



Appeal Decision

Site visit made on 14 January 2025

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 February 2025

Appeal Ref: APP/Q9495/C/23/3332910

Land to the west of The Dove Cot, Halfway House, Brathay, 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 Mrs E Coupe against an enforcement notice issued by the Lake District National Park Authority.
- The notice was issued on 20 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of an outbuilding to a dwellinghouse, occupied for holiday letting purposes.
- The requirements of the notice are to discontinue the use of the land as a dwellinghouse.
- The period for compliance with the requirement is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (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.

Decision

1. The appeal is dismissed, 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.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024, and further minor amendments were published on 7 February 2025. However, with the exception of paragraph numbering, the policies that are material to this appeal have not fundamentally changed from the previous iteration. I have therefore had regard to the revised Framework in my consideration of this appeal, and I am satisfied that no party would be prejudiced in me doing so.
3. The appellant suggests that the allegation is incorrectly described because the outbuilding was initially converted to an annex for occupation in association with The Dove Cot. However, the term 'outbuilding' does not, to my mind, indicate an alternative use beyond that associated with, or ancillary to, the residential occupation of The Dove Cot. Even if this were to be incorrect, I am satisfied that it has not prejudiced the appellant's case in any way. It is common ground that a material change of use to a dwelling, occupied for holiday letting, has occurred without the benefit of planning permission and when such permission was required. It is therefore not necessary to correct the allegation.

Background

4. The appeal property is a former stable building associated with The Dove Cot. In 2012 a Lawful Development Certificate¹ was granted for use of The Dove Cot as a dwelling.

¹ LPA Ref. 7/2012/5250

5. The appeal property was initially converted to a self-contained annex, in February 2021, and let as additional holiday accommodation in association with The Dove Cot. In February 2023, the appellant started to let the former stables as a single bedroomed holiday let independently from The Dove Cot.

The appeal on ground (a)

6. The appeal on ground (a) is that planning permission ought to be granted for the matters alleged in the notice. Therefore, in this case, planning permission is sought for the material change of use of an outbuilding to a dwellinghouse, occupied for holiday letting purposes.
7. From a review of the evidence before me, the main issues are:
- Whether the development is in an appropriate location with regard to matters of flood risk, and;
 - The effect of the development on highway safety.

Flood risk

8. The appeal site is located to the north of the River Brathay, in reasonably close proximity to the riverbank and falls within both Flood Zones 2 and 3, which are zones with a medium to high probability of flooding. The proposal relates to a dwellinghouse to be occupied for holiday letting, which is classified as being more vulnerable to the effects of flooding².
9. Policy 03 of the Lake District National Park Local Plan 2020-2035 (the Local Plan) seeks to increase the resilience of the Lake District to all types of flooding. It goes on to state that development proposals in accordance with the approach to managing flood risk in the Framework and the associated Planning Practice Guidance (PPG) will be supported.
10. The Framework advises at paragraph 170 that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. In this case, because the proposal involves a change of use, the sequential and exception test of the Framework do not apply. However, it is still necessary to demonstrate that the proposal would be safe with appropriate mitigation measures to minimise associated flood risks.
11. To this end, paragraph 181 of the Framework requires the submission of a site-specific flood-risk assessment (FRA). It goes on to state that, development should only be allowed in areas at risk of flooding where, in light of this assessment it can be demonstrated that:
- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
 - b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*

² NPPF, Annex 3: Flood risk vulnerability classification

- c) *it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) *any residual risk can be safely managed; and,*
- e) *safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

All of the above criteria must be satisfied for a development to be considered safe.

12. The FRA³ that was initially submitted with the appeal confirms that the property is laid out over five levels, with the lounge area at 46.63 metres Above Ordnance datum (AOD), the kitchen at 46.83 metres AOD, the dining area and entrance at 47.03 metres AOD, the bedroom at 47.23 metres AOD, and the en-suite and utility room at 47.43 metres AOD. The report also confirms that the river flood level for a 'design flood' with a 1% annual probability is modelled at 47 metres AOD. This would result in flooding of the lounge and kitchen areas. When adjusted to take into account climate change, the flood level rises to 48.25 metres AOD. This would result in the whole property being flooded with water depths of between 1.62 metres and 0.82 metres. This presents a significant safety concern for current and future occupiers.
13. The FRA along with a supplementary FRA⁴, provides some commentary in relation to potential flood resistance measures that could be deployed to improve the flood resilience of the building. However, these reports lack a coherent and robust set of recommendations in relation to resilience and resistance measures, and it is not clear if any of the suggested measures have been assessed in the context of the appeal building. For example, it is suggested that further structural investigations and interventions may be required to ensure the building can be made flood resilient. In addition, it has not been demonstrated how the development could quickly be brought back into use, following a flood event, without significant refurbishment.
14. The PPG advises that when considering whether a development can be made safe for its lifetime⁵, residential developments can be assumed to have a lifetime of at least 100 years, unless there is specific justification for considering a different period. The FRAs accompanying the appeal have only modelled flood levels up to the year 2080 and the suggested flood resilience and resistance measures, if sufficient, are only proposed to protect the property to flood levels modelled up to the 2050s. This would potentially protect the property for a 25 to 35 year period, but beyond this flood levels are likely to be much higher, and therefore the proposal would not be safe from the risk of flooding for its entire lifetime.
15. The flood map data shows that the public highway that serves the site, to the immediate east and west, would be covered by flood water during a flood event. The FRAs suggest that the owner, on receipt of a flood warning, would inform any guests giving time to evacuate before flood levels increase. However, the November 2023 FRA states, at paragraph 5 f., that there are no flood warnings available for this location.

³ Flood Risk Assessment for The Stables, by Rubicorn Project Consultancy Ltd, dated 10 November 2023

⁴ FRA titled 'NPPF Paragraph 173 for The Stables', by Rubicon Project Consultancy Ltd, dated 14 March 2024

⁵ PPG Paragraph: 006 Reference ID: 7-006-20220825

16. Furthermore, the PPG⁶ states that residents should have the ability to safely access and exit a building *during* flood conditions (my emphasis). Based on the information submitted, it is not possible to confirm what depths and velocity of water is likely along the adjacent highway during a flood event. Therefore, it has not been demonstrated that safe access and escape routes are available to existing and future occupiers of the development, and the proposal does not include details of an emergency plan. In the absence of evidence to the contrary, there is a significant risk that residents could become stranded during a future flood event with no means of escape, and with emergency services unable to reach them by road. In order to minimise the flood risk to residents, it is suggested that the occupancy of the dwelling be limited to the months of April to September. However, there is no evidence before me to confirm that this would result in a lower risk, or that this measure would fully address the concerns I have identified.
17. In all these regards, I find the FRAs to be woefully deficient, and lacking any conclusive analysis, or firm recommendations, that would sufficiently address the identified, and site-specific, flood risks in this case.
18. Bringing all these points together, it has not been sufficiently demonstrated that the development is appropriately flood resistant and resilient, that residual risks can be safely managed, or that safe access and escape routes are available along with other emergency procedures or plans being in place to ensure the safety of existing or future occupants during a flood event. As such, it has not been demonstrated that the development would be safe from flooding for its lifetime. Consequently, I find that the development is not in an appropriate location with regards to matters of flood risk.
19. Therefore, the development is in conflict with Policies 02 and 03 of the Local Plan, and the associated provisions of the Framework and PPG, which together, among other things, support sustainable development, and seek to increase resilience, mitigate the risks associated with flooding, and to ensure that developments can be made safe for their lifetime.
20. I acknowledge that the appeal property could potentially be used as additional accommodation associated with, and ancillary to, The Dove Cot without the need for planning permission. However, to my mind that does not justify granting permission for a second separate unit of accommodation with the associated flood risks that have been identified. Doing so would place an additional, and separate, household at significant risk of flooding.

Highway safety

21. Vehicular access to the appeal property is via an existing access which serves The Dove Cot, directly off the A593 public highway. This is a busy and winding road which connects Ambleside with Skelwith Bridge.
22. The LPA's position on this issue is that the existing access is substandard due to limited visibility, in both directions, when leaving the site. Despite this, I have not been referred to any specific visibility standards or requirements in this regard. Nor have I been provided with any comments or professional assessment from the local highway authority.

⁶ PPG Paragraph: 005 Reference ID: 7-005-20220825

23. Nevertheless, during my site visit I observed that the existing vehicular access is located on the inside of a bend in the alignment of the highway. As a result, the inter-visibility between a vehicle leaving the appeal site and vehicles approaching from both the west and east is severely constrained.
24. The visibility from the access is constrained to such a degree that a driver exiting in a forward gear is unlikely to be able to safely see oncoming vehicles, including cyclists, until a large part of the vehicle had manoeuvred onto the carriageway. This gives rise to a significant risk of collisions with other vehicles and, as such, this results in an unacceptable adverse impact on highway safety. In reaching this finding, I acknowledge that the vehicular access is an existing arrangement that is currently in use. However, the proposal would intensify the use of this access, through the creation of a separate dwelling and therefore resulting in additional independent vehicular movements using the access. Consequently, this jeopardises highway safety to an unacceptable degree.
25. The appellant highlights the fact that no highway safety concerns were raised when planning permission was granted in 2013 for the replacement of The Dove Cot with a three bedroomed house⁷. However, that proposal would not have increased the number of households using the access and therefore it is not comparable to the appeal proposal.
26. To conclude on this main issue, I find that the development would have an unacceptable adverse effect on highway safety. It therefore conflicts with Local Plan Policy 02 which only supports the reuse of buildings for residential use where suitable access arrangements can be secured. In this regard, it also conflicts with the Framework's aim to ensure safe and suitable access to the site for all users, and to ensure that development does not have an unacceptable impact on highway safety.

Other Matters

27. My attention is drawn to a previous appeal decision⁸ relating to the former outbuilding associated with Half Way House, which is now known as The Dove Cot. However, the issues raised in that appeal are of little relevance to the case before me. That appeal decision is of some vintage and therefore since it was decided the local and national policy context has changed considerably. It does not, therefore, assist me in the determination of this appeal.
28. Related to this, the appellant argues that the property is not suitable as a local occupancy dwelling and therefore this adds weight in favour of the appeal, with support from Policy 18 of the Local Plan. This policy supports sustainable tourism proposals, including proposals for the reuse of existing buildings for short term holiday letting, and only where the building is not suitable as a local occupancy dwelling. Much is made of this argument by both main parties.
29. Nevertheless, this policy cannot be viewed in isolation. Given the risks I have found, associated with both flooding and highway safety, it is clear that the appeal property is not suitable for use as a separate dwelling, regardless of whether this is as an unrestricted dwelling, for holiday letting purposes, or local occupancy. In each scenario a separate unit of accommodation would be established and would be unacceptable from a highway safety and flood risk perspective.

⁷ LPA Ref. 7/2013/5424

⁸ Appeal Ref. APP/Q9495/A/06/200558

30. In determining the appeal on ground (a) I have had regard to the Planning Policy Statement (PPS) on Green Belt protection and intentional unauthorised development issued by the Secretary of State on 31 August 2015. It makes 'intentional unauthorised development' a material consideration to be weighed in the determination of planning applications and appeals, including enforcement appeals. The PPS remains extant although it is not incorporated into the Framework or PPG. However, permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of 'intentional unauthorised development' must be supported by evidence of something more – that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.
31. In this case, the appellant entered into formal pre-application discussions with the LPA to seek a view as to whether it would be acceptable to convert the stables to a holiday let unit. The LPA provided a detailed written response⁹ in December 2019, which indicated that planning permission would be required for the conversion of the building to a dwelling, but that this would be unacceptable due to flood risk. Despite this clear advice, the appellant subsequently went on to convert the building to a holiday let without the benefit of planning permission. Accordingly, it is apparent that the appellant decided to proceed with the unlawful development intentionally. Therefore, I give the PPS weight in the determination of this appeal.
32. I acknowledge that the proposal would not result in harm to the character or appearance of the surrounding area and there would be no adverse effects on the living conditions of nearby residents. Nevertheless, these are neutral considerations that weigh neither for nor against the appeal.

Ground (a) conclusion

33. It has not been demonstrated that the development would be safe from flooding for its lifetime. I have therefore found that the development is not in an appropriate location with regards to matters of flood risk. The development also poses a significant and unacceptable adverse risk to highway safety. In these regards, the development is contrary to the above cited policies of the development plan and associated national policies. The other matters and considerations advanced in favour of the scheme are of insufficient weight to justify a decision other than in accordance with the development plan.
34. For these reasons, I conclude that the appeal on ground (a) should fail and therefore planning permission is refused in respect of the deemed planning application.

The appeal on ground (f)

35. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control.
36. In this case, the notice requires the appellant to discontinue the use of the land as a dwellinghouse. It follows that the purpose of the notice is to remedy the breach of planning control that has occurred, and as explicitly stated within the notice itself.

⁹ LPA Ref. 7/2019/E0267

37. The appellant points out that use of the building as annexed accommodation as part of the adjacent holiday letting property, The Dove Cot, does not involve development. However, if this is to be considered a lawful use of the appeal building, compliance with the requirement of the notice would not preclude this. The requirement simply requires the use of the appeal building as a standalone dwellinghouse to cease. It does not seek to discontinue a lawful use that would be ancillary, or incidental, to The Dove Cot. Furthermore, the appellant has not put forward any lesser steps that would remedy the breach of planning control.
38. For these reasons, the ground (f) appeal does not succeed.

The appeal on ground (g)

39. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is two months. The appellant seeks a period of six months in order to prevent the need to cancel bookings.
40. In relation to this ground of appeal I must balance the public interest in securing expeditious compliance with the requirements of the enforcement notice against the private interests bound up in the breach of planning control. In doing so, I appreciate that compliance will inevitably result in the cancellation of some holiday bookings. This will be inconvenient for those prospective visitors, and will result in a loss of income for the appellant.
41. Nevertheless, I am mindful that the development is located in an area at risk of flooding, and occupants are not sufficiently safe from the risks associated with a flood event. The development has also compromised highway safety to an unacceptable degree. These matters pose very real threats to life and limb, and it is therefore in the public interest to remedy the breach of planning control as soon as reasonably possible and without delay. These are compelling reasons not to extend the compliance period beyond the current specified period of two months.
42. Consequently, extending the compliance period to six months, as suggested, would unduly perpetuate the breach of planning control and the associated harm, without sufficient justification. In weighing the public and private interests, I consider that the public interest of expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance.
43. For these reasons, I find the period of compliance, as stated in the notice, to be a proportionate and reasonable response to the breach of planning control that has occurred.
44. Accordingly, the appeal on ground (g) fails.

Conclusion

45. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

J M Tweddle
INSPECTOR