



Appeal Decision

Site visit made on 10 March 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Appeal Ref: APP/D0840/W/20/3262615

Trannack Byre, Trannack Farm, Helston TR13 0DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Jewell against Cornwall Council.
 - The application Ref PA20/03168, is dated 9 April 2020.
 - The development proposed is replacement outbuildings; Garage / Workshop, home office, play-room / study & occasional guest accommodation at Trannack Byre, Trannack Farm.
-

Decision

1. The appeal is allowed and planning permission is granted for replacement outbuildings; Garage / Workshop, home office, play-room / study at Trannack Byre, Trannack Farm, Helston TR13 0DD in accordance with the terms of the application Ref PA20/03168, dated 9 April 2020, subject to these conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PA-01 REV 1, PA-02 REV 1, PA-04 REV 1, PA-06 REV 1, PA-08 REV 1, PA-10 REV 1, PA-12 REV 1, PA-14 REV 1, PA-16 Rev 1, PA-18 REV 1, PA-20 REV 1.

Application for Costs

2. An application for costs was made by Mr and Mrs Jewell against Cornwall Council. This application is the subject of a separate Decision.

Background and Procedural Matters

3. Trannack Byre was created by the subdivision of the farmhouse at Trannack Farm into two houses following permission granted (Ref W2/PA99/000322/F) in 1999. The appeal site includes the dwelling and associated land, within which are sited a pair of utilitarian and modestly sized semidetached buildings on a north to south axis (the Subject Buildings). A large agricultural building, also within the control of the appellants, is directly to the north.
4. At my visit I observed that the larger of the Subject Buildings, which is the one to the north, has now been demolished. However, in the interests of certainty, I made my assessment based strictly on the existing and proposed plans.
5. The proposal was submitted to the Council in the form of a householder application. The definition of such, within Article 2(1) of the Town and Country

Planning (Development Management Procedure) (England) Order 2015 (DMPO) includes an application for development within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse.

6. The proposal as first submitted to the Council included guest accommodation, as reflected by the ground floor plan and the description of development. The appellant suggests this element would be 'de-minimis'. However, if planning permission were given for those plans, the buildings could be used for the purposes for which are shown and for which it is designed¹. In my opinion the provision of habitable accommodation, even if only occasionally utilised and/or restricted by a legal agreement, would be integral to the primary residential use of Trannack Byre and not incidental to it. Its presence within the scheme therefore led it to fall beyond the definition of a householder application.
7. The Council nonetheless validated the planning application and the proposal was subsequently put out for public consultation. Following concerns raised by Stithney Parish Council about the scale of the proposal, and correspondence between the main parties, the scheme was revised by drawings sent to the Council on 3 July 2020 (the Revised Scheme).
8. The Revised Scheme removed the guest accommodation and it is for this reason that it is the version of the proposal that I have considered in relation to this appeal. Given that the Revised Scheme also reduced the scale of the proposed buildings, I have done so without prejudice to any party.
9. This did, however, necessitate that the main parties agree a revised description of development during the appeal which omits reference to the guest accommodation. This is reflected in my decision above.
10. Notwithstanding the submission of the Revised Scheme, the Council adopted the position that the location of the Subject Buildings falls outside of the curtilage of Trannack Byre, and that the scheme is therefore beyond the definition of a householder application. The planning application was subsequently non-validated, pursuant to Articles 11(5) and 12 of the DMPO, and the appeal has resulted as a consequence of this action.
11. A further assessment by the Council of the scheme's planning merits has taken place at the appeal stage. I have identified the main issues in this appeal having considered these circumstances and the Council's appeal statement, which sets out its main concerns should it be determined that the planning application was in fact valid as the Subject Buildings are within the curtilage of the dwellinghouse Trannack Byre.

Main Issues

12. The main issues therefore are:

- whether or not the proposed development falls within the curtilage of Trannack Byre meaning that the appeal has been validly made; and if I find that it does:
- the effect of the proposal on the character and appearance of the area.

¹ S75(2) and (3) of the Act

Reasons

Curtilage

13. The Council have suggested that a Lawful Development Certificate (LDC) under S191(1) of the Act should be submitted to resolve if the Subject Buildings fall within the residential curtilage of Trannack Byre. As the Council also point out in its submissions, the term 'curtilage' does not relate to a use of land, being derived from conveyancing law.
14. It is possible in such circumstances to frame the description of an LDC in such a way that the decision relies upon the determining factor of whether the land or buildings are or would be within the curtilage of a building. However, I am not determining an LDC in this case or therefore reaching a formal view of the lawfulness or otherwise of the appeal site. Whatever decision I reach, it does not affect the appellants' ability to apply for an LDC. I will, however, reach a view, based upon the evidence presented in this specific case including what I could see for myself on site.
15. Section 55(2)(d) of the Act provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, is not development. Consequently, if the Subject Buildings appear to me to fall within the curtilage of Trannack Byre, then I would also be of the view, only insofar as it is material to my decision, that their use incidental to Trannack Byre would be lawful.
16. In determining whether or not land and buildings form part of the curtilage of a dwellinghouse, case law has established that it is primarily a matter of fact and degree for the decision maker to decide what weight should be given to each of the relevant factors. These factors are (i) the physical layout of the building and land; (ii) ownership past and present; and (iii) use or function past and present.
17. The Subject Buildings share an intimate physical relationship with the dwelling at Trannack Byre. They are set close to it within wholly private land and share with it an enclosed yard, which is used for the domestic parking of vehicles, and across which one gains principal access to the dwelling. This space is otherwise physically divorced from the agricultural building to the north by its solid blockwork south elevation. The Subject Buildings therefore appear as part and parcel of the Trannack Byre site.
18. Whilst the Subject Buildings have only recently, as of April last year, been under the same ownership as Trannack Byre itself, the transfer of land took place within the appellant's family, and between the respective parties residing at the two dwellings comprising the former farmhouse. These circumstances mean that, in practical terms, the previous ownership of the Subject Buildings did not necessarily preclude their use in association with Trannack Byre.
19. The red line of the site plan which accompanies the permission to subdivide the farmhouse also places the smaller Subject Building (labelled as an outbuilding) and its immediate area of yard within the Trannack Byre site. However, the larger Subject Building and the north section of the yard fall beyond the red line of the defined Trannack Byre site. This part of the appeal site has never

subsequently been included inside any red line in relation to the intervening planning applications at Trannack Byre².

20. I do not consider that I can attribute significant weight to red lines on previous submissions because I have limited other evidence about the reasons for the way the lines were drawn. However, it is pertinent that the red line of the 1999 site plan focuses only on Trannack Byre, omitting the other dwelling and its grounds created because of the subdivision. The position and description of the north building as an 'outbuilding', as indicated on that site plan, logically suggests that it was used, prior to 2000, in relation to the original farmhouse at the site even though it was not within a red line.
21. Such a conclusion is further endorsed by the content of the statutory declaration which accompanies the appeal, which identifies that the Subject Buildings were in use for incidental residential purposes since at least 1987. It also states that, since the creation of Trannack Byre, the Subject Buildings have been used solely and incidentally in relation to Trannack Byre without interruption.
22. Consequently, the Subject Buildings have had and continue to have an intimate physical relationship to Trannack Byre. Ownership has changed but it is rational to conclude that the previous land ownership did not serve to prevent any functional relationship between the Subject Buildings and Trannack Byre. This is also evident given the content of the statutory declaration, which identifies the longstanding use of the Subject Buildings for purposes incidental to the enjoyment of Trannack Byre, since its inception in 2000.
23. Drawing my assessment on this matter together, the evidence before me indicates that the appeal proposal falls within the curtilage of Trannack Byre and that the appeal was therefore validly made.

Character and appearance

24. Trannack Byre reads as an integral part of the grouping of residential and farm buildings at Trannack. Whilst the proposed replacement buildings would be larger, they would be lower than the ridge of Trannack Byre and the design and finish materials would provide an appropriate pseudo agricultural aesthetic, maintaining a deferential relationship with the dwelling they would serve
25. The buildings would also appear within the background of and/or subservient to Trannack Byre when viewed along the nearby highway and the adjacent Public Right of Way to the south and would be framed against a backdrop of trees to the west. Glare from rooflights would have a negligible effect and, as with any artificial lighting, would be viewed within the context of the surrounding built environment. As such, the proposed development would retain an adequate degree of subservience to the house and would assimilate successfully into the grouping at Trannack and the wider agrarian landscape.
26. I therefore conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area. It would accord with the landscape and design aims of Policies 1, 2, 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted 2016), the National Planning Policy Framework and the Cornwall Design Guide.

² Refs W2/PA01/00266/F and PA07/00668/F

Conditions

27. In addition to the standard time condition it is necessary in the interests of certainty for a condition to set out the approved plans. As finish materials are identified within the drawings, it is not necessary to secure this detail through a condition. Given the evidence that the Subject Buildings are within the curtilage of Trannack Byre, I see no compelling reason why it is necessary to restrict the use of the replacement buildings going forward.

Conclusion

28. For the reasons outlined above and taking all matters raised into account, I conclude that the appeal should be allowed, subject to conditions.

Matthew Jones

INSPECTOR