



Appeal Decision

Site visit made on 25 June 2024

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2024

Appeal Ref: APP/Q9495/W/23/3330570

Low Briery Holiday Park, Penrith Road, Keswick, Cumbria CA12 4RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Susan Walker on behalf of LB Corporation against the decision of the Lake District National Park Authority.
 - The application Ref is 7/2022/2247.
 - The development proposed is described as “extension to existing holiday park, formation of access, landscaping and ancillary works”.
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Decision

1. The appeal is allowed, and planning permission is granted for the extension to the existing holiday park, formation of access, landscaping and ancillary works at Low Briery Holiday Park, Penrith Road, Keswick, Cumbria CA12 4RN, in accordance with the terms of the application, Ref: 7/2022/2247, and the plans submitted with it, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The appeal site is located within the English Lake District World Heritage Site (the ELDWHS) and the Lake District National Park (the LDNP). There is overlap between the Special Qualities (SQs) of these 2 designations. However, the purposes and statutory requirements for assessing proposals relating to each are nuanced and therefore in exercising my statutory duty, I assess the effect on each designation separately.
3. The main parties concur that the appeal proposal would have a minor adverse landscape effect overall, reducing to negligible in the long term as the appeal scheme matures to become integrated with the landscape by year 10. It has also been agreed that there would be a moderate adverse visual effect in the short term, reducing to slight adverse by Year 10, particularly from the public rights of way network and open access land on Latrigg. From the submitted evidence and my site inspection, there is no cause for me to find otherwise and that is the basis on which I base my determination insofar as it relates to landscape matters.
4. The Lake District High Fells SAC (the High Fell SAC) and Borrowdale Woodland Complex SAC (the Woodland SAC) are situated within a 5 kilometre buffer of the appeal site. The River Derwent and Bassenthwaite Lake Special Area of Conservation (the River Derwent SAC) is situated within approximately 50 metres of the appeal site. The appeal scheme triggers the need for Appropriate Assessment under the Conservation of Habitats and Species Regulations (2017) (the Habitat Regulations).

5. The submitted evidence demonstrates that the River Derwent SAC catchment has nutrient loading sensitivities in terms of Phosphorus that would arise from the proposed development typology. Nutrient loading is therefore a material consideration. The main parties have been given opportunity to comment on whether the mitigation identified to ensure nutrient neutrality, and a planning condition to secure it in perpetuity are appropriate in the context of the statutory requirements of the Habitat Regulations. Necessarily, I address this as a main issue in discharging my statutory duty in respect to these Regulations.

Main Issues

6. The main issues for this appeal are therefore:
- the effect on the Special Qualities of the LDNP, with particular regard to the conservation and enhancement of its landscape and scenic beauty;
 - the effect on the significance of the ELDWHS, with particular regard to the Special Qualities and attributes of Outstanding Universal Value; and
 - whether the requirements of the Habitat Regulations would be met.

Reasons

National Park

7. The appeal site runs alongside the existing access lane serving the very well-established Briary Holiday Park and the Keswick to Threkeld Railway (the railway line), a popular formalised accessible recreational footpath and cycle route. The appeal site has an undeveloped rural character. Together with neighbouring fields, it forms part of the pastoral landscape that encloses the eastern side of Keswick. The appeal site is more elevated and more publicly visible when compared to the existing holiday park which it would become part of.
8. The proposed holiday let lodges and associated areas of decking, access road, parking and turning areas, hard landscaping and internal and external lighting would represent a significant change to the character of the appeal site itself. However, given its position alongside the access lane serving the existing holiday park, the proposal would not give rise to any significant change in the presence and movement of people and vehicles.
9. The particular SQs of the LDNP which are relevant to the appeal scheme are SQ No 1, a world class cultural landscape; SQ No 4, unique farming heritage and concentration of common land; SQ No 12, a long tradition of tourism and outdoor activities; and SQ No 13, opportunities for quiet enjoyment.
10. Paragraph 182 of the National Planning Policy Framework (December 2023) (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and that the scale of development within this designation should be limited.
11. The appeal proposal would be of an appropriate scale to its context. The appeal site would continue to be physically well-contained from the wider extensive landscape of the LDNP by existing mature tree cover situated between the railway line and the existing holiday park beyond and also the nearby busy A66 transport route.

12. The proposal would relate very well to the existing holiday park and the railway line by virtue of its positioning, means of access, layout, lodge format and existing landscaping. Furthermore, the proposed materials would be visually recessive. In terms of site levels, some cut and fill would be required given the sloping topography, but any retaining structures would be gabion walls filled with local stone and planted to soften their appearance. All existing trees would be retained, and further landscaping is proposed, and the details could be adequately secured by way of a planning condition.
13. From the submitted evidence and my site observations, I am satisfied that the appeal proposal would give rise to a negligible scale of change over a very limited extent of the LDNP. The effects would be of negligible magnitude and a minor overall effect, being adverse on completion reducing to negligible as the appeal scheme matured to become integrated with the landscape by year 10. I accept that the proposed change would have a residual landscape impact, particularly from surrounding higher ground. However, the appellant's photomontage demonstrates that this would reduce over time to a level which this extensive landscape could successfully absorb.
14. For all of these reasons, the appeal proposal would maintain local distinctiveness and sense of place and reinforce the importance of local character.
15. In exercising my statutory duty for National Parks, as amended by the Environment Act (1995), the appeal proposal would conserve and enhance the natural beauty of the LDNP. Furthermore, the provision of additional holiday accommodation would in itself promote opportunities for the understanding and enjoyment of the SQs of National Parks by the public. I address the conformity of the appeal scheme with the remaining SQs later.
16. In view of my findings, the appeal proposal would meet the statutory purposes of the LDNP relating to understanding and enjoying its SQs and conserving and enhancing its natural beauty. Furthermore, as it would conserve and enhance the landscape and scenic beauty of the LDNP there would be no conflict with the Framework.
17. In conclusion to this main issue, the appeal proposal would not undermine the Special Qualities of the LDNP, with particular regard to the conservation and enhancement of its landscape and scenic beauty.
18. In terms of this main issue, in combination Policies 01 and 05 of the Lake District National Park Local Plan 2020-2035 (the Local Plan) seek to conserve and enhance the extraordinary harmony and beauty of this landscape and its SQs, and also protect or enhance its authenticity, integrity and significance. Amongst other things, Policy 06 of that plan states that all development must reinforce the importance of local character by having regard to scale, height, density layout, appearance and materials. In view of my findings, there would be no conflict with these policies.

World Heritage Site

19. The Framework recognises that a WHS is a heritage asset of the highest significance, which is internationally recognised to be of Outstanding Universal Value (OUV). The OUV of a WHS is of cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common

importance for present and future generations. Consequently, the Framework states that as an irreplaceable resource, it should be conserved in a manner appropriate to its significance, so that it can be enjoyed for its contribution to the quality of life of existing and future generations. Any harm to its significance requires clear and convincing justification.

20. The International Council on Monuments and Sites (ICOMOS) Guidance advises that any heritage impact assessment should focus on attributes of its OUVs (AOUVs), and a conclusion reached on the overall impact of the proposals on those individual attributes and on the whole WH property. Furthermore, as the WHS Management Plan required for any such designation is enshrined in policy, it should be given weight accordingly.
21. The PPG states that the effective management of a WHS involves the identification and promotion of positive change that will conserve and enhance its OUV, authenticity and integrity, with the modification or mitigation of changes which have a negative impact on those values.
22. The significance of the WHS is derived from the SQs which contribute to its AOUVs and is set out in the adopted Statement of Outstanding Universal Value (SOUV) for the designation.
23. The particular SQs which contribute to the AOUVs of the ELDWHS which are relevant to the appeal scheme are SQ No 1, a world class cultural landscape; SQ No 4, unique farming heritage and concentration of common land; SQ No 12, a long tradition of tourism and outdoor activities; and SQ No 13, opportunities for quiet enjoyment. Collectively, these define the significance of this WHS and the authenticity and integrity of the natural and cultural attributes of this internationally important designation.
24. In terms of SQ Nos 1 and 4, during my site visit I observed that it is the land pattern to the south of the A66 that relates most clearly to the unique farming heritage which has evolved in the Lake District over a thousand years. This is such that an obvious pattern of land use and enclosure has developed which is dictated by the topography and characterised by in-bye including pastures and hay meadows, in-take, out-gang and open fell.
25. It is evident that the tradition of farming with grazing on in-bye, in-take and out-gangs to the open fell and commons is intact to the south of the A66 which enables this traditional land management pattern to be maintained. However, crucially the appeal site has become an isolated parcel of land abutting the wooded Greta Valley as a result of the development of the A66.
26. I am therefore satisfied that the appeal site no longer forms part of the classic in-bye character in terms of the traditional agro-pastoral character which contributes so importantly to the OUV of the ELDWHS. Rather, it now relates more closely with the wooded River Greta / A66 corridor and is associated with land that has a long tradition of tourism in close vicinity to Keswick. Although there is still potential to graze livestock here, the appeal site no longer functions in the traditional manner of the agropastoral landscape due to its disconnection from in-take, out-gang and open fell.
27. Consequently, and in view of my earlier landscape findings, the appeal proposal would not be harmful to SQ Nos 1 and 4. Furthermore, by virtue of its nature

and location, the appeal proposal would contribute positively to SQ No 12 as it would reflect the long tradition of tourism on land close to Keswick.

28. In terms of SQ No 13, I observed that the busy A66 road corridor already affects the quiet enjoyment of the appeal site as part of the countryside. The scale and nature of the development proposed within its particular context would not erode this to a degree that would undermine that remaining SQ.
29. Overall, I am satisfied that the proposed changes would not represent a long term adverse effect on the SQs of the ELDWHS identified as being relevant or with the WHS property as a whole. As such, the appeal scheme would conserve the extraordinary harmony and beauty of the Lake District landscape.
30. Consequently, the appeal proposal would not harm the significance of the ELDWHS, with particular regard to its SQs and AOUVs. Furthermore, given my findings regarding the LDNP, the appeal proposal would also accord with SQ No 1 in terms of cultural heritage. Consequently, there would be no conflict with the approach of the Framework to designated heritage assets. Therefore, the requirements of paragraphs 206, 207 or 208 of that national policy are not triggered.
31. In terms of this main issue, in combination Policies 01, 05 and 07 of the Local Plan seek to conserve and enhance the extraordinary harmony and beauty of this landscape and its SQs, including its OUV and also protect or enhance its authenticity, integrity and significance. In view of my findings, there would be no conflict with these local plan policies.

Habitat Regulations

32. The submitted Nutrient Neutrality Assessment (NNA) for the management of effluent arising from the appeal scheme confirms that without mitigation, there would be an increase in the phosphate loading for the River Derwent catchment. Furthermore, the proposed working site is located within 50m of the River Derwent SAC at its closest point. A small, unnamed stream flows broadly northwards across the site into the River Greta.
33. Each of these circumstances could cause likely significant effects which would have adverse effects on the integrity of the River Derwent SAC. These effects would arise through disturbance to the water course in terms of its plain to montane levels, along with its Sea, Brook and River Lampreys, Atlantic Salmon and Otter which are all qualifying habitat and species features of this European designated site. This disturbance would stem from changes in water chemistry through pollution and siltation through construction processes and also from the introduction and spread of pathogens or invasive species. Effective mitigation is therefore required to avoid the effects from pollution and increased siltation and also to ensure biosecurity.
34. However, in terms of in-combined effects, there are no other known proposed works within the same locality which would result in an increase in pressure on the River Derwent SAC.
35. Furthermore, I am satisfied that beyond all reasonable scientific doubt that the High Fell SAC and the Woodland SAC are situated sufficiently far from the appeal site for it to be unlikely that there are any potential pathways which could cause any likely significant effects so as to affect the integrity of their respective qualifying features. In terms of in-combined effects, there are no

other known proposed works within the same locality which would result in an increase in pressure on those SACs. Consequently, I have screened these other two sites out of my assessment.

36. In necessarily undertaking my Appropriate Assessment, I conclude the likely significant effects on the River Derwent SAC could in part be mitigated through the implementation of a Construction Environmental Management Plan (CEMP). I note that the list of suggested conditions provided has omitted that requirement, despite being recommended in the appellant's shadow HRA assessment. However, this matter could be addressed by a suitably worded planning condition which I return to later.
37. Furthermore, the NNA concludes that the increase nutrient loading could be adequately offset by land being taken out of agricultural use; that being 1.91 ha of land falling within the appellant's control and outlined in blue on the site location plan. The appellant has demonstrated to the satisfaction of Natural England that the area falls within the 'impeded drainage' and 'lowland grazing' typologies for the purposes of the submitted nutrient calculations. The appellant has also demonstrated the use of the land for grazing over the preceding 10 year period. They have confirmed acceptance of a condition prohibiting further grazing in perpetuity.
38. Natural England is satisfied with the effectiveness of the mitigation proposals overall. I agree with the main parties that such mitigation could be adequately secured in a timely manner through a planning condition. As the suggested planning condition before me is insufficiently specific I have amended it in respect to the mitigation it refers to and the need for this to be secured in perpetuity.
39. Consequently, subject to the imposition of these 2 planning conditions, I find that it is unlikely that any detrimental impacts to the qualifying features of the River Derwent SAC would arise from the appeal proposal.
40. Overall, I am satisfied that appropriate mitigation would be secured so as to eliminate any reasonable scientific doubt that the appeal proposal would have any likely significant effects which would adversely affect the integrity of this SAC during the construction or occupation phases.
41. In conclusion to my Appropriate Assessment, the requirements of the Habitat Regulations are met.
42. Policy 01 of the Local Plan seeks to conserve and enhance the wildlife of the area. Policy 04 of that plan seeks to protect important habitats, achieve resilient habitats and improve the function of ecosystems. In view of my findings on this main issue, the appeal scheme would not conflict with those policies.

Conditions

43. A list of suggested planning conditions was submitted by the Council. Condition No 1 specifies implementation within 3 years in order to comply with Section 91 of the Town and Country Planning Act 1990 (as amended) and the Framework. Condition No 2 requires the scheme to be carried out in accordance with the plans listed in order to define the permission in accordance with local and national policy.

44. Condition No 3 seeks to control the scope of occupancy, to avoid the creation on new homes contrary to the adopted spatial strategy. Condition No 4 seeks to secure appropriate landscaping to adequately mitigate the visual effects of the appeal scheme. Conditions No 5 seeks to manage the potential for light pollution and safeguard the habitat of local biodiversity interests and the tranquillity of the LDWHS and LDNP. Condition No 6 seeks to avoid unacceptable nutrient loading in perpetuity to meet the requirements of the HRA. Condition No 7 seeks to safeguard the integrity of existing trees from potential effects of the proposal.
45. As identified earlier a further condition, condition No 8 is also necessary to manage any potential harmful environmental effects during the construction phase.
46. Subject to my revisions to condition No 6, these conditions each meet the prescribed tests, being necessary, relevant to planning and the proposal, enforceable, precise and reasonable.
47. Subject to these conditions, there would be no conflict with the development plan as a whole.

Conclusion

48. In the absence of conflict with the development plan as a whole and, as the requirements of the HRA are met, the appeal should be allowed.

C Dillon

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby approved shall be commenced before the expiration of three years from the date hereof.
2. The development hereby approved shall not be carried out otherwise than in conformity with the following submitted plans and details:
 - Location Plan - Drawing no. 15068-EDA-XX-XX-DR-A-1000 rev P01
 - Proposed lodge type 1 - Drawing no. 15068-EDA-XX-XX-DR-A-1230
 - Proposed lodge type 2 - Drawing no. 15068-EDA-XX-XX-DR-A-1231
 - Proposed lodge type 3 - Drawing no. 15068-EDA-XX-XX-DR-A-1232
 - Proposed site plan - Drawing no. 15068-EDA-XX-XX-DR-A-1210 Rev P01
 - Proposed field plan north - Drawing no. 15068-EDA-XX-XX-DR-A-1203
 - Proposed field plan south - Drawing no. 15068-EDA-XX-XX-DR-A-1204
 - Proposed site sections - Drawing no. 15068-EDA-XX-XX-DR-A-1220
 - Proposed section through road - Drawing no. 15068-EDA-XX-XX-DR-A-1211 Rev P01
 - Landscaping Masterplan
 - Flood risk assessment
 - Design and access statement
 - Nutrient neutrality assessment
 - Planning statement
 - Tree survey
 - Interim HRA
 - LVIA and supporting figures
 - Ecological impact assessment.
3. The development hereby approved shall not be occupied otherwise than for short term holiday letting purposes and shall not be occupied as a person's sole or main place of residence. The owner/operator shall maintain an up-to-date register of the names and addresses on the occupiers of the holiday lodges and shall make the register available at all reasonable times to the Local Planning Authority upon request.
4. Not later than 12 months from the substantial completion or first use of the development hereby approved, landscaping of the site shall be undertaken in accordance with the landscaping scheme submitted as part of the application. Any trees or plants which, within a period of five years thereafter, die, are removed or become seriously damaged or diseased shall be replaced in the next

planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation.

5. Prior to the installation of any external lighting on the site, details of such lighting shall be submitted to the Local Planning Authority for approval. Thereafter the lights shall be installed and maintained in accordance with the agreed details.
6. Prior to the first use of the lodges hereby approved the mitigation strategy, for nutrients impacts, including the setting aside the land outlined in blue on drawing No 15068-EDA-XX-XX-DR-A-1000 rev P01 from grazing of livestock or any nutrient generating agricultural use, and as set out in the submitted Nutrient Neutrality Assessment (dated 22 August 2022) and Interim HRA Assessment (dated August 2022) shall be implemented in its entirety. Thereafter these mitigation measures shall remain in place in accordance with the Nutrient Mitigation Strategy in perpetuity.
7. The trees on the site which are shown to be retained on the approved plans shall be protected during all site clearance, demolition and building works in accordance with the measures set out in the submitted Tree Report alongside the recommendations as set out in BS5837:2012. The agreed arrangements shall be carried-out in full prior to any activity taking place and shall remain in-situ for the duration of the development. Three days' notice shall be given to the Local Planning Authority when tree protection measures are in situ, prior to commencement of works.
8. The development shall not commence until a detailed Construction Environmental Method Plan (CEMP) has been submitted to and agreed by the Local Planning Authority. The CEMP shall identify measures to safeguard water quality within the River Derwent and Bassenthwaite SAC. The CEMP should include full details of the appropriate measures to be used including:
 - (a) pollution prevention safeguards, including where necessary drainage arrangements, siltation traps, settlement tanks and bunds;
 - (b) the storage and disposal of materials including the location of stockpiles, use of buffer strips and details of disposal methods;
 - (c) the construction of site facilities including the extent and location of construction welfare facilities, vehicle parking and equipment, fuel, chemical and material compounds;
 - (d) the timing, duration and phasing of construction; and
 - (e) a Dust Management Plan for the control of dust during construction.

The approved CEMP shall be fully implemented during the construction phase.

END OF SCHEDULE