
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: 24 September 2024

Appeals A - C Refs: APP/Q9495/C/24/3337709, 3337809 & 3337810 Land to the north of The Boat House, Bank Ground Farm, Coniston LA21 8AA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Steph Bennet on behalf of The Rawdon-Smith Trust (Appeal A), Mr J Batty (Appeal B) and Mr K Batty (Appeal C) against an enforcement notice issued by Lake District National Park Authority.
- The enforcement notice, numbered E/2020/0140 North Area A, was issued on 20 December 2023.
- The breach of planning control as alleged in the notice is, without planning permission, operational development comprising the formation of two retaining stone walls, backfilling land creating a raised platform comprising of an area of hardstanding and lawned area, erection of four associated facility buildings and the associated making of a material change in use of the lake and lakeshore to a tented camping and caravan site.
- The requirements of the notice are:
 - I. Permanently discontinue the use of the Land as a tented camping and caravanning site.
 - II. Remove from the Land the four timber buildings.
 - III. Remove in their entirety from the Land the two retaining stone walls (one on the lakeshore and one on the field banking) and the infill material used to form the raised platform between the two retaining stone walls.
 - IV. Reinstate the Land to its former levels and condition before the works to stie the timber buildings and to create retaining walls and platform took place.
 - V. Remove all items, materials and debris from the Land arising from compliance with the requirements I - IV above.
- The periods for compliance with the requirements are:

Requirement I – one month
Requirement II-V 12 months.
- Appeal A proceeding on the grounds set out in section 174(2) (b), (e) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal C is proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Appeals D - F Refs: APP/Q9495/C/24/3337807, 3337808 and 3337823 Land to the south of The Boat House, Bank Ground Farm, Coniston LA21 8AA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr J Batty (Appeal D), Mr K Batty (Appeal E) and Mrs Steph

Bennet on behalf of The Rawdon-Smith Trust (Appeal F) against an enforcement notice issued by Lake District National Park Authority.

- The enforcement notice, numbered E/2020/0140 South Area A, was issued on 20 December 2023.
- The breach of planning control as alleged in the notice is, without planning permission, operational development comprising the formation of a retaining stone wall, backfilling land creating a raised hardstanding and the making of a material change in use of the Land from lake and lakeshore to use as parking and/or storage.
- The requirements of the notice are:
 - I. Permanently discontinue the use of the Land for parking and storage.
 - II. Remove in its entirety from the Land the retaining stone wall and the infill material used to form the raised hardstanding.
 - III. Reinstate the Land to its former level and condition before the works to create the retaining wall and raised hardstanding took place.
 - IV. Remove all items, materials and debris from the Land arising from compliance with the requirements II and III above.
- The periods for compliance with the requirements are:
 - Requirement I – one month
 - Requirement II-IV 12 months.
- Appeal D is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal E is proceeding on the grounds set out in section 174(2) (b), (c), and (d) of the Town and Country Planning Act 1990 as amended.
- Appeal F is proceeding on the grounds set out in section 174(2) (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: The appeals are dismissed and the enforcement notices are upheld with corrections and variations in the terms set out below in the Formal Decision.

Procedural matters

1. These appeals all relate to two parcels of land at The Boat House, Bank Ground Farm, on the east shore of Coniston Water. The appeals are made against two enforcement notices issued by the Lake District National Park Authority (Authority) numbered E/2020/0140 North Area A and E/2020/0140 South Area A. I shall refer to these as Enforcement Notice 1 and Enforcement Notice 2 respectively.
2. The appeals have been made by three separate appellants on various grounds of appeal, some of which overlap. Where this has occurred, it is convenient to consider them under the same ground of appeal.

The Enforcement Notices

3. Enforcement Notice 1 alleges, amongst other things, operational development comprising the formation of two retaining stone walls, backfilling land creating a *raised platform* comprising of an area of hardstanding and lawned area (emphasis added). Enforcement Notice 2 alleges, amongst other things, operational development comprising the formation of a retaining stone wall, backfilling land creating a *raised hardstanding* (emphasis added).
4. It is evident from both notices the breach of planning control that is alleged, and the appellants have clearly understood this. Nevertheless, it seems to me that the allegation in Enforcement Notice 1 of a raised platform is a more

accurate description of the breach of planning control that has taken place on both parcels of land. In the interest of consistency, I shall therefore correct and vary Enforcement Notice 2 to allege the creation of a raised platform and to require the removal of that raised platform.

5. In both Enforcement Notice 1 and Enforcement Notice 2, Requirement I requires the respective use to be 'permanently' discontinued. Having regard to the provisions of Section 181(1) of the Town and Country Planning Act 1990 (the 1990 Act), which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary and inappropriate. I shall therefore delete it.
6. I am satisfied that no party would be prejudiced by correcting and varying the notices in these respects.

Appeals A and F: the appeals on ground (e)

7. The ground of appeal is that copies of the enforcement were not served as required by Section 172 of the 1990 Act. In summary, Section 172 of the 1990 Act requires that the enforcement notice shall be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land.
8. I note that a previous enforcement notice was quashed following success of appeals on ground (e) because a copy of the notice was not served on a person having an interest in the land (APP/Q9495/C/22/3310547 and APP/Q9495/C/22/3310525). That error has been rectified in the service of the notices subject to these appeals.
9. The appellant's case on this ground of appeal is that the extent of the land under the ownership of The Rawdon-Smith Trust (the Trust), when compared with red line boundary of the land to which the notices relate, does not tie in with the whole area. In particular, it seems to me that in relation to Enforcement Notice 1, only a very thin sliver of land owned by the Trust falls within the red line boundary of the land to which the notice relates.
10. Nevertheless, the Authority was perfectly entitled to serve a copy of the notice on the Trust as an owner of the land, even if it that ownership represents only a very small percentage of the total land area to which the notices relate. Indeed, not to have done so would have deprived the Trust of any opportunity to appeal against the notice and access to the Courts should that be necessary. That would almost certainly have resulted in the notice being quashed on appeal as a breach of natural justice.
11. It is axiomatic that a local planning authority can only require compliance with an enforcement notice insofar as the landowner has the ability to do so. That clearly does not extend to land outside of the Trust's ownership and/or control. However, that is not relevant to an appeal on this ground, which relates solely to whether the notice has been served correctly. By serving the notice on the Trust as well as the other landowner(s), the Authority did correctly serve the notice on all the owners and occupiers of the land to which it relates, as well as any other person having an interest in the land, and therefore as required by Section 172 of the 1990 Act. Accordingly, the appeals on this ground fail.

Appeals A, D and E: the appeals on ground (b)

12. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
13. Photographs of the land subject to Enforcement Notice 2 show that, at least prior to 2018, the lakeshore was in its natural state. The breach of planning control alleged in the notice is, to paraphrase, the creation of a raised platform. Comparison with photographs taken prior to 2018 clearly show that the creation of that raised platform has occurred as a matter of fact. There is no dispute that in relation to the area subject to Enforcement Notice 2 the uses taking place on that raised platform include bringing boats, etc out of the water for maintenance and car parking ancillary to those uses. The salient point, however, is that those uses are now occurring on the raised platform that has been created.
14. The Trust raises a different point in relation to Enforcement Notice 1, in that it considers that the matters stated in the notice have not occurred on the land under the ownership of the Trust based on the land identified by the red line boundary shown on the plan attached to the notice. Two points flow from this.
15. Firstly, although the land within the red line boundary of the plan attached to the notice may only include a very thin sliver of land owned by the Trust, the Trust has not shown on the balance of probability that the matters stated in the notice have not occurred on the land within its ownership. I recognise that the small scale of map and fluctuations in water level on Coniston Water may be factors in that regard but nevertheless there is nothing before me to show that the matters stated in the notice have occurred on land that is wholly outside of the land owned by the Trust.
16. Secondly, irrespective of whether or not the land is within the ownership of the Trust, the appeal on ground (b) is that those matters have not occurred. The ground of appeal therefore relates to the whole of the land to which the notice is subject, as defined by the red line boundary shown on the plan attached to the notice. It follows that success on ground (b) cannot be achieved on the point raised by the Trust.
17. I conclude that the breach of planning control constituted by the matters stated in the notice has occurred. Accordingly, the appeals on ground (b) fail.

Appeals B, C, D, E and F: the appeals on ground (c)

18. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
19. The meaning of development for the purposes of the 1990 Act is defined at section 55(1) of that Act as meaning:

...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.

20. It was held by Lord Denning in *Parkes v SSE* [1979] 1 All ER 21172 that operational development 'comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself, whereas...' 'use' comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land'. It follows that there are two elements to the breaches of planning control alleged in the notices that need to be considered under this ground of appeal: the operational development and the associated making of a material change is use of the lake and lakeshore. It is convenient to consider the operational development in the first instance.

Operational development

21. The creation of a raised platform is generally regarded as being an engineering operation for purposes of section 55(1) of the 1990 Act. Engineering operations involve works with some element of pre-planning and which would generally be supervised by a person with engineering knowledge, albeit the courts have held that is not necessary for the operations to actually be so supervised, meaning that the person who carried out the work does not have to be an engineer.
22. Prior to the matters stated in the notice taking place, the lakeshore was in its natural state. The creation of the raised platforms required a substantial amount of stone to be imported onto the site and resulted in a significant and noticeable raising of ground levels, together with the artificially 'stepped' and man-made appearance of the raised platforms themselves. The creation of the raised platforms therefore brought about a distinct physical alteration to the land and must have been pre-planned. Consequently, as a matter of fact and degree, the creation of the raised platforms constitutes development for the purposes of section 55(1) of the 1990 Act. Section 57 of that Act states that planning permission is required for development.
23. The appellants maintain that the walls of the raised platforms are a means of enclosure and are permitted by Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). However, the purpose of the walls is more properly described as to retain the material that was backfilled behind them in order create the hardstanding/lawned area rather than to enclose anything: the flat surface of the raised platforms is essentially flush with the top of the vertical face of the wall. Consequently, rather than being means of enclosure, they are retaining walls that form an integral part of larger engineering operations to raise the ground level and form the raised area behind them. As such, they are not permitted by Class A, Part 2, Schedule 2 of the GPDO.
24. In relation to Enforcement Notice 1, the appellants explain that the rear wall is a dry-stone wall that does not hold back the banking behind, nor would the construction allow this structural loading. The appellant contends that the rear wall is permitted by Class A, Part 4, Schedule 4 of the GPDO. The appellant has not expanded upon that point but, on my understanding, Class A of Part 4 is in connection with operational development temporarily in connection with provision on land of buildings or works required temporarily in connection with

and for duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. The rear wall is a permanent structure and would therefore not be permitted by Class A, Part 4, Schedule 4 of the GPDO.

25. Neither is the raised area of hardstanding subject to Enforcement Notice 1 permitted development under Part 6, Schedule 2 of the GDPO. Such works are only lawful under Part 6 if they are deemed to be 'reasonably necessary' for the purposes of agriculture. The Oxford English Dictionary (OED) defines 'necessary' as something that is required to be done, achieved, present or needed.
26. The appellants claim that the hardstanding created on the raised platform 'provides important space for farm activity and protection of the track network' and for 'larger/heavier machinery to operate'. Some livestock were brought onto this area of hardstanding during my site visit but no justification or explanation has been provided as to why this area of hardstanding is reasonably necessary for the purposes of agriculture in this area. Furthermore, the appellant's own evidence is that at other times this same area of hardstanding is used for tented camping, which raises doubts about the necessity for this space for agricultural purposes.
27. There is no planning permission in place, deemed or otherwise, for these raised platforms.
28. Enforcement Notice 1 also alleges the erection of four facility buildings associated with the use of the raised platform. These are timber structures that have been placed on the ground, providing toilets/showers/changing spaces.
29. Sections 55(1) and (1A) of the 1990 Act should be read with regard to section 336(1) of that Act. The latter defines a 'building' as including any structure or erection and any part of a building, but not plant or machinery comprised within a building. The approach of the courts in construing these definitions has been to ask first whether what has been done has resulted in the erection of a 'building': if so, the court should want a great deal of persuading that the erection of it had not amounted to a building or other operation.
30. The courts have identified three primary factors that are decisive of what is a building: (a) size (b) permanence and (c) physical attachment. In this case, the structures appear to have been brought to the site fully assembled rather than being constructed on site. They are not large structures, individually or cumulatively, but equally are not modest in size. The structures are not permanently fixed to the ground.
31. This leaves the question of permanence. The courts have held that 'permanence' does not necessarily connote that the state of affairs is to continue forever or indefinitely. The structures are capable of being moved but only with some difficulty. As I understand it, the structures have been in place for some time now and that in practice the appellant does not intend to move them.
32. I therefore conclude that based on the three factors of size, permanence and physical attachment and as matter of fact and degree, the four facility buildings are buildings as defined in section 336(1) of that Act. The erection of these

buildings therefore constitutes a building operation(s) for the purposes of section 55(1) of the 1990 Act. It follows that the erection of these buildings constitutes development for the purposes of that section of the Act. There is no planning permission in place, deemed or otherwise, for that development.

Material change of use

33. The appellants point out that the lakeshore has historically been used for agricultural and leisure purposes. The Authority does not dispute that the informal use of the adjacent land for water sport and associated activities would be lawful.
34. In relation to Enforcement Notice 1, the appellants maintain that the use of the land for tented camping occurs only as per the Permitted Development allowances. The appellants go on to explain that they do not wish to use the land beyond the 28 days for camping and that the use of the land remains primarily agricultural. I also fully accept that the activities that took place on 14 May 2022, and which included the stationing of a motorhome on the land, was a private family celebration and do not represent the typical use of the land.
35. The booking spreadsheet is provided by the appellants records that in 2022 the land was used for tented camping for a total of 19 days. Data from 2023 shows that tented camping also did not exceed 28 days in that year. The Authority has no evidence of its own to challenge that provided by the appellants. Consequently, I am satisfied that, on the balance of probability, the use of the land for tented camping has only taken place in accordance with that permitted by Class B, Part 4, Schedule 2 of the GPDO. Consequently, there has been no breach of planning control in that respect.
36. In other circumstances I would have varied the notice to reflect the success on ground (c). However, because the enforcement notice will be upheld for other reasons, it is necessary to avoid inadvertently granting permanent planning permission for tented camping through the provisions of section 173(11) of the 1990 Act. I will therefore not delete the requirement of the notice in this respect. For the avoidance of doubt, upholding the notice with that requirement in place does not remove the availability of permitted development rights provided by Class B, Part 4, Schedule 2 of the GPDO once the notice has been fully complied with.
37. In relation to Enforcement Notice 2, the raised platforms have facilitated the parking of vehicles/placing of boats on the lakeshore to increase and to be more organised. On the limited evidence that is before me, I conclude that the creation of the raised platforms has resulted in uses that may previously have been taking place on an occasional and informal basis now taking place more frequently and taking on a formal character. As a result, there has, as a matter of fact and degree, been a definable change in the character of use(s) taking place on the land. There has therefore been a material change of use.

Conclusion on the appeals on ground (c)

38. I conclude that, on the balance of probabilities, the use of the land for tented camping does not constitute a breach of planning control. The appeals on ground (c) succeed to that extent, albeit that the requirement to discontinue that use will remain. In all other respects, the appeals on ground (c) fail.

Appeals B, C, D and E: The appeals on ground (d)

39. 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 test in this regard is the balance of probability and the burden of proof is on the appellant. It is again necessary to separate consideration of this ground of appeal into the operational development and the material change of use that are alleged, given that these have different periods of immunity under Section 171B of the 1990 Act.

Operational development

40. Section 171B(1) provides that no enforcement action may be taken in respect any unauthorised operational development after the end of the period of 4 years beginning with the date on which the operations were 'substantially completed'¹. In relation to the raised platform subject to Enforcement Notice 1, the appellant must therefore show that the raised platform was substantially complete on 20 December 2019.
41. In relation to the raised platform subject to Enforcement Notice 1, photographs provided by the appellant clearly show that there was a curved wall adjacent to the boathouse at some point. The appellant explains that this wall and the associated elevated section of ground has existed for over 13 years.
42. However, an aerial photograph of the site taken in August 2022 provided as the part of the Authority's evidence shows that this curved section of wall has been subsumed into the larger raised platform. A photograph taken from ground level in June 2020 also appears to show some differences in the facing stonework. For that reason, I cannot discount the possibility that the curved wall was completely replaced in the process of being subsumed into the raised platform. The appellants have provided no evidence to show otherwise.
43. In their Grounds of Appeal, the appellants indicate that the rear wall is a dry-stone wall that replaces an earlier wall. The replacement of that wall would itself constitute an engineering operation, and therefore development requiring planning permission. The appellants do not indicate when that wall was replaced, and I am therefore unable to determine whether that development has become immune from enforcement action through the passage of time.
44. In relation to the raised platform subject to Enforcement Notice 2, the Authority previously purported to take enforcement action in a notice issued on 30 September 2022 but the notice was quashed on appeal (APP/Q9495/C/22/3310547 and APP/Q9495/C/22/3310525). Section 171B(4)(b) provides for the taking of "further" enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served. This is known as the "second bite" provision.
45. Where an enforcement notice is issued under section 171B(4), any ground (d) appeal must be considered on the basis of whether the development was lawful

¹ The enforcement notices were issued before the changes to the immunity periods set out in section 171B made on 25 April 2024.

on the date of the first notice, or when the local planning authority first purported to take action. I am satisfied that the breach of planning control against which the Authority purported to take enforcement action in September 2022 is in essence the same as that alleged in the current notice. In this case, the appellant must therefore show that the raised platform was substantially complete by on 30 September 2018.

46. In relation to the raised platform subject to Enforcement Notice 2, the appellants produce photographs taken in April 2018 clearly shows a wall and elevated area of land, as well as a boat being stored on that raised area. However, photographs taken in February 2022 embedded within the evidence provided by the Authority show the same elevated area of land in the process of being covered in a layer of crushed stone. The laying down of that layer of crushed stone itself constituted an engineering operation that more likely than not required planning permission in its own right. The obvious implication is that the laying down of that layer of crushed stone was part of one contiguous engineering operation, such that the photographs taken in April 2018 do not show the raised platform in its substantially completed state. Moreover, the stage had not then been reached at which no further planning permission would be required for any of the works being done to it.
47. The courts have held that, for an appeal to succeed on ground (d), the whole of the alleged development must be substantially completed. The courts have further held that a development must be regarded holistically and that where some parts are not completed, then the whole development becomes unlawful. In this case, looking at the development(s) holistically, on the balance of probability the raised platforms were not substantially complete on the date four years prior to the notice being issued.

Material change of use

48. Section 171(B)3 of the 1990 Act provides that the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. Given the success of the appeal under ground (c), this ground of appeal now only relates to the material change of use alleged in Enforcement Notice 2.
49. The appellants have provided written statements from three individuals who have used the lakeshore for boating activities since the 1980's and late 1990's respectively. I have no reason to doubt the evidence set out in those representations and the Authority has no evidence to make their version of events less than probable.
50. However, an appeal on ground (d) must relate to the matters stated in the notice. I have already found that there was a definable change in the character of the use resulting from the creation of the raised platforms. These were not substantially complete until at least February 2022. On that basis, the appellant is not able to show that the use (i.e: the use following the definable change in character) has been taken place for a period of 10 years beginning with the date of the breach.
51. I conclude that 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 notices. Accordingly, the appeals on ground (d) fail.

Appeals B and D: the appeals on ground (a) and the deemed planning applications

52. 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 reasons for issuing Enforcement Notice 1 and Enforcement Notice 2 are essentially the same and it is therefore convenient to take them together.
53. The Authority has stated four substantive reasons for issuing the enforcement notices, from which the following main issues are raised:
- the effect, if any, on the character and appearance of the area
 - the effect, if any, on the landscape and scenic beauty of the Lake District National Park and the significance of the English Lake District World Heritage Site
 - whether there would any harm to biodiversity, and
 - would the wider benefits to the community outweigh flood risk.

Character and appearance

54. The appeal site lies within the Area of Distinctive Character 55: Coniston Water, as defined in the Lake District National Park Landscape Character Assessment and Guidelines (LCA). The sensitive attributes of this Area of Distinctive Character, as defined in the LCA, include:
- Sense of enclosure, intimacy and tranquillity in proximity to the lakeshore;
 - Designed estate landscape associated with Monk Coniston Estate and Brantwood;
 - Ancient semi-natural woodlands on the fell sides, which contribute to a sense of enclosure;
 - Vernacular buildings of slate or white-washed stone, and
 - Extensive views to surrounding high fells.
55. The appeal site is located on the eastern lakeshore of Coniston Water. As part of my site visit, I was able to view the lakeshore of Coniston Water from a boat. This not only provided a good view of the raised platforms on the appeal site, it also provided me with a good view of the western lakeshore and to compare the two from Coniston Water itself.
56. I noted that the eastern lakeshore typically comprises natural, gently sloping lakeshore interspersed with reed beds. There are relatively few man-made structures on this side of Coniston Water. Where these do occur, they are generally jetties with the occasional associated boathouse. Furthermore, the limited number and typically small scale of these structures ensures that they do not alter or undermine the natural topography of the lake shore.
57. Even prior to the construction of the raised platforms, the appeal site already represented something of an anomaly in this landscape, insofar as there are more structures on and around the lakeshore and several jetties. Photographs of the appeal site show that, with the exception of curved stone wall erected

some 13 or so years ago (and now subsumed into the raised platform), the lake shore was previously the same natural and gently sloping feature typically found elsewhere along the eastern lakeshore.

58. The raised platforms are overtly of man-made appearance, with vertical faces and flat surfaces. The angle at which the raised platform projects from boathouses/jetties only serves to reinforce that man-made character and appearance of the raised platform. As a result, the raised platforms are incongruous in this otherwise largely natural environment and are visually jarring against the generally natural character of the eastern lakeshore. Consequently, the raised platforms are not sympathetic to the character and appearance of the area.
59. There is no evidence before me to suggest that the build-up of sediment against the vertical face of raised platform, which is already happening at the northern end, will ultimately extend to conceal and/or soften its appearance to the point where it blends in with the natural character and appearance of eastern lakeshore. Moreover, even if it eventually did, there is no indication of the likely timescales involved.
60. I accept entirely that the raised platforms are not easily visible from public vantage points including, due to the distance involved, from the busy tourist facilities on the western lakeshore. However, they are clearly visible from Coniston Water itself, including to those taking part in boating activities of all descriptions (such as boats providing cruises on the lake for tourists), and in that context detract from the character and appearance of the area.
61. The appellant draws my attention to a number of stone walls, boathouses and jetties located on the lakeshore of Coniston Water. In terms of the eastern lakeshore, the jetties and boathouses do not alter the natural topography of the lake shore to anywhere near the extent that the raised platforms do.
62. In terms of the western lakeshore, the LCA describes how Coniston village nestles between the lake and the fells on the western side of the lake, and fits very comfortably into its landscape setting. The stone walls, boathouses and jetties pointed out by the appellant on this western shore are typically part of the development associated with Coniston as it expanded in the Victorian period, such as at Coniston Old Hall. There are also developments in response to increased tourism, including the Boating Centre and caravan site, Bluebird Café, the gondola stations and the outdoor education centre with large hard standing/storage. Collectively, these developments form part of a different landscape context to the typically natural topography of the eastern lakeshore.
63. Moreover, some of the stone walls pointed out to me had partially collapsed and/or fallen into disrepair, such that their man-made appearance has been softened and taken on a more natural appearance. For all these reasons, the examples of stone walls pointed out by the appellant do not provide justification for the harmful impact of the raised platforms on the landscape of the eastern lakeshore.
64. In relation to Enforcement Notice 2, the LCA indicates that boats play an important part in the composition of the landscape. I therefore find no harm in the use of that raised platform for the storage of boats. The same cannot be said, however, of the parking of cars on that raised platform, which is an

inherently alien use on a lakeshore. The material change of use is harmful to that extent.

65. I conclude that the development unacceptably harms the character and appearance of the area. I therefore conclude that the breach of planning control is contrary to Policies 01, 02, 05, 06 and 24 of the Lake District National Park Local Plan (Local Plan). These policies require, amongst other things, that the scale, siting, and design of the development enhances or maintains the character of the lake and its lakeshore location, including undeveloped stretches of lakeshore.

Landscape and scenic beauty of the Lake District National Park and the significance of the English Lake District World Heritage Site

66. The appeal site is within the Lake District National Park. Paragraph 182 of the National Planning Policy Framework (Framework) indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. National Parks have the highest status of protection in relation to these issues.
67. I have found that the raised platforms, and to a lesser extent the parking of cars on the raised platform to the south of the boathouses, unacceptably harm the character and appearance of the area. It follows that these developments detract from the landscape and scenic beauty of the National Park as a whole. The development therefore does not accord with Paragraph 182 of the Framework.
68. The appeal site is within the English Lake District World Heritage Site (WHS). Paragraph 195 of the Framework confirms 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 as a designated heritage asset, I attach great weight to the asset's conservation.
69. From the information submitted, the OUV and thus significance of the WHS is derived, in part, from the landscape of exceptional beauty, shaped by persistent and distinctive agro-pastoral traditions which give it special character. The raised platforms and the parking of cars on this platform harms the character and appearance of the area, and to that extent detracts from landscape of exceptional beauty identified as an OUV of the WHS. It therefore harms the significance of the WHS.
70. 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 of the development, I find that the harm is less than substantial.
71. 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 additional facilities for boating activities, giving an enhanced offer which may encourage more tourists to this site and the Lake District, and which is consistent with the important part that boats play in the composition of the landscape, as identified in the LCA. No evidence has been provided as to the level of the benefits in terms of the contribution of boating activities to the local

economy. However, as noted on my site visit, the boating facilities are well used by children and young adults, such that they have both a recreational and educational benefit.

72. In weighing the balance, I consider 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.
73. 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.
74. The developments would also fail to accord with Policy 07 of the Local Plan which, amongst other things, seeks to conserve the significance of heritage assets, including the character, authenticity, integrity, setting and views of the historic environment (which includes the WHS).

Biodiversity

75. Coniston Water is a designated County Wildlife Site. I have not been provided with a copy of the County Wildlife Site designation for Coniston Water, but the Authority explains that the designation describes the lake as being 'important for its soft and stoney hydrosere, rich in association of aquatic plants, winter wildfowl and adjacent wetland habitats. The lake supports a number of fish species including char'. The appellant has not challenged that description.
76. Due to the level and type of works undertaken both within the lake itself and on the lakeshore, I concur with the Authority that it is highly likely that there has been an impact upon the ecosystem, due in part to the loss of areas of the lakebed and lakeshore. Works undertaken are likely to have removed some of the stoney hydrosere, consequently harming a feature specifically identified feature of the County Wildlife Site. In addition, activity associated with the use could harm other features identified in the County Wildlife Site designation.
77. The Biodiversity Supplementary Planning Document (SPD) published by the Authority in May 2021 requires any harm to biodiversity to be assessed in terms of Biodiversity Net Gain². I fully recognise the difficulties of calculating Biodiversity Net Gain when the development has already occurred. Nevertheless, the appellant has not provided any calculations in relation to Biodiversity Net Gain arising the development subject to the enforcement notices. In the absence of that evidence, on the limited information that is before me, it appears more likely than not that the development fails to conserve or enhance biodiversity or any ecosystems in the vicinity and, indeed, is likely to have had a negative impact on biodiversity.
78. I conclude that the developments unacceptably harm biodiversity. I therefore conclude that the breach of planning control is contrary to Policy 04 of the Local Plan which, amongst other things, seeks to protect important habitats, sites and species. I also conclude that the breach of planning control fails to accord the Authority's Biodiversity SPD.

² The appellant suggests that the SPD is not yet being applied. However, the Editor's Note to the SPD indicates that it will only apply to those planning applications received by the Authority from 30 August 2021 onwards. The Authority has confirmed that the SPD is adopted and forms part of the Development Plan. I am advised that the SPD is under review at this time but I consider it appropriate to apply the SPD in its current form to the deemed planning applications arising out of ground (a).

Flood Risk

79. The appeal site is located within Flood Zone 3, as identified by the Environment Agency, which have a greater probability of flooding. Proposed development within Flood Zone 3 should normally be accompanied by a Flood Risk Assessment (FRA) to assess the impact of any proposal on the flood risk and if deemed necessary any suitable mitigating measures.
80. No FRA has been submitted in relation to the raised platforms. Consequently, the impact (if any) of the development in relation to flood risk is currently unknown, due to the lack of information available about the actual construction of the development and any mitigating measures that may have taken place. The appellant has, however, referred in evidence to significant fluctuations in the water level of the lake which indicates that the risk of flooding may be real possibility.
81. It is incontrovertible that the works undertaken have altered the natural lakebed and levels in this area, and have created a solid barrier against any rise in the water level lake of the lake. In addition, the previously existing natural capacity and soakaway of the lakeshore in this location may to some extent have been compromised through the development that has taken place. I fully recognise that in the context of Coniston Water as a whole the development is only a minor incursion. Nevertheless, in the absence of a FRA and adopting the precautionary principle, I cannot discount the possibility that localised effects could be both significant and harmful.
82. I conclude that it has not been shown that the wider benefits to the community resulting from the development would outweigh the risk of flooding. I therefore conclude that the breach of planning control is contrary to Policy 03 of the Local Plan and Policy CNP8 of the Coniston Neighbourhood Plan seek to increase the resilience of the Lake District to all types of flood event.

Other considerations

83. 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 raised platforms and associated material change of use fail 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.
84. There are some public benefits to be gained from the development through farm diversification and broadening the range of visitor accommodation offered. The provision of the four facility buildings to improve the quality of the offer to those camping on the site forms part of that. To that extent, the development would accord with Policies CNP 1 and CNP2 of the Coniston Neighbourhood Plan which supports the expansion and retention of existing local businesses, with a view to ensuring that such developments would provide additional, quality, well paid jobs.
85. However, any benefit has not been quantified and there is no evidence to suggest that there is currently extra demand for this type of accommodation

over and above that which already exists locally. Moreover, there is no evidence that the extension of the type of accommodation being offered would support the existing farm enterprise or tourism businesses already operating. In any event, given the relatively small size of the surface area of the raised platforms, the limited number of pitches that would be available would only bring a small economic benefit to the local economy, including any additional local employment required to operate the site.

86. The appellant has a D1 Exemption (cleaning out and dredging waterways) licence from the Environment Agency, to maintain dredge and restore the lake shore and waterways. Dredged stone is stored on the farm but, as the appellant explains, takes up valuable agricultural land and is time consuming work. The appellant considers that it would be better for site ecology, flooding and land/time management to reduce the need to dredge. I agree that this would be a benefit arising from the development, not least in biodiversity terms, but is very difficult to quantify.
87. The appellant has promulgated a number of fallback positions. However, these have not been well developed in the appellant's evidence and for that reason I attach little weight to them.
88. 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, the harms identified above are intrinsic to breach of planning control that has occurred and could not be overcome by the imposition of conditions.

Conclusion on the appeals on ground (a) and the deemed planning applications

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

Appeals B, C, E and F: the appeals on ground (f)

90. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to correct it) are to remove the raised platforms and discontinue the use of the Land for parking and storage (Enforcement Notice 2). The purpose of the notice must therefore be to remedy the breach of planning control.
91. The appellant considers that the requirements at paragraph 5(IV) of Enforcement Notice 1 and paragraph 5(III) of Enforcement Notice 2 are unreasonable and imprecise, this on the basis that no one can be sure exactly

what the level was before works. The appellant suggests that it is not reasonable to rely on a photograph for restoration as this is not a true estimate of levels. Consequently, any works undertaken by the appellant would at best be an estimate.

92. Three points flow from this. Firstly, section 173(11) of the 1990 Act provides that (a) where an enforcement notice could have required buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A of the 1990 Act in respect of development consisting of the construction of the buildings or works.
93. The appellants do not suggest any alternative lesser step(s) that would achieve the purpose of the notice. Consequently, if I was to adopt the appellants' position and vary the notice by deleting these requirements in their entirety without imposing an alternative step(s), the raised platforms would then be deemed to have planning permission pursuant to section 173 (11) of the 1990 Act. The corollary is that the raised platform would remain as built. It follows that none of the harms that I have identified under ground (a) would be rectified and that the purpose of the notice would not be achieved.
94. Secondly, the courts have held that the oft-used standard wording 'to restore the land to its condition before the development took place' reflects the wording in section 173(4) of the 1990 Act and is sufficient. This is because, in many cases, the landowner will be the person with the best knowledge of what that previous condition was before the breach of planning control took place.
95. Thirdly, on the photographic evidence that I have seen, prior to the breach of planning control taking place the land comprised a gently sloping shore. There are many similar examples of a gently sloping shore on the eastern side of Coniston Water. Consequently, it would be a relatively simple matter to obtain the datum for water level by comparison with the natural shores elsewhere on the lake, and then to replicate the gradient of the shore by reference to photographs of the land before the breach of planning control took place.
96. I conclude that steps required by the notices are proportionate to the breach of planning control that has occurred and are necessary to achieve the purpose of the notices. Consequently, those requirements are not excessive. Accordingly, the appeals on ground (f) fail.

Appeals A and F: the appeals on ground (g)

97. 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 both notices is one month in respect of Requirement I and 12 months in relation to all the other requirements.
98. The Trust express concerns regarding their accountability and consider that the time frames for any further action they may be required to undertake are unreasonable. I have confirmed above that a local planning authority can only require compliance with an enforcement notice insofar as the landowner has the ability to do so. I fully recognise that the Trust will need to liaise with the other landowner(s) and it will ultimately be a matter for the Authority whether to strictly enforce those periods of compliance. The Authority has already

made its position clear in that respect insofar as it relates to the Trust. However, I see nothing inherently unreasonable in the period(s) of compliance which I consider to be a proportionate response to the breach of planning control that has occurred. Accordingly, the appeals on ground (g) fail.

Conclusion

99. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices with corrections and variations as appropriate and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Enforcement Notice 1 (numbered E/2020/0140 North Area A)

Appeals A - C Refs: APP/Q9495/C/24/3337709, 3337809 & 3337810

It is directed that the enforcement notice is varied by:

- in paragraph 5(I) of the notice, deleting the word 'permanently'
100. Subject to that variation, the appeals are 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.

Enforcement Notice 2 (numbered E/2020/0140 South Area A)

Appeals D - F Refs: APP/Q9495/C/24/3337807, 3337808 & 3337823

101. It is directed that the enforcement notice is corrected by:

- deleting paragraph 3 of the notice in its entirety, and substituting there the words 'without planning permission, operational development comprising the formation of a raised platform, itself comprising a retaining stone wall and backfilled land create a raised hardstanding and the making of a material change is use of the Land from lake and lakeshore to use as parking and/or storage'

102. It is directed that the enforcement notice is varied by:

- in paragraph 5 (I) of the notice, deleting the word 'permanently'
- in paragraph 5(II) of the notice, after the words 'from the Land', inserting the words 'the raised platform, comprising'
- in paragraph 5(III) of the notice, after the words 'works to create', inserting the words 'the raised platform, comprising'

103. Subject to the correction and variations, the appeals are 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