Ms J. Birkett
Development Control
Lake District National Park Authority
Murley Moss
Oxenholme Road
Kendal LA9 7RL

14 January 2020

Dear Ms Birkett

7/2019/5808 (CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT) PROPOSED USE OF LAND FOR THE MOORING OF UP TO 10 BOATS TO BE USED FOR RECREATIONAL USE AND OVERNIGHT HOLIDAY ACCOMMODATION

Friends of the Lake District (FLD) welcomes the opportunity to comment on the above application. We are the only charity wholly dedicated to protecting the landscape and natural environment of Cumbria and the Lake District.

Change of use

Grasmere, currently and historically, is used only by swimmers and small, unpowered and unobtrusive craft such as rowing boats, canoes and kayaks. This is in accordance with the 1973 Smaller Lakes Byelaws and with the Local Access Forum Agreement, which are both available on the Lake District National Park’s website. It is more common, even in summer, to see Grasmere empty of swimmers and boats than it is to see its use by swimmers or boats of any kind. There is no evidence of any regular or significant use of Grasmere by boats with sleeping berths and/or other facilities necessary for habitation.

This assessment of the current use of Grasmere is reflected in the personal experience of FLD members and many of those that have commented on this proposal to date as well as in recent and historical photographic evidence (for example, those found via a simple Google image search and on the Francis Frith website). It is further reinforced by the Lake District National Park’s own webpage advising potential visitors on ‘Exploring Grasmere and Rydal’, which states “[w]ith no motor boats, this quieter lake is great for swimming, kayaking and rowing. In the summer you can hire rowing boats on the lake”.

The application states that ‘[s]ailing and cruising craft....are often used on Grasmere’. Even if this were true, it would be in conflict with the Local Access Forum Agreement (which clearly states that sailing and powered craft are prohibited) and it is contrary to the first-hand experience over many years of many who are familiar with Grasmere, as well as photographic evidence.

The application also states that recreation is the ‘primary use’ of Grasmere. Given the very limited extent of the use of the lake by boats and swimmers, this statement is misleading at best. Rather, the primary function and purpose of Grasmere is as a natural and integral part of the landscape and ecosystem and for the ecosystem services it helps to provide as a result, only one of which is a direct recreational use. Its indirect services in providing a sense of calm, tranquillity and beauty to walkers on the shoreline and surrounding fells are those more commonly used by people.
This proposal is for 10 large, powered craft with substantial provision for not only sleeping accommodation for up to 6 people, but for human habitation more generally, including toilet, bathroom and kitchen facilities. The primary purpose of these craft is to provide holiday accommodation. Given the small size of Grasmere and the very limited physical scope for cruising in a larger craft, any navigation purpose is ancillary or incidental to the purpose as holiday accommodation. Indeed, as proposed, holiday-makers could reside on board for up to a week without leaving the boat, undertaking no navigation of the lake at any point. However, it is not proposed in the application that there is any intention for people to navigate the lake on these boats without also making use of the sleeping and other habitation facilities as they are to be there on holiday for up to a week. In other words, the accommodation is not dependent on the navigation but any use for navigation would be dependent on use also for sleeping and general habitation and therefore the navigation use would be ancillary or incidental to the accommodation use.

Additionally, the argument in the application that the boats ‘have not been adapted to provide overnight accommodation’ is weak. Whilst it is true that they have not been adapted, the reality is that this is because they were purposely-built to include accommodation and therefore did not need to be adapted. This in fact strengthens the case that the accommodation use is not ancillary, particularly in the context as proposed, in which the boats are to be used for holiday accommodation and may never move from the main mooring point.

The caselaw cited in the application relating to canals is irrelevant to the case of Gentlemen’s Yachts on Grasmere for holiday accommodation given that canals are purpose-built for navigation and that canal boats are purpose-built for long, slow journeys, traditionally for the transportation of goods and such as to necessitate ancillary accommodation for those in charge of the boat.

The scale and powered nature of the proposed boats, would conflict with the Smaller Lakes Byelaws and Local Access Forum Agreement. The fact that their primary purpose is to provide holiday accommodation means that the proposed boats represent the equivalent of creating a 10-pitch campsite of campervans for permanent holiday use on land previously unused for that purpose, a proposal that would unquestionably require planning permission. Furthermore, the need for fixtures to create permanent moorings would constitute operational development.

The proposed use would constitute a clear change from the current use in terms of the powered nature of the craft, the proposed size of the craft, the scale of the proposed operation and crucially, use for overnight holiday accommodation with associated facilities. The proposal would therefore require planning permission. It follows that a Certificate of Lawfulness of Proposed Use or Development for this proposal should not be granted.

Byelaws
The 1973 Smaller Lakes Byelaws prohibit the use of any ‘power driven vessel’ and define these as those having an internal combustion engine. The applicant is seeking to circumvent this by proposing boats with electric motors. However, events and course of time have overtaken this definition in the same way as they have overtaken the reference to the Lake District Planning Board. This is presumably accepted as superseded by the term ‘Lake District National Park Authority’ despite no formal amendment to refer to the current circumstances having been made (and thereby suggesting that other points could be superseded too where it is evident that they no longer accurately represent reality, the reality being that today, power driven vessels extends to a wider definition). Indeed, at the time of writing the Smaller Lakes Byelaws use of the internal combustion engine to power boats was dominant with electric boats seeing a downturn earlier that century having previously been popular. It is questionable whether the authors could reasonably have been expected to predict a need to reference a means of power that at the time, appeared to have had its day. Furthermore, byelaws for other lakes, including Windermere and Coniston have been updated and now define ‘power driven vessel’ as ‘any vessel propelled by machinery’.

With this in mind, whilst the Smaller Lakes Byelaws technically do not prohibit electrically propelled craft as are proposed, it is the intent of those Byelaws that is important. We understand that the strapline raising awareness of the new Byelaws at the time they were introduced was ‘20 Lakes for Peace and Quiet’, strongly suggesting that the intent of the Byelaws was to protect the peace and tranquillity of the 20 lakes to which they apply.

Accordingly, allowing any activity that would compromise the aim of the Byelaws, whether or not it is technical a contravention of them, would be detrimental to those aims and to the Statutory Purposes of National Park designation since those aims were surely intended to uphold those Purposes.
Relevant Planning Law

The Environment Act 1995 (in revising the original legislation set out in the 1949 National Parks and Access to the Countryside Act, which designated National Parks) sets out the two statutory purposes for National Parks in England and Wales:

- To conserve and enhance the natural beauty, wildlife and cultural heritage; and
- To promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public.

The Sandford Principle, also set out in The Environment Act 1995, requires that where there is irreconcilable conflict between the two purposes, greater weight shall be attached to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area.

The Environment Act 1995 therefore weighs against the grant of a Certificate of Lawfulness of Proposed Use or Development in this case as detriment to the environment, tranquility, character and other Special Qualities of Grasmere would be given greater weight than the enjoyment benefits for those purchasing holiday accommodation on the boats. This is particularly so when also taking into account that the presence of the boats would compromise the enjoyment and experience of the Special Qualities for the many.

Common Land

Given that Grasmere is part of Loughrigg Common (CL79), the applicant should consider whether consent is required under s.38 of the Commons Act 2006. The same restrictions apply under s.38 to water as to land meaning that works that restrict access are regulated. There is potential for the proposed boats to remain moored in one place for substantial amounts of time and, particularly a group of 10 large craft moored together ‘most commonly in the south-east part of the lake’, could hinder access across the lake for swimmers, those using kayaks, rowing boats, canoes etc, who would have to weave in and out of the proposed boats or else skirt around them in order to access and enjoy that part of the lake.

Conclusion

The proposed use would constitute a clear change of use requiring planning permission and thus, a Certificate of Lawfulness of Proposed Use or Development for this proposal should not be granted.

We also request that an urgent update of the 1973 Smaller Lakes Byelaws be undertaken to ensure that they are clear and appropriate to current circumstances.

Please record these representations as those of the Campaign to Protect Rural England (CPRE-Cumbria Association).

Yours sincerely,

Lorayne Woodend Wall MRTPI
Planning Officer