



## Appeal Decision

Site visit made on 31 January 2022

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

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**Appeal Ref: APP/D0840/C/21/3284828**

**Land at Carbis Bay Hotel, Beach Road, Carbis Bay, St Ives, Cornwall, TR26 2NP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Baker against an enforcement notice issued by Cornwall Council.
  - The enforcement notice, numbered EN21/00308, was issued on 17 September 2021.
  - The breach of planning control alleged in the notice is without planning permission, on land associated with the Carbis Bay Hotel (1) engineering operations to alter the natural land levels to facilitate the development of the land and create terracing, (2) operational development on the land to construct concrete pile foundations and concrete slabs, construct a concrete retaining wall, construct three single storey structures to provide nine meeting rooms with associated decked area, erect a fence and gate at a height exceeding 2 metres above the natural ground level, and construct an access road and parking area.
  - The requirements of the notice are to:
    - (1) Disconnect and remove from the land all services connected to the buildings as shown in the approximate position marked in green on the plan attached to the notice,
    - (2) Demolish and remove from the land the three buildings as shown in the approximate position marked in green on the attached plan.
    - (3) Demolish and remove from the land the decked area and supporting structures as shown in the approximate position marked hatched purple on the attached plan.
    - (4) Demolish and remove from the land the concrete slabs and pile foundations as shown in the approximate position marked in green on the attached plan.
    - (5) Demolish and remove from the land the concrete retaining wall as shown in the approximate position marked in black on the attached plan.
    - (6) Demolish and remove from the land the fence and gate as shown in the approximate position marked in light blue on the attached plan.
    - (7) Demolish and remove from the land the access road and area of hardstanding as shown in the approximate position marked in yellow on the attached plan.
    - (8) Demolish and remove from the land the stone terrace walls as shown in the approximate position marked in hatched dark blue on the attached plan.
    - (9) Reinstat the land as outlined in red on the attached plan to its original levels, gradients and condition before the breach took place.
    - (10) Remove all materials and debris resulting from compliance with (1) – (9) inclusive above from the land outlined in red on the attached plan
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## **Decision**

1. It is directed that the enforcement notice be corrected with the deletion of "and parking area" from the end of the allegation.
2. Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **The site**

3. Carbis Bay Hotel is a well-established hotel located in the built-up area of Carbis Bay in an elevated position above the beach which has extended its facilities in recent years through the construction of a multi-use building and beachfront lodges.
4. The appeal site is to the west of the main hotel building in an area of coastal scrub and woodland. Some three single-storey, timber-clad buildings with grey/black flat roofs have been erected in a linear form on the site. These are accessed via a decked pedestrian way on the excavated cliff side and have balconies on the beach side separated by privacy screens. The concrete retaining wall referred to in the allegation has been clad in timber and there are other timber-clad storage or service cabinets/structures either attached to the buildings or freestanding.
5. The decked area extends to the south east of the buildings to an area of hardstanding beyond which is a timber fence and security gate adjacent to the coast path. From the gate a narrow access road leads behind the hotel to the car park with a boundary treatment of large rocks/stones.
6. Work has commenced on converting the meeting rooms into hotel accommodation although they have not yet been occupied.
7. The south west coast path passes the front of the hotel, then ascends the coastal slope along the eastern boundary of the site to pass along the south west boundary of the appeal site before crossing the railway line via a pedestrian bridge.
8. The site is not within any formal landscape designation. The Hayle Estuary and Carrick Gladden SSSI is some distance to the east of the site; there are woodland Tree Preservation Orders to the immediate south and west of the site; and the site lies within a defined Coastal Vulnerability Zone.

## **Background and relevant planning history**

9. The relevant planning history of the Carbis Bay Hotel includes an application for a two-storey spa building and pool with 3 two-storey 3 bed lodges on a slightly larger site than the current appeal site and this was refused permission in May 2018 (PA18/01007) essentially on grounds relating to the impact of the development on the character and appearance of the area.
10. Complaints were received in March 2021 regarding unauthorised engineering works and the destruction of the natural habitat on the appeal site. The owners of the site advised the Council that the works were required in connection of the forthcoming G7 summit in June and that it was necessary to commence work before the submission of a planning application. On 9 March 2021 application PA21/02527 was submitted for the 'Retention and completion

of 3 no. single storey structures to provide 9 meeting rooms and access pathway'. Works continued on site and complaints about the development were received by the Council. Following concern about the disturbance to habitats and the felling of trees, the Council served a TPO on the land associated with the hotel to ensure established trees on the site were not harmed by the development.

11. There has been a significant public response to the unauthorised development and to the submitted retrospective planning application for reasons including the inappropriateness of the development and to the failure of the applicant to follow the due planning process. Many representations (some 350-400) were received by the Council and the development attracted the attention of the local and national media.
12. On 27 August 2021, the application was withdrawn by way of email from the agent, although the appellant states that it was withdrawn on 17 September 2021, with the enforcement notice issued on the same day. Whilst the applicant is entitled to withdraw an application prior to it being determined, no explanation has been volunteered to indicate why this was the case.
13. The appellant states that the work was regularly inspected by officers and that the Council did not take action of any kind, such as serving a Planning Contravention Notice, a Temporary Stop Notice or other action. The appellant states that he was left with the impression that the Council was satisfied with the works undertaken, that they were necessary to facilitate the G7 summit and were accepted in the longer term as additional hotel facilities. However, this view is contradicted by the Council who had been in contact with the Managing Director of the hotel from the beginning of the investigation. On 8 March he was informed that although the retrospective application had been submitted, it was incomplete, the works were unauthorised and there was a risk of action being taken if the works did not cease. This was re-iterated on 10 March and 15 March when he was cautioned that the works may not gain permission.
14. The National Trust, the South West Path Association, Cornwall CPRE and the Cornwall Wildlife Trust have submitted comments in response to the appeal objecting to the development and supporting the Council's enforcement action. Over 100 comments have been made by members of the public relating to the failure of the appellant to follow the proper planning process and to the destruction of the coastal landscape; to the fact that a previous development had been refused; the precedent that such an abuse of the system would have on future development; the damage caused to the environment flying in the face of the green credentials of the G7 summit; and, that the Cabinet Office had confirmed that the meeting rooms were not needed for the G7 Summit.
15. One comment supports the development and its contribution to the local economy.
16. Irrespective of the reasons for the appellant pursuing the development in the manner he chose and the extent of the public reaction, my concerns in determining this appeal relate to the material planning considerations and to national and local policies including those in the Development Plan which consists of the Cornwall Local Plan 2010-2030 (CLP) and the St Ives Area Neighbourhood Development Plan 2015-2030.

17. Carrying out development without the necessary planning permission is not an offence but is a risk taken by a developer who could be subject to enforcement action. This could lead to the developer having to satisfy the requirements of an enforcement notice in the event of an appeal being dismissed.

### **The appeal on ground (b)**

18. An appeal on this ground is that the alleged breach of control has not occurred as a matter of fact. The appellant states that at the time of notice, the meeting rooms were being repurposed as letting suites and no parking area had been constructed.

19. The Council advises that the parking area referred to is an area of hardstanding at the eastern end of the site. The appellant considers that the errors in the notice can be corrected without prejudice to the parties by removing "and parking area" and replacing reference to the nine meeting rooms with "to provide nine rooms for uses ancillary and incidental to the Carbis Bay Hotel complex". The appellant does not dispute that the other building and engineering operations have taken place.

20. Whilst I consider that the allegation should be corrected by the deletion of "and parking area", the fact that the appellant has chosen to repurpose the unauthorised buildings is not relevant as the allegation would have been worded on the basis of the Council's understanding of the unauthorised development at the time.

21. The appellant refers to the single storey structures 'are not proposed to be used exclusively as meeting rooms, but as additional accommodation for the hotel complex of which they form part'.<sup>1</sup> The Council points out that Design and Access statement accompanying the application to regularise the development (PA21/02527), indicated that the buildings were intended to remain as conference and meeting space, with any alternative uses being subject to an application after the G7 conference. Although the appellant disputes the relevance of the withdrawn application to this appeal, it nevertheless provides the background against which the Council has formulated the allegation. In the light of this, the wording of the allegation is reasonable and accurate in its description of the unauthorised development that has taken place and the appellant can be in no doubt about what is alleged in the notice which is clear on its face.

22. I therefore propose to correct the notice by the deletion of "and parking area" only from the allegation but in all other respects the development alleged in the notice has occurred as a matter of fact.

23. The appeal on ground (b) succeeds in part.

### **The appeal on ground (a)**

24. An appeal on this ground is that planning permission should be granted for what is alleged in the notice. The main issue is the effect of the development on the character and appearance of the area. Other issues relate to the impact on ecology and biodiversity, and on surface water drainage, coastal and land stability.

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<sup>1</sup> Paragraph 5.1.1 of the appellant's grounds of appeal.

### *Character and appearance*

25. The beach at Carbis Bay is a constituent part of the overall character of the area backed by a coastal slope topped with scrub and heath vegetation. The site is within Character Area C6 of the St Ives Area Neighbourhood Development Plan (SIANDP), which is the area to the east of the railway line. Policy OS9 relates to panoramas, vistas and views which should not be compromised by development. For the area around the appeal site the following are identified - the vista from the beach to the green spaces either side; vistas and views from the coast path on approach from both directions; and view from the approach road (Beach Road) to the beach. However I note that the appellant points out that on the basis of Appendix 4 of the SIANDP, it is only the view from the coast path that is expressly identified. The appellant draws attention to Policy OS3 (which has not been referred to by the Council) and which seeks to retain trees, woodland, hedgerows and Cornish hedges which make a significant contribution to the character of the landscape.
26. The site is within landscape character area CA05 St Ives Bay in the Cornwall and Isles of Scilly Landscape Character Study where it is recognised that suburban development has led to the loss of rural character in parts of St Ives Bay, including at Carbis Bay.
27. The hotel forms a prominent and distinctive feature but before the development of the meeting rooms, the coastal slope would have been largely undisturbed and formed a natural backdrop to the beach albeit that there is some existing development at the top of the slope. The cliff tops are known as a marine heathland supporting a range of vegetation displaying a variety of colours throughout the year and the Council considers that the appeal site previously blended well with this landscape giving an almost unbroken run of vegetation around the bay. The appeal site formed part of the natural, undeveloped green corridor that stretched as a wild mixture of scrub and trees from the hotel along the higher levels of the coastal slopes in a north westerly direction.
28. The construction of the meeting rooms in three single-storey buildings with the decking and associated service structures has significantly and adversely affected the character and appearance of the area by extending the built form of the hotel into a hitherto wild and vegetated area. Although clad in materials similar to the existing beach lodges below the hotel (but with different treatment to the flat roofs), the buildings appear prominent and incongruous from many viewpoints, whether from the beach or from closer to the site.
29. I disagree with the appellant's assertion that 'the structures sit directly above (south) existing built development associated with the hotel'<sup>2</sup>. On the contrary, from the plan accompanying the notice, and from observation on site, it is evident that two of the three buildings and a large proportion of the third are situated above the beach and not above existing development. When seen from the beach they are seen as being detached from the main hotel complex.
30. The development has intruded into views from the south west coast path from above the development and from the footbridge over the railway line. It is less evident from Coast Road. From the path above the site, the dark coloured flat roofs predominate over what previously would have been views of the beach

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<sup>2</sup> Para 5.2.5 of the Appellant's statement..

through vegetation. Where the path passes uphill between the hotel and the development, new close boarded fencing has compromised views into and across the site as walkers are channelled through a section of path with restricted views. I note that the appellant has changed this short section to a stepped paved pathway which he considers has upgraded it.

31. At night time, light from the development would contribute to the change in the character and appearance of the area.
32. The new surfaced access track at the rear of the hotel from the car park to the meeting rooms and its adjacent granite stone border is not particularly intrusive on its own as it is read as part of the hotel complex, but when considered in the context of the development as a whole, it contributes to the negative impact that the development has on the character and appearance of the coastal slope.
33. The photographs attached to Mr Rupert Manley's representations of 3 January 2022 show the impact that the development has had on the coastal slopes and the off-shore photos clearly illustrate the failure of the development either to integrate with the main hotel complex or with what remains of the natural environment.
34. Although the development is lower in height and covers less than the site of the refused 2018 planning application, this does not provide a justification for it as the development remains prominent and intrusive in what would otherwise have been a natural landscape that contributed positively to the character and appearance of a distinctive landscape. As the National Trust points out, the undeveloped coast is a finite resource and the unauthorised development erodes the distinctive coastal landscape and seascape qualities of what remains.
35. The appellant argues that the meeting rooms should not be seen as an incursion into the undeveloped parcel of land to the rear, but seen in the context of the wider hotel complex and amongst more recent contemporary developments. However, I depart significantly from the appellant's opinion that the units 'nestle in with the surroundings appearing as an organic addition to the landscape'. They achieve neither but remain as an intrusive and prominent element in the landscape extending the built development well beyond the previous visual limits of the hotel complex.
36. The appellant refers to The Beach House to the east of the hotel on Beach Road and Skyfall on Hain Walk, located to the west of the site in an elevated position. The latter appears to be built on the top of the coastal slope and is visually related to other buildings in the vicinity and I do not consider that its location is comparable to the appeal site. The Beach House occupies a mid-slope position at a similar level to the appeal site but is adjacent to the public highway and to another dwelling. I have no information before me that explains the planning background to this dwelling, but irrespective of that, it provides no justification for accepting unauthorised development having an adverse impact on the character and appearance of the area.
37. There are a number of CLP policies that are relevant to the main issue in this appeal with the principal ones being Policies 12, 23 and 25. Policy 12 concerns design, requiring that the distinctive natural and historic character of Cornwall is retained and that development should demonstrate a design process that has

clearly considered the existing context, and how the development contributes to the social, economic and environmental elements of sustainability through fundamental design principles.

38. Policy 23 relates to natural environments. Development proposals will need to sustain local distinctiveness and character, biodiversity, ancient woodlands and veteran trees. The landscape character of designated and undesignated landscapes is to be recognised and reflected in all development using guidance from the Cornwall Landscape Character Assessment.
39. Policy 25 seeks the protection and enhancement of green infrastructure as well as taking opportunities to restore and enhance linkages between green spaces.
40. I conclude on this issue that the development has compromised the objectives of these policies, and failed to comply with Policies GD1, OS3 and OS9 of the SIANDP. Additionally the development fails to follow the advice in the Cornwall Design Guide which at section 2.9 relates to schemes having a locally inspired identity and character. It also does not accord with the objectives for sustainable development set out at paragraph 8 in the National Planning Policy Framework (the Framework), paragraph 130 relating to achieving well-designed places and paragraph 174 in terms of the conservation of the natural environment.

#### *Ecology and biodiversity*

41. Paragraph 180 of the Framework states that significant harm to diversity should be avoided or adequately mitigated or compensated for. Policy 23 of the Cornwall Local Plan states that all development takes into account the importance of habitats and considers opportunities for biodiversity enhancement.
42. In response to complaints by third parties that disturbance to wildlife, including badgers had taken place, the appellant submitted a Preliminary Ecological Appraisal<sup>3</sup> which indicates that no evidence had been found of badgers on the site. It does however conclude that the only mitigation required by the development is the replacement of existing lighting that will allow 'light-averse' bats to continue to forage in adjacent areas.
43. The appellant has suggested that this could be the subject of an appropriately worded condition.

#### *Drainage, coastal and land stability*

44. The appeal site is within the St Ives-Carbis Bay Critical Drainage Area which identifies Carbis Bay as having a small steep catchment with flooding problems where new development should reduce run-off and infiltration drainage should be used as much as possible. The existing surface water drainage system which the meeting rooms connect to was installed to serve the hotel complex. This system discharges to coastal waters by way of a headwall on the beach, and not over the cliff to the beach.
45. The appellant has assessed the adequacy of the system and its ability to accept the additional flows from the development<sup>4</sup>. The results indicate that the last pipe to the headwall should be increased in diameter to provide additional

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<sup>3</sup> Appendix RM5 of the appellant's statement

<sup>4</sup> Appendix RM6 of the appellant's statement

capacity. The appellant suggests that this could be dealt with by way of a condition as the land is in the control of the appellant. The assessment concludes that the water drainage does not cause any detriment to the coastal slope/cliff in terms of land stability.

46. The appellant has also submitted a report on land stability<sup>5</sup> which confirms there is a possible risk of small scale failures to occur and recommends that signage is erected around the toe of the slope to warn the public of cliff instability. Such instability is not identified as a direct result of the development and the appellant suggests that a watching brief is all that is required, which could be conditioned if necessary.
47. The report confirms that the works above the development are 'over-steepened' and that remedial works are necessary to ensure the long term stability of this slope. Again, the appellant has suggested a condition requiring the submission and approval of details and a completion period following approval.

#### *Other considerations*

48. In support of the development, Policy 5 of the CLP encourages the development or upgrading of existing tourism facilities through the enhancement of existing, or provision of new, high quality sustainable tourism facilities, attractions and accommodation. These will be supported where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes. Proposals should provide a well balanced mix of economic, social and environmental benefits.
49. The development would satisfy aspects of this policy through the proximity of the Carbis Bay railway station and bus services. It would provide an expansion of the high quality facilities given the appellant's intention to re-purpose the meeting rooms as holiday accommodation which would help to support hotel activities outside the summer months.
50. The Framework seeks to create the conditions favourable for businesses to invest, expand and adapt and at paragraph 81 states that significant weight should be placed on the need to support economic growth and productivity.
51. Policy LED8 of the SIANDP gives support to extensions to existing accommodation providing the criteria of Policy GD1 are met but in this case, the development does not satisfy the requirement for development to be sensitive to its surroundings.
52. The hotel employs up to 150 people and makes an important contribution to the local economy and this would be consolidated to some extent through the development which is stated would create 9 new jobs covering a wide range of skill sets. The appellant stresses the importance of the economic benefits that the holding of the G7 summit has brought to Cornwall and has submitted copies of letters from two local construction firms<sup>6</sup> in support. Additionally the installation of low carbon energy technologies makes the complex highly sustainable as described by Centrica. The owners of the Ocean Sports Centre have stated that the expansion of hotel facilities has facilitated the

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<sup>5</sup> Appendix RM4 of the appellant's statement

<sup>6</sup> Attached to the appellant's 'Appeal rebuttal' statement



development of improved premises and staff levels involved in the Ocean Sports Centre.

### **The planning balance**

53. I have found very significant harm to the character and appearance of the landscape which is contrary to national and local policies. Whilst issues relating to ecology and biodiversity, and to drainage, coastal and land stability could be mitigated through the imposition of appropriately worded conditions these would not overcome the level of harm I have found. Although it is to the hotel's considerable credit that it has hosted the G7 summit and now wishes to adapt the meeting rooms to holiday accommodation, the economic benefits arising from the development, despite attracting significant weight, are insufficient to outweigh the harm to the landscape.
54. The appeal on this ground fails and planning permission is refused on the deemed planning application.

### **Conclusion**

55. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice following correction.

*P N Jarratt*

INSPECTOR