
Appeal Decision

Site visit made on 1 February 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 February 2022

Appeal Ref: APP/Q9495/C/21/3283871

The Lion and Lamb, The Square, Gosforth CA20 1AL

- 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 Richard Mawson against an enforcement notice issued by the Lake District National Park Authority (LDNPA).
 - The enforcement notice, reference E/2021/0106, was issued on 14 August 2021.
 - The breach of planning control as alleged in the notice is: the '*construction of an area of raised decking and associated timber balustrading in the approximate position marked with a cross on the attached plan*'.
 - The requirements of the notice are as follows:
 - 1) *Remove the decking and associated balustrading from the land and*
 - 2) *Remove from the land all materials , rubble and other debris arising from compliance with the first requirement above.*
 - The period for compliance with the requirements is *4 months*.
 - The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. See Formal Decision below.

Matter of clarification

2. The National Planning Policy Framework (NPPF) was revised in July 2021. Where references have been made to the NPPF, I have considered them on the basis of the respective re-numbered paragraphs accordingly. There are no fundamental differences between the latest and the previous versions of the NPPF with regard to the policies on highway safety and requirements for good design.

Background information

3. The public house, '*The Lion and Lamb*', is located in a prominent position in Gosforth, on the south-eastern side of 'The Square'. The unauthorised development is located between the public house and the public highway, which forms one of the three main routes into 'The Square' at this roundabout junction in the centre of the village. On the opposite side of the road there is open tabling and seating on a hardstanding area, again adjacent to the highway, outside '*The Globe*' public house. Next to this there is a further concreted area in front of a retail outlet which is separated from the highway with a series of individual planters. In all cases the main lines of the carriageway around the junction are delineated by painted single yellow lines.

4. There is a notable lack of continuous footways throughout the village and, as referred to above, close to the roundabout, painted single yellow lines define the main carriageways. Although there is a footway from beyond the bus stop (opposite the properties signed Gosforth Gate) and round the corner into Temple Terrace, there are no other footways around 'The Square'. In other parts of the village, where footways are lacking, there are various low level stone walls and other more traditional enclosures separating the properties from the highway.

5. A retrospective planning application (reference 7/2021/4052) was submitted for the decking and balustrading as originally built. However, this was refused by the LDNPA for the following reasons:

1. *The structure obscures views of drivers approaching the roundabout and fails to ensure adequate highway safety. The proposal would therefore present a risk to public safety and would be contrary to the provisions of the National Planning Policy Framework (in particular paragraph 109 and 132).*
2. *Policies 01 and 07 seek to preserve the distinctive buildings and character of historic settlements, which is identified as a special quality of the National Park. Policy 06 seeks to achieve design excellence in all development and development must reinforce the importance of local character by having regard to scale, height, density, layout, appearance and materials. The NPPF states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve.*

6. The timber decking, is raised approximately 175mm above ground level and the surrounding timber balustrading varies slightly in height. The drawing for the retrospective application showed the balustrade to be an additional 1100mm in height over the 175mm high decking (giving a total height of 1275mm). However, at the time of my visit the height along the main frontage was only between 800mm and 900mm. It is clear, therefore, that alterations have been made to the original enclosure and, from their submissions, the LDNPA appears to acknowledge that this is the case.

7. On behalf of the appellant, who has owned the property for 6 years, it is indicated that the area had previously been used for mobile seating and tabling in the summer months. However, this was considered to be dangerous and so the original decking and surrounding balustrading were installed. As well as being considered safer, it is also explained that, due to the pandemic, the provision of outside hospitality facilities became an economic necessity. The LDNPA appears to acknowledge that, in the absence of any firm evidence to the contrary, the land lies within the public house boundary, as opposed to being within the public highway.

The appeal on ground (a)

The Main Issues

8. The main issues are as follows:

- Whether or not the principle of the development is acceptable,
- The effect of the works on Highway Safety in this part of Gosforth,
- The effect of the works on the character and appearance of this historic part of the village and,
- The effect on amenity, living conditions and surface water drainage.

Relevant Policy

9. Section 38(6) of the Planning and Compulsory Purchase Act states that for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise.

10. The most relevant Development Plan policies in this case are contained within the adopted Lake District National Park Local Plan 2021 (LDNPLP). These are as follows: Policy 01 (National and International significance of the Lake District); Policy 02 (Spatial strategy); Policy 06 (Design and development) and Policy 07 (Historic environment). The LDNPA had also referred to Policy 05, but this is primarily concerned with protecting the landscape and I do not consider that it is directly relevant in this case.

11. The NPPF is a major material consideration. It seeks to achieve sustainable development and the sections which are particularly relevant in this case are sections 9 (Promoting sustainable transport); 12 (Achieving well-designed spaces) and 16 (Conserving and enhancing the historic environment).

The principle of the development

12. It is acknowledged by the LDNPA that, over the last 6 years, the appellant has sited and used tabling and seating on the land in relation to the functioning of the public house. It is accepted by the authority that the principle of the use of the appeal site is acceptable and in accordance with the Policy 02 (Spatial Strategy) of the LDNPLP. I note the references to photographs of the site showing this to be the case and I find no reason to disagree with the LDNPA's conclusions in this respect.

13. The Local Highway Authority had raised a query as to whether the land forms part of the highway or is private land. However, a definitive response has not been provided and as indicated by the LDNPA, if the land forms part of the public house forecourt, then there are permitted development rights to enclose the land. I agree that, in the absence of any information to the contrary, the historic use of the land over many years indicates that, on the balance of probability, it does form part of the public house forecourt. This reinforces my view that the principle of some form of enclosure is acceptable.

The effect on highway safety

14. Having driven and walked through and around this part of Gosforth, other than the television installation, I do not consider that the development which I inspected is significantly harmful to highway safety in this part of the village. During my visit I made a specific note of each approach to and from the 'roundabout', both by car and on foot. In each case, with the height as now established as being on average nearer no more than 900mm, as opposed to 1275mm, I had clear and safe sight-lines in all directions as a driver. The sight-lines to and from all three of the junctions were not affected by the relatively low level balustrading which surrounded the tabled enclosure.

15. When approaching the roundabout junction on foot, from the east, I was also able to walk between the public house and the raised enclosure and was not forced onto the highway, as suggested in the LDNPA's submissions. When approaching from the north-west and the west, there was no issue. Thus, rather than being dangerous, I found that the enclosure actually protected pedestrians approaching the roundabout junction when approaching from the south and east.

I also noted that the raised decking had been kept clear of the drainage channel and did not, therefore result in any drainage issue, as previously referred to by the LDNPA. The current situation, therefore, is that there is still room for pedestrians to step off the highway onto the part of the forecourt and thus I do not consider that the current height enclosure causes any danger for pedestrians.

16. I do, however, agree with Gosforth Parish Council regarding the use of the external television screen which, in my view, could well distract both drivers and pedestrians. During my visit I did note the screen attached to the north elevation of the public house. Like the Parish Council, I understand the need to support local businesses, particularly in these Covid related times. However, it seems to me that the public house has more than adequate other areas to the rear, whereby customers can enjoy television sport or other programmes.

17. In conclusion on this issue, except for the television provision, I do not consider that the installation has had a detrimental impact with regard to the safety of the road network in this part of the village for either drivers of vehicles or pedestrians.

The effect on character and appearance

18. Having seen the construction and colour of the enclosure, I share the LDNPA's concerns regarding its detrimental visual impact in this part of the village. In my view, the crudely-detailed, black-painted balustrading detracts markedly from the historic character and appearance of both the buildings and the streetscape in the immediate vicinity of the public house.

19. Policies 01 and 07 of the LDNPLP seek to preserve the distinctive buildings and character of historic settlements such as Gosforth and Policy 06 seeks to achieve design excellence with regard to any development carried out within the National Park. In particular this latter policy outlines that any development must reinforce the importance of local character by having regard to scale, height, density, layout, appearance and materials.

20. All of the existing buildings at this main crossroads to the village have an attractive historical character using smooth rendered walls, painted window surrounds and local slate roofs. The public houses on 'The Square' contribute positively to the historic settlement, its form and the overall character of the area. In other parts of the village enclosures to both residential and commercial premises frontages are constructed of sympathetic materials in character with the streetscene. These include low levels stone walls with planting, separate planters and traditional timber and metal fences.

21. The prominent balustrading, on the other hand, with its modern design and utilitarian materials jars with and visually harms the historic character of the village. The development, therefore, fails to reinforce the local character and is contrary to the requirements of the LDNPLP policies 01, 06 and 07. It is also contrary to section 12 of the NPPF which seeks to achieve well-designed places.

The effect on amenity, living conditions and surface water drainage

22. The appeal site is located on the street frontage close to several buildings which are dwellings. It would also appear that there are living quarters above the two public houses. There is, therefore, the potential for the outdoor tabling and seating to detrimentally affect the amenities of those living close to the site. However, the land has been used for this use associated with the public house for around 6 years and decking structure has not significantly altered the situation.

23. Having considered all of the relevant factors I agree with the LDNPA Officer's conclusion that the use of the forecourt for this purpose would not have an unacceptable impact on the amenity due to visual intrusion, overlooking, overshadowing, overbearing effect, noise, light pollution or any other adverse impacts. I also agree that the use can retain a high standard of amenity for existing and future users of the dwellings. I find, therefore, that the use is acceptable in terms of amenity and is not contrary to Policy 06 of the LDNPLP.

24. With regard to the dispersal of surface water from the highway and the forecourt I note that the Lead Local Flood Authority objected to the proposal on the basis that it would have been built over an existing drainage channel. However, as noted by the LDNP Officer and seen during my visit, although the structure has been built adjacent to the drainage channel the structure it did not extend over it and it appeared to be functioning correctly. Like the Officer I therefore conclude that, as the channel is being maintained properly it has not resulted in an increased risk of flooding at the junction.

The Planning Balance and overall conclusion

25. I have concluded in the appellant's favour with regard to the principle of the development; the fact that there is no detriment to highway safety; that the use causes no harm to residential amenity and that there is no risk of flooding associated with the tabling and seating use of the public house forecourt. However, I have also concluded that the works as carried out are unacceptable and that this particular design has resulted in significant visual harm to the historic character and appearance of this part of Gosforth.

26. In my view, the effects of the works on the character and appearance of this part of the village far outweigh the matters which I found to be in favour of the retention of this particular decking and balustrading. It follows that planning permission for the unauthorized works will not be granted and the appeal fails.

Other Matters

27. In reaching my conclusions I have taken into account all of the other matters raised by the appellant, the LDNPA and Gosforth Parish Council. However, none of these carries sufficient weight to alter my conclusions on the main issues and nor is any other factor of such significance so as to change my decision that the appeal should fail.

Formal Decision

28. The appeal is dismissed and the enforcement notice is upheld. The application deemed to have been made under Section 177(5) of the Act is refused.

Anthony J Wharton

Inspector