
Appeal Decision

Site visit made on 3 January 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Appeal Ref: APP/D0840/C/22/3304909

Land known as Loventor, Tregonhawke Cliff, Military Road PL10 1JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Dr Jaspar Joseph-Lester against an enforcement notice issued by Cornwall Council ('the Notice').
 - The enforcement notice, numbered EN18/02009, was issued on 4 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the extension of the western elevation of the chalet and the installation of patio doors. In addition the creation of a raised decked area and pergola structure to the northwest of chalet. The approximate position of the development is marked with a blue 'X' on the attached plan.
 - The requirements of the notice are: (1) Cease the use of the extension to the chalet and decked area shown in the approximate position by blue 'X' on the attached plan; (2) Demolish and remove the extension to the chalet and patio doors on the western elevation of chalet and reinstate chalet in accordance with permission 592/1029/F; (3) Demolish and remove the raised decked area and pergola shown in the approximate location by blue 'X' on the attached plan; and (4) Remove all materials arising from compliance with (2) – (3) above from the land and reinstate the land to its former condition before the breach occurred i.e. soiled and grass seeded.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. It is directed that the enforcement notice is varied by: the deletion of paragraph (1) from section 5 of the Notice 'What You Are Required To Do'; the deletion of the words "and patio doors" and the words "and reinstate chalet in accordance with permission 592/1029/F" from paragraph (2) in section 5 of the Notice; and the deletion of the words "i.e. soiled and grass seeded" from paragraph (4) in section 5. The resultant paragraphs (2), (3) and (4) shall be renumbered "(1), (2) and (3)", respectively.

Subject to the variations, 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.

Application for costs

2. An application for costs was made by Dr Jaspar Joseph-Lester against Cornwall Council. This application is the subject of a separate Decision.

The Notice

3. An Inspector has a duty to get a Notice in order, using the powers in S171 of the Act. This power should not be exercised, however, where it would lead to injustice to any party. The Notice refers to operational development so, therefore, its reference to the cessation of use in the first requirement in section 5 of the Notice is inappropriate and should be omitted.
4. The latter part of the second requirement is that the chalet should be reinstated in accordance with permission 592/1029/F, one of two permissions from the early 1990s. The Appellant states that it seems that neither of the 1990s permissions was implemented. Further, he states that the Officer considering an application on the site in 2018 opined that the current chalet is likely to have been built without consent. Therefore, he says it seems that neither of the 1990s permissions was implemented, they expired and the current chalet was built without consent; it has now long since become lawful. Whether the chalet was built in accordance with the planning approval, and when it was built, are matters where the onus lies with the Appellant to make his case on the balance of probability. The evidence before me lacks precision, and I cannot be sure, on the balance of probability, that this was the case.
5. Notwithstanding this, that part of the second requirement has nothing to do with the alleged breach of planning control. This does not refer to the construction of the chalet, or non-compliance with a planning permission, but cites an extension to the chalet, the installation of patio doors and the construction of decking and a pergola. Therefore, the Notice cannot be used as a vehicle to address differences between the approved chalet and that which has been built.
6. I will, therefore, correct the Notice by omitting reference to the need to reinstate the chalet in accordance with permission 592/1029/F. This can be done without injustice to either party.

Reasons

Ground (c)

7. An appeal under this ground is that the alleged breach of planning control does not constitute a breach of planning control. This is a legal ground of appeal where the onus lies with the Appellant to make his case.
8. The Council provided copies of three Article 4 Directions ('A4Ds') that relate to the area in which the appeal site lies. These remove permitted development rights from dwellings there. Amongst the rights removed in that dated 3 April 1952, 'A4D1', is "the enlargement, improvement or other alteration of a dwellinghouse". That dated 9 November 2001, 'A4D2', widened the scope of control to include roof alterations and the erection of walls, fences and other means of enclosure. The most recent, dating from 14 July 2009, 'A4D3', removed the rights to erect porches, various outbuildings and the like.
9. The Appellant's Ground (c) case is made in respect of the patio doors, decking and pergola.
10. The Appellant provided a photograph dated 25 October 2015 that showed a patio door in situ, which he says had been there for some time. To my mind, what has been installed is materially different from that which is shown in the

photograph by reason of its materials, colour, the thickness of its frame and new surround. It is not a like for like replacement. It is an "other alteration" that requires planning permission, by reason of A4D1.

11. The Appellant submitted a photograph of decking on the land dated 6 June 2016 that he says, by reason of its "worn, weather-beaten appearance...it had clearly been in place for some years". It would, he claims, have been lawful by the time of its replacement with the existing decking in 2018 and, as such what is on the land can be considered a like for like replacement.
12. Neither the photograph from 2015, relied upon by the Appellant in respect of his arguments for the patio door, nor that photograph¹ he submits with the same date showing part of the garden where there is now decking, show any decking. Therefore, on the balance of probability, the decking in the 2016 photograph did not become lawful and cannot be relied upon to support his arguments.
13. In any event, the decking that has been erected is not a like for like replacement for that shown in the 2016 photograph. That was a rudimentary structure with rough boards of varying lengths set just above ground level. Today's decking lies at two levels, both of which are considerably higher than that of the 2016 photograph - that immediately outside the patio door markedly so. It has steps up from the garden to the lower level and further steps to its higher level where access to the chalet, via the patio door is obtained. The joinery work is far more refined with its boards accurately cut to length and the structure incorporates sturdy timber uprights, two of which support the rope fencing around the upper decking.
14. The frame for the decking provides support for the pergola. In his Grounds of Appeal, the Appellant claims that this part of the development would be permitted development under "Part 1 Class E and therefore did not require an express grant of planning permission". I assume that he refers to Part 1 Class E of the Town and Country (General Permitted Development) (England) Order 2015, as amended. These permitted development rights were withdrawn by A4D3. The matter was not followed up in the Appellant's Final Comments and I find that the case has not been made that there has been no breach of planning control.
15. For the reasons set out above, I find that the alleged breach of planning control constitutes a breach of planning control, and the Ground (c) fails.

Ground (d)

16. An appeal under Ground (d) is that at the date the Notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. Again, it is for the Appellant to prove his case on the balance of probability.
17. S171B of the 1990 Act sets out the time periods after which breaches of planning control gain immunity from enforcement action. The relevant time period here is that set out in S171B(1), four years. Given that the Notice was

¹ IMG_7125.JPG

issued on 4 July 2022, the 'relevant date' is, therefore, on or before 4 July 2018.

18. The Council argues that the works that have been undertaken are a single act of development. In his Final Comments, the Appellant opines that "the doors, the replacement decking, and steps are all separate acts of development". If the Appellant is right, each, as he says, would have their own timescales for enforcement and immunity; to achieve the latter, they would have had to have been substantially complete by the relevant date.
19. Between paragraphs 4.9 and 4.13 of its Statement of Case ('SoC'), the Council submitted a series of photographs that show the nature and progression of work on the raised deck area, extension and pergola structure referred to in the Notice. To my mind, these illustrate that these are all elements of a single development. They show how the elements are inter-related and how they are all reliant on the same framework.
20. That dated 26 October 2018 shows that at that time the frame of the extension was in-situ, but this had not been clad nor had the wc and shower facilities been installed. Although no date is attributed to them, given the position of a workbench, materials and what appears to be the yellow lid of a container in a prominent position, the two photographs on page 10 of the SoC were taken at the same time. They show the remainder of the decked area and pergola; neither of which is substantially complete.
21. I have found, in the Ground (c) case, that the present area of decking is quite different from that which was shown in the photograph dated 6 June 2016. The Appellant refers to its weather-beaten appearance pointing to it having been in place for some years. However, the materials cannot be considered to make the case for the decking having been there for four years. Their weather-beaten appearance might be a result of using second hand materials. The claim that the decking "had clearly been in place for some years in 2016, and so must have become lawful by the time when it was replaced in May/June 2018" is not expanded upon and the evidence on this matter lacks precision. Furthermore, as I have set out in the Ground (c) appeal, photographs from 2015 do not show the decking on the land, which undermines this claim.
22. For the above reasons, the Ground (d) appeal fails.

Ground (a)

23. The appeal under Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
24. The main issue in this appeal is the effect of the development on the character and appearance of the area.
25. Loventor is a timber chalet that lies towards the lower end of Tregonhawke Cliff, at the eastern end of Whitsand Bay. It is one of a large number of chalets along this part of the coast that are linked to one another and to the public road at the top of the cliff by a network of paths. The chalets are by and large well-spaced out, separated by extensive undeveloped areas of steep roughly vegetated cliff.

26. The area is very attractive and has been locally designated as an Area of Great Landscape Value (AGLV). The Cornwall and Isles of Scilly Landscape Character Study defines the area as lying within Landscape Character Area 22 'South East Cornwall Plateau' where this area of coast is described as being "spectacular", an epithet with which I concur.
27. The evidence shows that the chalet on the land is not that which was approved under 592/1029/F. Notwithstanding that it is larger than that which was approved, I did not find it to be conspicuously large. Whilst chalets on the cliff share many characteristics and are, in the main, quite simple structures, there is, nonetheless, variety in their designs, materials, fenestration and sizes.
28. The principal policy in respect of the development is 'saved' Policy W1; originally part of the Caradon Local Plan First Alteration, adopted August 2007 ('CLPFA'). Although over 15 years old, the policy has been saved and incorporated into the development plan, which also includes the Cornwall Local Plan Strategic Policies, adopted November 2016, ('LP') and The Rame Peninsula Neighbourhood Development Plan 2017-2030 ('NDP').
29. Notwithstanding the age of Policy W1, it is still relevant. Amongst its terms, it supports the improvement and extension of chalets where the resultant floor area falls within certain limits. The case has not been made that the development falls within the limits in Policy W1; the Appellant's case is based on the acceptability of its size, design and materials, and, consequently, that it causes no harm to the character and appearance of the area. The Council also refers to the Whitsand Bay Chalets Guidelines for Development Control, produced by a preceding planning authority, Caradon Council, in 2001. This provides advice on the interpretation of Policy W1. I agree with the position taken by the Inspector in an appeal decision² from 2018, in respect of a chalet called Belnorcot, that whilst this is a material consideration, as it does not form part of the statutory development plan and is over 20 years old, this limits the weight that I am able to assign it.
30. Policy W1 needs to be read in conjunction with a suite of policies that seek to achieve high quality design that is appropriate to the area in which a development is located, and those that aim to protect the AGLV.
31. The site lies close to the main path that runs down the cliff from the public road to a beach, where I saw a café a lifeguards' hut. Given that it offers these facilities, and that it is a beautiful location, I can safely assume that this is a popular beach and that the path is well-used. Although I appreciate the manner in which the site's levels have been used, the development is seen in various views, both from above and below the chalet. As a whole, I find it to be an overly large extension to the chalet, with a footprint that is not subservient to it. Its design is at odds with the simple form of the chalet, which is a common theme of the chalets I saw on the cliff. It does not represent high quality design required by LP Policy 12.
32. Amongst its terms, LP Policy 23 requires development to maintain the character and distinctive landscape qualities of the AGLV. This is reflected in a further 'saved' policy from the CLPFA, Policy CL9. NDP Policy 5 is a general development policy relating, amongst other things, to visual impact and design across the area of the NDP. Its support for development proposals is dependent

² APP/D0840/W/18/3197347

- on compliance with local policies and that design reflects locally distinctive character and traditional building styles.
33. The character of this part of the AGLV is partly derived from the simple form and relatively small size of the chalets there. The Council's policies have clearly been an important factor in maintaining this character and protecting the appearance of the area.
34. It has been argued that the development replaced a freestanding structure on the land. A photograph in a newspaper³ in 2013, though the date of the photograph is unknown, shows what appears to be some sort of shed on the land. This photograph has also been submitted in the Council's Statement of Case. Given the distance from which the photograph was taken, and its small size, it is not possible to make an accurate comparison between that shed and what is on site presently. I note from photographs that the shed was not on site in 2016 but might have been there in a dismantled state in October 2015. The evidence before me does not allow me to conclude that there has been a substantial improvement, as claimed.
35. The Appellant says that he would remove the pergola, were this to tilt the planning balance. Whilst this element has the greater visual impact, this would not overcome the harm that the development causes.
36. I take the point that some form of WC/shower is necessary to allow the chalet to function, though I have not been given details of how these were provided before the extension was added. That element of the development does not, of itself, cause significant harm to the character and appearance of the chalet or wider area. However, I do not have sufficient evidence to show that it is readily severable from the remainder of the development. As such, I cannot vary the requirements of the Notice to allow for its retention. This is, however, a matter that might be explored with the Council before the Notice comes into effect.
37. In his Final Comments, the Appellant makes reference to a number of other developments to chalets, setting out such information as their original and resultant floor areas and sizes of deckings that were allowed by the Council. Amongst these is one made on the chalet Belnorcot in the appeal decision I refer to above that was made subsequent to that decision. In that case, the Planning Officer is reported as saying that whilst the development was contrary to the terms of Policy W1, there were no grounds to refuse the application. I have been given little evidence from those cases, and give this information little weight. In any event, I find that there are clear grounds for refusing permission here.
38. The harm that I have identified is not mitigated by the use of painted and untreated timber, both of which are appropriate to the area. The Appellant points to the use of glass and steel on other chalets in the area, which he finds to be insensitive, I do not find this to be sufficient reason to justify the development.
39. The above comments do not relate to the patio door that has been installed. This replaced an earlier patio door in the same part of the chalet, is appropriate to it and causes no harm to the character and appearance of the area. As

³ The Guardian 23 July 2013

this is readily severable from the other elements set out in the Notice, I shall grant planning permission for this and vary the Notice accordingly.

40. The development, as described above, causes harm to the character and appearance of the area. It is, therefore, contrary to the terms of Policies W1 and CL9 from the CLPFA, Policies 12 and 23 of the LP, NDP Policy 9 and guidance in the Government's National Planning Policy Framework.

Conclusion on Ground (a)

41. For the reasons given above, the Ground (a) is dismissed.

Ground (f)

42. That part of the Appellant's case relating to reinstating the chalet in accordance with permission 592/1029/F has been addressed. The other aspect of the Ground (f) relates to that part of requirement (4) that obliges the Appellant to apply soil and grass seed to the land. The Appellant states that the lower deck is on top of a concrete cess pit and foundations of a former structure and that they have been there for more than 4 years and cannot be required to be removed.
43. I cannot be sure of the condition of the site prior to the erection of the extension. Photographs dated 25 October 2015 in the Appellant's Grounds of Appeal show a large part of the land where the development has been undertaken and that this was grassed. However, the situation might have changed in the interim. As the Council has not submitted any information on the matter, and the Appellant would be likely to know better what was there prior to the Notice being issued, I shall vary the requirement by removing reference to adding soil and grass.
44. To this extent the Ground (f) appeal succeeds.

Overall Conclusion

45. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector