



The Planning Inspectorate

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Mr C T Balogh
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Your Reference:

Our Reference:
T/APP/Q9495/A/94/238068 &
238069/P2

Date -7 FEB 1996

Dear Sir

**TOWN & COUNTRY PLANNING ACT 1990 SECTION 78 & SCHEDULE 6
APPEALS IN RELATION TO APPLICATIONS NO 7/94/2046 & 2047**

1. The decisions on the above appeals were quashed by order of the High Court. I have been appointed by the Secretary of State for the Environment to redetermine them. They are against the decisions of the Lake District Special Planning Board to refuse the use of accommodation, within a converted building at Highpark, Loweswater, as self contained holiday accommodation without complying with conditions attached to planning permission No 7/93/2017 dated 11 August 1993. I have considered the written material available to the first inspector when he determined the appeals following a hearing and the further representations that have subsequently been made by yourself and by the Special Planning Board. I inspected the site and the surrounding area on 4 December 1995.

2. In your statement of 20 November you seek an award of costs in respect of preparation for and attendance at the initial hearing. The first inspector's decision on your application for costs is not a matter before me and I have no power to make an award of costs in relation to an appeal determined by written representations. I shall therefore take no further action in respect of your costs application.

3. I shall determine the appeals on the basis that the applications were made under Section 73 of the Act for use of the premises without complying with the conditions subject to which the planning permission was granted.

4. The conditions in dispute are Nos 2 and 3 which provide that:

- (2) The holiday accommodation hereby approved shall not be occupied other than as a single planning unit with Highpark, and

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- (3) no person, member of the same family or group of persons shall occupy the building hereby granted permission for a period in excess of four weeks in any period of three months calculated from the first day of occupation

5. Highpark is a former farmstead in a relatively isolated location within the Lake District National Park. It is situated at the foot of Mellbreak within about 500m of the shore of Crummock Water. Access is by a track, leading from narrow country lanes, that also serves the nearby property Mellbreak Cottage. To the south-east the track gives access to a footpath leading to the southern end of Crummock Water.

6. The farmstead consists of a farmhouse and three former agricultural buildings to its north, partly enclosing a yard. The access track runs to the east of the yard alongside an enclosed area, roughly rectangular in shape (area C on the plan attached to this letter) and an unenclosed area (area D). These areas together with land to the south and west of the farmhouse are also shown within your ownership. The buildings are Listed Grade II. The structure to which the appeal relates abuts the north-east corner of the farmhouse, it has been restored to form a 2 bedroom holiday cottage but the remainder of the buildings are largely unused and in need of repair.

7. Planning permission was granted for the conversion of the appeal premises in 1982 subject to a condition requiring that its use be incidental to that of the main dwelling and preventing its separate disposal. Following the use of the converted premises prior to the restoration of the house, enforcement action was taken by the Special Planning Board. Appeals against the 2 enforcement notices were upheld; in one case the inspector concluded that there had been no material change of use and in the other that the occupancy condition requiring that the building should not be separately disposed of was ultra-vires and therefore unenforceable. You consider that condition 2 which effectively negates planning permission 7/93/2017 for use as self-contained holiday accommodation would have a similar effect.

8. From all that I have read and seen I consider that the main issues in these two appeals are whether the conditions are necessary, having regard to the desirability of securing the restoration of the listed farmstead, and if so whether they meet the other tests outlined in Circular 11/95.

APPEAL A in respect of condition 2

9. The condition was originally imposed to maintain control over the use of the site in the interests of amenity. The reason given for the refusal of the application to discharge the condition was that; 'the sub division of the property into more than one planning unit would result in an unneighbourly form of development to the detriment of residential amenity having regard to the close physical relationship of the buildings which rely on common use of the central courtyard for access'.

10. The initial application site in respect of 7/93/2017 was restricted to the footprint of the building. It has since been indicated that it is the intention that the courtyard area between the buildings (and separated from the access track by a gate) should be regarded as communal space for access and turning and that, as well as a small triangular area

immediately to the north of the building (area B), land to the east of the access track (areas C and D) and the long barn (area A) would be included within the curtilage of the holiday accommodation. Conditional planning permission (7/94/2292) for the independent use of the holiday accommodation was granted on the basis of the revised curtilage in March 1995. Both you and the Special Planning Board have indicated that there would be no objection to the appeals being considered on the basis of the revised curtilage.

11. I appreciate the concern that the proximity of the farmhouse and appeal premises and the joint use of the yard area could result in disturbance to the residents of both properties. I also consider that the relative position of the buildings would result in a lack of privacy. However, bearing in mind that the permission for the appeal premises is specifically for holiday use, I would agree with the previous inspector that standards could reasonably be lower than those required for permanent occupation. I do not consider that the question of residential amenity would necessitate the controls sought by condition No 2.

12. My more serious concern is in relation to the effect of ancillary development and inappropriately parked vehicles on the visual amenity of the attractive countryside. The original restricted curtilage included no parking space or garage/storage space specifically associated with the holiday unit. With the group of buildings as a whole there is more than adequate ancillary accommodation and space suitable for car parking. The use of the holiday unit would consequently present no problem whilst the various buildings remain under your sole control. If the holiday unit is to be independent of the remainder of Highpark, I consider it essential that it has specific and visually acceptable parking provision and also that an element of the existing ancillary accommodation is allocated to the unit. Not to do so could result in a demand for additional, and potentially visually damaging, storage and garage space which the Special Planning Board may find difficult to resist. I write this having regard to the listed status of the buildings and the restrictions on development that are applicable in the national park. It could also result in cars being left in obtrusive positions where they would detract from the quality of the area.

13. The revised curtilage for the holiday unit includes a partially screened area (area B) which would be suitable for car parking and a large traditional barn which would be suitable for garaging/storage purposes. My concern in relation to the potential impact on visual amenity would be met by the inclusion of these areas, coupled with a condition requiring the provision of a single parking space in area B and the provision of garage space in barn A. On this basis a mechanism to prevent the independent use of the holiday unit would no longer be required.

14. With Application 7/94/2292 the Special Planning Board also imposed conditions removing certain permitted development rights and preventing parking on areas C and D. I have considered whether it would be appropriate to impose similar conditions in this case. Whilst it is undesirable that parking should take place on areas C and D, I accept that unauthorised parking could occur, over which you may effectively have little control (I observed that you have placed boulders on the land in an effort to prevent this happening). Bearing in mind that the condition referred to in the previous paragraph would ensure that acceptable parking and garaging was available within the inner yard, I am not convinced that the further control is necessary. Similarly, bearing in mind the

restrictions that apply because the building is listed and within a national park I do not consider that it would be necessary to further curtail permitted development rights.

15. It is clearly desirable that the restoration of the group of listed buildings should be completed as soon as possible and I would accept that this is a relevant planning consideration. Reference is made to condition 2 in particular causing difficulties in relation to mortgage and sale, thus preventing the raising of funds to complete the restoration of the group of listed buildings. The alternative condition should not cause the same difficulties.

16. With the revised curtilage I conclude that it would be possible to meet my concern in relation to the effect on visual amenity with a less onerous condition, which would meet the tests described in Circular 11/95. Condition 2 is therefore unnecessary. I shall allow the first appeal and substitute the condition outlined above.

APPEAL B in relation to condition 3

17. The initial reason for the imposition of condition 3 was to maintain control over the use of the site in the interests of amenity. The reason given in the refusal of the application to discharge the condition was; 'in order to encourage maximum use of the facility and ensure that the building is not permanently occupied as a dwelling a qualifying period of occupancy is considered essential for the proper development of this site'.

18. An application for permanent residential use of the building without a local residency restriction would clearly be contrary to Policy 42 of the Replacement Cumbria and Lake District Joint Structure Plan and Policy C of the emerging Lake District National Park Local Plan. Irrespective of the question of proximity to the farmhouse referred to in paragraph 11, which I consider makes the building unsuitable for permanent occupation, permanent occupation could impose a greater demand on local services and facilities.

19. Paragraph 92 of Circular 11/95 indicates that conditions restricting occupancy to a particular class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would be the refusal of permission. Paragraph 117 states that there may be circumstances where it will be reasonable for local planning authorities to grant planning permission for holiday accommodation as an exception to normal policy, with a condition specifying its use as holiday accommodation only. Specific mention is made of conversions of redundant buildings into holiday accommodation where conversion to normal dwellings would not be acceptable.

20. Annex C of PPG21 indicates that in such cases the conversion to form holiday accommodation may reduce pressure on other housing in rural areas and that the justification for such a condition would be the reduced demands on the local services. It also mentions that users of the accommodation might be prepared to countenance lesser standards of access, parking and private amenity space.

21. Even though the application specifically related to self contained holiday accommodation, in view of the local policies designed to protect the special qualities of the Lake District National Park and also the importance of reducing pressure on other

housing in the rural area, I consider this to be an exceptional case where a holiday occupancy condition of the type referred to in PPG21 would be justified. In my opinion such a condition would be necessary and meet the other tests of Circular 11/95. In reaching this conclusion I have taken account of the fact that in certain circumstances flexibility in the application of policy may be justified in order to secure the preservation of a listed building.

22. Condition No 3 goes a stage further and imposes a time limit on stays. Although the document pre-dates the Replacement Structure Plan, this reflects the approach of the 1986 National Park Plan. Paragraph 11.25 indicates that consent for the use of buildings for holiday accommodation will only be granted subject to a condition to restrict occupation to short term lets. Whilst there is no model condition in either PPG21 or Circular 11/95, this is considerably more onerous than a simple holiday use restriction described in PPG21. The Special Planning Board indicate that such an approach is justified firstly, to ensure effective use is made of the holiday accommodation in an area where the pressure is great (specific holiday accommodation is a facility that park-wide the Board seeks to constrain as an element of total housing provision) and secondly, to prevent the occupation of the unit as a second home.

23. In relation to the first argument, I would accept that from the point of view of the development of the tourism potential of the national park it may be desirable to maximise the use of holiday accommodation. However, even if it could be shown that optimum use of the facility reduced the pressure for otherwise unacceptable development, I would question whether without such a condition it would have been necessary to refuse the application. Bearing in mind that simple holiday occupancy conditions are the exception to the normal rule there would have to be a particularly pressing reason to justify the imposition of the more onerous condition. Whilst I accept that the Lake District attracts a large number of visitors and appreciate that in summer months holiday accommodation is likely to be at a premium, I am not convinced that this would be sufficient reason to justify the onerous wording of condition 3.

24. I would also question whether the condition would make any material contribution to the desired objective. Bearing in mind that the length of most stays in holiday accommodation is constrained by cost and factors such as annual holidays and school holidays, I consider it unlikely that the condition would significantly affect the level of the use of the premises in the key summer months. In this context I note that the majority of your lettings in the season are for one week and only once have the premises been let for 3 weeks.

25. Furthermore a distinction should be drawn between maximising the use of facilities in the quieter areas such as this and the busier areas, better able to absorb facilities for tourism. Policy 50 of the structure plan indicates that the quieter sensitive localities will be protected from development and increases in use that would be detrimental to their special qualities.

26. Turning to the second point, in view of the relatively high proportion of housing accommodation in the Lake District that is used as a second home (the Special Planning Board quote figures of around 12% in Loweswater and 21% in neighbouring Lorton), I can appreciate their concern to ensure that converted properties are not used in this way.

However as the application specifically related to holiday accommodation, there would be no question of its being used as a permanent home within the terms of the permission. As it states in Annex C of PPG21, the authorities should normally be able to establish from the general lifestyle of the occupants whether the accommodation is being used exclusively by holidaymakers and consequently contravention could be detected. The simpler holiday condition would not in my opinion give rise to problems in enforcement. A condition which limited the time any group of individuals could use the premises as holiday accommodation may assist in preventing its use as a second home but as it would arguably be more concerned with the identity of the user than with the use of the land, this in my opinion would be contrary to national advice.

27. The Special Planning Board argue that it is their normal practice to impose a condition on permissions for the conversion of buildings in the countryside for holiday self-catering restricting occupation to short term lets. Specific mention is made of a case at High Swineside, Lorton, where such a condition was imposed by an inspector. You point out that this is not the case and quote examples in the more popular southern area of the Lake District where inspectors have considered such a condition to be unnecessary and unduly onerous. You also produce a letter from an estate agent working in the Keswick area since 1976 who states that he has not experienced the use of conditions restricting the occupation of holiday accommodation to no more than one month in three.

28. From the evidence it appears that such conditions have not been imposed in all cases. I note that in the emerging local plan, Policy C4 indicates that, in cases of conversion to provide holiday accommodation, permission will normally only be granted subject to a condition to ensure that the accommodation is not occupied other than for holiday purposes. There is no mention of more onerous conditions restricting the length of occupancy. I am also aware that in view of current national guidance the planning officer recommended that the existing condition be replaced by one without a restriction on the length of stay.

29. As it is my conclusion that the reference to length of stay within condition 3 is unnecessary I will not assess this aspect of the condition against the other tests referred to in Circular 11/95.

OVERALL CONCLUSION AND DECISIONS

30. In reaching my conclusions I have considered all the other matters that were raised in the material before me. In particular I have taken account of the many judgements that were mentioned, to legislative requirements including European law, to the previous appeal decisions that were referred to and to the desirability of ensuring that the premises are occupied from the point of view of security.

31. For the above reasons, and in exercise of the powers transferred to me, I hereby allow these appeals and grant planning permission for the use of accommodation, within a converted building at Highpark, Loweswater, as self contained holiday accommodation in accordance with the terms of applications 7/94/2046 and 2047 dated 23 February 1994 subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this letter.

2. Before the use hereby approved commences, barn A (identified on the attached plan) shall be prepared and in other respects made ready to accept use as garaging, and the forecourt area B shall be prepared and in all other respects made ready to accept a use as a parking space. Thereafter the parking space and garaging facilities referred to above shall be available for use in connection with the occupation of the premises as self contained holiday accommodation.

3. The premises shall only be used to provide holiday accommodation

32. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N A C Holt', written over a horizontal line.

N A C Holt TD BArch DipTP DipCons RIBA MRTPI
Inspector