



Appeal Decisions

Hearing held and site visit made on 22 October 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal A Ref: APP/M9496/C/24/3336593

Rocking Stone Farm, Birchover, Matlock DE4 2BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Rachael and Mr Gerry O'Rourke against an enforcement notice issued by Peak District National Park Authority.
 - The notice was issued on 14 October 2023.
 - The breach of planning control as alleged in the notice is (1) the carrying out of building or other operations comprising the installation of a holiday let cabin (cabin on raised platform), composting toilet (eco composting toilet), covered kitchen area (kitchen area with cover), and raised platform housing a Japanese sauna (decking for Japanese hot tub), and (2) the making of a material change of use of the land from pastoral farmland and woodland to independent residential use/use as holiday accommodation.
 - The requirements of the notice are: 1. Cease use of the unauthorised development as independent residential use/holiday accommodation; 2. Remove the holiday let cabin, composting toilet, covered kitchen area, raised platform housing the Japanese sauna, and all materials and paraphernalia used in the erection and construction of the buildings identified above from the land; Reinstatement the land to its former condition prior to the change of use and building and other operations described; and 3. Remove all resultant materials from the land associated with the step referred to in item 2 above.
 - The period for compliance with requirement 1 is three months, with requirement 2 is four months, and with requirement 3 is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e) and (f) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/M9496/W/23/3330613

Rocking Stone Farm, Birchover, Matlock DE4 2BL

- 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 Mrs Rachael & Mr Gerry O'Rourke against the decision of Peak District National Park Authority.
 - The application Ref is NP/DDD/0523/0521.
 - The development proposed is 'retrospective application for the erection of timber structures and platforms for use as holiday accommodation'.
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Decision

1. The enforcement notice is corrected by, in section 5, combining an unnumbered element and requirement 3, this requirement thus becoming '3. Remove from the land all materials resulting from compliance with requirement 2 and reinstate the land to its former condition'. The notice is also corrected by, in the first alleged breach of planning control in Section 3, the deletion of 'sauna' and the substitution instead of 'hot tub'.

2. The enforcement notice is varied by the deletion of the second alleged breach of planning control as set out in Section 3.

3. Subject to the corrections and the variation, the ground (a) enforcement appeal and the planning appeal are allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the 'erection of a cabin and associated structures for short-term let holiday accommodation' subject to the following conditions:

1. The permission hereby granted relates solely to the use of the cabin and associated structures for short-term let holiday accommodation ancillary to Rocking Stone Farm, Birchover. The cabin and associated structures shall not be occupied as a permanent dwelling and shall not be occupied by any person for a period exceeding 28 days in a calendar year. The owner shall maintain a register of occupants for each calendar year, which shall be made available for inspection by the National Park Authority on request. The cabin and associated structures may be used for purposes ancillary to residential occupation of Rocking Stone Farm when not in use for short-term let holiday accommodation.
2. The cabin and associated structures shall be for ancillary use to Rocking Stone Farm only and shall not be occupied, let or sold or otherwise disposed of separately.
3. No other structures shall be erected or sited anywhere within the application site other than those shown on drawing number PSS-101-089 unless otherwise agreed in writing by the National Park Authority.
4. No external lighting shall be installed until a scheme has been submitted to and approved in writing by the National Park Authority. Lighting shall only be installed in accordance with the approved scheme.

Preliminary Matters

4. One element of the requirements of the enforcement notice as set out in section 5 is not numbered, and the period for compliance with this element is not explicitly specified. The enforcement notice has therefore been corrected by combining the unnumbered element and requirement 3; the compliance period for requirement 3 thus also applying to the unnumbered element. The notice is also corrected by, in the first alleged breach of planning control in Section 3 to correct a descriptive error, the deletion of 'sauna' and the substitution instead of 'hot tub'.

5. Following discussions at the Hearing on the relationship between the two alleged breaches of planning control the Council agreed that the second breach could be deleted. This does not prejudice either main party and the enforcement notice has been varied accordingly.

6. At the Hearing there was a lengthy discussion on the legal status of the enforcement notice and a previously issued and withdrawn notice. This matter is relevant to the ground (d) appeal and to the relevant period for claiming immunity from enforcement action, but it is also relevant to whether the extant and withdrawn notice are valid or whether either is a nullity. It was agreed that, for this matter, the Hearing should be adjourned to a later date pending the disclosure of evidence by the Council and consideration of this evidence by the Appellants. There was therefore no discussion of the ground (d) appeal at the Hearing. The other grounds of appeal, and the planning appeal, were discussed.

7. The ground (a) enforcement appeal and the planning appeal have been allowed. The Appellants agreed, in this event and given the unusual circumstances of this case, that there is no need to postpone issue of the Decision pending resumption of the Hearing to consider the ground (d) appeal.

8. The first alleged breach of planning control ends with 'in the approximate location as shown tinted pink on the attached plan'. The tinted pink area on the plan is oval and slightly overlaps the boundary of the enforcement land. The Council accepted that the plan is not accurate. There can be no doubt where the development is located so nothing depends upon the accuracy of the plan for compliance with the requirements of the notice. Though the Appellant's Agent did request that the plan be substituted by an accurate plan this is not justified given the grant of planning permission and that this would delay issue of the Decision.

9. The description of the development given in the first breach of planning control and the description of development in the planning application differ. They do not also accurately describe the development for which planning permission is sought. An accurate description is 'the erection of a cabin and associated structures for short-term let holiday accommodation' and this has been used in the planning permission granted in this Decision.

10. An application for an award of costs has been made by Mr and Mrs O'Rourke against the Peak District National Park Authority. This application is the subject of a separate Decision.

Reasons

The ground (e) enforcement appeal

11. Several matters are mentioned in support of the ground (e) appeal but none are compelling. Furthermore, a valid appeal has been submitted against the enforcement notice and has been determined. The Appellants have not been prejudiced by any of the matters mentioned. The ground (e) appeal thus fails.

The ground (a) enforcement appeal and the planning appeal

12. The main issues in the ground (a) enforcement appeal and the planning appeal are; first, whether the development as carried out complies with development plan policies for the siting of short-term let holiday accommodation; and second, the effect of the development on the character of the landscape.

The first issue – compliance with the development plan

13. The development plan includes the Peak District National Park Core Strategy (NPCS), adopted in 2011, and the Peak District National Park Development Management Policies (NPDMP), adopted in 2019. The DPDMP is the most recently adopted document and must be regarded to comply with the NPCS.

14. The most relevant policy in this case is NPDMP policy DMR1 'Touring camping and caravan sites'. Parts A and B of the policy consider new, and extensions to, touring camping and caravan sites and the provision of shopping and other facilities at such sites. Part C sets out exceptions to Parts A and B matters and states that 'Exceptionally, the development of structures may be permitted where these are small, simple, wooden pod structures in woodland locations with minimal landscape impact, or...'; the second part of Part C not being relevant. The landscape impact proviso will be considered in the second main issue.

15. The development comprises a cabin and three associated structures. The cabin is about 2.9 metres square and 3.0 metres high. The principal structure is a toilet that is about 1.5 metres long, 1.3 metres wide and 2.4 metres high. The other structures are a canopy over an open sided kitchen area that is about 3.7 metres long and 2.4 metres wide, and a decking area that is about 3.5 metres long by 2.1 metres wide. The cabin and associated structures are in a wooded location below the summit of a hill, or tor, on a steep slope down to the south-west, and are constructed predominantly in timber.

16. At the Hearing Mr Coombes, for the Council, accepted that the cabin and associated structures are small, simple, wooden structures in a wooded location. 'Pod' is not defined in the NPDMP. The Cambridge Dictionary has many definitions of 'pod', mostly relating to plant seeds or groups of animals, but in relation to 'structure' the definition is 'a small simple building or a small simple structure in a building, often rounded in shape'. In this regard a 'pod' is a 'structure' or 'building' so a reasonable definition of 'pod' would be a 'small simple structure or building'. The inclusion of 'pod' is inconsequential in considering whether the development complies with NPDMP policy DMR1C.

17. Policy DMR1C refers to the development of 'structures' so does not preclude multiple appropriate structures in wooded locations. The cabin and associated structures are all small, simple, wooden structures, pods if they need to be so defined, in a wooded location. The development, in this regard, complies with policy DMR1C. Mr Coombes accepted at the Hearing that if the development does comply with the policy, that it would also comply with other policies in the NPCS and the NPDMP relating to the siting of short-term let holiday accommodation. The development as carried out complies with development plan policies for the siting of short-term let holiday accommodation in the Peak District National Park.

The second issue – the character of the landscape

18. There are expansive views across the valley from inside the cabin and from the hot tub platform and the dining area. But these are filtered by nearby trees and it is these trees that screen the development in distant views towards the tor. If any part of any of the small simple wooden structures is glimpsed in these views, almost wholly from private vantage points, then it will be indistinct and will not be visually intrusive. The cabin and structures are not visible from any other direction and, in terms of visual amenity, do not harm the character of the landscape. The corrugated plastic roof over the dining area is inconsequential.

19. The cabin and the decking under the hot tub have been erected on metal frames that sit on, and are bolted to, large boulders that are a feature of the immediate area. These and the other associated structures have been sensitively located and have been carefully and expertly designed and erected to have a minimal physical impact on the landscape. With regard to paragraph 5.22 of the supporting text to policy DMR1C the development does blend successfully into the landscape and does allow all the valued characteristics of the natural and historic landscape to dominate. The development can therefore be considered favourably.

20. The development has a minimal impact on the character of the landscape and, in this regard also, complies with NPDMP policy DMR1C. The development must therefore comply with other NPCS and NPDMP policies that seek to preserve the natural beauty, quality, visual amenity and character of the landscape.

Conditions

21. The Council has suggested five conditions but withdrew one of these at the Hearing. The other four conditions have been imposed but have been amended where necessary, in the interests of clarity and precision and to meet the tests in the Planning Practice Guidance. Conditions 1 and 2 will ensure that the development will remain sustainable as short-term let holiday accommodation, condition 3 will safeguard the landscape character of the area, and condition 4 is in the interests of the nighttime visual amenity of the area.

Conclusion

22. The development as carried out complies with development plan policies for the siting of short-term let holiday accommodation and has a minimal impact on the character of the landscape. Planning permission has thus been granted, subject to conditions, for the erection of a cabin and associated structures for short-term let holiday accommodation at Rocking Stone Farm, Birchover, Matlock.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms S Foster	Principal of SJ Foster Planning
Mr R Gascoigne	Director of Emery Planning Partnership
Mr G O'Rourke	Appellant
Mrs R O'Rourke	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Cook	Principal Enforcement Officer
Mr S Coombes	Planning Officer

INTERESTED PARTIES:

Mrs J Frost	Local resident
Mrs L Neil	Local resident
Mr J Coffey	Local resident

DOCUMENTS

- 1 Extract from National Park Authority Standing Orders dated November 2023
- 2 Representation by the Chair of Visit Peak District and Derbyshire
- 3 Representation by Mr N Watmore
- 4 Representation by Mr N Mellor