



Appeal Decision

Site visit made on 10 January 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 08 February 2023

Appeal Ref: APP/M0933/C/22/3297922

Cark Manor, Cark, Grange-over-Sands LA11 7PG

- 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 David Haythornthwaite against an enforcement notice issued by South Lakeland District Council.
- The enforcement notice was issued on 6 April 2022.
- The breach of planning control as alleged in the notice is unauthorised operational development including the erection of a gazebo building within the curtilage of a Grade II listed building.
- The requirements of the notice are:
 - A. Permanently remove from the land, within the red line boundary on the attached plan, the unauthorised gazebo building.
 - B. Permanently remove from the land all building materials, all rubble and associated materials arising out of compliance with A.
 - C. Comply with A and B within thirteen weeks.
- The period for compliance with the requirements is thirteen weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

The appeal on ground (a)

1. The ground of appeal is that planning permission should be granted. The main issues are:
 - i. the effect of the development on the setting of the Grade II listed building known as Cark Manor and the special historical and architectural qualities it possesses and the character and appearance of the area, generally; and
 - ii. the effect on the living conditions of the occupants of nearby residential, properties with particular reference to noise and disturbance.

Heritage

2. The National Planning Policy Framework (the Framework) advises that when considering the impact on the significance of designated heritage assets, great weight should be given to their conservation. Cark Manor is a large detached Grade II listed property which is set in a small parkland area on the edge of Cark. It was first listed in September 1989 and is a late eighteenth century building with some nineteenth century extensions and alterations. The property has two storeys and is built of roughcast stone with hipped slate

- roofs. It incorporates six bays, the first two of which are recessed and lower, the fourth bay breaks forward under a hipped gable. The building incorporates a number of other important architectural and historic features, including a first floor sill band and modillioned eaves, sash windows with glazing bars, a verandah to west end of eight bays with three fluted Tuscan columns with a glazed roof, a large projecting wing with a return entrance to the rear, a square entrance tower set at angle, with swept pyramidal slate roof and weather vane and a Tuscan porch and 6-fielded-panel door and overlight with glazing bars.
3. The Manor is situated in an elevated position within a small parkland, with the lawns set at a lower level to the south of the property and accessed by a set of stone steps. The gazebo which is the subject of the enforcement notice has been erected on the lawn between the steps and a parking area. It is a hexagonal metal structure set on a concrete base, with ornate pillars supporting a metal roof. It is enclosed at the lower level on five sides with ornate panels and the sixth side remains open. The structure is very much characteristic of a traditional metal bandstand. The setting of the listed building is formed by its gardens and grounds and the Maple tree situated close to the gazebo, in particular forms a significant mature feature of the grounds.
 4. The gazebo is situated approximately 50 metres to the south west of the listed building and is positioned at a much lower level. Furthermore, it is substantially screened by existing landscape planting along the driveway to the north and other existing landscaping within the parkland setting. The structure has an ornate formal style and design and is rather flamboyant for the relatively informal landscaped parkland setting. However, it is not out of keeping with the formal terrace and stone staircase which leads to the lawns from the main house.
 5. Therefore, the proposal would not harm the setting of the Grade II listed building and the special historical and architectural qualities it possesses and the character and appearance of the area, generally. Therefore, it complies with policies CS1.1, CS1.2, CS8.2, CS8.6 and CS10 of the South Lakeland Local Development Framework Core Strategy 2010 (the CS), Policies DM1, DM2 and DM3 of the South Lakeland Development Management Policies Development Plan Document (March 2019) (the DMP) supported the Framework. Among other objectives these require developments to safeguard the essential character and appearance of buildings that make a positive contribution to the special architectural or historic interest of the area, developments should protect, conserve and where possible enhance the setting of built features that contribute to settlement character and heritage assets including their characteristic settings should be safeguarded.

Living Conditions

6. It is my understanding that Cark Manor is occupied as a holiday let. Whilst the use of the gazebo as an outdoor seating and socialising sitting area may not result in significant increased levels of noise and disturbance to a permanently occupied family residential property during the day, that may be different with people on holiday who may be more likely to spend time outdoors late in the evening. In addition, those on holiday are less likely to have the degree of responsibility of a permanent resident with reference to the effect of their activities on neighbours.

7. Restricting the hours of use of the Gazebo would be an effective means of controlling noise and disturbance to neighbours when activity is most likely to be disruptive. Restricting lighting would also be an effective way of reducing activity late at night. It is my understanding that there is a care taker living on site, so this would ensure the enforcement of such conditions.
8. Subject to conditions, there would be no harmful effect on the living conditions of the occupants of nearby residential properties with particular reference to noise and disturbance. As such the development would comply with Policy CS7.6 of the CS and Policy DM1 of the DMP, as supported by the Framework, which requires tourism development to be located where the environment can accommodate visitor impact.
9. My attention has been drawn to other concerns of local residents relating to their living conditions. However, given the separation between nearby residential properties and the development and the presence of planting and landscaping, there is no significant loss of outlook, visual intrusion or privacy to the neighbouring occupiers.

Other matters

10. I have noted that the reasons for issuing the enforcement notice do not include biodiversity or arboriculture matters. However, Policy DM4 of the DMP requires all development to result in environmental net gains for biodiversity. No details have been provided for any potential net gain in biodiversity and a condition has been recommended by the Council, which the appellant has agreed to. Therefore, in order to ensure compliance with the development plan a suitably worded planning condition can deal with this matter. .
11. Some concern has also been raised regarding potential compaction of the root protection zone for the adjacent Maple tree and the effect on its longevity. In order to ensure no detriment to the long term health of the tree which is important in the landscape setting of Cark Manor, details of remedial works for the aeration of the soil within the root protection area can be conditioned.

Conditions

12. Condition 1 is imposed to ensure that details of a scheme of remedial works to aerate the soil within the root protection area of the Maple tree and details of a scheme for biodiversity net gain are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the scheme of remedial works to aerate the soil within the root protection area of the Maple tree and a scheme for biodiversity net gain before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
13. In order to safeguard the setting of the listed building and in the interests of protecting the living conditions of the occupants of nearby residential properties rural character and appearance of the area and the amenity of the neighbouring occupiers in accordance with Policies DM1 and DM2 of the DMP, no lighting shall be installed in the vicinity of the gazebo. In order to so safeguard the living conditions of neighbouring residential in accordance with

Policy DM1 of the DMP the use of the gazebo shall be restricted to specified times.

14. Since the development of the gazebo has been completed, there is no need to attach a condition requiring the implementation of the development in accordance with particular plans.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Formal Decision

16. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the operational development including the erection of a gazebo building within the curtilage of Grade II listed building on land at Cark Manor, Cark, Grange-over-Sands LA11 7PG, subject to the following conditions:

- 1) Unless within three months of the date of this decision schemes for the remedial works to aerate the soil within the root protection area of the Maple tree and details of a scheme for biodiversity net gain, are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within twelve months of the local planning authority's approval, the gazebo shall be demolished and all equipment and materials brought onto the land for such development shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the gazebo shall be demolished and all equipment and materials brought onto the land for the purposes of development shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no lighting shall be installed in or around the gazebo, hereby approved.
- 3) Having regard to the use of Cark Manor as holiday let accommodation, the gazebo hereby approved shall only be used between the hours of 0800 and 2200.

A A Phillips

INSPECTOR