



Appeal Decision

Site visit made on 4 July 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 29 September 2023

Appeal Ref: APP/Q9495/W/22/3312980

Hopegill Gardens, Thelmllea, Braithwaite, Cumbria CA12 5TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ross Cowperthwaite of Atkinson Homes against the decision of the Lake District National Park Authority.
 - The application Ref 7/2022/2158, dated 8 June 2022, was refused by notice dated 11 November 2022.
 - The application sought planning permission for erection of dwellinghouses to rear of Thelmllea, Braithwaite, without complying with condition no 9 (requirement for local slate) on planning approval Ref 7/2021/2206, dated 15 September 2021.
 - The condition in dispute is No 9 which states that: 'The roofs of the building hereby permitted shall be covered and maintained in local slates which have been mined or quarried in Cumbria. Such slates shall be riven not sawn.'
 - The reason given for the condition is: 'To ensure a satisfactory standard of appearance of the development by the use of traditional materials in accordance with Policy 06 of the Lake District National Park Local Plan 2020-2035.'
-

Decision

1. The appeal is allowed and planning permission is granted for erection of dwellinghouses to rear of Thelmllea, Braithwaite, Cumbria CA12 5TD in accordance with the application Ref 7/2022/2158 without compliance with condition 7 previously imposed on planning permission Ref 7/2022/2165, dated 3 August 2022 and subject to the conditions listed in the attached schedule.

Background and Preliminary Matters

2. Planning permission was granted for the construction of five dwellings on land to the rear of Thelmllea Ref: 7/2020/2301, with two further applications granted to amend the scheme Ref: 7/2021/2206 and Ref: 7/2022/2165. The scheme has been built and the houses are now occupied. The description of development has, however, been amended from that found on the application form. The Authority had highlighted that the original permission had been implemented and the most recent approval was Ref 7/2022/2165, dated 3 August 2022. It was therefore agreed by the parties to change the description to 'amendment to condition 7 (slate) on planning permission 7/2022/2165 erection of dwellinghouses to rear of Thelmllea, Braithwaite'. It is on this basis that I have determined the appeal.
3. Condition 7 states that 'the roofs of the building hereby permitted shall be covered and maintained in local slates which have been mined or quarried in Cumbria. Such slates shall be riven not sawn.' The reason being 'to ensure a

satisfactory standard of appearance of the development by the use of traditional materials in accordance with Policy 06 of the Lake District National Park Local Plan 2020-2035.'

4. The application was made in the name of Mr Ross Cowperthwaite of Atkinson Homes, whereas the appeal form was in the same name, but the company was Atkinson Builders Ltd. As the appellant is the same throughout, I have used the company name listed in the banner heading and as shown on the application form.

Main Issue

5. The main issue is the effect that not complying with condition 7 would have on the character and appearance of the dwellings and the surrounding area.

Reasons

6. The site is a small cul-de-sac development located off Thornthwaite, close to the A66. The proposal is to the rear and reached by a new access created between 'Thelmlea' and 'Hollytree House'. The houses are in a rough semi-circle with the central one being two storeys in height and the four others being 1½ storeys. The housing has a uniform character being all built in a mixture of local stone, render and a purple-coloured brick. This has a similar tone to the purplish hue found on the second-hand Welsh slate that is on the roofs of the five houses.
7. The slate has been laid and used in a consistent way on the roofs of the houses. The site is located above three, detached, more established properties, including Thelmlea and Hollytree House, all of which have slate roofs. Whilst I have no evidence of the provenance of the slate on the roofs on these houses, I could see when I visited the site, that the slate on the properties at Hopegill Gardens blend in and do not look out of place with the slate roofs on these established houses.
8. Whilst the use of local slate can reinforce local distinctiveness, character and a sense of place, Welsh slate is not untypical in the Lake District and there are many examples and areas where it has been frequently used. The proposal is a modern housing development on the edge of the settlement. It does not front any of the main roads through it but is set back on a sloping site which is not highly visible. The use of Welsh slate on this site, particularly in the context of the buildings around it, does not harm the character and appearance of the area.
9. I therefore conclude that using second-hand Welsh slate would not have a harmful effect on the character and appearance of the dwellings and the surrounding area. It would accord with Policies 02 and 06 of the Lake District National Park Local Plan 2020-2035, adopted 2021, which require development to support local character, distinctiveness, and a sense of place.

Other Matters

10. The site has been considered in accordance with Regulation 14(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The development has been screened as it is within a 'sensitive area', as defined by Regulation 2 of the EIA Regulations, in this case the Lake District National Park; and it is within the catchment of the River Derwent and Bassenthwaite

Lake Special Area of Conservation. The proposal was found to not likely to have significant effects on the environment and so an Environmental Statement is not required. Therefore, this matter does not need to be considered further.

11. Since planning permission was originally granted for this development, and since the application that is the subject of this appeal was submitted to the Authority, under the Conservation of Habitats and Species Regulations 2017 (the Regulations), and as advised by Natural England, a Competent Authority must consider the nutrient impacts of projects and plans which affect habitat sites. This includes the catchment of the River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC).
12. In this instance, I am the competent authority. Under section 73A of the Town and Country Planning Act 1990, amending the condition subject to this appeal, would create a new planning permission. Although the proposal involves the amendment of a condition only, as it would create a new planning permission should the appeal be allowed, I am therefore required to consider whether the proposed development as a whole would be likely to have a significant effect on the site, and if so, assess the implications of the effect of the proposal on the site's conservation objectives under an appropriate assessment.
13. In this case, the appeal relates to the effect of not complying with condition 7 and whether the alternative choice of roof covering would cause harm. The dwellings are built and are occupied. Therefore, a change from local slate to the use of Welsh slate would have no effect on the way the dwellings are occupied, not result in any additional pollution and it would have no effect on the integrity of the SAC. Consequently, the proposal would not be in conflict with the Regulations.
14. The Authority consider that the use of Welsh slate has resulted in 'intentional unauthorised development'. However, even if the appellant carried out the development in breach of the condition, I have found that the use of the slate on this site is acceptable. Therefore, whether there has been 'intentional unauthorised development' carries very little weight in my overall decision.

Conditions

15. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. Whilst I have seen that the development has been built and is occupied, I have insufficient information before me about the status of the conditions imposed on the original planning permission. Furthermore, the Authority has suggested that all the conditions need to be reimposed. In the event that they already have been complied with, that is a matter for the parties to resolve outside the appeal process. I have therefore imposed all the conditions, including an amendment to condition 7 allowing the use of second-hand Welsh slate.

Conclusion

16. For the reasons set out above, the appeal is allowed.

M J Francis INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall not be carried out otherwise than in conformity with the following submitted plans and details received by the Local Planning Authority:

Plans and documents submitted as part of application ref:7/2022/2165

-Site Layout P-01 Rev C

Plans and documents submitted as part of application ref:7/2022/2165

-Site Location Plan Thelmlea, Braithwaite

-Plot 1 – Elevations BR-03 Rev D

-Plot 1 – Ground Floor Plan P-01 Rev A

-Plot 1 – First Floor Plan P-02 Rev A

-Plot 2 – Elevations P-03 Rev A

-Plot 2 – Ground Floor Plan P-01 Rev A

-Plot 2 – First Floor Plan P-02 Rev A

-Plot 3 – Elevations P-03 Rev A

-Plot 3 – Ground Floor Plan P-01-Rev A

-Plot 3 – First Floor Plan P-02 Rev A

-Plot 4 – Elevations P-03 Rev A

-Plot 4 – Ground Floor Plan P-01 Rev A

-Plot 4 – First Floor Plan P-2 Rev A

-Plot 5 – Elevations BR-03 Rev D

-Plot 5 – Ground Floor Plan P-01 Rev A

-Plot 5 – First Floor Plan P-02 Rev A

- Valiant Air to Water heat pumps brochures

- FlushSash brochure

- Stone work as shown on submitted image IMG_4050

- Covering letter from Antonia Turner dated 9 July 2021

- Drawing number 05 Rev D: Drainage Plan

- Drawing number 07 Rev A: Refuse Construction Detail

- Boundary Treatment Rev A

- Construction Management Plan

- Drainage Strategy (as amended 26 February 2021)

- Maintenance – Drainage and SuDS Components
- BS5837:2012 Tree Survey, Tree protection plan, Arboricultural Implication Assessment and Method Statement
- BS5837:2012 Tree Survey – Braithwaite Adjusted RPA's
- Braithwaite PTC Final
- Braithwaite TPP Final

- 2) The dwellinghouses hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.

The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether this condition is being observed.

In this condition the following definitions apply:

'Person with a Local Connection' means an individual who immediately prior to occupation of the dwelling satisfies one of the following conditions:

- (1) The person has been in continuous employment in the Locality defined for at least nine months and for a minimum of 16 hours per week; or
- (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or
- (3) The person has been continuously resident in the locality defined for three years immediately prior to:
 - a) Needing another dwelling resulting from changes to their household, (including circumstances such as getting married/divorced, having children or downsizing)
 - b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion, or
 - c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release, or
- (4) The person is a former resident who lived in the Locality defined for three years and then lived outside the Locality defined for social and/or economic reasons and is returning to live in the Locality defined within three years of the date of their departure, or
- (5) The person is a person who-
 - a) is serving in the regular forces or who has served in the regular forces within five years prior to occupation;

- b) Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where-
 - i. The spouse or civil partner has served in the regular forces; and
 - ii. Their death was attributable (wholly or partly) to that service; or
- c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service.

'Locality' shall mean the administrative areas of the Parishes of: Above Derwent, Bassenthwaite; Bewaldeth and Snittlegarth; Blindbothel; Borrowdale; Buttermere and Brackenthwaite; Caldbeck; Embleton; Keswick; Lorton; St Johns, Castlerigg and Wythburn; Setmurthy; Threlkeld; Underskiddaw; Wythop; and those parts of the Parishes of Blindcrake; Ireby and Uldale; and Loweswater which lie within the administrative area of the Lake District National Park.

An 'Only or Principal Home' is a dwellinghouse which is occupied continuously for a minimum period of six months in every twelve-month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation.

The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

- 3) The gradient of the access drive shall be no steeper than 1 in 8 (12.5%) for a distance not less than 5m as measured from the carriageway edge of the adjacent highway.
- 4) Prior to the first occupation of the development hereby permitted the road serving the development including all footways and any cycleways shall be constructed to base course level.
- 5) The dwellinghouses hereby permitted shall not be occupied until the access and parking arrangements have been constructed in accordance with the approved plans.
- 6) Not later than 12 months from the substantial completion of the development, landscaping of the site shall be undertaken in accordance with the details of a scheme which shall first have been submitted to and approved in writing by the Local Planning Authority. The said scheme shall include details of hard and soft landscaping proposals and boundary treatments.

Any trees or plants which, within a period of five years thereafter, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation.

- 7) The roofs of the buildings hereby permitted shall be covered in local slates (that is slates which have been mined or quarried in the County of Cumbria) or second-hand Welsh slate as detailed by the application.
- 8) Prior to the first occupation of the dwellinghouses hereby permitted the renewable energy measures shown on the approved plans and details (air source heating system) shall be installed and operational.
- 9) 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 material external alterations or extensions shall be carried out to the east facing roof slope and wall of the dwellinghouse shown as Unit 5 on the approved plans without application to, and the grant of permission by, the Local Planning Authority.

End of Conditions