



Appeal Decision

Site visit made on 3 October 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th November 2023

Appeal Ref: APP/C9499/C/22/3305909

Land at Fell End Chapel, Kirkby Stephen, Ravenstonedale CA17 4LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A M Atkins against an enforcement notice issued by Yorkshire Dales National Park Authority.
 - The enforcement notice, numbered EE/12/12, was issued on 18 July 2022.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref E/12/69 granted on 12 February 2021.
 - The development to which the permission relates is: the conversion of a traditional barn to a dwelling and the installation of package treatment plant.
 - The condition in question is no 2 which states that: The development shall be carried out in accordance with the details indicated in the following drawings/documents: Application Form; Design Statement; Heritage Statement, all received 30 September 2020; Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020; Location Plan 1810_PA_03 Rev 0, received 10 February 2021.
 - The notice alleges that the condition has not been complied with on the following grounds:
 - (i) An area of hardstanding for car parking has been created in a different location to that shown on approved drawing 'Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020'
 - (ii) The package treatment plant has been installed in a different location to that shown on drawing 'Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020'
 - (iii) An access to the highway has been created in a different location to that shown on drawing 'Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020'
 - (iv) Engineering and building operations have been carried out on the land to the south and west of the barn, namely the following:
 - An area of land has been levelled and extended by cutting in to the adjoining hillside;
 - Level terraced areas have been created by cutting into the adjoining hillside and reconfiguring land levels;
 - Precast concrete blocks have been laid and stone walling constructed to retain the hillside
- being development not shown on the approved drawings and documents referred to in Condition No 2 of the Permission.
- The requirements of the notice are to:
 - 5.1 Dig up the hardstanding used to create the car parking area and reinstate the affected area to its former condition by covering with topsoil and reseeding with grass.
 - 5.2 Remove the package treatment plant from the land and reinstate the affected area to its former condition by covering with topsoil and reseeding with grass.
 - 5.3 Block off the access referred to in paragraph 3(iii) above by reinstating the dry stone walling using materials to match the adjoining dry stone walling.
 - 5.4 Remove the pre cast concrete blocks and associated walling referred to in paragraph 3(iv) above from the land.

5.5 Reinstatement of the land to the west and south of the barn referred to in paragraph 3(iv) above by reconfiguring the ground levels to those existing prior to the unauthorised engineering operations and reseed the affected areas with grass.

- The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.
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Decision

1. It is directed that the enforcement notice is corrected as follows:

Section 1 is corrected by the deletion of 'paragraph (b) of section 171A of the above Act' and replaced with 'paragraphs (a) and (b) of section 171A of the above Act'.

Section 3 – THE BREACH OF PLANNING CONTROL ALLEGED is deleted in its entirety and substituted with the text set out in Annex 1 attached to this Decision.

Additionally, the Notice is varied by:

Section 6 – TIME FOR COMPLIANCE is varied by deleting the words 'Six months' and substituting with 'Eight months'.

2. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

3. The allegations in Section 3 of the Notice includes development alleged not to have been carried out in accordance with the approved plans associated with planning permission ref. E/12/69 (the Permission). They also include unauthorised works that fall beyond the scope of development described in that planning permission, and that lie outside of the defined site subject of it. The allegation does not therefore accurately distinguish between works carried out not in accordance with the requirements of a planning permission and those that are otherwise unauthorised. Accordingly, I have amended the layout of Section 3 as attached at Annex 1, to provide the distinction and for clarity.
4. Subsequent to those changes, I find no injustice would arise to either party by my alternative definition of the allegations as the thrust of those allegations remain the same and the submissions of the main parties address the matters referred to in them regardless.
5. Pursuant to the above, Section 1 of the Notice is amended to reference both paragraphs (a) and (b) of section 171A of the Act. This encompasses both the development carried out without planning permission and that described as failing to comply with any condition or limitation subject to which planning permission has been granted.
6. Section 4 – Reasons for Issuing the Notice, refers to the breaches of planning control appearing to have occurred within the last ten years. However, given my approach of separately defining some operational development as falling

outside the scope of the Permission, those alleged breaches would be subject to the 4-year limit set out in s171B(1) of the TCPA 1990. Nevertheless, as there is no dispute between the main parties that the works remain incomplete, no prejudice arises from that omission in the Notice.

7. The appellant highlights the fact that there was no topographical plan provided with the planning application such that he considers that it is unclear as to what exactly is required by the Notice in reinstating affected areas to their former condition. However, it is well established¹ that the requirement to restore a site to its previous condition is a valid requirement and is not bad in law. As the person responsible for carrying out the unauthorised works, the appellant would be aware of the starting position. Accordingly, I find the steps specified in the Notice are reasonable and clear.

Preliminary Matters

8. The Notice sets out the alleged breaches of planning control in detail. In their appeal submissions, the main parties have also referred to an alteration to one of the building's openings that is not shown on the approved plans associated with the Permission. However, as it does not form part of the allegation in the Notice, it is outside the scope of this appeal. I will not therefore refer to that matter further in this Decision. For the avoidance of doubt, nothing in this appeal should be read or inferred as to prejudice either party in regard to that excluded matter.
9. There is some dispute between the main parties as to the extent of the residential use of land permitted under the Permission. This principally derives from an annotation of 'garden' on approved plan Ref. 'Proposed Conversion 1810_PA_01 Rev 2', stamped amended 17 December 2020, as referenced in the Decision Notice. The annotation is centred on a small triangle of land adjacent to the southern gable of the building to be converted to residential use.
10. A planning permission should stand by itself, and the meaning should be clear to any reader within the four corners of the document. If any ambiguity arises then, following caselaw², a pragmatic approach must be applied to the interpretation of the planning permission.
11. Also explicitly referenced in the Permission is approved plan reference 1810_PA_03 Rev 0, stamped as amended 10 February 2021. This is the location plan identifying the land to which the application relates, as required by statute³. It shows the extent of the planning application site outlined in red. In this case, it was provided by the appellant and replaced a previous site plan during the course of the National Park Authority's (the NPA) consideration of the planning application. The superseded site plan showed an alternative larger application site and the remainder of the land subject to the Notice as being in the ownership of the appellant (edged blue).
12. Paragraph: 024 Reference ID: 14-024-20140306 of the Planning Practice Guidance (PPG) in relation to location plan requirements states: 'The application site should be edged clearly with a red line on the location plan. It

¹ *Lipson v SSE* [1976] 33 P&CR 95 and *Ormston v Horsham RDC* [1965] 17 P&CR 105

² *Wood v SSCLG & the Broads Authority* [2015] EWHC 2369 (Admin) and *University of Leicester v SSCLG & Oadby & Wigston BC* [2016] EWHC 476 (Admin).

³ TCP (Development Management Procedure) (England) Order 2015 Part 3 Article 7(1)(c)(i)

should include all land necessary to carry out the proposed development (eg land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.' The blue land is therefore merely identification of ownership.

13. In cross referencing the annotation with the location plan, it lies outside of the defined red edge of the application site. This is common with other annotations on the proposal plan. The position of the word 'garden' is alongside the delineated southern extent of the permitted frontage garden area described in the officer's report - such that it appears similarly offset from the feature it describes (as are the other annotations on that plan). In that context, I find the weight to be applied to the location plan showing the extent of the land for which planning permission was sought to be definitive. Moreover, there is little before me to demonstrate that the additional land (edged blue on the earlier plan) benefits from any permitted or established use for that purpose.
14. On 5 September 2023 the Government published a revised version of the National Planning Policy Framework (the Framework). However, the policies relating to the conservation and enhancement of the natural and historic environments, highway safety and design that are relevant to this appeal have not changed and there was no need, therefore, to invite the parties to make further submissions in response to the revisions.

The appeal on ground (a) – the deemed application for planning permission

Main Issues

15. The main issues are:

- whether Condition 2 is reasonable in the interests of defining the extent of the Permission,
- the effect that removing or varying the condition to encompass the alleged breaches of Condition 2 and/or the unauthorised works would have on the character and appearance of the locality, the historic environment, highway safety and the statutory purpose of the Yorkshire Dales National Park (the NP).

Reasons

Condition 2

16. Condition 2 of the Permission details the relevant plans on which the NPA made its decision. The reason for imposing the condition is stated as 'To define the plans/details to which this permission relates'. It is a standard form of condition. It defines the site and the detail of operational development for which planning permission was granted. It serves to provide certainty for all parties. This is particularly so where plans have changed during the course of the local planning authority's consideration of the proposals. It also allows for the variation of the permission under the terms of s73 of the Act.
17. Whilst I acknowledge that some uncertainty might arise from the way the proposed site plan is annotated, as above, the permission must be interpreted

within its 4 corners and with regard to the referenced associated material. As I have found, this provides the necessary certainty as to the development permitted in this case. It is sufficiently precise to be enforceable, is necessary and reasonable in all other respects. Accordingly, I find the condition meets the legal tests and those set out in Paragraph 56 of the Framework and the PPG in terms of the use of planning conditions.

Character and appearance, including that of the historic environment and the NP

18. The appeal site includes a former chapel building siding on to Murthwaite Lane and set a short distance back from a stone wall and pedestrian access gate fronting on to the A683. The building consists of a coursed stone frontage with quoined corners and stone surrounded arched head windows and door. A date stone above the front door shows the year 1861. Other elevations are random stone below a gabled slate roof. Small adjuncts have been added to the northern gable. The building is regarded as a non-designated heritage asset by the NPA, a matter which is not contested by the appellant.
19. The NPA's evidence shows that, with the exception of the small front area which was previously fully enclosed and lawned, the land about the building was open undeveloped rough grassland only enclosed along the road frontages. The wider appeal site was therefore fully assimilated with the appearance of the surrounding areas of rough grazing land set in the lower part of the valley landscape framed by rising fells either side of the main road.
20. The simple form and modest scale of the building, along with the limited associated land-take and position close to the road junction would therefore have been relatively benign in the landscape. As a building that reflects part of the cultural heritage of the area, this arrangement was consistent with the NPA's commentary stating that 'a key feature of the chapels in this area is that they enjoy an almost symbiotic relationship with their landscape settings in that they intrude very little on the visual amenity'.
21. In that context, the limitation to additional land within the terms of the Permission, to allow for the installation of a package treatment plant (PTP) and a parking area in association with the residential conversion of the building, was to limit any adverse effect on the landscape setting of the non-designated heritage asset and to accord with requirements in the development plan.
22. Within the Permission site, the approved location of the parking area and PTP immediately to the rear (west) of the building has been excavated to lower the ground adjacent to the building and Murthwaite Lane. A significant retaining wall consisting of layers of large concrete blocks with a concrete capping has been installed returning beyond the line of the southern gable of the building and alongside the side road.
23. The block wall retains the displaced lower edge of the parking terrace roughly levelled with the carriageway on Murthwaite Lane. In its current state, this has a rough hardcore surface and is cut into the hillside topography. A low concrete retaining wall has been installed following the regrading of the higher land along its western boundary. The elevated position substantially beyond the Permission site and more distant from the building is more obtrusive in the landscape and reduces any screening effect afforded by the former chapel.

24. The PTP has been alternatively sited close to the frontage wall about half-way between the building and the southern extent of the Land. It is therefore at some distance from the approved residential unit. At the time of my site visit an inspection hatch and exposed groundworks associated with the PTP were visible behind the roadside wall of the A683. It constitutes part of works forming the wider levelled area surfaced with loose stone and gravel. The expansive area is bordered to the south and west by a continuation of the large blockwork retaining wall which doglegs to terminate close to the south-eastern corner of the Land.
25. To the west of the retaining wall the land has been regraded and includes exposed earth faces and another levelled area part way up the slope rising to the site's western boundary. The construction of the various retaining walls, changes to land levels, laying of hardcore and alternative siting of the PTP appear as significant engineering operations in areas of previously undeveloped land to the west and south of the building. The introduction of those man-made features and unnatural topography contrasts starkly with the surrounding semi-natural landscape and completely changes the setting of the former chapel.
26. Those visual effects are compounded by the opening up of the Land's frontage through the formation of a wide break in the roadside drystone wall – a characteristic linear feature in the area. Although distant views of the site are somewhat contained by the local topography and groups of nearby trees, the works are clearly visible on the approaches along the main road, along the site's frontages and from nearby public footpaths.
27. Whilst some visual change would inevitably be wrought by the alternative use of the building as a dwelling, against its modest scale and limited curtilage, the external ground works are extensive. They significantly diminish both its sense of isolation and the characteristic simple landscape setting of the former chapel. In the context of the NP, as a designation of the greatest importance and highest status of protection in relation to its scenic beauty and landscape character, the magnitude of change caused by the works is significant and adverse.
28. I recognise that the ground levelling and formation of alternative access points may have facilitated the conversion works by providing temporary storage and parking facilities. However, the associated removal of material, surfacing and the installation of substantial retaining features are neither of a temporary nature, designed to minimise their effect on the landscape, nor sensitive to the location.
29. The appellant contends that a condition could be applied to any grant of planning permission to allow for the post-conversion completion of works in agreement with the NPA. It is asserted that this could include the regrading of the land to the south to form embankments, levels, cladding of the retaining structures and landscape planting to maintain the significance of the rural setting in agreement with the NPA. However, this is proposed on the premise that the land to the south of the building forms part of the approved residential garden area such that, it is claimed, landscaping (including walls) and uncontrolled planting could be carried out as a relevant fallback position.
30. Whilst the implementation of the Permission has restricted some means of enclosure, I acknowledge that planting could be carried out across the land without further recourse to any approval. However, on the limited evidence

provided, I am not persuaded the retention of the unauthorised works, both within and outside of the Permission site, could be assimilated in the manner suggested sufficient to address the harm I have identified.

31. Even if the concrete block retaining walls were clad in stone to reflect local drystone walls, their various heights and angled arrangements, and their prolific use to provide a succession of unnatural levels would nevertheless appear incongruous.
32. In the alternative, there is little to demonstrate that the works could be retained in a manner to reinstate an undeveloped appearance to the land outside of the Permission site, or suitably limit the visual effect of the works within it. Accordingly, I find that a condition would not be effective or a realistic proposition to make the development acceptable in planning terms. It would not therefore be appropriate to impose it as it could undermine the benefit of any permission it was attached to and fail the test of reasonableness, as set out in Paragraph 56 of the Framework.
33. The appellant indicates that a condition could impose greater control over the appearance of the Land than could otherwise be achieved by the Notice. However, it is not within the ambit of the appeal procedures to seek to impose any greater burden than addressing the matters concerned in the Notice.
34. Paragraph 177 of the Framework states that applications for development within National Parks should be refused for major development other than in exceptional circumstances, or where it can be demonstrated that the development is in the public interest. The appellant contends that works were necessary to address drainage concerns and prevent potential landslides in the locality. However, there is little substantive evidence provided to demonstrate that those matters presented a real risk to the approved development or on the wider site. It is not therefore an argument to which I attribute material weight.
35. I also note the appellant's contention that a finished landscaped area about the building would reflect and be commensurate with other residential properties. However, there is little to suggest those are converted buildings subject to additional policy requirements to preserve their setting, heritage or cultural value. Accordingly, the claim is a matter of limited weight in the appeal.
36. For the above reasons, I find that the nature and extent of the works undermine the characteristic minimal imposition of the former chapel on its remote rural landscape setting. They introduce incongruous features to previously undeveloped areas of the Land that unduly urbanise it and have thereby caused a significant adverse change to its rural character. The works conflict with Policies ENV2, ENV10 and RUR3 of the Eden Local Plan 2014-2032 as, amongst other things, they require development to conserve and enhance distinctive elements of the landscape character, avoid adverse effects on the local landscape and the local topography, and enhance the setting of non-designated heritage assets. It also conflicts with Policy UENDP1 of the Upper Eden Neighbourhood Development Plan which allows conversion of buildings providing ancillary works do not have an unacceptable impact on the visual and landscape amenity of the area.
37. For similar reasons, the development conflicts with the purposes of conserving and enhancing the natural beauty and cultural heritage of the area, and promoting opportunities for the understanding and enjoyment of the special

qualities of the NP by the public. It is thereby contrary to statutory purposes of the NP.

Highway safety

38. The site lies at the junction of Murthwaite Lane with the A683. Murthwaite Lane narrows to a single width no-through road serving a limited number of properties. In the vicinity of the site, the A683 is a free-flowing national speed limit road. The location of the access created in the roadside wall south of the building lies between 2 bends forming a gentle chicane in the main road alignment.
39. Along with the road configuration, the local topography and some roadside trees limit the forward visibility either side of the access on to the A683. The road geometry has been deemed sufficient to require double solid lines to be installed between the opposing carriageways along the Land's frontage, and beyond.
40. The achievable splays over land owned by the appellant or highway land have not been provided by the appellant. The position of the access between the apexes limits views in either direction. As above, it also limits the forward visibility of drivers/riders travelling towards the site to vehicles turning into or out of it. Furthermore, the arrangement is more hazardous than the approved accesses fronting Murthwaite Lane where traffic speeds and frequency will be significantly lower. Those access points would rely on the priority junction with the A683 which emerges on the outside of the northern apex to provide greater visibility and distance to the southern bend.
41. To avoid dangerous reversing manoeuvres in association with the access on to the A683, its use would require surfacing to facilitate vehicle turning within the site. For the reasons given above, views of hard surfacing through the formed opening would cause harm to the local landscape and setting of the building. In the absence of any highway safety (or other) justification to outweigh the identified harm, I find the development also conflicts with the Framework's requirement to provide safe access for all users.
42. The appellant agrees that the access could be narrowed or closed up to reinstate the roadside wall. As anything short of reinstatement is likely to result in some continued use of the access, albeit potentially more infrequent than during the conversion phase of the development, I find the requirements of the Notice would be the most effective way to prevent its long term use and reinstate the integrity of the characteristic boundary wall.

Conclusion on ground (a)

43. The effect of the works carried out in breach of Condition 2 of the Permission and unauthorised works outside of the Permission site cause harm to the landscape character in an area of the highest protection of its landscape quality. It undermines the setting of a non-designated heritage asset which reflects part of the cultural heritage of the NP. The retention of a direct access on to the A683 in a location more hazardous than the previously approved arrangement would elevate risks to highway safety.
44. Together, these are matters of significant weight which conflict with the development plan read as a whole. There are no other material considerations, including the Framework, to indicate a decision otherwise than in accordance

with the development plan. For those reasons, I conclude that the appeal on ground (a) should not succeed.

Ground (f)

45. To succeed on this ground the appellant must show that the steps required by the Notice to be taken exceed what is necessary to remedy the breach of planning control.
46. The appellant's suggested reprofiling of the land - to cover over and/or landscape the works would not remedy the identified breaches of planning controls. The works would persist and there is nothing before me to illustrate that such works could restore the land to its condition before the breach took place.
47. Pursuant to my findings on the ground (a) appeal and the absence of any other specified scheme proposed to remedy the harm identified in the Notice, there is no basis to consider an alternative form of development. This would prejudice one or more parties in the appeal. The appeal on ground (f) therefore fails.

Ground (g)

48. This ground of appeal is that the period for compliance specified in the Notice falls short of what should reasonably be allowed. The period for compliance specified in the Notice is 6 months.
49. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the Notice against the private interest bound up in the development subject of the Notice. In so doing, I must assume that the use of the land subject to the Notice does cause the harm alleged in it.
50. I note the appellant's contention that the NPA should provide surveyed plan details to inform the Notice requirements, which would take time to achieve. However, as I have found the requirements in the Notice to be sound and sufficient for the appellant to understand what is necessary to remedy the breach by making any development comply with the terms of any planning permission and/or by restoring the land to its condition before the breach took place, I do not find this a valid argument.
51. However, having regard to my conclusions above, the timing of this decision would require the necessary works to be carried out substantially during months of less favourable weather conditions. Whilst the necessary acts of demolition and land re-profiling are relatively straightforward, they are somewhat substantial in this case and could be significantly hindered by adverse weather given the location of the site.
52. The requested extension to the compliance period to 12 months would be inappropriate insofar as it would be tantamount to a temporary permission. However, I consider a modest extension reasonable to account of the site's more remote upland location.
53. The appeal on ground (g) therefore succeeds and the period for compliance with the Notice is extended to 8 months.

Other Matters

54. I note that the appeal site is located in close proximity to the River Rawthey, Eandale Beck and Sally Beck Site of Special Scientific Interest (SSSI), identified for its geological significance. Following the issue of a screening direction under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, on 01 November 2023, and having regard to the requirements in the Notice, I anticipate no likely adverse effect upon the SSSI. This is due to the nature of its designation and the site's separation from it.

Conclusion

55. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Hitchcock

INSPECTOR

The Enforcement Notice:

Correction to Section 3 THE BREACH OF PLANNING CONTROL ALLEGED

Breach of condition:

On 12th February 2021 full planning permission (ref.E12/69) ('the Permission') was granted for conversion of traditional barn to dwelling and installation of package treatment plant.

Condition No2

Condition 2 of the Permission states that:

'The development shall be carried out in accordance with the details indicated in the following drawings/documents:

Application form;

Design Statement;

Heritage Statement; all received 30 September 2020

Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020

Location Plan 1810_PA_03 Rev 0, received 10 February 2021'.

It appears to the Authority that Condition No2 has not been complied with in the following respects:

- (i) An area of hardstanding for car parking has been created in a different location to that shown on approved drawing 'Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020'
- (ii) The package treatment plant has been installed in a different location to that shown on drawing 'Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020'
- (iii) An access to the highway has been created in a different location to that shown on drawing 'Proposed Conversion 1810_PA_01 Rev 2, received 17 December 2020'

The approximate locations of the car parking area, package treatment plant and access are marked on the attached plan by 'x' 'y' and 'z' respectively.

Unauthorised operational development:

Engineering and building operations have also been carried out on the land to the south and west of the barn, namely the following:

- An area of land has been levelled and extended by cutting in to the adjoining hillside;
- Level terraced areas have been created by cutting into the adjoining hillside and reconfiguring land levels;
- Precast concrete blocks have been laid and stone walling constructed to retain the hillside.

END.