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## Appeal Decisions

Site visit made on 23 May 2023

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

**an Inspector appointed by the Secretary of State**

**Decision date: 3 July 2023**

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**Appeal A** Ref: **APP/D0840/C/22/3299559**

**Appeal B** Ref: **APP/D0840/C/22/3299560**

**Appeal C** Ref: **APP/D0840/C/22/3299561**

**Appeal D** Ref: **APP/D0840/C/22/3299562**

### **Land known as Land at St Just, St Just In Roseland, Truro, Cornwall**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr George Hext (**Appeal A**), Mr Thomas Hext (**Appeal B**), Mrs Deborah Hext (**Appeal C**) and Mrs Camilla Hext (**Appeal D**) against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN21/01556, was issued on 21 April 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, engineering operations including excavation works and the removal of hedgerow to create a new access onto a classified road."
- The requirements of the notice are to:
  - (1) Reinstate the hedge bank located along the B3289 to its former condition prior to the works being undertaken
  - (2) Reinstate the land and levels back to its former condition prior to the reprofiling works being undertaken.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (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.

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### **Appeal E Ref: APP/D0840/W/22/3292120**

#### **Land East of B3289 (north of play area), St Just-in-Roseland, Truro, Cornwall TR2 5JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Messrs G and T Hext against the decision of Cornwall Council.
- The application Ref PA20/07172, dated 7 August 2020, was refused by notice dated 6 August 2021.
- The development proposed is a new agricultural access and track, with associated works.

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**SUMMARY OF DECISIONS: The appeals fail. The enforcement notice is upheld, and planning permission is refused.**

## Procedural matters

1. The Appellants have expressed concern that the Statement submitted by the Council introduced what they consider to be new material and reasons for refusal, at a late stage in the appeal process. For the purposes of determining these appeals, I am not minded to disregard any part of the Council's Statement because the Appellants have had, and have taken, the opportunity to submit comments on its content. Whether doing so has caused them to incur unnecessary or wasted expense is a separate matter, for which any redress would need to be sought via an application for an award of costs. No such application is currently before me.

## Background

2. The Appeal Site is on the western side of one of three contiguous fields owned by the Appellants. Historically part of a wider agricultural holding, the total area of the three fields is around 2ha. Access to them is via the residential cul-de-sac of Harbour View, then across the top part of the adjoining public Play Area. The fields are at a higher level than the B3289, which runs through the village, and the Appeal Site slopes steeply down toward the mature Cornish hedge which forms the eastern boundary of this road.
3. An opening in the hedge was made in 2018, to enable contractors building a new dwelling on the opposite side of the road to access a water main. As part of this work an access into the field was created, which the Appellants consider to be in a preferable location to the existing access via Harbourside. In response to the Council's consideration of enforcement action, an application seeking planning permission for the new access, and related works, was submitted in March 2020.<sup>1</sup> Permission was refused in May 2020. In August 2020 a second application (now the subject of **Appeal E**) was submitted, which sought to address the Council's reasons for refusing the first application. Permission was refused in August 2021, and the Council issued an Enforcement Notice (now the subject of **Appeals A,B,C and D**) in April 2022.

## The appeal on ground (a) (APPEAL A), and the appeal against the Council's refusal to grant planning permission (APPEAL E)

4. While all five appeals essentially concern the same development on the same Appeal Site, there is a distinction between the deemed planning application made under ground (a) of **Appeal A**, and the planning application which is the subject of **Appeal E**. The former seeks permission for all or part of the matters alleged by the Enforcement Notice, while the latter seeks authorisation both for works already undertaken to create the access, and for further works to improve the track and create visibility splays. It will nevertheless be appropriate to deal with the two applications together, since the issues involved are common to both. The main issue is the effect of the development on the character and appearance of the area.

### The effect on the character and appearance of the area

5. The Appeal Site lies within the Cornwall Area of Outstanding Natural Beauty (AONB). The Government's *National Planning Policy Framework* (the NPPF) explains that great weight should be given to conserving and enhancing

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<sup>1</sup> Ref PA20/02095

landscape and scenic beauty in AONBs which, alongside National Parks and the Broads, have the highest status of protection in relation to these issues. The need to attach great weight to conserving the landscape and scenic beauty of the AONB is reiterated in Policy 23 of the Cornwall Local Plan (2016), which goes on to say that proposals for development within the AONB should be informed by, and assist the delivery of, the objectives of the AONB Management Plan.

6. I saw at my site visit that on this edge of the village, in the vicinity of the Appeal Site, there is a clear distinction in character between the two sides of the road. The eastern side is lined by dwellings, set down below the level of the road, with parking bays and grass verges on the roadside edge. The western side is bound by a tall hedgerow, with no footway, verges or gaps other than that which has been created on the Appeal Site. For most of its length, the hedge is of a height that precludes any views of the fields behind it.
7. Such hedges are a distinctive feature within the Cornish landscape, providing structure to historic field patterns and a sense of enclosure to rural roads and lanes, and forming valuable ecological corridors. As noted in the local landscape Character Assessments<sup>2</sup> produced to inform planning policy and development management decisions, pressure from the intensification of farming and changing agricultural practices can lead to the degradation and loss of traditional hedges. The Cornwall AONB Management Plan (2022-2027) notes that changes to roads and lanes in the AONB require particular design to ensure that their characteristic form is not lost or compromised, and Policy PD-P19 states that "new openings to lanes through existing hedge banks or vegetation which require uncharacteristic contemporary design standards and uncharacteristic visibility splays will not be supported."
8. An important consideration in this case is that the access is to and from a classified road. The B3289 is a route to the King Harry Ferry, which carries a significant volume of traffic, especially during the summer months; along this section there is a 30mph speed limit. The Council's Highways Department has advised that visibility splays of 43m to either side of the access are therefore required, and that these visibility splays would need to be kept clear of any obstruction above 0.9m from the level of the carriageway. While the development that is the subject of **Appeal A** currently has no visibility splays, it is common ground that if I were to grant planning permission for it, I should attach a condition requiring their provision.
9. The application that is now the subject of **Appeal E** includes the necessary visibility splays, and a track 4.5m wide and 40m long; the first 5m would be laid with concrete, and the remainder covered with shillet. A 5-bar metal field gate would be set back a sufficient distance for vehicles using the access to be able to pull in off the road before opening the gate.
10. There is nothing inherently unusual, or unacceptable, about the creation of a new agricultural access within the AONB; as the Appellants rightly note, there are already a great many, some of which are Permitted Development and some of which have recently been granted permission by the Council. The problem here is with what would have to be done to accommodate such an access. The

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<sup>2</sup> The *Cornwall and Isles of Scilly Landscape Character Study* (2008) and the *Roseland Local Landscape Character Assessment* (2014)

large difference in levels between the Appeal Site and the adjoining road means that the track cannot simply follow the slope of the land, as do the vast majority of agricultural accesses, including those in the photographs submitted by the Appellants. Instead, the existing unauthorised track has been cut into the slope, and the proposed track would involve a substantial amount of further excavation and the grading of the banks either side. As a result of these operations the track would have a formal and “engineered” character and appearance, more commonly associated with access to built development than with access to agricultural fields.

11. Further, the provision of the required 43m visibility splays on each side of the access would necessitate the substantial reduction and reprofiling of the existing Cornish hedge. The Appellants have proposed additional planting to mitigate this, but I share the concerns set out in the Council Officer’s report about the lack of detail provided. The Site Layout plan submitted with the application lists a variety of trees and shrubs for “additional mixed planting in existing hedge”, but does not specify what would be done about vegetation within the visibility splays, which would need to be maintained at a height below 0.9m. The “Planting Scheme” attached as Appendix A to the Design and Access Statement states that a “woodland edge flowering pasture mix” would be planted “on bank area of hedge”, but this is not shown on any plan and it is not clear whether it means the lowered part of the hedge adjoining the highway, or the banks that face either side of the access track. The later plan showing sections through the hedge and highway does not seem to have been accompanied by a plan showing where the sections were taken, and appears to indicate that the vegetation within the visibility splays will have the appearance of grass verges.
12. The landscaped visibility splays would have a very different character and appearance to the strongly vertical presence of the formerly roadside hedge. The introduction of any form of verge in front of what remained of the re-profiled hedge would, whether laid to grass or planted with a wildflower mix, have a suburbanising effect on this side of the road. The Appellants have suggested that landscaping and planting could be the subject of a condition, but given the constraints imposed by the visibility splays I am not persuaded that any potential landscaping and planting scheme could effectively mitigate the extent and impact of the alterations needed to the existing hedgerow.
13. The Appellants drew my attention to the Council’s decision<sup>3</sup> in respect of a proposed new agricultural access at nearby Trevannel Farm, which is also in the AONB. The Council concluded there that the proposal, which included additional planting and involved two breaches in existing hedgerows, would have a low impact on the character of the landscape. In my view this helpfully illustrates the important point that each proposal must be determined on the basis of its own merits and site-specific circumstances. In that case, as noted in the Officer’s Report, the track would follow existing contour lines, limiting the need for extensive excavation, and the introduction of extensive woodland planting within the fields alongside the track would help to limit its visibility. The situation is very different here.

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<sup>3</sup> Ref PA21/03316, March 2021

14. Drawing all of this together, I find that the development here at issue would result in significant and harmful changes to the character and appearance of this edge-of-village location. In views from and along this stretch of the B3289, the existing vertical enclosure provided by a traditional Cornish hedge would be opened up to reveal a formal, engineered track set amid landscaped visibility splays, containing verges similar to those already present on the opposite side of the road. These features, having a suburban rather than agricultural appearance, would result in the loss of the current clear distinction between the character of each side of the road. The built-up part of the village would appear to extend further outward, and the existing traditional roadside hedgerow would be much altered and diminished. This would detract from the natural beauty of the AONB.

#### Other material considerations

15. The Appellants have explained that relocating the access to the Appeal Site would overcome problems presented by the current access. This involves agricultural vehicles driving across the top of a public Play Area, and while there is no evidence that doing so has in fact caused any problems to date, the provision of an alternative access which removed the potential for any conflict between playground users and agricultural machinery would clearly be beneficial.
16. The existing access route also involves driving along a residential cul-de-sac. The Appellants contend that cars parked on the road, or outside the block of garages at the end of Harbour View, can present obstacles for large agricultural equipment. I agree that relocating the access to remove the potential for any conflict between residents and their vehicles, and such large-scale agricultural equipment as may seek to access the fields, would be a benefit that carries some weight in favour of the scheme.
17. I note the contents of the letter written by Edward Buckland, Chartered Surveyors instructed by the Appellants to evaluate the feasibility of renting out the three fields which include the Appeal Site. The letter sets out their professional opinion that the current access is "far from ideal", and that a direct access from the B3289 "could only be considered an advantage in the marketing of this land". It concludes that the access in its current form is not suitable for commercial agricultural farming.
18. I appreciate that the provision of an alternative access, suitable for use by the large-scale agricultural equipment favoured by many contractors, would increase interest from potential tenants. But I am not persuaded that it would be the only way to achieve the Appellants' stated aim of ensuring the continued agricultural use of the land. It is common ground that these fields are well suited for grazing, and since the residential cul-de-sac that forms the current access is able to accommodate a refuse lorry, I see no reason why it should not be able to accommodate a livestock lorry, and agricultural equipment of the type still in use by many local farmers, which needs to be of a size compatible with navigating narrow rural lanes. In short, I consider that while the provision of an access capable of accommodating large-scale agricultural vehicles may well be necessary to maximise the profitability of the land, the evidence does not demonstrate that it would be essential to securing its future productive use. This limits the amount of weight I place on the economic benefit of the scheme.

### The planning balance

19. As the Appellants rightly point out, there are policies – at both national and local level – which support agriculture and the diversification of farm business. But it is important to bear in mind that such support is provided in the context of requirements to respect and maintain the character of the landscape. For example, while Policy 2 of the Local Plan welcomes development proposals that “support the expansion of existing businesses and the indigenous businesses of agriculture, fishing and mining” it also requires proposals to protect, conserve and enhance the natural and historic landscape. Similarly, Policy PD-P17 states that “Farm diversification and infrastructure will generally be supported... *where the development is of a scale, design and location that can be accommodated within the sensitive landscapes of the AONB*” [my emphasis].
20. For the reasons set out above I have concluded that the development is not essential to secure the future productive use of the land, but it would nevertheless have some economic benefit through supporting agricultural business, and that is a consideration to which I attach some weight. The safety benefits of removing the potential for conflict between agricultural vehicles and equipment and (1) users of the public Play Area and (2) vehicles parked on Harbour View also carry some weight. However, I find that even in combination, these matters fall considerably short of outweighing the significant harm that would be caused to the character and appearance of the area, and to the natural beauty of the AONB. This is the case for both the proposed retention of the existing access track, subject to a condition governing visibility splays (**Appeal A**), and the proposal to retain and improve the unauthorised access (**Appeal E**).
21. I conclude that the development would conflict with the aims of Policies 12 and 23 of the Cornwall Local Plan and Policies LA1, LA2 and CV1 of the Roseland Neighbourhood Development Plan, which together seek to maintain and enhance the distinctive character of the landscape and the natural beauty of the AONB. It would also fail to accord with Policies MD9 and PD-P19 of the Cornwall AONB Management Plan.

### Conclusion

22. I conclude that the appeal on ground (a) (**Appeal A**) and **Appeal E** should be dismissed, and planning permission refused.

### **The appeals on ground (f)**

23. This 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 that the plan attached to the Enforcement Notice covers an “extensive area” of land, not all of which has been developed, so is incorrectly included.
24. I do not think the area of land outlined in red on the Enforcement Notice Plan can rightly be called “extensive”. The red line is drawn in a rectangle which, from what I saw at my site visit, shows the whereabouts of the alleged breach of planning control with reasonable accuracy. It would have been open to the Council to take the alternative approach of drawing the red line around all three of the fields owned by the Appellants and then indicating the approximate

position of the development with a cross, which would have involved a far larger area of land, but would still not have amounted to “over-enforcement”.

25. I am satisfied that the plan attached to the Enforcement Notice specifies the boundaries of the land to which it relates with sufficient precision, and that the requirements set out in the Enforcement Notice are necessary to remedy the breach of planning control. The appeals on ground (f) therefore fail.

### **The appeals on ground (g)**

26. This ground of appeal is that the period specified for compliance with the requirements of the Enforcement Notice falls short of what should reasonably be allowed. The specified period is six months. The Appellants request that this should be extended, to avoid disturbing any agricultural activity being undertaken on the land, and suggest a compliance period of twelve months.
27. It appeared, at my site visit, that the field in which the appeal site is located is currently laid to grass. If it is being grazed, a compliance period of six months should provide ample time for the livestock to be relocated for a while – or a temporary fence erected – so that works to re-profile the unauthorised access track and reinstate the hedgebank can be undertaken. If I am wrong about that, and a crop has been planted, the fact that this decision will be issued in early July means that a six month compliance period would run until early January, which should still provide sufficient time to carry out the required works after the harvesting season is over.
28. I conclude that a period of six months from the date of this decision is a reasonable amount of time for compliance with the requirements of the Enforcement Notice. The appeals on ground (g) fail.

### **Conclusions**

29. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the Enforcement Notice and refuse to grant planning permission for the application deemed to have been made under s.177(5) of the 1990 Act, and for the application made to the Council on 7 August 2020.

### **Formal Decisions**

30. **APPEAL A:** The appeal is dismissed, the Enforcement Notice is upheld, and planning permission is refused on the application deemed to have been made under s.177(5) of the 1990 Act as amended.
31. **APPEALS B,C and D:** The appeals are dismissed and the Enforcement Notice is upheld.
32. **APPEAL E:** The appeal is dismissed.

*Jessica Graham*

INSPECTOR