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## Appeal Decisions

Site visit made on 22 May 2023

**by F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 April 2024**

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### **Appeal A Ref: APP/Q9495/C/22/3305199**

#### **Land to the west of Garr Lane, Torver, Coniston**

- 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 1990 Act as amended).
  - The appeal is made by Mr Matthew Mayvers against an enforcement notice issued by Lake District National Park Authority.
  - The notice, numbered: E/2020/0334B, was issued on 11 July 2022.
  - The breach of planning control as alleged in the notice is: Without planning permission, operational development on the Land consisting of:
    - a) the formation of a track and hard standings with edging stones;
    - b) the installation of four hot tubs and associated infrastructure consisting of heaters, cabling and water piping;
    - c) the installation of four glazed raised decking areas and steps;
    - d) the installation of 18 lighting posts.all in the approximate positions marked on the attached Plan 2.
  - The requirements of the notice are to:
    - (a) Remove the track and hard standings with edging stones from the Land;
    - (b) Remove the four hot tubs and associated infrastructure from the Land;
    - (c) Remove the four glazed raised decking areas and steps from the Land;
    - (d) Remove the 18 lighting posts from the Land;
    - (e) Remove all items, materials and debris arising from compliance with requirements (a) to (d) from the Land; and
    - (f) Spread the ground exposed by compliance with requirement (a) with a grass seed mix at a mix amount of 20 kilograms of seed per hectare.
  - The period for compliance with the requirements is: Three months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) 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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### **Appeal B Ref: APP/Q9495/C/22/3305200**

#### **Land to the west of Garr Lane, Torver, Coniston**

- 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 1990 Act as amended).
- The appeal is made by Mr Matthew Mayvers against an enforcement notice issued by Lake District National Park Authority.
- The notice, numbered E/2021/0085A, was issued on 11 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, material change of use of the Land from use for agriculture to use as a seating and play area for the consumption of food and drink and recreation by customers of The Wilson Arms.
- The requirements of the notice are to: 1. Cease the use of the Land as a seating and play area for the consumption of food and drink and recreation; and 2. Remove all tables, chairs, umbrellas, play equipment and any other associated items from the Land.

- The period for compliance with the requirements is: One month.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) 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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### **Appeal C Ref: APP/Q9495/C/22/3305201**

#### **Land to the west of Garr Lane, Torver, Coniston**

- 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 1990 Act as amended).
  - The appeal is made by Mr Matthew Mayvers against an enforcement notice issued by Lake District National Park Authority.
  - The notice, numbered E/2021/0085B, was issued on 11 July 2022.
  - The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of the erection of a marquee building, in the approximate position marked with a blue line on the attached Plan B.
  - The requirements of the notice are to: (a) Remove the marquee building from the Land; and (b) Remove all items, materials and debris arising from compliance with requirement (a) from the Land.
  - The period for compliance with the requirements is: One month.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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**Summary Decision Appeal A: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.**

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

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

#### **Procedural Matters**

1. Whilst Appeals A, B and C relate to separate enforcement notices, different alleged breaches of planning control and are proceeding on different grounds, they concern the same appellant and buildings and/or land within their ownership. Therefore, to avoid duplication, I have dealt with them together in one decision letter.
2. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023, after the National Park Authority (the Authority) issued the enforcement notices. The parties were given the opportunity to comment on the revised Framework. Where relevant, I have taken the revised Framework and any comments received into account in my determination of the appeals.

#### **Background**

3. The appeal sites are situated at the rear of, and used in connection with, the Wilson Arms, a public house located in the village of Torver which lies to the east of Coniston Water. Together they are located within the Lake District National Park (the National Park) and the English Lake District World Heritage Site (the WHS).

4. The sites have a detailed planning and enforcement history. Planning permission was granted subject to conditions in December 2019 for 'Change of use of amenity livestock display area ancillary to the Wilsons Arms Public House for the siting of 4 no. timber Shepherd's Huts for holiday accommodation and field to beer garden (part retrospective)<sup>1</sup> (the 2019 permission).
5. An application to discharge conditions 4 (size, design and colour of the huts) and 7 (external lighting) of the 2019 permission was submitted in February 2020<sup>2</sup>. The Authority determined the details presented to discharge condition 4 were satisfactory, but the details submitted to discharge condition 7 were unacceptable. Consequently, the Authority issued a split decision.
6. The Authority also considers that there has been a breach of condition in relation to conditions 3 (number and position of caravans/huts) and 6 (landscaping) of the 2019 permission, for which it has also served a Breach of Condition Notice<sup>3</sup>.
7. Planning permission was refused in December 2020 for 'Addition of one K2 family glamping pod for holiday accommodation'<sup>4</sup>. This decision was appealed and subsequently allowed, subject to conditions<sup>5</sup> (the 2020 permission).
8. A planning application was submitted for the siting of three further camping pods on land to the north of the current appeal sites<sup>6</sup>. This application was refused in May 2022.
9. Enforcement appeals in relation to adjacent land were dismissed in September 2022<sup>7</sup>. These appeals relate to separate alleged breaches of planning control, primarily relating to the use of the land for camping.
10. For the avoidance of doubt, my decisions relate solely to the enforcement notices, alleged breaches of planning control and associated appeals as set out in the headings above.

## **Appeal A: APP/Q9495/C/22/3305199**

### **Procedural Matters**

11. It was mutually agreed on site and subsequently confirmed in emails by the parties that the number of lighting posts as stated in the notice, 18, does not reflect the number on site, 30. I will correct and vary the notice in this respect.
12. In its statement, the Authority acknowledge that the four hot tubs included within the notice are not served by any 'cabling and water piping' and would accept this matter being corrected within the notice. I will correct and vary the notice in this regard.
13. The power under section 176(1)(a) and (b) of the 1990 Act as amended provides that a notice may be corrected and/or the terms varied provided that no injustice would be caused by doing so. Given the parties' agreement on both

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<sup>1</sup> Application Ref: 7/2019/5353 The 2019 Permission.

<sup>2</sup> Application Ref: 7/2020/5066.

<sup>3</sup> Enforcement Notice: E/2020/0334A.

<sup>4</sup> Application Ref: 7/2020/5623 The 2020 Permission.

<sup>5</sup> Appeal Ref: APP/Q9495/W/21/3270266.

<sup>6</sup> Application ref: 7/2021/5885.

<sup>7</sup> Appeal Refs: APP/Q9495/C/21/3288063, 3288064, 3288066 and 3288067.

of these matters, I am satisfied that no injustice would be caused by correcting and varying the notice in the above respects.

14. The appellant has submitted a planning application to regularise some of the matters stated in the notice<sup>8</sup>. Under section 70C of the 1990 Act as amended, the Authority has declined to determine the application. These matters do not affect my determination of this appeal.

### **The appeal on ground (c)**

15. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. On this ground, the onus is on the appellant to make out their case to the standard of the balance of probabilities.
16. The alleged breach comprises four elements a) – d). The appellant's case on this ground relates primarily to a) and b). Nevertheless, I have considered all of the matters stated within the notice. In assessing each element I have had regard to the meaning of development for the purposes of the 1990 Act as amended, which is defined at section 55(1) of that Act as: '...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land' (section 55(1)).

#### *Track and hard standings with edging stones*

17. On site I observed a gravelled/crushed slate track with timber edging running alongside the holiday accommodation plots (the plots); and gravelled/crushed slate access paths and landscaped circular areas (around fire pits and hot tubs) all edged with stones within each of the plots. The wheels of the huts, hot tubs and firepits appeared to be placed on sections of stone.
18. The appellant has not challenged the requirement for planning permission for this matter. Rather, they submit that, these elements have already been granted planning permission as part of the 2019 and 2020 permissions. As such, they do not constitute a breach of planning control.
19. With regard to the 'track', the Design and Access Statement which formed part of the 2019 application makes no reference to a 'track'. Additionally, the plan referenced in condition 2<sup>9</sup> of the permission, illustrates a fairly narrow linear section of land immediately adjacent to only three of the plots, and there is no annotation or key which references the presence, form and/or detail of any 'track'. The plan referenced in condition 6<sup>10</sup> of the same permission includes a wider linear section of land immediately adjacent to all of the plots which is demarcated on one side by unspecified planting. Although, similarly, there is no annotation or key which references the presence, form and/or detail of any 'track'.
20. The plans included with the 2020 permission<sup>11</sup> show a linear section of land adjacent to all of the plots and is referenced in the associated appeal decision as 'surfaced access which leads to the existing holiday accommodation'. Nonetheless, again, there is no annotation or key information on the plans which reference the route, form and/or detail of any 'track'.

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<sup>8</sup> Application Ref: 7/2022/5520.

<sup>9</sup> WA/PSP/1 Rev F Proposed Site Plan.

<sup>10</sup> WA/PSP/1 Rev C Proposed Site Plan.

<sup>11</sup> WA/ESLAOP/1 Existing Site Location and Ownership Plan and WA/PBP3/1 Proposed Block Plan.

21. In relation to the 'hard standings with edging stones' within the plots, the plans referenced in the 2019 permission do not illustrate or annotate any specific hard landscaping. I note that a more detailed plan is stated to have been submitted as part of the application to discharge condition 4<sup>12</sup>. However, there is nothing before me which confirms that this plan was accepted by the Authority and approved as part of that application and split decision.
22. Consequently, for the reasons set out above, it has not been satisfactorily demonstrated that the formation of a track and hard standings with edging stones, as implemented, benefit from the grant of planning permission as part of either the 2019 or 2020 permissions.
23. Having regard to the considerable size, and/or formal layout and nature of the track and hard standings with edging stones, in my judgement, their construction comprises an 'engineering operation' for the purposes of section 55(1), which constitutes development and requires planning permission. I therefore conclude that, on the balance of probabilities, the formation of a track and hard standings with edging stones does constitute a breach of planning control.

#### *Hot tubs*

24. On site I observed the hot tubs and associated wood fired heaters positioned adjacent to the huts within the plots. The appellant contends that no breach of planning control has occurred in relation to the siting of the hot tubs, because it does not involve a 'material operation' as they do not constitute a 'building'; nor does it involve a change of use of the land, as they are used for a purpose ancillary to the holiday accommodation, which is the lawful use of the appeal site. As the notice cites operational development on the land, not a material change of use of the land, I have focused my considerations on the matters stated in the notice, namely, the installation of four hot tubs and associated wood fired heaters as operational development.
25. A building is defined by section 336 of the 1990 Act as amended as, 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.' The three primary factors identified in caselaw as being decisive as to what is a 'building' are size, permanence and physical attachment<sup>13</sup>. None of these factors are necessarily decisive, and greater weight may be given to one over the others in reaching a conclusion.
26. The hot tubs are of a moderate size, likely to have been transported to the site partially or fully complete, rather than having to be constructed on site. In addition, they are described as free-standing, not fixed to the ground and remaining in one place under their own weight; and are not formally connected to any utilities/services such as water or electricity, being filled by a hosepipe and heated by the wood fired heaters.
27. However, the submitted evidence confirms that they have been present on a formal hardstanding base within the plots for a considerable amount of time. Relevantly, following being placed on site, it does not appear that they have been moved, or indeed are capable of being easily moved without a degree of effort. I recognise that 'permanence' does not necessarily connote that the

<sup>12</sup> Application Ref: 7/2020/5066 – Plan 'The Wilson's Shepherd's Huts' Appendix H of the appellant's statement.

<sup>13</sup> *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102.

state of affairs is to continue forever or indefinitely. Nonetheless, given the holiday accommodation use of the huts and plots, it is reasonable to conclude that the hot tubs are not a temporary installation and are to remain in their existing locations.

28. Consequently, although the hot tubs do not conclusively display the factors of size and physical attachment, I consider that they display a level of permanence which, in this instance, carries substantial weight and is decisive in determining, as a matter of fact and degree, that they do form 'buildings' and their installation constitutes operational development for the purposes of section 55(1), for which planning permission is required. I therefore conclude that, on the balance of probabilities, the installation of the four hot tubs and associated wood fired heaters does constitute a breach of planning control.
29. In coming to my decision, I have had regard to the appeal decision cited by the appellant, where the Inspector concluded, on the balance of probabilities, that the installation of hot tubs, did not amount to operational development<sup>14</sup>. Only the appeal decision has been provided, which limits a meaningful comparison. Whilst there may be similarities between the two appeals, I cannot be certain that the details of the hot tubs and circumstances of the cases are directly comparable. This lessens the weight it carries in favour of the appeal. In any event, each case must be judged on its own merits.

*Glazed raised decking areas and steps / Lighting posts*

30. On site I observed the glazed raised decking areas and steps abutting each of the huts; and the lighting posts positioned along the track and within the plots.
31. The plans approved as part of the 2019 permission show steps providing access to the huts but, as acknowledged by the appellant, do not include the glazed raised decking areas and steps as installed. The plans approved as part of the 2019 permission do not include details of lighting posts, and the details and plan submitted as part of the application to discharge condition 7 (external lighting) of that permission were not accepted by the Authority. In any event, having regard to that plan, which is not entirely clear, I note there are significant disparities between the number and some of the locations of the lighting posts as shown in comparison to what has been installed on site.
32. The appellant submits that the raised decks are not attached to the ground and should be treated as moveable structures, similar to the hot tubs, but makes no comments in relation to the lighting posts. In line with the assessment above, in considering these elements of the notice, I have had regard to the size, permanence and physical attachment of these elements.
33. The glazed raised decking areas and steps are of a moderate size, likely to have been transported to the site partially or fully complete, rather than having been constructed on site. However, whilst they may not be fixed into the ground, they do seem to be attached to the huts, which would be practical for stability purposes. Moreover, with no evidence to the contrary, it is reasonable to conclude that they were installed at the same time as the huts; and given that they provide access as well as additional space to the huts, it is more likely than not that they are intended to remain in that location.

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<sup>14</sup> Appeal Reference: APP/C1435/C/15/3131409.



34. The lighting posts are of a modest size. However, they are clearly fixed into the ground and connected to an electricity supply. Moreover, given the requirement for some form of lighting to mark the route to the plots, it is reasonable to conclude that they are planned to be a permanent feature.
35. Consequently, although the glazed raised decking areas and steps and the lighting posts do not conclusively display the factor of size, there is a degree of physical attachment and permanence to their installation. These factors carry substantial weight and are decisive in determining as a matter of fact and degree that they do form 'buildings' and their installation constitutes operational development for the purposes of section 55(1) for which planning permission is required. I therefore conclude that, on the balance of probabilities, the installation of four glazed raised decking areas and steps and 30 lighting posts does constitute a breach of planning control.
36. Overall, I find that all of the matters stated in the notice constitute development for the purposes of section 55(1), such that they require planning permission. There is/are no planning permission(s) in place, deemed or otherwise, for the development alleged in the notice. I therefore conclude that, on the balance of probabilities, the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

### **The appeal on ground (a)**

37. The appeal on ground (a) seeks planning permission for the matters alleged in the notice. Having regard to the corrections stated above, this is for operational development on the land consisting of: a) the formation of a track and hard standings with edging stones; b) the installation of four hot tubs and associated wood fired heaters; c) the installation of four glazed raised decking areas and steps; d) the installation of 30 lighting posts.

#### *Main Issue*

38. The main issue is the effect of the development on the character and appearance of the site and surrounding area, having regard to the site's location within the National Park and the WHS.

#### *Reasons*

39. The site is located within an area of high landscape value in the 'South Distinctive Area' of the National Park; the Broughton and Torver Area of Distinctive Character (54) as identified in the Lake District National Park Landscape Character Assessment and Guidelines, Supplementary Planning Document, (2008, Revised 2018 and 2021) (the SPD); and the WHS.
40. From the site, agricultural fields lie to the west, north and east; Carr Lane<sup>15</sup>, a public right of way<sup>16</sup> runs to the east and north; and the Wilson Arms, additional holiday accommodation and residential dwellings are positioned to the south and south west.
41. National Parks have the highest status of protection in relation to landscape and scenic beauty. Under the National Parks and Access to the Countryside Act 1949 (as amended), the two purposes of National Parks are to conserve and enhance the natural beauty, wildlife and cultural heritage of National Parks;

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<sup>15</sup> The notice names this route 'Garr Lane' as that is how it is referenced in Land Registry Documents.

<sup>16</sup> FP576009.

and to promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the public. In accordance with Paragraph 182 of the Framework, I attach great weight to the conservation and enhancement of the landscape and scenic beauty in the National Park as well as to its wildlife and cultural heritage.

42. The SPD confirms that the 'distinctive characteristics' of the Broughton and Torver Area of Distinctive Character include its ridge and hummocky topography which encompasses a network of pastoral fields with rocky knolls delineated by hedgerows and slate stone walls; the frequent small patches of deciduous woodlands with generally soft edges that frame surrounding fields; and predominantly a tranquil area due to openness and perception of naturalness of the landscape as well as the relative absence of settlements and sources of artificial noise. Guidelines for managing landscape change within the area set out within the SPD include, encouraging development as appropriate which respects or strengthens local character with good quality design and sensitivity to its environs.
43. Paragraph 195 of the Framework confirms that World Heritage Sites are designated heritage assets of the highest significance which are internationally recognised to be of Outstanding Universal Value (OUV). In line with Paragraph 205 of the Framework, in considering the impact of development on the significance of the WHS, I attach great weight to the asset's conservation.
44. From the information submitted, the OUV and thus significance of the WHS is derived, in part, from its historic interest as a spectacular and inspirational landscape of exceptional beauty, shaped by its continuous and distinctive agro-pastoral traditions and its rich cultural and vernacular architectural heritage. Risks cited to affect the WHS include the impact of long-term climate change, economic pressures on the system of traditional agro-pastoral farming and development pressures from tourism.
45. I recognise the grant of development as part of the 2019 and 2020 permissions. These permissions have changed the use of the land and introduced additional features in the form of holiday accommodation, modifying the character and appearance of the site to a degree. Moreover, the nearby public house, other holiday accommodation and residential properties impart a domestic/small settlement character to part of the surrounding area. These form a baseline for an assessment of the matters stated in the notice.
46. That said, the character and appearance of the majority of the surrounding area predominantly stem from its open, tranquil, verdant and eminently rural qualities, allowing views to pastoral fields, stone boundary walls, woodland and distant fells. The 2019 development, as permitted, relates to the commercial use of the public house; and the size, form and design of the huts and associated amenity space are appropriately modest, so not to detract from the highly significant landscape within which they sit.
47. Section 177(1)(a) of the 1990 Act as amended sets out that on the determination of an appeal under section 174, the decision maker may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. As such, I have considered each of the distinct elements individually and collectively.



*Track and hard standings with edging stones*

48. As constructed, the track is of a considerable width which adversely jars with the soft landscaped nature of the adjacent land, and the use of gravel/crushed slate over what appears to be a consolidated base give the route a very formal character and appearance. Additionally, the hard standings with edging stones within the plots give rise to a more formally designed and manicured appearance, imparting a more suburban character to the plots which is wholly at odds with the site as well as its wider rural context.
49. I recognise the practical need for some form of route for guests to access the plots and huts and for the appellant to maintain the holiday accommodation. However, it has not been satisfactorily demonstrated that the width, form and nature of the track as installed is necessary to achieve these purposes given the short distance of the plots from the public house and the car park. Moreover, whilst it may be necessary for the wheels of the huts to be placed on some form of hardstanding, this does not also require the formal delineation of an access path and amenity space within the plots as installed.

*Hot tubs*

50. The hot tubs and associated wood fired heaters, whilst linked with the use of the holiday accommodation, introduce additional features within the plots. This paraphernalia is not consistent with its wider rural context. It lessens the minimalism of the use within the site and adversely increases its conspicuousness within the landscape.

*Glazed raised decking areas and steps / Lighting posts*

51. The four glazed raised decking areas and steps provide access and additional amenity space to the huts. However, each of the plots already have their own dedicated amenity space. The size and form of the structures notably increases the extent of the accommodation and compromises the simplicity of the hut's design. Moreover, their elevated position exacerbates their prominence within the site and landscape.
52. I accept that some form of lighting is required along the track and within the plots to allow safe access to the huts, and that the timber posts with hooded lights are modest in form and aim to mitigate the dispersion of light when illuminated. However, the number installed is wholly excessive to the size of the site and the individual plots. My site visit during the day did not provide an opportunity to view them illuminated, but given their proliferation across the site, it is reasonable to conclude that even with mitigating features, they increase the level of illumination and light pollution of the site and plots at nighttime, amplifying the site's prominence within the landscape.
53. In the above respects, individually and collectively, the elements stated in the notice appear as physically discordant and/or visually intrusive features which are not respectful of the distinctive character and appearance of the site and surrounding landscape. They weaken the perception of naturalness of the locale and undermine the authenticity and integrity of the area. These harmful effects are keenly felt when viewed from the nearby public routes to the east and the north of the site which allow short range and long range views to the development; as well as from the nearby private houses and their amenity spaces.

54. The appellant suggests that 'appropriate screening' could be delivered to make the matters stated in the notice acceptable and would be willing to agree to a condition on this matter. However, no screening options are advanced. In any event, whilst 'screening' may mask and/or mitigate the harmful visual effects of the development, it would not satisfactorily lessen its adverse impact on the authenticity and integrity of the area.
55. Consequently, the development harms the character and appearance of the site and surrounding area and, while localised in its extent, fails to conserve or enhance the local landscape of this part of the National Park. In my view, it follows that if the landscape and scenic beauty of this part of the National Park is materially diminished, the identified OUV and thus significance of the WHS is also incrementally harmed.
56. I note the Inspector's comments in Appeal Ref: 3270266, that the character and appearance of the wider paddock area adjacent to the site is not one of open undeveloped countryside, and that there is a strong sense of containment from the surrounding countryside afforded by the existing boundary treatments. Even so, in line with the Inspector's comments in Appeal Refs: 3288063, 3288064, 3288066 and 3288067 I am of the opinion that the paddock area more forms part of the wider countryside setting than the built form of the settlement. In any event, given the nature and heritage significance of the site and surrounding landscape, and their undoubted sensitivity to change, this does not mean that any additional development within the site does not have harmful effects and/or is acceptable.
57. Moreover, whilst these additional features are advanced as being necessary or associated/ancillary to the permitted use, no substantive evidence has been submitted which demonstrates that the development as implemented is required for the ongoing viability of the business or that the business would be in jeopardy or cease if the appeal on ground (a) were to fail. In this respect, and with reference to Paragraph 206 of the Framework, clear and convincing justification for the harm identified has not been provided.
58. With reference to Paragraphs 207 and 208 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm requires to be assessed. Given the nature and limited extent, individually and collectively, of the development, I find that the harm is less than substantial.
59. In accordance with Paragraph 208 of the Framework, this harm is required to be weighed against the public benefits of the development. The development provides formal and lit access, additional amenity space and additional facilities to the existing holiday accommodation, giving an enhanced offer which may encourage more tourists to this site and the Lake District. This has the potential to deliver increased economic investment into a local business and the area, generating benefits to the public at large. No information has been provided as to the level of these benefits. However, given the limited number of plots and huts and the form of the additional development, they are likely to be modest.
60. On balance, I find that the public benefits which accrue from the development are not sufficient to outweigh the harm to the OUV and thus significance of the WHS.

61. Accordingly, I conclude that the development has a harmful effect on the character and appearance of the site and surrounding area, having regard to the site's location within the National Park and the WHS.
62. This conflicts with Policies 01, 05, 06, 07 and 18 of The Lake District National Park Local Plan 2020-2035, adopted May 2021 (the LP), in so far as they seek to conserve and enhance the extraordinary beauty and harmony of the Lake District landscape, including special qualities and attributes of OUV of the WHS; and achieve design excellence which reinforces local character, reflects local distinctiveness and is consistent with the landscape character. Also, it does not accord with the provisions in the Framework which seek to conserve and enhance the natural and historic environments and achieve well designed and beautiful places.

### *Conclusion*

63. Drawing all of the above together, I have found the development to be contrary to the relevant policies of the development plan and no material considerations of sufficient weight have been advanced to justify a decision other than in accordance with the development plan. Therefore, I conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

## **Appeal B: APP/Q9495/C/22/3305200**

### **The appeal on ground (c)**

64. An appeal on ground (c) is as stated above.
65. The 2019 permission granted '**Change of use of** amenity livestock display area ancillary to the Wilsons Arms Public House for the siting of 4 no. timber Shepherd's Huts for holiday accommodation and **field to beer garden** (part retrospective)' (my emphasis) subject to conditions. The Authority submits that the use of 'the field' as a beer garden has been extended across the paddock into the land outlined in red on the plan attached to the notice (the land), which it contends is outside of the existing 2019 permission. The Authority advances that this amounts to a material change of use of the land.
66. The appellant does not challenge that those matters alleged in the notice have not occurred. They contend that the matters do not constitute a breach of planning control, because the change of use of the land to a beer garden has already been granted as part of the 2019 permission. When on site I observed that the land comprised closely mown grass, with tables/seating and children's play equipment placed upon it.
67. The focus of the dispute relates to the 'approved plan(s)' submitted as part of the 2019 permission. The Authority advances that the plans cited under condition 2 of the permission, specifically Drawing number WA/PSP/1 Rev F, Proposed Site Plan, incorporates the approved site boundary which limits the extent of the change of use of the field to beer garden (as annotated on the plan), within which the tables/seating is contained. Conversely, the appellant references Drawing number WA/PSP/1 Rev C, Proposed Site Plan, cited in condition 6 concerning landscaping, that shows a site boundary taking in the whole of the field. They also highlight that the description states 'field' and not 'part of field.' On this basis, the appellant contends that the grant of a change of use of field to beer garden under the 2019 permission covers the whole field.

68. In considering this ground of appeal, I have had regard to the appellant's comments concerning the requirements set out in Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO); advice in the Planning Practice Guidance (the PPG); and the referenced caselaw<sup>17</sup>.
69. The parties confirm that the scheme, and thus the plans, changed a number of times during the determination of the 2019 application. Each change resulting in a different iteration of the plan showing the development within the site. Only Rev C and Rev F have been provided as part of the appeal.
70. I acknowledge the lack of a definitive 'site location plan'; the broad description of development; and reference to both Rev F and Rev C of the 'Proposed Site Plan' within the decision notice, each possessing different red line boundaries. Nevertheless, the Authority must have been content that the 'Proposed Site Plan' was sufficient to meet the requirements of Article 7 of the DMPO and in line with the advice in the PPG.
71. In order to resolve ambiguity on the face of a planning permission, it is permissible to look at extrinsic evidence including, but not limited to, the application form and other documents, depending on the circumstances of the individual case. Rev F is clearly the final iteration of the plan (superseding Rev C) and thus, in my judgement, the one which shows the accepted and approved physical extent of the permission. This is confirmed in condition 2, which stipulates that 'the development hereby permitted shall not be carried out otherwise than in conformity with the following submitted plans and details.' I also note on the plans that the annotation of 'beer garden' on both revisions of the plan focusses on the southern part of the field and the picnic tables/seating. Moreover, whilst Rev C can be said to form part of the approval, in citing Rev C under condition 6, it is logical and reasonable to conclude that this plan relates only to landscaping.
72. Having regard to the above, I consider that the extent of the permission is confirmed by Rev F, and the change of use of the land outlined in red on the plan attached to the notice from a field to beer garden has not been granted as part of the 2019 permission.
73. In terms of whether this identified change of use is 'material', it is accepted that for a material change of use to occur there must be some significant difference in the character of the activities from what has gone on previously. This is determined on the merits of the case, as a matter of fact and degree.
74. From the submitted evidence, the previous use was agricultural, namely a field. The change of the land's use from agrarian to beer garden has resulted in the formal close mowing and maintenance of the land, the introduction of tables/seating, and the presence of patrons of the public house. Notwithstanding the adjacent permitted uses, this unquestionably gives rise to a significant difference in the character of the activities from what has gone on previously. As such, as a matter of fact and degree, the change of use is 'material.'

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<sup>17</sup> *R. v Ashford Borough Council ex parte Shepway District Council* [1998] 2 PLCR 12; *Slough Estates Ltd v Slough Borough Council* (No. 2) [1971] AC 958; [1970] 2 WLR 1187; and *R(Reid) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 2174 (Admin).

75. I conclude that, on the balance of probabilities, the change of use of the land from use for agriculture to use as a seating and play area for the consumption of food and drink and recreation by customers of The Wilson Arms is material and does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

### **The appeal on ground (a)**

76. The appeal on ground (a) seeks planning permission for the matters alleged in the notice, namely, the material change of use of the Land from use for agriculture to use as a seating and play area for the consumption of food and drink and recreation by customers of The Wilson Arms.

#### *Background and Main Issue*

77. The Authority cites harm to the amenity of the neighbouring properties, without specifying the type of harm. Having regard to the development and the representations submitted by interested parties, I have focused my considerations of this issue on noise and disturbance.
78. The main issues are the effect of the development on i) the character and appearance of the site and surrounding area, having regard to the site's location within the National Park and the WHS; ii) the living conditions of neighbours, with regard to noise and disturbance.

#### *Reasons*

##### *Character and appearance*

79. The designations on the land, the character and appearance of the site and surrounding area, and the baseline for my assessment are as set out above.
80. As a result of the change of use, the formal maintenance of the land, introduction of commercial/leisure paraphernalia in the form of tables/seating and play equipment and the intensification of activity by customers of the public house over a wider area, adversely intrudes into this open paddock space. It weakens the distinctive natural and tranquil qualities of the site, thus diminishing the authenticity and integrity of the area.
81. These harmful effects are experienced when the development is viewed from the nearby public routes to the east and the north of the site; as well as from the nearby private houses and their amenity spaces. Additionally, they would not be satisfactorily mitigated by landscaping, which I note the appellant is willing to agree to, subject to a suitably worded condition.
82. Consequently, the development harms the character and appearance of the site and surrounding area and, although localised in its extent, fails to conserve or enhance the local landscape of this part of the National Park. It follows that if the landscape and scenic beauty of this part of the National Park is materially diminished, the identified OUV and thus significance of the WHS is also incrementally harmed, for which no clear and convincing justification has been provided.
83. Given the nature and limited extent of the development, I find the harm to the designated heritage asset of the WHS to be less than substantial. This is required to be weighed against any public benefits arising from the material change of use. The extension to the beer garden allows more patrons, both

locals and tourists to visit and use the services provided by the public house. This has the potential to deliver increased investment into a local business and the area, generating benefits to the public at large.

84. The appellant asserts that the beer garden is an important element of the public house's business and supports its continuing operation as a visitor and community facility. Be that as it may, I am mindful that the development is an extension to an existing beer garden, of which the latter would remain whatever the outcome of the appeal. Moreover, no information has been provided to demonstrate what the extended area contributes to the business and local economy, over and above that which the existing beer garden provides. Given the area that the land/extension to the beer garden covers, this is likely to be modest.
85. Overall and on balance, I find that the public benefits which accrue from the development cited in the notice are not sufficient to outweigh the harm to the significance of the WHS.
86. Accordingly, I conclude that the development has a harmful effect on the character and appearance of the site and surrounding area, having regard to the site's location within the National Park and the WHS. This conflicts with Policies 01, 05, 06, 07 and 18 of the LP and the provisions within the Framework referenced above. Additionally, it conflicts with Policy 02 of the LP which, amongst other things, seeks to enable development that supports and maintains the vibrancy and sustainability of settlements distinctiveness and sense of place.

#### *Living conditions of neighbours*

87. A number of residential properties and their respective private external amenity spaces lie to the south west of the land. Their proximity to the public house and the existing beer garden means that it is reasonable for residents of these homes to expect a higher level of activity and ambient noise, particularly during warmer months of the year.
88. Nevertheless, the extension of the beer garden with additional tables/seating as well as play equipment, more likely than not, gives rise to an intensification of activity on the land with an associated increased generation of noise and disturbance. These effects have the potential to materially harm the living conditions of neighbouring residents and diminish the use and enjoyment of the properties as their homes.
89. The Authority has not provided any substantive evidence to demonstrate why the matters stated in the notice cause harm to the amenity of neighbouring properties. However, I am cognisant of the representations made by interested parties on this appeal. Moreover, it is reasonable to conclude that the larger the beer garden the higher the potential for increased noise and disturbance from the site, generating harmful effects to the living conditions of nearby residents.
90. Accordingly, I conclude that the development has a harmful effect on the living conditions of neighbours, with regard to noise and disturbance. This conflicts with Policy 06 of the LP in so far as it requires development not to have an unacceptable impact on the amenity of adjoining residents. It also conflicts



with the provisions within the Framework which seek to achieve well designed and beautiful places.

### *Conclusion*

91. Drawing all of the above together, I have found the development to be contrary to the relevant policies of the development plan and no material considerations of sufficient weight have been advanced to justify a decision other than in accordance with the development plan. Therefore, I conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

## **Appeal C: APP/Q9495/C/22/3305201**

### **Procedural Matters**

92. On my site visit I observed that the marquee which is the subject of this notice and appeal had been removed from the land. The parties confirmed and agreed on site that this took place around October 2022, after the issue of the notice on 11 July 2022. Section 174(2)(b) of the 1990 Act as amended is worded in the past tense. Therefore, I need to consider whether the alleged breach had occurred by the date of issue of the notice.
93. The appellant submits that the land upon which the marquee has been erected forms part of the grounds of the public house. Therefore, no change of use has occurred through the erection of a marquee in connection with the public house. However, the matters stated in the notice and alleged breach of planning control are, operational development consisting of the erection of a marquee building, and I have considered it on this basis.
94. Representations have been submitted by interested parties in relation to the presence and harmful effects of the marquee. However, in the absence of an appeal on ground (a), the planning merits of the proposal do not form part of my considerations of this appeal. Moreover, as the marquee has been removed, I have not considered them against the appeal on ground (g).
95. As part of their appeal on ground (b) the appellant highlight's that the land to which the notice relates identified on Plan A covers a much larger area than the former position of the marquee. They assert that, no 'marquee building' has been erected on the majority of the land included on Plan A and, therefore, the matters stated in the notice have not occurred.
96. These comments challenge the validity of the notice. Section 4(c) of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires that the notice and any accompanying plan to indicate the precise boundaries of the land to which the notice relates. Paragraph 2 identifies the land to which the notice relates, described as 'Land to the west of Garr Lane, Torver, Coniston shown edged red on the attached Plan A.' Although Plan A takes in a wider area than the approximate position and footprint of the marquee, it remains that it encompasses the 'land' to which the notice relates. Moreover, Plan B is clear in confirming the approximate position where the breach of planning control is alleged to have occurred. On this basis, I consider the notice to be valid. Even if this were not the case, an error on Plan A would not be enough on its own to support a finding of nullity or invalidity of the notice.

### **The appeals on grounds (b) and (c)**

97. An appeal on ground (b) is that those matters stated in the notice have not occurred. An appeal on ground (c) is as stated above. On ground (b), like ground (c), the onus is on the appellant to make out their case to the standard of the balance of probabilities. Given the degree of overlap in the appellant's case concerning these grounds of appeal, I have considered them together.
98. The matters stated in the notice are 'the erection of a marquee building, in the approximate position marked with a blue line on the attached Plan B.' The appellant does not dispute that, at the time the notice was issued, a 'marquee' was erected in the approximate position marked with a blue line on Plan B. On this basis and having regard to my conclusions above that the notice is valid, the appeal on ground (b) cannot succeed.
99. In relation to the appeal on ground (c), consideration must be given as to whether the marquee constitutes 'development' for the purposes of section 55(1), namely, whether it constitutes a building. In this respect, the same factors addressed in Appeal Ref: 3305199 above, namely size, permanence and physical attachment, require to be addressed.
100. The parties' evidence states that the 'marquee', comprising two interconnected fabric marquees, measured approximately 18.5m wide by 21m long with a height of about 2.5m to eaves and a total height of about 4.5 to 5m to ridge. Internally it possessed a solid floor laid over the grass.
101. I acknowledge that the structure was not mounted on any permanent base or formal foundations, instead it rested in place by its own weight and was fixed via 'pegs' which could be easily removed. Nor was it formally connected to any utilities/services such as water or electricity.
102. Nonetheless, it is common ground between the parties that the marquee was a substantial structure. Having regard to the submitted images and the visible footprint scar on the land still apparent on my site visit some six-seven months after it had been removed, I agree. Its ample dimensions likely requiring it to be erected on site. In addition, whilst I note the appellant's comment that it was only erected while the public house was being renovated for it to remain viable, it was in place between, the not insubstantial periods of, March to October 2022 and May to September 2021. In this regard the structure's presence on the land was not brief.
103. Consequently, although the marquee did not conclusively display the factor of physical attachment, I consider that it was of a size and degree of permanence which, in this instance, are decisive in determining that it was a 'building' and that its erection constituted operational development for the purposes of section 55(1), for which planning permission was required.
104. The appellant has not directed me to any part of the Town and Country Planning (General Permitted Development) (England) Order 2015 which confirms that the erection of the marquee building in the position shown on Plan B, for the length of time stated in the evidence, constitutes permitted development.
105. As such, I conclude that, on the balance of probabilities, the matters stated in the notice have occurred and the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeals on grounds (b) and (c) fail.

### **The appeal on ground (g)**

106. The appeal on ground (g) is that any period specified in the notice in accordance with section 173(9) of the 1990 Act as amended falls short of what should reasonably be allowed. The period specified in the notice is one month.
107. Given that the marquee has already been removed, I have left the period for compliance as stated in the notice unchanged.

### **Conclusions Appeals A, B and C**

108. For the reasons given above, I conclude that the appeals should not succeed. For Appeal A, I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. For Appeal B, 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. For Appeal C, I shall uphold the enforcement notice.

### **Formal Decision Appeal A:**

109. It is directed that the enforcement notice is corrected by:
- the substitution of Plan 2B attached to this decision for Plan 2 attached to the enforcement notice.
  - in paragraph 3 b), the deletion of the words 'infrastructure consisting of heaters, cabling and water piping' and the insertion of the words 'wood fired heaters'.
  - in paragraph 3 d), the deletion of the number '18' and the insertion of the number '30'.
110. It is directed that the enforcement notice is varied by:
- in paragraph 5 b), the deletion of the word 'infrastructure' and the insertion of the words 'wood fired heaters'.
  - in paragraph 5 d), the deletion of the number '18' and the insertion of the number '30'.
111. Subject to the corrections and variations, 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.

### **Formal Decision Appeal B:**

112. 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.

### **Formal Decision Appeal C:**

113. The appeal is dismissed and the enforcement notice is upheld.

*F Cullen* INSPECTOR

Scale: Not to Scale

