



Appeal Decisions

Site visit made on 3 April 2025

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2025

Appeal A Ref: APP/Q9495/C/24/3344442

Appeal B Ref: APP/Q9495/C/24/3344443

Land to the West of Dalegarth Hall Cottage, Holmrook CA19 1TF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act") by Mr P Stanley (Appeal A) and Mrs P Stanley (Appeal B).
- The appeals are against an enforcement notice issued by Lake District National Park Authority on 17 April 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 from use as agriculture to mixed use as agriculture and for seasonal recreation and leisure accommodation through tented camping and the siting of campervan caravans with associated operational development comprising the installation of a track and areas of hardstanding and erection of buildings.
- The requirements of the notice are to: (i) Discontinue the use of the land for seasonal recreation and leisure accommodation through tented camping and the siting of campervan caravans; (ii) Permanently remove the track, areas of hardstanding and buildings, as identified on attached photographs A, B and C, from the land; and (iii) Remove all associated infrastructure, including but not limited to tents, portable toilets, bins, water tanks and taps, signage from the land.
- The periods for compliance with the requirements are: (i) 1 week; (ii) and (iii) 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the 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 the grounds set out in section 174(2)(b), (c), (f), (g) of the Act.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matter

1. The Environment Agency (EA) altered its Mapping of flood zones affecting the appeal site during the appeal, such that the majority now lies within Flood Zone 2 (FZ2, medium risk), rather than Flood Zone 3 (FZ3, high risk). The parties were afforded an opportunity to revise their submissions in this regard.

Appeals A and B – the appeals on ground (b)

2. The appellants contend that the southernmost of the 3 fields comprising the appeal site is only used for agricultural purposes. However, they also confirm that it has been used for tented camping and the siting of campervan caravans twice in 3 years, each time due to last-minute bookings. While they have amended the booking system to prevent recurrence, the alleged mixed use had occurred in all 3 fields as a matter of fact, so the appeals on this ground must fail.

Appeals A and B – the appeals on ground (c)

3. Article 3 and Schedule 2, Part 4, Class BC of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“Class BC” of “the Order”) permit the use of land as a temporary recreational campsite for up to 50 pitches for no more than 60 days in any calendar year. This permission is subject to the prior approval of the local planning authority and, in the case of land within FZ2 or FZ3, this must be granted afresh each calendar year before the use resumes. Parts of the appeal site are within FZ2, and prior approval was granted for 2024, when they were classified FZ3. It is reasonable to assume that it may be granted again, particularly in view of the downgrading of most of the land from high to medium flood risk.
4. The mixed use alleged in the notice does not include any 60-day limitation. Accordingly, Class BC of the Order does not permit what the notice alleges and the appeals on ground (c) must fail. The permission granted by the Order may, however, be considered in the appeals on ground (f).

Appeal A – the appeal on ground (a)

5. The main issues in this appeal are:
 - Whether seasonal recreation and leisure accommodation through tented camping and the siting of campervan caravans is appropriate in terms of flood risk.
 - The effect of the development on the landscape of the Lake District and its Special Qualities and the defined attributes of the English Lake District World Heritage Site.
 - The effect of the development on biodiversity with regard to the Newhall Coppice ancient replanted woodland.
 - Whether the development constitutes sustainable tourism by reason of diversification of an agricultural or land-based rural business.

Reasons

6. The notice does not define the scale and duration of the seasonal use it alleges. However, the appellant states that ‘the proposal’ is the use of the 2 northern fields with circa 60 pitches between mid-May and October. I shall consider the deemed planning application (DPA) on that basis.

Flood risk

7. The site lies adjacent to the River Esk, a designated statutory main river, and is mostly within FZ2, an area of medium flood risk. The track connecting the main part of the site to the highway passes through FZ3, an area of high flood risk, and the southernmost field is within FZ1, an area of low flood risk. Annex 3 to the National Planning Policy Framework (“the Framework”) classifies a site used for holiday or short-let caravans and camping with a specific warning and evacuation plan as ‘more vulnerable’ to flood risk.
8. Policy 03 (Development and Flooding) of the Lake District National Park Local Plan 2020-2035 (“the LP”) provides support to development in accordance with the

approach to managing flood risk in the Framework and the Planning Policy Guidance (“the PPG”). The Framework requires that a sequential risk-based approach is taken to development in areas known to be at risk from any form of flooding. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source and the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

9. A site-specific flood risk assessment (SSFRA) was drawn up when most of the site was classified FZ3. This includes a sequential assessment of 11 fields, 3 of which comprise the appeal site, that had been drawn up to support a planning application for a mixed agricultural and campsite use of the northern 2 fields and the erection of an outbuilding and associated works.¹ It is not explained how those 11 fields were chosen or whether they comprise all the land that was available.
10. Seven of the fields are within FZ1 and 4 of these were judged to not be viable for campsite use for the same 3 reasons. These were because they are used for grazing, because rights of access only exist for sheep and agricultural vehicles, and because no infrastructure is installed for power or water.
11. The first reason does not stand up to scrutiny for the simple reason that the 2 fields that were proposed for campsite use (the 2 northern fields of the appeal site) were also used for grazing. The third reason, the absence of infrastructure, would have applied to the appeal site before the unauthorised use commenced, so is evidently not an insurmountable problem.
12. While access rights limited to sheep and agricultural vehicles might prevent campsite use, that would not necessarily prevent wider rights being secured. The assessment is silent as to whether an approach was made to any person who might have been able to grant such rights.
13. For these reasons, the sequential assessment is not sufficiently thorough to demonstrate that there are no available sites with a lesser risk of flooding.
14. The SSFRA concluded that the risk of fluvial flooding was likely to be significantly lower than the suggested value provided by the then available EA mapping. This was based on the calculated capacity of the river channel and the absence of historic flooding events. The same SSFRA had been used to gain prior approval for use of the 2 fields closest to the river as a temporary recreational campsite.²
15. The SSFRA noted that the site entrance is the area most vulnerable to flood risk, due to its proximity to the river and the lower bank height at that point. The SSFRA did not, however, model the risk of flooding along the track between the highway and the site, which remains within FZ3.
16. The Authority does not consider the SSFRA to demonstrate that the site would be safe for its lifetime. It points out that while the EA did not object to the temporary recreational campsite proposal, it was for the Authority to consider the emergency planning and rescue implications. The evacuation routes shown in an appendix to the SSFRA would lead site users away from the river and toward Dalegarth Hall Farm but no details of how people would be given safe refuge there have been provided. The only onward route goes back over the river and therefore passes

¹ 7/2023/4040 (withdrawn).

² RC/2024/0006 granted 24 July 2024.

through FZ3; however, that would apply to the other fields considered above and may also be the case for other sites around Eskdale.

17. The Authority granted prior approval for a temporary recreational campsite despite the foregoing concerns. It explains that the decision to grant prior approval was for a specific 60 days (Friday 24 May to Sunday 2 June and Friday 19 July to Friday 6 September) and a limit of 50 pitches. That may be contrasted with the greater number of pitches that could be accommodated over the undefined season alleged in the notice, and with the appellant's proposal. It does not, however, explain why flood risk was considered acceptable for up to 50 pitches on the specified 60 days but not for any more or on other days within the season.
18. The Authority's concern about flood risk includes the use of the access track through Newhall Coppice, which crosses land still designated FZ3 and which the EA does not seem to have considered. Thus, while the appellant says the EA has downgraded the risk of flooding at the site, from FZ3 to FZ2, there has been no change in this regard.
19. It is not certain how this differs from the assessment the Authority made when it decided to grant prior approval because not all the information that was before it then has been provided. Specifically, it is not clear whether the application for prior approval included the track through Newhall Coppice, which is affected by the notice and to which the DPA therefore relates. Nevertheless, it is outside the site boundary recorded in the SSFRA, which accompanied the application, and the Authority advises that the EA does not comment on whether access is safe. The only references to access in the SSFRA are the tracks running through the centre of the site and leading to Dalegarth Hall Farm. The latter track is within FZ1 and would provide an escape route in the event of flooding. However, as noted earlier, the only onward route from there passes through FZ3.
20. I saw signs at the entrance directing people to use the track through Newhall Coppice to gain access to the site, so passage through land within FZ3 is integral to the seasonal tented camping and siting of campervan caravans alleged in the notice. While this reality should perhaps have been considered before the Authority decided to grant prior approval, it is clearly material to consideration of the DPA.
21. Because passage through land in FZ3 is integral to the use, the location of much of the site in FZ2, and the noted shortcomings in the sequential assessment, flood risk is not managed in accordance with the Framework and the PPG. Even with the fallback of the temporary use with prior approval taken into account, the seasonal use, whether as described in the notice or as proposed by the appellant, is contrary to policy 03 of the LP and Part 14 of the Framework and unacceptable in this regard.

Landscape

22. The site lies within the tranquil Eskdale Area of Distinctive Character, part of the English Lake District World Heritage Site. To be acceptable, development must ensure the highest level of protection is given to the landscape, and the type, design, scale and level of activity must maintain local distinctiveness, sense of place, and tranquillity.

23. The appellant states that the site is far less visible than some campsites within Eskdale, but these are not identified, so their planning history and status are unknown. However, owing to tree cover along the river and to the south and east, the site is screened in views from the nearest surrounding land and this screening is at its most effective during the camping season, when trees are in leaf.
24. There is open access to the surrounding upland areas, which are also crossed by several public footpaths. It is therefore to be expected that tents and campervan caravans would be exposed in longer-distance views from higher vantage points, particularly in direct line of sight from Muncaster Fell to the west. Tents and campervan caravans could only be screened in views such as this by extensive tree planting that, as it matured, would detract from the open character of grazing land that typifies the valley bottom.
25. Camping and caravanning are generally undertaken in lowland areas, and it is in the nature of the National Park's geography that these can be seen from nearby uplands. As such, a degree of visibility may be unavoidable. Nevertheless, the absence of a landscape and visual impact assessment means that it has not been demonstrated that the landscape is given the highest level of protection or that local distinctiveness and sense of place are maintained. The use is therefore contrary to policy 05 of the LP and Part 15 of the Framework and is unacceptable.

Biodiversity

26. Newhall Coppice is an ancient replanted woodland and the track which passes through it is now used more than it was. Even so, there is no evidence of any physical changes to the track or that its greater use has caused the woodland or its biodiversity to deteriorate, as the Authority contends. Consequently, the use would not have a significant harmful direct or indirect effect on biodiversity and ecosystems processes, and it accords with policy 04 of the LP and is acceptable in this regard.

Sustainable tourism and diversification

27. In view of the temporary recreational campsite granted prior approval, the seasonal use is on an existing camping and caravanning site and may increase the length of stay of overnight visitors. However, to draw support from policy 18 of the LP, the use must also be consistent with the landscape character, which has not been conclusively demonstrated.
28. Income from camping and caravanning helps the farm diversify as costs rise and agricultural subsidies are phased out. However, there is no evidence that the viability of the farm enterprise is dependent on tented camping and the siting of campervan caravans over and above what has been granted prior approval. In addition, a key requirement of policy 19 of the LP, that diversification activity is located within or well related to existing building groups is not met.

Conclusion on ground (a)

29. The flood risk of locating a 'more vulnerable' land use on land in FZ2 with access through FZ3 carries substantial weight against granting permission. The failure to demonstrate the highest level of protection for the landscape, or that local distinctiveness and sense of place are maintained, carries significant weight against granting permission. The seasonal use avoids significant effects on

biodiversity and ecosystems while contributing to tourism and farm diversification. I afford moderate weight to those benefits, but they do not outweigh the identified harm in terms of flood risk and landscape.

30. For these reasons, the development is contrary to the development plan as a whole by reason of the clear conflict with policies 03 and 05 of the LP relating to flood risk and landscape. It is also contrary to Parts 14 and 15 of the Framework and the appeal on ground (a) must fail.

Appeals A and B – the appeals on ground (f)

31. Compliance with the notice's second requirement would involve the permanent removal of a track that runs through the northern fields. The appellants ask that the track is allowed to remain because it is also needed in connection with agriculture, specifically lambing and the gathering of sheep during the winter months. They state that both activities necessitate access to the fields by farm machinery that would otherwise churn up the land.
32. While no further information has been provided, it is reasonable to assume that lambing and winter gathering were successfully carried out before the track was laid and could still be if it were removed. Furthermore, it is not denied that the track was installed to facilitate the non-agricultural element of the mixed use. It has therefore not been demonstrated that the requirement exceeds what is necessary to remedy the breach of planning control.
33. As noted in the appeals on ground (c), the Order may, subject to prior approval, permit a temporary recreational campsite for up to 50 pitches for no more than 60 days in any calendar year.
34. As drafted, the notice's first requirement, to discontinue the use of the land for seasonal recreation and leisure accommodation, could preclude the exercise of Class BC permitted development rights. While the appellants have not challenged this, it would be excessive. The appeals on ground (f) therefore succeed to this limited extent and the notice will be varied accordingly.

Appeals A and B – the appeals on ground (g)

35. The appellants ask that the notice is varied so that the use is ceased by the end of October 2025, which would allow for the exercise of permitted development rights. However, as I shall vary requirement (i) to allow for the continued exercise of Class BC rights, a variation of the compliance period is unnecessary.
36. It is, however, reasonable that the removal of the associated infrastructure, some of which is specifically required by a condition of the permission granted by Class BC, does not occur until after that permission has been spent. The appellants suggest that the removal of all associated infrastructure should tie in with this, and so occur by 31st December 2025. Given that prior approval has been granted for a temporary recreational campsite until 6 September, the removal of facilities that are necessary for it within 4 months of this decision would be problematic.
37. The appeals on ground (g) therefore succeed in this respect and the notice will be varied accordingly

Appeals A and B – Conclusions

38. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act in Appeal A.

Appeals A and B – Formal Decisions

39. It is directed that the enforcement notice is varied by:

- The deletion of the words "Discontinue the use of the land for seasonal recreation and leisure accommodation through tented camping and the siting of campervan caravans" and their substitution with the words "Discontinue the use of the land for seasonal recreation and leisure accommodation through tented camping and the siting of campervan caravans except as may be permitted by Article 3 and Schedule 2, Part 4, Class BC of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)" in section 5 i).
- The deletion of the words "Requirement at 5 ii) and iii) shall be completed with four months after this notice takes effect" and their substitution with the words "'Requirement at 5 ii) and iii) shall be completed not later than 31 December 2025" in section 6.

40. Subject to the variations, the appeals are 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 Act in Appeal A.

Mark Harbottle

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/Q9495/C/24/3344442	Mr P Stanley
Appeal B	APP/Q9495/C/24/3344443	Mrs P Stanley