



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: 14 February 2024

Appeal Ref: APP/Q9495/C/23/3320772

Birkett Mire, Keswick, Cumbria CA12 4TT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mrs W Birkett against an enforcement notice issued by Lake District National Park Authority.
- The notice, numbered E/2020/0276, was issued on 24 January 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the making of a material change of use of the land from agriculture to a mixed use of agriculture and the siting of a shepherd's hut occupied as holiday letting accommodation and associated operational development consisting of the formation of areas of hardstanding and installation decking.
- The requirements of the notice are to:
 - i) Discontinue the use of the land for the siting of a shepherd's hut occupied as holiday letting accommodation;
 - ii) Remove the shepherd's hut from the Land;
 - iii) Remove all the associated items from the Land including the crush stone paths and hardstanding, timber decking, hot tub, seating, fire pit, lighting and any associated piping and cables from the Land; and
 - iv) Reinstate the Land to its former condition.
- The period for compliance with the requirements is: Three 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 dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Formal Decision

1. 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.

Preliminary Matters

2. Both parties have helpfully summarised the immediate planning history of the appeal site. It is not therefore my intention to repeat it here, suffice to say that I have given careful consideration to the previous applications for planning permission and, particularly, the approvals granted for the siting of four touring caravan pitches¹ (the 2020 scheme) and a second application to replace the previously approved touring pitches with five shepherd's huts² (the 2021 scheme).

¹ LPA Ref No: 7/2020/2221

² LPA Ref No: 7/2021/2120

3. I have also taken careful note that the 2020 scheme initially included the shepherd's hut which is the subject of this appeal before it was ultimately removed from the scheme which gained approval, whilst the site area for the 2021 scheme for five shepherd's huts effectively overlapped that of the 2020 scheme. Four of the five shepherd's huts granted permission by the 2021 scheme (nos 1 -4³) have been sited in the locations indicated on the approved plans that accompany that permission. The fifth shepherd's hut had not, at the time of my visit to the site, been placed in its approved position. The appellant has confirmed with the current appeal submission that, if successful, the approved fifth hut from the 2021 scheme would not be implemented.
4. The appeal against the notice is proceeding on ground (a) only, that '*in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.*'. Although the plan that accompanies the notice includes the whole of a larger field enclosure on land near Birkett Mire, the material change of use and associated operational development as described within the notice is effectively limited to a small, enclosed triangular area of land at the far corner of the field to the southwest of the existing shepherd's hut development. This area is linked to the area set out in the approved 2021 scheme by a path that is largely grassed over but with a hardcore base.
5. A new and updated version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. With the exception of paragraph numbering, the parts of the Framework most relevant to this appeal have not changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.

Main Issues

6. The main issues are the effects of the appeal scheme upon:
 - The character and appearance of the appeal site and surrounding area;
 - Flood risk; and
 - The River Derwent and Bassenthwaite Special Area of Conservation.

Reasons

Character and appearance

7. It is clear from the planning history associated with Birkett Mire that the National Park Authority (the NPA) considered that the site which now accommodates four shepherd's huts was sufficiently well located relative to the existing group of farm buildings to gain support from LP Policy 18. From my observations of that part of the site during my visit, I agree that it is indeed well related to the main grouping of buildings. Although located in a corner of a field separate to that group, the existing shepherd's huts are sited in the closest corner of that field to the farm buildings and converted holiday lets. They are also well sited relative to each other and, as a group, are well-contained within their enclosure without excessive outward spread.

³ As per Drwg No: 10.26/301a

8. The shepherd's hut in this instance lies apart from the existing group of four huts. The appellant has stated a desire to retain the hut in this location as it provides a degree of isolation from the other huts, thereby providing a slightly different tourist-accommodation offer to the other four huts. It has been stated by the appellant that the distance that it lies apart from the approved position of the fifth hut is stated as being in the region of 72m. However, as that hut is not in place, nor is it the appellant's intention to install it should the appeal scheme succeed, the distance between the appeal scheme and the closest hut would be greater than that stated.
9. In any event, the appeal hut feels more detached than that figure suggests. Both enclosed areas are gated, and the path between the two runs through an actively grazed pasture. That path, a narrow hard-surfaced path but which is slightly overgrown with grass, runs alongside the field boundary edge. With that boundary's mature tree line and hedgerow, there is only just a direct line of sight between the appeal hut and the closest of the existing huts.
10. It is clearly the appellant's intention, in marketing terms at least, that the appeal scheme should be seen as offering a degree of isolation from the other huts and thus something different to the existing group. Having viewed the appeal scheme's relationship with that group of huts, such an intention is easy to appreciate and, it strikes me, accurately describes the relationship between the two. Whereas the existing group is well related to the main farm buildings and converted accommodation, the enclosed area and shepherd's hut is not well related to either grouping. Instead, it stands apart from them in the opposing corner of the field, slightly hidden from their view. Whilst I accept that the hedge and tree line provide some visual screening in longer views and avoids it being seen isolated in the middle of a field, the hut and enclosed area is neither located on, nor immediately adjacent to, buildings or structures within an existing holiday accommodation site. Instead, it is located some distance from, and visually and functionally isolated from, the existing group of four huts.
11. I accept that, as a shepherd's hut, the structure and the use of the land is more visually discrete and low-key than some other forms of caravan, camping, glamping or lodge-type holiday accommodation. It is also clear that this unit of holiday accommodation would operate as part of the existing grouping of four shepherd's huts which, themselves, are functionally associated with the holiday let offer more widely at Birkett Mire. Thus whilst the appeal scheme would garner some support from parts of Lake District Local Plan⁴ (LP) Policy 18, and a shepherd's hut in isolation might not be exceptional or harmful within a wider rural pastoral landscape, those features associated with the use of the enclosed area and the occupation of the shepherd's hut, in a location poorly related to the existing accommodation and farm building, would not be entirely consistent with the site's immediate, and wider, landscape character.
12. Although the eastern field boundary provides good visual screening in the form of mature trees and an existing hedgerow, the southern and eastern boundaries of the enclosed area are more open. I accept that the area occupied by the shepherd hut is relatively limited, but the steps, deck, seating area and outside hot tub extend the associated paraphernalia a sufficient distance out

⁴ Adopted May 2021

from the hut itself as to be intrusive features within the otherwise rural and pastoral landscape in their own right, as well as compounding the inappropriately located shepherd's hut.

13. The appellant has sought to draw parallels with the NPA's justification for the 2021 (5-hut) scheme, arguing that the same landscape factors that justify that scheme, apply equally with regard to the appeal proposal. However, it is pertinent to note that the cited extract⁵ emphasises that many of the features that helped support that scheme do not apply in the appeal case. With regard to other examples referred to, it seems to me that in the Burns Farm scheme⁶ the camping yurts and shepherd's huts were on areas of land contiguous with the existing touring caravan site and buildings, not on an area of land essentially detached from the huts, as is the case at Birkett Mire, whilst with regard to Low Side Farm from the limited evidence before me these appear to be seen directly against the backdrop of a range and grouping of buildings. Neither are directly comparable to the appeal scheme therefore, nor can I be certain that the development plan provisions against which they were considered bears comparison to the current development plan context. The appeal scheme is therefore contrary to LP Policies 01, 02, 05 and 06 which together seek to protect the special and universal characteristics of the Lake District National Park and the English Lake District (World Heritage Site), and which are afforded the highest level of protection for its landscape and scenic beauty.
14. Whilst LP Policy 18 is not specifically referred to in the notice's reasons, it is clear from the submissions of both parties that its provisions have informed their respective cases regarding the physical location and degree of isolation of the shepherd's hut. Having carefully considered the NPA's reasons for issuing the notice, and the detailed appeal submissions of both parties, I conclude that the appeal scheme would also be contrary to LP Policy 18, adding weight to my conclusions in respect of the other LP Policies set out above. In reaching this conclusion, I am satisfied that neither main party would be prejudiced.

Flood Risk

15. The plan that accompanies the notice includes the whole of the field within which the shepherd's hut and the enclosed area around it lies. The hut and the land around it occupy a small, triangular area of land enclosed by a post-and-wire fence in the southern corner of the wider field and thus the area shown on the notice's plan.
16. In the delegated reports accompanying the 2020 and 2021 applications, the majority of the field was described as falling within flood zone 1, the exception being the southern corner which was identified as being flood zones 2 and 3. In this respect, the NPA's approach has been consistent with regard to the identification of flood zones.
17. Unlike the previous applications, the appeal scheme is located within the southern corner of the field. The appellant's Flood Risk Assessment⁷ confirms that the area that the shepherd's hut is sited within lies in flood zones 2 and 3,

⁵ Page 5 of appellant's Appeal Statement – highlighted in red text

⁶ Layout Plan at appellant's Doc 10

⁷ 'Flood Risk Assessment: Birkett Mire, Threlkeld' by R G Parkins – Ref: K40169.FRA/001 – 18 April 2023

albeit that a closer comparison of the delineation between flood zones 2 and 3 does not align particularly closely with contour mapping of the area in question. This should, it is argued, introduce sufficient doubt as to the accuracy of the Environment Agency's (the EA) generic mapping data for flood risk and, ultimately, which flood zone the shepherd's hut lies within.

18. The ground levels of the triangular area of land within which the hut is sited fall away from the entrance gate into it towards the southern tip of the site and the western field boundary. The hut itself is located on the higher ground closer to the entrance gate and is raised above the ground level in the region of 0.7m, and the access path to it, parallel to the field boundary, is generally level but on slightly higher land than the triangular area of land, the area where the hut is situated and indeed much of the remaining field.
19. I have noted the appellant's assertion that the EA's flood zone delineation is somewhat generic, based on modelling and that it appears not to accurately follow the mapped site contours. However, the appellant's FRA is also based on some assumptions with regard to the extent of the 'large flood' extent. Mapped at the 137.0m contour, it is very close to, and slightly overlaps, a small portion of the shepherd's hut's footprint. Additionally, a large section of the enclosed area of land associated with the hut including an outside seating area, deck and hot tub, lies squarely within the appellant's assumed 'large flood' area.
20. To my mind there remains sufficient doubt as the site's vulnerability to flooding and thus, it has not been clearly demonstrated that the site is not at risk from flooding. It has clearly been demonstrated, and extant permission exists, for a fifth shepherd's hut at Birkett Mire to be sited in an area at less risk from flooding than that which is before me. As the site of the alleged breach, for which an application for planning permission is deemed to have been made under ground (a) falls within flood zones 2 and 3, the NPA are correct to state that the appeal scheme fails the sequential test.
21. LP Policy 03 seeks to increase the resilience of the Lake District to all types of flood event, which includes river flooding. It goes on to state that development proposals in accordance with the approach to managing flood risk set out within the Framework and the Guidance will be supported. Thus, the Framework sets out an approach to direct development away from areas at highest risk, stating that development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. As clearly that is the case here, where the appellant has planning permission for a fifth hut as part of the existing development, the appeal scheme fails to accord with the Framework's approach to managing the risk from flooding. For the reasons I have set out above therefore, I am not persuaded that the appeal scheme would not put the hut and the land around it, and people, in the form of guests staying in this shepherd's hut, at unacceptable risk from flood events. The appeal scheme is contrary to LP Policy 03 and the approach to set out within the Framework and the Guidance.

The River Derwent and Bassenthwaite Special Area of Conservation

22. The site lies within the catchment of the River Derwent and Bassenthwaite Special Area of Conservation (SAC), approximately 180 metres east of St Johns Beck, a tributary of the River Derwent (itself, an SSSI). The SAC is described as being vulnerable to an increase in nutrient loading as a result of an increase

in wastewater discharges due to increases in local residential (or, as in this instance, holiday guest) populations.

23. Extant permission exists for the development of five shepherd's huts at Birkett Mire, of which four have been developed and are in use as holiday accommodation. The NPA's officer report sets out the basis for the conclusion that a five-hut scheme would not give rise to concerns in this respect. The appellant has not, however, fully implemented that permission as the fifth of the approved huts has not been developed but the opportunity to develop the fifth hut as part of that site currently remains extant.
24. In this context, were this appeal to succeed, there could be an additional shepherd's hut at Birkett Mire, with the consequential risk that additional guest accommodation would result in additional nutrient loading and discharges arising from the net increase in accommodation. Were I to be minded to allow the appeal, it would have been necessary for me to seek additional information, including the potential for the development to discharge nutrients into the catchments, from the parties and consult Natural England in order to undertake an Appropriate Assessment (AA). An AA is required on a case-by-case basis to determine whether the project would adversely affect the integrity of the European Site. It would also have required a consideration of whether any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner.
25. The appellant however has indicated that the hut subject to this appeal effectively acts as the fifth hut. Should the appeal succeed, the appellant goes on to state that the previously approved 'fifth hut' would not be developed. There would not, as a consequence, be any net increase in nutrient loading or discharges arising from the wider site.
26. There is however no mechanism before me with which to ensure that the extant permission is not fully implemented. I am not persuaded that the use of a planning condition to do so would pass the tests of conditions set out within the Framework⁸, and there is no other mechanism before me to ensure that there is no net increase in accommodation units and, thus, guests. I cannot therefore be certain that there would not be a net increase in the number of permitted shepherd's huts at Birkett Mire, with the consequential increase in nutrient loading and discharges arising therefrom. As such, it has not been adequately demonstrated that the appeal scheme would not adversely affect the integrity of the European site. The appeal scheme is contrary to LP Policy 04 as a consequence.

Other Matters

27. The appeal scheme has gathered some support locally, an interested party referring to the efforts of the appellant and her family in diversifying activities at Birkett Mire. The outcome of this appeal does not however directly affect the presence of the existing four shepherd's huts already granted planning permission as part of the 2021 scheme, and which are already in place. Nor does it restrict the development of the fifth hut, as set out within the 2021 scheme, as that scheme remains extant.

⁸ Paragraph 56

28. The NPA's approach to second homes is not a material consideration to which I give any weight in relation to the matters before me, whilst I have no reason to believe that the NPA have considered the appeal scheme other than on its planning merits and within the current development plan context.

Conclusion

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

G Robbie

INSPECTOR