



Appeal Decision

Site visit made on 21 September 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2021

Appeal Ref: APP/Q9495/C/21/3275004

Land at passageway off The Slack, Ambleside LA22 9DQ

- 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 Paul Gaynor, Gaynor Sports Ltd against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 24 March 2021.
- The breach of planning control as alleged in the notice is, without planning permission, building operations consisting of the addition of seven air conditioning units as shown in the attached photograph at Appendix 1.
- The requirements of the notice are, permanently remove the seven air conditioning units and associated pipework, ducting, cabling and supporting framework from the Land.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The appeal on ground (d)

1. An appeal on ground (d) is made on the basis that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters stated in the notice.
2. Section 171B of the 1990 Act sets out the relevant time limits for enforcement action to be taken. Section 171B(1) sets out that no enforcement action may be taken against building operations after the end of a period of four years from which the operations were substantially complete. It is necessary therefore for the appellant to demonstrate, on the balance of probabilities, that the air conditioning units were substantially complete on or before 24 March 2017.
3. The appellant accepts that five of the units were not installed until November 2017. Thus, they were not substantially complete more than four years prior to the issue of the notice.
4. The appellant nevertheless argues that two of the seven units were installed in 2006. The two units in question were manufactured by Carrier, in contrast to the remaining five units which were manufactured by Toshiba.

5. A signed letter dated 13 April 2021 from the Managing Director of Pricewise Air Conditioning Ltd indicates that in March 2006 the company was instructed to install the two units on the property. However, it is not clear if March 2006 was when the company was instructed or when the installation was done. Beyond that, the company does not offer any receipts or invoices for the installation of the units, nor any photographs taken at the time of their installation.
6. A log book has also been provided which appears to show that three Carrier units were installed at the appeal property on 21 March 2006. However, the log book does not show any subsequent servicing record of those units. There are six other references to Carrier units within the log book. Four were said to be installed in May 2006, two in October 2006 and one unit has a date of installation unknown. Overall, it is not clear from the servicing record whether the two units which are subject of the notice are referred to within it. Whilst serial numbers are provided within the record, there is nothing to cross reference them against within the evidence.
7. The appellant has also provided an extract from Google Streetview which is said to be dated August 2016. However, whilst it is purported to show the two units in question, due to the angle of the image, I can only ascertain that one air conditioning unit was present on the building at that time. Nor indeed is the image of sufficient resolution to allow me to ascertain whether the unit shown is one of those subject of the notice.
8. Overall, I find that the appellant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the air conditioning units were substantially completed four years or more before the notice was issued.
9. As a result, the appeal on ground (d) fails.

The appeal on ground (a)

Procedural Matters

10. The enforcement notice refers to policies within the Lake District National Park Core Strategy (Local Plan Part One) (the CS) which formed part of the development plan at the date the notice was issued. The notice also refers to policies within the emerging pre-adoption Lake District Park Local Plan. The Lake District National Park Local Plan 2020-2035 (the LP) was subsequently adopted on 19 May 2021 and now forms the development plan, superseding the policies in the CS. The appellant had the opportunity to comment on the adoption, indeed they submitted a revised appeal statement in response to it. I have therefore had regard to the relevant policies in the adopted LP as required by statute.
11. Likewise, the parties have also had the opportunity to address the revised National Planning Policy Framework (the Framework) published in July 2021 at the final comments stage of this appeal. Again, it is the July 2021 Framework to which I will have regard.

Main Issue

12. The main issue is whether the development will preserve or enhance the character or appearance of the Ambleside Conservation Area (the ACA).

Reasons

13. The appeal site lies within the ACA, a designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for development in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
14. The significance of the ACA derives from its medieval origins and subsequent Victorian era expansion of the town resulting from the opening of road and rail networks. The area is characterised by a tightly knit, complex street pattern, including narrow lanes, ginnels and back lanes. These are juxtaposed against the sweeping, panoramic vistas of the Lakeland fells which frame the town. The townscape varies but reflects local Lakeland vernacular with a prevalent use of local stone in buildings and walls.
15. The appeal site lies within the core of the conservation area, close to Market Place and the main commercial centre of the ACA. It is located at the end of a narrow alley, which is framed by three storey buildings either side largely constructed from Lakeland stone. The alley is accessed from The Slack - a narrow back lane which pre-dates 19th century redevelopment of the town centre and which links Market Place with Compston Road. The floor of the alley is partially constructed in cobbled stone with the appeal building itself sits at the head of the alleyway. The building contains an attractive stone archway which frames the access door. Reflecting the complex historical street pattern of Ambleside, this alley, with its vernacular materials, narrow spacing, floorscape and attractive frame of the arched door, makes a positive contribution towards the significance of the ACA.
16. Views of the units are limited to within the alley itself and from a single vantage point on The Slack. The alley itself is not a public thoroughfare since it provides access only to a commercial unit and upper floor dwellings as well as delivery access for the appeal property. Views from The Slack are fleeting to an extent as pedestrian and vehicular movements move between the Market Place and Compston Road. Moreover, the horizontal arrangement of five of the units means their scale is not fully appreciable from The Slack.
17. Nevertheless, the eye is drawn down the alley when walking along The Slack due to the relief it offers from the continuous massing of the buildings upon it. In that context, when they are seen, the units appear as modern incursions within the streetscape, detracting from the historical character and atmosphere of the alley.
18. The Authority does not allege any particular harm in respect of the living conditions of the occupiers of Shambles Cottages which has an outlook onto the alley. Nevertheless, the notice does identify that the units appear incongruous from within the dwelling. As such, whilst the appellant indicates that units would not materially affect the outlook from the rooms which face onto the alley, their presence when looking out of windows within the property, only serves to embellish the harm which arises. Nevertheless, such views

would be private rather than public views, and thus any harm from their visibility within Shambles Cottage adds little to their overall effect on significance.

19. Undoubtedly, there are examples of several alleys or yards within the ACA which contain commercial paraphernalia such as refuse storage, extract vents and car parking. However, it seems to me that such features detract from the significance of the ACA, rather than contribute positively towards it. As such the provision of a further seven air conditioning units would only serve to further magnify the negative impact such additions have on the heritage asset.
20. The appellant has proposed the provision of a hard wood screen to be attached to the external wall of the building to prevent views of the units from The Slack. However, whilst painted grey, the texture and shape of the board would appear at odds to the vernacular stone work within the building. Moreover, the provision of a screen would only serve to emphasise the presence of something which needs to be hidden. As such, I consider the provision of such a screen would not overcome the harm I have identified.
21. I conclude, therefore, that overall the development will fail to preserve or enhance the character or appearance of the ACA. That failure results in harm to the significance of the heritage asset. Consequently, the development will conflict with Policy 6 of the LP which states that development must reinforce the importance of local character, and Policy 7 of the LP which seeks to conserve and enhance the significance of heritage assets. In accordance with paragraph 199 of the Framework, I afford great weight to the harm that would arise.
22. I consider the harm which arises would be less than substantial in accordance with paragraph 202 of the Framework. As such that harm should be weighed against the public benefits of the development.
23. I understand that Gaynor Sports performs an important role within the retail offering in Ambleside and also in job creation. The appellant indicates that the business currently supports the equivalent of 70 full time employees. The units provide ventilation to the ground floor area of the shop in a space which is used for the sale and display of camping equipment. It appears that this part of the premises is not served by windows. An Air Condition Safety Statement provided by the appellant indicates that Section 2 of the Health & Safety at Work Act 1974 places a duty on Gaynor Sports to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees. Section 4 of the Act states that those in control of non-domestic premises have a duty towards those who are not their employees but use their premises. The statement indicates that without the units, the lack of ventilation could contribute to virus transmission and could create indoor conditions in terms of temperature and humidity that support virus survival.
24. The appellant indicates that without ventilation, the internal area of the store would become redundant. However, there is nothing in the appellant's evidence which indicates that ventilation levels without the units in that the area of the store would be so poor that use of the area would no longer be possible. Moreover, whilst the appellant has provided evidence which shows that alternative locations for the air conditioning units has been explored, no evidence has been provided which demonstrates that the internal layout of the building could not be revised to mitigate against lower levels of ventilation

within the room in question. Furthermore, no financial evidence has been put forward which shows how the loss of the units would jeopardise the financial viability of the business or result in job losses. As such, whilst I afford significant weight to the public benefits of the development, I conclude that on the evidence before me, they would not outweigh the harm to the significance of the ACA.

Other Matters

25. The appellant indicates that Authority previously considered taking enforcement action but chose not to do so. However, such matters carry very little weight in favour of the appellant in this case. I also note the lack of harm in respect of noise impacts. However, the lack of such harm would not outweigh the harm to heritage assets.
26. The appeal site lies within the English Lake District World Heritage Site (the WHS). However, the development will be unlikely to have any particular impact on the attributes of the outstanding universal value of the WHS. Nevertheless, any lack of harm in respect of the WHS would not outweigh the harm I have identified to the significance of the ACA.

Conclusion

27. For the reasons given above, and having considered all other matters raised, I conclude that the appeal on ground (a) should not succeed and the deemed application for planning permission should be refused.

The appeal on ground (g)

28. An appeal on ground (g) is made on the basis that the period for compliance with the requirements of the notice is too short. The notice gives a period of four months for it to be complied with.
29. The appellant indicates that a period of 12 months would be more appropriate. This is predicated on the basis that such time would be required to allow the appellant to explore alternatives to provide ventilation to the camping area which it is said will be lengthy and costly in nature. The Authority indicate it has no objections to the compliance period being extended. It seems to me that a period of 12 months would allow sufficient time for the appellant to explore alternative means of ventilating the ground floor camping area in order to ensure its continued use.
30. As a result, the appeal on ground (g) succeeds.

Formal Decision

31. It is directed that the enforcement notice is varied by the deletion of four months and the insertion of 12 months as the time for compliance in section 6 of the notice.
32. Subject to the variation, 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.

J Whitfield

INSPECTOR