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## Appeal Decisions

Site visit made on 11 January 2022

**by Zoë Franks Solicitor**

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

**Decision date: 09 February 2022**

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### **Appeal A Ref: APP/Q9495/C/21/3279948**

#### **Land at Lands Field, West of Yewdale Road, Coniston, LA21 8DX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr P A Johnston against an enforcement notice issued by Lake District National Park Authority.
  - The notice, numbered E/2021/0023, was issued on 25 June 2021.
  - The breach of planning control as alleged in the notice is Without planning permission, operational development on the Land consisting of excavations and infilling with stone.
  - The requirements of the notice are:
    - 1) Remove the infill stone from the excavations and from the Land to reduce the level of the stone to a depth of 20cm below the adjacent unexcavated ground level; and
    - 2) Remove all piles of stone from the Land;
    - 3) Infill the excavated voids created by requirement 1 with topsoil, compacted to match the ground level of the adjacent unexcavated areas; and
    - 4) Spread the areas of compacted soil with an agricultural grass seed mix as a mix amount of 20 kilograms of seed per hectare.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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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### **Appeal B Ref: APP/Q9495/C/21/3284034**

#### **Land at Lands Field, West of Yewdale Road, Coniston, Cumbria, LA21 8DX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr P A Johnston against an enforcement notice issued by Lake District National Park Authority.
  - The notice, numbered E/2021/0023A, was issued on 2 September 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land from use as agriculture to use as a public car park.
  - The requirements of the notice are to:
    - i) Discontinue the use of the Land as a public car park; and
    - ii) Remove the three pay and display machines, from the approximate locations indicated with an 'X' on the attached plan, from the Land; and
    - iii) Remove all timber poles and posts which delineate parking spaces from the Land; and
    - iv) Remove all advertisements which relate to the use of the Land as a public car park from the Land.
  - The period for compliance with the requirements is one month.
  - The appeal is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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**Appeal C Ref: APP/Q9495/C/21/3284036**

**Land at Lands Field, West of Yewdale Road, Coniston, Cumbria, LA21 8DX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr P A Johnston against an enforcement notice issued by Lake District National Park Authority.
  - The notice, numbered E/2021/0023B, was issued on 2 September 2021.
  - The breach of planning control as alleged in the notice is without planning permission, operational development on the Land consisting of the erection of a building in the approximate position marked with a cross on the attached plan and as shown on the photograph to this notice.
  - The requirements of the notice are to:
    - i) Remove the building and all its component parts from the Land; and
    - ii) Remove the drainage tank from the ground, infill the resulting hole with soil and spread and agricultural seed mix over the soil.
  - The period for compliance with the requirement is one month.
  - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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**Appeal D Ref: APP/Q9495/W/21/3287105**

**Lands Field, Yewdale Road, Coniston, LA21 8DX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Phillip Johnston against the decision of Lake District National Park Authority.
  - The application Ref 7/2021/5696, dated 18 August 2021, was refused by notice dated 4 November 2021.
  - The development proposed is change of use to seasonal car park and associated works.
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**Decisions**

**Appeal A**

1. It is directed that the enforcement notice is varied by the deletion of points 3 and 4 in paragraph 5 'What you are required to do' and the replacement with:  
  
*'3) Infill the excavated voids created by requirement 1) with soil, compacted to match the ground level of the adjacent unexcavated areas and spread topsoil over the Land to restore the ground levels to those shown on the Site Survey: April 2016 drawing produced by Spatial Data Limited; and*  
  
*4) Spread the Land with an agricultural grass seed mix at a mix amount of 20 kilograms of seed per hectare.'*
2. Subject to the variations, 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.

**Appeal B**

3. The appeal is dismissed and the enforcement notice is upheld.

**Appeal C**

4. The appeal is dismissed and the enforcement notice is upheld.

**Appeal D**

5. The appeal is dismissed.
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## **The Appeal Site and its Surroundings**

6. Lands Field is located on Yewdale Road in Coniston village in the Lake District National Park. 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 also 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. 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
7. Coniston itself is within the Lake District National Park Authority Landscape Character Assessment (the 'LDLCA') Area 70 Coniston Fells but adjoining Area 55 Coniston Water, and is classed as Landscape Character Type K - Low Fell and Type M Lowland Valley. The fells rise to the west and north of the site (which themselves are part of Landscape Character Type F Rugged/Craggy Volcanic High Fell). The site is therefore on the boundary of the two areas of landscape character and several landscape character types, and the effects of any development need to be considered in relation to them in the round.
8. The appeal site is between the Ruskin Museum and the bowling green and other recreational land. It is accessed from the road which leads to the Coppermines Valley (referred to as Coppermines Lane), and which is adjoined on the other side by tall trees and vegetation. It is therefore surrounded by a predominantly green environment on the majority of three of its sides (notwithstanding that it is not open countryside and there are man-made features in the immediate vicinity).
9. It has hedgerow boundaries and is laid out in two sections, also delineated by hedgerow. Both parts are laid out and being used as a car park with approximately 250 spaces, gravel access tracks and a timber clad structure in the west corner next to the entrance. There are three ticket machines and the rows of parking bays are separated by wooden posts, and additional planting. The surface of the land is a mixture of loose grey coloured gravel trackways and grassed parking areas. There is a large mound of earth near to the northern boundary of the site and works have been undertaken to create a vehicular access to Yewdale Road. This is not currently being used and was blocked up during the site visit (although there are still views through it onto the site) and there is a pedestrian access to Yewdale Road which is open for use.

## **Relevant Planning History**

10. The previous agricultural use of the site was for the grazing of sheep, and it is intended that sheep would still be able to graze on the grassed areas at certain times.
11. Whilst there have been various planning applications over the last few years, the most relevant history for the purposes of these appeals is:
  - Enforcement notice, numbered E/2021/0023, which was issued on 25 June 2021 which alleges the breach of planning control as operational

development on the Land consisting of excavations and infilling with stone, and which is the subject of Appeal A;

- Enforcement notice, numbered E/2021/0023A, which was issued on 2 September 2021 and which alleges the breach of planning control as the making of a material change of use of the Land from use as agriculture to use as a public car park, and which is the subject of Appeal B; and
  - Enforcement notice, numbered E/2021/0023B, which was issued on 2 September 2021 and which alleges the breach of planning control as operational development on the Land consisting of the erection of a building, and which is the subject of Appeal C; and.
  - Planning application reference 7/2021/5696 for the change of use to seasonal car park and associated works and which is the subject of Appeal D.
12. The development, which is the subject of Appeal D, has already been carried out.

## **Appeal A**

### *Section 174, Ground (a) and the deemed application for permission*

13. This ground only relates to Appeal A, and the application for planning permission deemed to have been made is for the operational development on the land consisting of excavations and infilling with stone.
14. The main issue is the effect of the development on the character and appearance of the area, the Lake District National Park and the English Lake District World Heritage Site.
15. The Authority's case is that the excavations and infilling with stone on the site are visible from the public roads and surrounding landscape, and result in a visually incongruous man-made addition which fails to reflect the local character and distinctiveness, and causes harm to the local landscape and area.
16. The appellant's case is that the works described in the notice were undertaken to address drainage issues in the locality and to allow water to drain through the land (rather than running off as it did previously). The appellant argues that the area around the appeal site is not open countryside and is surrounded by man-made features. His case is that as such the works are not incongruous but reflect the existing character of the locality.
17. The current views of the site from Yewdale Road, as observed during my site visit and on the photographs submitted during the course of the appeal, are very different when compared to the former purely agricultural use with a grassed field and grazing sheep. Whilst some sheep may still be present, the change in part of the surface to grey stones is immediately apparent as a man-made operation and does therefore detract from the openness of the view to the fells behind. This is notwithstanding that the planting around the boundary of the site, and which is not part of the notice, has also impacted on the openness.
18. It is evident, particularly in the views through the accesses, that there is no longer a pastoral use in this location on the edge of the core of the village. This is shown on Viewpoint 1 of the appellant's Landscape and Visual Assessment ("the LVA") and there is also a similar effect shown on Viewpoint 2.

It can be clearly seen that the field has been lost with an extension of the man-made element of the village infilling what was previously the start of the fields leading to the fells. The nature of the views along Coppermines Lane has also changed by the perceived loss of the open field, and these views can be seen through the access gate although they are more limited due to the high hedgerow.

19. The LVA addresses issues relating to the effects upon the landscape character and visual amenity of the study area resulting from the development. It states that the magnitude of change to the immediate landscape character is High (but Low when considered in terms of the wider LCA area). This accords with my observations during the site visit where the effects of the development on the views of the site were adverse, from Yewdale Road in particular, and caused harm to the character and appearance of the area.
20. The LVA states that in terms of the visual amenity assessment, from the different visual receptors identified in the study area which demonstrate recreational views publicly accessible, the effects would be of between a Moderate to Moderate/Substantial degree of significance. It concludes that the further planting of trees would reduce the visual effects and as a result the degree of significance would fall to Moderate from Yewdale Road and Slight from the other viewpoints.
21. Whilst this may be true in purely visual terms, it is evident looking at the views submitted with the LVA, and as seen during the site visit, that the operational development has changed the perceived use and character of the site and extended the built environment of the village. Whilst further planting would not require planning permission in itself, any additional planting would reduce the openness which is a feature of the LCA and of the views to the fells. The loss of the agricultural field is seen and experienced through the change in the materials on the site and in the formal layout of the trackways. The effect is very different from the previously grassed field which reflected the agro-pastoral tradition of the area.
22. This change in the nature of the views through the operational works is contrary to the overall strategy for Landscape Character Type K in the LDLCA which includes the conservation and enhancement of the interface between settlements and their surrounding landscapes. The development does not conserve or enhance the extraordinary beauty of the Lake District Landscape and is therefore in conflict with Policy 05 of the Lake District National Park Local Plan 2020 – 2035 ('the LDNPLP') which is part of development plan for the area and which states that decisions will be guided by the LDLCA, and the Framework. The development causes harm to the character and appearance of the area in this edge of core of village setting, and to the views of the fells behind, and this causes less than substantial harm to the significance of the World Heritage Site.
23. 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 submits that the drainage properties of the site have been improved by the development which would be of public benefit. However, I give this limited weight as there is nothing before me to support the view that off-site flooding caused by run-off

was a concern prior to the works taking place, or that the works as undertaken were the only way to achieve the same drainage benefits.

24. The public benefits do not therefore outweigh the considerable importance and weight that must be attached to the desirability of preserving and enhancing the significance of the World Heritage Site.
25. The development causes harm as set out above and is in conflict with the LDNPLP 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; Policy 06 which seeks to achieve design excellence that contributes to local distinctiveness; or Policy 07 which aims to conserve or enhance the significance of heritage assets. 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.

#### *Ground (f)*

26. An appeal on this ground is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. The purpose of this notice is to remedy the breach of planning control and the requirements do not exceed what is necessary to do that and to ensure a consistent surface so the grass can grow. The appellant argued that any requirement in relation to the restoration of the site should relate to the level of the land prior to any development being undertaken and the Authority accepts that the requirements can be varied to refer to the levels shown on the topographical survey (as provided by the appellant). The notice should therefore be varied in that way.
28. The appeal on ground (f) succeeds to that extent.

### **Appeals B and C**

#### *Ground (f)*

29. The purposes of the two notices in Appeals B and C are to remedy the breach of planning control. The lesser step of further landscaping including tree planting suggested by the appellant would not achieve this, but would rather only seek to address issues of injury to amenity. The requirements in the notices do not therefore exceed what is necessary to remedy the breaches of planning control constituted by the matters alleged in the notices. The ground (f) appeals in Appeals B and C therefore fail.

### **Appeal D**

#### *Section 78*

30. The main issues are: the effect of the development on: the character and appearance of the area, the Lake District National Park and the English Lake

District World Heritage Site; and on the provision of vehicle parking to improve sustainable transport.

31. The appeal is for the use of Lands Field as a seasonal car park which will be operated between 1 March and 5 November each year on a temporary basis until 2022. The development has already been carried out and includes the associated works of the operational development such as the laying out of the car parking and access tracks, the installation of the pay and display machines and signage, and the siting of the trailer for use in connection with the car park. The Authority consider the structure on site to be a building rather than a trailer but this is not relevant for the purposes of this appeal.
32. The Authority refused the application on the basis that the development causes harm to the landscape and scenic beauty of the National Park and World Heritage Site. The Authority accepts that there is sufficient evidence to demonstrate that additional public parking is required in Coniston but argue that the development does not comply with development plan policy which requires that new parking must also improve sustainable transport links and opportunities.
33. The appellant's case is that the development is not in conflict with policy and that it brings benefits to the area. The appellant argues that the site is located on the edge of the core of the village, surrounded by man-made features, and that the development is constructed from appropriate local materials such as the grey stones and gravel and the wood cladding. In addition to providing the required additional parking in the village, the appellant states that the works have improved drainage on the site including a soak away point which prevents water draining onto the adjoining highway.

#### *Character and appearance*

34. The operational works which are the subject of Appeal A also form part of Appeal D. The same issues and findings therefore apply as set out in the preceding paragraphs regarding the ground (a) in Appeal A. The development for which permission is sought in Appeal D also includes the use of the land for car parking and for the siting of the trailer, and both this and the associated works will also have additional visual effects which will cause harm to the character and appearance of the area. Any number of cars parked together within a mostly rural or open setting are extremely prominent, and in this case, appear as an incongruous man-made addition in an otherwise predominantly green landscape (albeit that the location is on the edge of the village core).
35. The change in appearance of the site caused by the use as a car park, taking into account the partially gravelled surface and actual cars when parked, when compared to the previous grassed field used for the grazing of sheep is significant. Whilst the views of the wood-clad structure with decking are limited, it also contributes to the adverse visual effects of the development, and causes a change in the character of the site in this location. The development as a whole therefore causes harm to the character and appearance of the area.
36. The adverse effects to the landscape and visual effects identified constitute harm to the significance of the World Heritage Site. The harm represents less than substantial harm for the purposes of the Framework and should be weighed against the public benefits of the proposal.

37. The appellant argues that development provides 20 parking spaces for use by the staff of local businesses and has a positive impact on the character of the area, helping with traffic issues and providing benefits to the local economy. It is accepted in the development plan that some additional parking is required in the area, but it has not been shown that it needs to be on the scale of the development which provides 250 parking spaces. The appellant's own parking evidence suggests a mean average of only around 70 cars used the site over the course of a day between July and November 2021, although there were some busier days during August and September. I therefore afford these benefits limited weight as the same benefits may be able to be provided with an alternative development on a smaller scale. In addition the appellant states that the works have improved the drainage of the site but, as there is nothing before me to show that there was a problem outside of the site before the development took place, or that a less visually intrusive scheme could not provide the same benefits, I also afford this limited weight.
38. The public benefits do not therefore outweigh the considerable importance and weight that must be attached to the desirability of preserving or enhancing the significance of the World Heritage Site.

#### *Sustainable transport*

39. Whilst the parties agree that there is a need for some additional car parking in Coniston, they do not agree as to whether this is the appropriate site or scale or whether it is compliant with the policies relating to sustainable transport and parking.
40. Policy 12 of the LDNPLP, which is part of the development plan for the area, provides (amongst other things) that the Authority will support appropriate additional car and coach parking in Coniston. Policy 22 aims to encourage vehicle parking to improve sustainable transport and sets out that additional public parking provision will only be supported if it helps to reduce the need to travel by private motor vehicle, and contributes to improved sustainable transport and movement opportunities. The appellant argues that only Policy 12 applies in this case, but Policies 12 and 22 are not in conflict with each other and both are material to this appeal. Consideration of the requirements of Policy 22 aids in deciding whether the development provides 'appropriate additional car and coach parking' as required by in Policy 12.
41. The parties accept that Coniston is a Rural Services Centre and Multi Purpose Hub for the purposes of Policy 22 which requires that additional car parking must: facilitate the transfer of people to sustainable transport and travel opportunities; and link to or incorporate and improve links to existing sustainable travel opportunities; and encourage long-stay parking; and does not introduce inappropriate levels of use to the location. The policy requires that all of these factors are met.
42. The Authority is satisfied that the appellant has shown that the existing car park appears to encourage long-stay parking (as evidenced by its parking survey and the one day flat rate charge) and does not currently introduce an inappropriate level of use to the location. However, the appellant's own research regarding the use of the car park shows that 3.3% of people using the car park then went onward by bike, and 1.2% went onward by bus. These are very small numbers when compared to the overall number of users, and the large majority planned to go for a walk or hike, with many also visiting the

village. It is therefore not evident in the appellant's case that the development facilitates the transfer of people to sustainable transport and travel opportunities, or improves links into such opportunities.

43. The appellant's case is that the proximity to the existing bus stop and provision on site of walking and cycling guides is sufficient evidence that the development complies with Policy 22 but I do not agree, especially when taking account of the survey evidence submitted. Policy 22 is clear that there are many ways in which new parking development can support the modal shift from cars to forms of sustainable travel, and these will be dependent on the local circumstances, but the development in this case simply provides a large car park next to an existing bus route and the evidence before me shows that there is little cross-over between the use of the two.
44. The appellant has submitted a Traffic Management Plan which states that he intends to improve access with a new access onto Yewdale Road which would enable the provision of dedicated coach parking. It also states that he plans to install electric charging points, capacity monitoring and to fund a residents parking scheme, if required, to prevent on street parking. The appellant has not suggested that any of these things should be secured by a planning condition or planning obligation as part of this appeal, and the new access would also require planning permission. I therefore accord these plans little weight.
45. The appellant also submitted a report regarding alternative sites in the area which could be used to provide car parking and identified the appeal site as the most appropriate in a sequential test. This does not overcome the harm caused by the development or the conflict with the development plan. The appellant argues that to meet the need for parking in Coniston there will be some landscape impact. However to the extent that development plan policies are material to an application for permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
46. The development is in conflict with Policy 22. In addition, and although this does not alter the outcome of this appeal, as the car park in this development would exist in isolation of any other measures and would therefore not form part of a local traffic management scheme, the proposals would also be contrary to Policy CNP7 of Coniston Neighbourhood Plan which pre-dates the LDNPDP but is not inconsistent with it.

#### *Other Matters*

47. I have also had regard to all of the representations received regarding the appeal and taken them into account in coming to my decision.
48. Some issues that have been raised in addition to those dealt with in the preceding paragraphs include the benefits that that car park brings in reducing indiscriminate parking which can cause highway safety issues and increased pollution as drivers look for spaces. I accept that any kind of parking can have adverse visual effects and that unregulated parking can cause problems, but that does not overcome or outweigh the conflict with the development plan that I have outlined above, and there is nothing before me from the highway authority regarding either the benefits of the scheme or any safety issues caused by the access from Coppermines Lane. I have also been referred to

other new or modified parking in the area, but each scheme is determined on its own merits and, in this case, I have found that there is clear harm caused by the development, although I do note that some of the representations received would also support a smaller scale car park at this location.

*Conclusion on Appeal D*

49. For the reasons set out above, the development causes harm to the character and appearance of the area, the Lake District National Park and the significance of the English Lake District World Heritage Site, and fails to provide vehicle parking to improve sustainable transport. It is therefore in conflict with Policies 01, 05 ,06 ,07, 12 and 22 of the LDNPDP, 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 and planning permission should not be granted.

*Zoë Franks*

INSPECTOR