



Appeal Decision

Site visit made on 31 October 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/Q9495/C/23/3321099

Land at Little Borwick Fold, Crook, Kendal LA8 9HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Ian Bone (Newfoundland Lodges Ltd) against an enforcement notice issued by Lake District National Park Authority.
- The notice, numbered E/2021/0020, was issued on 22 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, operational development resulting in the erection of a building.
- The requirements of the notice are:
 - a) Remove the horizontal window frame and slate sill at first floor level on the south-west elevation of the building (labelled Opening 1 in Image A of the attached Appendix One). Infill the resulting opening with stonework to match the surrounding stonework. The infill stonework shall match the surrounding stonework in terms of materials, stone pattern, and render finish; and
 - b) Remove the timber frame, slate cill and the stonework below the slate cill at ground floor level on the south-east facing elevation (labelled Opening 2 in Image B of attached Appendix One). Install a pair of vertically boarded timber doors into the resulting opening, as shown on the drawing attached as Image C of attached Appendix One; and
 - c) Remove the board, supporting frame, slate cill, timber lintel and lead flashing at first floor level on the south-east elevation (labelled Opening 3 in Image D of attached Appendix One). Infill the resulting opening with stonework to match the surrounding stonework. The infill stonework shall match the surrounding stonework in terms of materials, stone pattern and render finish; and
 - d) Infill Openings 4 and 5 (as labelled in Image E of attached Appendix One) at first floor level on the south-east elevation, with stonework to match the surrounding stonework. The infill stonework shall match the surrounding stonework in terms of materials, stone pattern, and render finish.
- The period for compliance with the requirements is:
Two months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

This decision is issued in accordance with section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 4th January 2024.

Formal Decision

1. It is directed that the appeal is allowed, the enforcement notice is quashed and 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 building at land at Little Borwick Fold,

Crook, Kendal LA8 9HS as shown on the plan attached to the notice and subject to the following condition:

- 1) Unless within **3 months** of the date of this decision a scheme of details of the window frames and windows within Openings 2 and 3 to include details of the window frame design, materials and external finish and colour is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within **3 months** of the local planning authority's approval, the required steps set out at (a) to (d) (incl) of Section 5 of the notice shall be carried out within the compliance period set out in the notice.
 - a) If no scheme in accordance with this condition is approved within **6 months** of the date of this decision, the required steps set out at (a) to (d) (incl) of Section 5 of the notice shall be carried out within the compliance period set out in the noticed.
 - b) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.
 - c) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. The notice alleges the carrying out of operational development, namely the construction of a building. It is common ground between the two main parties that the operational development carried out followed the demolition and reconstruction of a stone barn within the cluster of buildings at Borwick Fold and Little Borwick Fold. The Council have helpfully set out a brief summary of their investigation into the works at Little Borwick Fold, including reference to two separate applications for schemes of operational development¹ and the use² of the building, the details of which the appellant has not challenged. Both applications were refused by the Council.
3. Section 173(3) of the Town and Country Planning Act 1990 (as amended) (the Act) states that an enforcement notice shall specify the steps that are required to be taken to achieve, wholly or partly, any of the purposes set out in s173(4). These purposes are either to remedy the breach of planning control or, as in this instance, to remedy any injury to amenity.
4. The notice is clear that as the required steps do not require the whole of the unauthorised development to be removed, the effect of the notice as issued is to grant planning permission for the building, with the works set out by the notice's requirements. The notice is also quite clear that the harm arising from the breach of planning control, that being the construction of the building, does so as a consequence of the additional openings inserted into the building's south east and south west elevations. The purpose of the appellant's appeal under ground (a) is that planning permission should be granted for the building as built.

¹ LPA Ref No: 7/2022/5807

² LPA Ref No: 7/2022/5629

5. The notice clearly sets out in its required steps, the works required to remedy the injury to amenity and identifies two elevations in turn, setting out particular steps for three of the openings and a combined requirement for two further openings. I have structured my decision accordingly.
6. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The relevant parts of the Framework as they relate to World Heritage Sites (other than paragraph numbers) have not changed and I have determined the appeal on the basis of the new version of the Framework.

Main Issue

7. The main issue is the effect of the additional openings enforced against upon the character and appearance of the protected landscape of the Lake District National Park and English Lake District World Heritage Site.

Reasons

South west elevation

Opening 1

8. The appeal building is situated as part of a cluster of buildings and residential dwellings situated on either side of a narrow single-track road that passes through the courtyard. The minor road's alignment and the position of the buildings are such that there is a distinct sense of entry into the courtyard at its eastern and western sides. As a further consequence of the road's alignment and the building's positioning, the wide south west elevation faces towards the road on approach from the west and is clearly visible from that aspect.
9. Opening 1 is a high-level first floor window situated directly under the building's eaves level. It is heavily recessed within the elevation's stonework and also under the roof's eaves. It is not, I accept, a particularly traditional form of window opening on a building of this nature. It is, however, a modest intervention on an elevation to which the eye is instead drawn to the pentice across its entire width and which wraps around the rear gable elevation into a single storey extension. This, and the projecting stone blocks at regular intervals in two courses at first floor level, provide particular points of interest to this elevation.
10. The additional opening at Opening 1 is a modest and relatively discrete addition, notwithstanding the open views of this elevation when passing through the courtyard from the west. The stonework around the opening is of a piece with the rest of the elevation, whilst the slate-slab sill provides a slim basis to the window, in keeping with other openings across the building's elevations.

South east elevation

Opening 2

11. The notice includes within its Appendix One, extracts of drawings submitted to accompany a previous application for planning permission¹. The 'existing' plan extract set out in accompaniment to the notice shows a doorway where Opening 2 is now located.

12. The opening's width and overall height to lintol level appears to be broadly similar to the previous doorway opening. Although the Council are concerned that this opening would be unduly domestic in its appearance, the opening itself does not appear to me to be so. The robust lintol is exposed timber and the sill slate-slab matches other openings, whilst the stonework around it is, as with that around Opening 1, of a piece in terms of coursing and stone block sizes.
13. The current window to this opening is clearly a temporary stop gap, pending the outcome of the appeal. The plastic panels and make-shift wooden 'glazing bars' detract from the proportions of the opening itself that with an appropriately worded condition and scrutiny of the actual window details would otherwise be sufficient to avoid harm to the traditional appearance of what is a modern building, albeit rebuilt in a traditional style.

Opening 3

14. Opening 3 is an additional opening, unlike the re-purposed and re-proportioned Opening 2, below. It is not explained by the Council how this additional opening imbues the gable elevation and building with an overly domestic appearance. First floor openings of these proportions are not uncommon, often accompanied by a flight of stone steps to provide access. Indeed, the building at the other side of the courtyard adjacent to the entrance from the west, has just such an arrangement. Whilst the origins of this building and this opening are not before me, equally it is clear that such an arrangement and proportions of an opening in an elevated gable position is not unheard of.
15. The prominent gable elevation retains a significant and high proportion of solid stonework notwithstanding Opening 3 (and Opening 2) and the presence of this additional opening would not cause material harm or render the elevation, or the building as a whole, with an overly domestic character or appearance. As with Opening 2, I am satisfied that a condition would be an appropriate way in which to control details of the window frame design, materials and external finish and colour. Notwithstanding the appellant's indication of some form of external access to this opening, as the notice seeks merely to the opening as constructed, which I have found to be acceptable, it is not within the bounds of an appeal under ground (a) to consider further matters such as an external access.

Openings 4 and 5

16. These are two small openings at first floor level which broadly flank Opening 3. The purpose of these openings is not made clear by the appellant, nor is the harm arising from them made by the Council. They are however, of minimal size, do not disrupt the gable elevation and share some similarities with other similar such high-level openings on the building's north west facing (rear) gable elevation. Their retention would not harm the character or appearance of the building.

The appeal building within the Lake District National Park and English Lake District World Heritage Site

17. The appeal building lies within a cluster of buildings comprised of a mix of existing traditional and modern agricultural buildings and two dwellings. Although the cluster of buildings is visible from distance in the wider rolling

landscape, the appeal building is not the dominant feature of the cluster in longer views. Instead, it is the sprawl of more modern agricultural-style buildings that spread out from the rear of the courtyard in a southerly direction that are a key visual element of the cluster within the wider landscape.

18. Although the appeal building's south east facing gable elevation is a prominent feature in direct line-of-sight when approaching the cluster on the minor road from the east, I am satisfied that with an appropriately worded condition fenestration details for Openings 2 and 3 of an appropriate style, proportions and material can be secured. I am not persuaded that such details would result in an overly domestic appearance as feared by the Council, or that would otherwise cause harm to the character or appearance of the appeal building.
19. With regard to the south west facing elevation, the high-level window is a modest intervention into this extensive elevation. The Council appear content with the pentice across the entire width of this elevation and which extends around into the single storey element (and roof) at the rear. It is this which dominates this elevation on approach rather than the high-level opening of Opening 1. Whilst the high-level window and its proportions may not be a particularly traditional or vernacular feature, it is sufficiently modest and recessive in its high-level position as to avoid harm to the character or appearance of the appeal building.
20. Taking these factors into consideration, I find that the additional openings would not cause harm to, and would preserve, the special interests of the Lake District World Heritage Site and would not cause harm to the character or appearance of the appeal building or the area surrounding it. There would not, as a consequence, be conflict with the provisions of Policies 01, 02, 05, 06 or 07 of the Lake District National Park Local Plan, which together recognise the international significance of the Lake District World Heritage Site, including its attributes of Outstanding Universal Value, and the importance of the conservation and enhancement thereof. Nor would there be conflict with the provisions of the Framework as they relate to the protection given to World Heritage Sites.

Other Matters

21. The appellant's submission is that the additional openings arise, in part at least, from a desire to use the building for purposes connected to one or more of the appellant's businesses. These reasons include the appellant's wish to create modern, comfortable working conditions within the appeal building and to avoid using space within the domestic property for work purposes. However, the matter before me in this ground (a) appeal relates to the operational development that has occurred and not to the use, or intended use, of the building. As the planning status of the building's use is not clear, and as the appellant has not challenged the Council's view in this respect, this is not a material consideration to which I give any significant weight.

Conditions

22. The Council have suggested one condition, which would require the submission of fenestration details in respect of openings 2 and 3. As these openings, and particularly the fenestration within them, are unfinished, such a condition would be necessary and reasonable, and provide sufficient oversight of the details to ensure a finished result that would preserve the special character of

the Lake District World Heritage Site, and the character and appearance of the appeal building and surrounding area.

23. I have however amended the wording of the condition given the nature of the application deemed to have been made under the provisions of an appeal on ground (a). There is a strict timetable for compliance because permission is granted retrospectively and it is not possible to use a negatively worded condition to secure the approval of these matters before the development takes place. As the appellant did not appeal under ground (g) I have included within the condition the compliance period initially set out in the notice. The condition will ensure that the development can be enforced against if the requirements are not met.
24. I am satisfied that the other openings cited by the notice are acceptable in their appearance, finish and details and a condition (or conditions) for further details is not necessary.

Conclusion

25. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a building as described in the notice.

G Robbie

INSPECTOR