



Appeal Decisions

Hearing held on 22 March 2022

Site visit made on 22 March 2022

by **Jessica Graham BA (Hons) PgDipL**

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal A Ref: **APP/D0840/C/21/3272757**

Appeal B Ref: **APP/D0840/C/21/3272758**

Appeal C Ref: **APP/D0840/C/21/3272759**

Chy Kerenza, North pool road, Illogan, Cornwall, TR15 3JQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeals are made by Mr Glenn Leader (**Appeal A**), Mr Michael Leader (**Appeal B**) and Miss Deborah Leader (**Appeal C**) against an enforcement notice issued by Cornwall Council.
 - The notice, numbered EN20/00560, was issued on 18 March 2021.
 - The breach of planning control as alleged in the notice is "Without planning permission, the erection of two semi-detached residential dwellings."
 - The requirements of the notice are to:
 - (1) Demolish the two semi-detached dwellings that have been erected on the land
 - (2) Remove all resultant materials and services from the land following compliance with requirement (1) above.
 - The period for compliance with the requirements is nine months.
 - **Appeal A** is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) 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.
 - **Appeals B** and **C** are proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision: The appeals succeed in part and the enforcement notice is upheld with variations in the terms set out in the Formal Decision below

Preliminary Matters

1. At the Hearing it became apparent that the Planning Inspectorate had not received copies of supporting letters submitted by the Appellants, and the Appellants had not received copies of the Council's Statement. I adjourned the Hearing so that copies of the missing documents could be made, and provided time for everyone to read and absorb their content before proceeding.
2. Having read the Council's statement, the Appellants disputed the accuracy of the stated height of the dwellings built on the appeal site. The Council explained that this had been scaled off the drawings submitted with the most recent planning application. Mr Glenn Leader advised that those drawings must be wrong, as he had measured the height himself and obtained a different figure. Since the height of the buildings that have actually been constructed (in

contrast with the height of the buildings for which planning permission was granted) is a material consideration in these appeals, I asked the Council and the Appellants to take their own measurements, and submit these to the Planning Inspectorate by 5 April 2022.

3. The parties subsequently confirmed to the Planning Inspectorate that they had measured the ridge height on site, and agreed it to be 8.816m. I then provided an opportunity for the Council to update its case with regards to the agreed measurement, and for the Appellants to comment on that updated case.
4. In advance of the Hearing, both the Council and Mr Glenn Leader had indicated that they were minded to apply for an award of costs. However, at the Hearing, each advised me that they no longer wished to pursue a costs application.

Background

5. The appeal site, which lies within the built-up area of Illogan, previously contained a somewhat dilapidated bungalow. Following advice from the Council that replacing the bungalow with two houses would be preferable to replacing it with three bungalows, a planning application to demolish the existing bungalow and construct two semi-detached dwellings was submitted and approved ("the 2018 Permission").¹ A revised scheme, in which the two dwellings were set further back from the road to provide better parking provision and reduce overlooking to the rear, was approved in February 2019 ("the 2019 Permission").²
6. In June 2020 the Council visited the site, and observed that the dwellings were not being constructed in accordance with the approved plans. An application for planning permission for retention and completion of the dwellings "as built" was subsequently submitted, and refused in December 2020 ("the 2020 Application").³ In March 2021 the Council issued an Enforcement Notice, and it is that notice which forms the subject of the current appeals.

The appeals on grounds (b) and (c)

7. The grounds of appeal are that the matters alleged by the notice have not occurred (ground b); or that those matters, if they occurred, do not constitute a breach of planning control (ground c).
8. I can deal with these two grounds together, and in short order. The Appellants do not contest that the alleged construction of two dwellings has taken place: those dwellings now stand on the appeal site. Rather, their case (at the time the appeals were submitted) was that the Council was incorrect to say that the dwellings did not benefit from planning permission, because they had been built in accordance with the 2019 Permission, with the incorporation of additional elements that would be allowed under Permitted Development Rights.⁴
9. However, at the Hearing the Appellants confirmed that they now understand, and accept, that a building which is still under construction cannot benefit from Permitted Development Rights: a dwellinghouse must be complete before such rights can be exercised. The question of what could be added, using Permitted

¹ Ref PA17/11404 dated 19 February 2018

² Ref PA18/11552 dated 1 February 2019

³ Ref PA20/08849 dated 16 December 2020

⁴ As permitted by the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO")

Development Rights, remains relevant to the appeals on grounds (a) and (f) and I shall return to it below. But for the purposes of determining the appeals on grounds (b) and (c), there is no longer any dispute that the alleged construction of the dwellings has taken place, and that in their current “as-built” form, they do not have planning permission.

10. The appeals on ground (b) and (c) must therefore fail.

The appeals on ground (d)

11. The ground of appeal is that at the date when the notice was issued, it was too late for the Council to take enforcement action. The time limit for taking enforcement action against building operations is four years from the date on which the operations were substantially completed,⁵ and the Enforcement Notice in this case was issued on 18 March 2021. This means that to succeed on ground (d), the Appellants would need to show that the construction of the dwellings had been substantially completed before 18 March 2017.

12. At the Hearing, the Appellants accepted that this was not the case. Construction of the dwellings had not been substantially completed (or, indeed, started) before 18 March 2017, and the time available to the Council for taking enforcement action had not expired when the notice was issued. The appeal on ground (d) must therefore fail.

The appeal on ground (a)

13. The ground of appeal is that planning permission should be granted for the matters alleged by the notice – that is, in this case, for the dwellings that have now been built on the appeal site. It is common ground that the potential for overlooking from side windows could be addressed by condition, so the single main issue is the effect on the character and appearance of the area.

14. North Pool Road is a long cul-de-sac, with a slight rise where it crosses the former track bed of the old mineral railway that ran from Carn Brea to Portreath. There are some three-storey residential blocks along nearby Balkin Way, a two-storey house opposite the appeal site, and other two-storey properties in the vicinity. The dwellings either side of the appeal site are bungalows.

15. In this context, as the Council pointed out in its pre-application advice to the Appellants, the principle of replacing the former bungalow on the appeal site with a pair of two-storey semi-detached dwellings would be acceptable *provided* that they were designed to be in keeping with the character of the area. The replacement dwellings for which the Council subsequently granted permission had a roof with, importantly, wide hips to either side. These hips meant that above eaves height, the roof sloped up and away from the neighbouring bungalows. This hipped design reflected that of the two-storey property opposite the appeal site, and resulted in a roof with far less bulk than would have been the case if the ridge had run the full width of the building.

16. The pair of semi-detached dwellings that have now been constructed do not have a hipped roof. Instead, there is a large, steeply sloping gabled roof across the full width of the two dwellings. It has two front-facing and two rear-facing

⁵ S.171B(1) of the Town and Country Planning Act 1990 (as amended)

velux windows, and its ridgeline is nearly 1m higher than that of the approved dwellings.

17. In views from the street, it is clear that the dwellings on the appeal site have three storeys of living accommodation; their scale dominates the more modest form of the bungalows to either side. This adverse impact is heightened by the addition of enclosed side-entry porches beneath a gabled roof; unlike the open-fronted mono-pitch design of the porches on the approved dwellings, this adds to the overall visual bulk of the buildings. The expanse of the tall gable-end wall is a prominent and intrusive element on the approach from the rise along North Pool Road, disrupting the low-lying roofscape on this side of the street.
18. For these reasons I find that the dwellings as constructed conflict with the aims of Policies 12 and 13 of the Cornwall Local Plan 2010-2030, which seek to ensure that (among other things) development follows a design process that clearly considers the existing context, is of an appropriate scale and height, and avoids adverse visual impacts.
19. The Appellants explained that the rear projection had been extended in order to accommodate a downstairs bathroom, which would be more accessible to those with limited mobility, and the porch was enlarged to provide additional storage space. I appreciate that these alterations were aimed at improving the quality of the living accommodation. But where planning permission has (as here) been granted subject to a condition requiring compliance with the approved plans, it is not open to a developer to alter those plans at will. If during the course of construction it becomes apparent that a different layout is necessary or desirable, an application must be made to the Council.
20. I conclude that the adverse impact the dwellings have on the character and appearance of the area conflicts with the relevant policies of the Development Plan, and there are no other material considerations sufficient to outweigh that conflict. The appeal on ground (a) fails, and the application for planning permission deemed to have been made under s.177(5) of the 1990 Act is refused.

The appeals on ground (f)

21. The ground of appeal is that the steps required by the notice exceed what is necessary to remedy the breach of planning control. The Appellants contend it is excessive to require the demolition of the two existing dwellings, because the differences between what was permitted and what was constructed could have been carried out under Permitted Development Rights.
22. As explained above, dwellings only benefit from Permitted Development Rights once they are complete. But it is nevertheless right to consider whether, had the dwellings first been duly completed in accordance with the planning permission that was granted, they could then have been lawfully altered to achieve their current form. If so, there is a strong argument that it would be unreasonable to require their demolition, because enforcement action is intended to be remedial rather than punitive.
23. In granting planning permission, the Council did not impose any conditions to restrict additions or alterations to the development that could potentially be carried out under Permitted Development Rights. It is common ground that the basic footprint of the existing dwellings (that is, the four main external walls)

accords with that shown in the plans approved by the 2019 Permission. The differences between what was permitted and what has been built are the alteration of the roof form, from hipped to gable-ended; the increase in the roof ridge height from 7.89m to 8.81m; the increased size and changed form of the porches and the rear projection; and changes to the style and positions of windows.

24. The GPDO⁶ grants permission for the enlargement of a dwellinghouse through adding to or altering its roof, subject to various restrictions and conditions. These include the requirement that no part of the dwellinghouse would, as a result of the works, exceed the height of the existing roof. In this case, the height of the roof has been increased by nearly a metre, so the alterations to the roof could not have been carried out as Permitted Development. Further, the extended front porch is an enlargement forward from the principal elevation of the house, so could not have been carried out as Permitted Development either.⁷
25. Some of the other alterations could potentially have been made under Permitted Development Rights. However, the increased height of the roof and the extension of the front porches mean that what has been built on site could not have been achieved by first constructing the dwellings as approved, and then exercising Permitted Development Rights. While it may have been possible to carry out a hip-to-gable roof conversion without increasing the height of the roof, the ridge height would have been nearly a full metre lower than that of the current dwellings, and the resulting visual impact would not have been so adverse.
26. In summary, I find that what has actually been built on the appeal site is materially and significantly different from what could have been built, had the dwellings first been constructed in accordance with the Planning Permission granted, and then altered in accordance with Permitted Development Rights. It is not therefore excessive for the enforcement notice to require the demolition of the buildings in order to remedy the breach of planning control that has taken place.
27. I have a duty to consider whether there are any obvious alternatives which would achieve the purpose of the enforcement notice, but with less cost and disruption. In this case, there is an extant grant of planning permission. Requiring the buildings to be altered to comply with its terms would achieve the purpose of remedying the breach of planning control.
28. The Council explained that it had considered this option, but rejected it on the grounds that the requirements of the notice would then have had to detail the exact works needed to comply – such as the precise specification of the replacement roof, and all consequent works to the interior – and this would have resulted in an unduly cumbersome and onerous enforcement notice.
29. I can understand the Council's concerns in this regard: particularising detailed alterations to achieve compliance with approved plans is problematic, not least because once those requirements have been complied with, the whole building has a deemed planning permission under s.173(11) of the 1990 Act, and the

⁶ The Town and Country Planning (General Permitted Development Order 2015 (as amended), Paragraph B.1.(b) of Schedule 2

⁷ Paragraph A.1.(e)(i) of Schedule 2 to the GPDO

conditions imposed on the original Permission cease to have effect. But where (as here) the notice is directed at a building which differs materially from the approved plans, such that the allegation is the construction of a building without planning permission, such detailed requirements are unnecessary. It is sufficient for the notice simply to require *either* demolition *or* alteration to comply with the terms and conditions of the permission that was granted. The reason for providing both alternatives is that either of them would achieve the purpose of remedying the breach, so the developer should be given the choice as to which to pursue.

30. I shall therefore vary the terms of the notice so as to provide the Appellants in this case with the option of altering the existing dwellings to comply with the terms of the 2019 Permission, as an alternative to demolishing them. The appeal on ground (f) succeeds to this extent.

The appeal on ground (g)

31. The ground of appeal is that the nine-month period specified in the notice for compliance with its requirements falls short of what should reasonably be allowed.
32. At the Hearing, it emerged that the two dwellings constructed on the appeal site are now occupied: one by Mr Michael Leader, and the other by tenants. The Council confirmed that it had not been aware of this at the time the notice was drafted, and the nine month compliance period had been specified on the basis that this would provide a reasonable and proportionate amount of time in which to demolish the two dwellings and clear the site.
33. In circumstances where anyone stands to lose their home as the result of an appeal decision, as is the case here, there is likely to be a serious interference with their rights under Article 8 of the European Convention on Human Rights, as enacted through the Human Rights Act 1998. However, it does not necessarily follow that this would be a violation of their human rights.
34. Subject to the variation discussed in paragraphs 28 – 31 above, I am satisfied that the requirements of the notice are not excessive. The introduction of an alternative to demolition – that is, altering the dwellings to comply with the terms of the planning permission – provides an option under which the existing occupiers could move into temporary accommodation, while the necessary works were carried out. However, I am mindful that whichever option is chosen, the compliance period would need to encompass sufficient time for notice to be served on the tenants, and/or a search made for alternative accommodation.
35. I have not been provided with details of the Tenancy Agreement. The Appellants described it as being for a “rolling” six month period, which suggests that the notice required for termination is likely to be no longer than two months. I note Miss Leader’s concern that her father is elderly, and the stress of the current proceedings has had an adverse impact on his health. It is also of course important, in the public interest, that the requirements of the notice should be carried out without undue delay to overcome the harm identified by the Council in its reasons for issuing the notice.
36. Bearing all of these considerations in mind, I conclude that it would be appropriate in this case to extend the compliance period to twelve months. I

am satisfied that the nine months originally specified by the Council should be ample for the physical work of either demolishing the houses, or altering them to conform with the planning permission granted. The additional three months will provide time for the existing occupiers to be given notice and/or look for alternative accommodation, either on a temporary or permanent basis, prior to those works commencing.

37. In my judgment, a 12 month period would strike the appropriate balance between the competing private and public interest, such that there would not be a disproportionate burden placed on the Appellants.
38. I therefore determine that the period for compliance with the requirements of the notice should be extended from nine months to twelve. The appeal on ground (g) succeeds to that extent.

Conclusion

39. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent. The appeals on grounds (a), (b), (c) and (d) fail.

Formal Decision on Appeal A, Appeal B and Appeal C

40. It is directed that the enforcement notice is varied by
- At paragraph 5, between the heading "What you are required to do" and the first requirement, inserting the word "EITHER:" and
 - At paragraph 5, below the second requirement, inserting the word "OR:" followed by the text " 3) Alter the two existing semi-detached dwellings to comply with the terms of the planning permission reference PA18/11552 dated 1 February 2019 including the conditions subject to which that permission was granted." and
 - At paragraph 6, under the heading "Time for Compliance" delete the existing text in its entirety, and replace it with the words "twelve months".

Subject to these variations, the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made, in Appeal A, under section 177(5) of the 1990 Act as amended.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Glenn Leader	Appellant, Appeal A
Mr Michael Leader	Appellant, Appeal B
Miss Deborah Leader	Appellant, Appeal C
Mr Peter Kilpatrick	Neighbour and friend of the Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter Blackshaw BA(Hons) MRTPI	Principal Development Officer
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DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of the Council's letter dated 22 February 2022, notifying interested persons of the date and details of the Hearing
2. Copies of supporting letters submitted on behalf of the Appellants

DOCUMENTS SUBMITTED, AT THE INSPECTOR'S REQUEST, AFTER THE HEARING

3. Copy of drg no 929_56A, annotated to show on-site measurements agreed by the parties
4. Email from the Council dated 14 April 2022, responding to the Inspector's invitation to update its case in the light of Document 3
5. Emails from Mr Glenn Leader dated 3 and 6 May 2022, responding to the Inspector's invitation to comment on the contents of Document 4