



Appeal Decision

No site visit made

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 OCTOBER 2024

Appeal A Ref: APP/Q9495/C/24/3347803

Appeal B Ref: APP/Q9495/C/24/3347804

Norwood House, Church Street, Ambleside, LA22 0BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Keith Morgan and Appeal B is made by Mrs Wendy Holden against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 29 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, operational development consisting of building operations to install three replacement window frames, in the southeast elevation of the building.
- The requirements of the notice are to i) remove the window frames from the three openings which are outlined in red on the attached appendix A, for the southeast elevation of the Land; ii) in the openings created arising from compliance with step i) install window frames of an appearance, positioning and method of opening that restore the Land to its condition before the breach took place (images indicating the condition of the Land before the breach took place are provided in Appendix B); or iii) in the openings created arising from compliance with step i) install sliding sash window frames with two over two design of the appearance, positioning and method of opening to match those shown in images in Appendix C.
- The period for compliance with the requirements is 12 months.
- The appeals are proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 (as amended) (the Act).

Decisions

Appeal A Ref: APP/Q9495/C/24/3347803

1. It is directed that the enforcement notice is varied by the deletion of all the words in section 5(iii). Subject to the variation, the enforcement notice is upheld.

Appeal B Ref: APP/Q9495/C/24/3347804

2. It is directed that the enforcement notice is varied by the deletion of all the words in section 5(iii). Subject to the variation, the enforcement notice is upheld.

Reasons

3. An appeal on ground (f) of section 174(2) of the Act is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

4. The evidence is that new windows were installed in March 2021. The claim made by the appellant is that the windows which are the subject of the appeal have the same type of opening method as those that existed previously and that *'vertical bars were added in order that they now match our adjoining neighbours, and we think enhances the appearance of the street-scene'*.
5. The appellants are essentially asking me to consider the planning merits of the breach of planning control as part of the consideration of the ground (f) appeals. However, planning merits may only be considered pursuant to an appeal made under ground (a) of section 174(2) of the Act. A ground (a) appeal has not been pleaded by either of the appellants and, moreover, a fee has not been paid for a deemed planning application. As an appeal is not brought on ground (a) of section 174(2) of the Act, I cannot consider the appellants' arguments on the planning merits of the breach of planning control in the context of the appeals made on ground (f).
6. The purpose of the notice, in respect of requirements 5(i) and (ii), is to remedy the breach of planning control in accordance with section 173(4) of the Act. These steps are not excessive and are necessary to remedy the breach of planning control.
7. Requirement 5(iii) of the notice includes the alternative step of installing new sliding sash windows as shown in the images in Appendix C. This is not an appropriate requirement. This is because a requirement of a notice must relate to the alleged breach of planning control. Requirement 5(iii) relates to the installation of new windows and not to the windows which are the subject of the notice. Moreover, it goes beyond restoring the land/building to its condition prior to the unauthorised development occurring. Consequently, it is an excessive requirement. It is not necessary to remedy the breach of planning control.
8. I have corrective powers to remove a requirement found to be unnecessary. In this case, I shall delete requirement 5(iii) of the notice and, in doing so, do not find that injustice would be caused the main parties. It is noteworthy that the notice includes a compliance period of twelve months. Should the appellants want to consider the installation of new sliding sash windows, like those shown in the images in Appendix C, I find that the compliance period of twelve months would afford ample opportunity for a planning application to be submitted to the local planning authority and for it to be determined.

Conclusion

9. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeals on ground (f) succeed to that extent.

D Hartley

INSPECTOR