



Appeal Decisions

Site visit made on 13 March 2018

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2018

Appeal A: APP/D0840/C/17/3179626

Appeal B: APP/D0840/C/17/3179627

Chy-an-Mor, Porthallow, St Keverne, Helston, TR12 6PW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Richard Carey and Appeal B is made by Susan Carey against an enforcement notice issued by Cornwall Council.
 - The enforcement notice was issued on 7 June 2017.
 - The breach of planning control as alleged in the notice is the erection of a timber staircase to, and the erection of a glass balustrade on, the roof of the building in the approximate position outlined in blue on the plan attached to the notice.
 - The requirements of the notice are:
 - 1 Remove the glass balustrade shown in the approximate position marked with black hatched lines on the plan, from the roof of the building outlined in blue on the plan;
 - 2 Remove the timber staircase shown in the approximate position marked by a green cross on the plan from the building shown outlined in blue on the plan
 - 3 Remove all the materials and debris from the land resulting from compliance with 1 and 2 above.
 - The period for compliance with the requirements is 6 weeks.
 - The appeals proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. 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 1990 Act as amended.

The appeal site

2. Chy-an-Mor is a two storey cottage situated side on to School Hill. Within the garden are an outbuilding and a flat-roofed single storey garage, which is the subject of the notice. A glass and steel balustrade has been constructed around the edges of the roof of the garage with access via an external wooden staircase. There are a number of planting boxes on the roof.

The appeals on ground (c)

3. The appellant contends that the glass and steel balustrade is permitted development under Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as it is provision within the curtilage of an enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such.

4. Development is not permitted by Class E if the development comes within the scope of the limitations set out in E.1(a) to (j).
5. E.1(c) does not permit any part of the building, enclosure, pool or container that would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The appellant contends that the original dwellinghouse was differently constructed and laid out, with the front door and principal elevation being the western elevation on School Hill, rather than on the southern elevation facing onto the garage and garden. In support a statutory declaration by the appellant, Susan Carey, indicates that there was a shop at street level at the western end of the property and that she lived in the house behind it. The shop closed in the 1960s and major works were done to the house with the shop becoming a bedroom and the coal cellar turned into a kitchen. She also states that as a child she used to play on the roof of the garage and the roof has been used for sunbathing for three generations. A neighbour, Mrs Tripp, confirms that the main entrance to the cottage was through the shop, which was a shoemakers shop.
6. E.1(c) refers to the original dwellinghouse, not to the original building. In this case the building on 1 July 1948 appears to have been in a mixed commercial and residential use with these uses being inter-connected internally and I make a distinction between that and a dwellinghouse for the purposes of the GPDO. Consequently, I regard the original dwellinghouse as being the dwelling that resulted from the major works to the property when the shop use ceased in the 1960s and the shop space became occupied as part of the dwelling. Whereas the east elevation contained a shop window and entrance door to the shop and fronted the highway and may have been regarded as the principal elevation of the building at one time, when the major works were carried out, or subsequently to that, the south elevation became the principal elevation as this is the front of the house, it contains the main architectural features of the building and faces the garden of the property.
7. Although the 2017 Technical Guidance¹ provides advice under General Issues on the term 'principal elevation', it points out that this refers to 'in most cases'. The appeal property falls outside the general approach to the identification of the principal elevation and in this case reference to the postcode does not assist.
8. As the development is situated on land forward of a wall forming the principal elevation of the original dwellinghouse, it does not represent permitted development.
9. Class E provides for the maintenance, improvement or other alteration of a building or enclosure but E.1.(d) does not permit development that would have more than one storey. In this case the construction of the

¹ Permitted Development Rights for Householders Technical Guidance DCLG April 2017

staircase and the glass balustrade facilitates the use of the roof of the garage thereby creating a second storey.

10. The Technical Guidance at page 30 states that verandahs, balconies and raised platforms are not permitted development and will require planning permission. It goes on to say that a raised platform is any platform with a height greater than 0.3 metres and will include roof terraces. This is exactly the function that the garage roof performs and the fact that the glass balustrade runs around the edge of the garage roof creating an enclosure does not alter this position.
11. I conclude that as the development does not meet the limitations of Class E, it does not have planning permission and therefore the appeal on this ground fails.

The appeals on ground (a)

12. The main issues in the ground (a) appeal are the effects of the development on the character and appearance of the area and on living conditions.
13. The appeal site is close to the centre of a small coastal village comprising buildings of traditional character and materials. The host building is a modest single storey flat roofed structure of no particular architectural distinction and set slightly back from the carriageway of School Hill, along which buildings progress up the hill. It is adjacent to a traditional cottage known as Beech House which has a roof light on the roof slope at a lower level than the garage roof and opposite a cottage with windows facing School Hill.
14. The installation of the glass balustrade, the staircase and the planting on the roof of the garage draws attention to the building resulting in a prominent addition visible from School Hill, from nearby properties and from the road in the vicinity of the beach access. It is not inconspicuous but visually prominent and contrary to the prevailing character and appearance of the village. I acknowledge that there are other locations where similar materials have been used but these tend to be used for balconies where they are viewed against a building frontage and not as a free-standing structure.
15. I note that the roof has been used by the occupiers of the appeal property for many years and that the appellant states that this use would continue even if the balustrade and steps are removed. It is contended that as a lawful use of the building its continued use should be secured in a safe manner but in any event the balustrade could be replaced with planting and the staircase replaced with a step ladder. Whilst it may be the case that its use would continue, any future use of the roof would be a matter for the appellant to manage. It would not be in the wider public interest for the prominent structure to remain to satisfy the private recreational interests of the appellants.
16. As the Council point out, in order to mitigate the effects of overlooking and loss of privacy through the continued use of the roof, the erection of screens would be required and these would increase the prominence of the development.
17. I conclude that the development is harmful to the character and appearance of the area and leads to the loss of privacy of neighbours. It is contrary to Policies 12 and 13 of the Cornwall Local Plan Strategic Policies 2010 – 2030 which relate to design and development standards.

18. I have had regard to all other relevant matters, including the comments of the Parish Council and neighbour, but the appeal on this ground fails.

The appeals on ground (f)

19. An appeal on this ground is that the requirements of the notice are excessive.

20. The appellants consider that it would be excessive to require the removal of the staircase as only the top can be seen outside the site and that it could be reduced in height to be level with the top of the adjacent wall.

21. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.

22. The appeals on this ground fail.

P N Jarratt

Inspector