



Appeal Decision

Site visit made on 11 August 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2020

Appeal Ref: APP/D0840/C/19/3240961

Land South West of Crackington Manor, Crackington Haven, Bude Cornwall

- 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 Act).
 - The appeal is made by Mr Andrew Orchard against an enforcement notice issued by Cornwall Council.
 - The enforcement notice was issued on 11 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised development of a raised wooden platform, patio/paved area and brick flower borders. The approximate position of the raised wooden platform is marked by a red 'X' on the attached plan and the patio/paved area between points 'A' and 'B' on the attached plan.
 - The requirements of the notice are:
 - 1) Demolish the raised wooden platform and fence surround to the roof level of the building below (approximate location shown by red X);
 - 2) Demolish and remove the patio/paved area and brick flower borders between points 'A' and 'B' marked on the attached plan and reinstate the land to its former condition before the breach occurred i.e. soiled and grass seeded;
 - 3) Remove all materials arising from compliance with (1), (2) above from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed insofar as it relates to land edged red but only those parts as indicated between points 'A' and 'B' shown on the plan and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the patio/paved area and brick flower borders between points 'A' and 'B' on the attached plan.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the land edged red on the plan but only that in the approximate position marked by a red 'X' on the attached plan and planning permission is refused in respect of a raised wooden platform on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The notice requires the removal of a "fence surround" in relation to the wooden deck. Although no fence is referred to in the allegation, I consider that it is clear that the "fence surround" is a part of the deck and is separate from the

fence that is around the wider field which is not part of the alleged unauthorised development.

The Appeal on ground (c)

4. On ground (c), the onus of proof is on the appellant to demonstrate that the development as alleged does not constitute a breach of planning control.
5. There are 2 distinct elements to what is alleged, the raised wooden platform at a high level above the building on site and the patio/paved area along with brick flower borders which are at a lower level leading from the enclosed field down to the building's entrance. It is necessary to consider whether what has been undertaken involved the carrying out of "development" without the required planning permission. The meaning of development is set out in S55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land.
6. Reference has been made, in some letters submitted in support of the appellant's case, to the presence of a building on the site which may have been an ammunition store and which may have had a lookout platform above it. The Council does not dispute that there has been a building on site for a substantial period of time although as they point out, the appellant's evidence and third party comments are not precise in detailing what that has consisted of. There is also no dispute that the storms and, in particular, debris laden floodwater in 2004 caused substantial damage at the site.
7. The wooden platform is a substantial structure which is supported by timber posts which elevate it significantly above the ground level along the eastern side. I could see that along the western side part of the structure is immediately above the roof of the building. There is a post and rail fence around the perimeter of the platform and a timber decked top-surface although at the time of my site visit this was also covered with a carpet of artificial grass. I am not provided with any detailed evidence of any old timbers that remain from any previous observation platform. In the absence of detailed evidence about any pre-existing structure, on the balance of probabilities I consider that this seems to be a largely new construction rather than merely a repair of what may have existed before. Due to the size, permanence and physical attachment to the ground of the wooden platform, its construction has amounted to an operation of development as defined by S55(1).
8. The patio/paved area along with brick flower borders are between the front of the building and the river that bounds the western side of the site. The site was, at the time of my visit, raised above the surface level of the river. The paving has been laid including stone or concrete slabs as well as brick detailing. Along the inside border of the paving are raised flower borders which also appear to partially retain earth and stone in the banks. The appellant does not suggest that these elements were carried out at separate times.
9. I am given little detailed information about the form of the path or patio area prior to the damage that occurred due to the flooding in 2004. The statements submitted in support of the appellants case do confirm that there was previously a concrete path but no mention is made of paving slabs or the flower borders. Some works appear to have been necessary to repair the wall following the floods but the works appear to have gone further in the provision of the patio. It is not explained in any detailed way, what degree of

groundworks were undertaken or what the area looked like prior to the flood. I therefore consider on the that the laying of slabs, bricks and other constituent parts of the patio/paved area, as a matter of fact and degree, have involved substantial engineering, building or other operations rather than being minor repairs. This again has amounted to an operation of development as defined by S55(1).

10. These works of operational development require planning permission and there is no suggestion that is deemed by any current development order. The appeal on ground (c) therefore fails.

The Appeal on ground (a) and the deemed planning application

Main issue

11. The main issue is the effect of the developments on the character and appearance of the area. The site is within the Cornwall and Tamar Valley Area of Outstanding Natural Beauty (AONB). I am required by the National Planning Policy Framework (the Framework) to give great weight to conserving and enhancing the landscape and natural beauty of the AONB.
12. The appeal site is within an attractive coastal area. The settlement is nestled within the coastal topography and there is a mix of traditional and modern building styles. The grain of development is far denser in the lower parts of built up area. As one ascends the roads and footpaths on either side of the valley, the positions of buildings are more sporadic and separated by landscape features such as robust living hedges and trees as well as traditional stone hedge-banks. These features therefore help to reduce the impacts of paraphernalia related to the buildings nearby and also contribute to the rugged and exposed coastal environment.

The raised wooden platform

13. The appeal site is close to the sea and at the time of my site visit, there was a sea-mist engulfing the coastal margins. Notwithstanding these conditions, I could see the structure from various positions including the public footpath to the south and from the South West coastal footpath to the west near to another partly sub-terranean building (with sign for 'Crackington Surf Life Saving Club'). It is not clear from submitted evidence whether the covering of bright-green artificial grass existed when the notice was issued. Its stark unnatural appearance draws attention to the surface of the platform. However, even if that were removed to expose the duller timber below, the structure is and would be visible albeit from limited positions within the surrounding area. The structure at an elevated level relative to other structures nearby, such as the public toilets on the down-hill side of the site, sits high in the landscape. It appears as an obvious artificial feature in contrast to its surroundings.
14. The notice does not allege any unauthorised use of the appeal site. The platform clearly has the purpose of enabling people to use it as an area to sit or stand even if that is as an observation platform. People using the platform would be significantly raised above the level of the ground and therefore will be more noticeable from outside of the site than if they were on the natural ground or the roof of the building. People on the platform would be clearly visible from the nearby footpaths and would also draw more attention to the presence of the structure.

15. The structure does not obviously relate to any building that can be seen from outside of the site. As such it appears as an alien feature within the landscape which does not conserve the landscape of the AONB and is not therefore appropriately located.
16. In relation the main issue, the raised wooden platform has a harmful impact upon the character and appearance of the surrounding area. This therefore does not comply with The Cornwall Local Plan¹ (CLP) Policy 23, saved the North Cornwall Local Plan 1999 (NCLP) ENV1 or the Framework.
17. I have not been given sufficient detail of the condition of the site prior to the construction of the platform, before or since the 2004 floods. The presence of a previous viewing platform has very limited weight in my decision and does not outweigh my conclusion on the main issue.
18. With respect to the appeal on ground (f), the appellant has suggested that the lesser step of retaining the part of the platform that is over the roof of the building would be a suitable alternative requirement. I have considered this under this appeal on ground (a) as this relates to planning merits and potentially to the imposition of a planning condition to alter the development, rather than a lesser step on the notice. Although such measures would reduce the impact of structure, the development would still be visible as would people using it. My concerns would not be addressed by reducing the size of the platform.

The patio/paved area

19. The paving along with the flower borders are set down low within the site in front of the main entrance to the building. They form a broad access to the building. This area does not appear to have encroached beyond the previous site boundaries towards the river channel. The land on the opposite side of the river is bounded by a robust living hedge which is typical for the area.
20. Given the low position of the development relative to the majority of the site and these surrounding landscape features, the development has a very limited visual impact being mainly visible from within the site. The river in this stretch does not appear to be navigable but even if people can travel past the site that would be at a much lower level and the surface of the development which would not be obvious from there. The development is well related to the building and is required to access it. In my view this causes no material harm to the landscape qualities of the area. This conserves and enhances the landscape character of the AONB and the local need is to access the building.
21. In relation the main issue, the patio/paved area has does not have a harmful impact upon the character and appearance of the surrounding area. This therefore complies with CLP Policy 23, saved the North Cornwall Local Plan 1999 (NCLP) ENV1 or the Framework.

Conclusion on ground (a)

22. For the reasons given above and having regard to other matters raised, the appeal on ground (a) and the application for deemed planning permission fail in relation to the raised wooden platform but succeed in relation to the

¹ Cornwall Local Plan, Strategic Policies 2010 – 2030, adopted November 2016

patio/paved area. I only need to consider the appeals on other grounds with respect to the wooden platform.

The Appeal on ground (f)

23. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The notice requires the removal of the entire raised wooden platform. The clear purpose of the notice is therefore to remedy the breach of planning control and not the alternative purpose in s173(4)(b), to remedy injury to amenity.
24. In order to remedy the breach of planning control, the entire development needs to be removed and no lesser step could achieve that. However the planning system is not punitive and given that I have an appeal on ground (a), I can assess the planning merits of the suggested alternative which I have done above under ground (a). Retaining part of the development would have a harmful impact in the manner I have explained.
25. As such therefore the appeal on ground (f) fails.

The Appeal on ground (g)

26. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
27. The part allowing of the appeal under ground (a) will reduce what needs to be done to comply with the notice. The appellant's appeal on this ground was mainly related to the patio which can now remain in place. It is not clear why more than 3 months would be required in order to achieve the remaining requirement of the notice.
28. The appeal on ground (g) therefore fails.

Conclusion

29. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

A Harwood

INSPECTOR