



Appeal Decisions

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: 18 September 2023

Appeal A - Ref: APP/M0933/C/22/3301526

Appeal B - Ref: APP/M0933/C/22/3301550

Hardcragg Hall Cottage, Hardcragg Way, Grange-over-Sands LA11 6BH

- 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 appeals are made by Mr Denis Whalley (Appeal A) and Mrs Fiona Whalley, (Appeal B) against an enforcement notice (EN) issued by the South Lakeland District Council (the LPA).
- The breach of planning control as alleged in the EN is as follows:
 - i. Erection of a shed, outlined in blue on the attached plan, within the curtilage of the Grade II Listed Building.
 - ii. Erection of a shed outlined in blue on the attached plan within two metres of the boundary of the curtilage of the dwelling house and exceeding a height of 2.5 metres which is not permitted by Schedule 2 Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.
- The requirements of the notice are as follows:
 - (A) Permanently remove the building outlined in blue within the red line boundary on the attached plan.
 - (B) Permanently remove from the land all building materials, all rubble and associated materials arising out of compliance with (A).
- The Compliance period is 13 weeks.
- Appeal A is proceeding on grounds (a), (e) and (f). Appeal B is proceeding on grounds (e) and (f), as set out in section 174(2) of the Town and Country Planning Act 1990.

On 1 April 2023 Barrow-in-Furness Borough Council, Eden District Council and South Lakeland District Council merged to form a new Unitary Authority called Westmorland and Furness Council. Appeals against the issuing of an Enforcement Notice continue to refer to the name of the Local Planning Authority that issued the notice, in this case South Lakeland District Council.

Summary of Decisions

1. Appeal A is allowed on ground (a). Planning permission is granted for the retention of the garden shed, and the enforcement notice is quashed.
2. Appeal B is dismissed on ground (e).
3. In both Appeals ground (f) does not fall to be considered. See Formal Decisions.

Background information

4. The appeal property, Hardcragg Hall Cottage, is a residential property attached to Hardcragg Hall, a Grade II listed building. The Hall was listed on 11 August 1950. The buildings lie within the Grange-over-Sands Conservation Area (GSCA). The list description for Hardcragg Hall is as follows:

'SD4077 GRANGE FELL ROAD 705-1/4/13 (North side) 11/08/50 Hardcragg Hall (Formerly Listed as: GRANGE FELL ROAD Hardcragg Hall excluding modern conservatory - west end)

Formerly known as: Hard Crag GRANGE FELL ROAD. House, now hotel and restaurant. C17, extensively restored in a C17 style c1900. Painted roughcast with slate roof. L-plan. EXTERIOR: 2 storeys. The windows have plain reveals, oak mullions, and diamond leaded glazing. The east facade is a 2-window range and has a gabled bay window of 8 lights with transom in the right-hand bay. The other windows are of 4 lights: the left-hand one on the ground floor has a transom. To the left of the bay window there is a rainwater hopper inscribed 'N P 1764'. The chimney on the right-hand gable has rounded shafts. The left-hand (south) gable wall has a 5-light bay window with transom on the ground floor and a 4-light window above. To the left is the 5-window south range. The left-hand window on the ground floor has stepped lights. The other ground-floor windows are of 5 lights, the right-hand one with transom. The 1st-floor windows are of 4 lights except for the 3rd, above the porch, which is a cross-window. The single-storey gabled porch has a sundial in its front wall which appears to be of artificial stone and is dated '1663'. To the right of the porch a lead rainwater pipe has an upper hopper inscribed 'RCL 1734' and a lower hopper inscribed '19 WTM 0-, S Between the 1st and 2nd windows there is a lead hopper inscribed 'C W M 1770'. Chimneys on left-hand gable. INTERIOR: the ground-floor rooms are lined with oakpanelling in a C17 style, incorporating C17 woodwork. Above a C19 fireplace at the south end of the east wing is a timber inscribed 'TDM 1666'. Above a spice cupboard door there is the inscribed date '1685'. The entrance hall contains a staircase with splat balusters. HISTORY: the house was bought c1860 by one of the Townley family of Burnley, and WG Marshal Townley was born there in 1869. Beatrix Potter was a friend of the family, and it is said that she met the original of Pigling Bland at Hard Cragg. (Swale WE: Grange-Over-Sands: Grange-Over-Sands: 1969-: 59).'

5. The listed building, originally a house, was later converted to a hotel before becoming a house again when the hotel use ceased. As part of the expansion to the hotel an extension was built onto its north-eastern elevation in 1981 (Planning Permission - PP 5/81/0820). This extension later gained planning permission and listed building consent (PP 5013240 & LBC 5013208) for conversion to a separate dwelling in May 2002. The approvals also included alterations to a boundary wall. This dwelling is now the appeals property, Hardcragg Hall Cottage, which is now set within its own curtilage and is not separately listed.

6. The building (the shed), the subject of the EN, has been constructed within the south-eastern part of the garden of the cottage close to the boundary with the Hall. The garden shed also abuts the boundary with two adjacent properties (No 2 Grange Fell Road and 'Natal', on Hardcragg Way). Both properties are situated at a lower level than the garden of the appeal site. A site visit was initially undertaken by Council Officers on 11 May 2021 and officers took photographs and measurements. These indicated that at its southern edge the shed had been raised in order to level resulting in the height from the ridge to ground level being 3.2m.

Matters of clarification

My Site Visit

7. During my site visit I was unable to gain access into the garden of the Hall or into the Hall itself. However, I have carefully studied the submissions and photographs of the current owners of the Hall. In particular, I noted the views of the shed from the photographs taken from the ground floor and bedroom windows of the Hall. I also noted views from No 2 Grange Fell Road; from the front of 'Natal', Hardcragg Way; from the garden of the cottage and from its upper floor.

8. Standing adjacent to the shed I was able to look back towards the Hall and the cottage and into the other adjacent gardens. These viewpoints collectively provided me with further evidence with regard to the visual interrelationships of the shed within its overall surrounds and the setting of the listed building. The base and some remaining materials of the previous shed (photographs submitted by the appellants) were also evident.

Whether Hardcragg Hall Cottage lies within the curtilage of Hardcragg Hall.

9. The PP and LBC, granted in May 2022, which included alterations to the Hardcragg Hall boundary, fundamentally changed the curtilage of the listed building and created a separate curtilage for the newly created dwelling, the cottage. As indicated above, the cottage was built as an extension to the Hall in 1981 and granted PP and LBC to become a separate dwelling in 2002. Clearly, in 1981 the extension was within the curtilage of the listed building. The extension (now the cottage) was physically connected to the Hall; it was in the same ownership and in the same use as a hotel.

10. The extension was then separated from the Hall. Although still attached to the Hall, in terms of construction, there is now no physical link between the cottage and the Hall. From 2002/2003 the two properties have been in completely separate ownerships and the current title deeds confirm that this is the current situation. The properties are also in separate uses, albeit it both residential.

11. I have considered the arguments put forward by the main parties and the owners of the listed Hall with regard to the question of what constitutes the current curtilage of the listed building and have taken into account all of the relevant caselaw. The appellants and the owners of the listed building have specifically referred in detail to the case of *Sutcliffe v Calderdale Borough Council 1983 (Calderdale)* and have referred to the 3 tests to be applied.

12. In a strict application of the tests and putting aside the question of listing, it can be argued that in terms of the normally accepted definition of curtilage ('*an area of land attached to a house and forming one enclosure within it*'), the shed would lie outside of the area of land which currently forms the land attached to the Hall. The physical layout is now different, the ownership is different and the uses, although both residential, are separate.

13. However, judgement in the cases of *Watts v SSE (1991 JPL718)* and *R v Camden ex parte Bellamy (1992 JPL 718)* indicate that the curtilage of a listed building should be taken to be that which existed at the time of listing, regardless of any subsequent development. It is on this basis, therefore, that I have considered these appeals and this accords with the allegation set out in the notice; that is, the erection of the shed within the curtilage of the Grade II listed Hall.

Whether or not the appeal garden shed constitutes permitted development

14. From the submitted plans and my site inspection of the site it is evident that the garden shed has been built within 2m of the boundary of the curtilage to the cottage. It is not disputed that the maximum height of the shed is 3.2m, but, irrespective of where the height measurement is taken, its location means that the development carried out is not permitted by Schedule 2 Part 1 Class E.1 of The Town and Country Planning (General Permitted Development) (England) Order 2015. In any case there is no appeal on ground (c) for either appeal and, therefore, there can be no dispute that planning permission is required for the development as carried out.

Appeals A and B on ground (e)

15. Both appeals are made on ground (e). That is, on the basis that copies of the notice were not served correctly, as required by Section 172 of the Act. In both cases it is contended that a copy of the EN was not served on every relevant owner and/or occupier of the land, or on any person having an interest in the land.

16. However, for Appeal B it is evident that the notice was served on the appellant for this appeal, Mrs. Fiona Whalley. There is no dispute about this. It is confirmed by the Council and appears to be accepted by both appellants. It follows, therefore, that Appeal B must fail on ground (e).

17. Turning to Appeal A, Mr Denis Whalley confirms that as 50% owner of the appeal property he was not served with a copy of the notice. However, the Council refers to the fact that it served the notice *'on those listed on the Land Registry details which only stated Fiona Whalley'* and, therefore, that it was *'unaware of anyone else owning or having an interest in the property'*.

18. The Council indicates that communications regarding the unauthorized works had been carried out with Mr Denis Whalley. However, at the time of consulting the Land Registry there was no formal confirmation on the Register that he was an *'interested party'* with regard to legal ownership or that he had any other interest in the land. Furthermore, it is stressed by the Council that, in situations such as this, other parties have an opportunity to appeal and that Mr Denis Whalley was able to appeal the notice. Again, this is clear and Mr Denis Whalley is in fact the appellant for Appeal A.

19. The courts have held that Secretary of State can disregard incorrect service if no person would be prejudiced. In this case it is evident that both Mrs Fiona Whalley and Mr Denis Whalley, as joint owners of the cottage, have been able to appeal the notice. Thus, neither can claim to have been prejudiced by the way in which the EN was served and that both appeals therefore fail on ground (e).

Appeal A on ground (a)

Introduction

20. I have concluded above that the shed must be considered to be within the curtilage of the Hall and that, as constructed it cannot constitute permitted development. It follows that, if it is to lawfully remain in place, planning permission is required. I now turn, therefore, to whether or not planning permission should be granted for the appeal garden shed.

20. In considering whether to grant planning permission I have had special regard and paid special attention to the statutory duty requirements of Sections 66(1) and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 (PLBCAA).

The Main Issues

21. The main issues are as follows:

- The effect of the garden shed on the setting of Hardcragg Hall:
- The effect of the shed on the character and appearance of the Grange-over-Sands Conservation Area (GSCA).
- The effect of the shed on the living conditions of the occupiers of the Hall and other neighbouring properties, with regard to loss of privacy, overlooking, overbearance and health and well-being.

Relevant Policy

22. Relevant development plan policies are set out in the South Lakeland Core Strategy Policies (CS) and South Lakeland Development Management Development Plan Document Policies (DM). These are CS1.1 (Sustainable Development Principles); CS1.2, (The development strategy); CS8.2, (Protection and enhancement of landscape and settlement character); CS8.6, (Historic Environment); CS.10 (Design); DM1 (General Requirements for all development); DM2 (Achieving Sustainable high-quality design) and DM3 (Historic Environment).

23. The National Planning Policy Framework (NPPF) policies are a major material consideration. The relevant sections are as follows: 2 (Achieving sustainable development); 12 (Achieving well-designed places) and 16 (Conserving and enhancing the Historic Environment).

Effect on the setting of Hardcragg Hall

24. Having seen the garden shed from all of the viewpoints referred to above and having studied all of the photographic viewpoints, I do not share the concerns of the LPA or the owners of the listed building with regard to the overall effect of the shed on the setting of the Hall.

25. I acknowledge that the design and construction of the shed is not typical of the average garden shed. I also note that the photographs taken during construction, when the boundary Beech Hedge was only approximately 1m in height, resulted in a somewhat stark and noticeable structure within the garden of the cottage. However, with the Beech Hedge now at around 2m and the fact that the timber has started to weather, the current appearance of the shed has started to blend in with the garden landscaping. Taking into account the materials used I consider that this weathering will continue over the years and will result in the shed being perceived as very much in keeping within this residential area surrounded by other gardens and garden structures.

26. The fact that it is tucked into the far triangular corner of the cottage garden, behind the high hedge, helps in screening it from views from the Hall. Whilst the roof will still clearly be seen from all of the upper windows of both the cottage and the Hall, it will be seen against the backdrop of the larger roof to the property at No 2 Grange Fell Road. From the front of this property only a small triangular section of the shed roof can be seen. From the garden of the adjacent property, 'Natal', I consider that due to the landscape and levels and the Beech Hedge the shed is not perceived as an obtrusive or visually harmful element.

27. Having walked the length of Hardcragg Way, and up Grange Fell Road to well beyond the vehicular entrance to the Hall, I could not find any other views of the shed or its roof from any other public viewpoints. Thus, it is extremely difficult to conclude that, in the general public interest, the setting of the Hall is detrimentally affected by the appeal shed.

28. I accept that those living immediately adjacent to the cottage garden will continue to see the shed from various viewpoints. It is clear that the occupiers of the hall will continue to see it from the upper floors of their property. However, the hedge has already started to screen the shed from views from the lower floors and garden and even in winter the golden-brown beech leaves will continue to provide some screening albeit not as good as when the hedge is in early and full leaf. The occupants of the Hall will also continue to see other roofscapes and structures within the other gardens between Hardcragg Way and Grange Fell Road.

29. In assessing how a particular structure affects the setting of a listed building, it is necessary to assess its overall visual impact in relation to the listed building. This will depend not only on the design and construction of the structure but also on how it is perceived with regard its specific location and specific physical relationship with the listed building.

30. In this regard it is a reasonable distance away from the both the Hall and the cottage; it is not perceived as being too close to either dwelling and, albeit an unusual design, is the type of structure which one would expect within a domestic garden. The fact that the previous shed was closer to the cottage and higher up the garden (and therefore more noticeable from the Hall), reinforces my view that the appeal shed is in an acceptable location within the garden of the cottage.

31. Even if the boundary hedge was not in position or was within the garden area of the Hall itself, I do not consider that it would be detrimental to the historic and architecturally interesting setting of the listed building. Its setting in a wider context has already been compromised somewhat by the modern developments which now surround it. In my view the appeal shed does not fundamentally change the situation and is acceptable. On this first issue, therefore I find in favour of the appellants.

Effect on the character and appearance of the GSCA

32. Having walked around the GSCA and having noted the development over the years around the Hall, I do not consider that the shed as constructed is harmful in any way to the character and appearance of the conservation area. As indicated above the surrounding developments now form part of this particular area of the GSCA and I noted numerous other small structures within the gardens of the nearby more modern dwellings.

33. The appeal shed, in terms of size, use and appearance contributes to this mixed appearance of the area and in doing so I am satisfied that despite its novel construction it preserves the character and appearance of this part of the GSCA. I also find in the appellants' favour on this second issue.

Effect on living conditions including impact on health and wellbeing.

34. I do not consider that the shed results in any loss of privacy for the owners of the listed building, or for the occupiers of any of the other adjoining or nearby dwellings. Due to the height of the Beech hedge and the position of the shed it would be difficult for anyone, either inside or immediately outside of it, to overlook the garden of the Hall. Due to the slope of the land, it would also be difficult to see into the windows of the Hall. In fact, during my visit, I found it difficult to establish any views from the shed into the rooms of the cottage itself.

35. Clearly, from the upper floor windows of both the Hall and the cottage, any activity around the shed will still be seen. However, this is typical of situations where dwellings have adjacent gardens. In my view the shed is too far away from the Hall to have an overbearing effect for its occupiers. Furthermore, the hedge and slope of the land have mitigated the visual effect when viewed from the Hall. I accept that it appeared as being stark and obtrusive without the hedge and when being constructed. However, I find the current situation to be acceptable and not detrimental in terms of loss of privacy, overlooking or being overbearing for occupants of the Hall. That is also the case for other neighbours.

36. Turning to the effect of the shed with regards to health and wellbeing, I sympathise with the owners of the Hall and can understand the effect that the building of the shed has had on their on their quality of life. Having dealt with similar cases I can understand the frustration, anger and disappointment that can

occur when an unauthorised development is carried out on an adjacent site and to which neighbours object. These can be difficult and indeed worrying times and I acknowledge that they can have a detrimental effect on health and wellbeing.

37. However, I consider that taking account of all of the circumstances, a decision to grant planning permission for the retention of the shed as built in this particular location is proportional in planning terms with regard to the overall effects of the shed on the occupiers of the neighbouring properties.

38. The reference to the loss of value of the Hall is not a material planning consideration and neither is the loss of any view, which in any case is minimal when seen in the context of the other modern developments which now surround the listed building and which can be seen from the front windows of the Hall.

Overall Conclusion

39. For the reasons set out above I find that the development as carried out preserves the setting of the listed building; it does not harm any of its special architectural or historic features and it preserves the character and appearance of the GSCA. I also find it proportionally acceptable in terms of its overall effects on the occupants of the Hall and other adjoining properties.

40. I conclude that the shed as constructed accords with Policies CS1.1, CS1.2, CS 8.2, CS8.6 and CS.10 of the South Lakeland CS, and Policies DM1, DM2 and DM3 of the Development Management Development Plan Document. I also consider that it accords with the relevant policies set out in Sections 2, 12 and 16 of the NPPF. Therefore, Appeal A succeeds on ground (a) and planning permission will be granted for the retention of the shed as constructed. In these circumstances Appeals A and B on ground (f) do not fall to be considered.

Other Matters

41. In reaching my decision on these appeals I have considered all of the submissions made by the appellants, the Council and other interested persons. These include the full planning history of the Hall and the cottage; all of the detailed appeal statements; the final comments; and all drawn and photographic evidence. However, none of these alter my conclusions on any of the main issues and neither is any other factor of such significance so as to change my decision that planning permission should be granted for the retention of the shed.

42. I have noted the Council's suggested conditions. However, the development has been completed and there are no approved plans.

Formal Decisions

43. Appeal A is allowed, and the enforcement notice is quashed. 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 erection of a shed, outlined in blue on the plan attached to the notice at Hardcragg Hall Cottage, Hardcragg Way, Grange-over-Sands LA11 6BH.*

44. Appeal B is dismissed.

Anthony J Wharton
Inspector