



Appeal Decisions

Site visit made on 22 May 2023

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

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

APPEAL A Ref: **APP/D0840/C/22/3294150**

APPEAL B Ref: **APP/D0840/C/22/3294151**

Land opposite Squirrels Leap, 1A Woodland Heights, Tremorvah Crescent, Truro, Cornwall TR1 1NL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Richard Dolman (**Appeal A**) and Mrs Candice Dolman (**Appeal B**) against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN20/00742, was issued on 4 February 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the siting of 2 storage containers for domestic storage and the formation of a hard surface".
- The requirements of the notice are to:
 - 1) Cease the use of the shipping containers for residential storage
 - 2) Remove the 2 shipping containers from the land
 - 3) Dismantle and remove from the land the hardstanding comprising a tarmac driveway
 - 4) Return the land back to its former condition prior to the unlawful development taking place.
- The period for compliance with the requirements is two months.
- **Appeal A** is proceeding on the grounds set out in section 174(2)(a), (c), (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.
- **Appeal B** is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: Subject to variation so as to extend the period for compliance, the Notice is upheld and both Appeals dismissed.

Procedural matters

1. The area of land identified on the plan attached to the Enforcement Notice is the open space which lies opposite the dwellings on Woodland Heights. The matters alleged by the Notice have taken place at its north-eastern end. In the interests of clarity, I shall use the term "the Appeal Site" to refer to the part on which the alleged development has taken place, rather than the open space in its entirety.
2. The Appellants' agent points out that under the heading "Reasons For Issuing This Notice" the Council has summarised the harm, and policy conflict, which it

says “would” be caused. The storage containers and hardsurfacing attacked by the Notice are (as both parties are well aware) already in place, so the tense is incorrect, but I do not agree with the claim that this renders the Council’s subsequent submissions inconsistent or irrelevant. I am satisfied that any reasonable reader of the Notice would understand that the Council’s case relates to the existing containers and hardsurfacing, and their present-day impact. That is, after all, the basis on which the Appellants’ case has been argued. It is the basis on which I shall determine this appeal.

Background

3. The Appeal Site lies on the southern side of a private drive, directly opposite the dwelling at 1A Woodland Heights (known as Squirrels Leap). This dwelling was formerly an annexe serving the dwelling at 1 Woodland Heights (known as Japonica). It will be helpful to summarise here the relevant planning history of the two dwellings.
4. Japonica was constructed pursuant to planning permission granted on appeal in 1998¹. This permission was subject to a number of conditions, one of which removed various Permitted Development Rights. Planning permission was subsequently granted for alterations and additions to the detached garage serving the dwelling, so as to create an annexe, subject to a condition restricting its occupation to family members or non-paying guests. In March 2016, Planning permission² was granted for the change of use of this annexe to a dwelling in its own right. The conditions attached to the permission included a requirement that the allocated parking provision should be retained, but there was no condition removing, or limiting, the Permitted Development Rights of the new dwelling.
5. There then followed two applications, in 2016 and 2018, for the construction of a garage on the current Appeal Site: an appeal against the second refusal was dismissed in 2018.³ A subsequent application for a carport to cover the parking spaces immediately in front of Squirrels Leap was allowed on appeal in 2020.⁴

The appeals on ground (c)

6. The ground of appeal is that the matters alleged in the Enforcement Notice do not constitute a breach of planning control. The Appellants’ case on this ground has two strands. Firstly, they contend that the Appeal Site forms part of the curtilage of Squirrels Leap, such that the hardstanding is Permitted Development by virtue of Class F of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”). Secondly, they contend that placing the containers on the land is not development, and so does not require planning permission.
7. There is no statutory definition of what exactly constitutes “curtilage”. The GPDO makes several references to curtilage, but only gives a definition of the term for the purposes of Part 3. The Government’s *Permitted Development Rights For Householders – Technical Guidance* says that curtilage should be understood as “land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as

¹ Ref APP/P0810/A/98/293939

² Ref PA16/00067

³ Ref APP/D0840/D/18/3205430

⁴ Ref APP/D0840/D/20/3258439

the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.” Case law has established that regard should be had to the three tests of (i) physical layout of the building and the land or building said to be in the curtilage; (ii) ownership (past and present) and (iii) use or function (past and present).⁵

8. There appears to be no dispute that the Appeal Site forms part of the same planning unit as Squirrels Leap: the plans approved by the 2016 Permission identify it as part of the grounds of that property, and it has consistently been presented and treated as such in subsequent applications. But it is important to be clear that just because land lies within the same planning unit as a building, it does not necessarily follow that it must also be within its curtilage. Similarly, the fact that a piece of land may be used as a garden serving a particular dwelling does not mean that it is necessarily within its curtilage. In each case, establishing the extent of the curtilage will be a matter of fact and degree.
9. Here, the land in question is not part of the area of land in which the house itself sits, but rather is the north-eastern end of the open space which runs along the opposite side of the estate drive. The Appellants have provided a photograph⁶ to show the condition of the land prior to the formation of the hard surface, in which an area of decking, with table and chairs, is visible at the lower end of the Appeal Site. The photograph also shows that there was at that time no separation of the Appeal Site from the remainder of the open space; there was a single swathe of grass, containing a number of mature trees, with its roadside boundary delineated by a run of short posts. At my site visit I saw that the entirety of the Appeal Site has been hardsurfaced, and a line of shrubs or saplings planted alongside the edge of this hardstanding, which continues along the roadside boundary of the remainder of the open space.
10. As to ownership, in March 2021 the Council issued a Planning Contravention Notice which (among other things) queried the ownership, and use made, of the part of the open space lying opposite both Japonica and Squirrels Leap. The response provided on behalf of Mr Dolman confirmed that he was the freehold owner, and that area of land had been used for “purposes incidental and ancillary to the residential use of [his] property since November 1999”. I understand that Mr Dolman continues to own Japonica. But what is not clear, from the response to the PCN or the rest of the evidence currently before me, is how (if at all) the use of the space has changed since Squirrel’s Leap became an independent dwelling in 2016. There is, for example, no information as to whether, when the Appeal Site was not physically separated from the rest of the open space, the occupiers of Japonica were able to make use of the decking and chairs that formerly stood there; or whether the Appellants continue to use the green space beyond the Appeal Site as a garden.
11. The Council points out that the drive which runs between Squirrels Leap and the Appeal Site provides a clear visual and physical boundary between the Appeal Site and the dwelling. I do not consider that this physical feature, in and of itself, necessarily prevents the characterisation of the Appeal Site as curtilage: there are cases where areas of land separated from a dwelling by an intervening hedge, or a lightly-trafficked road, have on their facts been found

⁵ These tests were originally formulated in *HM Attorney-General ex rel Sutcliffe & ors v Calderdale BC* [1983] JPL 310, and subsequently affirmed in *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin)

⁶ Appendix RM.6 to the Appellants’ Statement of Case

to be part of the curtilage. But on the facts of this particular case, I am not persuaded that the appeal site is so intimately associated with the house at Squirrels Leap as to form part and parcel of the dwelling. The appeal site reads as more closely associated with the adjoining grassed area on the opposite side of the road, and it is not clear – on the ground or from the representations submitted – whether these two parts of the open space, despite being in the same ownership, are wholly separate in terms of use.

12. I therefore conclude that the appeal site does not form part of the curtilage of Squirrel's Leap. It follows that it does not benefit from the Permitted Development Rights available under Part 1 of the GPDO for "development within the curtilage of a dwellinghouse". The formation of the hardsurfacing on this area of land amounted to development, for which planning permission was required, but not obtained.
13. Turning to the two storage containers, the Appellants contend that their placement on the appeal site does not amount to operational development because they are not buildings, and so do not require planning permission. For the purposes of planning, a "building" is defined as *any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.*⁷ This is a wide definition – potentially encompassing "any structure or erection" – and has sometimes been interpreted to include objects which would not, in ordinary parlance, be considered buildings. Case law has identified three primary factors as relevant to the question of what is a building: size, permanence and physical attachment.⁸
14. The shipping containers here at issue are substantial, and placed side by side on the lower end of the Appeal Site, their combined dimensions are similar to that of a garage. It would nevertheless be relatively straightforward, with the right lifting equipment, to remove the containers from the land, since they are not physically attached to it but rest there under their own weight.
15. As to permanence, the evidence of the Appellants is that one container was placed on the land in October 2019 and the other in August 2020, and that they are used to store items which cannot be accommodated within the house. The containers were brought on to the Appeal Site after two applications for planning permission to construct a garage in that position were unsuccessful. There is no indication, then, that the siting or use of the containers was intended to be temporary. Permanence has also to be considered in terms of significance in the planning context.⁹ The siting of two shipping containers, which are industrial and utilitarian in appearance, on land that previously formed part of an open green space has clearly effected a physical change in the character and appearance of that land, which will remain so long as the containers are in place.
16. The Appellants have drawn my attention to three appeal decisions in which the siting of a container was held, on the facts there applied, not to be operational development. I do not doubt that other examples could also be found. But it is important to be clear that none of these set any form of "precedent". In each

⁷ S.336(1) of the Town and Country Planning Act 1990

⁸ *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1 K.B. 385, subsequently endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.2)* [2000] 2 P.L.R

⁹ *R (oao Save Woolley Action Group Ltd) v Bath and East Somerset Council* [2012] EWHC 2161 (Admin)

case it is necessary to address the question of whether or not an object is a building by assessing its own particular site-specific circumstances.

17. Taking all of this into account, I conclude that while the containers did not have to be “constructed” on site and could be relatively easily moved, they are of ample size, are intended to remain for the foreseeable future in their location, and have resulted in physical change to the characteristics of the land which is permanent rather than fleeting in character. I conclude that on the facts of this particular case, the containers amount to buildings. Their placement on the appeal site was therefore development for which planning permission was required, but not obtained.
18. For the reasons set out above, I conclude that the formation of the hard surface and the siting of the two containers on the appeal site amounted to development in breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a)

19. The ground of appeal is that planning permission should be granted for the matters alleged by the Notice. The main issue is the effect of the hardsurfacing and containers on the character and appearance of the area.
20. The houses at Woodland Heights have an elevated woodland setting. Formerly part of the Tremorvah Hall Estate, much of the residential area, including the Appeal Site, is covered by a Tree Preservation Order and retains a green and spacious character. A significant contribution to that character is made by the open space which runs along the southern side of the private drive serving Squirrels Leap, Japonica and two other properties. This space is mainly laid to grass, contains a number of mature trees, and forms an integral part of the street scene.
21. The Inspector who determined the 2018 appeal against the Council’s refusal to grant planning permission for a garage on the Appeal Site found that “Despite proposing an appropriate design and use of sympathetic materials, the proposed garage and driveway would represent a stark new hard feature in the undeveloped space on the southern side of the estate driveway. Rather than being read in the local landscape as incidental to its host dwelling on the opposite side of the estate driveway, it would appear as a jarring interruption in the otherwise continuous sweep of treed landscaping when approaching from Tremorvah Crescent.”
22. In my judgment, the hardsurfacing and containers that have subsequently been placed on the Appeal Site bear out those concerns. The metal shipping containers, with their industrial, utilitarian appearance, are an unexpected and discordant presence within the well-kept green landscaping of this residential area. I note the Appellant’s suggestion that the Notice be amended to require the removal only of the containers, allowing the hardsurfacing to remain. I also note the Council’s concern that if this were done, the hardsurfacing would accommodate the parking of a greater number of vehicles. I consider that even in the absence of the containers, the hardsurfacing constitutes an intrusive introduction of development into a previously undeveloped green space. It is precisely those qualities of the open space – the fact that it remains undeveloped, and is attractively verdant – that make a positive contribution to the street scene. The development here at issue significantly diminishes that contribution, to the detriment of the character and appearance of the area.

23. I find that the placement of hardsurfacing and containers on the Appeal Site conflicts with the aims of Policies 2, 12 and 23 of the Cornwall Local Plan (November 2016) and Policy E6 of the Truro and Kenwyn Neighbourhood Plan (November 2016), which together seek to ensure that development demonstrates an aesthetic understanding of its setting, and sustains the character of its locality.
24. I conclude that planning permission should not be granted for the matters alleged by the Notice, in whole or in part, and the appeal on ground (a) fails.

The appeal on ground (f)

25. 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' agent has helpfully clarified that this ground was included in order to facilitate the variation of the Notice, should it be found that either the containers or the hardsurfacing were, on their own, lawful or permissible. For the reasons set out above I have concluded that both the hardsurfacing and the placement of the containers amounted to breaches of planning control, for which planning permission should not be granted, so there is no need to vary the notice in those respects. I am satisfied that the steps required by the Notice are necessary to remedy the breach of planning control.
26. The appeal on ground (f) fails.

The appeal on ground (g)

27. The ground of appeal is that the compliance period specified by the Notice falls short of what should reasonably be allowed. The Notice specifies a period of two months for the storage use to cease, the containers to be removed from the land, the hardsurfacing to be dismantled and the land restored to its former condition. The Appellants contend that six months is needed, on the basis that an alternative storage facility will need to be found, and the contents of the containers transferred, before they can be removed; only then could the hardsurfacing be broken up, and re-laid to grass.
28. The Appellants have not disputed the Council's point that there are a number of self-storage facilities in the Truro area which offer storage at short notice, and in the absence of any information about what is actually in the containers, I can see no obvious reason why it should take very long to locate an alternative storage space and transfer their contents. However, I appreciate that the removal of the containers, the breaking up of the hardsurface and the laying of lawn are steps which can happen only in that particular order, with each step likely to be dependent on the availability and timetable of the relevant contractors.
29. Taking all of this into account, I consider that it would be reasonable to extend the period for compliance to four months. I shall vary the notice accordingly, and the appeal on ground (g) succeeds to that extent.

Conclusion

30. For the reasons given above, I conclude that neither **Appeal A** nor **Appeal B** should succeed. I shall uphold the Enforcement Notice, with a variation to the period for compliance.

Formal Decision

31. It is directed that the Enforcement Notice is varied by:

- At paragraph six, deleting the number “2” and replacing it with the number “4”.

Subject to this variation, **Appeal A** and **Appeal B** are dismissed, the Enforcement Notice is upheld, and 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