
Appeal Decision

Site visit made on 20 August 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: 3 September 2024

Appeal Ref: APP/Q9495/C/24/3340168

Land at Fairfield, Eskdale, Holmrook

- 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 appeal is made by Hua Yun Da Petroleum Services (Bahamas) against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice, numbered E/2023/0071, was issued on 10 January 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a dwellinghouse, falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended), to a use as short term letting accommodation.
 - The requirements of the notice are to discontinue the use of the land otherwise than as dwellinghouse falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - 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 (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 fall to be considered.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld

Procedural matters

1. The site visit was conducted as an Access Required Site Visit, at which it is standard procedure that the local planning authority do not attend. The appellants were represented at the site visit by their agent, Mr Peter Winter. As part of that site visit, I was shown around the inside of the appeal property as well as the external areas. I also took the opportunity to familiarise myself the immediate surroundings of the appeal property, including walking much of Randlehow.

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

2. 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, with additional matters being raised by local residents in their representations. The main issues raised are therefore:

- whether the loss of the permanent residential dwelling is acceptable in policy terms, and
- the effect, if any, of the use the property as short-term letting accommodation on the living conditions of the occupiers of surrounding residential properties, specifically from noise disturbance and light pollution.

Whether the loss of the permanent residential dwelling is acceptable in policy terms

3. Policy 15 of the Lake District National Park Local Plan (Local Plan) seeks to increase the supply of homes to meet local community need. Policy 18 of the Local Plan states, amongst other things, that proposals for the reuse of existing buildings (excluding guest houses) for short term holiday letting will only be supported where they would not utilise a building that is suitable for providing local housing need.
4. The direction of travel of these policies is clear: they both seek to secure permanent housing to meet local community need. Indeed, I note that in principle Policy 15 allows the change of use of guest houses to dwellinghouses. This is a clear indication of the priorities that underpin the Local Plan in terms of the balance between guest accommodation and permanent housing to meet local need.
5. The appeal property has been significantly extended and altered pursuant to planning permissions granted in 2019 and through permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The property now comprises nine bedrooms and is well appointed, including a large kitchen, separate dining area, lounge, bathrooms and games room.
6. The property is located within the settlement of Eskdale Green, defined as a village in Policy 02 of the Local Plan. This policy notes that villages 'have a more limited supply of social and economic infrastructure including employment, services and facilities, but demonstrate strong linkages with Rural Services Centres and other settlements'. In that context, I noted that the appeal property is in comfortable walking distance of the Post Office/convenience store located on Smithybrow Lane.
7. The appeal property is located within a quiet residential enclave of Eskdale Green, with residential properties to the north, south and east. There are further residential properties further to the south, and I am advised that outline planning permission has been granted for 3 dwellings on a plot of land to the west. Consequently, given that the property was previously occupied as a dwelling, in principle the appeal property is an eminently suitable location for continued use as a dwelling.
8. Policy 15 of the Local Plan supports the provision of new permanent homes that, amongst other things, are secured in perpetuity for permanent occupation with eligibility restricted to a geography that is tailored to local circumstances. Policy 15 goes on to expressly state that open market housing will not be supported again, as I read it, in the context of the provision of new permanent homes. The appeal property was previously an open market dwelling with no local occupancy clause attached.

9. It follows that anyone is entitled to purchase the property and to live there, such that the dwelling would only ever be rented or sold at the market price. It would not be rented or sold at a reduced price which would be aligned to local need in terms of affordability. But that is a function of the previous use of the appeal property as an unrestricted dwelling, and the use to which it would revert in any event if the appeal were to be dismissed and the notice upheld for other reasons.
10. The 'Small area housing needs analysis' for Eskdale Parish, published by Copeland Borough Council in April 2022, identifies a need for 6 dwelling is total, including 1 affordable rented 3/4 bed home and 1 market 3/4 bed home. No specified need for a property having more than four bedrooms was identified. However, in the section of the analysis titled 'Market Mix', it is explained that the modelling on which the analysis was based also suggested some need for larger (4+-bedroom) homes. The analysis also makes it clear that it does not give a definitive answer in terms of what the housing need is in a small rural area, nor the housing mix required.
11. It is clear that the appeal property in its current configuration could not meet the need for 3/4 bed homes identified in the 'Small area housing needs analysis' for Eskdale Parish. But that is not to say that there is no market need for a property of this size in Eskdale Green. That can only be definitively established through robust marketing the property.
12. Although the property as enlarged was marketed at some point in or around 2023, I have no information regarding how the property was marketed and the interest (if any) that was generated. For example, I have no details of any viewings of the property or expressions of interest/offers. The asking price was substantial but I have no information as to how that pricing strategy was arrived at: for example, comparison with similar properties that were on the market at the same time in a comparable location or by floorspace comparators. Neither do I have any details as to how long the property was on the market, or how/where it was advertised and for how long.
13. In the absence of that information, it is not possible to assess whether the marketing of the property was suitably robust, realistic and targeted: it is reasonable to conclude that there would potentially be demand for large dwellings in attractive locations such as this within the Lake District National Park if robustly marketed and realistically priced. It is therefore premature to suggest, as the appellants do, that there is no demand for a property of this size in this location.
14. In their Final Comments, the appellants explain that the appeal property is now owned in conjunction with a nearby agricultural business, specifically Low Birker Farm. Policy 18 of the Local Plan indicates, amongst other things, that the reuse of existing buildings for short term holiday letting will be supported where they would form part of an agricultural or land-based rural business diversification proposal. The appellants contend that the use of the appeal property as short-term letting accommodation would accord with Policy 18.
15. The appellants have provided no further details about how and to what extent the use of the appeal property as short-term letting accommodation assists the diversification of Low Birker Farm. For example, I have been provided with no evidence that the revenue received from the use of the appeal property as short-term letting accommodation is re-invested in the running of Low Birker

Farm and, if so, how that money is then used to support operations at the farm. In the absence of that evidence, I cannot determine whether the use of the appeal property as short-term letting accommodation accords with Policy 18 of the Local Plan in terms of facilitating the diversification of Low Birker Farm.

16. Policy 15 of the Local Plan seeks achieve a better balance in the housing market. This requires a choice of house types, size and affordability. Moreover, Policies 15 and 18 of the Local Plan are weighted in favour of retaining permanent residential dwellings irrespective of their size, affordability and occupation restrictions.
17. For these reasons, I conclude that the loss of this dwelling to short-term holiday letting is contrary to Policies 15 and 18 of the Local Plan.

Living conditions

18. The representations from the residents of Eskdale Green explain with compelling detail how the use of the appeal property for short-term holiday letting accommodation has affected their living conditions. A number of consistent themes emerge from their representations, which may be summarised as:
 - noise disturbance, including due to music and/or people shouting/screaming, with repeated description of the appeal property as a 'party house' used by large groups of people, including Stag and Hen parties
 - noise from loading and unloading of vehicles, sometimes as many as 10-12 cars, in particular when they arrive in the late hours
 - light pollution
19. I recognise that noise disturbance may not have occurred on every occasion on which the property has been let and that, whilst the occupier of a neighbouring property twice contemplated making a complaint to the police, no complaints were actually made. Nevertheless, that resident gave cogent reasons why no complaints were actually made and the fact that this resident even contemplated making a complaint to the police is an indication of the severity of the impact on the living conditions enjoyed by that resident. Moreover, more than one representation comments that, due to the number of people that can be accommodated, there is noise from the appeal property even when the occupiers are behaving reasonably.
20. The locational context of the property is also a significant factor in this respect. The appeal property is located within a quiet residential enclave of Eskdale Green. There are residential properties on the directly adjoining plots to the north and the south, with residential properties diagonally opposite on the east side of Randlehow. There are more residential properties further along Randlehow to the south. Ambient noise levels in this part of Eskdale Green are therefore likely to be relatively low, especially at night and not least from the general absence of traffic. As such, even a moderate level of noise disturbance is both significant and unacceptable in a residential setting such as this. The noise disturbance described by local residents in their representatives could not reasonably be described as moderate.

21. The location the appeal property is also a factor in terms of light pollution. Randlehow is unlit, such that ambient light levels would be primarily from the lights from residential properties on that road. The appeal property has a large number of windows. I can therefore fully appreciate that light levels from the appeal property could be intrusive, not just from properties in Randlehow but also from properties to the north-west.
22. Light levels are not necessarily a function of the use of the appeal property as short-term holiday letting accommodation. Similar light levels could result from the use of the property as a dwelling. However, in this case, local residents describe occupation of the property by large groups late into the evening/night. That is a pattern more likely to result from use of the appeal property for short-term holiday letting accommodation than from use as a dwelling. Consequently, I accept that the appeal property as short-term holiday letting accommodation has detracted from the living conditions of the occupiers of surrounding residential properties in terms of light pollution.
23. I conclude that the use of the appeal property for short-term holiday letting accommodation unacceptably detracts from the living conditions of the occupiers of surrounding residential properties, specifically from noise disturbance and light pollution. The breach of planning control is therefore contrary to 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 due to noise pollution or other adverse impact.

Other considerations

24. 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 that has occurred fails to accord with the development plan. 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.
25. The use of the appeal property for short-term holiday letting accommodation benefits local services, such as shops, restaurants, and bars through supporting tourism. In addition to providing a source of revenue in its own right, which could be re-invested in the local economy, the use of the appeal property for short-term holiday letting accommodation brings benefit to the local community and assists in delivering a prosperous local economy. In that context, the use would accord with Policy 18 of the Local Plan albeit the value to the local economy has not been quantified in any way. This limits the weight that I can attach to that benefit. Similarly, the use of the appeal property as for short-term holiday letting accommodation would accord with the National Planning Policy Framework (Framework), which looks to build a strong, responsive, and competitive economy.
26. There is, therefore, a tension within Policy 18 of the Local Plan between support for tourism and securing permanent housing to meet local need. However, that tension has already been resolved through the local plan adoption process. The development plan must be read as a whole. When

taken together, Policies 15 and 18 of the Local Plan are clearly weighted in favour of retaining permanent residential dwellings over support for tourism. The expectation that determination must be in accordance with the development plan, which is re-stated in the Framework, overrides the benefit to the local economy set out in that guidance.

27. I have considered whether the imposition of suitably worded conditions could overcome the harms that I have identified above and make the development acceptable in planning terms. However, in my view the harms identified are intrinsic to breach of planning control that has occurred and could not be overcome by the imposition of conditions.

Other matters

28. Another recurring theme in representations made by local residents is the difficulty experienced by guests at the holiday let in accessing the property in their vehicles. Local residents describe how on a number of occasions vehicles driven by guests staying at the appeal property have become stuck on the approach road coming from 'The Green' railway station and then, once at the appeal property, need to make several manoeuvres to enter the car park. Some local residents attribute the degradation of the highway outside the appeal property to this activity.
29. On my reading of this evidence, local residents are not alleging that this manoeuvring outside the appeal property constitutes a hazard to highway/pedestrian safety or gives rise to any inconvenience in terms of accessing their own properties. On my understanding, the point being made goes to the suitability of the appeal property as a holiday let and/or to the alleged damage to the highway. Some residents do describe encountering vehicles in the narrowest section of Randlehow and the difficulty this causes. However, in the absence of any meaningful evidence in terms of highway safety or inconvenience in accessing their own properties, the simple 'difficulty' experienced by some guests in accessing the appeal property and damage to the highway are not matters that I am able to take into account.
30. A number of residents also complain that the alterations to the appeal property that have taken place since around 2019 have resulted in a building that is out of scale and therefore out of keeping with other properties in this location, and as a result has harmed the character and appearance of the area. However, the evidence before me is that the property has been extended and altered pursuant to planning permissions granted in 2019 and through permitted development rights granted by the GPDO. Consequently, these developments all have the requisite planning permission(s) and hence from no part of the breach of planning control alleged in the notice. It follows that the impact of those developments on the character and appearance of the area is not a matter that is before me and I make no comment on it.

Conclusion on the appeal on ground (a) and the deemed planning application

31. For the reasons set out above, the breach of planning control alleged in the notice is contrary to the development plan. Having weighed the factors in support of the development, I am not persuaded that there are any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

32. I conclude that planning permission ought not to be granted for the matters stated in the notice.

The appeal on ground (g)

33. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months.
34. The appellants explained in the Appeal Form that there are bookings for the appeal property throughout 2024 and the appellant had instructed the letting agents that until this matter is resolved there should be no bookings beyond the end of January 2025. It was confirmed in Final Comments that this remains the situation. The appellants therefore request that the period of compliance be extended to match this timescale.
35. Although the appellant is entitled to assume success on any ground of appeal and that the notice may be quashed, it is nonetheless axiomatic that any bookings taken after the date on which the notice was issued would be at the owners own risk. It is evident from the Appeal Form that the bookings for up to the end of January 2025 were already in place when the appeal was made, albeit I am not told whether these bookings were made before or after the notice was issued.
36. Against that private interest, I must consider the public interest in the notice being complied with expeditiously. In this case, the 'public' interest is primarily the interests of the residents of Eskdale Green. In an appeal on this ground, I must start from the position that the development causes whatever harm I have identified in my conclusions on ground (a). The residents of Eskdale Green have been experiencing those harms for well in excess of a calendar year now. The residents of Eskdale Green have a legitimate expectation that with the dismissal of this appeal those harms will now cease.
37. The timetable for this appeal means that the three-month period of compliance is likely to mean that compliance with the notice will now be required by around the end of November 2024¹. Extending the period for compliance as requested by the appellants would result in the use continuing for a further two months, including over the whole of the Christmas/New Year holiday period. In my view, and having regard to the disturbance they have endured in recent times, the residents of Eskdale Green are entitled to the enjoyment of their own homes in peace and quiet over festive holidays.
38. In weighing that balance between public interest and private interests, I conclude that the existence of bookings up the end of January 2025 is no justification for extending the period of compliance. I am satisfied that this would be a proportionate response to the breach of planning control that has occurred. Accordingly, the appeal on ground (g) fails.

Conclusion

39. For the reasons given above, I conclude that the appeal should not be allowed. 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.

¹ Three months from the date of my Decision in any event.

Formal Decision

40. 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.

Paul Freer
INSPECTOR