



Appeal Decision

Inquiry held on 2 and 3 September 2008

Site visits made on 2 and 3 September 2008

by **David Harrison** BA DipTP MRTPI

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

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Decision date:
3 October 2008

Appeal Ref: APP/H0928/C/07/2062326

Carr House, Mallerstang, Kirkby Stephen CA17 4JX

- 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 Adam Hoyle against an enforcement notice issued by Eden District Council.
- The Council's reference is 04/5124. The notice was issued on 29 November 2007.
- The breach of planning control as alleged in the notice is without planning permission, building operations consisting in the construction of a dwelling from the derelict shell of the building formerly known as Carr House, Mallerstang and the occupation of the building as a dwellinghouse.
- The requirements of the notice are (1) Cease the residential use and occupation of any part of the site. (2) Demolish Carr House, the attached out-building and the boundary walls constructed in the curtilage of the same and remove all building materials and debris from the land. (3) Remove from the site all other equipment, machinery, domestic paraphernalia and any items brought onto the site in connection with the unauthorised development. (4) Level the site and cover with a layer of top-soil to a depth of at least 25 mm and evenly sow grass seed across the site.
- The periods for compliance with the requirements are step (1) six months and steps (2), (3) and (4) twelve months.
- The appeal is proceeding on the grounds set out in section 174(2) [a] [c] [d] and [f] of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Procedural matters

1. The appeal on ground (c) was introduced at the Inquiry. The Council raised no objection to this as a similar case had already been made by the appellant under the heading of ground (d). The evidence relating to ground (c) and ground (d) was heard on oath.

Site description and background

2. Carr House lies in open countryside on the eastern slope of the Eden Valley in the Parish of Mallerstang. The associated land extends to about 0.4 ha (1 acre) and access is via an unfenced track about 200 m long across pastureland from the B6259. Carr Beck runs along the northern side the site and a public footpath (No.343029) passes to the rear (east) of the building. The site is about 3 miles south of Kirby Stephen town centre and about 1.5 miles south of the village of Nateby.

3. It is common ground that Carr House was originally a dwelling which was last occupied in the 1940s. The roof was removed sometime around 1987. It is accepted by the appellant that the residential use had been abandoned.
4. In April 1991 an appeal against the refusal of planning permission for the "conversion of derelict house and farm building into private dwelling" was dismissed (Ref: T/APP/H0928/A/90/173962/P).
5. Carr House was purchased by Mr Hoyle in May 2002. He undertook various works to the building including rebuilding parts of the external walls and replacing the roof, and subsequently occupied it. The Council began to investigate whether there had been a breach of planning control and a series of applications were made. A Lawful Development Certificate (LDC) application was submitted by Mr Hoyle for "Continuous use as a dwelling since at least April 2003" and this was refused on 15 November 2007 (Ref: 07/0785). The enforcement notice was issued shortly afterwards and two planning applications have since been submitted by Mr Hoyle. Planning permission for the "Retention of unauthorised building and use as holiday accommodation" was refused on 9 January 2008 (Ref: 07/0910) and permission for "Retention of existing dwelling, to be used as affordable housing by local persons; and access track" was refused on 15 May 2008 (Ref: 08/0015).
6. At the time of the Inquiry Carr House was being occupied as a dwellinghouse by Mr Hoyle and his partner. The ground floor was one "open plan" room used as living space and the first floor was being used as a bedroom. There is a stone outbuilding at the front housing a composting toilet and there is a vegetable garden. Work on the building stopped when the enforcement notice was issued. Outstanding work includes re-pointing, fitting door and window frames (to replace plastic sheeting), and internal partitions and fittings.

The appeal on ground (c)

7. For the appeal on ground (c) to succeed it must be demonstrated that there has been no breach of planning control. The appellant's case relates to the physical works to the building and not the residential occupation which is accepted as being in breach of planning control.
8. Section 55 of the 1990 Act sets out the meaning of "development" and Section 55 (2) sets out certain operations which do not involve development. (2) (a) allows for the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building (ii) do not materially affect the external appearance of the building.
9. Mr Hoyle stated in 2005 (in response to a Planning Contravention Notice) that the work was being undertaken in connection with the formation of a "multi-purpose shelter".
10. The Council wrote to Mr Hoyle on 10 May 2006 following a site visit in which it was observed that "a large proportion of the existing stonework at first floor level had been rebuilt or made good and that the property had been completely re-roofed with new timbers, felt/insulation and stone slabs". The letter stated that whilst the Council could sustain an argument that, as a matter of fact and degree, planning permission was required for the work, officers were prepared to give Mr Hoyle the "benefit of the doubt" in respect of the works that had

been undertaken. A letter dated 1 December 2006 to Mr McWilliam, who had enquired about the development at Carr House, states that "Officers have been aware of the redevelopment of this former agricultural store and dwelling and have been monitoring the changes over the last two years. May I inform you that the work done so far has been judged to constitute a repair and as such does not require planning permission." The Council's advocate, Mr Young accepted that the Council had "got it wrong" and that planning permission had been required for the work as it did affect the external appearance of the building. He said that this correspondence may have "muddied the water" but there was clear photographic evidence of the extent of the new building work, which went beyond repair.

11. Mr Woof said that Mr Hoyle had accepted the view expressed by the Council in 2006 in good faith, and it was unreasonable of the Council to change its opinion later. The roof was already in place and had been accepted by the Council in 2006 as being a repair, and subsequent works have not affected the external appearance. Internal work is covered by Section 55 (a) (i).
12. Photographs dated 2003 submitted with the 2007 LDC application show the condition of the south gable and part of the rear wall at that time. The top of the gable is missing but the old roof timbers are visible. Compared with the photograph taken on 4 January 2006 by the Council's planning witness, Mr McNally, it is evident that the gable has been rebuilt without the original doorway and with a new window opening. A chimney has been added and a complete new roof. Mr Hoyle agreed that the south wall had been rebuilt from the level of the holes which previously held joists. These are visible in the 2003 photographs, level with the bottom of the doorway.
13. There are no photographs of the front wall before it was partly rebuilt but the photograph taken by Mr McNally on 22 December 2004 shows lighter coloured (less weathered) stonework at first floor level, including the three window openings. Mr Hoyle accepted that the central part of the front wall had been rebuilt at first floor level.
14. I agree with the Council that the building would not have benefited from "permitted development" rights as it was not a dwellinghouse at the time the work was being undertaken. The partial rebuilding of the walls and the addition of a completely new roof and chimney have materially affected the external appearance of the building. The work went beyond repair and amounted to building operations requiring planning permission. There has been a breach of planning control and the appeal on ground (c) therefore fails.

The appeal on ground (d)

Was the building work required to form the dwelling substantially completed before 29 November 2003 (four years before the notice was issued) ?

15. The test is the balance of probability. Photographs submitted by Mr Hoyle dated 2003 (no month is specified) show the shell of the building before any of the building work I have already described had taken place. The new roof was not added until 2005 so the building could not have been substantially completed

before then¹. This was well after the relevant date of 29 November 2003 so the appeal on ground (d) must fail in relation to the construction of a dwelling.

Was Carr House first occupied by Mr Hoyle as a dwellinghouse before 29 November 2003 (four years before the notice was issued) ?

16. It is common ground between the parties that Mr Hoyle moved into the rebuilt and re-roofed structure in about April 2005, well after the relevant date. However, the appellant claims that the breach of planning control occurred in April 2003 when he moved into a "stone and timber construction" which he had erected within the curtilage of Carr House at the rear of the main building. This was before the relevant date of 29 November 2003. Mr Hoyle said the structure had used elements from the original house and when his advocate, Mr Woof, put it to him that it was a "permitted development" extension he agreed.
17. Mr Woof argued that Mr Hoyle's residential occupation of the curtilage of Carr House, initially in the "construction" and subsequently in the rebuilt house should be seen as a continuous period of occupation of "Carr House" throughout the relevant 4 year period. He said that "The evidence points towards Mr Hoyle using the property, with its extension (the "stone and timber construction" also described as the tarpaulin shelter), and then without it, but all within a reasonable boundary for a dwelling, as a dwellinghouse for at least 4 years prior to the enforcement notice being served". I do not accept this reasoning. The tarpaulin shelter was not an extension to "the property". The property was an empty shell. At best, Mr Hoyle occupied two completely separate structures during two consecutive periods and the fact that they were physically close to each other in the same parcel of land has no significance in my view. There is no need for me to reach a conclusion as to whether or not the "construction" was a "dwellinghouse" because it was entirely removed at about the time in April 2005 when Mr Hoyle moved into the main building. The space it occupied is now a void, following excavations at the rear of the main building. Even if it had been regularly occupied by Mr Hoyle the residential use of this construction could not have become established as it existed for less than 4 years.
18. The use Carr House as a dwellinghouse did not begin until April 2005 when Mr Hoyle moved into the re-roofed building, well after the relevant date of 29 November 2003. The appeal on ground (d) therefore fails.

The appeal on ground (a)

The deemed planning application

19. The deemed planning application is to retain the building in its present form and to continue the occupation of the building as a dwellinghouse. It amounts to a retrospective proposal for a new dwelling in the countryside.
20. It is clear that Mr Hoyle began to rebuild Carr House with the intention of occupying it himself. However, the revised Section 106 unilateral undertaking submitted during the Inquiry (dated 3 September 2008) was accepted by the Council as satisfactorily addressing the "affordable housing" issue. In the light

¹ It is arguable that the building was not substantially completed even by the time of the Inquiry but nothing turns on this.

of this undertaking the deemed application is in effect an application for the retention of an affordable dwelling. I will consider the appeal on the basis that Carr House would be occupied by a "qualifying" person or household, and this would not necessarily be Mr Hoyle.

Planning policy

21. The parties referred to PPS1 *Delivering Sustainable Development* (2005), the *Planning and Climate Change* Supplement to PPS1 (December 2007), PPS3 *Housing* and PPS7 *Sustainable Development in Rural Areas* (2004).
22. The Draft Regional Spatial Strategy for the North West (RSS13 – The North West Plan) (January 2006) is progressing towards adoption. The Cumbria and Lake District Joint Structure Plan 2001 – 2016 (April 2006) is the current structure plan and the current local plan is the Eden Local Plan which was adopted in 1996.
23. The Local Development Framework (LDF) Core Strategy was due to be submitted to the Secretary of State at the time of the Inquiry. The Council argued that the strategy carried forward the key principles of the existing development plan and should carry a "degree of weight" as a material consideration in determining the appeal. As this is a draft document it carries only limited weight in my determination of the appeal. In my view more weight should be given to the saved policies in the Structure Plan and the Local Plan.
24. The Upper Eden Community Plan is a non-statutory Joint Parishes Plan. The appellant argued that this plan is potentially a LDF document, but this is not the case at present and I attach little weight to it.
25. The general thrust of planning policy at all levels is to support a spatial strategy where new residential development is mainly concentrated within key settlements and local service centres of the District so that housing is provided in suitable locations, which offer a good range of community facilities, and with good access to jobs, key services and infrastructure. Isolated development in the open countryside requires special justification. Support is given to a flexible approach to the provision of affordable housing.

Main issues

26. When considering the 1991 appeal against the refusal to allow conversion of the derelict house into a dwelling, the Inspector defined the main issue as being "whether the proposal would result in the creation of a new dwelling in the open countryside and, if so, whether this would unreasonably conflict with the objectives of planning policies which are intended to safeguard the character and appearance of the rural landscape".
27. Since this appeal decision was made the planning policy context has evolved and Carr House has largely been rebuilt.
28. The main issues are the impact of the development on the landscape, whether there is a need for affordable housing locally, and if there is, whether the site of Carr House is a suitable and sustainable location for an affordable dwelling. I also need to consider whether there are any other factors that weigh in favour of the proposal.

Impact on the landscape

29. When considering the 1991 appeal the Inspector concluded that “The restoration of the building, creation of a domestic curtilage, ... reinstatement of the access and provision of services such as electricity or telephone would combine to have a substantial visual impact upon the surrounding rural landscape. This would be in contrast with the present situation whereby the derelict structure is not prominent when viewed against the backdrop of the hillside or the woodland area to the north and east”. (Paragraph 9).
30. Local Plan Policy NE1 *Development in the Open Countryside* states that the countryside of the District is valued for its undeveloped character. In order to protect its character new development outside settlements and groups of dwellings will only be permitted to meet local infrastructure needs or if a need is established for a development in a specific location which is sufficient to outweigh environmental cost, provided certain criteria are met. Policy NE3 *Landscapes of County Importance* identifies the Eden Valley and Eden Gorge area. Outside established settlements development will need to be of a design appropriate to the landscape, and it should not cause an unacceptable level of harm.
31. The appellant argued that not only were the previous Inspector’s fears about the effect on the landscape unfounded, the landscape has been positively enhanced by replacing a ruin with a functioning house.
32. The Council did not argue that Carr House is visible from Mallerstang Road itself, but it is visible in the wider landscape when viewed from the opposite side of the valley, and from the footpath which passes directly behind it.
33. The landscape setting is the same but I had the benefit of being able to assess the impact of the restored building and to some extent, the creation of the domestic curtilage; a vegetable garden has been laid out at the front of the house. The access has been “reinstated” by the addition of road stone, but it remains unfenced and has not had a particularly noticeable impact on the landscape. The appellant has agreed to a condition which would prevent the installation of overground electricity or telephone lines.
34. After the close of the Inquiry I drove along the road that passes to the south of Birkett Knott on the west side of the valley to view Carr House from the position depicted in the photographs in Mr Woof’s Appendix 15 .The rain did not let up and I did not walk to the top of the hill, but driving down into the valley I had a clear view of Carr House on the far side. In its derelict state Carr House would probably have been less obvious, but I do not think that it looks out of place in these long views. I could also see “The Hollins”, a barn conversion which was built in 1999 near to Hollin Close Wood. Mr Woof argued that the Council’s decision to approve this acted as a precedent as it amounted to a new dwelling in the countryside. I do not know all the circumstances leading to this decision, but it does not weigh in favour of allowing the appeal.
35. I also walked along footpath Ref: 343029 which runs behind Carr House. On the approach from the north the house was hidden from view until close up. Coming from the south the chimney is visible across the field north of Southwaite Gill, but again the house is hidden in a dip until the final approach. The path passes to the rear of the house and any activity and domestic

paraphernalia associated with the residential occupation would be clearly visible to anyone using the path. Because Carr House was occupied as dwelling up until the 1940s I do not believe that its reoccupation would be particularly significant in terms of its visual impact. The walker on the footpath would come across a domestic enclave as opposed to a ruin, but it is not unusual to encounter isolated dwellings or farmsteads on a valley side, at the transition point between farmed land and the open moorland as would be the case here.

36. Although my conclusion on this issue it is not consistent with that of the previous Inspector I do not believe that the visual impact of the development is in itself particularly harmful. Some weight needs to be given to the fact that it was occupied as a dwelling and appeared as such in the landscape for a longer period than it has lain derelict. A "picturesque ruin" has its place in the landscape in this part of the Eden Valley, but so does an isolated house; it is part of the historic pattern of development.

The need for affordable housing

37. In order to qualify for occupation of the affordable housing unit in accordance with the Section 106 undertaking, the person must have a local connection and be in housing need. The area counting as "local" is the parish of Mallerstang, but if no suitable person comes forward wishing to take on a tenancy at Carr House at an affordable rent after a period of 6 weeks the area is extended to include Kirkby Stephen, Wharton, Ravenstonedale, Waitby and Nateby, and after a further 6 weeks it would be extended to the whole area administered by Eden District Council.
38. Policy RDF3 of the draft RSS states that plans and strategies in the Region's rural areas should, among other things, "seek to empower local communities to address their own needs" and goes on to say that in the "sparse" rural areas of the region more innovative and flexible solutions to meet their particular development needs should aim to achieve, among other things, more equitable access to housing. Policy CNL2 states that high priority should be placed on the further provision of affordable housing.
39. Structure Plan Policy H19 *Affordable Housing outside the Lake District National Park* states that affordable housing to meet proven local need will be provided through the development of affordable housing in rural sites considered an exception to normal planning policy contained in local development frameworks. Local Plan Policy HS6 states that the Council may exceptionally grant planning permission for small scale housing development to meet specific local needs for affordable housing which cannot otherwise be met.
40. *The Taylor Review of Rural Economy and Affordable Housing : Living Working Countryside* (July 2008) was referred to by the appellant. The Council agreed that this report is a material consideration and I have read its recommendations. The general thrust of the report is to support maximum flexibility in the provision of affordable housing in rural areas.
41. The Eden District Council Housing Need Survey 2006 identified a need for some 14 affordable housing units per year in Kirkby Stephen Ward which includes the parish of Mallerstang. There is outstanding planning consent for 34 affordable dwellings including 29 which are subject to a S106 agreement concerning a footpath over third party land. The Council accepted that none had been

completed within the last 5 years and that there was an unmet need for affordable housing in the ward.

42. The non-statutory Upper Eden Community Plan Policy UECP1 *Rural Housing Allocation Policy* sets out "guideline development rates" for the parishes. Mallerstang is recorded as having 39 resident households and there is an estimated need for 1 affordable house every 3 years. Mr Woof, who has been involved in the preparation of the Community Plan, said that the figure of 39 was too low and the necessary building rate might be 1 every 2 years. Without a specific household survey it is not possible to be more precise about the likely demand in a sparsely populated rural parish, but for the purposes of this appeal it is clear that there is likely to be a need for at least one affordable dwelling. This is not disputed by the Council. The question is whether the opportunity presented by the unauthorised development at Carr House should be taken up as a way of meeting this need.

Is the site of Carr House a suitable and sustainable location for an affordable dwelling ?

43. The Council argued that any occupant of Carr House would be likely to be *dependent* on the use of a private car. The site is about 3 miles south of Kirkby Stephen town centre and about 1.5 miles south of the village of Nateby. The parish of Mallerstang is sparsely populated and has no village or other settlement. There is a bus service to Kirkby Stephen (No. 569) once a week between March and October, and there is a "Rural Wheels" appointment based transport service run by Cumbria County Council which allows access to services in Kirkby Stephen which is one of the District's Key Service Centres.
44. Time was spent at the Inquiry analysing the particular pattern of trips *generated* by Mr Hoyle and his partner. Mr Hoyle makes return trips to Kirkby Stephen where his business is based and his partner works in Kendal. Mr Davies, who gave evidence on behalf of Mr Hoyle relating to the "carbon footprint" of the proposed development, said that Eden was one of the most sparsely populated districts in the UK and work journeys were long on average; Mr Hoyle's trip to Kirkby Stephen was relatively short. It was also suggested that Mr Hoyle might choose to cycle to work, or use an electric vehicle (charged using electricity generated at Carr House). But this is not particularly relevant because Mr Hoyle is only one possible occupant of the house and his travel pattern may not be typical. It is necessary to consider likely travel patterns in general terms rather than relating to a specific individual or household. An isolated location like Carr House is bound to generate more trips than the equivalent household in Kirkby Stephen, the Council's preferred location for affordable housing, because that is where the majority of services and local employment opportunities are based.
45. It seems to me that harm would arise from the additional car trips that will *inevitably* be generated by the occupation of Carr House, whoever lives there. There has been a consistent discouragement of isolated development in the open countryside in planning policy guidance, including the most recent version of PPG7 *Development in Rural Areas* (2004). Paragraph 8 refers to the location of new housing in existing towns and identified service centres and recognises that it will also be necessary to provide for some new housing to meet identified local need in other villages. It does not promote the use of isolated

- sites even where they might be regarded as “previously developed land”. Paragraph 10 states that isolated new houses in the countryside will require special justification for planning permission to be granted. This is a reference to an agricultural or other rural employment need, which is not argued here.
46. The appellant refers to the advice in PPS 1 as a “sea change”. This suggests that lack of access by private car is not necessarily a barrier to sites for affordable housing. Paragraph 25 of the supplement to PPS1 *Planning and Climate Change* (December 2007) states that “When considering the need to secure sustainable rural development, including employment and affordable housing opportunities to meet the needs of local people, planning authorities should recognise that a site may be acceptable even though it may not be readily accessible other than by the private car”. (my underlining). I do not take this to mean that isolated sites for single dwellings where there is only very limited public transport available would necessarily be suitable for affordable housing. Many small villages do not have public transport that provides a viable alternative to the use of the private car for work related trips for example, but there may be other social infrastructure and services that makes the village a suitable location for affordable housing.
47. One of the strategic housing policy objectives set out in paragraph 9 of PPS3 *Housing* (November 2006) is to create sustainable, inclusive, mixed communities in all areas, both urban and rural. Mr Woof argued that paragraph 30 was key to this decision as it allows for affordable housing in rural communities without restricting it to a “settlement”. However, the first sentence states that “... the aim should be to deliver high quality housing that contributes to the creation and maintenance of sustainable rural communities in market towns and villages.” (my underlining). Subsequent references to communities also relate to market towns and villages rather than scattered communities. Residents of Mallerstang who spoke at the Inquiry were very unhappy at the implication that Mallerstang was not a community. From what I heard there is clearly a strong feeling of community, but there is no village or other settlement in the parish, the nearest being Nateby to the north. There was a suggestion that the Council should not “look a gift horse in the mouth” and should grasp the opportunity to bring an affordable dwelling into the supply of housing in Eden.
48. Mr Woof argued that the need for affordable housing justified “exceptional” status because it was affordable housing. But it is still necessary to carry out a balancing exercise and to use a sequential approach. I find nothing in the guidance referred to by the appellant which supports the contention that isolated sites of former dwellings are suitable candidates for the location of affordable housing.
49. Mr Woof drew attention to Policy UECP2 *Rural Self-build Affordable Housing Policy* in the Upper Eden Community Plan which states that self-built housing in rural areas will be permitted as affordable housing where it can be shown that the dwelling (1) meets an identified housing need (2) is to be built by or on behalf of a person with a local connection (3) built to a suitable standard and subject to a S106 agreement ensuring its availability in perpetuity.
50. The aim of the policy is to allow emerging households from existing families who cannot afford to buy a house on the open market but who have access to

land or buildings suitable for conversion, to provide a dwelling for themselves (which will need to remain “affordable” in perpetuity). The suggested benefits of such a policy are that “multiple generations of families can remain in rural settlements. The informal support provided by family living closely counters many of the hardships otherwise associated by living in isolated rural communities” (sic). Also traditional buildings no longer required for agriculture in settlements can be re-used as dwellings resulting in greater retention of the existing built environment. This will lead to a more sustainable, interesting and vernacular built heritage than other models of affordable housing provision. The housing need within settlements will be met largely without any need to draw upon Government subsidy and the policy will allow local people to invest in their own communities for the benefit of themselves and future generations.

51. This suggested approach may have some merit, but it appears to be aimed at *meeting* the needs of established families in the rural parishes. Mr Hoyle’s proposal does not fit into this at all. What is envisaged is additional dwellings (whether new build or conversions) on established farmsteads close to existing dwellings. It is not an endorsement for the re-use of isolated dwellings; on the contrary, it promotes the virtue of close association rather than perpetuating the pattern of isolated dwellings which has its origins in an agricultural economy which has undergone radical change. In, short, the Carr House site is too isolated to be considered suitable even in the context of this locally generated non-statutory policy.
52. I have examined every avenue whereby permission might be granted for use of Carr House as an affordable dwelling. Even in the face of an acknowledged need in the parish of Mallerstang this is not an appropriate site in my view.

Other matters

53. It was initially maintained that the development at Carr House was “carbon neutral” but Mr Davies conceded under cross-examination that it is not. Mr Hoyle has constructed a micro hydro turbine using Carr Beck as a source of renewable energy but as he has designed and built it himself there is no guarantee that it could be maintained by another occupier unfamiliar with the technology. There is also a small wind turbine and between them they generate sufficient power to run a fridge, lights, and “low-powered home comforts”. The off-grid power supply is not sufficient for heating or cooking and there is a wood burning stove and a cooker using bottled gas. If permission is granted Mr Hoyle said he would put in a more efficient hydro turbine and a ground source heat pump and would be in a position to export surplus power to the national grid. Whilst such micro generation of domestic power is commendable, the house is far from being “carbon neutral” even leaving aside the question of traffic emissions.
54. It was also argued that the “embedded carbon” level was an advantage as the majority of the building materials that had been used were already on the site (except for the roof). The project was an example of self-build and had been privately funded. Although the project has been undertaken at low cost this must have been due, in part at least, to the fact that the house has been built on land which did not command full residential value, because there was no planning permission. Mr Hoyle said he paid £45,000 for Carr House at a time when a similar (complete) house would have cost between £150,000 and

£160,000. It seems to me there is a difference between a regulated self-build project, which is clearly a potentially useful source of affordable housing, and work undertaken without planning permission on an unsuitable site.

55. There is a good measure of local support for what Mr Hoyle has done, but I attach little weight to this as such support, although genuine, does not take the wider view that it is necessary for me to take.
56. All these factors need to be weighed in the balance, but even taken together they do not add significant weight in favour of allowing the development.

Conditions

57. In addition to a condition preventing the installation of overground services, the appellant agreed to the removal of "permitted development" rights for extensions to the dwelling and other development within the curtilage and a landscaping condition, but these would not render the development acceptable in my view.

Conclusion on the planning merits

58. To summarise; here is a near complete house rebuilt using appropriate materials, much of which were already on the site. It is part of the traditional/historic settlement pattern in the valley. There is an element of off-grid power available. There is support from local people. No affordable housing has been built recently in Kirby Stephen, Nateby or Mallerstang. However, taking into account all these factors, and all the other matters raised by the appellant, I reach the conclusion that the proposal is essentially for a new dwelling (albeit affordable) in a remote location in the countryside. There is a clear conflict with the current policies in the development plan and I find nothing in national policy guidance or in the emerging Local Development Framework which would support the approval of this particular development. The residential use should be required to cease and permission to retain the building as a dwelling should not be granted. What is to be done with the building is a matter for consideration under ground (f). The appeal on ground (a) therefore fails.

The appeal on ground (f)

59. It was accepted by the appellant that if the deemed application was refused then Steps 1 and 3 in the notice, which require the residential use to cease and associated equipment etc. to be removed, are reasonable, but steps 2 and 4 which require the removal of the entire building and grassing over of the site are not. Mr Woof argued that the building should be allowed to remain in a weatherproof state. It was possible that the on-going Local Development Framework process might lead to a policy shift which would allow an alternative use in the future.
60. The requirement to remove the entire building cannot remain in the notice. The aim of the notice should be to remedy the breach of planning control and the Council cannot require Mr Hoyle to remove any part of the building that existed when he purchased it. The Council argued that partial demolition would be detrimental to the visual amenity of the area, but this seems inconsistent with

the argument that the present situation is more visually harmful than the situation before Mr Hoyle began work on the property (when it was a shell).

61. I have given very careful consideration to the three options before me; allowing the building to remain in a sound condition but without any lawful use, (other than possibly agricultural use), requiring the roof to be removed, or requiring all the work carried out by Mr Hoyle to be undone, and the building returned to its ruinous state. The first option will give rise to the question as to why a perfectly useable building cannot be lived in and I anticipate continued pressure for some form of residential use to be found for it if it remains. The second option would leave a more or less complete building. My conclusion is, and I say this without enthusiasm, that the entire roof and parts of the walls should be removed, despite the fact that the Council has previously (and wrongly) expressed the view that this work did not require planning permission. This will return the site to a condition similar to that which existed when Mr Hoyle purchased the property. This will remedy the breach of planning control.
62. Requirement (2) should be deleted and replaced with "Remove the roof covering and roof timbers and remove those parts of the external walls of Carr House that have been rebuilt since May 2002 and remove all resulting building materials and debris from the land". Requirement (4) should be deleted.
63. The Council expressed concern that there are no clear records of the work that has been undertaken, but it is within the knowledge of Mr Hoyle, and it should be clear to him what needs to be done. His own photographs taken in 2003 and those taken by Mr McNally on 22 December 2004 may be useful reminders if needed. If Mr Hoyle would prefer to salvage more of the materials, that is a matter for him. This requirement does not relate to any of the boundary walls or to the small outbuilding in front of Carr House.

Overall conclusion

64. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

65. I direct that the enforcement notice be varied by deleting requirement (2) and requirement (4) from paragraph 5 and substituting for requirement (2) "Remove the roof covering and roof timbers and remove those parts of the external walls of Carr House that have been rebuilt since May 2002 and remove all resulting building materials and debris from the land". Subject to these variations I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Harrison

Inspector

APPEARANCES

FOR THE APPELLANT:

Tom Woof	BA DipUD MRTPI, Director of DPS Ltd, Planning Consultants, Furrow Green Farm, Wharton, Kirkby Stephen, CA17 4QL
He represented the appellant, gave evidence himself and called	
David Watt	2 Shoregill Lodge, Warcop, Appleby, Cumbria CA16 6PL
David De St Croix	Fairview, Nateby Road, Kirby Stephen, Cumbria CA17 4DQ
Philip Davies	1 Townhead Cottage, Newby, Shap, CA10 3EX, Climate Change Officer, Cumbria County Council, speaking in his personal capacity
Adam Hoyle	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Young	Solicitor with Eden District Council
He called: Adam McNally BSc MSc	Development Control Officer, Eden District Council

INTERESTED PERSONS:

Brigitta Todd	Apple Dene, Clifton Dykes, Penrith, CA10 2DH
Gordon Hutton	Shoregill House, Outgill, Kirkby Stephen CA17 4JU
John Hamilton	The Thrang, Mallerstang, Cumbria CA17 4JX, Chairman of Mallerstang Parish Meeting, speaking on his own behalf
Richard O'Connor	Springthwaite, Aisgill Moor, Mallerstang, Kirkby Stephen CA17 4JU

DOCUMENTS

- 1 Attendance lists
- 2 Council's notification letter
- 3 Letter in response to 2 above
- 4 Statement of Common Ground

- 5 Appendices to Mr Woof's proof of evidence
- 6 Section 106 Undertaking dated 3 September 2008
- 7 Extract from Regional Planning Guidance for the North West (RPG13) March 2003, submitted by Mr Woof
- 8 Extract from North West of England RSS (Proposed Changes to the Draft) March 2008, submitted by Mr Woof
- 9 Pendragon Castle Cycle Route, submitted by Mr Woof
- 10 Appendices to Mr McNally's proof of evidence
- 11 List of conditions agreed by the appellant and the Council
- 12 Letter from Brigitta Todd, Apple Dene, Clifton Dykes, Penrith, CA10 2DH

PLANS

- A Plan attached to the enforcement notice