is defined on the basis of visual openness and views to and from the sea, and states that development will not be allowed if it would damage the undeveloped/open status of the designated area or where visually connected to any adjoining areas.
20. While not part of the Development Plan, the *Dorset and East Devon Coast World Heritage Site Management Plan 2014-2019* ("the WHSMP") and *The Partnership Plan 2019-2024, Management Framework for the East Devon Area of Outstanding Natural Beauty* are also of relevance here. The WHSMP explains that one of the key reasons for the WHS designation was the great variety of "textbook" geomorphological features, including the stacks at Ladram Bay. Policy 1.1 seeks to protect the Outstanding Universal Value of the WHS through prevention of developments that might impede natural processes, or obscure the exposed geology, while Policy 1.4 seeks to protect the landscape character, natural beauty and cultural heritage of the WHS and its setting from inappropriate development. The strategic aims and associated objectives of the AONB Management Framework include "the conservation and enhancement of the high quality and internationally significant coastline".

The impact of the development on the character and appearance of the area

21. The Appellant contends that the development here at issue forms a logical extension to the existing cluster of shops, buildings, timber structures, boats and other features within the Combe. I saw at my site visit that this pre-existing development within the Combe has limited visibility beyond its confines: once on the beach, most of its elements are concealed from view, other than from the small section of beach from which views directly up the Combe are available. Similarly, in cliff-top views of the beach from the South West Coast Path, the pre-existing development and other features within the Combe are largely concealed. It is fair to note that in these views the extent of the development at the Holiday Park is clearly visible on the terraced clifftop behind the beach, and forms part of the existing landscape context.
22. However, prior to the introduction of the timber structure that is the subject of this appeal, the striking red sandstone cliff-face itself was entirely undeveloped. Its natural profile was uninterrupted in views from the Coast Path and, as an even more prominent component of the view, from the beach. As the Appellant's LVA recognises, the construction of the platform has extended development into the landscape of the cliff face, beach and foreshore of Ladram Bay; a previously undeveloped area which has a strong sense of naturalness, is of high landscape value, and has little capacity to accommodate change of this type.
23. I saw at my site visit that the timber structure is clearly visible from most parts of the beach, and partially screens parts of the cliff-face in these views. In views from the South West Coast Path, the structure is not visible from points north of the thatched cottage at the head of the Combe. However, from the section between the Holiday Park and the junction of the Coast Path with the public footpath to Piscombe Lane, there are wide, open views of Ladram Bay and the beach. These are screened in places by the undulations of the landform, hedges and scrub vegetation, but at all of the points from which the beach can be seen, the timber structure is also visible; while a relatively small component of the panoramic views, its built form intrudes upon, and forms a jarring contrast with, the otherwise undeveloped natural profile of the cliff face.
24. From the point where the South West Coast Path crosses the head of the Combe, there are channelled views down through the Combe towards the beach, the sea, and sea-stack known as Ladram Rock. In these views the unauthorised timber structure screens parts of the beach, the lowest part of Ladram Rock, and the area of sea between them – an effect which obscures Ladram Rock's status as a sea stack, separated from the cliffs and the beach.
25. All of these impacts are clearly harmful. The intrusion of this man-made structure into the previously undeveloped cliff face diminishes, rather than conserves or enhances, both the natural beauty of the AONB and the undeveloped character of this part of the Coastal Preservation Area, thereby conflicting with Strategies 44 and 46 and Policy D1 of the East Devon Local Plan. Further, the development partially obscures the exposed geology of the cliff face in short-range views from the beach and long-range views from the South West Coast Path, and by obscuring the status of Ladram Rock as a sea stack in public views from the Coast Path down the Combe, it impedes the appreciation of this internationally important natural feature. This is at odds with the aims of the World Heritage Site Management Plan.

26. The Appellant has suggested that a condition could be imposed requiring parts of the timber structure to be treated with a wood stain chosen to match the colour of the sandstone cliff face, and I appreciate that this would help to make the development less visually intrusive where it appears in views toward the cliffs. However, while slightly less obvious, the structure would remain clearly visible as a man-made construction in front of the previously undeveloped cliff face; it would also continue to obscure views of the geomorphological features for which this area is renowned.
27. I note the Appellant's contention that the adverse impacts of the development are mainly confined to the winter months, on the basis that in summer they are reduced by the presence of seasonal features such as boats, matting and tables with seats, which tend to be concentrated at the beachside entrance to the Combe. I am not persuaded that the presence of such seasonal paraphernalia – which by its very nature is temporary and moveable, and so is readily distinguishable from a fixed timber structure – in any way serves to mitigate the harmful impacts I have described above. Rather, on the day of my site visit, the bright clothes and movements of visitors occupying the tables and chairs placed on the raised platform served to draw the eye in both short- and long-range views of the cliff-face, an effect less likely to occur in winter months.
28. The Appellant also contends that the timber structure serves to screen unsightly views of the lower foundation sections of the adjoining building, as well as the "clutter" that had resulted from the previous use of the slipway for open storage of boats. But no reasons have been given as to why any screening of the adjoining foundations could not have been achieved through less intrusive means than the construction of a large platform, or why any screening of boats and associated maritime clutter should be considered necessary in this seaside location.

Other matters

29. The Appellant asserts that that "the development is required to provide those of disability/ambulant disability and children to have access or views to the beach and other coastal facilities associated with the use of the holiday park". I do not underestimate the value and importance of improving the accessibility of the coast to all, and ensuring that such access is inclusive and sustainable. This is certainly a material consideration capable of carrying weight in favour of development that seeks to achieve wider accessibility. However, the Appellant has not provided any convincing evidence that the structure here at issue meets that description. The platform does not provide, or even improve, physical access to the beach.
30. It does provide views out over the beach from a level area, but users of wheelchairs or pushchairs who had got as far down through the Combe as the entrance to the shop and platform would have very little farther to go, over similar terrain and at the same incline, before reaching the beach itself. The top part of the beach is level, and I saw at my site visit that (as described in the Appellant's LVA) heavy rubber mats were in place at the bottom of the Combe and along the top of the beach. These provide relatively easy access, for wheelchairs and pushchairs too, across the shingle to the range of timber tables and chairs set out below the raised platform. There is no indication that any part of the raised platform, or any of the tables and chairs that occupy it,

are kept available for wheelchair users or those with impaired mobility. Nor does it appear that any part of it is set up to be "child friendly", such that parents or carers might feel that keeping to the platform was safer than venturing on to the beach.

31. Of course it may well be the case that some visitors with impaired mobility and/or young children might find it easier and more convenient to sit on the timber platform rather than on the beach. But the Appellant has not provided any evidence that other means of addressing the needs of these particular user groups, with a less damaging impact on the character and appearance of the area, could not be employed. For example, in some coastal areas where access is steep or difficult, an all-terrain vehicle is used to assist the movement of visitors between the beach and a drop-off point above. Without any explanation as to why this or any other possible alternatives to the platform would not be suitable here, the timber structure cannot rightly be described as "required" for accessibility purposes.
32. The Appellant also states that the timber structure acts as a viewing platform for the Holiday Park's beach employees, to enhance safety for swimmers and people hiring boats and kayaks. On the day of my site visit, the platform was in use as a seating and dining area, its tables and chairs occupied by people with drinks and snacks. An employee of the Holiday Park was seated at a table at the head of the beach, close to the boat hire area, and from there had a very good view out over the bay. I appreciate that my site visit only provides a single snapshot of the uses made of the platform and beach, and that a marginal improvement in views of activity on the water may be obtained by standing on the raised platform. But I am not convinced that any ensuing improvement in beach safety would be significant enough to carry any appreciable weight in favour of granting permission for this structure.

Conclusions on the appeal on ground (a) and the Deemed Planning Application

33. The appeal site is part of a coast that has been designated a World Heritage Site, an AONB, and a Coastal Preservation Area. Great weight must therefore be given to the conservation of this heritage asset, and the conservation of the landscape and scenic beauty of the area. As discussed above I have found that the development here at issue screens public views of the otherwise exposed cliff face, diminishes its natural and undeveloped character, and adversely affects its appearance. Being relatively small in scale, the development does not result in substantial harm to (or the total loss of) the significance of the WHS. But harm is nevertheless caused, and in the absence of any detailed or convincing justification as to the need for the structure, is not outweighed by the very minor public benefits that may arise from its use as a seating and viewing area.
34. In summary, I find that the development conflicts with the relevant policies of the Development Plan, with National Planning Policy, and with the guidance set out in the WHS Management Plan and the AONB Management Framework. No other material considerations have been identified that are of sufficient weight to overcome the harm caused.
35. The Appellant has suggested that in the event I concluded it was not appropriate for the structure to remain permanently in position I could instead grant permission for a temporary period of five years, so as to allow time to reassess the impact of the structure and decide if an alternative permanent

solution was available. However, in view of my finding that the proposed application of woodstain would not suffice to lessen the harmful visual impact of the structure, there is no justification for allowing the harm to persist for five years pending a reassessment. I return to the question of considering alternative solutions in the context of ground (g) below.

36. I conclude that the appeal on ground (a) should fail, and the deemed application for planning permission be refused.

The appeal on ground (f)

37. The ground of appeal is that the steps required by the notice to be taken are excessive. The Appellant's case on this ground is concerned only with the third requirement of the notice, which specified the permanent cessation of use of all storage areas beneath the raised platform. For the reasons set out above, I have determined that the notice should be corrected by deleting this third requirement, as well as the second requirement. It is not for me, in the context of the current appeal against this enforcement notice, to make any finding as to the lawfulness or otherwise of any pre-existing or future use of the appeal site for open-air storage.
38. Since the Appellant does not take issue with any other requirements of the notice, there is nothing for me to consider under this ground of appeal.

The appeal on ground (g)

39. The ground of appeal is that the time given to comply with the requirements of the notice is too short.
40. The Appellant's case on this ground is that the six month period specified by the notice should be extended at least until the end of the main summer tourism season, to minimise any disruption caused to the operation of the holiday park business and the use of the beach by visitors. The Appellant explains that there are large numbers of beach users between Easter and the end of October, and that undertaking the removal of the development at busy periods would create a danger to users of the beach and slipway from moving plant, machinery and materials. The Appellant contends that the provision of a ten month period for compliance would enable the dismantling works to be programmed for a time when there is low usage of the slipway.
41. The Council argues that the Appellants were made aware, during negotiations held between October 2018 and January 2019 over a retrospective application for planning permission that originally included the development here at issue, that the Council considered the retention of the platform unacceptable. It points out that the Appellant has retained the development in its present form, in full knowledge of the Council's view that it was unacceptable, for a lengthy period which has included two "off peak" winter seasons during which the platform could have been removed.
42. That may well be so. Nevertheless having lodged a valid appeal against the enforcement notice, which included ground (a) and the consequent deemed application for planning permission, the Appellant was entitled to assume success, and is entitled to a reasonable period for compliance after the notice takes effect.

43. I consider the points made by the Appellant about the timing of the dismantling works to be entirely reasonable: it would be neither practical nor sensible to attempt the demolition and removal of the unauthorised structure during periods when the beach and the slipway, which are accessible to the public at all times, are in heavy use. I appreciate that the Coronavirus Restrictions will have had a serious adverse impact on the Appellant's business operations (and the tourism industry generally) during the early stages of this year's holiday season, and as a consequence it will be important to extend the latter part of the season as long as possible. Of course it is also important, in the public interest, that the requirements of the notice be carried out without undue delay to overcome the harm identified by the Council in its reasons for issuing the notice.
44. Bearing all of these considerations in mind it is relevant to note that this decision letter is issued in mid-August 2020, so the six month compliance period specified by the notice will run until mid-February 2021. In my judgment, that should provide sufficient opportunity for the Appellant to programme the dismantling works for a time when there is low usage of the beach and slipway. It should also provide adequate time for the Appellant to consider, and if necessary seek planning permission for, alternative means of improving access to the beach.
45. On that basis, I find no justification for increasing the period for compliance beyond the six months specified by the notice. The appeal on ground (g) therefore fails.

Overall Conclusion

46. For the reasons given above I conclude that the appeal against the enforcement notice should not succeed. I shall uphold the notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

47. It is directed that the enforcement notice be corrected by
- at Paragraph 5, the deletion of the requirements currently numbered II), III) and IV); and then
 - at Paragraph 5, the insertion of the following requirement: " II) Remove from the Land all materials and debris associated with compliance with step I) above."

Subject to these corrections the appeal is dismissed and 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.

Jessica Graham

INSPECTOR