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## Appeal Decisions

Hearing Held on 3 December 2024

Site visit made on 3 December 2024

**by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 December 2024**

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**Appeal A Ref: APP/T2350/C/24/3340452**

**Appeal B Ref: APP/T2350/C/24/3340453**

**Thorneyholme Hall, Newton Road, Dunsop Bridge BB7 3BB**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act).
- Appeal A is made by Mr Michael Reilly against an enforcement notice issued by Ribble Valley Borough Council. Appeal B is made by Mrs Candice Reilly.
- The enforcement notice was issued on 9 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, a detached outbuilding, with associated decking, artificial grassed areas and lighting has been erected, with a footprint of approximately 184 sq. metres on the land at Thorneyholme Hall.
- The requirements of the notice are to remove the outbuilding (for which there is no planning permission) and associated infrastructure including decking, artificial grassed areas, and lighting and return the land to residential garden.
- The period for compliance with the requirements is twelve weeks.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the 1990 Act. 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. Appeal B is proceeding on grounds (c) and (g).

**Summary of Decision: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. Prior to the issue of the enforcement notice, planning permission was refused on 23 January 2024 for the change of use of Thorneyholme Hall from a private dwelling (C3) to a hotel/holiday let (C1) and the retention of the outbuilding for use as hotel/holiday let (C1). This is the subject of a separate appeal (ref APP/T2350/W/24/3348576).
2. At the Hearing it was discussed whether it would be necessary to include an alternative requirement that would allow the appellant the option of implementing an extant planning permission at the site. However, this would not be necessary as I am quashing the notice.
3. The reasons for issuing the enforcement notice specify conflict with Key Statement EC3 and Policies DMB1 and DMB3 of the Ribble Valley Core Strategy (2014). It was agreed at the Hearing that these policies are not relevant to this appeal since they concern the local economy and tourism development.

### **The ground (c) appeals**

4. In order to succeed on ground (c), the appellants must show on the balance of probabilities that the matters alleged do not constitute a breach of planning control.
5. Under Section 171A of the 1990 Act, carrying out development without the required planning permission constitutes a breach of planning control. The appeals have been made on the basis that a planning permission (ref: 3/2021/1084) for the change of use from private dwelling (C3) to cookery school with accommodation (C2) remains extant and, therefore, the outbuilding on the site already has planning permission.
6. However, the erection of the outbuilding, as alleged, did not have planning permission. The permission related to a proposed subsequent alteration and change of use of that building. Although Section 75(3) of the 1990 Act provides that planning permission for the erection of a building includes permission to use that building for the purposes for which it is designed, there is no equivalent provision that planning permission for a change of use includes permission for the prior erection of the relevant building. Indeed, as defined by Section 336(1) of the 1990 Act, use, in relation to land, "does not include the use of land for the carrying out of any building or other operations on it."
7. I find, therefore, that it has not been shown on the balance of probabilities that the matters alleged do not constitute a breach of planning control and the ground (c) appeals must fail.

### **The ground (a) appeal and the deemed planning application**

#### *Main Issues*

8. The ground (a) appeal is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the erection of a detached outbuilding, with associated decking, artificial grassed areas and lighting.
9. The main issues are (1) the effect of the development on the character and appearance of the area, in particular, the Forest of Bowland National Landscape; and (2) whether the development would be at an unacceptable risk of flooding or would exacerbate flooding elsewhere.

#### *Character and Appearance*

10. Thorneyholme Hall is a substantial detached residence set within large grounds to the east of the settlement of Dunsop Bridge, within the Forest of Bowland National Landscape. The surrounding landscape is characterised by the Upper Hodder Wooded Rural Valleys. It comprises river valleys, pockets of woodland and upland areas with small settlements connected by rural roads and lanes. There are several farms with associated farmhouses and agricultural buildings, and some scattered dwellings. Overall, the surrounding countryside is predominantly rural and built development is limited.
11. Thorneyholme Hall lies close to the confluence of the River Hodder with the River Dunsop. Vehicular access is gained over the river by a relatively narrow bridge, which also serves neighbouring groups of houses that lie to the east

- and west. The gardens extend to the side and rear of the Hall and include lawned areas, planting, and trees many of which are protected by a Tree Preservation Order.
12. The notice concerns an L-shaped building that has been erected to the east of the main house on the site of a former garage. The outbuilding is constructed from timber and has a slate roof. I saw that it currently comprises three separate rooms within the western wing, each with a shower and toilet. The northern wing included two other rooms, a further shower room and toilet and a store room. There is decking to the rear, with a hot tub, and an artificial grassed area to the front along with external lighting. The building has a floor area of 184 square metres, with a height of 2.25 metres to the eaves and 4.6 metres to the ridge.
  13. The outbuilding is situated towards the front of the site and is seen in the context of the Hall. It is relatively large in terms of its footprint, but the single-storey building is comparatively small in scale when considered alongside the more substantial Hall. The L-shaped design is reflective of a utilitarian outbuilding, such as a stable block, and its timber and slate materials are appropriate to its status as an outbuilding associated with a large residence. The outbuilding remains subservient due to its proportions and design, and it does not detract from the Hall's imposing character and quality appearance.
  14. The outbuilding is relatively prominent in views from Thorneyholme Bridge, neighbouring properties and the public right of way that runs to the north. Visibility is more limited from the road beyond. Glimpsed views are possible from a short stretch, but the site is well-screened, and the outbuilding does not stand out as an incongruous or dominant feature. Moreover, I saw that large farm houses with substantial outbuildings are not uncommon across this part of the National Landscape. The outbuilding is constructed in a vernacular style, using high quality materials and features that are in keeping with the character of the landscape and are reflective of local distinctiveness.
  15. The Council was concerned about the decking and the lighting, which it considered contributes to the unacceptable visual impact. I find these to be relatively low key features and they are not widely visible.
  16. I conclude on this issue that the development would not have an adverse effect on the character and appearance of the area, and it would not be contrary to the statutory purpose to conserve and enhance the natural beauty of the Forest of Bowland National Landscape. It would, therefore, accord with Key Statement EN2 and Policies DMG1 and DMG2 of the Core Strategy, which seek to secure development of a high standard of design, that protects, conserves and enhances the landscape and character of the National Landscape.

#### *Flood Risk*

17. Most of the appeal site is within an area identified by the Environment Agency's flood risk map as Flood Zone 3, which is land assessed as having a greater than 1 in 100 annual probability of flooding. The flood risk is fluvial from the River Hodder. The appellant has submitted a Flood Risk Assessment (FRA), dated December 2022. This concerned a different scheme, but aspects are relevant to the matters before me.

18. The FRA explains that Thorneyholme Hall and its grounds are on elevated land. The adjoining Thorneyholme Farm sits at a lower level to the site and there is a 1 metre high retaining wall along the western boundary with the farm. The height difference is maintained to the south as there is a raised embankment. Furthermore, there is a substantial brick wall along the site's northern boundary. It is also apparent that the slab level of the outbuilding has been raised and I understand there is a void below.
19. Although the site remains within Flood Zone 3, I accept that the site-specific circumstances, the topography and boundary walls, would provide a level of flood protection from a 1 in 100 year event. The FRA states that flood water would remain in the river channel past the site and would be prevented from entering by the retaining wall and the earth embankment. I agree, therefore, that the risk of fluvial flooding to the unauthorised development would be medium.
20. The FRA proposes mitigation against fluvial flooding, which would be necessary given the identified risk. The measures include flood protection door barriers and high level sockets, which could be fitted retrospectively. The use of the outbuilding could also be restricted through an appropriately worded condition to ensure the use remains incidental to the dwellinghouse and to prevent it being occupied as bedrooms, which would be more vulnerable should flooding occur.
21. The construction of the outbuilding has led to a marginal increase in hard surfacing. However, built development across the wider site is not excessive and it is highly unlikely that the building would exacerbate flooding elsewhere.
22. I conclude on this issue that the outbuilding is at medium risk of fluvial flooding. However, the impact of a flood event could be mitigated to an acceptable level through measures identified in the FRA and through preventing its use as bedrooms, which would be secured through planning conditions. Subject to these conditions, I consider that the development would not be at an unacceptable risk of flooding or exacerbate flooding elsewhere, in accordance with Policy DME6 of the Core Strategy and the National Planning Policy Framework.

### *Conditions*

23. I have explained that conditions are necessary to prevent the occupation of the outbuilding as bedrooms and to ensure flood mitigation measures are put in place. The wording of condition 2 is to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place.
24. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

### *Conclusion*

25. For the reasons given above, and subject to conditions, I conclude that the development accords with the development plan as a whole. The ground (a) appeal succeeds, therefore.

### **Conclusion**

26. I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for development as described in the notice. The appeals on ground (g) do not fall to be considered.

### **Formal Decision**

27. Appeal A is 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 detached outbuilding, with associated decking, artificial grassed areas and lighting on the land at Thorneyholme Hall, Newton Road, Dunsop Bridge BB7 3BB as shown on the plan attached to the notice and subject to the following conditions:

- 1) The outbuilding hereby permitted shall not be occupied at any time other than for purposes incidental to the residential use of the dwelling known as Thorneyholme Hall. The outbuilding shall not be used to provide additional bedroom accommodation.
- 2) The outbuilding shall be demolished to ground level and all materials resulting from the demolition shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme for flood risk mitigation shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained/retained/remain in use. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*D Moore*

Inspector

## **APPEARANCES**

### **FOR THE APPELLANTS:**

Anthony Gill (Barrister Kings Chambers)  
Joshua Hellawell (PWA Planning)  
Michael Reilly (Appellant)

### **FOR THE LOCAL PLANNING AUTHORITY:**

Kathryn Hughes (Principal Planning Officer)  
Stephen Kilmartin (Principal Planning Officer)  
Steve Maggs (Enforcement Officer)