



Appeal Decision

Hearing held on 13 February 2024

Site visit made on 13 February 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/D0840/C/22/3304291

Land known as Little Trerank, The Lodge, Harmony Road, Roche, St Austell, PL26 8EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Carol Bennett against an enforcement notice issued by Cornwall Council.
 - The notice, numbered EN20/01243, was issued on 20 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwellinghouse shown in the approximate position by blue 'X' on the plan attached to the notice.
 - The requirements of the notice are EITHER:
 - (1) Demolish the dwellinghouse shown in the approximate position by a blue X on the attached plan.OR:
 - (2) Alter the dwelling to comply with the terms of the planning permission reference PA/14/10722 dated 12th March 2015 including the conditions subject to which the permission was granted.
 - (3) Remove all materials arising from compliance with either 1 or 2 above from the land
 - The period for compliance with the requirement 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 is corrected by:
 - (i) the deletion of the words "the erection of a dwellinghouse" and their replacement with the words "the erection of a partially completed dwellinghouse" in paragraph 3;
 - (ii) the deletion of the words "within the last four years" and their replacement with the words "within the last 10 years" in paragraph 4;
 - (iii) replace the words "dwellinghouse" and "dwelling" with the words "partially completed dwellinghouse" in paragraphs 5(1) and 5(2);
2. Subject to the corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a partially completed dwellinghouse at Little Trerank, The Lodge, Harmony Road, Roche, St Austell,

PL26 8EU as shown on the plan attached to the notice and subject to the following conditions:

- 1) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for a reduction in the height of the partially constructed dwelling by at least 1.6m shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) No further development shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall provide planting plans with written specifications including:
 - i) Full schedule of plants;
 - ii) Details of the mix, size, distribution and density of all trees/shrubs/hedges;
 - iii) Cultivation proposals for the maintenance and management of the soft landscaping;
 - iv) All planting, seeding or turfing comprised in the approved scheme of landscaping should be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice should be given to the local planning authority when the approved scheme has been completed;
 - v) Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.

Procedural Matters

3. The appellant originally appealed on ground (d) but this ground was withdrawn at the commencement of the hearing. I have therefore dealt with the appeal on grounds (a) and (b). As a legal ground of appeal has been made on ground (b), the onus of proof rests with the appellant and the standard of proof is on the balance of probability.
4. The Council has advised that the former Landscape Character Areas were replaced by the Cornwall Character Areas in August 2023.

The Notice

5. The breach of planning control as alleged in the notice is “..without planning permission the erection of a dwellinghouse...”. The Council rejected the appellant’s request for the notice to be withdrawn following criticism of the wording of the allegation. However, the Council considers that the wording should be amended to refer to a “partially completed dwellinghouse.” I agree that this is a more accurate description of the alleged development and I have the power under s176(1)(a) to correct the notice so long as I am satisfied that the appellant would not suffer an injustice as a result.
6. The appellant claims that injustice would arise as the approach to the grounds of appeal relate to a dwellinghouse to which the 4 year rule applies to the period when enforcement action can be taken; that the Council has changed its case to refer to the 10 year rule; that as the dwelling is not substantially complete the time period has not started to run; and that there is ambiguity in the notice as demonstrated by the Council’s suggested amendment. The claimed injustice is that the appellant’s case has been prepared on the basis of the words contained in the notice.
7. Notwithstanding the appellant’s claims, I am satisfied that no injustice would arise as a result of a correction to the notice. The appellant has been aware of the alleged unauthorised nature of the development through unsuccessful planning applications and a dismissed appeal, and I do not consider that the poor wording of the allegation would lead her to be in any doubt about what has occurred or what would be necessary to meet the requirements of the notice. The appellant has had adequate notice of the Council’s request for the notice to be corrected and any adjustments to the evidence could have been made. Indeed, the appellant submitted late evidence on 16 January 2024 relating to ground levels and which the Council raised no objection and which I was prepared to accept. However, this new evidence did not address the other matters upon which the claim of injustice was made.
8. I therefore intend to correct the notice such that the allegation refers to a partially constructed dwelling together with consequential amendments.

The site and relevant planning history

9. The appeal site comprises a partially completed dwelling ‘The Lodge,’ within a relatively small plot bounded by a wall, fence and trees within a rural location largely surrounded by farmland near to the settlement of Roche. The site shares vehicular access via a single rural track with its neighbour, ‘The Cottage.’

10. In 2015 planning permission was granted for a replacement dwelling (PA14/10722) which was for a larger property set more centrally within the plot. In a subsequent dismissed appeal, it was stated that the dwelling approved for replacement in 2015 was demolished before June 2016 (APP/D0840/W/16/3146606).
11. The replacement dwelling has not been constructed in accordance with the approved plans. It is sited slightly differently and is higher at both eaves and ridge levels. An application for the 'retention and completion of the dwelling with amended height/siting' (PA19/00848) was refused and a subsequent appeal dismissed (APP/D0840/W/20/3246038). The inspector concluded that the proposed development would have an unacceptable effect on the character and appearance of the area but acknowledged that it would not adversely affect the living conditions of the occupants of The Cottage in respect of light and outlook. There is a dispute on the extent of variation in the height of the partially constructed dwelling which the Council considers to be 1.64m and the appellant 0.90m higher than approved.
12. Planning application PA22/02737 for a proposed replacement dwelling with variation of condition 2 of the original 2015 decision was refused in July 2022 for reasons of siting, massing, height and prominence. No valid appeal was submitted despite the appellant's stated intention to do so.
13. At my site inspection I noted that the structure is temporarily clad in protective sheeting and that the site slopes upwards towards the southern boundary. The structure sits on a concrete plinth that is about 0.70m or so above ground level at the northern corner of the building.

The appeal on ground (b)

14. An appeal on this ground is that the matters stated in the notice has not occurred as a matter of fact.
15. The appellant's case is that the dwellinghouse has been constructed in accordance with the original permission and/or it is not materially different from the approved development. It is submitted that the ground levels of the appeal site have been documented incorrectly when previous applications and the previous appeal were considered but that new evidence shows that the appeal site was higher than the levels considered by the Council.
16. The appellant's new evidence relies on there having been no change in the ground levels where the new building is sited and this was obvious to everyone. There is a reference to site levels on the approved plan 0108-PL-05 to a datum point of 177.50m at a point to the north of the proposed dwelling, but there is no levels condition on the permission. However, the appellant believes the datum level to be incorrect as the lowest ground level is 182.55m at the manhole and storm drain outside The Cottage as shown by a topographical survey carried out for the 2019 retrospective application. This is some 15m further from the site than the 177.5m datum which is now considered to be at a level of 183.49m.
17. Photographs have been submitted showing the relationship of the floor level of the demolished cottage with the foundations of the new building. An old kitchen soakaway remains on site and provides the most accurate indication of levels and this has been measured at 183.49m.

18. I am satisfied from my observations on site and from the submitted evidence that the original site sloped gently upwards to the southern boundary and that the floor level of the original dwelling was substantially lower than the plinth level of the new building. I also acknowledge that the datum level provided by the appellant for the approved application had been measured incorrectly and that its true level is probably some meters different. However, the actual height of the datum is not necessarily relevant to determining the height of a built development as it is the difference between the datum point and the measured height that is significant.
19. In this case the appellant has provided information to support the planning applications which the Council has taken at face value. In the 2022 application the appellant sought to reduce the ridge height by 1.6m to accord with the level approved in the original scheme. In the planning statement the appellant indicated that she would start again and construct the dwelling in accordance with the original permission.
20. In the 2019 application, Plans 18096 PL-00-04A and PL-03-01 depict the difference between the approved scheme and that built.
21. Plan 0108-PL-05 Rev A of the original 2014 application shows a datum point of 177.50m as being the manhole cover on the access drive and is the same as shown in the 2019 application. In the 2014 application, a superceded plan (0108-PL-05) is annotated to indicate ' FFL to match the Cottage FFL' but the Council advised the applicant this would be unacceptable as it was in a different ownership. It was indicated that the FFL should be related to a datum point and in response, plan 0108-PL-05 Rev A was received.
22. Plan SK01 A (Document 1) was submitted to the Inspector in connection with appeal against the 2019 refusal (APP/D0840/W/20/3246038). This shows a difference of 1.64m between the approved ridge height and the height as constructed.
23. Although it appears reliance has been placed on a datum level that was subsequently shown to be incorrect, this is not a determining factor. What is quite clear is the relative height of the development measured against the datum indicated at 177.75m and the reference to an FFL of 177.75 of the proposed dwelling on the approved drawing 0108-PL-05 Rev A. The FFL is clearly not at the same level as the datum and the partially completed dwelling has been built materially higher and not in accordance with the planning permission. The fact that no explicit levels condition is attached to the planning permission does not over-ride condition 2 of that permission requiring the development to be carried out in accordance with the approved plans, which includes drawing 0108-PL-05 Rev A.
24. I conclude that it has not been shown on the balance of probability that the alleged development has been built in accordance with the approved plans as a matter of fact. The appeal on this ground therefore fails.

The appeal on ground (a) – the deemed planning application

25. An appeal on this ground is that planning permission should be granted for what has been constructed on site, which in this case is a partially completed dwelling. The main issue is the effect of the development on the character and appearance of the area.

26. The planning history and the appeal decision on application PA19/00848 have consistently concluded that the development has an unacceptable effect on the character and appearance of the area. It is not necessary for me to repeat the reasons for these conclusions but I fully support them and agree that the scale, bulk, massing and prominence of the building are unacceptable within the landscape. The development is contrary primarily to Policies 12 and 23 (design and local distinctiveness) of the Cornwall Local Plan, and to Policies A1, G1, and H2 of the Roche Parish Neighbourhood Plan regarding design.
27. The ground levels in the area referred to by the appellant, together with the construction of a new road nearby and the recent felling of trees and other vegetation, carry little weight in terms of the acceptability of the impact of the development. The partially completed dwelling is prominent in the landscape, which is clearly evident for example, in views of the building from Harmony Road in Roche.
28. However, there are a number of factors that need to be weighed in the balance. Firstly the principle of a replacement dwelling has been accepted. The approved building is in a slightly different position within the site which the Council is prepared to accept. It has a relatively large footprint which contributes to the bulk and massing of the building when the increased ridge and eaves heights are taken into account. This footprint is in excess of twice that of the demolished cottage. I suspect that had the dwelling been constructed at the approved FFL, it would still have appeared as a large building in the countryside and somewhat incongruous in scale relative to its close neighbour at The Cottage. Whilst the Council sought to clarify a datum and FFL at the time of the application for the replacement dwelling, it is somewhat surprising that the issue of relative floor levels and ground levels was not the subject of closer scrutiny at the time although it is not unreasonable for the Council to have relied on the levels details provided by the appellant. I note that the original proposals might have been judged differently against the current policies in the Development Plan but I nevertheless attach considerable weight to the decision to permit a replacement dwelling originally.
29. Secondly, the appellant and the Council agree that the original permission was lawfully begun through the demolition of the cottage before June 2016 and that this represented a material operation in accordance with s56(2) and (4). Both parties recognise this as a fallback position and this is acknowledged as an optional requirement in the notice.¹ However, whilst such a fallback may exist, the difference in height between the approved height and that of the partially completed development is significant and I attach only limited weight to it.
30. Thirdly, it is clear to me that the appellant has suffered the consequences of a substantial error occurring when the foundations and floor slab of the replacement dwelling were laid at a level inconsistent with the permission. The appellant ceased the completion of the dwelling when its height became an issue and engaged different agents, commissioned topographical surveys and made further planning applications to redeem the situation. I also acknowledge that other than temporarily cladding the building in a protective sheeting, no attempt appears to have been made to complete the dwelling, although I could not gain access to the inside of the building due to the sheeting at the time of my site

¹ At the hearing I made reference to *Hussain v SSCLG* [2017] EWHC 687 (Admin) but I acknowledge this does not alter the lawful commencement of development accepted by the parties.

visit. I attach moderate weight to the appellant's genuine attempts to remedy the situation.

31. I note that the neighbour is concerned that granting permission for the development would set a precedent and send out the wrong signals to others who may be inclined to carry out unauthorised development and I agree with that sentiment. However, the enforcement regime is not intended to be punitive and if there is an alternative approach that could reduce the level of harm currently caused, then this could represent a way forward.
32. The appellant has submitted proposals through PA22/02737 for the reduction in the height of the building by 1.6m to accord with the level approved in the original permission, to retain the floor levels and to replace the roof at a lower pitch. The Council considered that this would produce a squat form of dwelling.
33. Although these details are not before me, they nevertheless indicate that significant alterations to reduce the height and consequently the visual impact of the building are possible, which could overcome a large degree of the harm currently caused to the character and appearance of the area. No doubt there are other design solutions possible that could achieve a similar height reduction with a more acceptable roof pitch, for example, through the introduction of dormer windows. However, these would be for the appellant to pursue and for the Council to assess the quality any design changes submitted for approval.
34. Having had regard to all relevant factors, on balance, the unauthorised development could be made acceptable if a deemed permission were to be subject to a condition requiring the submission, approval and implementation of a scheme involving the reduction in the overall ridge height of the building by a minimum of 1.6m. The parties acknowledge that such a condition would be appropriate, together with a landscaping condition which would be necessary to soften the visual impact of the development further.
35. Condition (i) is therefore imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the height reduction before the development takes place.
36. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion

37. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected, subject to conditions.

P N Jarratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Steven Hopkins of Holmes and Hills, Solicitors

Carol Rose Bennett, appellant

Aaron Cherie, appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

James Holman MRICS MRTPI FAAV, Principal Officer

Oliver Bradbear, Trainee Solicitor

Briony Davies,

INTERESTED PARTIES:

Debbie Billington, neighbour

John Wood, retired councillor

Documents

1 Drawing SK01 Revision A dated 28.11.19: site/buildings levels comparison - considered by the Inspector for APP/D0840/20/3246038