



Appeal Decision

Site visit made on 13 November 2024

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2024

Appeal Ref: APP/Q9495/W/24/3343894

7 Brantfell Walk, Bowness, Cumbria LA23 3AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Russell Lilliebridge against the decision of Lake District National Park Authority.
 - The application Ref is 7/2024/5016.
 - The application sought planning permission to "divide the block in red to create 2 separate dwellings for the purpose of being able to rent or sell individually making an additional local occupancy home (resubmission of 7/2023/5227)" without complying with a condition attached to planning permission Ref 7/2023/5617, dated 28 November 2023.
 - The condition in dispute is No 6 which states that: "Prior to the first use of the development hereby permitted, at least 30 percent of the operational energy requirements of the development shall be secured from decentralised, district heating and/or renewable or low-carbon energy sources. Details and a timetable of how this is to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority."
 - The reason given for the condition is: "In the interests of increasing the proportion of energy generated through renewable and low carbon sources in accordance with Policy 20 of the Lake District National Park Local Plan 2020-2035."
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Decision

1. The appeal is dismissed.

Preliminary Matters, Background and Main Issue

2. Planning permission was granted in 2018¹ for the construction of the appeal building. The appellant states that they were led to believe this granted planning permission for an independent permanent dwelling. However, the evidence before me indicates that planning permission was granted for an annex only, and I saw on my site visit how the building is closely related to the main house, including sharing an access and garden space. A further planning permission was granted in 2023² to subdivide the site and change the use of the annex into a local occupancy dwelling.
3. The appeal is seeking to remove condition No 6 of the 2023 planning permission, which sought to secure at least 30 percent of the operational

¹ Authority Ref 7/2017/5785

² Authority Ref 7/2023/5617

energy requirements of the development from decentralised, district heating and/or renewable or low-carbon energy sources. The condition required details of any physical work and a timetable for its implementation. The reason for this condition indicated it was applied pursuant to Policy 20 of the Lake District National Park Local Plan 2020-2035 Adopted May 2021 (the Local Plan).

4. The Authority refused planning permission in this case as it considers that the appellant has failed to provide any material considerations to support the removal of the condition, including evidence on the feasibility or viability of the development.
5. The main issue is therefore whether the removal of condition No 6 would be acceptable, with regard to the provisions of the development plan that relate to renewable and low-carbon energy, and the feasibility and viability of the development.

Reasons

6. The appeal building was granted planning permission prior to the adoption of the Local Plan, and so was not subject to the provisions of Policy 20. That development has been complete and so the appeal relates to an existing building. Nevertheless, the evidence indicates that the appeal proposal would result in a material change of use of the building and land to provide a separate dwellinghouse. The making of any material change in the use of any buildings or other land would be new development as defined within Section 55 of the Town and Country Planning Act 1990 (as amended).
7. Paragraph 162 of the National Planning Policy Framework (the Framework) states that in determining planning applications, local planning authorities should expect new development to comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable.
8. Policy 20 of the Local Plan requires that all new housing developments generate 30 per cent of their operational energy requirements through decentralised, district heating and, renewable and low-carbon energy sources. The policy provides an exception to this requirement where it is deemed to make a development unfeasible or unviable, however this must be demonstrated by the applicant through an independent viability assessment.
9. The appellant contends that compliance with the condition would not be beneficial for several reasons, including financial costs, lack of environmental benefits and harm to the fabric of the existing building.
10. In the first instance, the appeal is not supported by an independent viability assessment. While additional costs would invariably be involved in the provision of a new energy generation or heating system, these have not been clearly articulated in the evidence. The resultant value of the property, taking into account the local occupancy restriction, has also not been clarified.
11. Consideration has been given to the provision of solar panels for the main house previously, and the appellant advises this would have been of no environmental benefit. However, no substantiated evidence in respect of this has been provided and so it is not clear when this assessment was made, the efficacy of the technology considered, or what the cost would have been.

12. Moreover, this does not relate to the appeal building, which is smaller in size and is stated to have low energy demands. While I recognise the appeal building is shaded at times due to its position in relation to neighbouring buildings and trees, the efficacy of contemporary solar panels and/or energy storage to serve this building and associated costs does not appear to have been thoroughly investigated.
13. Consideration has also been given to the installation of an air source heat pump. The appellant contends that this would add a considerable burden to the property value, requiring replacement of the existing heating system, including removal of all existing electric radiators and the water heater, and extensive repair work.
14. It has not been demonstrated that the complete replacement of the heating system is necessary to comply with the condition. Even if this were the case, neither the full extent of the work required, nor the cost, have been clearly set out. It has also not been clarified why parts of the existing heating system are unable to be resold and/or reused. It therefore has not been demonstrated that compliance with the condition would be financially unviable or unfeasible.
15. The evidence before me does not demonstrate that a heat pump would need to be located under the bedroom window, or that this would have an unduly harmful impact on future occupiers with regard to noise. There is also no substantiated evidence that the production and installation of a heat pump, water heater and pipes would far outweigh any environmental benefits.
16. The appellant indicates that the existing building has a very efficient electric heating system and is well insulated, using very little energy. Nevertheless, this does not in itself demonstrate compliance with the requirements of Policy 20 of the Local Plan in respect of renewable and low-carbon energy provision.
17. The supporting text to Policy 20 indicates that, if the development proposal is a conversion of an existing building, in some circumstances the character of a building may outweigh the need to meet 30 per cent of its operational energy requirements through renewable and low carbon energy sources. There is no compelling evidence before me to indicate that this would apply in this case.
18. While the proportion of electricity provided by the national grid generated from renewable sources may increase over time, this does not demonstrate that the current proposal is compliant with the provisions of Local Plan Policy 20 or justify a departure from the development plan at this time.
19. The removal of condition No 6 would thus not be acceptable, with regard to the provisions of the development plan that relate to renewable and low-carbon energy, and the feasibility and viability of the development. Policy 20 of the Local Plan seeks to increase the proportion of energy generated by renewable and low carbon sources. This is consistent with the Framework, and in particular Paragraph 160 which seeks to increase the use and supply of renewable and low carbon energy and heat and requires development plans to provide a positive strategy for energy from these sources.

Other Matters

20. While there is no information before me regarding the affordability of the dwelling, I recognise that it would provide additional housing for local residents and thus contribute to the local housing supply. Nevertheless,

planning permission has already been granted for the change of use and there is no compelling evidence to demonstrate that this is undeliverable without the removal of the condition.

21. While the development may be compliant with other provisions of the development plan, including those pertaining to local occupancy restrictions, the absence of harm or development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.
22. No objections were received in respect of the application, and Windermere & Bowness Town Council indicated their agreement with the appellant's position. Nevertheless, this does not in itself demonstrate compliance with the development plan or outweigh the identified conflict.
23. The Framework acknowledges the benefits of early engagement and good quality pre-application discussion. The absence of pre-application advice is therefore regrettable. However, this cannot lead me to a different conclusion on the main issue.

Conclusion

24. The appeal proposal conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR