



Appeal Decisions

Site visit made on 9 December 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Refs: APP/Q9495/C/20/3265804 & 3265805

Land at Crake Valley Holiday Park, Water Yeat, Ulverston LA12 8DL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr David Khan of Rural Gateways Ltd and Mrs Helen Khan against an enforcement notice issued by the Lake District National Park Authority.
 - The enforcement notice, numbered E/2020/0198, was issued on 20 November 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, building operations resulting in the construction of a residential unit and other operations to form a supporting revetment wall.
 - The requirements of the notice are:
 1. Permanently remove the building from the land, and
 2. Permanently remove the supporting revetment wall, reinstate the Land to its former levels and profile, apply topsoil and seed with grass
 - The period for compliance with the requirements is four months.
 - The appeal by Mr David Khan (Ref: 3265804) is proceeding on the grounds set out in section 174(2) (a),(b),(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal by Mrs Helen Khan (Ref: 3265805) is proceeding on the grounds set out in section 174(2) (b),(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. In relation to that appeal, since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Summary Decision: the appeals are dismissed and the enforcement notice is upheld with a variation as set out in the Formal Decision below

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 Core Strategy 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.
2. At the site visit, a number of developments on the appeal site that were either the subject of ongoing enforcement investigations or had been the subject of formal enforcement action were drawn to my attention. In order to inform the baseline for my consideration of the appeal on ground (a) made by Mr David Khan, I requested that the Authority provided a factual summary of the Enforcement Notices that had been issued in relation to those developments, and of the ongoing enforcement investigations in relation to the appeal site.

3. The Authority duly submitted the requested summary which, I am satisfied, is confined to factual matters and does not stray into new evidence in respect of the breach of planning control alleged in the notice subject to this appeal. Nevertheless, in the interest of fairness, the appellants were offered the opportunity to comment on the information provided by the Authority.
4. In response, the appellants submitted a bundle of documents. The information within that bundle of documents goes beyond a factual summary of the ongoing enforcement investigations that was requested and covers some of the background behind those investigations. Those matters are not before me and I have not taken them into account. Moreover, parts the appellant's response related to a number of ongoing matters that are being pursued with the Authority separately, in some cases through other forums. Those matters are beyond my remit and I have had no regard to them in determining these appeals.
5. At the site visit on 9 December 2021, I indicated that I would undertake a further unaccompanied site visit having received the information requested at that site visit. In the event, I satisfied that I can determine these appeals on the basis of the evidence now before and no further site visit was undertaken.

The Enforcement Notice

6. The breach of planning control as alleged in paragraph 3 of the notice is, without planning permission, building operations resulting in the construction of a *residential unit* and other operations to form a supporting revetment wall (emphasis added). The requirement stated at paragraph 5(1) of the notice is to permanently remove the *building* from the land (emphasis also added). There is, therefore, a slight mis-match between the breach of planning control alleged in the notice and the requirements to comply with it.
7. It is apparent from the grounds on which the appeals have been made that the appellants have fully understood the breach of planning control alleged and what they must do comply with the notice. Nevertheless, in the interests of clarity and precision, I shall vary the requirements of the notice to refer to a residential unit so that it directly corresponds with the breach of planning control alleged in the notice. I am satisfied that no injustice would be caused by doing so.

The appeals on ground (b)

8. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellants to show, on the balance of probability, that the matters alleged in the notice have not occurred.
9. The breach of planning control as alleged in the notice is in two parts: (a) building operations resulting in the construction of a residential unit and (b) other operations to form a supporting revetment wall. It is convenient to consider (a) in the first instance.

The alleged building operations

10. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land.

11. The term 'building operations' is defined for the purposes of the 1990 Act in section 55(1A) as including (a) demolition, (b) rebuilding, (c) structural alterations of or additions to buildings, and (d) other operations normally carried on by a person in business as a builder. Sections 55(1) and 55(1A) should be read in connection with section 336(1) of the 1990 Act, which defines a 'building' as including any structure or erection and any part of a building. The approach of the courts in construing these definitions has been to ask first whether what has been done has resulted in the erection of a 'building': if so, the courts should want a great deal of persuading that the erection of it had not amounted to a building or other operation.
12. The appellants maintain that the development that has occurred comprises the stationing of a "wooden lodge style caravan" in two sections that are bolted and clamped together. The appellants explain that the two sections of the caravan (as the appellants describe it) could be separately transported on a motor vehicle or trailer. I have been provided with various drawings of lifting cradles, rigging diagrams and load charts, as well as a contract from a haulage & crane specialist (albeit, I note, the latter is a blank form and has not been completed, signed or dated). This evidence implies that the wooden lodge style caravan, as termed by the appellants, was capable of being constructed off-site, and then being transported to and lifted onto the site.
13. However, on the evidence before me, this is not what happened in practice. In his Statement of Truth, Mr David Khan explains that "Had I opted for a unit built off site it would have required a 150 ton crane that could only get on site if the entrance was widened considerably, certain trees removed and substantial preparation of the ground to site the crane." He goes on to state that "I have *built* what I have termed an ECO Lodge" (emphasis added).
14. This is corroborated by the Statement of Truth of Mr Ivan Unsworth, who describes himself as a City and Guilds trained building contractor. Mr Unsworth confirms that he fully supervised the *construction* of the lodge subject to this appeal (emphasis added). Mr Unsworth goes on to explain the *frame* (expressed, I note, in the singular) is *erected* (my emphasis) using structural timbers and then covered with membrane and clad with laminate beams.
15. Further evidence that construction took place on the site and as a single entity is provided in a representation from a local resident and in photographs taken by officers of the Authority. The first sequence of photographs produced by the Authority, which are undated, show a largely open timber framework. The second sequence of photographs, taken in July 2020, show the timber framework covered in timber and an outer membrane. These photographs also show the timber framework resting breeze blocks or similar. The single photograph taken in September 2020 shows the timber framework and outer membrane largely covered with laminate beams.
16. This sequence is confirmed in the representation from the local resident, including that works only started once the revetment wall was in place. It is significant that the author of this representation describes this process as being "totally different" to all the other lodges on the park which, it is explained, came onto the site ready built and were lifted into position by a crane.

17. The series of photographs taken the Authority reveal a sequential progression of works that, as a matter of fact and degree, I consider to have resulted in the erection of a building as defined by section 336(1) of the 1990 Act: specifically, the erection a framework, the internal covering of that framework, the weatherproofing/insulation of that internal covering and the covering with the external finish.
18. The Courts have held that three primary factors are decisive in terms of what constitutes a building: size, permanence and physical attachment. The Courts have held that none of these factors are necessarily determinative, and that it is necessary to apply the three tests to make a fact and degree assessment.
19. According to dimensions provided by the appellants, the lodge measures some 8.5 metres by 6.0 metres, with a maximum height of 4.5 metres. In terms of its size, the lodge is therefore a substantial structure. In his Statement of Truth, Mr Khan indicates that the structure is designed to last a minimum of 70 years. The structure therefore has more than a degree of permanence to it. The structure rests on a concrete base but I have no evidence to suggest that it is physically attached to that base.
20. In applying these factors, I attach greater weight to the overall size of the structure and the fact that it is clearly intended to be permanent. I attach less weight to the fact that the structure does not appear to be physically attached to the ground, given also that the structure can rely on its own weight to remain in situ. Consequently, having regard to the factors of size, permanence and physical attachment, I conclude that as a matter of fact and degree the structure is a building.
21. From his Statement of Truth, it appears that Mr Unsworth, who is a person in business as a builder, carried out those building operations or at least supervised them. Adopting the approach taken by the courts, given that I have found that what has been done has resulted in erection of a building, I find that the erection of it has amounted to building or other operations for the purposes of section 55(1) of the 1990 Act.
22. It is significant that in none of the photographs taken by the Authority is there any evidence that the building, as I have found it to be, was constructed in two parts. In particular, the first (undated) sequence of photographs showing the timber framework reveal no evidence of that framework being erected in two parts that were subsequently joined together. In those photographs, the structure has the appearance of a contiguous sequence of construction of a single entity. Furthermore, at my site visit, I paid special attention to the discovery of any evidence that the structure had been formed from the joining of two halves. However, despite a careful inspection of the structure, both inside and out, I found no evidence to that effect.
23. I therefore conclude, on the balance of probability, that the building was constructed as a single entity. This is immediately fatal to the appellant's case that the structure is a twin-unit caravan, for the reasons that I now set out.
24. In that context, section 29 of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) defines a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted.

25. Section 13 of the Caravan Sites Act 1968 (the 1968 Act) then adds further definition in respect of twin-unit caravans, states that:

(1) A structure designed or adapted for human habitation which

(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and

(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)

shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the 1960 Act by reason only that it cannot lawfully be so moved on a highway when assembled.

26. It follows from the definitions above that the structure has to arrive on the site as not more than two pre-fabricated sections which are then fixed together on the site. That did not occur in this case: it was constructed on site, as single entity. For that reason alone, the structure in this case cannot constitute a twin-unit caravan.

27. Furthermore, the definition of a twin-unit caravan requires that, once assembled, the completed structure must still be capable of being moved from one place to another in the manner described. There is no evidence before me that the completed building has been designed to be capable of ordinarily being transported in one piece. Indeed, given the size of the building and the evidence in Mr Khan's Statement of Truth that a crane to lift the building could only get on site if the entrance was widened considerably, trees removed and substantial ground preparation took place, it seems to me that moving the complete structure would not be a practical proposition. For that reason also, I consider that the structure in this case cannot constitute a twin-unit caravan.

28. The appellants argue, on my reading in the alternative to their primary case, that the building operation alleged in the notice to be a residential unit should be regarded as a chattel. The Oxford English Dictionary (OED) defines a chattel as a 'personal possession'. However, the residential unit is large: too large in my view to be capable of being moved as a single entity. It rests on a concrete base, and to that extent is physically attachment to the ground. The structure is designed to last a minimum of 70 years and therefore has more than a degree of permanence to it. These factors lead me to the conclusion that, as a matter of fact and degree, the residential unit goes beyond being a personal possession and should properly be regarded as being a building rather than a chattel.

Supporting revetment wall

29. The appellants evidence on this matter is internally inconsistent. On the one hand, the appellants argue that 'retaining wall' is a misnomer because the boulder faced embankment was laid as landscaping which is to be infilled with soil and planted. However, within the same paragraph, the revetment wall is described as being a practical means of retaining the earth bank using rock: in other words, a retaining wall. The OED defines a revetment as a retaining wall or *facing of masonry* or other material, supporting or protecting a rampart, wall, etc. (emphasis added).

30. On my reading, the OED definition is a very close fit to the breach of planning control alleged in the notice. In particular, the reference in the OED definition to a facing of masonry, accords with the rocks/boulders used on site.

Conclusion on the appeals on ground (b)

31. I have found that the matters stated in the notice, comprising building operations resulting in the construction of a residential unit and other operations to form a supporting revetment wall, have occurred. Accordingly, the appeals on ground (b) fail.

The appeals on ground (c)

32. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. This is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellants to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
33. I have found that the erection of the lodge (to adopt the appellant's term) amounts to building or other operations for the purposes of section 55(1) of the 1990 Act. I consider that the other operations to form a supporting revetment wall are akin to an engineering operation, in that they involve the importation of soil/rocks to that part of the site and reprofiling of the land. That work therefore also constitutes development for the purposes of section 55(1).
34. Section 57(1) of the 1990 Act provides that planning permission is required for development. No planning permission has been granted for the lodge or for the supporting revetment wall, either by deemed planning permission granted by a development order or by express planning permission granted by the Authority.
35. In that context, the appellant suggests that planning permission has been granted under a permission granted in January 2020 (Authority Ref: 7/2019/5755). The development approved by that permission was, in summary, revisions to the approved site layout to allow the siting of four extra holiday caravans. I have found that the lodge is not a caravan, and therefore the lodge is not permitted by that permission.
36. It follows that these matters do constitute a breach of planning control. Accordingly, the appeals on ground (c) fail.

**The appeal on ground (a) and the deemed planning application
(Appeal Ref: APP/Q9495/C/20/3265804 only)**

37. 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. The Authority has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is whether the developments conserve and enhance the landscape and scenic beauty of the Lake District National Park.

The baseline position

38. In order to determine whether the breach of planning control stated in the notice conserves and enhances the landscape and scenic beauty of the Lake District National Park, it is first necessary to identify the correct baseline position. In this case, that task is made more complicated by the fact that some of the built development present at the time of my site visit was either subject to an extant enforcement notice, has been identified as being erected without the benefit of planning permission and/or is currently subject to an ongoing enforcement investigation.
39. In August 1976, planning permission was granted on appeal for the extension to the existing caravan park for seasonal caravans and facilities for itinerant campers and caravanners (Ref: 7/75/5249). There is, as I understand it, a question as to whether that permission has been implemented. The Authority indicates that it is currently considering an application to discharge the remaining conditions on permission 7/75/5249 (Authority Ref: 7/2021/5058) and that if permission 7/75/5249 were fully developed it would markedly change the visual context of the application site. This is a material consideration to which I must have regard but, because of the uncertainty as to whether permission 7/75/5249 could actually be implemented, it is a matter to which I attach very limited weight at this time.
40. Of more immediate relevance are a series of developments for which planning permission may be required but for which planning permission has not been sought. The Authority's evidence provided a comprehensive list of outstanding enforcement investigations in its written evidence and, as indicated above, this was updated at my request following my site visit. The appellants have had the opportunity to comment on that evidence, and I have taken those comments into account where relevant.
41. It is not necessary to rehearse the details those investigations here but, in my view, the cumulative effect of those various developments is to add a significant amount of built form and/or infrastructure onto the land. I make no assumptions as to the lawfulness of those developments or the acceptability of those developments in planning terms. However, for present purposes and in the interest of certainty, I consider that my assessment of the baseline position ought to be based on built developments in the landscape that are accepted by the Authority as being lawful in planning terms. For that reason, I have discounted from my assessment of the baseline position all of those developments identified by the Authority as currently subject to enforcement action and/or as being under investigation.

Assessment

42. The appeal site is within the Blawith Fells Area of Distinctive Character and the Low Fell Landscape Character Type, as defined in the Landscape Character Assessment Supplementary Planning Document 2011 (LCA). The Character of this area is defined in the LCA as rough textured low fell, moorland and hummocky grassland landscape with extensive patches of bracken and gorse punctuated by grey, rocky outcrops. The landscape sensitivities are described in the LCA as including dramatic views eastwards

towards Coniston Water, which contribute to recognisable sense of place and which are vulnerable to interruption.

43. The lodge building sits on an area of artificially raised land formed by the revetment wall. It is predominantly viewed from a lower level and against a backdrop of trees and other vegetation. From that lower level, other lodges are visible in the background but because of their single-storey height and intervening vegetation they are not unduly intrusive. The therefore lodge sits in a prominent position above a pocket of largely undeveloped and open area of land¹. The latter forms part of Blawith Common.
44. The lodge is of two-storey height on the front elevation facing onto the lower ground below. The front elevation features two large windows at ground-floor level and a centrally placed large window at first floor level. The building has a mono-pitched roof angled front-to-rear, such that the rear elevation is effectively single-storey in height. The building is clad in timber which, whilst may fade and weather over time, at the time of my site visit was bright and garish.
45. Because of its size, design and materials, the lodge dominates views from the ground below. As a result, in visual terms the lodge intrudes into the pocket of largely undeveloped and open area of land and unacceptably harms the character of that space. The size and height of the lodge is also out of keeping with single-storey lodges that are visible in the background when viewed from this lower level, and is harmful to the character and appearance of this space for that reason as well. Moreover, the size and height of the lodge are out of scale with other lodges across the site as a whole. This has a harmful impact on the character of the wider site.
46. When viewed from the lower level, the supporting revetment wall has the appearance of a loose collection of boulders. In other circumstances within the Lake District National Park, that may have been an acceptable approach. However, in this particular location, the immediate surroundings mostly comprise flat ground to the front or land that slopes gently to meet higher ground to the rear. In this position, behind the near-vertical face of loose boulders is a sudden and substantial rise in ground level. This artificial raising of ground level appears wholly incongruous in this particular location and harms the character of the area, including when viewed from Blawith Common.
47. The LCA indicates that the visual sensitivity of the Blawith Fells Area of Distinctive Character and the Low Fell Landscape Character Type is high. For the reasons set out above, I consider that the lodge and the supporting revetment wall harm the character and appearance of the locality, both individually and collectively. I therefore conclude that the matters stated in the notice fail to conserve and enhance the landscape and scenic beauty of the Lake District National Park, and are contrary to Policies 01,02,05,06 and 07 of the Local Plan. These policies require, amongst other things, that development reinforces the importance of the local character and distinctiveness of the landscape, protects the Lake District National Park's

¹ In reaching that conclusion, I have discounted the steps leading up from the lower level, the lights along the edge of those steps and the hardstanding at the lower level.

spectacular and inspirational landscape and avoids adverse effects on the special qualities of the National Park and World Heritage Site.

48. Paragraph 176 of the National Planning Policy Framework (Framework) indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. In addition to being contrary to the development plan, the matters stated in the notice fail to accord with the Framework in that respect. In accordance with paragraph 176 of the Framework, that is material consideration to which I attached great weight.

Other considerations

49. 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 matters stated in the notice conflict 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.
50. I recognise that the development represents a significant investment by a local business to improve their accommodation offer, and as a result has a public benefit in terms of supporting tourism and the local economy. To that extent, the development accords with Policy 02 of the Local Plan. I have taken that into account in weighing the overall balance.
51. A total of three letters of representation have been received in connection with this appeal, all objecting to the development that has taken place. One of those letters is from the Blawith and Subberthwaite Commoners Association, which contends that the supporting revetment wall encroaches onto Blawith Common and denies access rights over the Common. The boundary and extent of the Common in this location is primarily a matter for consideration under different legislation, and I note that the appellant has sought legal advice on this matter. Beyond being satisfied that the development subject to the notice is clearly visible from Blawith Common, I have therefore not taken the precise boundary and extent of Common in this location as being relevant to my consideration of these appeals under the 1990 Act and express no view on it.
52. However, other objections raised in the representations received relate to the design and appearance of the lodge and the supporting revetment wall. These objections clearly are clearly relevant and weigh against the development.
53. I am mindful that planning permission was granted in January 2020 to allow the siting of four extra holiday caravans in this location (Authority Ref: 7/2019/5755). However, by reason of its height, design and appearance, the visual impact of the lodge is different to, and in my view is likely to be more harmful than, that arising for four caravans. For that reason, that permission does not provide any justification for the lodge as built.

54. In support of retaining the lodge, the appellant cites an appeal decision dated June 2009 relating to his site at Blankett Wood Park, Grange-over-Sands (APP/M0933/C/09/2096118). In that case, the Inspector allowed the appeal and granted planning permission for operational development consisting of the construction of two timber framed buildings.
55. It is important to understand the Inspector's reasoning in reaching the conclusion that planning permission should be granted. Firstly, I note the Inspector's conclusion that the timber framed buildings subject to that notice were not caravans, but represented operational development for which planning permission was required. Having reached that conclusion, the Inspector recognised that the timber framed buildings could each be divided into two separate transportable halves, taken away from the site and then fastened together to form a structure that would be capable of being moved in one piece. It followed, the Inspector reasoned, that the structures would then fall within the statutory definition of a caravan and could be brought back onto the site. The Inspector considered that this created exceptional circumstances that would allow planning permission to be granted.
56. The facts relating to this appeal are quite different to those before the Inspector in that case. I have concluded that the lodge was constructed as single entity. There is no evidence before me that the lodge could in practice be divided into two halves, taken off site and the re-assembled on the appeal site. The line of reasoning followed by the Inspector in that case is therefore not open to me. The corollary is that the exceptional circumstances that enabled the Inspector to grant planning permission are not created in this case, such that Inspector's decision in relation to that appeal can be distinguished from this appeal.
57. The appellant, Mr Khan, considers that upholding the notice would interfere his rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, he considers that his rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
58. In this context, the 'residential unit' concerned (the lodge, as termed by Mr Khan) is let out as holiday home and is not Mr Khan's primary residence². I am therefore not convinced persuaded that the appeal property can properly regarded as being Mr Khan's 'home'. Accordingly, I am not persuaded that Article 8 is engaged in this case.
59. It is indicated on the appeal form that the appeal is made (in part) by Mr Khan on behalf of Rural Gateways Ltd. I gather from other correspondence before me that Mr Khan is a Director of that company but I have not been made aware of Mr Khan's financial interest in that company. In any event, to the extent that Mr Khan's rights under Article 1 of the First Protocol are engaged, if at all, it is necessary for me to consider whether any interference with those rights is justified.

² In email correspondence relating this appeal, Mr Khan gives his home address as being elsewhere.

60. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended, such that there is a clear legal basis for the interference with Mr Khan's rights under Article 1 of the First Protocol. The appeal site is within the Lake District National Park, the statutory purpose of which includes conserving and enhancing its natural beauty. I have found that the breach of planning control alleged in the notice fails to conserve and enhance the landscape and scenic beauty of the Lake District National Park, such that upholding the notice would be in the wider public interest. I am therefore satisfied that the issuing of the enforcement notice was lawful and that in this case any interference with Mr Khan's rights under Article 1 of the First Protocol is in the public interest, and is both justified and proportionate.
61. In addition, Mr Khan alleges that he has been discriminated against by the Authority, and that as such his rights under Article 14 of the HRA have been violated. However, on my reading of the appeal documents, there is no evidence to substantiate that allegation. The appellant also maintains that the Authority has not followed its adopted enforcement concordat, having refused to meet with him. That is a procedural matter that could be pursued through other avenues, and can have no bearing on my determination of this appeal.
62. As the Authority point out, a Written Ministerial Statement made August 2015 introduced a planning policy to make intentional unauthorised development a material consideration that could be weighed in the determination of planning applications and appeals. The Authority consider that this applies in relation to the matters stated in the enforcement notice subject to this appeal. In my view, on the papers before me this issue is finely balanced.
63. It is apparent from the planning history of this site that Mr Khan has considerable experience of the planning system, including the enforcement of planning control. I also note that in the appeal decision relating to Mr Khan's site at Blankett Wood Park, Grange-over-Sands (APP/M0933/C/09/2096118), the Inspector clearly found that the timber framed buildings subject to that notice were not caravans, but represented operational development for which planning permission was required. That decision ought to have alerted Mr Khan to the possibility that the lodge constructed in this case also required planning permission.
64. On the other hand, Mr Khan maintains throughout his evidence that the lodge was a caravan and that the supporting revetment wall was landscaping. Although I have taken a different view, derived in no small part on photographic evidence that casts serious doubt about Mr Khan's version of events, it is reasonable to conclude that the opinions expressed by Mr Khan are genuinely held. That being the case, it is difficult to conclude that the erection of the lodge and supporting revetment wall were carried out in the certain knowledge that planning permission was required. I therefore conclude that, on balance, the matters stated in the notice were not intentional unauthorised development and that this is not a material consideration that weighs against the development.
65. I have carefully considered whether the imposition of suitably worded conditions could overcome the planning harm alleged in the enforcement

notice and which I have found has occurred. However, the harm to the landscape and scenic beauty of the Lake District National Park arising from the breach of planning control derives to a large extent from the size, design and siting of the lodge, as well as the materials used in the construction of the supporting revetment wall. The imposition of conditions could not overcome those fundamental harms.

Conclusion on ground (a) and the deemed planning application

66. 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. Accordingly, I conclude that planning permission ought not to be granted for the matters stated in the notice.

The appeals on ground (f)

67. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to permanently remove the building from the land, to permanently remove the supporting revetment wall and to reinstate the land to its former levels and profile. The purpose of the notice must therefore be to remedy the breach of planning control that has occurred.
68. The essence of the appellants' appeal on this ground is that there is scope for further variation of the Authority's planning approval for a caravan on this site to enable retention of this unit of holiday accommodation and the revetment wall. However, an existing planning permission for a use of land (specifically in this case that granted under reference 7/2019/5755), cannot as a matter of law be retrospectively varied to allow the retention of operational development.
69. Furthermore, in this case, I have found the lodge to be unacceptable on its merits. It is not appropriate to vary a notice under an appeal on ground (f) to facilitate the retention of a development which I already concluded under an appeal on ground (a) ought not to be granted planning permission.
70. The Authority advise that there is no planning approval for the supporting revetment wall, an application that was made being subsequently withdrawn (Authority ref: 7/2020/5837). Even if technically possible, which it is not, there is no extant planning permission for that structure that could be varied.
71. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellants, but none are obvious to me.
72. Accordingly, the appeals on ground (f) fail.

The appeals on ground (g)

73. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.
74. The appellant's case on this ground of appeal is that the Authority has not taken account of the implications for the appellants' business of the ongoing coronavirus pandemic. A compliance period of at least 12 months is sought.
75. The appellant's case on this ground of appeal has been overtaken by events. Restrictions imposed during the coronavirus pandemic have now been eased. Consequently, there is no justification for extending the period of compliance at this time, either in terms of the implications on the appellants' business or their ability to undertake the work required to comply with the requirements of the notice.
76. Accordingly, the appeals on ground (g) fail.

Conclusion

77. For the reasons given above, I conclude that the appeals 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.

Formal Decision

78. It is directed that the notice is varied by:
- In paragraph 5(1) of the notice, delete the word 'building' and substitute there the words 'residential unit'
79. Subject to that variation, the appeals are 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