



Appeal Decision

Site visit made on 28 November 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5 MARCH 2025

Appeal Ref: APP/Q9495/C/23/3324129

Bretherdale Woodland, Bretherdale, Penrith

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Brian Curwen against an enforcement notice issued by Lake District National Park Authority.
 - The notice was issued on 10 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, operational development resulting in the erection of three timber buildings and a building consisting of two storage containers with a link wall and roof for use in association with recreational shooting at land at Bretherdale.
 - The requirements of the notice are to: a) Remove the timber building, labelled Building One in photograph 1, and associated timber structures and wooden steps from the Land; b) Remove the two timber buildings, labelled Building Two and Building Three in photograph 2, from the Land; and c) Remove the building consisting of two containers with a link wall and roof, labelled Building Four in photograph 3, from the Land.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) 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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Decision

1. It is directed that the enforcement notice is varied by the deletion of one month and substitution with six weeks as the period for compliance.
2. Subject to the variation 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

3. The structure identified as Building Four in the notice has been removed and was not present on the land during the site visit.
4. Section 173(11) of the 1990 Act provides that "Where – (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities."
5. This provision does not apply in this case in relation to the recreational shooting taking place on the land because it is accepted by the parties that it

is taking place for fewer than 28 days per year as permitted development pursuant to Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO"). This issue is considered in further detail below. The parties' cases are put on the basis that the notice is targeting the operational development.

Ground (d)

6. An appeal on this ground is on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breaches of planning control.
7. The notice alleges operational development which constitutes four separate structures. The appellant argues that Buildings Two and Three as identified in the notice have been there for more than four years prior to its issue and are therefore immune from enforcement action. In order to succeed in this ground of appeal the appellant must prove on the balance of probabilities that the specific buildings which are the subject of the notice, i.e. Buildings Two and Three as shown in the photograph attached to the notice, are immune.
8. The appellant's evidence, which is unsworn, is that there has been a building in the location next to the gate where Buildings Two and Three are now situated for many years, and for longer than four years prior to the issue of notice. The aerial photograph dated 25 June 2018 provided by the Authority does not show a structure or building in the position of either Building Two or Three. Both buildings can be seen in the aerial photograph dated 20 September 2019. These photographs taken together suggest that the current buildings identified in the notice were erected between these dates.
9. The Landowner, John Haslem, confirms that there has always been a "small selection of huts and sheds to the right of the gate" but does not specifically state when either of the current buildings were erected. He does say that he gave permission for a wooden shed to be replaced in 2017 and that one was put up by Chris Rimmer at that time, and that the other building was already there.
10. Mr Rimmer states that he erected the "garden shed" in 2017 and that the other building was already there. Looking at the photographs it is not sufficiently clear which building is referred to as the "garden shed" as either could fit that description.
11. James Potter, the neighbouring farmer to the site, states in his unsworn evidence that one building has been there for more than 15 years and that the "second and slightly bigger shed" was put up in around 2017/2018.
12. This evidence provided by the appellant is at odds with the aerial photograph which shows that neither Building Two nor Three were in their current location in June 2018. Whilst this date precedes the immunity cut off date of 10 May 2019 by almost one year, the appellant's submitted evidence is insufficiently clear and precise regarding both buildings. I understand that these events took place several years prior to the making of the statements but the burden of proof lies with the appellant. This burden has not been discharged on balance in this case in relation to either Building Two or Three.
13. The appeal on ground (d) in relation to Buildings Two and Three does not therefore succeed.

Ground (a) and the deemed planning application

14. Building Four as described in the notice has been removed from the site and the appellant has confirmed that they would like the deemed planning application to be considered without it. The remaining development (considered without Building Four) would be part of the matters stated in the enforcement notice and I am satisfied that the deemed planning application can be varied in this way without causing injustice to the parties.
15. The main issue in relation to the deemed planning application is whether the development accords with the Spatial Strategy in the Lake District National Park Local Plan 2020 - 2035 ("the LDNPLP"); and the effect of the development on the character and appearance of the open countryside of the Lake District National Park.

Appeal Site

16. The appeal site has a lawful forestry and timber production use and is surrounded by common and agricultural land. It is located within open countryside in the eastern part of the Lake District National Park ("the LDNP") and English Lake District World Heritage Site ("WHS"), and is therefore within both a nationally and internationally designated area. The National Planning Policy Framework 2024 ("the Framework") requires that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, and the scale and extent of development within such areas should be limited.
17. National Parks have two purposes which decision-makers must seek to further; to conserve and enhance the natural beauty, wildlife and cultural heritage of the area, and to promote opportunities for the understanding and enjoyment of the National Park by the public.
18. There are no public rights of way over the appeal site which is private land. Nearby views of the development from outside of the site are limited due to the topography and landscape features, but it can be seen from wider afield. The appellant's Landscape and Visual Appraisal Statement ("the LVAS") highlights that the development can be seen from access land on Bretherdale Common and North Side, as well as from public rights of way.
19. In June 2020 the appellant submitted a notice of intention for a forestry building for storage of equipment ancillary to maintaining the woodlands. The Authority determined that prior approval pursuant to Schedule 2, Part 6, Class E of the GDPO was not required.
20. Following an enforcement complaint and investigation, planning application reference 7/22022/3148 ("the 2023 Application") sought retrospective permission for the four buildings subsequently identified in the enforcement notice, and was refused.
21. The Authority considers that the use of the land for the releasing of game birds does not amount to a material change of use of the land, and as the shooting drives take place on fewer than 28 days per year are permitted under Schedule 2, Part 4, Class B of the GPDO. In fact, much of the activity which constitutes the actual shooting drives takes place on the surrounding common and agricultural land, and not on the appeal site. The notice does not therefore

allege a material change of use but only operational development regarding the buildings.

22. However, such a temporary use of land is not permitted by Class B if the land in question is a building. As the buildings are used to facilitate the use of the land in association with the shooting drives that use does not comply with limitation B.1 (b) and is therefore not permitted under Part 4, Class B of the GPDO. Whilst the temporary use of the land can continue for 28 days each year, the operational development or use of the buildings is not permitted in association with that use.

Spatial Strategy

23. The starting point in assessing whether the appeal development complies with the spatial strategy for the area in this case must be whether the operational development is supporting a lawful use. The temporary use permitted by the GPDO as outlined above does not include a temporary use of any land which is a building. The use of the buildings in association with the shooting drives is therefore not lawful
24. The appeal site is one single planning unit, and the parties agree that it has a lawful forestry use. A material change of use of the appeal site to include the use for shooting drives with associated operational development (even as part of a mixed use with the forestry use) would require express planning permission. Such a material change of use of the overall site is not part of the deemed planning application because the notice is only targeting the operational development.
25. The site is located in open countryside. Policy 2 of the LDNPLP, the Spatial Strategy, advises that proposals in open countryside will only be supported where certain criteria are met. The most relevant criteria to consider in this case are whether there is an essential need for a rural location; whether the development helps to sustain an existing business; or whether the development is necessary for and designed to support agricultural or forestry use.
26. However, in this case Policy 2 of the LDNPDP cannot be considered in relation to the operational development as separate to the use of the whole appeal site. The use of the buildings in association with the recreational shooting on the planning unit which does not have permission is essential to, and part and parcel of, the proposal.
27. The development alleged in the notice, i.e. the buildings, do not comply with Policy 2 as a proposal for development in the open countryside because there is not an essential need for them in that the shooting drives can take place without the buildings, and they are not helping to sustain an existing business that is being run lawfully in terms of planning. The temporary shooting drive use only had permitted development rights without the buildings on the site, and weight cannot be attached to an existing business which is being run without the necessary planning consent. From the evidence before me, there is also little to show that the buildings are necessary for or designed to support the forestry use or existing business associated with that use. Indeed Building One looks like a domestic or recreational structure.

28. The alleged development does not therefore comply with Policy 2 of the LDNPDP.

Character and appearance

29. Building One is the largest of the remaining buildings, and is used to provide shelter and welfare facilities for those taking part in the shooting drives and staff. It has a domestic appearance and is single storey with various windows and doors, and clad in a light-coloured timber with roofing felt. There are also associated timber structures including steps to access the unlevel ground. These materials, and the design, are very different from the other buildings in the vicinity which are vernacular domestic buildings constructed from stone and slate.
30. Buildings Two and Three are small wooden sheds located next to the gate and described by the appellant as being used for storage, including in direct relation to game bird release and shooting.
31. The appellant's LVAS acknowledges that the buildings have characteristics which do not harmonise with the local character and landscape, and proposes environmental mitigation and enhancement measures. These measures include: staining the timber wall and replacing the roofing material so that the buildings are a darker colour overall which is recessive when viewed against the coniferous plantation which is viewed behind; rationalising the car parking behind existing trees to interrupt views; and some native tree planting.
32. The buildings cause harm to the character and appearance of the area through their discordant style and the materials used which will be evident from multiple viewpoints. The views of the additional and incongruous buildings in this location will also negatively impact on the tranquillity of the area. As all of the buildings are described as used in association with the unlawful recreational shooting use and, as the deemed planning application does not include the material change of use of the appeal site, there is no justification for the mitigation or for allowing the harm to the countryside in the initial years. The appeal development overall is in clear conflict with Policy 5 of the LDNPLP which deals with the protection of the spectacular landscape, and Policy 6 relating to the importance of local distinctiveness in good design.
33. The LVAS states by Year 15 of the proposed mitigation strategy the mature planting would screen and obscure the buildings, lowering the landscape effect to imperceptible and neutral. However, the shooting drives take place for less than 28 days a year, and are described by the appellant as ancillary at most. Notwithstanding that I do not accept that the recreational shooting drives are part of the ancillary use of the land, even if that were the case, the landscape harm outlined in the appellants landscape assessment would not be justified over so many years. The permanent features are not acceptable for such a limited and seasonal use.
34. As the development does not protect or enhance the authenticity, integrity and significance of the Lake District, and as it is at odds with the character and appearance of the local area in terms of design and materials used, it is also in conflict with Policy 1 of the LDNPDP, which seeks to conserve and enhance the national and international significance of the Lake District. Whilst mitigating measures regarding the visual effects could possibly be considered, the recreational shooting use is not lawful and such a use of the planning unit is

not sought in this appeal. There is a lack of justification for the buildings to be sited in the remote open countryside location.

Other matters

35. There are some economic benefits associated with the recreational shooting, including casual employment and income generation, and the use of the game birds in the food chain of the local area. However, these are not sufficient to outweigh the harm that I have outlined above.
36. The appellant argues that if the buildings are removed there will be increased numbers of vehicles associated with the recreational shooting attending the site (and with the engines running for longer) and external storage which will look untidy and increase the risk of crime. However, the limited use of the site associated with the recreational shooting, even taking into account the ongoing maintenance and tending of the birds, does not outweigh or justify the permanent harm caused by the operational development.

Conclusion

37. The development causes harm to the character and appearance of the open countryside of the Lake District and is not in accordance with the spatial strategy for the area. Neither does the development further the purpose of the National Park to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
38. The development is therefore in conflict with the LDNPDP and the Framework, and as there are no material considerations that indicate otherwise the appeal under ground (a) fails and the deemed planning application is refused.

Ground (g)

39. The appellant seeks an extension of the compliance period to two months. Taking into account all factors including the current time of year and possible weather conditions, I am satisfied that the period should be extended to 6 weeks which is proportionate in all of the circumstances.
40. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Zoë Franks

INSPECTOR