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## Appeal Decision

Site visit made on 11 January 2022

**by Zoë Franks Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 January 2022**

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### **Appeal Ref: APP/Q9495/C/21/3282251**

#### **Land at Langdale Fell, Ambleside**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Lowther Estate Trust against an enforcement notice issued by Lake District National Park Authority.
  - The notice, numbered E/2019/0124B, was issued on 17 August 2021.
  - The breach of planning control as alleged in the notice is without planning permission, operational development consisting of the installation of a pay and display machine in the approximate position marked with a cross on the attached plan and as shown on the photographs attached to this notice.
  - The requirements of the notice are: i. Permanently remove the pay and display machine, associated signage and supporting posts from the land; and ii. Restore the surface of the Land to its condition before the development took place.
  - The period for compliance with the requirements in one month.
  - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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#### **Decision**

1. It is directed that the enforcement notice is corrected by the insertion of the words '*and associated signage and supporting posts*' after the word '*machine*' in paragraph 3 '*The matters which appears to constitute the breach of planning control*'.
2. Subject to the correction, 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.

#### **The Notice**

3. It is clear from the requirements in the notice that the Authority are seeking to secure the removal of the signage and supporting posts from the appeal site as well as the pay and display machine. The appellant has confirmed that they have no objection to the allegation in the notice being corrected to include the associated signage and posts and I am satisfied that this variation can be made without causing injustice to the parties.

#### **The Ground (a) appeal and deemed application for permission**

4. The main issue is the effect of the development on the character and appearance of the area
5. The site is located in the Lake District National Park, and the National Planning Policy Framework 2021 ('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 Lake District National Park is a World Heritage Site, which the Framework describes as a heritage asset of the highest significance. Its significance derives in part from its cultural landscape of exceptional beauty, shaped by persistent and distinctive agro-pastoral traditions which give it special character (and which includes the common land). The Framework states that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation

6. The appeal site is situated on Elterwater Common (which is common land) outside of the village of Elterwater in the open countryside on the side of a tarmac road.
7. The Authority accepts that the site has previously been used for parking but argues that the location previously had an informal and undeveloped character which was consistent with the character of the Common. The Authority argues that the man-made infrastructure of the pay and display machine and associated signage and posts is intrusive and at odds with the open and undeveloped character of the Common and causes harm to the scenic beauty of the area.
8. The appellant's case is that the development does not cause harm to the visual character of the locality as there are other car park located in the Lake District National Park which have similar pay and display machines, signage and information boards, and that roads in the area also have signage and street furniture. In addition, the appellant states that the machine is not located on undeveloped land but on existing hardstanding already used as car park and adjacent to the road, and the machine is small, does not harm views, and is screened by the rocky outcrop to which it is adjacent. The appellant also argues that the car park supports rural recreation and local businesses and that if the car park were to close (which may happen if it does not generate income to be used towards its upkeep) cars would park in an ad hoc manner across the Common.
9. I accept that there are other car parks with man-made infrastructure in the area and that, at the time of the site visit, there were examples of cars parked along the edges of the roads. However, much of the car parking, both on the appeal site and elsewhere in the vicinity, will be of a transitory nature in contrast with the permanent structure of the pay and display machine. Due to the topography and character of Elterwater Common, with little in the way of trees or vegetation next to the appeal site, the development is visible as an intrusive and incongruent structure from many points over a wide area, and the screening provided by the rocky outcrop is limited and does not prevent all views of the development (particularly from northerly and westerly points). The materials used are evidently man-made and appear discordant in this location viewed against the natural landscape of the Common, notwithstanding that the appeal site is accessed from the road and has a hard surface. This is in part because of the height and colour of the structures, and their permanent nature.

10. The development does therefore cause harm to the character and appearance of the area, and less that substantial harm to the significance of the World Heritage Site as a heritage asset.
11. As harm has been identified to the significance of the World Heritage Site as a designated heritage asset, the Framework requires that the harm is weighed against the public benefits of the development. The appellant has argued that the income from the carpark is used for the upkeep of Elterwater Common, its carparks, agricultural and forestry practices but has not provided any details regarding the sums of money that have been used in this way, and I therefore give this limited weight. Other benefits identified by the appellant include the fact that the paid car park discourages long-stay and overnight parking, that the signage alerts drivers to presence of car parks rather than using ad hoc parking and that it also promotes a modal shift away for private car by eliminating free parking. Some of these reasons contradict each other, as alerting drivers to the existence of car parks cannot also said to be encouraging less use of private cars. I also give these reasons limited weight in terms of public benefits as the hardstanding would remain and there is no evidence that this would not continue to be available and used as parking on the common land. There is also nothing before me regarding the effect that paid paying in this location would have on the use of private cars in the area or parking habits, or that additional parking is required to support rural recreation and businesses in the area, and I therefore accord these considerations little weight.
12. The public benefits do not therefore outweigh the considerable importance and weight that must be attached to the desirability of preserving or enhancing the character or appearance of the World Heritage Site.
13. The development causes harm as set out above and is in conflict with Lake District National Park Local Plan 2020 – 2035 including; Policies 01 and 05, which amongst other things, seek to protect the significance and special qualities of the Lake District and its spectacular landscape; Policy 02 which seeks to ensure that development is of a scale and nature appropriate to the character and function of its location; and Policy 07 which aims to conserve or enhance the significance of heritage assets. The solar panels may accord with Policy 20 which seeks to promote the use of renewable and low carbon energy but this does not resolve the conflict with the other development plan policies and the Framework. In the absence of any material considerations of sufficient weight to overcome this conflict, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Zoë Frank*

INSPECTOR