
Appeal Decisions

Site visit made on 25 June 2021

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 3 August 2021

APPEAL A Ref: APP/D0840/X/21/3269518

Panorama, 1 Barnoon Terrace, St Ives, Cornwall TR26 1JE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms Kim Usher against the decision of Cornwall Council.
- The application Ref PA20/09267, dated 22 October 2020, was refused by notice dated 16 December 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is "Demolition of section of boundary wall and attached outbuilding under 50 cubic metres (A section of low wall along the boundary is shown to remain)".

Summary of Decision: The appeal is dismissed

APPEAL B Ref: APP/D0840/D/20/3265249

Panorama, 1 Barnoon Terrace, St Ives, Cornwall TR26 1JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Kim Usher against the decision of Cornwall Council.
- The application Ref PA20/01409, dated 28 January 2020, was refused by notice dated 22 September 2020.
- The development proposed is "Creation of off-road parking space with electric vehicle charging point".

Summary of Decision: The appeal is dismissed

Application for costs

1. An application for costs was made by Ms Usher against Cornwall Council in connection with Appeal A. That application is the subject of a separate Decision Letter of even date.

Background

2. "Panorama" is a two-storey, end-of-terrace house. It has a garden to the front and a paved courtyard to the rear, which backs on to Barnoon Hill. This rear courtyard is enclosed by a stone wall which curves outward from the southern elevation of the house, then turns the corner from Barnoon Terrace to continue upward along Barnoon Hill, and in doing so forms the two outer walls of a small triangular outbuilding located within Panorama's courtyard. A section of the wall to the rear of the dwelling adjoining Panorama has been removed, to provide access to an off-road parking space. A section of the wall to the rear of

Panorama has also been removed, down to a height of some 20cm above ground level. The outbuilding remains intact.

3. The wall to the rear of Panorama has been the subject of various applications and appeals. In 2016 an application for permission to demolish a section of the wall and construct a new access to the highway was refused.¹ An appeal was made, and the refusal was upheld.² In 2017 an application for permission for the proposed demolition of a section of the wall was refused.³ In 2018 an application for a LDC for the proposed demolition of a section of the wall was refused.⁴ An appeal was made, and the refusal was upheld.⁵ In 2019 an application for permission for the creation of a parking space with electric vehicle charging point, extension of front patio and addition of a French door was refused.⁶
4. The two appeals now before me concern the demolition of the outbuilding and a section of the wall (Appeal A), and the creation of an off-road parking space (Appeal B).

Appeal A

5. The *Town and Country Planning Act* 1990, as amended, ("the 1990 Act") states that operations are lawful if no enforcement action may be taken against them – whether because they did not involve development, or require planning permission, or because the time for enforcement action has expired, or for any other reason. The main issue in this appeal is whether or not the proposed demolition works would involve development, and so require planning permission.

The relevant legislation

6. The 1990 Act provides that planning permission is required for the carrying out of any development of land. S.55 defines development as covering building and engineering operations, and this specifically includes⁷ the demolition of buildings. However, it then goes on to list operations which shall not be taken to involve development of the land, and these include "the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority." In accordance with this provision, *The Town and Country Planning (Demolition – Description of Buildings) Direction 2014* ("the 2014 Direction") directs that outside conservation areas, the demolition of (a) any building with a content of less than 50m³ and (b) the whole or any part of any wall shall not be taken to involve development of the land.
7. Where planning permission is required for development, s.58(1)(a) provides that this may be granted by a Development Order. This encompasses General Permitted Development Orders (GPDOs), the first of which was made in 1948. The current *Town and Country Planning (General Permitted Development)(England) Order 2015*, as with previous GPDOs, grants permission for certain classes of development described as "permitted

¹ PA16/08538

² APP/D0840/D/16/3163733

³ PA17/02916

⁴ PA17/10248

⁵ APP/D0840/X/18/3208612

⁶ PA19/02918

⁷ at s.55(1A)

development". As with previous GPDOs, it also contains provision, at Article 4, for the local planning authority to make a direction that the planning permission granted by the GPDO does not apply to all, or certain types of, permitted development within a specified area.

8. In accordance with this provision the Council made an Article 4 Direction, confirmed in August 1979, which specified that the planning permission granted by the GPDO then in force⁸ did not apply to permitted development of various types including *...the maintenance, improvement or other alteration of any gates, fences, walls or other means of enclosure*. Once confirmed, an Article 4 Direction remains in place, unless it is cancelled by the local planning authority through the appropriate procedures. When changes or additions are made to the GPDO, these are still subject to any Direction which remains in place. So in this case, the 1979 Article 4 Direction remains in force, and its provisions relate to classes of development re-enacted in the 2015 GPDO.

The application of the relevant legislation to the current circumstances

9. The Appellant has made it very clear that the LDC is sought solely for demolition works. These are described, in the letter which accompanied the application, as "the removal of the roadside section of wall extending down to its southern end. This would also include the small outbuilding contained within the existing boundary walls in the southern corner of the courtyard...no other works at all are proposed as part of this application and the wall would be retained to a height of 20cm."
10. While the 1990 Act was amended in 1991 to bring demolition – for the first time - within the statutory definition of development,⁹ there is still no definition of what is meant, for the purposes of planning control, by the term "demolition" (either within the 1990 Act, the 2014 Direction, or elsewhere). It is therefore necessary to assess whether, as a matter of fact and degree, the operations proposed by the Appellant fall within what might reasonably be regarded as demolition rather than any other type of building operation. This is important, because it is only works of demolition (and not, for example, rebuilding or structural alteration¹⁰) which have the potential to be excluded from the definition of development by virtue of s.55(2)(g) and the consequent 2014 Direction.
11. The ordinary meaning of "demolish", when used in reference to a building, means to pull the building down: that is, to destroy it completely, and break it up. This can be distinguished from the alteration of a building, where the original building (or part of it) remains, but in a changed form. Indeed, the two concepts are mutually exclusive: it could not properly be said that a building had simply been "altered" if it had in fact been pulled down and nothing of it remained, and it could not properly be said that a building had been "demolished" if it in fact remained in situ, albeit in an altered form.
12. Here, the proposed treatment of the outbuilding seems to me to be a fairly straightforward case of demolition. I note that the section of boundary wall that runs along the south-east side of the courtyard, and which acts as one of the three outer walls of the outbuilding, would remain in place. However, I do not

⁸ *The Town and Country Planning General Development Order 1977*

⁹ Subs.55(1A) and (2)(g) were inserted by the *Planning and Compensation Act 1991*

¹⁰ These are building operations which (like demolition) are specifically defined as development at S.55(1A)

consider that this could reasonably be construed as resulting in alteration rather than demolition: removal of the roof and two of the three walls would mean that the outbuilding, as an entity, was completely destroyed and ceased to exist. The south-east boundary wall that had formerly functioned as part of its structure would remain, but the building itself would have been demolished.

13. The nature of the proposed work to the roadside length of the wall is a different matter. The Appellant describes it as the demolition of a section of the boundary wall, and the 2014 Direction applies to “the whole *or any part of* any wall” [my emphasis]. However, the part of the wall at issue here would not be pulled down in its entirety: a 20cm high section of it would remain in place. It could not rightly be said that the part of the wall in question would be completely destroyed. A part of it would remain, and would continue in its original function as a boundary wall, albeit at a lower height. In my judgment, the works here proposed would therefore amount to the alteration of a part of the wall, rather than the demolition of a part of it.
14. That being so, the 2014 Direction does not apply, because it only prevents *demolition* of the whole or part of a wall from being taken to involve development. The 2015 GPDO classes alterations to a wall as (subject to relevant conditions) permitted development, but the Council’s 1979 Article 4 Direction remains in force, and so has the effect of disapplying, for “alteration of any...walls”, the planning permission that would otherwise be granted by Article 3 of the 2015 GPDO. In short, the reduction of this part of the wall to 20cm in height amounts to development, and since it does not benefit from any exemptions or exclusions, is development for which a grant of planning permission would be required.
15. While it is open to a local planning authority (or Inspector, on appeal) to modify the description provided in an application for a LDC for *existing* development,¹¹ there is no equivalent provision where (as here) the LDC application has been made in respect of *proposed* development. This means that it is not open to me to modify the description of the proposal so as to refer only to the demolition of the outbuilding, which I have concluded could be carried out without the need to apply for planning permission.

Conclusion on Appeal A

16. The development for which the LDC is sought includes a building operation – the reduction in height of part of the boundary wall – for which planning permission would be required. This means that the development as described could not lawfully be carried out without a prior grant of planning permission.
17. I conclude that the Council’s refusal to grant a LDC for “Demolition of section of boundary wall and attached outbuilding under 50 cubic metres (A section of low wall along the boundary is shown to remain)” was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s.195(3) of the 1990 Act as amended.

Appeal B

18. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

¹¹ S.191(4) of the 1990 Act

19. The proposed development is the levelling and reconfiguration of the surface of the rear courtyard, in order to provide an off-road parking space, and the fitting of an electric car charging point on the wall of the dwelling. The plans submitted with the application show that access to the parking space would be through a gap made in the boundary wall; of the same width as the gap which has already been made, but with the remaining bottom part of the wall also removed from this gap. I shall assess the proposal on the basis that planning permission is sought for the development as detailed in the plans.
20. As the Inspector who determined the 2017 appeal noted, the rear of Panorama is prominent in views from the south east, due to the narrowing of Barnoon Hill at this point. In views from the approach up Barnoon Hill, the stone boundary wall forms a focal point, and I saw at my visit that the enclosure of small, private outdoor spaces with stone walls is a distinctive feature of the St Ives townscape.
21. I agree with the previous Inspector that the loss of a significant section of a traditional and distinctive boundary wall, and the formation of an open and conspicuous car parking space, would materially reduce the existing visual quality of the streetscape. The outbuilding and southern part of the boundary would provide some screening in views up Barnoon Hill, but the harmful impact on the character and appearance of the area would be clearly apparent in street views closer to the site. The cumulative impact of other openings for vehicular access in the vicinity has not reached a level at which it could be said that the addition of one more would have no significant adverse impact.
22. I appreciate that parking in the area is difficult, as the availability of spaces is limited, and (particularly during holiday seasons) the roads of St Ives are congested. I also note that the provision of electric car charging points is supported and encouraged by national and local planning policy. However, I do not consider that the benefits of providing one additional off-road parking space and one electric car charging point would outweigh the harm I have identified above.
23. The 2014 Direction is also a material consideration. It provides that *demolition* (as distinct from alteration) of the whole or any part of any wall is not development. This means that the Appellant could, without planning permission, demolish the section of wall necessary to provide access.
24. However, this would not be sufficient to achieve the lawful provision of the parking space. Further works would be required, in that the existing courtyard is stepped, and the necessary levelling, reconfiguration and provision of drainage would constitute development. This could not be carried out as permitted development, because the 1979 Article 4 Direction includes both "the construction within the curtilage of a dwellinghouse of a hardstanding for vehicles" and "the formation, laying out and means of access to a highway not being a trunk or classified road." Planning Permission would be required.
25. In my judgment, even if the harm attributable solely to the removal of a section of wall to form the opening were set aside, the formation of a parking space in place of the existing traditional courtyard space would cause considerable harm to the character and appearance of the area. This would be sufficient in itself to justify the refusal of planning permission.

Conclusion on Appeal B

26. I find that the proposed development would conflict with the aims of Policy 12 of the *Cornwall Local Plan Strategic Policies 2010-2030* and Policies GD1 and BE5 of the *St Ives Area Neighbourhood Development Plan 2015-2030*, which respectively seek to ensure that development maintains local distinctiveness and respects the historic context, is sensitive to its surroundings, and retains local materials. It would also be at odds with the approach and advice of the *Cornwall Design Guide*, which is supportive of development that respects and sits well in its local context.
27. I conclude that the proposed development would conflict with the Development Plan, and have found no other material considerations of sufficient weight to overcome that conflict. I therefore determine that planning permission should not be granted.

Formal Decisions

28. **Appeal A** is dismissed.
29. **Appeal B** is dismissed.

Jessica Graham

INSPECTOR