
Appeal Decisions

Site visit made on 24 August 2023

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

an Inspector appointed by the Secretary of State

Decision date: 05 September 2023

Appeal A: APP/Q9495/C/22/3308989

Appeal B: APP/Q9495/C/22/3308990

Middle Row Farm, Threlkeld, Keswick CA12 4SF

- 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 Neil Elsander and Mrs Kim Elsander against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice was issued on 15 September 2022.
- The breach of planning control alleged in the notice is the breach of condition 2 on planning permission reference 7/2019/3100.
- The development to which the permission relates is renovation and extension of existing farmhouse, together with the conversion of the attached barn (A) to form a single dwelling (with annex accommodation). Demolition and re-build of barn (C), demolition of barn (E) and re-cladding of barn (D).
- The condition in question is No 2 which states that:
 - The development hereby permitted shall not be carried otherwise than in conformity with the following submitted plans and details:
 - Drawing no. 1789 005 Rev a, 1789 006 Rev a, 1789 010 Rev c and 1789 011
 - Design and Access Statement
- The notice alleges that the condition has not been complied with in that at the upper floor level on the front (south facing) elevation of Barn A two new openings have been formed, rather than the single new opening shown on the south elevation on approved drawing No. 1789 010 Rev c.
- The requirements of the notice are:
 - Permanently remove the additional window from the south elevation of Barn A, and
 - Infill the additional opening in the south elevation of Barn A with stonework to match the surrounding stonework and to accurately match the pattern and materials of the ventilation slits in compliance with the south elevation as shown on approved drawing 1789 010 Rev c.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice upheld.

Background

1. Middle Row Farm is a group of former agricultural buildings which comprises a farmhouse with an attached barn and a wider collection of non-traditional agricultural buildings. The group of buildings is situated in a relatively prominent elevated location on the southern slopes of Blencathra. In 2017, under planning permission reference 7/2017/5064 planning permission was

approved for the extension of the farmhouse, conversion of the bank barn as an extension to the residential accommodation on site and the removal of one of the former farm buildings and the rebuild or re-cladding of the others. Subsequently, in October 2019 a revised scheme was conditionally approved under reference 7/2019/3100. Condition 2 of that consent requires that the development shall not be carried out otherwise than in conformity with particular plans and details, including 1789 Rev c which is the Proposed Property elevations and floor plans.

2. It appears to the Authority that condition 2 has not been complied with because at the upper floor level, on the front (south facing) elevation of Barn A two new openings have been formed, rather than the single new opening shown on the South Elevation drawing of approved drawing 1789 010 Rev c.

Appeal A on ground (a)

3. The ground of appeal is that planning permission ought to be granted for the development. In this case the main issue is whether the development preserves or enhances the character or appearance of the English Lake District World Heritage Site.
4. The building the subject of the alleged breach of planning control is an excellent example of a traditional 'bank barn' which is a particular type of agricultural vernacular architecture that is unique to the Lake District and other parts of northern England. They are not found elsewhere in the United Kingdom and as such they make an important and significant contribution to the character and local distinctiveness of the Lake District. In particular, such barns are an important component of the Outstanding Universal Value of the English Lake District World Heritage Site relating to the continuity of traditional agro-pastoralism and local industry in a spectacular mountain landscape. Therefore, the building is a positive component of the designated heritage asset and is the subject of Policy 07 of the Living Lakes Your Local Plan Lake District National Park Local Plan 2020-2035 Adopted May 2021 (the LP) and paragraphs 189 to 208 of the National Planning Policy Framework (the Framework).
5. The landscape of the Lake District is not just defined by its topography including the mountains, lakes and valleys, but also by traditional buildings that make a contribution to the local landscape and its scenic beauty. Paragraph 176 of the Framework affords the highest level of protection in relation to these issues and Policy 06 of the LP stresses the importance of local character.
6. Bank barns are relatively large structures set across a contour so a threshing barn at the upper level can be accessed from higher ground, whilst livestock would be housed below with access from the lower side. Consequently, the elevations of bank barns as demonstrated with the south facing (front elevation) of original building the subject of this appeal, have a consistent character resulting from the typical pattern of openings. The lower level would have a number of byre and stable doors and windows and, perhaps a cart shed opening, whilst the upper floor would have a single hay loft door opening located centrally. The upper floor would therefore have a high ratio of solid wall to opening, where the traditional stonework is the dominant feature rather than a series of openings.

7. The Authority has recognised the challenges involved in converting buildings such as this to residential use due to the demands by occupants for light and views. However, a suitable compromise was reached and subsequently approved for there to be a single large contemporary opening at first floor level on the south facing (front) elevation. Nonetheless, an additional large opening has been implemented at first floor level and, despite the efforts to reduce its visibility by adding film, is clearly visible from a number of local vantage points in the area, including from public rights of way, open land and highways to the south.
8. The additional opening significantly erodes the character and appearance of the building by reducing the solid component of the elevation at first floor level and increasing the amount of void. The additional opening has also disrupted the pattern of ventilation slits and results in there being a regular pattern of first floor openings that is inconsistent with the traditional vernacular of agricultural buildings in the locality. Indeed, as a consequence of the elevated position of the building and the local topography, from public vantage points to the south the first floor is visually prominent and the arrangement of openings on the south facing (front) elevation gives a domestic appearance to the building.
9. Given the above, I find that the proposal would fail to preserve the special interest of the Lake District World Heritage Site. Consequently, I give this harm considerable importance and weight in the planning balance of this appeal.
10. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that this should have clear and convincing justification.
11. With reference to paragraphs 201 and 202 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the extent and localised nature of the works, I find the harm to the World Heritage Site to be less than substantial in this instance. However, this should not be equated with a less than substantial planning objection and is of considerable importance and weight. Under such circumstances, paragraph 202 advises that this harm should be weighed against the public benefits of the works.
12. In this case the appellant has not presented evidence of public benefits and therefore there are none against which I can balance the harm I have found. In any case, any benefits associated with improving levels of natural light to the residential property is a private, rather than public, benefit. Consequently, in attributing considerable importance and weight to the harm to the special interest and significance of the World Heritage Site, I find that this is not outweighed by any public benefits of the alteration to the exterior of the building. In this respect, the proposal fails to satisfy the paragraphs 199, 200 and 201 of the Framework.
13. The additional opening fails to preserve or enhance the character or appearance of the English Lake District World Heritage Site. As a consequence of its prominence and the degree of harm it is furthermore harmful to the character and local distinctiveness of the English Lake District World Heritage Site. As such it conflicts with Policies 01, 02, 05, 06 and 07 of the LP and the

provisions of the Framework. Among other objectives these seek to protect the national and international significance of the Lake District National Park, protect the spectacular landscape of the Lake District, ensure that the design of new development reinforces local character and the Authority will seek to conserve and enhance the significance of heritage assets, which include buildings and sites which are not statutorily designated.

14. In determining the appeal on ground (a) I have had regard to the Planning Policy Statement (PPS) on Green Belt protection and intentional unauthorised development issued by the Secretary of State on 31 August 2015. It makes 'intentional unauthorised development' a material consideration to be weighed in the determination of planning applications and appeals, including enforcement appeals. The PPS remains extant although it is not incorporated into the Framework or PPG. However, permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of 'intentional unauthorised development' must be supported by evidence of something more – that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.
15. The arrangement of openings on the front elevation of the appeal building was a matter of detailed discussions between the local planning authority, the appellants and their representatives during pre-application discussions as well as discussions following concerns about previous applications, including a site visit. Furthermore, the Authority's decision to accept a single new first floor opening rather than two, was a key part of those discussions according to the evidence before me. As such it is apparent to me that the appellants decided to proceed with the unlawful development intentionally. Therefore, I give the PPS weight in determining this case.

The appeals on ground (f)

16. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the permanent removal of the additional window from the south elevation of the barn and infill the opening with stonework to match the surrounding stonework, the purpose is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose. In this respect the appeals on ground (f) fail.
17. Nonetheless I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in Appeal A (APP/Q9495/C/22/3308989), it would be possible to grant planning permission for part of the development. The appellant has suggested that the new opening is reduced in size to match that of the adjacent door window. The window could also be set slightly higher above floor level than the other first floor opening to appear more random. However, the harm caused by the unauthorised opening would not be remedied by relatively small-scale changes to the opening that has been created. Given the disruption to the traditional form of the bank barn I am not satisfied that the suggested amendments are acceptable given the sensitivity of the building and the importance of the arrangement of openings at first floor level to the barn itself and the wider

contribution it makes to the landscape. Therefore, such lesser steps would not overcome the harm identified and the appeals on ground (f) fail.

The appeals on ground (g)

18. The ground of appeal is that the time given to comply with the requirements is too short. The six months given would be sufficient to carry out the requirements of the Notice. The 12 month compliance period suggested by the appellants would be excessive having regard to the continuing ongoing harm caused by the development. In addition, no further design work or planning permission would be required for the works and therefore the six months specified in the Notice is adequate in this case. The appeals on ground (g) do not succeed.

Conclusion

19. 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 deemed application.

A A Phillips

INSPECTOR