
Appeal Decision

Site visit made on 12 October 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Ref: APP/Q9495/C/21/3266926

Land at Old Smokey, Glenridding, Penrith CA11 0PG

- 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 Wendy Martin-Rhind against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2019/0351, was issued on 4 December 2020.
 - The breach of planning control alleged in the notice is failure to comply with condition No 4 of a planning permission Ref 7/2016/3149 granted on 15 November 2016.
 - The development to which the permission relates is the replacement of the existing two bedroom bungalow with a five bedroom family house. The condition in question is No 4 which states that: The roof of the building hereby permitted shall be covered in local green or blue/grey slates (that is slates which have been mined and quarried in Cumbria), and shall be laid in diminishing courses from eaves to ridge. The notice alleges that the condition has not been complied with in that different (Vermont) slates have been used.
 - The requirements of the notice are: Carry out building work to replace the roofing slate so that it corresponds with the details as specified in Condition 4 of planning permission 7/2016/3149, specifically that the roof is shall be [sic] covered in local green or blue/grey slates (that is slates which have been mined and quarried in Cumbria), and shall be laid in diminishing courses from eaves to ridge.
 - The period for compliance with the requirements is 24 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Procedural Matters

1. The Lake District National Park Local Plan 2020-2035 (Local Plan) was adopted on 19 May 2021. The policies in the Local Plan supersede the policies in the Lake District National Park Local Plan (1998) cited in the Enforcement Notice. I have been advised of the policies in the Local Plan that are relevant to this appeal and have determined this appeal having regard only to those policies. The appellant has been afforded the opportunity to comment on the policies in the recently adopted Local Plan.

The Enforcement Notice

2. Paragraph 4 of the Enforcement Notice does not specify a reason for issuing the notice (beyond saying that it appears to the Authority that a breach of planning control has occurred). In other circumstances, that might have

resulted in the notice being considered a nullity. However, in paragraph 3, the notice does set out the background to the breach of the condition alleged. This includes the reason why the relevant condition was imposed. I am therefore satisfied that the reason for issuing the notice may be discerned from paragraph 3, such that the notice ought not to be considered a nullity. I am reinforced in that conclusion by the fact that the appellant has not raised the point and has responded fully to the reasons for imposing the relevant condition in her appeal statement.

3. As drafted, the requirements of the notice are reasonably clear and I am satisfied the appellant has understood what she is required to do in order to comply with the notice. It is implicit from the wording of the requirements that the Vermont slates that have been fitted must first be removed in order that they can be replaced with slates that accord with Condition 4. Nevertheless, in the interests of clarity, it would assist if the notice specifically required that the Vermont slates that have been fitted must be removed. I shall vary the requirement accordingly.
4. I will also take the opportunity to correct the minor typographic error by deleting the superfluous 'shall be' in that sentence.
5. I am satisfied that no injustice would be caused by correcting and varying the notice in these respects.

The appeal on ground (a) and the deemed planning application

6. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. In this case, the notice is issued under section 171A(1)(b) of the 1990 Act to allege that there has been a breach of a condition imposed upon planning permission 7/2016/3149. The deemed planning permission that arises under the appeal on ground (a) is therefore to carry out the development subject to planning permission 7/2016/3149 without complying with the condition No 4: in other words, the replacement of the (previously) existing two-bedroom bungalow with a five bedroom family house, but using Vermont slates instead of locally sourced green or blue/grey slates.
7. As indicated above, the Authority has not stated a substantive reason for issuing the enforcement notice. From the evidence before me, including representations from local residents, I consider that the main issue raised is whether the use of the Vermont roof slates on the replacement dwelling conserves and enhances the landscape and scenic beauty of the Lake District National Park.
8. The appellant has commissioned a Landscape and Visual Impact Appraisal (LVIA) to assess the impact of the Vermont roof slates. The Authority has not challenged the methodology on which the LVIA is based. I see no reason to take a different view.
9. The LVIA identifies the baseline as being composed of National and regional classifications. At the National level, the study area falls within Character Area 8: Cumbria High Fells (CA8). The key characteristics of CA8 include spectacular mountain scenery of open fells and craggy peaks separated by U-shaped valleys with a radiating pattern of rivers and lakes, with local stone-built hamlets and villages along the valleys.

10. At the regional level, the appeal site is within Distinctive Characteristics Area 25: Ullswater, as identified in the District National Park Landscape Character Assessment and Guidelines: Revised 2018 (DCA25). The key characteristics of DCA25 are identified as a strong sense of the landscape evolving from south to north with, at the upper end, a steep-sided upland feel. The village of Glenridding is described as nestling at the foot of the Helvellyn Fells and as having a very strong identity as a former mining community.
11. Within DCA25, Character Type H Settlement and Built Character indicates that traditional stone and slate buildings are a distinctive part of the landscape fabric.
12. The landscape in the vicinity of the site is representative of the characteristics identified in CA8 and DCA25. In that context, I concur with the assessment of the LVIA that the sensitivity of the landscape character to change is high.
13. The building known as Old Smokey lies within a small 20 Century residential development within the settlement of Glenridding. This group of properties are located on a steep hill and line zig-zag road that ascends from the valley floor. Old Smokey is the penultimate in a line of dwellings that front onto this road. Above the site there is a further row of dwellings bordering Great Wood.
14. Old Smokey itself is a substantial detached house, with accommodation in the roof space. The building is of overtly modern design, with extensive areas of glazing, including a fully glazed gable to a projecting element of the front elevation. There is, in addition, an extensively glazed dormer window on the front roof slope.
15. However, whilst of the modern appearance, the origins of the design are rooted in the local vernacular. The extensive use of stone as the primary external finish is a key factor in this respect, as is the way in which the building responds to changes in ground level. This enables the building to potentially integrate with the surrounding properties which, whilst exhibiting some non-traditional materials, generally also conform to the local vernacular and employ a traditional palette of materials.
16. But the existing building at Old Smokey fails to integrate with the surrounding buildings because of the use of the Vermont slates. Although laid using the traditional technique of diminishing courses from eaves to ridge, the Vermont slates are much lighter in appearance than locally sourced green or blue/grey slate. The Vermont slates also have a different texture and are more reflective than locally sourced slates, and this gives them a somewhat garish appearance. The net result is that the Vermont roof slates are a discordant feature in the immediate landscape. I assess the effect on this landscape as being medium to high, dependant upon from where it is viewed.
17. The LVIA identifies a number of viewpoints, selected to provide an overview of the visual effects of the development. I am satisfied that the viewpoints selected are broadly representative of the views experienced by receptors. It is convenient to consider the visual effect of the use of Vermont slates by reference to these viewpoints.
18. Viewpoint 1 is the view looking east from the public footpath in the field adjacent to the appeal site. From this position, views of the roof of Old Smokey are restricted by intervening development. Such views as are

available are experienced against the backdrop of the fells beyond. Consequently, whilst sensitivity is high, I concur with the LVIA that the magnitude of the visual effect from this position is very low.

19. Viewpoint 2 is the view looking north-east from the public footpath in the field adjacent to the appeal site. From this viewpoint, parts of the roof of Old Smokey are visible both in the context of the immediately adjoining dwelling to the west and the dwellings to the rear. In this view, the contrast between the lighter appearance of the Vermont tiles on the roof of Old Smokey and locally sourced tiles on other properties is immediately apparent. Consequently, although the primary focus of the receptor may be towards Blaes Crag and Greenside when travelling north, or over Glenridding towards the lake when travelling south, I do not agree with the LVIA that the magnitude is very low. I assess the magnitude of the visual effect to be medium.
20. Viewpoint 3 is looking north-west from roadside parking in Glenridding. At the time of my site visit, views of Old Smokey from this position were partly obscured by intervening vegetation. However, the photograph embedded within the LVIA was evidently taken in the winter months, at which time the front elevation of Old Smokey is plainly visible from this position. Based on a combination of the more limited views possible at the time of site visit and my interpretation of the photograph in the LVIA, the lighter appearance and reflective qualities of the Vermont slates combine to make the roof of Old Smokey visually prominent and intrusive from this position. For that reason, I cannot agree with the assessment in the LVIA that the visual impact is low. In my assessment, the visual effect is high.
21. Viewpoint 4 is looking south from the footpath below Glenridding Dodd. In this view, the roof of Old Smokey is viewed in the foreground and in the context of longer views to the south towards the lake and surrounding fells. This view also affords glimpses of several other roofs in the group of dwellings of which Old Smokey forms a part, including some examples that appear not be roofed with locally sourced slates. This view was also partly obscured by intervening vegetation at the time of my site visit. Nevertheless, by reason of its proximity and the light appearance of the Vermont slates, the roof of Old Smokey was prominent. Based on the photograph embedded within the LVIA, the effect in the winter months is likely to be even more pronounced. For that reason, I assess the visual effect of the Vermont slates to be high.
22. Viewpoint 5 is also looking north-west from roadside parking in Glenridding but from a position further north than Viewpoint 3. From this position, Old Smokey is viewed in the context of other properties that front onto the zig-zag road and the road behind. The front elevation of Old Smokey is plainly visible from this position through gaps in the vegetation. The lighter appearance and reflective qualities of the Vermont slates are obvious from this position and make the roof of Old Smokey visually prominent and intrusive. Notwithstanding that from this position the roof of Old Smokey is viewed against the backdrop of Glenridding Dodd, in my assessment the visual effect is high.
23. Viewpoint 6 is looking north from the residential area/play area in Glenridding. At the time of my site visit, views of Old Smokey from this position were largely obscured by intervening vegetation. The photograph embedded within the LVIA shows that to some extent this is also the case during the winter months. Nevertheless, to the extent that the roof of Old Smokey is visible

from this position, the lighter appearance and reflective qualities are apparent. In my judgment, the visual effect is therefore medium.

24. Viewpoint 7 is looking north from the bench below Lanty's Tarn. This is a longer distance view across the valley from an elevated position. From this position, the roof of Old Smokey is viewed at an angle and amidst the roofscape of the other properties in the group. It is also viewed at a distance, and in the context of longer views of Glenridding Dodd, Ullswater and the surrounding fells. For all these reasons, I assess the visual effect as low but the sensitivity as very high, given that the bench is at the meeting point of several public footpaths.
25. Viewpoint 8 is looking north from Side Farm and the camp site there. From this position, by reason of its lighter colour and reflective quality, the roof of Old Smokey is just discernible beneath the mass of Glenridding Dodd. However, because of the intervening distance, the presence of vegetation and the built form surrounding it, the roof of Old Smokey is not immediately obvious in this view. I therefore concur with the LVIA that the visual effect is very low.
26. Viewpoints 9, 10 and 11. These are all views looking west from Patterdale Common/Place Fell, and it is convenient to consider them together. These views (as well as others possible from the public footpath that runs along the west side of Patterdale Common/Place Fell) are all distant views from an elevated position, and in most cases with no intervening vegetation.
27. I noted during my site visit that the public footpath along Patterdale Common/Place Fell is popular with walkers, which causes me to assess the sensitivity as very high. I accept that the focus of receptors using this footpath is likely to be the outstanding views over Ullswater towards the fells beyond. The village of Glenridding is also a prominent feature of these views.
28. Nevertheless, I observed that in views from this footpath the roof of Old Smokey is readily discernible amongst the built form of Glenridding. This is due to its lighter colour in relation to the surrounding roofs, and to its reflective qualities. I found this to be particularly so in relation to Viewpoint 10, from almost directly opposite Glenridding. Moreover, because the village of Glenridding is a prominent feature in this view, the incongruity of the roof to Old Smokey amongst the surrounding roofs tends to itself act as a focal point, such that the viewer's attention is drawn to it, even at that distance. For that reason, I assess the visual effect as medium across these viewpoints.
29. In summary, I consider the landscape in which Old Smokey sits is highly sensitive to change and with a value to receptors that varies from low to very high, subject to the view being experienced. I assess the effect of the Vermont slates on the landscape as being medium to high. I assess the visual effects as varying from very low to very high, again dependent upon from where the roof is viewed and the context within which it is viewed. I therefore consider that the use of Vermont slates on the roof of Old Smokey detracts from the landscape and from the way that this landscape is experienced. As such, the use of Vermont slates is harmful to that landscape in a way that the use of locally sourced green or blue/grey slates would not.
30. I conclude that condition No 4 imposed on planning permission Ref 7/2016/3149 is necessary to make the development approved acceptable in planning terms. Non-compliance with that condition through the use of

Vermont slates is therefore contrary to Policies 05 and 06 of the Local Plan. These policies require, amongst other things, that development must reinforce the importance of local character by having regard to materials.

Other considerations

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control alleged in the notice fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
32. The appellant explains that she instructed an experienced firm of chartered surveyors to project manage the construction of the new dwelling. In the event, the project managers failed to order locally sourced slate at the appropriate time and, by the time this oversight was realised, there was a significant lead-in time for the delivery of locally sourced slates. The solution adopted by the project managers was the use of Vermont slates which, the appellant was assured, had been used on other projects within the Lake District National Park. The project managers withheld from the appellant that the Authority had raised a potential issue within the use of Vermont Slates as far back as November 2019.
33. I have considerable sympathy with the appellant in this regard. However, ultimately, the responsibility for compliance with a planning permission rests with the landowner. The failure of a project manager instructed by a landowner to supervise the implementation of a planning permission cannot provide a justifiable reason for allowing a development that is harmful to its surroundings, not least in a highly sensitive landscape such as this.
34. Similarly, the financial cost of removing the Vermont slates and re-roofing with locally sourced slates is not a matter that I am able to take into account. Neither is the distress caused to the appellant in that respect. I have considered the point that the Vermont slates used may not be recyclable, and am mindful that achieving sustainable development is a thread that runs through the National Planning Policy Framework (Framework). However, there is no evidence before me to suggest that the Vermont slates used at Old Smokey could not be removed in an undamaged state and re-used on another project. In the absence of that evidence, I attach only limited weight to this point.
35. A number of representations have been received from local residents. Differing opinions are expressed. Some support the Authority in taking enforcement action. The majority, however, are in support of the appellant. These representations, from the occupiers of some of the properties surrounding Old Smokey, consider that the Vermont slates are unobtrusive and are appropriate in the particular context of the modern design of the building under construction. Some consider that replacing the Vermont slates would be unreasonable and an unnecessary expense. Whilst I have taken all representations received into account, the latter clearly weigh in support of the development in the overall planning balance.

36. Paragraph 176 of the Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these issues. I have found that the use of Vermont slates in contravention of condition No 4 imposed on planning permission Ref 7/2016/3149 harms the landscape in this location. In accordance with paragraph 176 of the Framework, that is a material consideration to which I attach great weight.

Conclusion on the ground (a) appeal

37. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan. Indeed, if anything, the weight given in the Framework to conserving and enhancing landscape and scenic beauty in National Parks tends to support my conclusions in relation to the development plan.
38. Accordingly, I conclude that permission ought not to be granted for the breach of planning control alleged in the notice.

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

40. It is directed that the enforcement notice is corrected by:
- in paragraph 5 of the notice, delete the words 'shall be'
41. It is directed that the enforcement notice is varied by:
- at the beginning of paragraph 5 of the notice, adds the words 'Remove the Vermont slates that have been fitted and'
42. Subject to the correction and 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.

Paul Freer
INSPECTOR