



Appeal Decision

Site visit made on 24 March 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 17 May 2017

Appeals A & B Ref: APP/D0840/C/16/3157870 & 3157871

Terras Crossing, Sandplace, Looe, Cornwall PL13 1PH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Susan Wilesmith and Mr Perry Davies, respectively, against an enforcement notice issued by Cornwall Council.
- The notice was issued on 3 August 2016.
- The breach of planning control as alleged in the notice is a) Without planning permission the erection of a two-storey residential dwelling in the approximate position marked A on the [*plan attached to the notice*] and the creation of a new access onto the A387 in the approximate position marked as B on the [*plan attached to the notice*]. b) Without planning permission the erection of a two storey garage in the approximate position marked C on the [*plan attached to the notice*] and the creation of a new access onto the A387 marked D in the approximate position on the [*plan attached to the notice*].
- The requirements of the notice are: (1) Cease the residential use of the two-storey dwelling house marked as A in the approximate position on the [*plan attached to the notice*]. (2) Demolish the residential dwelling marked as A in the approximate position on the [*plan attached to the notice*]. (3) Remove all the materials and services resulting from the compliance with requirement 2 above in their entirety from the aforementioned land. (4) Cease the use of the access and re-instate the boundary treatment shown in the approximate position marked as B on the [*plan attached to the notice*] to its former condition. (5) Demolish the two storey garage marked as C in the approximate position on the [*plan attached to the notice*] in its entirety from the land. (6) Remove all materials and services in their entirety resulting from the compliance with requirement (5) above from the Land; (7) Cease the use of the access for vehicles and re-instate the Boundary treatment shown in the approximate position marked D on the [*plan attached to the notice*] to its former condition.
- The period for compliance with these requirements is 9 months.
- The appeals are proceeding on the grounds set out in section 174(2) (a) and (b) of the Act [see also below].

Both appeals: Formal Decision

1. I direct that the enforcement notice be corrected by:
 - i. the substitution of Plan A attached to this decision for the plan attached to the enforcement notice;
 - ii. the deletion of the words "*edged in red on the attached plan (the "plan")*" in paragraph 2 of the enforcement notice and its replacement with the words "*edged in red on Plan A attached to the appeal decision (hereinafter referred to as "Plan A")*"; and,
 - iii. the deletion of the words "*the attached plan*" in all instances in which that phrase is used in paragraphs 3 and 5 of the enforcement notice and its replacement with the words "*Plan A*".
2. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

3. The Planning Inspectorate [PINS] wrote to the parties on 28 March 2017¹, following my visit, and in response I received a letter from the Council dated 4 April 2017. By the end of that week, apart from the grounds of appeal, I had not received any correspondence from the Appellants and I therefore asked my colleagues to double check in case something had gone astray. Suffice to say it is a good job that a check was made because I was given final comments and they, in turn, referred to a statement, which was subsequently identified.
4. At this stage, a fortnight after the site visit, I was conscious that the Council had not been sent the Appellants' statement to allow them to make any final comments and so PINS arranged for this to happen. The Council advised PINS around this time that it had not consulted any local residents about the appeals and so letters of consultation were issued that set the deadline for comments as 9 May 2017. The upshot is that my decision has been significantly delayed due to circumstances outside of my control. To the extent that PINS has been responsible for this delay I apologise on behalf of PINS for what has happened.
5. PINS letter dated 28 March 2017 sought clarification of the extent of the red line area as, for whatever reason, there were 2 different enforcement notice plans on the file. The Council confirmed that the plan attached to the notice on the public enforcement notice register is effectively a figure '8'. It says that all development is within the outer line. My concern is that the face of the notice merely says "*edged in red*" whereas it could be argued that there is a degree of ambiguity insofar as it might be said there are 2 areas edged red on the plan.
6. In the circumstances I intend to correct the notice by substituting a revised plan with a single red line around the whole site, together with consequential corrections to the text to refer to the revised plan. I consider that this can be done without injustice to either main party because it does not extend the area covered by the notice and, amongst other things, no claim has been made that this renders the notice so ambiguous or uncertain as to be a nullity. The fact that the letters, A-D, as referred to on the face of the notice straddle both areas within the '8', reinforce my view that any recipient of the notice would have understood that it was concerned with the whole of the land as defined. The plan that I shall use also elaborates more clearly on what the letters A-D relate to, which addresses the concerns raised by the Appellants².
7. The Council confirmed in its letter dated 4 April 2017 that it wanted me to disregard the photograph at Appendix 9 to its statement. I propose to deal with this appeal on this basis.
8. The appeals were initially lodged on grounds (a), (b) and (g) of the Act, but in an email dated 22 November 2016 the ground (g) was withdrawn. I propose to deal with these appeals on that basis. However certain arguments are put forward under the ground (b), which might be said to relate to grounds (c) and (d). Nevertheless, noting that the Appellants are legally represented, rather than formally admit fresh grounds of appeal and potentially further delay the decision by asking for comments from the parties on those additional grounds, I propose to consider the points under ground (b) and apply the relevant tests.

¹ There were a couple of links to internal documents included at the end of that letter, which were not intended for the parties, so please accept my apologies for their inclusion.

² Set out in the Agent's email to PINS dated 30 March 2017.

9. An application for a full award of costs was made by Cornwall Council against Ms Susan Wilesmith and Mr Perry Davies. This application is the subject of a separate decision.

Both appeals: Ground (b): *Approach and preliminary observations*

10. Under this ground of appeal the onus of proof falls on the Appellants to show that: "...the breach of control alleged in the enforcement notice has not occurred as a matter of fact" [as per section E. (b) of the appeal form]. The Planning Practice Guidance [‘the Guidance’] makes clear³ that in enforcement appeals the onus of proof in respect of matters of fact is on the Appellants. In order to succeed under this ground the Appellants need to show, on the balance of probability, the breaches alleged in the notice have not occurred.
11. The Appellants have provided a number of photographs⁴, but I have not been provided with the originals or the "EXIF information they contain"⁵. Instead the dates for when the photographs are said to have been taken are printed on a caption next to each photograph. However, it is unclear who has interrogated the photographs and how accurate/reliable the transcribing of that information is. As I have no independent confirmation of those dates and the evidence has not been corroborated by a statutory declaration or similar sworn statement, I am only able to attach limited weight to the stated dates as a form of evidence.
12. My view in this matter is confirmed by the clear indication that the captions contain the time they were taken. So, by way of example, Photo 5 is said to have been taken at 22:47:12 hours, which I take to be just before 2300 hours at night. That plainly cannot be right because the photograph has been taken in daylight⁶. So even if I assume that the information has been transcribed correctly the source might itself not have been set up correctly. If the timer is wrong why should I assume that the date function on the camera is correct? It confirms my view that these captions are an unreliable source of evidence.
13. The allegation is framed in terms of 2 separate limbs and no claim is made that the erection of a two-storey residential dwelling, within a), has not occurred as a matter of fact. The other component within a), namely the creation of a new access onto the A387, and both components of b) are in dispute and I propose to consider each access in turn before turning to consider the garage building.

Access at point 'B'

14. My site inspection confirmed that a vehicular access exists at point 'B' on the plan, broadly to the rear of the two-storey residential dwelling that has been erected. The grounds of appeal effectively admit that there is an access at this point insofar as it is said that: "*The A387 is accessed at this point where a soil track meets the main road*". There was a car parked next to the house in the area served by this point of access at the time of my visit, which confirms it is used as a vehicular access. As there can be no doubt that an access onto the A387 exists at point B as a matter of fact the ground (b) appeal must fail.
15. Under this heading in the grounds of appeal it is asserted that: "*No works of any kind have taken place to create the access between the property and the*

³ See for example paragraph: 053, Reference ID: 16-053-20140306.

⁴ This and all subsequent references to the Appellants' photographs are to those contained in the "Photo Album" at Appendix 2 to the Appellants' Statement and the views expressed here relate to all of those photographs.

⁵ Source of quote: paragraph 2.3 of the Appellants' statement.

⁶ The same point arises with other photos said to be taken around 2200 hours, but which show direct sunlight.

road". This might be said to relate to ground (c), that there has not been a breach of planning control. It is acknowledged that section 336(1) of the Act defines engineering operations to include the formation or laying out of a means of access to a highway. On the information before me it has not been shown, as a matter of fact, that there has not been an engineering operation, which might have included, but is not limited to, a reduction in the earth bank, the material widening of any pre-existing gap and/or the laying of hardcore or aggregate between the metalled edge of the public highway and the property. Accordingly, whilst I have sought to focus on the factual elements underpinning the claim, to the extent that there might be a hidden ground (c) appeal in this argument, if I had admitted such an additional ground it would have failed.

16. Under this heading it is also asserted that this is a: "...*historic connection which has served the other buildings on site, present and past*". This might be said to relate to ground (d) that, at the time the notice was issued, it was too late to take enforcement action in respect of this access. If such a ground of appeal had been lodged the burden of proof would have fallen on the Appellants to demonstrate the basis for any such claim on the balance of probability.
17. Photos 3 and 4 are said to relate to the access at point B but in the absence of more information I am not satisfied that these photographs are sufficient evidence of the existence of this access. In order to reach such a conclusion I would have to make assumptions about where the, presumably demolished, buildings shown in those photographs were. The absence of a sworn statement or other documentary information, such as Estate Agent particulars from when the property was bought, leads me to find that these photographs do not show, precisely and unambiguously, evidence of the access at point B. This finding is reinforced by my concerns about the reliability of the dates in the captions, noting that for Photo 4, 15 November 2012, is less than 4-years before the date of issue of the enforcement notice. In making this finding it is material that another access appears to have been blocked off with close board fencing to the north-west of point B and so, applying the balance of probability, I cannot be sure that these photographs relate to point B. The appeal site has changed significantly in the interim and there is no clear point of reference. Accordingly, to the extent that there might be a hidden ground (d), if I had admitted this fresh ground of appeal it too would have failed.

Access at point 'D'

18. The arguments advanced in this respect appear to conflate various grounds of appeal but are less easy to separate and so I shall approach them holistically. My inspection revealed the vehicular access at point 'D' on the plan to comprise the entrance to the garage, in which a truck was parked at the time of my site inspection. The vehicular access is located directly adjacent to the end of the road markings at the junction of the side road with the A387 and on that basis it is possible to make a direct comparison between what exists and the first Google Street View image⁷, which says on its face that the image was captured in May 2009. In my view, adopting the balance of probability, the Google Street View image does not reveal the existence of an access at this point in May 2009. There is a continuous line of vegetation, including a hedgerow and small trees that are evident in this image, together with a continuous grass verge. The Street View image is clear and I find no scope for ambiguity.

⁷ Appendix 8 to the Council's statement.

19. The Appellants' statement says: "*The garage was masked behind substantial foliage that was removed by the Appellant*"⁸. I turn to the building below but that statement, albeit not in the form of a statutory declaration, chimes with what can be observed in the Google Street View image, namely that there was a continuous line of vegetation along the road boundary rather than an access. The Appellants' own choice of words is that the foliage was substantial, which is defined as real, tangible and of considerable importance or size. The Appellants have not shown that this was a case of trimming back overgrowth around an existing vehicular access and, instead, the Appellants' own photograph, which appears to relate to those works, is labelled "*Tree removal*"⁹. Amongst other things the photograph reveals that a JCB, or similar, was used and I note various piles of soil or other materials deposited along the inside edge of the metalled surface of the road, which might suggest related engineering works.
20. The grounds of appeal say that it follows from the existence of the garage that no new access has been created. However, adopting the opposite approach, the absence of a vehicular access in the Street View image casts doubt as to whether this was a garage. To be clear I have no reason to doubt that there was a pre-existing building broadly in this location¹⁰, but in the absence of an access there must be a question as to whether it was a garage. In any event the grounds of appeal say that the claim as to the access will be supported by historic records but these have not been produced. The historic photographs are presumably those at Appendix 2 to the Appellants' statement, but for the reasons given above they do not support the existence of a vehicular access.
21. In reaching this view I have noted Photo 13, which shows an existing building broadly in the position of the existing garage¹¹. It appears to be being claimed that the larger portion of the façade of that building which is boarded up might have been an access to the alleged garage, but any such claim is not supported by a statutory declaration or similar. In its absence I have to assume it is an access to a garage based on the assertions made in submissions on behalf of the Appellants. That does discharge the onus of proof in my view. There is no evidence of: "*...a rotten wooden up and over door*"¹² as claimed. Moreover even if I assume that the boarded up part to the right of the central brick upright was evidence of some pre-existing vehicular access, it would appear that the access that serves the garage that presently exists is materially wider. That photograph does not therefore demonstrate that the building and alleged access was in the: "*exact location with the same connection to the highway*"¹³.
22. It is acknowledged that a new concrete base has been laid between the garage and the road and this was evident during my inspection. There is no evidence, distinct from assertion, that it replaced an existing crumbling base. This claim appears to be inconsistent with the Street View image and even Photo 13 appears to show an earth bank, with tree stump, along roughly the eastern third of that façade of the pre-existing building. As this image is said to date from 2014, whereas the image showing the works in progress is claimed to

⁸ Source of quote: paragraph 2.5 of the Appellants' statement.

⁹ Source of quote: caption to Photo 14 in Appendix 2 of the Appellants' statement.

¹⁰ As is evident from Photo 13 in Appendix 2 of the Appellants' statement.

¹¹ Reference is also made to Photo 15 in Appendix 2, but that is a more distant oblique view and of little assistance for those reasons.

¹² Source of quote: paragraph 2.6 of the Appellants' statement

¹³ Source of quote: paragraph 4.20 of the Appellants' statement.

date from 2012¹⁴, I cannot rule out the possibility that the piles of material shown on the carriageway edge were removed from the remaining two thirds. Even if that might be wrong Photo 13, on its face, does not obviously reveal the existence of a base between the wooden boarding and the carriageway.

23. For these reasons, as there can be no doubt that an access onto the A387 exists at point D as a matter of fact, the ground (b) appeal must fail to this extent. In addition, to the extent that the arguments might be said to extend into ground (c), the new wide garage entrance together with the new concrete base between the garage and the road lead me to find that there has been a breach of planning control. To the extent that there might also be a hidden ground (d), if I had admitted this fresh ground of appeal it would have failed because of the lack of a sound evidence base to show a pre-existing access. The Google Street View image appears to contradict that version of events.

Garage at point 'C'

24. As noted above, Photo 13 is clear evidence of the existence of a pre-existing building in the vicinity of where the garage, which is the subject of the notice under appeal, now stands. The first issue under this ground of appeal is therefore to establish what works were done to the building as a matter of fact.
25. The Appellants admit that a new garage door, the width of the building, has been installed and a new roof has been added after the previous roof collapsed. It is admitted that the new roof is higher and that a storage element has been created at first floor level. This is evident from comparison between Photos 6 and 7, in which the latter shows a much steeper roof pitch, together with a new window at first floor level in what must be the south-east elevation. However, whilst it is unclear whether the ground floor window in that elevation has been removed and reinserted, even if I were to assume that it has not been moved, it would appear that this wall has been increased in height. The original eaves height is just above the window and the top of the doorway, whereas Photo 7 reveals an additional area of wall leading up to the cladding at first floor level.
26. I have looked through the Appellants' historic photographs, but the internal condition of the south-east wall of the pre-existing building is not revealed. Photo 6 does however reveal that the panel below the window comprises of bricks, distinct from concrete blocks. The garage door was open at the time of my inspection, such that I was able to see that the inside of that wall which, certainly at the front and in the vicinity of the door, is constructed of concrete blocks. It would appear that either that wall has been re-built or a concrete block skin has been erected within whatever remained of the original wall. Given the increased loading arising from the larger roof as well as the new, wider beam across what is now the garage door, it would appear that the south-east wall has been re-built or strengthened using concrete blocks. The Appellants have not discharged the onus of proof to show otherwise.
27. Turning to the road side of the pre-existing building, I have already noted the brick pillar and so it would appear from the Appellants' admission that the roof was replaced and a new garage door installed, that this pillar and the whole of the roadside of the building was removed some time after 2013, assuming the

¹⁴ Photo 14 in Appendix 2 of the Appellants' statement.

- year of Photo 13 is correct¹⁵. This photo also shows that the right hand wall, to the north-west, was leaning at quite a precarious angle¹⁶. Such a finding is consistent with other photographs, including Photo 12 captioned "*Tree growing through garage (interior)*". If I have understood Photos 8, 10 and 12 correctly then they all relate to this area of the pre-existing building. Photos 10 and 12 appear to show wide gaps in the side wall along what is now the north-west elevation. Accordingly that side wall appears to be completely new and this finding is consistent with the admission that: "*The Appellant has blocked that connection [to another group of buildings] by building a block wall*"¹⁷. The need to support the increased height and weight of the roof supports this finding. Again, even if I might be wrong, the Appellants have not discharged the onus of proof, which falls on them for a reason, to demonstrate otherwise.
28. For these reasons, the only part of the pre-existing building that conceivably might have been retained is the rear, south-west, wall. The main image that I appear to have of that wall is Photo 9, but that has been taken at a relatively long distance and it is difficult to make out what the wall is built of. It does however appear to include a relatively large component of glazing. It is not clear whether this wall would have needed to be replaced to support the increased height and load of the roof. Whilst I have noted the Appellants' statement¹⁸, it is not sworn, and hence I can only attach it limited weight, and does not include the documents that are referred to therein. In any event it does not address the extent of the works that were undertaken to this building. The Appellants have not therefore discharged the burden of proof to show that the south-west rear wall of the pre-existing building was substantially retained.
29. Taking account of the quoted case law¹⁹ I conclude that as a matter of fact and degree, based on the evidence before me, a new garage building has been erected at point 'C' on the plan attached to the notice. There is no need to correct the allegation. The Appellants have not discharged the onus of proof to show that this aspect of the allegation has not occurred as a matter of fact. In reaching this view I have no reason to doubt that the Council conducted a previous investigation into the building, but there has been no suggestion that it estopps the Council from subsequently taking the enforcement action it has.
30. Again, in respect of the garage, I have considered whether some of the claims made relate more to ground (c), that there has not been a breach of planning control. However noting that the definition of building operations, in section 55 of the Act, includes rebuilding, I am satisfied that to the extent there might be a hidden ground (c), if I had admitted that fresh ground it would have failed. The word erection includes alteration and re-erection rather than necessarily just construction from the ground up. My view in this matter is corroborated by the clear admission that the garage roof is higher than the one it replaced.

¹⁵ Photo 13 shows the pre-existing building and the caption is dated 2014. Plainly little if any works had been done to the pre-existing building at the date it was taken. In that context it would appear that paragraph 2.6 of the Appellants' statement is wrong insofar as it says that the works to the roof and the installation of the roller type door were undertaken: "...in December 2012 and into 2013...". It is conceivable that these dates relate to the first sentence in that paragraph, when works were done to remove the tree, which was December 2012. However the construction of the paragraph leads to ambiguity.

¹⁶ There is daylight coming through the top half of the inside of that wall, such is the extent of the lean.

¹⁷ Source of quote: grounds of appeal.

¹⁸ Appendix 3 to the Appellants' statement.

¹⁹ *Hibbitt and Another v SSCLG and Rushcliffe BC* [2016] EWHC 2853 (Admin) at Appendix 10 to the Council's statement.

It was open to the legally represented Appellants to argue that the garage was permitted development but no such claim has been made at any stage.

31. Since there is no reason to amend the notice in this respect the speculation around other grounds²⁰ simply does not arise. Amongst other things I have given a reason why the works appear to have been undertaken within the last 4-years and so, if a ground (d) had been lodged, it too would have failed.

Overall finding on the ground (b) appeals

32. For the reasons given above the Appellants have not discharged the burden of proof to show that the breaches of planning control alleged in the enforcement notice have not occurred as a matter of fact. Accordingly the ground (b) appeals fail on the basis on which they were made. For the reasons given, if ground (c) or (d) appeals had been admitted they too would have failed.

Both appeals: Ground (a), planning merits: *Main issues*

33. There are 5 main issues that fall to be determined in the ground (a) appeals. The first is whether this is a suitable site for new housing having regard to local and national policy and the principles of sustainable development. The second is the effect of the development on the character and appearance of the area. The third is whether the appeal site is within a Cornwall Wildlife Site and, if so, whether it has been demonstrated that the development, including the new dwelling house, would have no effect on protected species. The fourth is the susceptibility of the development to flood risk. The fifth is the effect of the development, including use of the vehicular accesses, on highway safety.

Planning policy

34. The Development Plan [DP] appears to have changed since the notice was issued and now includes the Cornwall Local Plan [LP], which was adopted in November 2016. Relevant LP Policies, as cited in paragraphs 4.13-4.20 of the Council's statement, include 3, 7, 12, 13, 23, 26 and 27. The Appellants have also referred to LP Policies 5 and 21, and so I am satisfied that the Appellants have had a full and fair opportunity to comment on this change. So whilst the grounds of appeal suggested that what was, at that stage, the emerging plan could not be given any weight, that position has plainly now been superseded. The statutory duty in section 38(6) determines the approach that I must adopt.
35. Paragraph 4.1 of the Council's statement says that policies CL8 and CL9 of the former Caradon Local Plan First Alteration [LPFA] remain as saved policies. When tested against paragraph 215 of the National Planning Policy Framework ['the Framework'], I find no reason to conclude that these saved policies are inconsistent with the policies in the Framework. In reaching this view I have taken account of the Appellants' submissions but these refer explicitly to policies for the location and/or supply of housing. LPFA Policies CL8 and CL9 cannot be so described and, accordingly, I attach them significant weight. My view in this matter is confirmed by the fact that the Appellants no longer contest the Council's claim to have a 5-year housing land supply.

Reasons: (i) Sustainability

36. Paragraph 55 of the Framework says new isolated homes in the countryside should be avoided unless there are special circumstances. This national policy

²⁰ As cited in points 1-4 on page 3 of 7 of the appeal form and at paragraph 4.22 of the Appellants' statement.

has been interpreted locally in LP Policy 7, which also requires special circumstances to be shown for the development of new homes in the open countryside, which is defined in paragraph 2.33 of the supporting text to be the area outside of the physical boundaries of existing settlements. There is no reason to doubt that this definition includes the vicinity of the appeal site and so whilst I have been referred to LP Policy 3, given the Council's unchallenged claim that the appeal site is over 1.5 km from the edge of Looe, I find it to be of limited relevance to the circumstances of this appeal. Looe is not a main town identified in LP Policy 3, this site cannot be considered to be a form of rounding off or infill and whilst previously-developed the site is not immediately adjoining Looe. The other typologies in LP Policy 3, i.e. sites identified in a Neighbourhood Plan and rural exception sites, do not apply to the appeal site.

37. As the Council observe, no evidence has been submitted to demonstrate that any of the tests set out in paragraph 55 of the Framework or LP Policy 7 have been satisfied. The grounds of appeal assert that the dwelling's design and construction do not cause material harm, and I shall deal with that below, but it follows that it is not being claimed that the dwelling is of exceptional design. In the circumstances I find no special circumstances to exist and, conversely, a clear and to all intent and purposes, given the absence of argument as to how it could comply with its terms, essentially an agreed conflict with LP Policy 7.
38. In reaching this view I have considered whether the dwelling might fall within the first category of acceptable new dwellings in LP Policy 7, namely replacement dwellings. However no appeal has been brought against the refusal of application No PA15/05457 which related, amongst other things, to the existing use of the dwelling. The Council says the application was refused on the grounds: "*It had not been used as residential accommodation in excess of four years at any time*"²¹. This was not disputed at final comments stage. In these circumstances, whilst I have noted the various claims that have been made as to the alleged use of the building²², since it has not been shown there was a second lawful dwelling on the land, this is not a replacement dwelling.
39. I have also considered the possibility that the dwelling might fall within the third category of acceptable new dwellings in LP Policy 7, namely conversion and reuse of an existing building. However no ground (b) appeal has been brought in respect of the allegation that the breach comprises the erection of a dwelling. So, whilst I have noted the terms of the Appellants' statement²³, which describes it as a renovation, I am satisfied that is not what has taken place as a matter of fact. Since this is not a conversion or reuse of an existing building the development does not fall within the third category in LP Policy 7.
40. Against a finding of conflict with a highly material and up-to-date LP Policy I turn to consider other material considerations. The Appellants assert that the walk from the dwelling to the facilities in the town centre takes less than 30 minutes. However the A387 is not conducive to pedestrians safely walking this route due to the absence of a lit footway and the relatively narrow nature of the road, at least for 2-way traffic. There is no pavement or footpath along this part of the valley. The Council's unchallenged claim is that the nearest

²¹ Source of quote: paragraph 3.2 of the Council's statement.

²² Including within the Flood Risk Assessment at Appendix 6 to the Appellants' statement.

²³ Appendix 3 to the Appellants' statement.

railway station is at Sandplace, 1.4 km to the north, and my site inspection confirmed that road conditions for pedestrians are no better in this direction.

41. The Appellants have provided an excerpt from the bus timetable for the No 73 bus. Taken at face value the route appears to go from Sandplace to Looe via Widegates and the Looe Bay Holiday Park [A387/B3253] in a loop that takes 20 minutes. The travel time seems at odds with the fact that the bus takes just 3 minutes to get from Duloe to Sandplace, which is not much less than the distance from Sandplace to Looe. However, as I found out when doing my site visit, the A387 was closed to the south of the appeal site²⁴ and this appears to be the explanation for what is otherwise an anomaly. I propose to deal with this appeal on the basis that the 'normal' bus route passes the appeal site, which appears to be consistent with the case put by both main parties.
42. The timetable confirms that there is an hourly bus service to Looe for periods of the day, from 0937 to 1337 hours and 1557 to 1857 hours²⁵. The first bus arrives in Looe at 0732 hours and the last bus back from Looe is at 1817 hours. The Appellants have not disputed the Council's claim that the nearest bus stop is at Sandplace Station. However at final comments stage it is claimed that the bus service does request stops, and pick-ups, including from outside the appeal site. Whilst the position is unclear I have no basis to dispute this assertion.
43. In these circumstances I am satisfied that the bus service is a more realistic alternative than walking and there appears to be scope to link into the trains that run along the valley, including via the station at Sandplace. However there appear to be only 10 buses going to Looe each weekday, with no bus service in the evening and no evidence of a bus service at weekends. So whilst it is said that there is a late evening train and services at the weekend, the absence of a bus service to provide a link to those trains and the limited prospect of walking to Sandplace Station suggests that is not a realistic option. On balance public transport appears to be an option for some residents for certain journeys, but the relatively limited bus service suggests that, generically, public transport is not practical or realistic for most journeys to and from the appeal site.
44. In these circumstances it is difficult to argue with the Council's assertion that, realistically, private vehicles will be the most convenient method of accessing facilities. Although the Appellants claim that Looe town centre is a 10-minute cycle journey this would necessarily be via the main road, the A387. There is no off-road cycleway or similar and so I find no realistic prospect that this mode would be used by children, by way of example, to gain access to school. So whilst cycling might be an option for some residents I consider the private car would be the vehicle of choice for the majority of trips to and from the site in order to gain access to employment, shops, schools, services and facilities.
45. The Appellants' unchallenged claim is that the dwelling has been erected on previously-developed land. The definition of the same in the Glossary to the Framework excludes private residential gardens, but only those in built-up areas and in the circumstances I have no basis to dispute the claim. LP Policy 21 encourages proposals that use previously-developed land, but with the caveat that they are *sustainably located*. Paragraph 2.129 of the supporting

²⁴ The timetable is given for Monday 13 February 2017 and I did my visit in March, but this appears to have been a long-term road closure and so I anticipate this was a modified timetable for the duration of the works.

²⁵ Times relate to Sandplace. Plainly the actual times on the 'normal' bus timetable might vary but there is no evidence that the frequency of services has diminished whilst the works are in progress.

text makes clear that the suitability of the site, in terms of accessibility and location, must be considered. Given the identified conflict with LP Policy 7 and my conclusion that residents are likely to be largely dependent on the private car, I consider that this is not a sustainable location for a new dwelling. For this reason I cannot agree that there is compliance with LP Policy 21.

46. On the first main issue I conclude that this is not a suitable site for new housing having regard to local and national policy and the principles of sustainable development. No material considerations are advanced that outweigh the conflict with LP Policy 7. In making this finding, given my earlier reasoning, including the Appellants' concession with regard to housing land supply, no purpose is served in further analysis of the appeal decisions cited²⁶.

(ii) Character and appearance

47. The Council has not alleged harm to the setting of designated heritage assets, but I note Terras Pill Bridge is a Grade II listed building as the list description was provided with the Council's questionnaire. Somewhat unusually the list description finishes by saying: "*Terras Pill Bridge is in a particularly picturesque setting*"; I agree. The tidal estuary, set within the steep sided and, at least at this point, largely undeveloped valley of the East Looe River, is understandably designated an Area of Great Landscape Value [AGLV].
48. The Appellants admit: "*The previous building was hidden from view from every vantage point...*"²⁷. This is illustrated in the Appellants' Photos 1 and 2 which, noting that it is unclear whether they were taken from a public vantage-point²⁸, show the building largely screened by vegetation. Presumably there were views from the railway line but even the historic photo²⁹ shows that the building had a more horizontal form that limited its visibility in the wider landscape. Whilst the original building appears to have had a first floor level³⁰ it is unclear from these images whether it was ever more than an attic, loft or roof space.
49. In contrast the dwelling that has been erected has a substantial 2-storey form that faces across the estuary, which results in an assertive and highly visible structure, particularly when seen from the minor road on the other side of the estuary. Amongst other things the gable appears to have been reoriented by 90°, which emphasises its vertical form. As one gets closer to the appeal site, along the minor road as it crosses the river, the dwelling appears as a stark feature between the retained conifers which, due to their height, form and the manner in which they have been trimmed, serve to emphasise the incongruity of the built form. Whilst I acknowledge the choice of materials and colour has reduced its impact to some extent they do not address the building's mass. My view in this matter is reinforced by the observations of Morval Parish Council, which says: "*This new build is considerably more prominent and overbearing than any previous construction and as such is detrimental to the AGLV...*"³¹.
50. For these reasons I reject the claim that the dwelling is a visual improvement on the building that it replaced, which sat comfortably in its sylvan setting.

²⁶ Appendices 5, 6 and 7 to the Council's statement.

²⁷ Source of quote: paragraph 4.11 of the Appellants' statement.

²⁸ Photo 1 at Appendix 3 to the Appellants' Flood Risk Assessment does however show that the former building was visible from the highway to a limited extent, amongst the trees that have now been cut down/trimmed.

²⁹ Specifically the photo of the red diesel train, which is in the bundle at Appendix 6 to the Appellants' statement.

³⁰ See Photos 23, 25 and 27 at Appendix 2 to the Appellants' statement.

³¹ Source of quote: submission to PINS received on 03/02/2017.

Any new planting would take years to mature and in the interim the building would be visible when viewed from the south across the estuary. The south-west face of the dwelling incorporates a significant element of glazing and so whilst it is conceivable that a condition could be imposed to require landscaping there must be some doubt whether this would be retained in the longer term because it would compromise the view that the occupiers of the property would wish to enjoy. Even if a Tree Preservation Order [TPO] were imposed on any such planting there might be grounds for works to those trees on the basis that the trees were causing harm, e.g. by loss of daylight, to living conditions. In short, I am unconvinced such a condition could address the identified harm.

51. The mass of the new dwelling is also conspicuous when seen from the A387, through the gap in the trees that is used as an access. Particularly when travelling south along that road, the built form is highly visible because of its relative proximity to the highway. The same is true of the new garage, which is seen from both directions on the main road. It stands very close to the metalled portion of the carriageway and whilst the conifers at the junction mask its southern elevation to some extent, the high roof stands above the original bungalow on the Land, again adding to the mass of the built form.
52. For these reasons the new buildings do not, at a minimum, maintain the character and distinctive landscape qualities of the AGLV, contrary to LP Policy 23. The development would also materially harm the character of the area, contrary to LPFA Policy CL9. I have noted the photographs of development in Pelynt, but I have no details of the circumstances in which that was permitted. In any event the policy test in LPFA Policy CL9 is that development will not be permitted if it does not closely reflect the *traditional* building styles and local materials *in the particular area* [my emphasis]. Pelynt appears to be at least 3 km to the west as the crow flies and there appears to be nothing comparable to what has been built along this part of the valley. It is not a traditional building style or reflective of the area's characteristic pattern of settlement. There is not however a conflict with LPFA Policy CL8, which merely defines the extent of the AGLV, without imposing a further policy test.
53. On the second main issue I conclude that the development harms the character and appearance of the area. No material considerations outweigh the identified conflict with LP Policy 23 and LPFA Policy CL9.

(iii) Effect on the Wildlife Site

54. The Appellants' submission³² seeks to cast doubt on whether the appeal site falls within a designated Cornwall Wildlife Site called *East Looe West Bank – Trenant Point to Tregarland Wood*. However the Council has provided a map³³, which shows the vast majority³⁴, including all relevant parts, of the appeal site to be covered by this designation. The Appellants gave no sound basis to doubt the accuracy and provenance of this evidence at final comments stage. Moreover the Council then provided what it says is a document available from Cornwall Wildlife Trust at final comments stage, which in my view clearly and unambiguously³⁵ shows that the appeal site is within the designated site.

³² Appendix 5 to the Appellants' statement.

³³ Appendix 12 to the Council's statement.

³⁴ With the possible exception of the access points onto the A387.

³⁵ The document has the Cornwall Wildlife Trust logo, is centred on the appeal site and I was able to zoom in to it in order to satisfy myself that the land on which the dwelling has been erected is within the designated area.

55. There is no reason to doubt that the Council asked the Conservation Manager of the Cornwall Wildlife Trust to make comments on the development as if a planning application had been submitted; this claim was not disputed by the Appellants at final comments stage. Her quoted response is unambiguous in confirming that: *"This site is within a County Wildlife Site..."*³⁶. Taking all the evidence submitted by both parties into account I am satisfied that the dwelling has been erected within the designated Cornwall Wildlife Site.
56. LP Policy 23 says that development likely to adversely affect such sites will only be permitted where the need and benefits clearly outweigh the loss and the coherence of the local ecological network is maintained. The issue in these appeals is that in the absence of an ecological survey having been undertaken it is not possible to ascertain the likely impact on protected species. The Conservation Manager of Cornwall Wildlife Trust has suggested that the original building could have supported nesting birds and/or roosting bats. It is unclear when the works of demolition were undertaken, but even if this was outside of the bird breeding season the condition of the building[s] might suggest that bats might have been present³⁷. Even if it was not a roost the very design of the new dwelling, including large areas of glazing that might give rise to a new source of light, which might have an adverse effect on such protected species.
57. The Council has drawn attention to paragraph 99 of Circular 06/2005³⁸, which says: *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"* [*my emphasis*]. This is reinforced by the Guidance, which says: *"An ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate"*³⁹. In view of the advice of the Conservation Manager there was and is a reasonable likelihood of protected species being present and affected by the development on the appeal site. No exceptional circumstances are advanced as to why the survey should be left to coverage under a condition and whilst I acknowledge the Appellants' claim that the footprint of the development has been reduced, that does not justify why no ecological survey has been provided. It should have been one of, if not the, first thing that was done prior to the development of the site.
58. On the third main issue I conclude that the appeal site is within the Cornwall Wildlife Site called *East Looe West Bank*. In the absence of an ecological survey it has not been demonstrated that the development has had no effect on protected species and given the reasonable likelihood of protected species being present I find a conflict with LP Policy 23. No case has been made that the need and benefits of the development clearly outweigh the harm. The deemed application is contrary to Circular 06/2005 and I am unable to find compliance with the policy in paragraph 118 of the Framework.

³⁶ Source of quote: paragraph 5.37 of the Council's statement.

³⁷ See, by way of example, Photos 23, 25 and 27 at Appendix 2 to the Appellants' statement.

³⁸ Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system.

³⁹ Source of quote: Paragraph: 016 Reference ID: 8-016-20140612.

(iv) Susceptibility to flooding

59. The Appellants have provided 2 Flood Risk Assessments [FRA]. The first FRA is described as “*elementary*” by the Appellants themselves⁴⁰. It appears to have been prepared by the Appellants and says the cottage⁴¹ is in flood zone 2 and the house is not in a flood zone. I anticipate that the more accurate position is as set out in paragraph 1.3 of the second FRA, which says the property, and by that I take it to mean the dwelling subject of the notice, is within flood zone 1. However this conclusion is said to arise from discussions with the client [Mr Davies] rather than, by way of example, discussions with the Environment Agency [EA]. Indeed elsewhere it is said: “*...the client has identified the property as being located in Flood Zone 1 on the EA Flood Map for Planning*”⁴².
60. The problem I have is that this position appears to be diametrically opposite to that stated by the Council in its statement. In particular the “*relevant location plan*”⁴³ appears to show that the original bungalow is not within flood zone 2, but that the area of the site on which the new dwelling has been erected is. This does not appear to have been picked up by the Appellants at final comments stage or at the very least no comments were made on it. The EA does not appear to have been consulted for its view as part of the Council’s consideration of enforcement action or during the lifetime of the appeal.
61. At final comments stage the Council provided what is said to be an extract from the EA’s “*Flood Map for Planning (Rivers & Sea) centred on Terras Bridge*”. It appears to show that at least part of the appeal site is within Flood Zone 3 albeit that the part of the appeal site on which the dwelling has been erected appears to be outside of that zone, within flood zone 2⁴⁴. However, at least on my reading of the Flood Map, the original bungalow appears to be in Flood Zone 3, whereas the Council’s internal mapping system appears to show that property outside of flood zones 2 and 3. The Flood Map does say: “*...this map is intended only as a guide – it is not accurate at individual property level*”. However, noting that the topographical survey⁴⁵ appears to show spot heights lower in the vicinity of the original bungalow, to the extent that there might be a tension between the respective maps that have been provided by the Council, the EA’s Flood Map is to be preferred in my view.
62. For these reasons, out of all the evidence submitted by both main parties, I attach greater weight to the extract from the EA’s Flood Map, which appears to show that the area on which the dwelling has been erected is in flood zone 2. In those circumstances, for reasons explained by the Council⁴⁶, it is necessary to apply the sequential test. The position I intend to take in this matter is reinforced by reference to another section of the Guidance, which says: “*Nor should it normally be necessary to apply the Sequential Test to development proposals in Flood Zone 1 (land with a low probability of flooding from rivers or the sea), unless the Strategic Flood Risk Assessment for the area, or other*

⁴⁰ Source of quote: paragraph 4.9 of the Appellants’ statement.

⁴¹ I take this to be a reference to the original bungalow within the appeal site.

⁴² Source of quote: paragraph 7.7 of the second FRA.

⁴³ Source of quote: description of Appendix 4 on page 26 of the Council’s statement. I originally anticipated that the Council’s location plan had been derived from the interactive map referred to in the SFRA, including Appendix G thereof. However a further copy, which appears to be identical in substance, was submitted at final comments stage by the Council in which the source is said to be the Council’s own intranet mapping system.

⁴⁴ The document has the EA’s logo, is centred on the appeal site and I was able to zoom in to it effectively.

⁴⁵ Appendix 2 to the Appellant’s second FRA.

⁴⁶ Paragraph 5.27 of the Council’s statement, which reflects my reading of the Guidance.

*more recent information, indicates there may be flooding issues now or in the future (for example, through the impact of climate change)*⁴⁷. On this basis even if the Appellants are right and that part of the appeal site on which the new dwelling has been erected is in flood zone 1, the SFRA suggests there might be a flooding issue and ultimately the Appellants' second FRA finds that there might be a flooding issue in the future as a result of climate change. As such there is a sound basis to apply the sequential test to this development.

63. The Appellants' second FRA says that should it be found that the dwelling is located in flood zone 2, that dwellings classified as more vulnerable are still considered an appropriate use of land. However the reference [the footnote 7] is to the Technical Guidance, but this has been withdrawn and replaced by the Guidance. Given that the second FRA has been undertaken by a suitably qualified expert company I find this incorrect reference to be surprising.
64. Paragraph 101 of the Framework says development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. It continues the SFRA will provide the basis for applying this test. The Guidance says it is for the LPA to undertake the sequential test, which it has done, concluding that there are other single plots available. The Appellants' role is to justify with evidence what area of search has been used when considering alternative sites for the development. However in this case the Appellants have not undertaken this exercise. No reasons are offered why what is ultimately an open market dwelling needs to be on the appeal site rather than a site that is at less risk of flooding. In these circumstances I conclude that the dwelling does not meet the sequential test.
65. Against that conclusion I have reviewed the findings of the Appellants' second FRA, but this tends to only confirm my view that this is not an acceptable location for a new dwelling. Table 3 thereof indicates that, allowing for climate change, the estimated flood level for a 1 in 200-year storm is 4.97 m AOD, which is 0.62 m above the finished floor level [FFL] of the dwelling. I note that a factor in this estimation is a wave/surge impact of up to 0.5 m. When I look at the Appellants' photographs I see a conventional timber framed construction with insulation⁴⁸. In that context I am concerned that a wave/surge of 0.5 m could represent a threat to the structural stability of this timber framed house and could potentially result in the structure's catastrophic failure. So whilst the Appellants' second FRA says that temporary refuge could be sought on the first floor of the property, I am unconvinced. No consideration appears to have been given to the prospect of catastrophic failure due to wave/surge action.
66. On the fourth main issue I conclude that the development is susceptible to flood risk, taking account of climate change. The Appellants have not shown that the site is in flood zone 1 and I have given reasons why I have applied the sequential test, which the Council says is not met and I agree. As such I find a conflict with LP Policy 26, which requires development to be sited in a manner that does not create avoidable future liability for maintenance for public bodies and communities, as well as the policy in section 10 of the Framework.

⁴⁷ Source of quote: paragraph 033 Reference ID: 7-033-20140306.

⁴⁸ See, for example, Photos 24 and 26, at Appendix 2 to the Appellants' statement.

(v) Highway safety

67. By reference to section 10 of Manual for Streets 2, the Council says that the y-distance visibility at both access points should be 110 m. It also refers to an x-distance of 2 m, although paragraph 10.5.8 of Manual for Streets 2 says this is a minimum that should be considered in slow speed situations, which this stretch of the A387 is arguably not. However I shall proceed on the basis that each access needs a visibility splay of 2 m x 110 m. The Appellants have not provided any basis to dispute this assessment and have not provided a survey of either access point in order to demonstrate what visibility can be achieved. Based on my site inspection and all the evidence before me I am concerned that both access points have visibility that is significantly below that required.
68. Given the forward siting of the garage and the solid form of each side wall I fail to see how conditions could be imposed in order to achieve the required level of visibility. So whilst I acknowledge that the Appellants control this frontage there appears to be no prospect of a conditional planning permission being granted for the garage. My view in this matter is confirmed by the fact that the entrance directly adjoins one arm of the existing junction from the minor road, which has the potential to result in conflicting movements. So, for example, the driver of a vehicle entering the main carriageway to go north might only look south, along the A387, unaware a vehicle might be emerging from the garage. Thus, in a very real sense, the reduction in the required visibility has the potential to give rise to danger to highway users at this point.
69. There appears to be greater scope to improve the second access at point 'B' in order to achieve the required level of visibility. Plainly the physical constraints of the garage walls do not apply but there are a number of trees, together with other vegetation, along this part of the frontage which, at present, extend almost to the edge of the metalled portion of the carriageway. It is likely that some or all of these would have to be removed in order to provide the required splay. It is possible that some of the earth bank might need to be removed and unclear whether some of the means of enclosure might also have to go.
70. Nevertheless, on the limited information before me, given the Highway Officer's position that it is unclear whether adequate visibility can be achieved on a road where it is said that high speeds have been observed, I decline to go down the route of granting a conditional planning permission for the access at point 'B'. The Appellants have simply not addressed the merits of the accesses and have not confirmed that the necessary condition, which might open up the whole site to very extensive views and have potential implications for site security, would be acceptable. However in doing so I make clear it would not be appropriate for the Council to seek to resist registration of a planning application that was subsequently made for this access merely because of this appeal decision⁴⁹. Given that there is another dwelling on part of the appeal site and that I am not in a position to make a full and fair appraisal of the merits of this access, if such an application is put forward it would be wise to consider it on its merits.
71. On the fifth main issue I conclude that the development detracts from highway safety because of the substandard visibility at both points of access. For the reasons I have given I am not satisfied that conditions could address this issue. In the circumstances I find a conflict with LP Policy 27, which requires that all

⁴⁹ See section 70C of the Act, which uses the word "may", which means the judgement involves discretion.

development provide safe and suitable access to the site for all people and not cause a significantly adverse impact on the road network.

Both appeals: Ground (a): Other matters

72. The Appellants say it would be open to me to impose a condition restricting use of the dwelling to holiday accommodation. The first point is that is not the breach that appears to have taken place. Second, by reference to LP Policy 7, that is not a category of new dwelling that is acceptable. However LP Policy 5 supports the provision of new, high quality sustainable tourism accommodation where it would be of an appropriate scale to its location and accessible by a range of transport modes. There is no reason to find that scale, in this context, should be restricted to the scale of use and for the reasons given in the second main issue the scale of the dwelling is not appropriate to its location.
73. For the reasons given in my consideration of the first main issue, the dwelling would not be accessible by a range of transport modes. Journeys would be predominantly by car with limited scope for bus usage, particularly given the absence of an identified local bus stop on the bus timetable, which might deter tourists from even considering such a mode of travel. The position that I take in this matter is consistent with the appeal [Ref APP/D0840/W/16/3163273] to which the Council has made reference at final comments stage.
74. Policy 5 also requires development to provide a well balanced mix of economic, social and environmental benefits. However, whilst there is reference to leisure activities, including canoeing, kayaking and a boathouse, there is no business plan and it is unclear what effect such use might have on the "*many rare and protected species*"⁵⁰ that the Appellants acknowledge exist in the area. My view that it would not be appropriate to grant planning permission subject to such a condition is reinforced by my conclusions on the third, fourth and fifth main issues.
75. The Council has quoted from a Written Statement to Parliament that was made by the Rt Hon Sir Eric Pickles in March 2015. However, as the Appellants rightly observe, that part of the statement that has been identified by the Council is exclusively concerned with unauthorised encampments. It is not therefore material to the circumstances of the deemed planning application.
76. No personal circumstances or human rights considerations are advanced, but I have nevertheless taken considered the possible effect of dismissal of the deemed planning applications on the Appellants' home and family life. However, within the red line area on the plan attached to the notice [as proposed to be corrected] is the original bungalow, which appears to be a lawful dwelling that was occupied at the time of my site inspection. Paragraph 4.15 of the Appellants' statement describes it as a cottage that has been used for holiday lets, but there is no evidence to suggest that it has a condition that precludes it from being used as a permanent dwelling. So the complete and logical explanation as to why such considerations are not advanced appears to be that the Appellants have an alternative lawful dwelling that is available to them. As such, in the absence of detailed evidence, I attach the personal circumstances of the Appellants limited weight in the overall planning balance.

⁵⁰ Source of quote: paragraph 4.16 of the Appellants' statement.

Both appeals: Ground (a): Overall conclusion

77. I have taken account of all other matters raised in the Appellants' submissions, but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP. For the above reasons, and having regard to all other matters raised, I conclude that the ground (a), the deemed planning applications, should fail.

Both appeals: Conclusion

78. For the reasons given, and having regard to all other matters raised, I conclude that the appeals should be dismissed and I shall uphold the corrected enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew

INSPECTOR

Plan A

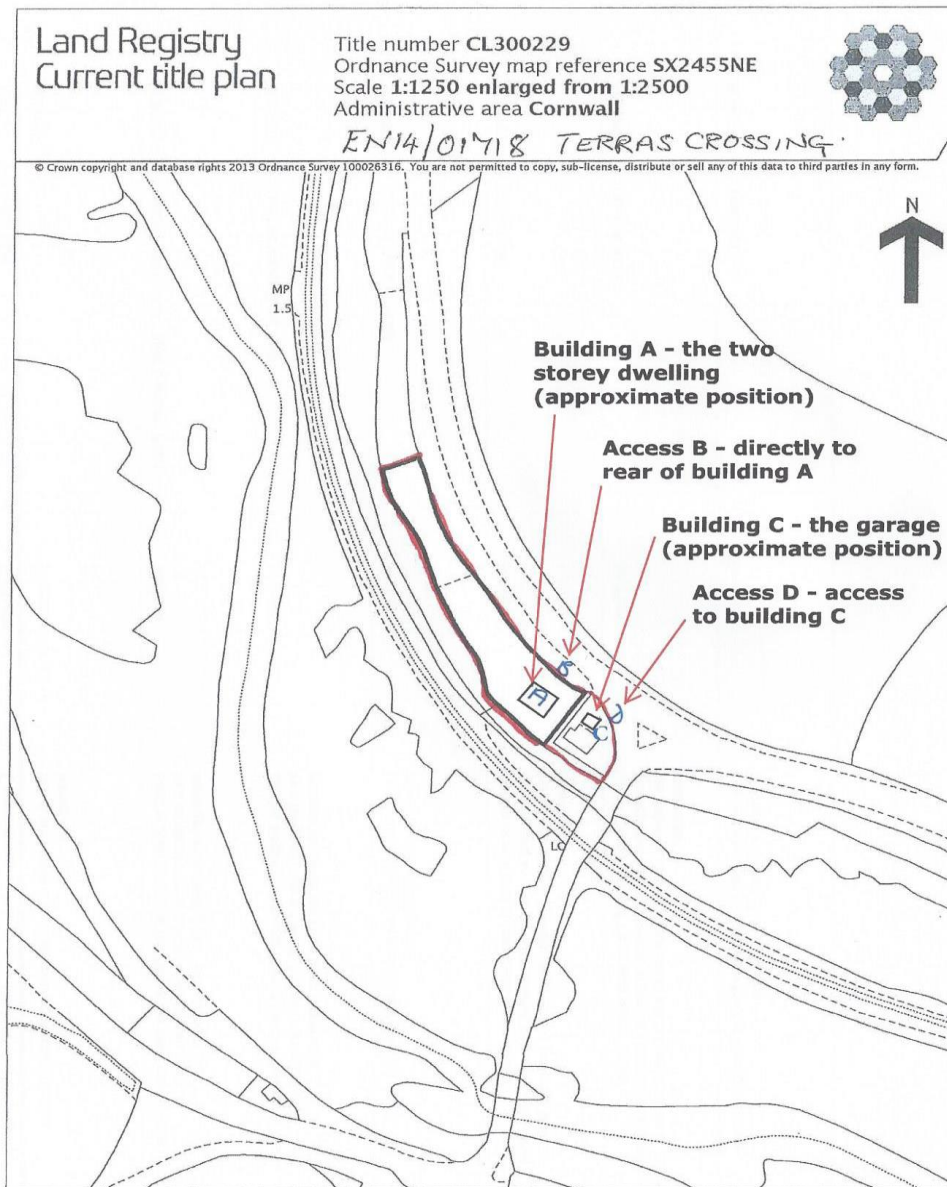
This is the plan referred to in my decision dated: 17 May 2017

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Terras Crossing, Sandplace, Looe, Cornwall PL13 1PH

Appeals A & B Ref: APP/D0840/C/16/3157870 & 3157871

Scale: Do not scale as original plan has been scanned which might cause variations.



This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 01 August 2016 at 12:29:04. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.