
Appeal Decision

Site visit made on

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Levelling Up Housing and Communities

Decision date: 11 September 2023

Appeal Ref: APP/Q9495/X/22/3307644

The Yewdale Inn, 2 Yewdale Road, Coniston LA21 8DU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by High Sprits Leisure Group against the decision of the Lake District National Park Authority (the LPA).
- The application, Ref 7/20225412, dated 26 June 2022 was refused by notice dated 1 August 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the installation of a moveable structure.

Decision

1. The appeal is dismissed. See formal decision below.

Introduction and background information

2. The appeal site is part of the existing outside seating area at the front of the 'Yewdale Inn' which is located on Yewdale Road in the centre of Coniston. The Inn comprises a public house/restaurant with hotel/guest accommodation above (advertised as 9 No bedrooms). The appellant company indicates that the whole of the premises is operated as a single business. The proposal is to erect a timber framed moveable structure to provide cover for patrons over part of the existing front external seating area. An earlier application was refused by the LPA.

3. The Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 introduced into Part 4 (Temporary Buildings and Uses) of Schedule 2 of the GPDO a new Class BB which related to moveable structures for specified uses. This Class granted deemed planning permission, until the end of 1 January 2022, for the provision of any moveable structure within the curtilage, and for the purposes, of:

- (a) *a building used for a purpose within:*
 - (i) *Article 3(6)(p) or (q) (drinking establishments etc.) of the Use Classes Order (UCO), (ii) Class E(b) (sale of food and drink etc.) of Schedule 2 to that Order: or*

(b) a historic visitor attraction.

4. Subsequently, the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No.3) Order 2021 made the above provision permanent. A new Class G of Part 2 of Schedule 2 to the GPDO grants deemed planning permission for 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 UCO; or
(b) Class E(b) (sale of food and drink etc.) of Schedule 2 to that Order.*

5. Article 3(6)(p) of the UCO relates to use as a public house, wine bar, or drinking establishment, and Article 3(6)(q) use as a drinking establishment with expanded food provision. Class E(b) relates to uses for the sale of food and drink, principally to visiting members of the public, where consumption of that food and drink is mostly undertaken on the premises.

6. Thus, as indicated by the Authority, if the primary use of the 'Yewdale Inn' fell squarely into Article 3(6)(p) or (q) (drinking establishments etc.), or Class E(b) (sale of food and drink etc.) then the Class G permitted development rights set out above would be applicable and the proposed installation of a 'moveable structure' would constitute permitted development. The dispute is whether or not this is the case.

The gist of the case for the Appellant

7. On behalf of the appellant company it is contended that the proposal is permitted development (PD) under Class G on the basis that it constitutes a 'moveable structure'; that it falls within one of the specified uses set out in Class G; that it lies within the curtilage of the 'Yewtree Inn' and that the structure would be used for the same purposes as the Inn.

8. Reference is made to the Use Classes covered by Class G, which are as a public house, a wine bar, or a drinking establishment with expanded food provision, or for the sale of food and drink principally to visiting members of the public. It is stressed that the largest proportion of the business income is accounted for by the provision of food and drink either as a '*drinking establishment with expanded food provision*' or as a '*restaurant (sale of food and drink principally to visiting members of the public for consumption on the premises)*'. It is accepted that the distinction between these uses is often a matter of fact and degree, but it is stressed that both benefit from the PD rights under Class G.

9. It is argued that the hotel/guest accommodation is ancillary to this primary use and that it does not generate sufficient income to operate independently of the food and drink part of the business. It is considered, therefore, that the primary use of the building is either as a restaurant or as a drinking establishment with expanded food provision and that the guest accommodation is ancillary to this primary use.

10. An alternative view is set out, in that the primary use of the building could be considered to be 'Public House'. It is indicated that although this is not defined in the UCO, the origin of the name comes from English common law which imposed social responsibilities for the '*well-being of travellers upon inns and taverns, declaring to be public houses, which must receive all travellers who were willing to pay for food, drink and lodging*'. It stressed that it is not uncommon for modern Public Houses, particularly in the Lake District, to provide guest accommodation.

11. It is argued, therefore, that if the uses in the building are considered to constitute a mixed use, the mixed use falls within what would normally be considered to be a Public House, which benefits from the permitted development right under Class G.

12. With regard to the case of *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240 (*Burdle*), the LPA view that it is not possible to say that one use is incidental or ancillary to another is disputed. It is contended that the guest accommodation or hotel use is ancillary to the primary use of the Public House/drinking establishment and restaurant.

13. It is indicated that there is no definition of a 'moveable structure' provided within the GPDO and that case law has established that there are three primary tests in relation to 'temporary moveable structures', size, permanence, and physical attachment. However, these tests are not considered to be directly relevant to Class G which does not include any time limit on how long permitted moveable structures can remain on the site.

14. It is also stressed that PD rights for moveable structures for historic visitor attractions and listed Public Houses/restaurants (Part 4 Class BB) is time limited. It is contended, therefore that the test of permanence is not directly relevant when considering Class G. Neither is the size test considered to be relevant because the size of structures is limited by the PD right (50% of the footprint of the building or 50 square metres whichever is the lesser). Therefore, it would be unreasonable to conclude that the size of a structure, which is within the size limits of Class G, was not 'moveable' because of its size.

15. It is acknowledged that the physical attachment of the structure is a relevant consideration in relation to whether it is moveable. When considering this it is necessary to consider account that it could be removed from the site in less than a day. It would sit on adjustable shoes and, although bolted to the ground, to prevent any movement whilst it is in use, it would be easily moveable. There is also no doubt that the 'moveable structure' would be within the curtilage of the property and, because it would cover part of the existing external seating area, it would be used for the same purposes as the building.

16. In conclusion the proposal is considered to meet all of the requirements to be permitted by Class G of Part 2 of Schedule 2 of the GPDO. In any case, the existing use of the site falls within one of the uses specified in Class G. The proposed structure will be moveable, will be located within the curtilage of the building and will be used for the same purpose as the building. As such, the proposed 'moveable structure' is PD and it is, therefore, requested that the appeal is allowed and that a LDC is issued.

The gist of the case for the LDNPA

17. In the context of this appeal, and the assessment of both the refused applications, it is contended that there is one single issue that requires to be addressed. That is, whether or not the 'Yewdale Inn' is primarily a 'drinking establishment' having regard to the provisions of Class G (a) of Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015(as amended) (the GPDO).

18. Reference is made to the fact that the appellant acknowledges that *'the site includes a pub and restaurant, in addition to guest accommodation, all of which is operated by the appellant as a single business'*. It is stressed that even from this first statement it is immediately clear that the use of the appeal site is not primarily as a Public House, wine bar, or drinking establishment (Article 3(6)(p)). Nor is it primarily a drinking establishment with expanded food provision (Article 3(6)(q)) or a use for the sale of food and drink, principally to visiting members of the public, where consumption of food and drink is mostly undertaken on the premises (Class E(b)).

19. From the website, it is clear that the business provides high quality hotel accommodation in the form of 9 bedrooms in addition to the 'Public House' and restaurant facilities. The appellant's contention that the guest accommodation is *'ancillary'* to the use of the building, as a drinking establishment (or a drinking establishment with expanded food provision), is not accepted and has not been substantiated.

20. Whilst it is acknowledged that all uses are under the same ownership and management, patrons of the 'Public House' and 'Restaurant' do not necessarily have to stay in the hotel/guest accommodation. Conversely occupiers of the hotel/guest accommodation do not have to eat and drink at the 'Yewdale Inn'.

21. On the facts of the situation the use is considered to be a mixed use, falling within the second category of the *'Burdle'* case, which states:

*'...it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another.
This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land'*.

22. It is stated that the appellant appears to accept this premise, in stating that if the uses in the building are considered to constitute a mixed use, it is argued that the mix falls within what would commonly be considered to be a Public House, which also benefits from PD rights under Class G. However, it is well established that a 'mixed use' cannot not fall within any specific Use Class and must, therefore, be in a *'Sui Generis'* use (i.e., in a class of its own).

23. In referring to the appellant's *'matters to be considered'* it is contended that the use of the premises does not fall wholly within one of the Use Classes. It is considered therefore that the questions posed in relation to whether the proposal is a moveable structure; whether it is within the curtilage of the building and whether it would be used for the same purpose as the building, do not fall to be considered.

24. In conclusion, it is contended that as the use of the 'Yewdale Inn' is not primarily a public house, wine bar, or drinking establishment (Article 3(6)(p)); a drinking establishment with expanded food provision (Article 3(6)(q)) or a use for the sale of food and drink, principally to visiting members of the public, where consumption of that food and drink is mostly undertaken on the premises (Class E(b)), the PD rights provided for by virtue of Class G (a) of Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are not applicable. The appeal should therefore be dismissed.

My Assessment

The Main Issue

25. From all of the submissions, I consider that the main issues in this appeal are:

- whether or not the use of the Inn falls primarily into Article 3(6)(p) or (q) (drinking establishments etc), or Class E(b) (sale of food and drink etc.) of the UCO and is granted deemed consent (for the provision of a moveable structure within its curtilage) by virtue of Class G of Part 2 of Schedule 2 of the GPDO, or,
- whether the uses constitute a mixed use of the premises, and the provision of a moveable structure is not permitted development under Class G.

Matters relating to the moveable structure and the curtilage.

26. The LDNPA contends that the questions posed in relation to whether the proposal is a moveable structure; whether it is within the curtilage of the building and whether it would be used for the same purpose as the building, do not fall to be considered. From the evidence I consider that these matters do not affect my consideration of the lawful use of the site. It seems clear to me that the structure would be moveable; that it would be within the curtilage of the Inn; would not be in the curtilage of a listed building or scheduled monument. It would, therefore, meet these particular requirements of Class G with regard to these matters.

The established uses of The Yewdale Inn

27. Turning to the various uses of the premises, which are not disputed, it is clear that the Inn operates as a 'Public House'; a 'Public House including the provision of food and as a 'Hotel or Guest House'. The website for the Inn refers to '*The Yewdale Inn*' offering '*Guest Rooms*' and '*Food and Drink*' and '*Rooms, Pub & Pizzeria*'. The '*Guest Rooms*' comprise 9 No en-suite bedrooms of varying sizes and the accommodation can be booked directly or via a Hotel Booking website. Bookings can be also made on-line for the Public House and Pizzeria restaurants.

28. With regard to these various uses the appellant company has referred to the use of the Inn as being primarily a '*drinking establishment with expanded food provision*' and as a '*restaurant (sale of food and drink principally to visiting members of the public for consumption on the premises)*'. It is stated that these two uses account for the largest proportion of the overall business income. This may well be the case but no detailed accounts showing a breakdown of the respective income from the three main uses ('Public House', 'Public House and Restaurant' and 'Hotel, Guest House' accommodation) has been provided. In any case, as acknowledged by the appellant company, any analysis or distinction between these uses is often a matter of fact and degree.

29. From the evidence before me it seems to me, therefore, that there are three distinct uses of the premises and clearly all of these contribute to the overall income generated by the business. The uses are typical of many small Inns, public houses and hotels within this part of the LDNPA area. Whether or not such premises are in a main single use with ancillary uses or, are in mixed use, is a matter of fact and degree depending on the merits and detail of the particular uses of the premises.

30. For example, a small Inn might predominantly operate as a public house and restaurant whilst offering one or two rooms for guests. Alternatively, a business might operate principally as a small hotel incorporating a public bar and restaurant. I acknowledge that in this case the uses are finely balanced. There is clearly a reasonable income for the appellant company from all three streams of this well-established business. But, the question is whether or not the overall use of the premises falls primarily into the criteria required in order that the development of a 'Moveable Structure' constitutes PD under Class G of the GPDO. I now turn to the particular circumstances in this case.

Whether or not the provision of the 9-bedroom Guest Accommodation is an ancillary use to that of the Public House and Public House/Restaurant use

31. I accept that the guest accommodation alone may not generate sufficient income to operate independently of the food and drink part of the business. However, again there are no detailed accounts submitted. But, even accepting that this is the case, the appellant company appears to be successfully operating the Inn on all three counts.

32. I acknowledge the argument that the use of the building could be considered to be 'Public House' and that the origin of the name comes from English common law which imposed social responsibilities for the '*well-being of travellers upon inns and taverns, declaring to be public houses, which must receive all travellers who were willing to pay for food, drink and lodging*'. I also accept that it is not uncommon for modern Public Houses, particularly in the Lake District, to provide guest accommodation. However, it does not follow that every hostelry, which provides travellers with food drink and lodging has a primary use as a public house which benefits from permitted development under Class G. As referred to above it is a matter of fact and degree as to whether or not the provision of food drink and lodgings within these particular premises constitutes a mixed use.

33. On the facts of this case and with regard to *Burdle*, I do not consider that the entire unit of occupation can be said to be primarily just one of three agreed uses and to which one, or other, of the other two uses is ancillary or incidental. In my view, and as a matter of fact and degree I consider that the current use of the Inn is a composite use, with the three component activities all carried out within the same planning unit. The fact that both the appellant company and the Authority acknowledge the three different uses at the Inn, reinforces my view that the uses cannot be readily separated to identify one as being the primary use.

34. I agree, therefore, with the Authority that the use carried out is Sui Generis, which does not fall into any specific Use Class. It follows that I also agree that the use of the 'Yewdale Inn' is not primarily (my underlining) a public house, wine bar, or drinking establishment (Article 3(6)(p); a drinking establishment with expanded food provision (Article 3(6)(q)), or a use for the sale of food and drink, principally to visiting members of the public, where consumption of that food and drink is mostly undertaken on the premises (Class E(b)).

35. Thus, the PD rights provided for by virtue of Class G (a) of Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are not applicable and planning permission would be required for the installation of a moveable structure to any part of the frontage to the premises.

Other Matters

36. In reaching my conclusions I have taken into account all of the other submissions made by the appellant and the LDNPA, including the planning history. However, none of these alters my conclusions on the main issues and nor is any other factor of such significance to change my decision.

Formal decision

37. The appeal is dismissed, and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector