



Appeal Decision

Hearing held on 26 June 2024

Site visit made on 27 June 2024

by Grahame Kean BA(Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/Q9495/C/22/3310495

Land at The Crown & Mitre, Bampton Grange, Penrith, Cumbria

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) by Joof Hotels Limited against an enforcement notice issued by Lake District National Park Authority.
 - The notice was issued on 29 September 2022.
 - The breach of planning control as alleged in the notice is: without planning permission the making of a material change in use from use as a public house and inn to a single self-contained holiday let (*sui generis*).
 - The requirement of the notice is: permanently discontinue the use of the Land as a single self-contained holiday let.
 - The period for compliance with the requirement is: 3 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

The notice

2. A requirement to discontinue a use of land is a permanent requirement in any event and to avoid potential confusion I will exercise powers in s176 of the 1990 Act to omit the superfluous word “permanently”.

Claim of invalidity or nullity

3. The Council’s position as to the lawful existing use of the appeal premises was that they were either: a public house with ancillary accommodation; an hotel with an ancillary public bar; or a mixed use as an hotel and public bar. The appellant company considers the Council’s case to be so unclear as to cause it prejudice and on that basis requests that the notice is quashed.
4. The appeal premises were known as the Crown and Mitre Inn and the sign is still displayed outside the building. Hospitality was offered in the form of a public house and accommodation. An establishment’s name can be historic and not indicative of whether one activity is or was ancillary to the other in planning terms. It is undisputed that there is at present no active use of the premises as a public house.

5. The notice alleges a particular sui generis use of the premises which is different from the possible combinations of hotel and public house/bar use posited by the Council. The requirements for a notice in s173 of the 1990 Act do not require that the pre-existing lawful use must be specified (although it is usually good practice to do so). A notice should be drafted so as to tell the recipient fairly, what he has done wrong and what he must do to remedy it. The notice fulfils this requirement. Therefore, it is neither defective nor a nullity.

Ground (b)

6. Ground (b) is concerned with whether what is alleged in the notice has occurred as matter of fact, ie use as a single self-contained holiday let. The appellant accepts that the property has been let as a single unit of accommodation but states that it has been also let in multiple units and continues to be used for serviced short term visitor accommodation. According to the appellant, the premises were an hotel rather than a public house and inn, and the current use is in essence continuing the hotel use.
7. The appellant also states that even if the current use is a different use from what obtained before he acquired the property, it does not amount to a material change of use in planning terms. This is considered on ground (c).
8. The premises have been let out to groups in a single letting to celebrate events such as birthdays, forthcoming weddings and the like. The company offers "single rooms, whole floors, group bookings, "buy outs" and the whole hotel to be booked for functions". There is some evidence of units being let severally within the premises, for example an advertisement for a particular week's stay for up to 6 guests in 3 bedrooms only, in February 2023. There was also a list of individual room bookings in 2021 totalling 91. However, in the first half of 2022 a series of "whole property" bookings were made on 12 occasions with, in each case, between 10 and 24 adults together and in several cases teenagers and children ranging from 2 to 11 in number. The information given in the appeal and at the hearing points overwhelmingly to the premises being let as a single unit for holiday purposes. I am satisfied that this was the prevailing pattern of use when the notice was issued in September 2022.
9. The "holiday let" part of the allegation also appears to be correct. The typical scenario is that of a large group of individuals, whether friends or extended family members, booking the whole premises for several nights or a weekend. Neither the owner or a manager lives on the premises and the group is left to organise the use and enjoyment of the rooms and indeed the whole property as they please, subject to the letting terms. The booking page on Sykes Holiday Cottages website advertises the premises as a 12-bedroom, 24-person "holiday let". The current description of the property for rateable valuation purposes since November 2021 has been "self-catering holiday unit and premises".
10. Also, the appellant submitted on ground (c) that "*there has been no breach of planning control as although the property is now let as a single unit of accommodation, it continues to be used for serviced short term visitor accommodation*" (my emphasis). Essentially the land and building comprise self-catering premises rented out primarily as a single unit of accommodation which is properly described in the notice as a single self-contained holiday let.
11. On the balance of probability, the matters alleged had factually occurred at the date of the issue of the notice. Therefore, the ground (b) appeal fails.

Ground (c)

12. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The issue here is whether there has been a material change in the use of the premises from the pre-existing lawful use.
13. It is common ground that the test of a material change of use is whether there has been a change in the character of the use of the land. The off-site effects of a new use of premises on residential amenity are a relevant factor. The question is one of planning judgement.
14. It is also agreed that a mixed use can subsist where the different elements are not associated with particular parts of the premises. Intermittent or seasonal use for different purposes may also amount to a mixed use. Further, a separate and distinct use within a composite use of land may cease but not necessarily result in a material change of use. However, if one use is allowed to absorb the entire site to the exclusion of the other, it is still a question of fact and degree whether there has been a material change of use.
15. Whether an established use has been abandoned depends on the period of non-use, the physical condition of the premises, whether there had been any other use and the owner's intentions objectively assessed. No one factor is determinative. A building's use may remain unused for a considerable time such that a reasonable person may conclude that the use had been abandoned.

Lawful existing use

16. It is helpful to distinguish different phases when the premises have been used in a particular way. The first and longest phase has been the traditional use as serviced accommodation and public house open to the community at large. The use apparently went back some two hundred years and had continued substantially in this way including with the previous owner S, before use of the premises was reduced.
17. During the pandemic the building remained open as a pub serving drinks to locals and visitors, subject to lockdown rules. Food was usually only available to residents of the pub which closed to the public in the summer of 2021 when it was more aggressively marketed for sale. The use of the public house was reduced by S and clearly there was friction between her and some residents who were critical of facilities being withdrawn. This affected local societies who patronised the public house. S made several unsuccessful attempts to sell the property and seek an alternative residential use before its sale in October 2021.
18. However, during this second phase it was not the case that the bar had closed to the public altogether until very shortly before it was sold. In addition, the premises licence did not expire until 17 November 2021. It was clear from the way several residents spoke, that even during this time they regarded the place as their local public house, where, when it was open, they would eat and drink. However, even in 2019 there were online reviews, many balanced and detailed in my view, that gave the impression of poor communication at times as to when the premises would be open to visitors for food and drink.
19. The third phase began in or around October 2021 with the new owner, the appellant company. There was now no reception, no staff, and no breakfast or food cooked for guests on the premises. Rooms were typically not cleaned until

after the whole stay. In a June 2022 officer's report on the use of the premises as a potential asset of community value (ACV) it was said that they have "*only been open to overnight guests and has not opened to the general public since [Covid] restrictions ceased.*" It was also claimed that since Brexit, staff were hard to recruit and many places were running a restricted service.

20. During this current phase of use the appellant has added amenities for guests such as a hot tub and various other features, but, and again the reviews are compelling, clearly there is now no live-in management or assistance. The whole booking stays have engendered complaints of noise and disturbance, inconsiderate parking, anti-social behaviours and lack of on-site supervision before the enforcement was issued.
21. The appellant's case is that the lawful existing use was an hotel to which the public house element was ancillary, and, in any case, the pub use ceased to operate some time ago. Secondly, it states that a change from an hotel to the current use is not a material change of use.
22. The written evidence and testimony of several local residents strongly suggest that the public house when in use was not simply an adjunct to the accommodation offered, or of a scale that was incidental or ancillary, but rather it was a use in its own right. It had the traditional hallmarks of a "pub" or "inn" open to the public irrespective of whether they were guests. The bar is not physically totally isolated from the rest of the premises but nor is it necessary for each component of a mixed use to be carried out in strictly separate areas of the planning unit. One did not have to gain access through the hotel lobby or rooms for example but came into the bar area directly through a door in the small vestibule of the building that fronted the street.
23. I disagree that the internal character of the property was more akin to a hotel or guesthouse than a public house. Although the bar pumps are now just for show the layout of that part of the premises would have had the character of a public bar accessible to anyone who chose to come in to avail themselves of the facilities. The hotel and pub uses were not shown to be interdependent, rather one use could have been carried on at times without the other. The use of both elements would have fluctuated at times, depending on the season, the weather and so on.
24. A bar area can be ancillary to the guest accommodation it serves, but on the information available it is probable that during the first phase I referred to there was a mixed use of an hotel and a public house. A dormant or inactive use may be considered as existing if already lawful and not extinguished by abandonment or superseded by a further change of use. This was the situation during the second phase in my view. It seems that since Covid the premises were closed for several months in the year but I find it unlikely that either the hotel use or the pub use was abandoned before around October 2021.
25. However, the surrender of the premises licence and its non-renewal provide a strong indication of an intention to abandon the public house use element of the premises shortly after they changed hands in October 2021. The bar area was subsumed into the larger area available and advertised for lettings of the premises as a single unit. The period between the ownership change, modus operandi and lapse of premises licence on the one hand, and issue of the notice on the other is relatively short, but objectively assessed the changes are significant enough from which to infer an intention to abandon the public house

use. Thus, the existing lawful use of the premises when the notice was issued was as a single primary use as an hotel.

Whether change in use material

26. Use classes are set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Use as an hotel is within Schedule 1, Part C, ie: Class C1: *"Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided."* Changes of use within the same use class are not development (s55 2(f) TCPA1990). As guest houses and hotels are in the same C1 use class, planning permission is not required to change from one to the other. A use outside the classes specified in the UCO is referred to as a *sui generis* use.
27. The appellant notes that "industry experts" believe it is often not possible to differentiate between bed and breakfasts, guest houses and small hotels. In the application of its local plan policy the Council regards a guest house as *"a private house offering accommodation to paying guests, usually larger than a bed and breakfast"*. No definition of the term "private house" is given but clearly private ownership does not exclude it from being a C1 use.
28. Section 1(3) Hotel Proprietors Act 1956 defines an hotel as an establishment held out by the proprietor as offering food and drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received.
29. Circular 03/2005, *Changes of Use of Buildings and Land*, described the C1 Hotels use: *"Hotels class includes not only hotels, but also motels, bed and breakfast premises, boarding and guest houses. These are premises which provide a room as temporary accommodation on a commercial, fee-paying basis, where meals can be provided."* Although revoked, the phrase "a room" seems relevant to consider. Whilst there may be a fine distinction to draw in some cases (people who can afford it sometimes take over whole floors of an hotel for example) the normal pattern of letting a single room or rooms stands in juxtaposition to single lettings of the whole building.
30. The issue is fact sensitive. Features of the current use are found in an hotel use and common factors appear to be provision of temporary accommodation on a commercial basis. However, self-catering holiday accommodation does not fit easily into what most people regard as an hotel, boarding or guest house use. Moreover, it is incorrect in my view for the appellant, in referring to the property's availability to be booked as a whole to state "[as] is the case with many hotels". Hotels may let out whole floors or even all the rooms, but no instance has been brought to my attention of the whole property comprised in what is commonly referred to as an hotel, being assigned to a visitor or holiday maker with exclusive occupation of the administrative and business parts of the establishment including its curtilage. When the premises are block-booked a "good housekeeping" bond is payable of £1000, unlike a usual hotel booking.
31. It is a relevant factor in my view that the live-in accommodation used by the former owners when running the hotel, has now been made available as part of the single letting offer. The extra bedroom space is included in the current description of the property for rateable valuation. Neither the VAT nor the

- valuation regimes correspond exactly to planning use classes, however one would expect some combination of services to be provided in a C1 hotel use.
32. The case of *Moore v SSCLG [2012] EWCA Civ 1202* was cited by both parties, concerning use of a dwelling for commercial holiday lettings, not an hotel. It merely confirmed however, that a material change in use would be a matter of fact and degree in each case as to the characteristics of the use as holiday accommodation. There was no attempt to define when use as a commercial holiday letting might amount to a material change of use, or even to suggest criteria that might be relevant.
33. It is also difficult to regard the current use as akin to that of a "guest house". A person who stays in a guest house is commonly understood to be one who stays in someone's home. The local plan definition of a private home where guests are offered accommodation seems more in line with this concept, than where the building is given over exclusively to the paying customer. The aspects of self-catering and exclusive occupation of the building, which involves signing a contract, militate strongly against the notion that customers are guests of anyone with whom they are staying. Similarly, the absence of any "board", ie food and drink prepared for the occupants is at odds with the meaning of a boarding house.
34. From the holiday cottages website and other online reviews there does not appear to be any services provided other than cleaning at the end of each let and general maintenance. No food or drink is provided. There are locks on the rooms but that does not prevent single letting which is the main aim of the new owner who is *"in the process of fine tuning the operation of the property to best meet its financial imperatives and secure a sustainable business"*.
35. Provision of meals, particularly breakfast is commonplace in what is regarded as an hotel, boarding or guest house. The publication Development Control Practice (DCP) states that *"changing the use of serviced accommodation falling within use Class C1 Hotels to self-catering units is almost certain to be considered a material change of use, although if some form of common servicing/facility provision still remains there may be room for debate"*.
36. There is no-one on hand at the appeal premises to provide meaningful services or facilities. I was referred to other DCP extracts but it is evident that hotel developments falling within Use Class C1 are dealt with separately from self-catering holiday uses.
37. The DCP is not "legal precedent" as suggested. An appeal decision Ref APP/G1630/X/00/1049528 found that premises were still an hotel use despite a fall in use of rooms by paying guests, lack of reception area, and lack of mention in tourist brochures. This is not surprising (but it is curious that this 20-year-old decision gave weight to a solicitor's appraisal of the premises as an hotel simply because he had "some legal knowledge of land-use terms"). More importantly the decision turned entirely on its own facts so is less helpful to my determination.
38. A common feature of serviced accommodation commonly found in hotels, guesthouses and bed and breakfast accommodation, is the provision of hands-on or personal services such as laundry, making up of rooms, food preparation and usually an on-site presence. The accommodation that predominantly has been offered recently in the appeal premises does not provide these services.

39. Large groups occupy the property as a result of their shared interests whether for a party or other purpose but they do not occupy it as single households. Several concerns were expressed about the off-site impacts of the current use on the amenity of residents, including noise and disturbance. Off-site impacts are a relevant factor as evidenced by the experiences of those subjected to the abrupt and readily apparent change in the modus operandi of the premises.
40. A large number of connected guests is more likely to generate noise and disturbance than letting individual rooms. The absence of on-site supervision increases the likelihood further. The appellant stated in terms that he would *"make an application to make necessary changes to the property to permit a permanent member of staff to be situated on the premises year round"* and in the interim *"seek to employ a near neighbour of the property as an on site manager"*. Neither of these things had occurred. The main operator does not live locally and would have to make a lengthy round trip to be present on site.
41. It was the whole booking stays that engendered complaints of noise and disturbance, inconsiderate parking, anti-social behaviour and lack of on-site supervision before the notice was issued in September 2022. These stays are a fundamental aspect of the use.
42. As a matter of fact and degree I consider that the current use of the premises has altered the character of the use of the land and building thereon to such an extent so as to amount to a material change of use from an hotel use to a sui generis use as a single self-contained holiday let for which planning permission is required.
43. Accordingly, the appeal on ground (c) cannot succeed.

Ground (a)

44. The main issues are

- whether the development serves the interests of the local community in accordance with local and national policies;
- whether the development adequately preserves tourist accommodation; and
- the effect of the development on adjacent occupiers.

Interests of local community and preservation of tourist accommodation

45. The Lake District National Park Local Plan 2020-2035, adopted in 2021 (LP) Policy 02 states that in villages in the national park, development will be required to strengthen community viability and resilience, and sustain and enhance existing local service provision.
46. When providing hotel accommodation, the premises operated in the village for very many years and was a popular stopping-off point for the Coast-to-Coast route which will now become a new National Trail. The Covid pandemic and associated lockdowns affected leisure facilities but in the national park there has been a rebound in activity since the end of restrictions.
47. LP Policy 23 aims to sustain community and cultural facilities and local services by resisting a change of use of shops, pubs and drinking establishments to alternative uses, unless the current use is no longer suitable or viable for its purpose, or there are suitable alternatives in the settlement. The policy applies

to the “current use” which in my view would not apply to the public house use that is no longer extant.

48. On the other hand, National Planning Policy Framework (NPPF)/84 and 93 encourage more generally the retention of local services and community facilities such as public houses, and seek to guard against their unnecessary loss, especially where the community’s ability to meet daily needs would be lost.
49. The evidence is that until recently, the public house met the local community’s needs to provide food and drink. Whether its loss is necessary depends on its commercial viability. However, there is no reliable evidence as to its performance over a reasonable period, to enable an effective assessment of viability. Sales listings for the property include Christie and Co. who at some point after April 2017 stated that even with trading from March to end of September, net profits of £46,697 were achieved and that it boasted a 40-cover lounge/bar and 20-cover dining/breakfast room. The business was in S’s ownership for several years and benefited from substantial repeat hotel bookings. The listing also emphasised that the owners “choose” to close the premises from October to March, but no reason was given. It remained unclear that a new owner might profitably manage them year round.
50. Another listing, on Rightmove notes that *“The current owners openly mention that they do not currently utilise the public house facility [it was a ‘fully functional bar’] and the potential for longer opening hours and a more varied restaurant service could provide an instant uplift on the current income stream”* and that they *“make sure life work balance is at the forefront of their mantra (sic)”* whilst noting there is still a healthy profit of around £50,000 per year. The freehold was offered at £500,000, seemingly from 27 November 2020. As is known, the appellant bought it in October 2021 for £410,000.
51. The Mardale Inn in nearby Bampton village has reopened, purchased by the Bampton Valley Community Pub group in Spring 2022. The local MP in November 2021 opined that *“the permanent closure of village pubs has long lasting negative effects on communities such as community cohesion, social isolation, income from tourism and local employment”*. I would agree. Even when both public houses were open to the public the appeal property was the only such facility in Bampton Grange with the Mardale Inn 850m away on an unlit country road with no footway. There are no other hotels, guest houses or B&Bs in the parish. Bampton Grange is an isolated village served by only one bus, one day per week, so the existence of an accessible local social facility assumes great importance to members of that community, as I was told.
52. I note also that under LP Policy 02 villages include *“Bampton/Bampton Grange”* and that *“cluster communities”* comprise *“a small settlement or group of small settlements which collectively or individually, have limited local services and facilities, or have easy access to such services in an adjacent Village or Rural Service Centre”* (emphasis supplied).
53. Although I cannot be certain given the lack of detailed financial evidence, it is probable that scope still exists for an owner who has a different focus on life work balance, to run the appeal premises as an hotel with food and drink whether ancillary or part of a mixed use. Whilst clearly this cannot be imposed, there seems no compelling justification for the loss of such a facility. The

premises do not appear to have had that full commitment by the previous owner for some years prior to its sale in 2021.

54. The appeal property was the subject of applications to make it an AVC. AVC designation could be a material consideration but, in this appeal, there is no direct reference made to it in national or local planning policy. Several such applications were made, two refused then one accepted (although the officer recommendation was to refuse). Both main parties sought to turn to their advantage points the significance of a refusal or as the case may be a designation. The decisions do not have especial consequence for the application of the planning policies. I have focussed rather on evidence submitted within the applications and taken account of this in my decision where relevant to the issues thrown up by the planning policies themselves. Neither national nor local development plan policy makes designation a pre-condition in seeking to protect valued facilities.
55. LP Policy 18 supports high quality, sustainable tourism for visitors to the Lake District whilst ensuring proposals benefit local communities and businesses. The criteria for holiday accommodation separates out hotels and guest houses proposals from holiday letting proposals. Changes from guest houses to different forms of holiday accommodation to meet changing market demands will be supported where a range of tourism accommodation is available in the local area and the relevant policy criteria are met. A change of use of holiday accommodation to other uses is only supported where there is no demand for it, resulting from an appropriate marketing exercise and other evidence.
56. For holiday letting proposals, only the reuse of existing buildings for short term holiday letting is supported in LP Policy 18 (excluding guest houses), unless suitable for local need or affordable needs housing, providing employment use or part of an agricultural or land-based rural business diversification proposal.
57. The unauthorised use would reduce the number of hotel rooms in the local area, ie the extent of Bampton Parish that includes Bampton Grange and Bampton. It is understood that the Mardale Inn provides 5 rooms. However, the loss of 8 hotel bedrooms at the appeal site would not provide adequately for the required range of quality holiday accommodation, considering also that there are 13 self-catering holiday lets in Bampton parish paying business rates, not including second homes. This is a considerable amount of self-catering holiday units in and around the area, given the relatively small resident population of the parish. Moreover, the advertised units are typically set in larger plots than the appeal premises and allow for good outdoor amenity space and parking. Many are in Bampton or Bampton Grange itself. It is also the case that the appeal premises are not let continuously and there have been significant periods with no bookings, such as the first two months of 2023.
58. The appellant acknowledges in terms that the previous hotel use brought visitors to the parish and strengthened community viability and resilience through increased local spending. A single holiday letting unit would not contribute to the local and rural economy to the same degree as hotel accommodation where guest facilities and services are provided. Where no food and drink is offered, it is likely to be self-provided by the customers. The very few local facilities in Bampton and Bampton and Bampton Grange might be sought out, but I note for example a comment from users of other self-contained units advertised which states *"it doesn't take too long to get food*

from nearby Penrith". Thus, it would not be untypical or difficult for large groups to stock up with provisions outside the local area for the duration of their stay.

59. The level of demand for visitor accommodation in the Lake District is seasonally related but that does not provide a compelling reason to conclude that the current use performs better because (as it is claimed) it attracts users more likely to stay inside and take part in group activities than go outdoors when the weather is poor. Similarly, the fact that the current use caters for a larger than usual total number of self-contained holiday units, must be set against the loss of traditional hotel accommodation in the local area. Therefore, I disagree that for these reasons the current use contributes overall to an improved range of tourist accommodation offered. In fact, the 8-bedroom premises at Fieldhouse Barn can be combined with the 7-bedroom premises at Fieldgate House, all within an extensive plot in Bampton Grange itself overlooking the village centre. Furthermore, there is no compelling evidence to suggest that the diverse needs of different individuals and groups would be met more effectively with the current use rather than the former.
60. The coast-to-coast trail is about a mile away from the village and several persons spoke as to the appeal premises being used previously by walkers on this journey. The route is already a well-used and publicised long distance walking route, and there are initiatives to improve the experience of users. An overnight stopping point would fulfil a need for this kind of accommodation. However, the effect of block-bookings of the whole building is that no accommodation is available for other members of the public. I note from one advertisement that bookings are only accepted starting on Mondays or Fridays. The loss of accommodation hitherto available on a more ad hoc and individual basis, to travellers rather than those seeking a self-contained holiday let, and in circumstances where the self-catering holiday accommodation market in the area is already well catered for, is damaging to the hospitality and leisure economy of the area and contrary to the central aims of LP Policy 18. The harm carries significant weight against the unauthorised change of use.

Effect on nearby occupiers

61. LP Policy 06 outlines that development must not have an unacceptable impact on the amenity of adjoining residents and users of the proposed development, due to visual intrusion, overlooking, overshadowing, overbearing effect, noise, light pollution or other adverse impacts.
62. The Crown and Mitre (as its name is displayed outside) is a landmark building on the main lane through Bampton Grange. However, its curtilage is tightly drawn around it, comprising space at the front for 3 to 4 parking spaces, to the side for another 1 or 2 at most, and at the rear a small patch of ground enclosed by stone walling where a hot tub has been installed in close proximity to several dwellings.
63. The road through the village runs between the former inn and St Patrick's church with its churchyard opposite which is also a graveyard with an air of tranquillity in line with the general character of the conservation area. Private residences are in a tightly clustered group of historic buildings in proximity to the appeal premises, where a back lane lies west and south of the appeal premises. Public footpath 306015 runs down the lane immediately to the western side of the appeal building.

64. The 7 or 9 parking spaces variously advertised in connection with the appeal site include 3 said to be available along the churchyard wall but these are in the highway and not formal parking spaces. The space along the side wall of the inn, as I saw, has the potential to interfere with the safe use of the access road to properties at the rear if more than one vehicle is parked there.
65. The appellant states that parking concerns could be resolved via an approved management plan but says such a condition would be ineffective anyway as a public house or hotel use would have *"greater issues with parking, noise and disturbance than use as a self-contained holiday let"*. There is no robust information to support such a view. Large groups of up to 24 people could reasonably be expected to bring about parking concerns in and around this tightly circumscribed plot, that conditions would not be effective to control.
66. Local residents have been adversely affected by the nature and scale of the activities carried on since the current use of the site began. I note the stills of cctv footage of someone alleged to be emptying the contents of a bin on site as a pretext for complaint. Whilst the images are inconclusive as exactly what was going on, clearly there have been other genuine, serious and credible complaints. Mostly these are from local residents about the use of the premises particularly late at night by large groups of partying individuals, rowdy, drunken behaviour and other matters such as inconsiderate parking and trespassing onto the neighbouring field. The owner stated that he was targeted by local residents seeking to intimidate him and that they appeared to be racially motivated but this allegation is unsubstantiated and was not pursued at the hearing.
67. A cleaning company which looks after several holiday cottages in Cumbria was contracted by the appellant to clean the property and they worked there for some months in 2022. The company's owner told me they had to clean up vomit and other bodily excretions after parties held on the property and eventually, they had to cease operations as they did not feel it was run in a manner respectful of the amenities of neighbours. Prior to ceasing work, correspondence indicates that the appellant had reported to the Council incidents of break-ins and rubbish left lying around, by persons unknown which "proved a point that they could get inside the property". These allegations point up the advantages of having on-site presence to verify such allegations as well as preventing anti-social behaviour from the tenants of the holiday lets.
68. The appellant cited an officer's report from an application in Keswick (Ref 7/2022/2047) to change the use of a guest house to self-catering holiday accommodation. The officer "cannot identify" that the change "as proposed" would result in an increased likelihood of unneighbourly or anti-social behaviour compared to the existing use, considering also similar changes already permitted locally. However, the officer's comments explicitly took into account the existing and potential activity with the guesthouse and the context of the area including the several previous applications determined mostly in Keswick. The effects of that application were considered individually and in combination with those other developments. I do not find the report of great assistance.
69. Given the appellant's intention to continue the current use, this cannot easily be addressed by planning conditions. Restricting the use of outdoor areas in the evenings by the simple expedient of a sign with no-one on site to supervise, is unlikely to be effective. Removal of the hot tub, or restriction on

use of outdoor areas in the later evening, would reduce the current use of the property beyond what would be, practically speaking, enforceable or reasonable to the customers. Use for six months of the year only in the winter season was mooted, however save for the reduction in use of the property by the previous owner, the hotel and public bar had, as the villagers who attended the hearing made clear, operated all year round for most of the time and in any event concerns as to adverse effects on neighbouring properties would remain.

70. A temporary permission is also suggested by the appellants until an alternative viable use is identified and secured. This is dealt with in ground (g) but there would still be an unacceptably adverse effect on neighbours' living conditions.
71. I find on this issue that the current use unacceptably impacts on the living conditions of adjoining residents, due to noise and other adverse effects, contrary to LP Policy 06.

Other matter: intentional unauthorised development

72. A planning policy statement in August 2015 made intentional unauthorised development (IUD) a material consideration to weigh in the determination of planning applications and appeals. The appellant was made aware in October 2021 that use as a single holiday unit would require planning permission. However, it was clear that the appellant in good faith disputed whether there was a material change of use requiring planning permission. I am not persuaded that IUD exists in this case.

Other matter: heritage

73. The appeal site is in the Bampton Grange conservation area (CA). Also, the July 2017 the Lake District was awarded World Heritage Site (WHS) status. At the hearing I made it clear that notwithstanding the absence of any Council-led objection to the development on heritage grounds I would consider the matter myself after taking due account of the relevant national and local policies.
74. The Crown and Mitre is a grade II listed building and s66(1) PLBCAA1990 requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. However, in this case the deemed application proposal does not affect the building itself or its setting.
75. A WHS is a designated heritage asset and weight is given to development causing substantial harm or loss to the site. Among its attributes of Outstanding Universal Value is: "*13. Opportunities for quiet enjoyment, ie the tranquillity of the landscape provides important opportunities for spiritual refreshment: a release from the pressures of modern day life and a contrast to the noise and bustle experienced elsewhere...all vital components of the concept of quiet enjoyment and can be found in many places across the whole of the National Park.*" However, in this connection the special qualities of the WHS are doubtless to be found more in the landscape than within the nearest settlement, therefore this policy would be unlikely to apply here.
76. However, the CA is also a heritage asset. The Planning (Listed Buildings and Conservation Areas) Act 1990, s72 requires decisions on applications for development in a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

77. The significance of the CA is found in its location, layout, buildings and other features, together with its inherent character. I have considered the conservation area appraisal (CAA) and benefited from inspecting the site and its surroundings. In my view the premises contribute positively to the character and appearance of the conservation area by virtue of its historic and architectural significance and its being part of a small, attractive cluster of buildings providing a focal point of the village. Here is a generally low-key and tranquil environment which is a feature that makes a positive contribution to the setting of roadside inn, church and churchyard, and in turn the CA. The repeated incidents of anti-social behaviour emanating from the current use of the premises would undermine this aspect of the character of the CA.
78. Therefore the deemed application proposal would not meet the aims of NFFP/212 in preserving those elements of the setting that make a positive contribution to the asset. Taking account of the relative significance of the element affected and its contribution to the significance of the CA, less than substantial harm would result as referred to in NPPF/208. The harm is weighed against the public benefits of the proposal including where appropriate, securing its optimum viable use, dealt with in the planning balance below.

Planning balance

79. There are some sustainable and public benefits from the current use. Economically, the use of the property as a single holiday let is beneficial through visitor spending although this is limited, and it is unclear how on the evidence such spending would be more locally undertaken than with the previous uses of the property. Socially, opportunities exist for under-represented groups to enjoy this special landscape but no more so than with the previous uses. Environmentally, a viable economic use for this listed building ensures funds are available for its upkeep. However, there is no compelling evidence to conclude that the previous uses were financially unviable.
80. Neither national nor local development plan policy makes designation a pre-condition in seeking to protect valued facilities. ACV status cannot restrict how the premises trade or operate. However, the recent past use of the site was suitable for providing local employment, contributing to the rural economy, which the current use as a single holiday letting unit without other services will not deliver to a comparable degree. The previous use of the premises brought visitors to the parish and strengthened community viability and resilience through increased spending in the local area. The current use fails to meet the aims of LP Policy 02 in strengthening community viability and resilience and sustaining and enhancing local service provision.
81. The loss of hotel accommodation in preference to self-contained holiday lettings to large groups of individuals where this type of accommodation in the area is well catered for, is damaging to the hospitality and leisure economy of the area and contrary to the aims of LP Policy 18. The harm carries significant weight against the unauthorised change of use.
82. The scope of local plan policy that seeks to protect public houses is ambiguous as to whether it includes recent uses not lawfully extant at the time of consideration. A legalistic approach to the interpretation of development plan policies is to be avoided, however I should give the benefit of the doubt to the appellant even though the point was not taken before me. However, it is the

case that NPPF/84 and NPPF/93 would seek more generally to prevent and guard against the unnecessary loss of a community facility where it meets daily needs. At least before the previous owner reduced the use of the premises and to a lesser extent after then, the hotel accommodation and public bar would have offered such a service to the local residents of the village.

83. The current use unacceptably impacts on the living conditions of adjoining residents, due to noise and other adverse effects, contrary to LP Policy 06. This weighs considerably against the development. The current use of the property has not been shown to result in fewer vehicle movements that cause parking problems compared to the previous uses.
84. The application of national policies that protect national parks and heritage assets do not by themselves provide a clear reason for refusing to grant permission. Although causing less than substantial harm, the adverse effects on living conditions emanating from the current use of the premises would nevertheless detrimentally impact on the character of the CA. The harm, after taking account of the limited public benefits of the development, also weighs against a grant of permission but to a small extent.
85. The conditions that might be attached to an eventual permission would be either impractical, unreasonable or unenforceable. There is no good reason why a temporary permission should be granted as it would unnecessarily prolong the adverse impacts on living conditions of nearby residential occupiers.
86. The appellant cites *R v Rochdale Metropolitan Borough Council, ex parte Milne [2000] EWHC 650 (Admin)* to illustrate that if there is a breach of any one policy in a development plan that does not necessarily prevent a finding that development cannot be "in accordance with the plan". That is correct. I have considered whether this deemed application proposal accords with the plan as a whole, bearing in mind the relative importance of the policies at play and the extent of the compliance or breach. Overall, and acknowledging the benefits of the proposal, such benefits do not outweigh the harm caused by the conflict with LP Policies 02, 06, and 18. Having regard to the importance and relevance of these policies to the main issues and the other policies referred to, I find the development conflicts with the development plan as a whole. As such it cannot benefit from the presumption in favour of sustainable development.
87. Therefore ground (a) does not succeed.

Ground (f)

88. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the notice requires the unauthorised use to cease altogether, its purpose is to remedy the breach of planning control.
89. The appellant suggests that it be required to discontinue the use of the land as a single self-contained holiday let, except between October and April (inclusive) of each year, however I have rejected this alternative on ground (a).
90. The appellant also argues that planning permission could be granted for part only of the building to be used as a self-contained unit of holiday accommodation. Whilst in principle permission for use of a smaller part of the

premises is within the powers contained in s177(1)(a) of the 1990 Act, insufficient detail is provided as to how such an alternative scheme of development would operate and it would not in any case provide a complete remedy to the breach of planning control.

91. If there is an obvious alternative that would overcome the planning difficulties at less cost and disruption than total cessation, I should consider the same. However, there is no such alternative before me that would satisfactorily mitigate the harm caused by the current unauthorised use.

92. Accordingly the appeal on ground (f) fails.

Ground (g)

93. The appellant suggests that a temporary permission should be considered until an alternative viable use is identified and secured but I have rejected the principle of such a permission as described above. Otherwise, an 18-month compliance period is sought by the appellant. However, I am satisfied that a period of three months is sufficient a period within which arrangements can be made to cease the current unauthorised use of the property.

94. The appeal on ground (g) fails.

Conclusion

95. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

96. It is directed that the enforcement notice be corrected as follows:

- The requirement of the notice is deleted and replaced with:

"Cease the use of the Land as a single self-contained holiday let."

97. Subject to this correction the appeal is dismissed and 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.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Gascoigne MRTPI	Emery Planning
Ms Lynn Jones MRTPI	Emery Planning
Mr Fatimihelin	(of Appellant company) owner of appeal site

FOR THE LOCAL PLANNING AUTHORITY

Brendan Brett	Barrister, No 5 Chambers
Mr Henderson MRTPI	Planning Development Manager

INTERESTED PERSONS

Mr Garner MRTPI	Representing several local residents:
S	
DK	
AK	
CM	
MH	
LT	
DW	

ADDITIONAL DOCUMENTS

- AD1 Indicative boundary of Bampton Grange conservation area
- AD2 Draft conditions