



Appeal Decision

Site visit made on 21 April 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/Q9495/C/22/3290517

Land at The Black Bull, 1 Yewdale Road, Coniston, LA21 8DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ian Bradley against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 30 November 2021.
- The breach of planning control as alleged in the notice is Without planning permission operational development consisting of the erection of a timber canopy in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are:
 - 1) Remove the canopy structure from the Land; and
 - 2) Remove from the Land all of the materials, rubble and debris arising from compliance with the first requirement above.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.

Summary Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural Matter

1. Whilst not raised as a ground of appeal, the appellant has, nonetheless, made submissions that the timber canopy is permitted development. These fall within ground (c) – that those matters do not constitute a breach of planning control, and I will deal with them as though raised by that ground. The Lake District National Park Authority (LDNPA) has addressed what it considers to be the meaning of development in its Compliance Report. There would therefore be no injustice caused by this course of action.

Appeal on ground (c)

2. The timber canopy has been erected to cover an outdoor seating area at the appeal site. It has a corrugated plastic roof covering over a timber frame the upright posts of which sit on wheels. A metal chain attached to each upright post is cemented into the ground. The compliance report refers to the canopy having green plastic 'vegetation' attached to its sides. However, at the time of my visit no such 'vegetation' was evident. Moreover, the appellant's final comments refer to the canopy now being on wheels. It is clear, therefore, that alterations may have been made to the structure after the notice being issued.
3. Section 55 of the Act sets out the meaning of development as the carrying out of building, engineering, mining or other operations in, on, over or under the

- land. Section 336 of the Act defines "Building" to include "any structure or erection".
4. The appellant draws my attention to "Class G (a) of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which sets out that "the provision of one moveable structure within the curtilage, and for the purposes, of a building used for a purpose within – (a) article 3(6)(p) or (q)(drinking establishments etc.) of the Use classes Order; or (b) Class E(b) (sale of food and drink etc.) of Schedule 2 to that Order" is permitted development subject to the requirements of paragraphs G.1.
 5. I note that the appellant has submitted a lawful development certificate to the LDNPA. However, I have not been made aware of the outcome of this application.
 6. It has been established that there are three primary tests for whether a structure is a building - size, permanence and physical attachment and no one of these is decisive.
 7. The canopy is a substantial single object of some size which could reasonably be regarded as a building. In this particular case there is no evidence that the canopy has moved since it was erected on the land, which I am informed was prior to November 2021, or is likely to be moved in the short term. Furthermore, on the appeal form under the ground (f) appeal the appellant suggests that the canopy could be modified with "maybe a low-pitched slate roof". In my view, modifying the canopy in this way would make it difficult or even impossible to move and indicates that it is the appellant's intention to retain the canopy in its present location. In any event, no details have been provided as to how often the structure is likely to be moved. Also, given the physical constraints of the site I consider it unlikely that the canopy would be moved within the site. Moreover, having regard to the site, the canopy does have a permanent rather than fleeting character.
 8. As to its physical attachment, albeit the canopy is now on wheels, the way in which it is secured by metal chains cemented into the ground has the effect of physically attaching the canopy to the ground and holding it in place.
 9. In my view, notwithstanding the appellant's comments, because of its size, attachment to the ground and the length of time it has been and is likely to remain in place, I consider that the canopy to be a building within the meaning of s336 of the 1990 Act. It is not a moveable structure for the purposes of Class G (a) of Part 2 of the GPDO.
 10. For the reasons given above, I conclude that as a matter of fact and degree the canopy constitutes development within the meaning of s55(1) of the Act and it is not development permitted under the provisions of Class G of Part 2 of Schedule 2 of the GPDO. Planning permission is required for its erection and has not been granted. Thus, the erection of the canopy is a breach of planning control. The appeal on ground (c) therefore fails.

Appeal on ground (a)

Main Issue

11. The main issue is the effect of the development on the character and appearance of the protected landscape of the Lake District National Park and the English Lake District World Heritage Site.

Character and Appearance

12. The Black Bull is in a prominent location in the village centre of Coniston. The Black Bull and indeed the majority of buildings in the village centre have either stone or white painted rendered walls, painted window surrounds and slate roofs which make a positive contribution to the historic settlement form and character of the area.
13. The canopy with its utilitarian materials is in stark contrast to the historic character and appearance of the Black Bull and the street scene in the immediate vicinity of the appeal site. Moreover, due to its design and materials, the canopy forms a discordant feature in a prominent location.
14. Under the ground (f) submissions the appellant states that the canopy could be modified. Whilst no details have been provided, the appellant suggests a low-pitched slate roof. Modifications to the roof of the canopy would not overcome the harm caused by the overall size of the canopy in this prominent location.
15. The canopy is harmful to the character and appearance of the Lake District National Park and the English Lake District World Heritage Site. Therefore, the development conflicts with Policies 01, 06 and 07 of the Lake District National Park Local Plan (2021) (LDNPLP) and the National Planning Policy Framework which aim to ensure new development reinforces the importance of local character by having regard to scale, height, density, layout, appearance and materials.

Conclusion

16. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, 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.

Appeal on ground (f)

17. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173 (4)(b)). As the enforcement notice requires the removal of the canopy, the purpose is clearly to remedy the breach of planning control. No lesser steps than the removal of the canopy would achieve that purpose.
18. The appellant submits that the complete removal of the canopy is excessive and that it could be modified by way of a low-pitched slate roof. I accept that enforcement action is remedial not punitive. Whilst no details have been submitted, I have considered this matter under the ground (a) appeal. In any event, in order to remedy the breach of planning control, it is not excessive to require the canopy to be removed. Modification of the canopy would not remedy the breach of planning control that has occurred. I conclude that no

lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

19. The appellant's comments that the canopy is now on wheels, is a moveable structure and is therefore permitted development have been dealt with under ground (c) above.
20. In order to remedy the breach of planning control, it is not excessive to require the removal of the building. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails

Formal Decision

21. 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.

Elizabeth Jones

INSPECTOR