



Appeal Decisions

Hearing held on 10 December 2024

Site visit made on 10 December 2024

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal A Ref: APP/Q9495/C/24/3345465

The River House Retreat, The River House, Clappersgate, Ambleside LA22 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Timothy Coupe against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land to residential, including the residential occupation of a caravan, and the carrying out of associated works to facilitate the residential use including the erection of timber decking with steps, the installation of steel box section posts and the construction of a concrete blockwork wall to the underside of the caravan.
- The requirements of the notice are to remedy the breach of planning control by:
 - i. Discontinuing the residential use of the Land, including the residential occupation of the caravan; and
 - ii. Restoring the land to its condition before the breach took place, by:
 - a. Removing the caravan from the Land; and
 - b. Removing from the Land the timber decking and steps, the steel box section posts and the concrete blockwork wall to the underside of the caravan.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Appeal B Ref: APP/Q9495/C/24/3345466

The River House Retreat, The River House, Clappersgate, Ambleside LA22 9NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Timothy Coupe against an enforcement notice issued by Lake District National Park Authority.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the Land to residential, including the erection of a building, and the carrying out of associated works to facilitate the residential use including the erection of timber decking with steps, the installation of steel box section posts and the construction of a concrete blockwork wall to the underside of the building.
- The requirements of the notice are to remedy the breach of planning control by:
 - i. Discontinuing the residential use of the Land, including the residential occupation of the building; and
 - ii. Restoring the land to its condition before the breach took place, by:
 - a. Removing the building from the Land; and
 - b. Removing from the Land the timber decking and steps, the steel box section posts and the concrete blockwork wall to the underside of the building.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Applications for costs

1. An application for costs was made by Mr Timothy Coupe against the Lake District National Park Authority (the NPA). This application is the subject of a separate Decision.

Preliminary Matters

2. At the start of the Hearing, it was agreed between the parties that there is a hidden ground (c) appeal with respect to Appeal A only. I will deal with this below.
3. The NPA stated that both Notices should be amended to clarify that the alleged breach of planning control being attacked is the formation of a separate residential unit rather than there being a material change of use of the Land to residential. The appellant argued that those are two materially different allegations and to change the Notices would cause him injustice.
4. The powers transferred to Inspectors in enforcement appeals include to correct any defect, error or misdescription in the Notice under s176(1)(a) of the 1990 Act and/or vary the terms of a Notice under s176(1)(b) of the 1990 Act where the Inspector is satisfied that doing so would cause no injustice to the appellant or the local planning authority. The courts interpret the power to correct notices widely. In the *Simms* case¹ it was held that the words of s176 propound only one test; namely, whether the change would cause injustice. There is no test that the correction should not go to the substance of the matter.
5. The existing Notices served by the NPA clearly relate to the making of a material change of use of the Land to residential use including either the residential occupation of a caravan or the erection of a building with associated works to facilitate the residential use. The NPA's suggested change to the Notices would introduce materially different allegations; being the material change of use of the land to a separate independent residential unit. Appeals should be assessed against the terms of the specific allegation or allegations and therefore it follows that the evidence submitted at appeal should be based on the allegation or allegations in question. In this case the appellant's case is built on what is alleged in the Notices and consequently, to materially change the allegations would cause him injustice. In this case there is no indication in the wording of the allegations set out in paragraph 3 of both Notices that the matter is the formation of a separate residential unit and therefore I shall determine these appeals on the basis of the allegations before me.

Appeals A and B on ground (b)

6. The ground of appeal is that the breaches of control alleged in the enforcement notices has not occurred. In order to succeed on this ground, it will need to be demonstrated that the making of a material change of use of the Land to residential use has not occurred as a matter of fact.
7. The appellant contends that there has not been a material change of use to residential as the land was already in residential use comprising part of the curtilage of River House. The NPA argues that the land was previously used as domestic garden incidental to the enjoyment of River House as a dwelling, but the residential use the subject of these appeals is neither incidental nor ancillary to the

¹ *Simms v SSE & Broxtowe BC* [1998] JPL B98

occupation of River House. On 28 July 2014 the NPA issued a lawful development certificate (LDC) with respect to the siting of a caravan within the curtilage of The River House to be used for purposes incidental to the enjoyment of The River House. On granting the LDC the NPA reasoned that:

“on the available evidence and on the balance of probability the caravan would be sited within the domestic curtilage of River House which is a dwellinghouse. The use of land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development that requires planning permission by virtue of section 55 (2)(d) of the Town and Country Planning Act 1990”.

8. It is clear to me that there has not been a material change of the land to residential because the land in question was already in residential use as land which comprised part of the curtilage of The River House. The NPA has confirmed that their case is that the Land was previously used as domestic garden incidental to the use of River House as a dwelling. However, the NPA then goes on to state that the residential use has introduced a second self-contained element of the use that is neither incidental nor ancillary to the occupation of The River House. That is not the allegation set out in the Notices and is not therefore a matter to be determined in these cases.
9. There is no dispute between the main parties that the Land in question is as a matter of fact residential land and therefore irrespective of whether there is a caravan or building on the Land, the alleged breaches of planning control set out in the Notices have not occurred. The NPA suggested at the Hearing that the allegations should be changed to allege the making of a material change of use of the Land to a separate independent residential unit but that cannot be done without causing injustice to the appellant. Therefore, in these circumstances the appeals on ground (b) must succeed.

Conclusion

10. For the reasons given above I conclude that the appeals should succeed on ground (b). Accordingly, I direct that the enforcement notices should be quashed. In these circumstances the appeals under the various grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Timothy Coupe Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Julie Birkett, Planning Manager

Michael Hyde, Consultant