



## Appeal Decision

Site visit made on 31 October 2023

**by M. P. Howell BA (Hons) Dip TP MRTPI**

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

**Decision date: 22<sup>ND</sup> MARCH 2024**

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**Appeal Ref: APP/D0840/C/22/3297058**

**Land known as The Garage, 1 Old Portreath Road, Sparnon Gate, Redruth TR16 4JB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kevin Fentham against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN21/01678, was issued on 16 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of part of a domestic garage to a self-contained dwelling used for residential purposes.
- The requirements of the notice are to:
  - 1) Cease the use of the domestic garage for independent residential accommodation.
  - 2) Permanently remove all services and facilities that facilitate the unauthorised residential use of the building.
- The period for compliance with the requirement is: Nine (9) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (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.

**Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and variations.**

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### Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. The Notice contains several typographical errors and superfluous words. The wording of the requirements also requires variation to ensure they match the wording of the allegation, and the recipient fairly knows what they must do to remedy the alleged breach of planning control. The changes, set out below, do not alter the nature of the allegation or cause any injustice to the Council or appellant.
2. It is noted that the land to which the Notice relates is 'Land known as The Garage, 1 Old Porthreath Road, Sparnon Gate, Redruth TR16 4JB.' However, from the evidence submitted by the appellant and Council, the spelling of 'Porthreath' should be corrected to 'Portreath.' This has been corrected in the banner heading and varied as part of the wording of the Notice.
3. In paragraph 3, delete the words '*used for residential purposes.*'
4. In paragraph 5, step 1, delete the words '*of a domestic garage for independent residential accommodation*' and substitute with the words '*of part of a domestic garage as a self-contained dwelling.*'

5. In paragraph 5, step 2, delete the words '*the unauthorised residential use of the building*' and substitute with the words '*the use of part of the domestic garage to a self-contained dwelling.*'

### **Application for costs**

6. An application for costs was made by Mr Kevin Fentham against Cornwall Council. This application is the subject of a separate decision.

### **Preliminary Matters**

7. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was published. There are no substantive changes relevant to the appeal before me, and therefore the Council, the appellant and other interested parties would not be prejudiced by my consideration of the 2023 version of the Framework.
8. The Cornwall Council Climate Emergency Development Plan Document (Climate DPD) was adopted in February 2023, during the course of the appeal. The Climate DPD was adopted following the service of the Notice and the subsequent written submissions by both parties in respect of the appeal. The appellants have been made aware of this and both parties were given time to provide comments on the matter. As such, no party would be prejudiced by my regard to the Climate DPD in my determination of the appeal.
9. The Appeal Form indicates that the appeal was made under grounds (a), (b), (f) and (g). However, the appellant's submissions include evidence supportive of a ground (d) appeal as well. The Council and appellant have been made aware of this, and I will consider the appeal on this additional ground. No objections have been received in respect of my consideration of the appeal on this ground or the information submitted in support of it.
10. A Planning Contravention Notice (PCN) was served on the appellant. The PCN was completed, returned and dated 16 November 2021. The completed PCN indicated the appellant was the owner of the land, and the building subject of the PCN was substantially complete in 2008. The appellant confirms, as part of question 5, that the facilities to sit, sleep and wash were installed in 2008. Cooking facilities were installed in 2016 but removed in March 2020, following a planning application and an application for a Lawful Development Certificate.

### **The Appeal on Ground (b)**

11. This ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the corrected Notice, those matters have not occurred as a matter of fact. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the corrected matters alleged have not occurred.
12. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to incidental) uses of that unit. The lead case for determination of the planning unit is *Burdle*<sup>1</sup>, where it was held that the planning unit is usually the unit of occupation, unless a smaller area can be

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<sup>1</sup> *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.

13. Three separate broad categories are identified for planning units, those include (a) a single unit of occupation with a single primary use with ancillary and incidental activities; (b) a single unit of occupation with two or more separate primary uses that are not incidental to one another (mixed use) or (c) a unit of occupation where two or more physically separate areas which are occupied for different and unrelated purposes. Each area in scenario (c) forms a separate planning unit. I will hereafter refer to these broad categories as category (a), (b) or (c).
14. Based on the evidence before me, and prior to the use of the upper floor as a self-contained dwelling, 1 Old Portreath Road, its garden and the detached garage were owned and occupied by the appellant and his family. Although the garage is detached from the house, they are relatively close and there is no physical barrier between the two. Furthermore, the primary living accommodation included a bedroom, small living space and ensuite and was used by a family member. The garage and residential accommodation facilities contained within it at this time would therefore have been ancillary to the host dwelling. As such, there was a single planning unit used for residential purposes. This broadly aligns with category (a), which is a single primary use with ancillary and incidental activities. It would not be a mixed use of the land as suggested by the appellant.
15. In terms of the current use, part of the building is used for the garaging of cars incidental to the occupation of the host dwelling, while part of the building has been turned into a self-contained dwelling. Both these uses are residential uses. However, the self-contained dwelling is rented out and is occupied by a tenant. There is no familial connection between the occupier of the self-contained dwelling and the occupiers of the host dwelling. Nor do the occupiers of the host dwelling provide any form of care or support to the occupier of the self-contained dwelling. The self-contained dwelling is physically separated from the main house by a front parking area, it is accessed directly by a side door and is separated from the garage by an internal wall. The building is used for two physically and functionally separate uses, and the self-contained dwelling therefore forms an additional planning unit. This change therefore aligns with category (c). The current use of the garage is not a mixed use of the land as suggested by the appellant.
16. For the reasons given above, a material change of use of part of a domestic garage to a self-contained dwelling has occurred as a matter of fact. The ground (b) appeal fails.

### **The Appeal on Ground (d)**

17. An appeal on this ground is that, at the date on which the Notice was issued, no enforcement action could be taken in respect of the use as a self-contained dwelling. The appellant should show that the use as a self-contained dwelling began on or before 16 March 2018, and that the use continued for a period of at least four years, without significant interruption<sup>2</sup>. Any four-year period is relevant. The test in this regard is the balance of probability and the burden of proof is on the appellant.

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<sup>2</sup> In accordance with section 171B (2) of the Town and Country Planning Act 1990 (1990 Act)

18. The appellant claims to have identified several inconsistencies with the Council's case relating to dates when cooking facilities were or were not available within the self-contained dwelling. Evidence would suggest that the Council is satisfied that cooking facilities were installed in October 2016 as part of the use as a self-contained dwelling. Had the cooking facilities been shown to have remained from that date, this would weigh in the appellant's favour. However, the evidence also suggests that those cooking facilities were removed on or around 28 April 2018, with cooking facilities being reinstated in approximately February 2021. Those dates conflict with information contained in Officer Reports pertaining to an LDC and a planning application, which were written between 28 April 2018 and February 2021, and which state that cooking facilities were present.
19. Although in its submissions the Council has set out an incorrect time frame, the completed PCN, served on the appellant and set out in the preliminary matters, provides some clarity on the matter. The appellant provided the information in the PCN, which is a legal notice where there are serious penalties if the information provided is false or misleading. As such, I have attributed significant weight to the information in the PCN.
20. With respect to cooking facilities, the appellant confirms in the PCN that they were removed in March 2020, after his applications for a Certificate of Lawfulness and retrospective permission were refused. This would have been 3 years and 7 months after they were said to have been installed in October 2016. He also confirms photos were sent to the Council showing that they had been removed, allowing the enforcement case to be closed. The period between the removal of the cooking facilities set out in the PCN and their reinstatement was 11 months. If the Council were to have investigated the matter, during that 11 month period, then there would have been no breach of planning control to act upon. This period is a significant interruption in the continued use as a self-contained unit.
21. Reinstalling the cooking facilities in 2021 and the re-commencement of the use as a self-contained dwelling, at that time, therefore, represents a new breach of planning control. By taking action in March 2022, the Notice was issued within four years of the breach recommencing. For these reasons, the appellant has failed to show, on the balance of probability, that the use as a self-contained dwelling has continued without significant interruption for a period of four or more years.
22. The ground (d) appeal fails.

### **The Appeal on Ground (a), and the Deemed Application for Planning Permission**

23. The **main issue** in this appeal is whether the development would provide a suitable location for housing, regarding the Council's spatial strategy in the development plan as well as accessibility.

### **Reasons**

#### *Location and Accessibility*

24. Policy 1 of the Cornwall Local Plan 2016 (the Local Plan) and Policy C1 of the Climate DPD promotes a presumption in favour of sustainable development in line with the approach set out in the Framework. Meanwhile, Local Plan Policies 2 and 3 set out the Council's spatial strategy for development. These policies provide for a sustainable approach to accommodating growth, whilst maintaining the dispersed

pattern of Cornwall, and providing homes and jobs based on the role and function of each place.

25. Under Policy 3, housing development is expected to be delivered within and adjacent to identified settlements, but not in the countryside. The appeal site relates to an existing garage building, which was originally built as a garage and partly used for ancillary living accommodation to the host dwelling. It lies adjacent to a terrace of dwellings that is accessed via the private lane off Old Portreath Road. Therefore, while not isolated in terms of Paragraph 84 of the Framework, the host dwelling and the garage, which forms the appeal site, lie outside any identified settlement.
26. The closest collection of properties, which form a hamlet settlement, is Sparnon Gate. This is a collection of properties either side, but mainly north of the junction between Bassett Road and Old Portreath Road. The garage and host property are a short walk from this junction, but to the south of the built form. Given the separation distance, the host dwelling and garage are visually divorced from, and does not relate well to, the built form present in Sparnon Gate. The site, therefore, lies within the countryside as defined by the Local Plan.
27. Policy 7 of the Local Plan establishes that the development of new dwellings in the countryside will only be permitted where there are special circumstances. The appellant contends that the proposal complies with criterion 3 of Policy 7 of the Local Plan. This involves the re-use of suitably constructed redundant, disused, or historic buildings that are considered appropriate to retain and would lead to an enhancement to their immediate setting. The building to be converted should have an existing lawful residential or non-residential use and be ten years old or greater.
28. The garage has an existing lawful residential use established by the host property and is more than 10 years old. No evidence has been presented to show the garage building to be redundant or a historic building. There is however a lack of clear definition over the term 'disused' in Policy 7 of the Local Plan. For clarity, I have used the definition in plain English from Dictionary.com, 'no longer used.'
29. I note the appellant's position, but the appellant's daughter moving out did not, in my judgement, make the living accommodation redundant or disused. I acknowledge that the living accommodation was no longer in use by his daughter, but she was not the only occupant of the host property. There is a lack of rationale outlining why this living accommodation could no longer be used by any other occupant of the main house. In this respect, there is insufficient reasoning to outline why the building was 'disused'.
30. The installation of the kitchen on the ground floor simply allowed it to be occupied by someone other than an occupant of the main house, and with no external changes, the use as a self-contained dwelling would preserve, not enhance, the immediate setting. The appellant indicates that the Courts have held that where there is no harm caused by development in conservation areas, then it can be an enhancement to a setting. However, the site is not within a conservation area and the appellant has not referred to or provided me with the relevant case law that supports this stance. Therefore, it is difficult to know if this case is comparable. Accordingly, in light of the evidence before me, the garage building is not a disused, redundant or historic rural building for the purposes of Policy 7 of the Local Plan.

31. Policy C1 of the Climate DPD sets out several overarching objectives for sustainable development, including maximising the ability to make trips by public transport, sustainable and active modes of transport in all developments through careful design and mix of uses that actively support walking and cycling rather than car use for day to day living. This is supported by Policy T1 of the Climate DPD and Policy 27 of the Local Plan, which encourage development to be located to minimize the need to travel, support more sustainable modes of transport and require a safe and suitable access to the site for all people.
32. I note that the site would have a similar level of accessibility to services and facilities as the adjoining properties. The nearest settlements at Illogan and Redruth are approximately 1km to the east and south along rural roads. The site is within a reasonable walking distance to a nearby bus stop and footpath in Sparnon Gate, approximately 250m away. Sparnon Gate has very few facilities and the bus times set out in the Council's Statement of Case indicate the nearest bus stop provides an hourly day time to early evening service to Illogan and Redruth from 7am to 7pm. The footways and lighting towards the bus stop and the nearest larger settlements are also limited.
33. I acknowledge that the current occupier mainly uses public transport to access services and facilities in nearby Pool, but planning permission runs with the land and is not based on the personal circumstances of the occupant at that time. Consequently, while it may be physically possible to access the bus stop from the site on foot or via bicycle, due to the distance that would have to be travelled to the nearest town and village, coupled with the limited pavements, lighting and public transport options, occupants are likely to travel by private car to access jobs, education, services and facilities at the nearest settlements and further afield. As such, the accessibility of the site would run contrary to the objectives set out in Policy 27 of the Local Plan as well as Policies C1 and T1 of the Climate DPD.
34. The appellant refers to the development being compliant with Policy 21 of the Local Plan. This policy refers to the re-use of previously developed land (PDL) and buildings in sustainable locations. There is no definition provided in the Cornwall Local Plan for PDL, so I have taken the description from the Framework<sup>3</sup>. Based on the definition set out in the Framework, the garage could be defined as PDL. However, for reasons set out above, it is not sustainably located. As such, the proposal would conflict with the requirements of this policy.
35. I have had regard to paragraph 109 of the Framework, which acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Also, paragraph 83 of the Framework aims to promote sustainable development in rural areas where it will enhance or maintain the vitality of rural communities. In this respect, the appeal site is not a considerable distance from the larger village settlements. Nonetheless, based on the scale of the development and the evidence before me, I have insufficient information to be able to conclude that it would enhance or maintain the vitality of the rural community.
36. An appeal<sup>4</sup> allowed in a hamlet known as Menagissey has been highlighted in respect of the accessibility issue. I do not have the full details of the case or what was included as evidence when the Inspector determined that proposal. As such, it is difficult to fully compare the two schemes. I recognise that there are some

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<sup>3</sup> Annex 2 of the Glossary of the National Planning Policy Framework (December 2023)

<sup>4</sup> Appeal reference APP/D0840/W/22/3306608

similarities in respect of accessibility, but that Inspector determined the proposal in that appeal amounted to the rounding off of a small settlement. They also concluded that the nearby lane was flat, with low speeds and had sufficient grass verge for occupiers to utilise. The proposal before me is not the rounding off of a settlement, and the adjoining roads appear to be well used vehicular routes with little or no safe grass verges for refuge. As such, I give this limited weight.

37. Accordingly, the development is therefore in an inaccessible location, and in conflict with the spatial strategy policies for the location of new housing. As such, it would conflict with Policies 1, 2, 7, 21 and 27 of the Local Plan, Policies C1 and T1 of the Climate DPD as well as the provisions of the Framework. These policies, amongst other matters, seek to direct new housing to settlements and sustainable locations as well as requiring access for all.

### *Conditions*

38. The appellant has suggested a condition could be attached to the permission covering the lifetime of the current occupier or a condition restricting the occupation of the dwelling for persons over the age of 55 or 60. This would amount to a personalised consent or a condition restricting the occupation of the dwelling to a certain age group.
39. When considering the suggested conditions, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act (1998), which refers to the peaceful enjoyment of property. In respect of the above, allowing the appeal could interfere with the rights of the occupier, who would no longer be able to use the self-contained dwelling and, where the appellant suggests, there is a lack of care home provision for older people.
40. I do sympathise with the current occupier's situation but matters relating to age and the stress of moving could be outlined in most cases. Aside from the occupant's proximity to a health centre in Pool, limited information has been presented to demonstrate the appellant's need or justification to live at this site as opposed to an alternative location. The personal circumstances put forward do not justify the granting of a permission. Furthermore, the evidence before me does not demonstrate a need for self-contained dwellings for the over 55 or 60s. While it is generally recognised that there is an aging population, this of itself does not justify allowing this development in the absence of any specific and detailed justification.
41. Imposing a condition to the effect that the self-contained dwelling can only be occupied by the occupier or a person(s) aged 55/60 or over would not therefore be reasonable or enforceable. As such it would not meet the relevant tests. Furthermore, having regard to legitimate and well-established planning policy aims to direct development to settlements that are accessible, the dismissal of the appeal would be proportionate and necessary. It would not unacceptably violate the rights of the appellant under Article 1. The protection of the public interest cannot be achieved by means that are less interfering of the occupant's rights.

### *Other Matters*

42. The appellant has outlined that the Council has declared a housing emergency at its meeting on 15 December 2021, due to the collapse of the private rental market. Also, that a pre-application letter sent by a Council Officer (in respect of an alternative development) indicates that the Council is seeking to increase housing supply by applying flexibility to its policies. However, I have limited information as to what form that flexibility will take, and it is not clear how it could apply to this development. Also, any comments made in respect of an alternative form of development at a different site, in a pre-application letter, is not a matter that would affect my findings on the main issues in this case.
43. I have had regard to the appellant's position on a development that would comply with the spatial strategy of the Local Plan would negate the accessibility policies of the Climate DPD. Firstly, in the event that the development complies with the spatial strategy, it would be for the decision maker to decide whether its compliance is outweighed by the conflict it has with any other policies of the Local Plan or Climate DPD. However, as I have concluded that the development is not compliant with the spatial strategy or accessibility policies, it is not necessary for me to consider this matter further.
44. Furthermore, I have had regard to the recent Ministerial Statement issued on 13 December 2023, which indicates local policy should not set building efficiency standards that go beyond current Buildings Regulations. However, the decision to take action in this instance is not due to any conflict with policies seeking to achieve higher energy efficiency standards. As such, I give it little weight in my decision.

### *Planning balance*

45. To allow housing on the appeal site would run contrary to the policies of the development plan, which encourage new development to occur within accessible locations and existing settlements to achieve a sustainable pattern of development. The proposed development therefore conflicts with the development plan. Paragraph 12 of the Framework says that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. I therefore give significant weight to the conflict with Policies 1, 2, 7, 21 and 27 of the Local Plan and Policies C1 and AL1 of the Climate DPD, which are generally consistent with the Framework.
46. In terms of benefits, the provision of a self-contained dwelling would make a small contribution towards housing, as well as social benefits arising from the occupier being able to stay in their home. Economic benefits arising from the appellant renting the self-contained dwelling and spending money in nearby rural settlements would also be a benefit. However, as the development is only for a single dwelling, the uplift to the supply of housing and support to services in adjoining villages would be limited. The development may not detract from the character and appearance of the area, but this is a neutral impact.

### *Conclusion on Ground (a) and the Deemed Planning application*

47. The proposed development would conflict with the development plan and there are no other considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. Therefore, I conclude that the appeal on ground

(a) shall not succeed. I shall uphold the corrected and varied Notice and refuse to grant planning permission on the deemed application for planning permission.

### **The Appeal on Ground (f)**

48. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control, or to remedy any injury to amenity, as the case may be. In this case the Notice requires the use of part of the garage as a self-contained dwelling to cease, and the services and facilities that facilitate that use to be removed. I therefore find the purpose of the notice is to remedy the breach of planning control under s173(4)(a) of the 1990 Act.
49. In pleading ground (f), the onus is on the appellant to state the precise details of any lesser steps, otherwise it is not possible to judge whether the Council's requirements are excessive or not. If I were to allow the appeal on ground (f) then I would also need to vary the requirements of the Notice in a way that unambiguously sets out what needs to be carried out.
50. The appeal on ground (f) contends that an ancillary residential use of the building is lawful. To require the removal of all services and facilities would not allow the building to be returned to its lawful ancillary domestic use. Therefore, by requiring all services and facilities that facilitate the unauthorised residential use to be removed from the building is excessive. The appellant suggests that the requirements should be clearly defined to those that are specifically required to cease the use as a "self-contained" dwelling.
51. I have already varied the steps required to be taken to correspond with the allegation. Those variations provide clarity to the appellant by indicating that the part of the garage being used as a self-contained dwelling shall cease, and the services and facilities that facilitate the use as a self-contained dwelling should be removed. In my judgement, these variations already address the appellant's concerns, without causing injustice.
52. To this limited extent, the appeal on ground (f) succeeds.

### **The Appeal on Ground (g)**

53. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed.
54. The period for compliance for the requirements is within nine months of the Notice taking effect. The appellant contends that additional time is required to allow the occupier of the self-contained dwelling sufficient time to relocate. It is also stated that it is unreasonable to request the use is ceased and the works to remove services and facilities are complied with on the same day. Consequently, a period of eighteen months is requested to comply with requirement 1 of the Notice, and 21 months for requirement 2.
55. Having regard to the personal circumstances of the occupier set out, as well as the issues surrounding the private rental market in the area, I consider that a period of time in excess of nine months to cease the use is justified. However, extending the periods of compliance to 18 months and 21 months is excessive, particularly given the Notice does not require extensive works to remedy the breach of planning control.

56. A period of 12 months for the appellant to comply with both requirements of the corrected and varied Notice would strike a reasonable balance between the public interests identified, and the private interests bound up with the Notice. To this limited extent, the appeal on ground (g) succeeds.

### **Formal Decision**

57. It is directed that the Notice be corrected and varied by:

*In paragraph 2, delete the word 'Porthreath' and substitute it with the word 'Portreath.'*

*In paragraph 3, delete the words 'used for residential purposes.'*

*In paragraph 5, step 1, delete the words 'of a domestic garage for independent residential accommodation' and substitute with the words 'of part of a domestic garage as a self-contained dwelling.'*

*In paragraph 5, step 2, delete the words 'the unauthorised residential use of the building' and substitute with the words 'the use of part of the domestic garage as a self-contained dwelling.'*

*In paragraph 6, specifying the time for compliance, the deletion of the words '9 months' and substitute with the words '12 months'.*

58. Subject to the correction and variations, the appeal is dismissed, and the Notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*M. P. Howell*

INSPECTOR