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## Appeal Decision

Site visit made on 15 March 2017

**by Martin Joyce DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 24 March 2017**

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### **Appeal Ref: APP/T9501/C/16/3157128**

### **Lodge 13, Otterburn Hall, Otterburn, Northumberland NE19 1HE**

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Gurjit Singh Ladhar against an enforcement notice issued by the Northumberland National Park Authority.
- The enforcement notice, LPA Ref: NNPA, was issued on 26 July 2016.
- The breaches of planning control alleged in the notice are:
  - (a) Without planning permission, the installation of glazed panels around the decking in the approximate location shown in blue on the plan attached to the notice; and,
  - (b) The failure to comply with Condition No 2 of a planning permission, Ref: 15NP0081 granted on 12 November 2015.
- The development to which the permission relates is the construction of timber decking (retrospective). The Condition in question is No 2 which states that:  
"Within 4 weeks of the date of this decision, the following details shall be submitted to and subsequently agreed in writing with the Local Planning Authority:
  - The proposed colour of the timber balustrading and external faces of the decking hereby permitted, which shall be a dark brown colour to match the appearance of the lodge; and,
  - The proposed timescale for undertaking this work.This work shall then be undertaken and the decking retained in perpetuity in accordance with the agreed details".  
The notice alleges that the condition has not been complied with in that the details of the proposed colour of the timber balustrading and external faces of the decking, and a proposed timescale for undertaking the work, were not submitted within 4 weeks of the date of the decision.
- The requirements of the notice are to:
  - (a) Ensure that all glazed panels are removed from the decking balustrade;
  - (b) Submit details of the proposed colour of the timber balustrading and external faces of the decking, which shall be a dark brown colour to match the appearance of the lodge, to the Local Planning Authority; and,
  - (c) Submit details of a proposed timescale for undertaking the work to colour the timber balustrading and decking the Local Planning Authority (*sic*).
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The deemed planning application also falls to be considered.

**Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.**

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### **Matters Concerning the Notice**

1. The enforcement notice alleges two breaches of planning control – the installation of glazed panels around the decking, and a breach of a condition on
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the planning permission for the decking. The timescales for the taking of enforcement action in relation to the various types of breaches of planning control are set out in Section 171B of the Town and Country Planning Act 1990 (The Act). For a breach of control involving operational development, which would include the installation of the glazed panels, the time period is four years, whereas for a breach of a planning condition it is ten years. The notice before me only specifies the ten year period, thus is it erroneous in that respect.

2. Section 176(1) of The Act permits the correction of a notice if no prejudice or injustice would arise, and I am satisfied that this would be the case in this instance. Whilst the omission of the correct time period within which enforcement action could be taken might prejudice an appellant through the denial of a right of appeal under ground (d), there could be no question in this case of such an appeal being made, as it is not disputed that the installation of the glazed panels was not undertaken until a date between 25 September and 5 November 2015<sup>1</sup>, well within the appropriate four-year period for taking action against unauthorised operational development. In such circumstances the notice can be corrected accordingly.
3. There is also a need for a further minor correction to the notice, as the final sentence of requirement (c) has a missing word ("to"). No injustice or prejudice has been caused by this mistake so I shall use the powers available to me accordingly.

### **Background**

4. The appeal concerns a timber lodge or chalet within a complex of similar properties sited in an open area on rising ground to the north of Otterburn Hall, a Grade II Listed Building. Planning permission for the siting of 35 holiday chalets in this area, known as the Top Site, was originally granted in 1987, and, to date, approximately 17 have been built, whilst others are in the course of erection. No 13 lies at the eastern edge of the site, adjacent to a public footpath that runs in a northerly direction through adjoining woodland to a small lake. The overall site is surrounded on three sides by plantations of mixed deciduous and evergreen trees.

### **THE APPEAL ON GROUND (a)**

5. The appellant is seeking, through this appeal to retain the glazed panels, albeit with further treatment, and to meet the requirements of Condition 2 of the 2015 planning permission for the installation of an enlarged decking area by agreeing the details of a colour for the balustrade and decking. The proposed treatment of the glazed panels would be to retain them with a coloured transparent film and also to provide willow screening on the outer edge, as has been installed at other chalets on the wider site. The appellant is, however, agreeable to the colouring of the balustrade and decking in a dark oak colour to match that of the chalet, and this is acceptable to the Authority.
6. The submission of details of the colouring of the balustrade and decking meets the terms of Condition 2 of the 2015 planning permission albeit that no timescale has been provided for such treatment. The submission therefore meets the terms of requirement (b) of the enforcement notice, but step (c) has

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<sup>1</sup> Paragraph 3.3 of the Authority's appeal statement.

not yet been met. The procedural consequence of this is that the notice will be upheld at least in respect of requirements (b) and (c), having regard to the fact that compliance with the terms of a notice does not discharge it<sup>2</sup>. My subsequent deliberations will therefore be confined to the first element of the allegation – the installation of the glazed panels.

7. The Development Plan for this area includes the Northumberland National Park Authority Local Development Framework Core Strategy and Development Policies (CS&DP), which was adopted in March 2009. Policy 1 Delivering Sustainable Development requires that all development proposals shall be accompanied by a Sustainability Statement which will demonstrate the extent to which the development, amongst other things, conserves and enhances the special qualities of the National Park. Policy 3 General Development Principles also requires the conservation or enhancement of those special qualities and states, amongst other things, that proposals shall demonstrate high quality sustainable design and construction which protects and enhances local character through careful integration with the existing built form, including that materials are appropriate to the site and setting.
8. The CS&DP pre-dates the National Planning Policy Framework (The Framework) but Policies 1 and 3 are consistent with its policies and objectives and therefore carry substantial weight in the context of this appeal.

### **Main Issue**

9. The main issue in this appeal is the effect of the development on the character and appearance of the surrounding area.

### **Reasoning**

10. The character of the surrounding area is that of a complex of chalets, used for holiday purposes, within a woodland setting in a highly attractive upland landscape. Mature vegetation surrounding the site restricts views of the chalet complex, and the appeal property, to short sections of a series of public footpaths that run through the site towards and into the neighbouring plantations.
11. Within the chalet site itself, and from a section of the footpath that runs in a north-south direction immediately west of Lodge 13, the glazed panels that have been installed within the balustrade surrounding the extended decking create a visually jarring and incongruous feature that detracts markedly from the appearance of the chalet itself and from the quality of the site as a whole. The materials are unnatural in a setting where timber materials sympathetic to the woodland surrounds predominate.
12. I saw that other chalets and lodges have a variety of balustrade treatments, including use of differing types of wood and also, in three instances, willow screening to provide additional privacy. However, there are no other examples of the use of an unnatural material such as the glazed panels at Lodge 13. Moreover, its opaque white colour makes it even more prominent and draws the eye in an unsatisfactory manner.
13. The appellant recognises the visual unsuitability of the development, but wishes to retain the panels for privacy reasons. He proposes that their visual

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<sup>2</sup> Section 181(1) of the Town and Country Planning Act 1990.

impact can be mitigated through the use of a brown-coloured transparent film and the attachment, on the outside, of willow screening, as used at other lodges. I do not, however, consider that this would overcome the visual harm that has accrued. The glazed panels would still appear as an unnatural and unsympathetic material in views of the chalet because they would be seen both through the willow screening and also in the views from the footpath to the north, for users heading in a southerly direction, as they would be able to see the inward faces of the panels from this section of the path. It is also an undeniable fact that the proximity of the public footpath allows clear views of most of the decking area at the front of the chalet, and screening through infilling of the balustrade in the manner proposed is unlikely to significantly improve that situation. This does not, therefore, provide a sustainable reason for allowing the panels, as proposed to be altered, to remain.

14. The proposal to mitigate the harm caused by the glazed panels would not, therefore, result in compliance with the terms of the CS&DP, and that of relevant policies in The Framework. My conclusion on this issue is that the development materially harms the character and appearance of the surrounding area. It follows that the appeal on ground (a) fails.

### **Other Matters**

15. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

### **Conclusions**

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

### **FORMAL DECISION**

17. The enforcement notice is corrected by:
- (a) The deletion of the first sentence of Section 4 and the substitution therefor of the following sentence:  
"It appears to the Authority that the breaches of planning control have occurred with the last four and ten years respectively."; and,
  - (b) The insertion, in Section 5(c) of the word "to" between the words "decking" and "the".
18. Subject to these corrections, 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.

*Martin Joyce*

INSPECTOR