



Appeal Decision

Hearing Held on 19 September 2023

Site visit made on 20 September 2023

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

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

Appeal Ref: APP/Q9495/C/23/3320012

Land on the south side of Greenbank, Borrowdale, Keswick CA12 5UY

- 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 Joseph Weir against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice, numbered E/2020/0201, was issued on 8 March 2023.
- The breach of planning control as alleged in the notice is the making of a material change of use of a former agricultural building to a single dwellinghouse comprising (on the ground floor) domestic storage and (on the first floor) residential accommodation.
- The requirements of the notice are:
 - a) Cease the use of the building as a dwellinghouse.
 - b) Remove from the building all fixtures and fittings that facilitate the unauthorised use of the building as a dwellinghouse including the kitchen, shower rooms, heating system, fitted wardrobes and beds.
 - c) Remove all materials resulting from compliance with step (b) from the Land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

The appeal site

1. The appeal property comprises an agricultural building which external walls constructed of stone facing with timber panelling and a slate roof. It is situated off a relatively long access track which links to the B5289 through the Borrowdale Valley.

The appeal on ground (d)

2. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In this case, the appellant contends that the building has been used occasionally as a dwellinghouse since 2014 and more permanently since around 2015. To succeed on ground (d) it will need to be demonstrated that on the balance of probabilities the use as a dwellinghouse commenced and continued for a period of four years without interruption up to the date the enforcement notice was served on 8 March 2023.
3. In support of his appeal on ground (d) the appellant has submitted a range of documentation; including:

- E-on electricity statements dated 29 July 2017, 9 April 2018, 9 October 2019, 25 April 2020 and 24 April 2021;
 - Barclays letters dated 4 May 2017 and 14 October 2019;
 - Allan Stobart Lubricants and Fuels sales invoices dated 5 September 2019, 5 May 2020 and 7 January 2021;
 - Email from Joe Weir dated 16 March 2023;
 - Emails from family embers dated 5 June 2023, 29 May 2023 and 30 May 2023;
 - NHS letter dated 6 April 2023; and
 - Various photographs and videos.
4. In support of its action the Authority has drawn attention to the Planning Contravention Notice (PCN) dated 26 October 2022 which was signed by Mr Joseph Weir on 16 November 2022. The evidence provided in the PCN is that agricultural use of the building ceased in 2006 or thereabouts and the current use of the building as a storage/man cave commenced in 2006. It goes on to state that the kitchen was revamped in 2015, the bathroom, en-suite and heating were installed in 2015 and power to the first floor was added in 2014. It was first occupied as a dwelling in 2006, but although he is not sure, his evidence is that it has been occupied on and off for many years, but more so from 2014 onwards. The evidence suggests the building was last used for residential purposes on 5 November 2022. The PCN states that old furniture was stored in the building.
 5. The appellant now admits that the PCN was not fully complete, and a lot of the information provided is less than accurate because he *"did not want it to be found that he was in the wrong"*. In other words, the evidence in the PCN is selectively, but not wholly, inaccurate and cannot be relied upon at all in the determination of this appeal.
 6. The E-on bills were clearly sent to the appeal property and demonstrate the consumption of electricity since 2017. There are significant gaps in the electricity bill evidence which cover only one quarter per year. Some are estimated bills and they are not evidence that the energy consumption relates to residential use, specifically and they do not relate to the period when the residential use allegedly commenced. However, the appellant stated that the bills are the only ones available.
 7. The Barclays letters provide background information only, illustrating that the appellant was receiving letters from the bank to the appeal property in May 2017 and October 2019. They do not form evidence of continuous residential occupation.
 8. The same applies to the invoices from Alan Stobart Lubricants and Fuels, showing that invoices were sent to Mr J Weir and delivered to the appeal property known as the Chicken Shed on various dates between 5 September 2019 and 7 January 2021. No earlier invoices corresponding to the alleged commencement of residential use are available.
 9. Mr Joe Weir's email dated 16 March 2023 provides a little background information but states that he has *"little proof of conversion as in evidence"*

prior to ten years” in terms of documentation. It contains no clear evidence of permanent residential occupation for a period of four years.

10. Conor Weir’s email dated 30 May 2023 states that Mr Weir moved out of the family home in 2014/15 and he lived in poor conditions in the Chicken Shed. However, the date is imprecise and there is no evidence of permanent occupation for the required period. Emails from the appellant’s other two children state that they lived with the appellant between February 2019 and May 2022 and in the Chicken Shed from February 2019 until present. However, one of the children admitted that the dates provided are “roughly accurate” which does cast some doubt over the accuracy of the evidence provided. A range of photographic evidence has been submitted to show occupation during these periods. It is clear to me that the photographs do show the appeal property in residential occupancy over a number of years, including a range of family activities taking place at the property at different times of the year. However, the body of evidence lacks precision and whilst they do provide some useful anecdotal evidence, some of the evidence such as the emails attract limited weight.
11. Photographs of the utility room, bathroom, heating system, hallway and other room dated 5 April 2018 show the appeal property but are not sound evidence of continuous occupation. In addition, two of the additional ground (d) photographs dated 30 December 2018 seem to show partially completed residential accommodation and another appears to show the ground floor storage area. Some of the additional photographs are undated whilst the others show different family activities taking place in the appeal property since 26 March 2020 and only cover part of the required four-year period.
12. In a case such as this more detailed statements or affidavits would be expected as evidence of permanent occupation, along with detailed supporting documentation. In this case there is little precise and detailed evidence in a form which attract weight sufficient to discharge the burden of proof. Therefore, the appeal on ground (d) does not succeed.

The appeal on ground (a)

13. The ground of appeal is that planning permission should be granted. The main issues with regard to the appeal on ground (a) are:
 - i. Whether or not the development comprises sustainable development in accordance with national and local planning policy, having particular regard to the reuse of existing buildings; and
 - ii. Whether or not the principle of new open market housing is acceptable in this location.
14. Critical to the assessment of the main issues is the determination of whether or not the appeal site is situated within a Cluster community as defined by Policy 02 (Spatial Strategy) of the Living Lakes - Your Local Plan Lake District National Park Local Plan 2020-2035 Adopted May 2021 (the LP). The Policy states that the overall spatial strategy will be achieved by supporting development that accords with the hierarchy of settlements set out and is of a suitable scale and nature and proportionate to the size and population of the settlement, among other detailed requirements. The appellant argues that the appeal site is within a cluster community which is defined as a small settlement or group of settlements which collectively or individually have limited local,

serviced and facilities or have easy access to such services in an adjacent Village or Rural Service Centre.

15. Borrowdale is a relatively remote rural valley which has the village of Rosthwaite/Stonethwaite at its southern end. The area around the appeal site has some scattered built development, comprising mainly hotels, guest houses, some dwellings, tourist facilities and agricultural buildings. The appellant argues that there is a range of community facilities in this part of the Borrowdale Valley, including some within walking distance, including the Borrowdale Hotel with public bar and restaurant, Leathes Head Hotel with a public restaurant, Lodore Hotel with public bar and spa, bus stop with all-year service and Grange Village with a church and tea room. In addition, there is a bus service to Rosthwaite/Stonethwaite every hour and therefore it is argued that there is easy access to a range of other facilities there.
16. There is no settlement focus in the immediate vicinity, and this part of Borrowdale has the character of countryside. In my judgement it does not constitute a small settlement or part of a wider group of small settlements and therefore, irrespective of whether or not it has limited local services and facilities or easy access to such services and facilities in an adjacent village or rural service centres, it cannot by definition, be a with a Cluster community. Therefore, the site is located within designated open countryside.
17. Within the open countryside Policy 02 states that proposals for development will only be supported where it demonstrates that it is, among others, an appropriate extension or reuse of an existing building. The Authority will support the reuse of buildings for residential purposes where the building meets a set of criteria. All the criteria need to be met to meet the policy requirements. These relate to the contribution to the landscape character or historic environment, being structurally sound and capable of conversion, not changing its character, being large enough to accommodate the use and being easily accessible to the road network.
18. It is my understanding that the building was originally permitted for agricultural use and its design and overall appearance reflect this. It is not a traditionally built structure and it is not particularly visually prominent within its high quality rural landscape setting. It does not make a positive contribution to the landscape character of the Borrowdale valley. The appellant argues that there is nothing in the policy which states that to be suitable for reuse the building must make a *positive* contribution to the landscape character. However, it is clear to me that one of the key strands of the National Park Authority's overall spatial strategy is to protect or enhance the authenticity, integrity and significance of the Lake District by carefully locating and designing new development so that they respect the statutory purposes which underpin the status of the Lake District as a National Park. Therefore, it would not make sense for the policy to be interpreted in a way which open up any building for conversion, irrespective of its contribution to the landscape quality of the National Park.
19. Policy 02 states that in the open countryside development will only be supported where the application demonstrates an essential need for a rural location. In this case the appellant made it very clear that he is not arguing essential need and therefore there is no need for me to undertake a detailed assessment of that matter.

20. Therefore, I conclude that the development does not comprise sustainable development in accordance with national and local planning policy, having particular regard to the reuse of existing buildings. Therefore, there is conflict with Policy 02 of the LP and the Framework.
21. The appellant has also argued that the LP supports the redevelopment of an existing building where it can be demonstrated that the development would result in an enhancement of the landscape character and enhance its immediate setting, among other objectives. However, the LP defines redevelopment as building new construction on a site that has pre-existing uses or renovating existing uses on a site. Consequently, the development before me does not fall into that category.
22. Based on identified housing need, provision will be made for a minimum of 1,200 new permanent homes within the National Park between 2020 and 2035 to increase the supply and meet local community need. There is no dispute that there is a housing need in the area, but that needs to be achieved in the right place. In the absence of any argument that the current proposal meets an essential local need, the development in the open countryside does not meet the criteria set out in the LP and therefore is not acceptable in principle. In coming to this conclusion, I have taken account of the appellant's detailed evidence on housing need and delivery, including the prevalence of second homes in Borrowdale and the availability of the limited number of homes available for social rent or shared ownership. I have also taken account of the suggested condition regarding local occupancy. However, the development remains contrary to the LP and in particular the unsuitability of the location for residential development in this case.
23. Therefore, on this issue I conclude that the principle of new open market housing is not acceptable in this location and conflicts with Policy 15 of the LP and the Framework.

Other matters

24. In addition, the Authority considers there to be other matters material in determining the appeal on ground (a). These are:
 - i. The effect on the River Derwent and Bassenthwaite Lake Special Area of Conservation; and
 - ii. Whether or not the development provides satisfactory living conditions for current and future occupants with particular reference to natural light.

Nutrient Neutrality

25. The appeal site is situated within the area designated by Natural England as the River Derwent and Bassenthwaite Lake Special Area of Conservation. The development is for a new dwelling served by a waste-water system and therefore any potential adverse effects as a result of additional nutrient loads, needs to be considered under the Habitat Regulations Assessment. Water quality is a contributing factor towards the protected site and additional water which discharges into the catchment via either wastewater treatment plant or on-site package treatment may contribute to excessive levels of nutrients.
26. Policy 04 of the LP relates to biodiversity and geodiversity and states that proposals will only be supported which would have significant and harmful

direct or indirect effects on biodiversity and ecosystem s processes where the need for the development clearly outweighs the harm caused and an appropriate scheme is proposed which will secure compensation and net increases in biodiversity. In addition, the Framework states that planning decisions should contribute towards and enhance the local environment by protecting sites of biodiversity value in a manner commensurate with their status and prevent new development from contributing to water pollution.

27. Natural England has provided a method for assessing the effect of development on Nutrient Neutrality and on the basis of such an assessment the appellant contends that no mitigation is required. The development would generate wastewater from overnight use which is likely to be discharged into the habitat catchment site. The total nutrients that would be discharged has been calculated at 1.01 kg TP (total phosphate) per year. The calculation also states that there would be no change in land use of the drainage area and there would be no net increase in nutrients to the habitat catchment site. Consequently, it is argued that the development would not generate additional nutrients and mitigation is not required.
28. However, the appellant also acknowledges that the Authority will argue that the Natural England methodology applies only to lawful development or that to which enforcement action is not pending but to do so is more a planning policy issue rather than an approach based on science. However, the approach taken but the appellant appears to me to be flawed because the baseline for the calculation of any net increase in nutrients should surely be the situation as it stands not accounting for unauthorised development such as the one the subject of the current appeal. That being the case, there is net additional nutrient increase beyond the baseline position and mitigation is therefore required.
29. The appellant argues that having cows in a field would result in a significant increase in nutrient discharge into the catchment compared to the current development and indeed the use of the building for residential purposes is likely to generate less discharge than the authorised agricultural use. However, there is no evidence that is the case and based on the likelihood of the development resulting in a net increase in nutrient output into the catchment it is likely that some mitigation is required. Therefore, having taken account of the evidence submitted by both main parties I conclude that there is insufficient evidence for me to conclude that the development would not have a harmful effect on the River Derwent and Bassenthwaite Lake Special Area of Conservation. As such there is conflict with Policies 01 and 04 of the LP, the Framework and the Conservation of Habitats and Species Regulations 2017.

Living conditions

30. The Authority argues that there are few external openings in the appeal building and some are covered by timber cladding which has been added to its upper walls. Consequently, it is contended that levels of natural light in the habitable rooms is very limited resulting in there being a poor standard of living conditions for occupants.
31. At my site visit I noted that each of the bedrooms has a window or rooflight providing satisfactory levels of natural light. In addition, the main living space, incorporating the kitchen/dining area and living room has numerous windows

- and other openings, including full height windows and doors, creating a relatively large, open and airy space which is well-served by natural light. I noted that some of the windows and openings are partly obscured by timber panelling or cladding, but that does not reduce natural light levels to an unacceptable degree.
32. Therefore, on this matter I conclude that the development provides satisfactory living conditions for current and future occupants with particular reference to natural light and in this regard, there is no conflict with Policy 06 of the LP and the Framework.
33. The Planning Policy Statement (PPS) on Green Belt protection and intentional unauthorised development issued by the Secretary of State on 31 August 2015 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 National Planning Policy Framework or PPG. This relates to all development and it is not restricted to those situated within the Green Belt. The appellant argues that it cannot apply in this case because the appellant has made previous applications.
34. It is my understanding that he has not paid Council Tax on the property and furthermore, timber cladding has been added to the upper area of the external walls which screens domestic features such as window openings. The appellant has also clearly stated that when he completed the PCN dated he did not want it to be found out that he was in the wrong and that the evidence provided in the PCN is selectively, but not wholly accurate. Therefore, in this case it appears to me that the appellant has sought to deliberately conceal the unauthorised development that has taken place by failing to pay Council Tax, by providing inaccurate evidence and by partly cladding the building to hide domestic features. Therefore, I give the PPS some weight in the determination of this appeal.
35. Personal circumstances are frequently pleaded in favour of a grant of planning permission in enforcement appeals, and it is well-established that the 'human factor' may be material to planning decisions. My attention has been drawn to a recent appeal¹ which was allowed, having apparently turned on the personal need involved. In this current appeal the appellant is clearly not claiming an ongoing personal need, but I understand his situation and desire to live in Borrowdale with his family where he has always lived. I have taken account of his personal circumstances, but these do not outweigh the harm that I have identified above.
36. Therefore, although the appellant argues that without intentional unauthorised development as a material consideration there is sufficient policy support for the appeal to be allowed, I find that there is conflict with the development plan as a whole and the appeal on ground (a) does not succeed.

The appeal on ground (f)

37. 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 the enforcement notice are set out in s173 of the Act and are to remedy the breach

¹ APP/X0415/C/22/3293635

of planning control (s173(4)(a)) or to remedy injury to amenity s173(4)(b)). Since the notice requires the use of the building as a dwellinghouse to cease, the removal from the building all fixtures and fittings that facilitate the unauthorised use and removal of all materials resulting from compliance with the other requirements, the purpose is to remedy the breach. Allowing any part of the unauthorised use the former agricultural building to a single dwellinghouse comprising (on the ground floor) domestic storage and (on the first floor) residential accommodation would not achieve that purpose. In this respect the appeal on ground (f) fails.

38. Nonetheless I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) included in the appeal it would be possible to grant planning permission for part of the development. The appellant has suggested that the enforcement notice has not been made to prevent domestic storage and materials and goods used in the inhabited part of the building should not be prevented from being stored in the building should that be the most practical course of action to take. However, the Notice is quite clear that the unauthorised use includes both domestic storage and residential accommodation, both which are required to cease. Thus, storage is prohibited by the Notice and the lesser step suggested by the appellant would not achieve the purpose. Therefore, the appeal on ground (f) does not succeed.

The appeal on ground (g)

39. The ground of appeal is that the time given to comply with the requirements is too short. The two months given would be sufficient to cease the use of the building as a dwellinghouse, remove all fixtures and fittings and remove all materials from the Land. The 12 month compliance period suggested by the appellant would be excessive given the ongoing harm caused by the development. However, I consider the period should be extended to allow the appellant to find alternative accommodation and an alternative authorised use for the property through the planning process. In this respect I consider eight months would strike the appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

Formal Decision

40. The enforcement notice is varied by the deletion from paragraph 6 of the words "two months" and the substitution therefor of the words "eight months" as the time for compliance with the requirements.
41. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joseph Weir	Appellant
Tom Woof	Prospus Consulting
Tiger Weir	
Sophie Weir	

FOR THE LOCAL PLANNING AUTHORITY:

Julie Birkett
Kevin Richards