The Planning Inspectorate

Appeal Decision

Site visit made on 17 November 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10th December 2020

Appeal Ref: APP/Q9495/C/20/3249926
Birkhead Barn, Troutbeck, Windermere, LA23 1PQ

- 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 Mrs Jane Clifford against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice, numbered E/2019/0040, was issued on 18 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, operation development consisting: 1) Installation of a door, glazed screen and frame into existing opening with horizontal timber boards above to the north elevation of the store (as labelled on Plan B) attached to the main building (as shown on the attached Image A); 2) Installation of a part glazed door and frame into an existing doorway into the undercroft (as labelled on Plan B) of the south elevation of the store attached to the main building (as shown in the attached Image B); 3) The laying of foundations and blockwork between the south elevation of the main building (as labelled on Plan B) and the east elevation of the store building (as shown on the attached Image C).
- The requirements of the notice are remove permanently from the Land: 1) the door, screen and frame that has been installed into the existing opening and horizontal timber boards above to the north elevation of the store (as labelled on Plan B) attached to the main building (as shown on the attached Image A); 2) The part glazed door and frame that has been installed into an existing doorway into the undercroft (as labelled on Plan B) of the south elevation of the store attached to the main building (as shown on Image B); and 3) The foundations and blockwork between the south elevation of the main building (as labelled on Plan B) and the east elevation of the store building (as shown in the attached Image C).
- 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 (c) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended also falls to be determined.

Decision

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

Ground (c)

2. An appeal on this ground is on the basis that the matters stated in the notice do not constitute a breach of planning control. The appellant's case is that they implemented the planning permission reference no: 7/2015/5638 dated 20 January 2016 ('the 2016 Permission') for the 'Change of use and extension

to existing garage to form detached dwelling to meet local needs'. The Park Authority's case is that the 2016 Permission was not implemented within the 3 year time period permitted and the whole of the development is unauthorised.

3. Section 56(1) of the 1990 Act provides that development of the land shall be taken to be initiated at the earlier of the time when the carrying out of operations are begun or the time when the new use is instituted. In this case the development authorised by the 2016 Permission was both the carrying out of operations and the change of use and condition 2 provided that the development had to be carried out in conformity with the submitted plans and details.

4. It is possible to commence a development for the purpose of section 56 and thereby meet a deadline forming a condition of the planning permission, and then later to deviate from the permitted works in a manner that later becomes an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for section 56 purposes.

5. The appellant's case is that the permission was commenced prior to the expiry of three years from the grant of the 2016 permission as is evidenced by the notification to Building Control of the proposed commencement of works on 14 January 2019 (by email dated 9 January 2019). The appellant states that structural works including the excavation and laying of pipework and connection of services, and the construction of the ground floor slab, internal wall tanking and internal walls were started as notified and inspected by the Building Control officer within 3 years of the date of the 2016 permission (but no exact date is provided regarding this visit). The appellant has also stated that the new door on the main elevation of the building was installed before the expiry of the 2016 Permission, but again no precise date is provided and none of the evidence is sworn. This door is in accordance with the approved plans (Reference 'N26/1455-06 Proposed') and would be sufficient to commence the operational works under the 2016 Permission, if undertaken before the expiry of that consent.

6. The Park Authority's case is that the 2016 Permission was not implemented as the works undertaken do not accord with approved plans. In addition, the Park Authority states that the appellants did not discharge Condition 11 in that they did not submit a tree protection method statement prior to the commencement of development and the permission could not therefore have been implemented due to the failure to discharge a condition precedent. However, Condition 11 does not expressly prohibit any development taking place before a tree protection method statement was submitted and so is not a true condition precedent.

7. It is for the appellant to prove on the balance of probability that the operations under the 2016 Permission were commenced before it lapsed. The appellant has stated that operations pursuant to the permission began on 14 January 2019 and that the doors were also installed before the expiry, but has not provided any direct evidence of this despite alleging that the building control officer visited the site. There was only 6 days between the date of the proposed commencement of work given to Building Control and the expiry date on the 2016 Permission so that even a short delay would have been fatal to this ground of appeal. In the absence of any direct, sworn or collaborative

evidence regarding the date of any of the works the appeal under ground (c) cannot succeed.

Ground (a) and the deemed application for planning permission

8. The main issue in the deemed application for planning permission is the effect of the development on the character and appearance of the building and the Troutbeck Conservation Area ('the CA').

9. The deemed application for planning permission is for the matters alleged in notice, that is the works as described as the breach of planning control at the time that the notice was issued. The works that have been undertaken following the service of the notice are not part of those matters or the deemed application for planning permission. It was evident during the site visit that further works had been undertaken but this appeal has been determined on the development as it was at the time of the issue of the notice.

10. The site is located in the Lake District National Park (which is a World Heritage Site) and the National Planning Policy Framework ('the Framework') states that great weight be given to conserving and enhancing its landscape and scenic beauty and that the conservation and enhancement of wildlife and cultural heritage are also important considerations. The site is within the CA which is a designated heritage asset, and there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area[1]. The property is also a non-designated heritage asset in its own right. The significance of the Conservation Area derives in part from its picturesque setting, and the architectural and historic interest of the area's buildings with well-preserved examples of local Cumbrian vernacular architecture.

11. The doors, glazing and cladding on the store building as originally installed, and constituting the matters alleged in the notice forming the deemed application for planning permission, does not accord with the rural character and appearance of the original building as a barn within the CA. The additional glazing and horizontal cladding is discordant and materially alters the appearance of the store building to that of a domestic building. There are examples of glazed doors and frames on other properties within the CA but the appeal property is located immediately adjacent to the road and was not constructed or previously used as a dwellinghouse. The change in the appearance of the appeal property making it look more like a dwellinghouse (as effected by the original works undertaken when the notice was issued) is not appropriate in its setting causing harm to the character and appearance of the building and the area, and less than substantial harm to the significance the CA. The development is contrary to the Core Strategy 2010 (which is part of the local development plan), including policies CS01, CS25 which seek to conserve and enhance the special qualities of the Lake District, the spectacular landscape and the internationally acclaimed historic environment and policies CS10 and CS11 which seek to achieve design excellence and sustainable development. The development is also contrary to saved policies C7 and BE11 of the Lake District National Park Local Plan (also part of the local development plan) intended to protect conservation areas and the natural beauty of the National Park.

[1] Section 72(1), Planning (Listed Buildings and Conservation Areas) Act 1990.

12. Where harm is identified to the significance of a designated heritage asset, in this case the CA, the Framework requires that the harm is weighed against the public benefits of the proposal. The appellant has argued that the development improves the appearance of the building, which was in a slightly dilapidated state, which is a benefit to the wider CA. However, the 2016 Permission provided a suitable alternative to the development which would have similarly provided the benefits associated with the maintenance of the building had it been implemented, and I therefore afford limited weight to this argument as a public benefit. The public benefits do not outweigh the considerable importance and weight that must be attached to the desirability of preserving or enhancing the character or appearance of the CA in accordance with the statutory test.

Conclusion on ground (a)

13. I conclude that the development fails to preserve the character and appearance of the building and fails to conserve or enhance the landscape and scenic beauty of the National Park and World Heritage Site, and would cause less than substantial harm to the significance of the CA as a heritage asset. In the absence of any public benefits to outweigh this harm the development is in conflict with the local development plan and guidance in the Framework. The appeal does not succeed under ground (a) and the planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Zoë Franks

INSPECTOR