
Appeal Decisions

Site visit made on 30 July 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 13th August 2024

Appeal Refs: APP/Q9495/C/23/3322151 & 3322152

Land at Silver Howe (formerly known as Inglewood House), Chapel Stile, Ambleside LA22 9JG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Andrew Millward-Boyton (Appeal A) and Mrs Rebecca Millward-Boyton (Appeal B) against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2020/0220, was issued on 11 April 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 use as dwellinghouse with ancillary accommodation to use as two separate dwellinghouses.
 - The requirements of the notice are to cease the use of the Land otherwise than as a single dwellinghouse.
 - The period for compliance with the requirements is one month.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the 1990 Act. In relation to Appeal B, since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed. Appeal B is therefore proceeding only the grounds set out in section 174(2) (d) and (g) of the 1990 Act.
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Summary Decisions: Appeal A is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out in the Formal Decision below. Appeal B is dismissed.

Procedural matters

1. The appeal site has a lengthy and complicated history that is fully out in the appellants' Grounds of Appeal. The appellants nonetheless accept that a material change use that involved the creation of two separate dwellinghouses historically has occurred without the required planning permission. I have taken that as the starting point.
2. The breach of planning control as alleged in the notice is, in summary, the making of a material change of use to two separate dwellinghouses. The appeal statement produced by the Authority focuses entirely upon the property formerly known as Great Langdale Annex but now known as The Piggery. The appeal statement is wholly silent in relation to Silver Howe (formerly known as Inglewood House). The inference that I draw from this is that the Authority is satisfied that the use of the property known as Silver Howe as a dwelling is acceptable in planning terms and the breach of planning control alleged in the notice arises from the use of The Piggery as a second, independent dwelling. I have proceeded on that basis.

The appeal on ground (d)

3. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The breach of planning control alleged in the notice falls under the time limit for taking enforcement action set out in section 171B(2) of the Town and Country Planning Act (the 1990 Act) specifically that, in respect of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
4. In relation to the time limit set out in section 171B(2) of the 1990, it is necessary to pose two questions: when did the change of use take place, and whether the use continued throughout the requisite period? Given that the breach of planning control alleged in the notice is the material change of use of the Land from use as dwellinghouse with ancillary accommodation to use as two separate dwellinghouses, it is necessary for the appellants to show that both dwellinghouses have achieved immunity from enforcement.

When did the change of use take place?

5. The appellants explain that the Annex (then referred to and registered with the former South Lakes District Council as Great Langdale Annex) was developed from an existing outbuilding. The annex had a kitchen, bathroom and bedroom, and therefore had the distinctive characteristics of a dwellinghouse in terms of its ability to afford the facilities required for day-to-day private domestic existence. The appellants go on to explain that this has been the case since the Annex was converted in the late 1980's.
6. The previous owner of the property, a Mr Sykes, states that Inglewood House (as it was then known) was rated separately as a Holiday Let and was under business rates with 100% relief, whereas he paid domestic rates for the Annex, described as 'Second Home or Furnished and Unoccupied'. The implication of Mr Sykes' evidence is that Inglewood House was not occupied as a dwellinghouse falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987, but rather as a *sui generis* holiday let.
7. This is supported by the screenshots from GOV.uk confirming that Inglewood House (now Silver Howe) ceased being listed as a dwellinghouse in 1997 when Mr Sykes started letting it out as a holiday let. These screenshots also show that that Great Langdale Annexe (now The Piggery) was listed as a Council Tax Band A property in its own right from 2006 to 2020.
8. Beyond that evidence, I have not been provided with any evidence to show when the use of either Inglewood House or Great Langdale Annexe as separate dwellinghouses began. For example, I have not been provided with copies of utility bills, photographs or Statutory Declarations. In the absence of that evidence, I am not in a position to determine when the use of the properties known as Silver Howe (formerly known as Inglewood House) and The Piggery (formerly known as Great Langdale Annexe) as dwellinghouses actually began. All that follows is predicated on that.

Whether the use continued throughout the requisite period?

9. In their Grounds of Appeal, in the Appendix titled 'Property History and Timeline', the appellants explain that renovation of the Annex (then known as the Great Langdale Annex) started in November 2018 and finished in December 2020. In March 2021, the Annex (by then named as The Piggery) was let out to two people.
10. This renovation took place over a period well in excess of two years, a not insignificant period of time. The use was dormant during that time. This represents a clear break in the continuity of the use. The refurbishment of the Annex was also not a minor project. The photographs embedded within the appellants' evidence show that North wall was removed and that the interior of the property was effectively gutted. The Authority could not have taken enforcement action during the time that the refurbishment was taking place.
11. It is settled case law that, if dormant, a use will only remain lawful if it has already acquired lawfulness¹. If a use that is taking place in breach of planning control is ceased before lawfulness has been acquired, then the immunity 'clock' would start again. In this case, the refurbishment of the Annex constitutes an interruption of the use of the Annex such that the use was not continuous. The evidence before me is not sufficiently precise and unambiguous to show that the use had acquired immunity before the major refurbishment of the Annex started. The immunity clock would therefore start again when the use resumed in or around March 2021. That is less than four years prior to the enforcement notice being issued, such that the use of the two properties as separate dwellings has not acquired immunity at that time.

Conclusion on the appeal on ground (d)

12. This is not a situation where the local planning authority has evidence of its own to contradict that of the appellants or make their version of events less than probable. However, I find that the appellants' evidence is not sufficiently precise and unambiguous to show that, on the balance of probability, the use of Silver Howe (formerly known as Inglewood House) and The Piggery (formerly known as Great Langdale Annex) as separate dwellings had acquired immunity at the date on which the notice was issued. I therefore conclude the Authority was in a position to take enforcement action in respect of the breach of planning control constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application (Appeal A only)

13. The ground of appeal is 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. The Council has stated three substantive reasons for issuing the enforcement notice, from which the following main issues are raised:

¹ *Panton & Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse DC* (1999) JPL 461

- whether the development represents an appropriate reuse of an existing building, including in terms of the provision of open market housing in this location
- whether the building known as The Piggery provides an adequate standard of amenity for existing and future occupiers, and
- the effect, if any, of the development on the living conditions of the occupiers of surrounding properties.

Whether the development represents an appropriate reuse of an existing building

14. Policy 15 of the Lake District National Park Local Plan (Local Plan) seeks to increase the supply of homes to meet local community need. The policy seeks to achieve that objective by supporting new permanent homes that contribute towards helping communities remain vibrant and resilient, which achieve a better balance in the housing market; and which are secured in perpetuity for permanent occupation with eligibility restricted to a geography that is tailored to local circumstances. The policy specifically does not support open market housing.
15. In the absence of a planning condition restricting its occupation to persons made eligible by geography, the use of The Piggery as a permanent dwelling would be wholly contrary to Policy 15 of the Local Plan. It is of course open to me to impose such a condition on any planning permission that is granted, and I return to that below.

Whether the building known as The Piggery provides an adequate standard of amenity for existing and future occupiers

16. The accommodation provided by The Piggery comprises an open plan kitchen/dining/living space upstairs and a bedroom and bathroom downstairs. There is no dedicated off-road car parking available and no outside amenity space. The gross internal floor space of around 25 square metres. This is well below the minimum space standards of 37 square metres for a one-person, one-bedroom dwelling set out in the Technical housing standards – nationally described space standard. It is even further below the minimum space standard of 50 square metres for a one-bedroom dwelling occupied by two people.
17. Due to its small internal floor area, and the complete absence of any external amenity space, I consider that The Piggery would not provide an adequate standard of amenity for existing and future occupiers. Consequently, it is not suitable for providing permanent housing, including to meet local need.

Living conditions

18. In its appeal statement, the Authority alleges unacceptable impacts, in terms of either loss of privacy or overbearingness, on the following properties: Silver Howe to the south, Inglewood Cottage to the east, 2 Undergarth to the west and Underfell and Low Underfell to the north. The Authority is not specific about those impacts and, like the appellant, I failed to pinpoint what those impacts were at the site visit.

19. I conclude that the use of The Piggery as a dwelling does not unacceptably detract from the living conditions of the occupiers of surrounding residential properties. Consequently, I find no conflict with Policy 06 of the Local Plan which, amongst other things, requires that development does not have an unacceptable impact on the amenity of adjoining residents and users of the proposed development.

Other considerations

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control fails to accord with the development plan in some respects. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
21. The appellant is very clear that he is not seeking permission to use a redundant building for permanent residential purposes, and that he is only seeking permission to expand an ancillary residential use to allow The Piggery to be let independently from Silver Howe. That is a very important consideration which, in one go, removes the policy objection established by Policy 15 of the Local Plan and obviates the need for a local occupancy condition.
22. In its place, Policy 18 of the Local Plan comes to the fore. That policy states, amongst other things, that proposals for the reuse of existing buildings (excluding guest houses) for short term holiday letting will be supported where they would not utilise a building that is suitable for providing local housing need, do not utilise a building which is suitable for providing employment use or form part of an agricultural or land-based rural business diversification proposal.
23. I have already found that, due to its limited internal floor area and complete absence of any outside amenity space, The Piggery would not provide an acceptable standard of amenity for a permanent home. It would therefore not be suitable for providing local housing need. For the same reason, it would not be suitable for employment use. It does not form part of an agricultural or land-based rural business diversification proposal. Consequently, should The Piggery be used for short-term letting accommodation, there would be no conflict with Policy 18 of the Local Plan.
24. The Authority proposes two conditions should I be minded to grant planning permission for The Piggery to be used for short-term letting accommodation and/or for purposes ancillary to use of Silver Howe as a dwelling. Those conditions require, in summary, that (1) the property shall only be occupied for the purposes of short-term holiday letting accommodation and (2) the removal of permitted development rights granted by the Town and Country Planning (General Permitted Development)(England) Order 2015.
25. Both of those conditions would be necessary to make the development acceptable in planning terms and would be reasonable in all other respects. I will, however, amend the wording to ensure that the conditions reflect the breach of planning control that has occurred and, consistent with the

Authority's case as I understand it, are directed solely at The Piggery. In any event, having regard to National policy regarding the withdrawal of permitted development rights set out in the Planning Practice Guidance, I see no reason to withdraw those rights in relation to Silver Howe.

26. I conclude that planning permission ought to be granted subject to those conditions. Accordingly, the appeal on ground (a) succeeds.

Conclusion

27. For the reasons given above, I conclude that Appeal A should succeed on ground (a). I shall grant planning permission for the use as described in the notice, subject to conditions.
28. Because the requisite fee was not paid in relation to Appeal B, I am not in a position to grant planning permission under that appeal. However, following the success on Appeal A, the enforcement notice will be quashed in any event. Appeal B will therefore be dismissed on the legal ground only (the failure of the appeal on ground (d)).
29. It also follows that the appeals on ground (g) do not fall to be considered.

Formal Decisions

Appeal A: APP/Q9495/C/23/3322151

30. 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 making of a material change of use of the Land from use as dwellinghouse with ancillary accommodation to use as two separate dwellinghouses at Land at Silver Howe, Chapel Stile, Ambleside LA22 9JG as shown on the plan attached to the notice and subject to the following conditions:
1. The dwelling hereby permitted (formerly known as Great Langdale Annexe and now known as The Piggery) shall only be occupied ancillary or incidental to the dwelling known as Silver Howe, or for the purposes of short-term holiday letting accommodation, in which case it shall not be occupied by any one individual, family or group for a period exceeding eight weeks in any three-month period. The owner/occupier shall maintain an up-to-date register of the name of all occupiers of the residential accommodation and their home address, and shall make this register available to the Local Planning Authority within 14 days of receipt of written request.
 2. In relation only to the dwelling hereby permitted formerly known as Great Langdale Annexe and now known as The Piggery and notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no material external alterations or extensions shall be carried out to the dwellinghouse, nor shall any building, enclosure, structure, domestic fuel oil container, pool or hardstanding be constructed within the curtilage of the dwellinghouse, without application to, and the grant of permission by, the Local Planning Authority.

APPEAL B: APP/Q9495/C/23/3322152

31. The appeal is dismissed.

Paul Freer
INSPECTOR