



Appeal Decision

Site visit made on 5 September 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2023

Appeal Ref: APP/Q9495/C/22/3310592

Land lying to the south of Brown Howe, Water Yeat, Ulverston

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr James Barratt, Barratt Limited against an enforcement notice issued by Lake District National Park Authority (the Authority).
- The enforcement notice was issued on 28 September 2022.
- The breach of planning control as alleged in the notice is, without planning permission, operational development comprising the formation of hard surfaces by way of the laying of crushed slate aggregate in the approximate positions marked in black hatched lines on the attached Plan 2.
- The requirements of the notice are:
 1. Remove the crushed slate aggregate from the Land; and
 2. Reinstate the Land to its condition before the breach of planning control took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed. and the enforcement notice is upheld in the terms set out below in the Formal Decision.

The appeal on ground (c)

1. An appeal on ground (c) is made on the basis that those matters stated in the notice as constituting a breach of planning control, do not constitute a breach of planning control.
2. S171A(1) of the Act defines a breach of planning control as including, (a) carrying out development without the required planning permission. There is no dispute between the parties that the hard surfaces amount to development under S55(1) of the Act. I see no reason to conclude otherwise. The ground (c) appeal therefore turns on whether the development was granted planning permission at the time the notice was issued.
3. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for those classes of development defined as 'permitted development' under Schedule 2 of that order.
4. The appellant states that the Land has been recently acquired as a long-term investment to provide access to Coniston for recreation. It is said that the

maintenance of the Land will be achieved in the future through the stewardship of a local farmer grazing sheep on an annual licence. Thus, the appellant says, the hardstanding is granted planning permission by Article 3(1) of the GPDO as the development is classed as 'permitted development' under Class B of Part 6 of Schedule 2.

5. Class B(e) of Part 6 of Schedule 2 does indeed state that the provision of a hard surface is permitted development. However, it is only where that hard surface is carried out on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares.
6. The appellant has provided no evidence which demonstrates that, at the date the notice was issued, the Land was in agricultural use as part of an agricultural unit of such size. Indeed, the appellant's submissions are clear that an agricultural use of the Land is proposed in the future. The corollary of that is that there is no current use of the Land for agriculture. Whilst the use of Land for agriculture does not constitute development under S55(2)(e) of the Act, there nevertheless must be some evidence of actual agricultural use, as opposed to notional use, for the Land to fall within the scope of Class B of Part 6 of the GPDO. As a result, in this instance the hard surfaces would not fall to be considered as 'permitted development' and would not have been granted planning permission by Article 3(1) of the GPDO at the date the notice was issued.
7. In the absence of any evidence of any other planning permission having been granted for the development, I find that, at the date the notice was issued, the operational development comprising the formation of hard surfaces by way of the laying of crushed slate aggregate was a breach of planning control.
8. The appeal on ground (c) therefore fails.

The appeal on ground (d)

9. An appeal on ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice.
10. S171B(1) of the Act sets out that, where there has been a breach of planning control consisting of operational development on land, no enforcement action may be taken after a period of four years beginning on the date on which the operations were substantially completed. As such, in order for the appeal on ground (d) to succeed, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the hard surfaces were substantially complete on or before 28 September 2018.
11. The appellant states that the element of hard surfacing adjacent to the highway was in place when they purchased the Land. The appellant has provided a satellite image dated 30 June 2018 which they say shows the hard surfaces. However, the image shows only a small grey area close to the access to the site. It does not provide any indication of hard surfacing existing to the same extent as that subject of the notice.
12. The appellant also points to sales particulars for the Land which it is said show an image depicting the hard surface. However, the image is undated, and, in any event, the particulars were prepared on 5 July 2021, which does not assist in demonstrating substantial completion prior to 28 September 2018.

13. Moreover, the image shows only a small element of hard surface adjacent to the access to the Land. It does not depict the full extent of the hard surface which is subject of the notice. Thus, if anything, the image, like the satellite photograph, shows at best that only a small element of the hard surface was in place at that time. It does not demonstrate that the full extent of the hard surfaces subject of the notice was substantially complete at the time that image was taken.
14. Furthermore, the appellant states, in their submissions in respect of ground (a), that the substantive permeable hard surfaces were formed after Storm Arwen, between 25 November and 29 November 2021, had felled trees on the eastern portion of the Land and that the existing hardstanding nearest the highway was increased in size to allow vehicles to turn off the highway. This contradicts the appellant's claim the hard surfaces were substantially complete before September 2018.
15. Moreover, the Authority has provided two images dated 4 May 2022 which appear to show a large truck depositing aggregate on the Land. One of the images shows that a significant quantity of the aggregate has been formed into a hard surface close to the access to the Land. That hard surface is much greater in its texture and the extent of Land it covers than the hard surface shown in the appellant's images. The Authority has also provided a satellite image dated 14 May 2019 which shows the hard surfaces subject of the notice were not substantially complete at the date the image was taken.
16. As a result, the appellant has not demonstrated, on the balance of probabilities, that at the date the notice was issued, the Authority could not take enforcement action against the formation of the hard surfaces on the Land because the time for taking action under S171B(1) had expired.
17. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed application

18. An appeal on ground (a) is made on the basis that planning permission ought to be granted for the matters which constitute a breach of planning control stated in the notice. Where there is an appeal on ground (a), an application for planning permission is deemed to have been made for the development stated in the notice as constituting a breach.

Main Issues

19. The main issues are:

- The effect of the development on the landscape of the Lake District National Park and the outstanding universal value of the English Lakes World Heritage Site, including the effect on protected trees.
- The effect of the development on biodiversity.

Landscape

20. The Land lies within the Lake District National Park which is a landscape designation of national importance. Paragraph 176 of the National Planning Policy Framework (the Framework) makes clear that great weight is to be given to conserving the landscape and scenic beauty of National Parks. Likewise, the

Land lies within the English Lake District World Heritage Site (the WHS), a designation of international importance.

21. The Lake District is characterised by its dramatic natural topography with deep valleys, steep fells and expansive lakes. Likewise, the landscape is a distinctive fusion of natural landscape and human settlement, featuring large swathes of historically established upland farming with bustling towns and villages sitting alongside dense woodlands and meandering rivers. It is those features of the natural, cultural, agrarian and settled landscape which are key attributes of the Outstanding Universal Value of the WHS.
22. The appeal site lies on the western side of Coniston Water, one of the large lakes from which the Lake District not only derives its name, but its national and international physical, social and cultural importance. The Land is characterised by gently sloping fields which extend from the A5084 down to the shore of Coniston Water. The Land itself is relatively open and free of built form. Otherwise, it is surrounded by the dense woodland which characterises the southern end of the lake. This dense woodland, combined with the lack of built up settlements and the natural character of the locality, contributes to a high degree of tranquillity in the area.
23. The trees comprising the woodland immediately adjacent to the Land to the north are protected by a Tree Preservation Order (TPO). The woodland is characterised by dense, mature trees many of which are located immediately adjacent to the boundary of the Land.
24. In light of the above, I find that the Land itself, along with the TPO trees to the north, make a substantial, positive contribution to both the landscape and scenic beauty of the LDNP and the outstanding universal value of the WHS.
25. The development has introduced the replacement of natural vegetation with a considerable area of hardstanding. Whilst I note the hardstanding was laid with local stone, it nevertheless appears as an incongruous intrusion into an area of land which was previously free of substantial built form. Moreover, the introduction of the hardstanding has substantially diminished the positive contribution to the LDNP and WHS that the open and natural characteristics of the Land made.
26. Furthermore, part of the hardstanding has been laid within the root protection area of some of the TPO trees in the woodland to the north. There is no evidence before me which demonstrates that the development will not detrimentally impact upon the integrity of the trees. As a result, there is the potential for the hardstanding to negatively impact upon the trees to the extent that they would be damaged or removed. The loss of such trees would be substantially harmful to both the surrounding landscape and the universal value of the WHS.
27. I conclude, therefore, that the that the development will have a harmful effect on the landscape and scenic beauty of the National Park and will fail to protect the outstanding universal value of the WHS. The development will, as such, conflict with Policies 01, 02 and 06 of the Lake District National Park Local Plan 2020-2035 (the LP) which seek to conserve and enhance the natural beauty of the landscape, the attributes of outstanding universal value and restrict development in the open countryside. It will also conflict with LP Policies 06

and 24 which require development to reinforce the importance of local character and only permit lakeshore development in certain circumstances.

Biodiversity

28. Policy 04 of the LP states that the Authority wants to protect important habitats, sites and species by supporting proposals which conserve and enhance biodiversity and ecosystems processes. The Policy sets out it will do this by, in part, only supporting proposals which would have significant and harmful direct or indirect effects on biodiversity and ecosystems processes where: the needed for the development clearly outweighs the harm and an appropriate scheme is proposed which will secure compensation and net increases in biodiversity.
29. Part of the Land lies within the locally designated Sliving Moss Field County Wildlife Site. The Land also forms part of the shoreline of Coniston Water which is also a locally designated County Wildlife Site.
30. Circular 06/2005¹ states that, *"it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"*. The Circular goes on to state that surveys should only be required where there is a reasonable likelihood of species being present.
31. The Land is predominately marshy grassland and lies adjacent to dense woodland and a lake. It thus seems to me that there is a reasonable likelihood of protected species using the Land. Therefore, an ecological survey is necessary to establish the presence of protected species, the extent they may be affected by the development and any mitigation measures necessary.
32. No such survey has been provided. As a result, I am unable to assess any effects on biodiversity. Given that Policy 04 of the LP seeks to protect habitats, sites and species, in the absence of being able to conclude that is the case, I must conclude the development will likely result in significant and harmful direct effects on biodiversity in conflict with Policy 04 the LP. There is also conflict with paragraph 174 of the Framework which states that planning decisions should protect and enhance sites of biodiversity value.

Other Matters

33. I note that the hardstanding has been done to facilitate ease of access to the lake shore for water sports recreation. However, such benefits do not outweigh the combined harm arising from the matters discussed above.

Conclusion

34. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

35. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed

¹ Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system

- what is necessary. S173(4) of the 1990 Act sets out that the purpose of an enforcement notice can be: (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach.
36. The notice alleges the formation of hard surfaces by way of the laying of crushed slate aggregate. It requires the removal of the crushed slate aggregate from the Land and the reinstatement of the Land. As a result, it seems to me that the purpose of the notice is to remedy the breach of planning control by restoring the Land to its condition before the breach took place.
37. On that basis, there are no lesser steps other than removal of the crushed slate aggregate and restoration of the Land to its former condition that would remedy the breach.
38. The appellant's case on ground (f) is that the hard surfaces are permitted development or ought to be granted planning permission. However, the appeals on ground (c) and ground (a) in respect of those points have failed. The appellant states that the hard surfacing ought to be only reduced to its original configuration. However, as can be seen from the appeal on ground (d), the appellant has not demonstrated, on the balance of probabilities, that there was hard surfacing on the Land prior to the breach taking place. In any event, any hard surfacing which existed prior to the breach taking place and against which the notice is not directed would be unaffected by the requirements. Moreover, a requirement to reinstate previous hard surfacing not part of the breach would be excessive. On the other hand, if any previous hard surface did exist and formed part of the breach, then a requirement which would allow part of the breach to remain would not remedy the breach of planning control.
39. The appeal on ground (f) therefore fails.

J Whitfield

INSPECTOR