
Appeal Decision

Site visit made on 9 November 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 11 November 2021

Appeal A Ref: APP/Q1153/C/21/3279695

Appeal B Ref: APP/Q1153/C/21/3279696

Land at Plot 1, Fernside, Crease Lane, Tavistock, Devon PL19 8EW

- 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 Mrs Lucy Caldwell and Appeal B by Mr Gavin Caldwell against an enforcement notice issued by West Devon Borough Council.
 - The enforcement notice, numbered WD/PL/Enf Plot 1, was issued on 22 June 2021.
 - The breach of planning control as alleged in the notice is unauthorised operational development comprising the construction of a garage, in the approximate position shown hatched in red on the plan attached to the notice.
 - The requirements of the notice are
 - (i) Remove the building and any resultant materials from the land; or
 - (ii) Modify the building so that it is in accordance with approved drawing 1401 (PL) 12A
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (c), and (f) of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. The appeals are allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of a garage on land at Plot 1, Fernside, Crease Lane, Tavistock, Devon PL19 8EW, referred to in the notice, subject to the following condition:
 - (i) The garage shall be completed in accordance with drawing number 2005(PL)04 and remain available in perpetuity for the parking of motor vehicles in association with the dwelling at Plot 1.

Procedural Matter

2. The appellants are dissatisfied about the manner in which the Council administered and determined an application for a variation of condition, the consequences of which have led to this appeal. However, the appeal process is not one for determining complaints alleging incompetence by a Council but as a means of providing an impartial assessment of up to seven grounds of appeal, including legal grounds such as ground (c), where the burden of proof rests on the appellant and the standard of proof is the balance of probabilities.

The site and relevant planning history

3. The appeal site is located adjacent to a residential area on the edge of Tavistock. It is one of four dwellings either side of a dwelling known as 'Fernside', which are at different stages of construction but not yet occupied. The appeal property is identified as Plot 1 (and Unit 1) and is to the west of the development site adjacent to 'Greenacres'. It contains a large two-storey chalet-style dwelling with a pitched-roofed and double garage at the front of the property accessed via a shared drive with Plot 2.
4. In 2018 permission was granted for 4 dwellings and garages, parking and access off Crease Lane (0393/18/FUL).
5. In 2019 permission was granted for the variation of condition 2 of the 2018 permission (approved plans) for alteration of Plot 2 (3608/18/VAR).
6. An application for non-material minor amendments to 0393/18/FUL and 3608/19/VAR was refused in February 2021.

The appeal on ground (c)

7. An appeal on this ground is that a breach of planning control has not occurred.
8. The appellant refers to permission 3608/19/VAR which was described on the decision notice as being for the variation of condition 2 (approved plans) of consent 0393/18/FUL for alteration to Plot 2. The application form at part 5 states that the applicant is the owner of Plot 2 as (sic) is seeking approval for an adjustment to the position of the dwelling, an increase in the size of the lounge and utility room and an increase in the size of the double garage. In response to how the applicant wished the existing conditions to be varied, it is stated that it is to amend the approved drawings to four drawings all relating to Unit 2:
9. However, the drawings submitted with the application were:
 - 1401(PL) 11 floor plan/layout Units 1 and 2
 - 1402(PL) 12A elevations for the dwelling and garage at Units 1 and 2.
 - 2032/(PL-)02 proposed floor plan for Unit 1 and Unit 2.
 - 2032/(PL-)03 proposed elevations for Plot 2 only
 - 2032/(PL-)04 proposed elevations of garage at Plot 2 only.
10. In February 2020 the agent requested that the application should also include Plot 1 and submitted further drawings:
 - 2032/(PL)01 proposed plan layout for dwelling Unit 1
 - 2032/(PL)02 proposed elevations for dwelling Unit 1
 - 2032/(PL)03 proposed elevations for dwelling Unit 1
 - 2032 (PL) 01A proposed site plan for plots 1 and 2.
11. Condition 1 of the decision lists the approved elevation drawings relating to Plot 1 and not Plot 2 and also to 2032(PL) 01 Rev A which is the proposed site plan for Plot 1 and 2.

12. Condition 2 of the decision states 'the garages hereby permitted shall remain available in perpetuity for the parking of motor vehicles in association with the use of the dwellings'.
13. The officer's report (which does not refer to drawing numbers) states 'In terms of the changes they have been designed to change the siting of plots 1 and 2 only. The design changes have moved plot one closer to the west boundary as well as some changes to plot 2. The proposed garages have also increased in size. The boundary treatment will remain in place and although the garages are larger than approved they will be compatible with the character and appearance of the area'.
14. In responding to the agent in March 2021, the officer advised that, following a review of the plans, the garage at Plot 1 has not been amended through the variation application as the amendments applied for in the drawings referred to did not include amendments to the garage, and that the garage remained subject to the approved drawing 1401 (PL) 12A.
15. When interpreting a planning permission, the basic rule is that a permission should stand by itself and the meaning should be clear within the four corners of the document¹. If something is not clear but the permission incorporates the application and plans, they may be used as aids to interpretation or an understanding the scope of what is permitted². Although the decision notice is misleading in respect of the drawing numbers referred to in condition 1 and in respect to references to garages and dwellings in the plural in condition 2, I consider that the permission and the application were explicit in their reference to Unit 2. There is a clear description provided by the applicant of what is required to be varied and this relates to Plot 2/Unit 2. This is reflected in the decision notice which grants permission for the development so described which does not include the garage at Plot 1. Although the officer's report refers to garages being larger, and the report seems not accurately to reflect what has been applied for, I attach less weight to the officer's report in the interpretation of the permission.
16. I am nevertheless somewhat baffled by the manner in which the Council determined the application in the light of the appellant's request to include an updated drawing of the garage to Plot 1 but the interpretation of a planning permission has been clearly set down through caselaw and the circumstances prevailing in this appeal lead me to only one conclusion.
17. The appellants have not shown on the balance of probabilities that the garage the subject of the appeal benefits from planning permission and is therefore unauthorised.
18. The appeal on this ground fails.

The appeal on ground (a)

19. This ground of appeal is that planning permission should be granted for the garage referred to in the allegation and the main issue is the effect of the development on the character and appearance of the area.

¹ Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74

² Winchester CC v SSCLG [2013] EWHC 101 Admin

20. The principle of a garage is not at issue but the Council indicates that the development in terms of design, massing, scale and integration into the street scene is no longer considered subservient to the primary dwelling, nor does it relate with the surrounding built form of development, appearing instead, to impose on adjacent properties and dominate the street scene when travelling along Crease Lane. The Council considers the garage to be contrary to policies DEV1, DEV10 and DEV20 of the Plymouth and South West Devon Joint Local Plan.
21. The Council does not take issue with the external materials. However, it has measured the garage to be 7.2m wide, 6.8m deep and about 6m to the ridge. The garage on the approved drawing 1401 (PL) 12A measures 6.5m wide, 6m deep and 5.5m to the ridge. The appellant's figures are slightly different but on the basis of either set of figures, the difference between the approved and as built garage dimensions are 0.7m in width, 0.0-0.8m in length and 0.5-0.6m in height. On the basis of drawing 2005(PL)04, which was submitted as part of the refused application for a non-material minor amendment, the garage has a useable upper floor in the roof space accessed by internal stairs having two rooflights on the north facing roof slope and a gable end upper floor window in the east elevation above a garage door and large window. There is a pedestrian door and window on the north elevation. The garage has been constructed but does not appear to be fully completed.
22. The National Planning Policy Framework attaches considerable importance to the creation of high quality, beautiful and sustainable buildings and places and that this is fundamental to what the planning and development process should achieve. It goes on to say at paragraph 134 that development that is not well designed should be refused and at paragraph 135 that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion as a result of changes being made to the permitted scheme.
23. In this case I have assessed what has been built with what was originally permitted in order to establish whether any material harm to the character and appearance of the area and street scene has resulted as a consequence.
24. The site is on the edge of Tavistock on the north side of Crease Lane and is not in any special area such as an AONB or conservation area. The south side is characterised by a residential area of detached, semi-detached and terraced dwellings which appear in layout and design to be typical of estate development of the time. It has no distinctive characteristics that suggest any close connections with the built heritage of area. This does not mean that its 'ordinariness' is not valued by local people although no representations have been submitted in this respect.
25. The garage as built is significant in its size and positioning but as far as I can establish from the numerous drawings associated with the site, the position of the garage well forward of the dwelling and close to the boundary with the highway has not fundamentally changed. I suspect that the similar position of the detached garage to the front of Fernside was taken as a cue in this respect. That garage is prominent in the street scene but is not harmful to it.
26. The distinguishing feature of the subject garage is its scale and massing which, because of the roof pitch reflecting that of the dwelling and the width of the garage increasing by 0.7m, has led to an increase in height of about 0.5m and,

as a consequence, an increase in the visible expanse of the gable ends and roof slopes. However, although the scale and massing of the garage leads it to compete in the street scene with the dwelling on Plot 1, which is inevitable due to its forward positioning on the site, it is not of such prominence for it to create a level of harm that would justify permission being refused.

27. I consider that the overall increase in the size of the garage over the size of the previously approved garage does not diminish the quality of the approved development or lead to any material harm to the character and appearance of the area. I consider that it accords with the relevant Joint Local Plan Policies and the Framework in respect of design. In reaching this conclusion I have also had regard to the apparent acceptance of the design in the officer's report in the application for a variation of condition (3608/18/VAR).
28. It appears that the garage has been constructed similar to that shown in drawing number 2005(PL)04. As the building does not appear to be fully completed I shall attach a condition relating to this drawing and additionally require that the garage remains available in perpetuity for the parking of motor vehicles in association with the dwelling at Plot 1, in the interests of highway safety

Conclusions

29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

P N Jarratt

Inspector