Appeal Decision
Site visit made on 4 August 2009
by Peter Nock BA DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Appeal Ref: APP/Q9495/A/09/2103833
Woodstock, Bootle Station, Millom LA19 5XB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Peter Cooke-Graiseley Properties against the decision of the Lake District National Park Authority.
- The application (Ref 7/2008/4048), dated 20 June 2008, was refused by notice dated 10 November 2008.
- The development proposed is change of use of former care home and outbuildings to 2 dwellings.

Decision
1. I dismiss the appeal.

Main issue
2. I consider that the main issue is whether or not the proposed development would meet the housing needs of the locality.

Reasons
3. The appeal site is located in the Lake District National Park and comprises a 3 storey semi detached building, with outbuildings, that was previously used as a care home. The buildings have been empty for some time and are now in relatively poor condition. The proposed development would see the premises redeveloped for residential use and subdivided into 2 dwellings, one with 2 bedrooms and the other with 8 bedrooms.

4. Policy H 20 of the Cumbria and Lake District Joint Structure Plan 2001-2016 adopted in 2006 only allows for housing development where it is of a scale and type to meet the identified housing needs of the locality. This includes the conversion of non residential buildings. Policy H4 of the Lake District National Park Local Plan, which refers to Bootle Station, reiterates the requirements of policy H20 of the Structure Plan. Although, in my view, there is no objection in principle to the change of use, to conform to the adopted policies it must be developed to meet an identified local housing need. In this case the appellant, refers to possible future examples of housing need but has not produced any objective evidence to show that the proposed development, in particular the 8 bed roomed house, is designed to meet the existing scale and type of local need. Since the planning application was refused, a Housing Needs Survey Report has been completed for Bootle Parish by Cumbria Rural Housing Trust and this confirms that there is no local need for an 8 bed roomed dwelling in the area. Furthermore the appellant has not indicated that he is willing to agree to a mechanism that will ensure that the occupancy of the development
is limited in perpetuity to local persons in housing need, which is a requirement of policy H20.

5. For the reasons given above and having regard to all matters raised, I therefore conclude that the proposed development would not meet the housing needs of the locality and would be contrary to policy H20 of the Structure Plan and H4 of the Local Plan.

Peter Nock

INSPECTOR
Appeal Decisions
Inquiry held on 26 August 2009

by Alan Upward BA(Hons) MCD MRPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 September 2009

Appeal Refs: APP/Q9495/C/09/2098478 - 80
Land at Gillthwaite Rigg, Lickbarrow Road, Windermere, LA23 2NQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Colin Bragg, Mr James Nield & the Company Secretary Lakeland Landscapes Ltd against an enforcement notice issued by the Lake District National Park Authority (LDNPA).
- LDNPA's reference is E/2008/0031.
- The notice was issued on 12 January 2009.
- The breach of planning control as alleged in the notice is without planning permission, material change of use of land and buildings to a mixed use comprising a boat repair business, boat storage and a garden nursery including a landscape gardening contractors store.
- The requirements of the notice are to permanently cease to use the land for a boat repair business and for boat storage.
- The period for compliance with the requirements is 3 months.
- The appeals are all proceeding on the grounds set out in section 174(2)(a), (c) & (d) of the Town and Country Planning Act 1990 as amended.

Formal Decision: I correct the notice at section 3 by the deletion of all words and the substitution of the following allegation:

"Without planning permission, material change of use of land and buildings to a mixed use comprising a boat repair business, boat storage, a garden nursery and a landscape gardening contractors depot."

Subject thereto, I dismiss the appeals and uphold the enforcement notice as so corrected. I refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

1. The inquiry evidence was taken on oath.

2. The appeal relates to land located alongside a narrow country road in semi-wooded hill country a short way to the east of Windermere. The site is an elongated parcel lying along the southern edge of the wooded grounds of Heathwaite Manor, a large country house now sub-divided into 4 dwellings. The land rises across the site from Lickbarrow Road, and falls into a number of compartments. An access way follows a line centrally through the site. The northern site boundary with the Manor is marked by a substantial stone wall. To the south is a tall hedge of mixed species, predominantly of beech with some hawthorn and holly.

3. A small area nearest to the road is level and mainly hard surfaced. At the date of the inquiry it was little used for storage other than of logs, but there were bays for the bulk storage of materials. Beyond a planted strip placed across the width of the site and comprising a number of trees and laurel hedging, was a central hard surfaced portion used for the storage of various items. One area close to its north-western corner was surfaced with plastic and used for the storage of containerised trees and shrubs. The remainder of the northern side of this part was land being used to store a wide range of equipment and machinery connected with horticulture/landscape gardening. There were also about 10 boat trailers of varying sizes on this area. The other side of the track was being used mainly for storage of small boats. Three boats were stored in the open with various trailers. There was also a moveable plastic clad shelter, inside which was a traditional 'char boat' undergoing repair. In the top corner of this central section were 2 buildings of masonry construction. One stone and slate building was the original potting shed associated with this site as a kitchen garden attached to Heathwaite Manor. It was being used for the storage of small items of materials, tools and equipment. A more modern blockwork built 'potting shed' was fitted out with benches and racks, and was used for similar goods. Immediately to the east of these 2 buildings was a sizeable, plastic sheet clad polytunnel.
Inside this were 2 small boats and a wide range of other goods and equipment. An area for timber storage was alongside the polytunnel.

4. Beyond this was the third upper level of the site partly screened by trees. This appeared mainly unused, although a section was subject to tipping with materials derived from a landscape gardening business. In the easternmost corner of the site was a sizeable water tank.

The allegation

5. The appeal site had formerly been the kitchen garden for Heathwaite Manor. It had been separated from it in about 1981, the land being used thereafter as a horticultural nursery. Mr Bragg gave evidence that he had bought the site in 1992, and began to use it both as a nursery and as a depot for his landscape contracting business. The enforcement notice does not expressly identify the "before" uses of the site, by comparison with which the mixed use in the allegation was considered to bring about a material change. That much can be inferred from the terms of the requirements. LDNPA had proceeded on the basis that these 2 uses were a lawful mixed use of the site prior to the creation of a wider mixed site use.

6. The "landscape gardening contractors store" was seen as now lawful by virtue of immunity gained by at least 10 years use alongside the nursery use. As described by Mr Bragg, his use of the site in connection with his contracting business went somewhat beyond a purely storage function. The land served as an operational depot for his business engaged in landscape gardening contracting. Goods, plants, equipment and materials were stored on the site in connection with it. Operational and employee vehicles were parked at the site with staff calling there initially each day to load vehicles and travel to and from work sites. Ancillary functions connected with the business were also conducted. The use would in my view be more accurately described as "landscape gardening contractor's depot".

7. Mr Bragg's evidence was that, after taking over the site, he had tried to run a plant nursery business alongside it, but that this had effectively stopped after about 2 years as uneconomic. There was, however, no ground (b) appeal suggesting that the use (or rather, part of it) had not occurred as a matter of fact over the period preceding issue of the notice, and after hearing the evidence, LDNPA's representatives believed that the nursery activity remained a part of the mixed use.

8. In describing the lawful uses, the allegation links the two by the word "including". In evidence the 2 were more often connected by "and". Use of the word "including" results in a loss of clarity in that it might be interpreted as meaning that the contractor's depot was part of a main use as a nursery rather than a separate primary use. That could be simply resolved by substitution in the allegation of the word "and", as it occurs in the evidence. The was discussed during the inquiry. The Appellant was not misled by the word used in framing his grounds of appeal, and correction on such a basis can be made as part of my decisions on the appeals without injustice to either main party. Change of the word "store" to "depot" was also discussed during the inquiry. It would better reflect the Appellant's perception of what the use has been. Again, this can be the subject of minor correction as part of my appeal decisions without injustice being caused. My consideration of the grounds of appeal will be on the basis of such correction.

Ground (c) appeals

9. The allegation was of mixed use for 4 main purposes within a site area which all parties accepted amounted to a single planning unit. The defined site is the unit of occupation, notwithstanding the form of tenancy which Mr Niell appears to have had. His use did not involve exclusive control of any part of the site, and activity within the polytunnel for boat repairs was associated with use of other land at the site, as well as the modern potting shed. These areas were shared with other activities such as boat storage and storage in connection with the contracting business. There is little by way of physical or functional separation between the various parts, and all rely on the single communal accessway through the land.

10. The arguments raised under ground (c) drew on the facts of site history, and in particular the nature of a lawful primary use as landscape contractor's depot. It was said that the storage of a landscape garden contractor's equipment and materials and the storage of boats would both fall within Class BB Storage and Distribution of the Use Class Order, making the uses interchangeable.
11. Aside from the question that the contractor's use goes beyond storage to encompass the wider activities of his depot, it is important to recognise that the provisions of the Use Classes Order cannot apply to a planning unit in mixed use. Such a mixed use does not fall within a Use Class, and cannot benefit from the permissive provisions for changes in s55(2)(f) of the 1990 Act. The focus must be on the mixed use as a whole and not on individual components. Even if a contractor's depot was a B8 use, and a replacement use for boat storage was also B8, such a change would not be excluded from the meaning of development for this reason.

12. From the evidence I consider that use as a landscape gardening contractor's depot contains a range of activities which go beyond use of land and buildings for storage purposes. It is sui generis in nature. Change thereafter would have to be assessed in overall terms as a matter of fact and degree. In this case the comparison has to be between the twin former uses as a nursery garden and contractor's depot and the 4 uses alleged in the notice.

13. At the date of issue of the enforcement notice the nursery use was no longer visible as one separate from the contractor's business. Mr Bragg's evidence was that he had in recent times reduced the scale of the landscape gardening business in terms of employees, lorry and other trip generation, and related storage at the appeal site. Employee numbers had declined from 10 – 12 in early years to 3 currently. There remained, however, significant manifestations of the business at the site. Mr Bragg's account of how boat storage had begun and increased, and how boat repairs had been conducted by Mr Nield, suggested that although some of the boats on the site at any one time would have been connected directly with repairs, storage was in itself a separate primary use of the unit. Mr Nield had worked on the stored boats of Mr Bragg and his friends, and also on boats brought onto the site. Although he had stopped using the land shortly after issue of the enforcement notice, there had been 2 persons working full-time and 1 part-time on repairs. Having regard to the type and frequency of use of power tools, this was clearly an industrial use.

14. Elements of a mixed use may expand and contract over time without automatically triggering a material change of use. In this case boat storage and repairs had expanded at the expense of contracting. Mr Bragg indicated that reduction was a step towards his retirement. The evidence did not suggest, however, that reduction was needed to allow the storage and repairs to take their place, and the site appeared to have capacity for rather more use than was currently occurring. Having regard to these factors, as well as the nature of the individual uses, I consider that the mixed uses now being alleged have a materially different character to the lawful uses both visually and particularly in terms of the noise implications of the industrial component. Goods vehicle movements associated with the contracting business during its peak years and related on-site activity would have generated noise in this rural location, but this would have differed materially from regular intrusive noise sources associated with industrial processes.

15. My conclusion is that operation of the mixed uses at the site amounted to development requiring planning permission. In its absence there was a breach of planning control. The ground (c) appeals should therefore fail.

Ground (d) appeals

16. Mr Bragg indicated that he had initially stored his own boats at the site. By 1996 there would have been 4 or 5 ie his own and the boats of one or two of his fishing and boating acquaintances. By January 1999 there would have been 6 – 8 boats on the site – at times maybe more. There would have been less during summer. They were kept at the side by the hedge. Boat numbers had remained at this level since then. There were currently 7 boats on the site.

17. Mr Bragg's recollection of how boat storage had grown from the mid-1990s onwards was not, however, supported by any documentary evidence, nor corroborated by any other persons with knowledge of the site during this time, including employees and persons who stored boats. Lack of documents may not be surprising in view of the informal nature of storage as a 'favour' to friends. In view of the Appellant's long connection with boating it seems likely to me that he would have used this site as a place to keep craft when not directly in use, but there is less to suggest that such a use was continuous for more than 10 years or at a level beyond the point where boat numbers might be disregarded as de minimis.

18. His account is at variance with the recollections of Mr A Graham who had lived at Gilthwaite Rigg since 1981. He had not been aware of any boat storage before 2007 when he had seen up to 12 with trailers, although he accepted that the presence of 1 or 2 amongst stored machinery and
other items would not have been something to take note of. If there had been 7 or 8, he would have expected to see them.

19. Although the bottom part of his land was a wooded area with lesser access than the upper sections of his large garden, his property was set at a higher level than the appeal site, and he would have been able to overlook it at relatively close quarters from much of his land during winter months. I would have expected him to have noticed if the storage of boats amongst the miscellany of plant, equipment and materials had grown during the late 1990s to the sort of numbers observed in recent times. Under ground (d) the onus falls on an Appellant to demonstrate the facts on which the claim of immunity relies. I conclude in terms of storage that he has failed to demonstrate that a level of use which was material in planning terms had begun more than 10 years ago and continued uninterrupted thereafter until January 2009.

20. Although it was accepted that there was a change in the scale and impact of repair activity following Mr Nield’s arrival, it was argued that routine boat repairing activities had taken place from the beginning every year during the close season. Of course, my conclusion is that larger scale storage has itself not been shown over the relevant period. For boats kept at the site I can understand that routine repairs would have been likely to take place over the winter period at the same location. This would have been unlikely regularly to involve major repairs/re-fitting of types requiring extensive use of powered machinery. Works undertaken at the appeal site would have been more in the nature of routine maintenance than a separate primary industrial use.

21. That industrial use would have been likely to have commenced only following the arrival of Mr Nield, who worked on a full-time basis and brought new machines in the place of hand tools. Mr Bragg estimated that this had occurred some 4½ years go. Mr A Graham, as the neighbour within the Manor whose garden abutted this site, had not noticed noise at the site other than "landscape yard" noise until about 2007. On either estimate this industrial use commenced well within the period of 10 years preceding issue of the enforcement notice.

22. Even if the number of boats stored on the appeal site had been greater for the relevant period than has been shown, the mixed use alleged in the notice would not have been commenced until general industrial repairs to boats began some time after 2005. I therefore conclude that the boat related uses as parts of the site’s mixed use did not begin more than 10 years before issue of the notice so as to be immune from enforcement action. The ground (d) appeals fail.

**Ground (a) appeals and the deemed applications for planning permission**

23. The unauthorised elements of the mixed use have been added at a rural site within the national park with origins as a plant nursery where a contractor’s depot was now accepted also to be lawful. ‘Saved’ Policy NE1 of the LDNP Local Plan 1998 indicates that “development in the open countryside will only be permitted where it would be closely integrated with existing uses; or be in accord with policies … to meet the social and economic needs of local communities and to protect and enhance the scenic beauty, natural resources and quality of the built environment.”

**The main issues are**

- the implications of industrial noise for the standard of residential amenity enjoyed by near neighbours in Heathwaite Manor; and

- the impact upon the landscape.

**Appraisal**

24. The operation of powered machinery used by Mr Nield, particularly electric sanders, drills and saws, had been subject to noise assessment by South Lakeland DC’s Environmental Health Department [SLDC]. Their findings and conclusions that activity would create a significant nuisance problem to near by residents, recorded in a letter submitted to the inquiry, were not disputed by the Appellant. Mr Bragg expressed the view that noise of the type experienced by neighbours during Mr Nield’s use of the site was quite unacceptable to him. The noise trial and measurements, carried out by SLDC applying the approach of BS4142 : 1997 Method for Rating industrial noise affecting mixed residential and industrial areas, showed a substantial degree of excess of rated operational noise over background levels recorded at the nearest residential property (22.8dB against the 10dB figure which would come within the category of making “complaints likely”). On such a basis the noise impact of the use on the 4 nearest residential
neighbours would quite unacceptably affect their amenity, having regard to the quiet rural nature of the surroundings.

25. Mr Bragg believed, however, that ways could be found to reduce noise levels to make the use acceptable, and he was willing to accept conditions of planning permission to achieve this. These were discussed extensively during the inquiry. He looked for the possibility of requiring repairs only to re-commence if within a new specially designed building to replace the polytunnel and to secure sufficient noise attenuation. The use of more modern and less noisy machinery could also be required.

26. Such an approach cannot, however, be incorporated into a planning permission granted in response to this appeal. A new building would require planning permission separately, and be beyond the power of a planning condition to require the provision of. There was no information whatsoever on what such a building might comprise and how effective it might be in reducing machine noise. It would be unreasonable to seek to impose a condition without information of this kind. On a similar basis there was nothing to identify what "more modern" machinery would amount to, and how it might compare with that used hitherto at the site. The provision of specified machinery by the terms of a planning permission would also be highly problematic in practice.

27. Other conditions specifying no repair working in the open or working "only with closed doors" in workshop or potting shed would be potential ways of managing the situation, albeit with practical difficulties of long term enforcement. The only realistic condition to regulate noise would be one specifying maximum noise levels at the site boundary. The Appellant suggested that this should define a maximum of 50dB based on a 6 minute L1eq measurement. Such an approach should only be pursued where it can be seen as potentially realistic, having regard to the enforcement implications of site monitoring. There was, however, nothing to show that a limit thus arbitrarily set could be adhered to in practice. This goes back to the questions discussed above about how an insulated building might be designed and built and how quieter machinery could be required to achieve lower sound measurements at site boundaries. It also would require a more detailed appraisal of the noise climate of the locality to assess the acceptability of such a maximum figure where the only currently available information was the background measurement of 43.6 dB LA90(10 min) recorded at one SLDC visit. My conclusion is that there is a wholly insufficient basis to regulate noise generated by boat repairs by conditions rather than refusal of planning permission.

28. Boat storage, as well as the use for boat repairs, would fail to meet the terms of local plan Policy NE1 in that it is not closely integrated with existing uses of the site. External storage on the land would have implications for the appearance of the site within this rural tract of the national park. This would have to take into account the relatively small scale of the operation thus far, the lawful status of the contractor's depot use and the degree to which the site is already screened by tree and hedge vegetation. The storage of perhaps 10 – 12 relatively small craft on this site would have a limited visual impact, where taking place alongside the storage of plan, equipment and materials connected with a landscape contractor's business on a relatively large site.

29. Thus far, the increase in boat storage has coincided with reduction of the contracting element of site use so that the overall scale of visual impact has been probably no greater than occurred during the period of greater usage by Mr Bragg's business. It would, however, be wrong to assume that one use would automatically displace the other rather than have the potential to add to the overall scale of commercial use on this land. More intensive use would in my view be possible, and the visual impact of this could go beyond what has occurred thus far. I accept that a lakeside location would be the more usual setting in which to see small pleasure boats stored. Their presence at this rural location, where agricultural activities predominate, is somewhat discordant. Potential for an adverse impact upon the area's character would therefore exist, although if boat storage were restricted by conditions setting maximum numbers of boats and trailers, and the part of the site so used, this could be kept within modest dimensions. A limit to 10 boats, and a slightly greater number of trailers, would broadly reflect what has happened thus far at the site.

30. It is fair to say that storage activities on this site have been relatively well contained within the rural landscape by the pattern of local topography and vegetation. The southern boundary hedge is relatively dense with a large component of beech plants, although screening will still be less effective during the winter months. There are views into the central portion of the site from Lickbarrow Road alongside despite the screening value of laurels and a number of small trees.
This could be enhanced by additional planting at the point where site levels increase beyond the immediate roadside storage area.

31. My conclusion is that there is a degree of harm to the established character of this area at odds with the terms of Policy NE1. For boat storage, this is not counter-balanced by any economic needs of the local community because the use appears to have been both small in scale and allied to the hobby of Mr Bragg and his boating friends rather than being an economic proposition. Although Mr Bragg continued to see storage as part of a wider use involving repairs, it would be possible to apply conditions limiting numbers to a maximum of 10 and specifying the southern side of the central part of the site as the location. To mitigate visual impact I consider that this would have to go hand in hand with wider controls over the management of the site for its lawful purposes, including controls over the tall southern hedge and screen planting towards the western end. The matter is finely balanced. Where the storage element has no recorded economic value, I consider that a grant of permission subject to conditions of these kinds would be unreasonable. Without measures to mitigate the visual effects on the landscape and character of the area this aspect of the development is unacceptable.

32. Taking into account the economic benefits which would be derived from the boat repairs business run by Mr Nield, and accepting the difficulty which he has had in finding premises in which to locate it, my overall conclusion is that both elements of the new uses should not be permitted because of the residential amenity and visual implications. The ground (a) appeals will fail, and the deemed applications will be refused. The enforcement notice will be upheld in corrected form.

Alan Upward

INSPECTOR
Town and Country Planning Act 1990: Section 172
Enforcement Notice
Land at Gillthwaite Rigg Nursery, Lickbarrow Road