



Appeal Decision

Site visit made on 10 October 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal A Ref: APP/D0840/C/23/3319592

Appeal B Ref: APP/D0840/C/23/3319593

Land to the north east and south east of Penvose Cottage, St Tudy, Bodmin, Cornwall, PL30 3NP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr G Malde against an enforcement notice issued by Cornwall Council ('the Notice').
- Appeal B is made by Mrs A Malde against an enforcement notice issued by Cornwall Council
- The enforcement notice, numbered EN22/00470, was issued on 24 February 2023.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of land from residential and nil use to a mixed use comprising of residential amenity land and the use of the land for a gin micro-gin distillery business (Rock Gin) with associated commercial parking of vehicles. Including associated operational development comprising of bridges, wooden structures and associated paraphernalia. The land has been outlined in red on the attached plan 'The Plan'.
- The requirements of the notice are: 1) Cease the use of the land for the running of a gin micro-gin distillery business; 2) Cease the use of the building outlined in green for running of a gin micro-gin distillery business and revert back to a domestic garage; 3) Demolish and remove the WC which has been built along the south west elevation of the building outlined in green on the attached plan; 4) Demolish and remove from the land all wooden buildings shown in the approximate locations by blue 'X's' on the attached plan; 5) Demolish and remove the wooden pergolas located within the solid red polygon on the attached plan; 6) Demolish and remove the pedestrian and vehicular bridges shown in the approximate location by a blue 'B' on the attached plan; 7) Dig up and removed the hardstanding parking area shown in the approximate location by solid green polygon on the attached plan; 8) Dig up and remove the hardstanding shown in the approximate location by a solid red polygon on the attached plan; 9) Remove from the land all signs / advertisements relating to the gin distillery business; and 10) Remove from the land all materials and debris resulting from the above works and restore the land to its former condition and use before the breaches took place.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended ('the Act').
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Act.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by: omitting the words "for a gin micro-distillery business (Rock Gin)" from section 3 of the Notice,

'The matters which appear to constitute the breach of planning control', and replacing them with the words "for research and development associated with Rock Gin".

Further, it is directed that the Notice is varied by: omitting requirements 1), 2), 3) 6), 7) and 8) from section 5 of the Notice, 'What you are required to do', and adding the words, "save for Building 2 shown on Plan 2 attached to this decision" to requirement 4 of section 5.

Subject to the correction and variations, the appeal is allowed in part on ground (a) insofar as it relates to: the use of land for research and development, associated commercial parking of vehicles; and operational development comprising of wooden bridges and wooden structures identified as Building 2 on Plan 2 attached to this decision and that marked with an 'x' on the land outlined in red to the north of Penvose Cottage on Plan 1 and planning permission is granted, subject to conditions in the Schedule, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for research and development, associated commercial parking of vehicles; and operational development comprising of wooden bridges and wooden structures identified as Building 2 on Plan 2 attached to this decision and that marked with an 'x' on the land outlined in red to the north of Penvose Cottage on Land to the north east and south east of Penvose Cottage, St Tudy, Bodmin, Cornwall, PL30 3NP.

Otherwise, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the erection of wooden structures and associated paraphernalia on the appeal site, Land to the north east and south east of Penvose Cottage, St Tudy, Bodmin, Cornwall, PL30 3NP.

Appeal B

2. There is limited success on grounds (b) and (d), and it is directed accordingly that the notice be corrected by: omitting the words "for a gin micro-distillery business (Rock Gin)" from section 3 of the Notice, 'The matters which appear to constitute the breach of planning control', and replacing them with the words "for research and development associated with Rock Gin" and varied by: omitting requirements 1), 2), 3) 6), 7) and 8) from section 5 of the Notice, 'What you are required to do', and adding the words, "save for Building 2 shown on Plan 2 attached to this decision" to requirement 4 of section 5. Subject to the corrections and variations the appeal is dismissed.

Procedural Matter

3. In my decision, after consulting the parties on the matter, I have referred to certain buildings by way of a numbering scheme on a plan that accompanied a recent planning application on the land. Both parties were aware of the plan and had no objections to its use as a means of identifying the buildings that I refer to. For the sake of clarity and for information purposes only, I have attached a copy of the plan, 'Plan 2', to this decision. This is not to say that the plan attached to the Notice was deficient, however.

Reasons

4. Penvose Cottage is a detached dwelling lying in the steeply sided, wooded valley of the River Allen which is followed by the A39. That road borders the property on its western side and the river runs along its eastern boundary. The

house is accessed via a minor road that runs south-eastwards from the A39 and runs through the River Allen by way of a ford.

5. The dwelling has a large garden to the southwest of the minor road. Within this area of land are the majority of the buildings that are referred to in the Notice. These comprise a single storey stone outbuilding close to the dwelling, on which, simply for clarity, I shall follow the Council's lead and refer to this as the 'garage'. Wooden buildings referred to in the Notice lie a short distance from the dwelling, between it and the River Allen.
6. A smaller area of land associated with Penvose Cottage lies to the north of the minor road. A small watercourse runs through this land, before leaving it and running alongside the road to join the River Allen. Two small wooden bridges provide access to this land across the watercourse. There is a parking area and a wooden shed on the land.

Ground (b)

7. An appeal made under Ground (b) is that the matters alleged in the Notice have not occurred. This is a legal ground of appeal where it is for the Appellants to make their case on the balance of probability.
8. The Appellants' case under this ground relates to that element of the alleged breach of planning control referred to as 'the use of the land for a gin micro-gin distillery business'.
9. The Council's position on this matter at the time of the issuing of the Notice was largely driven by the content of a planning application made by the Appellants. They were professionally represented when this application, Council reference PA21/12593, was made. The description of the development applied for was 'Retention and change of use of structures and area of land for a micro-gin distillery, small scale retail/tasting area, office (for personal and business use) and store space together with parking (for staff and commercial vehicles) and a replacement domestic store'. Amongst other things, it was accompanied by a Design and Access Statement that described the development in an identical manner.
10. In their Statement of Case, the Appellants set out that the description of development given in their 2021 application did not accurately represent what they sought, nor did it reflect the activities they had been undertaking from the land. They say that the building has been used for what are essentially research and development purposes, including infusing flavours into the gin. This, they say is a use within Class E(g) (ii) and (iii) of the Town and Country Planning (Use Classes) Order 1987 as amended.
11. The Council agree that the Appellants' submissions have provided "greater clarity", although there has still been a material change of use. It does not argue with the suggestion that the use that the building outlined in green on the plan attached to the Notice has been used for purposes within Class E(g) (ii) and (iii).
12. I find that the evidence shows that, as a matter of fact and degree and on the balance of probability, the change of use of the building to a micro-gin distillery business has not occurred. In the circumstances, using the powers in s176 of the Act, I can correct the Notice without causing injustice to either party.

13. Although the retail and storage uses of buildings within the red polygon, for purposes associated with the corrected use allegation, have ceased, the evidence shows that those uses did occur.
14. The other aspect to the Appellants' case, in this ground, is that the 'x' purportedly marking a building on the land to the north of the minor road is in an incorrect position. There is a building on that land, but they say that it is much further north than shown on the plan attached to the Notice. Therefore, they consider that the matter has not occurred in relation to the 'x' shown in the green polygon on the plan attached to the Notice.
15. There is no doubt that the Appellants are correct in their analysis of the location of the building. However, both parties agree that a building has been erected on that area of land, and have made arguments in respect of it. In the circumstances I can correct the Notice by substituting the plan attached to the Notice with 'Plan 1' attached to this decision, without causing injustice to the parties.
16. For the above reasons, the Ground (b) appeal succeeds to the extent set out above, and, in the circumstances, I shall correct the Notice.

Ground (c)

17. An appeal made under this ground is that if the matters alleged in the Notice occurred, they did not amount to a breach of planning control. Again, the Appellants are required to make their case on the balance of probability.
18. That case related to two areas of hardstanding, identified by red and green polygons on the plan attached to the Notice. The former lies a short distance to the southeast of the dwelling, and the latter on the north side of the minor road that runs from the A39 past the dwelling. For both, the Appellant's case is that they lie within the curtilage of the dwellinghouse and would be permitted development by reason of Class F of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended ('the GPDO'). For this to be the case, the land on which the hardstandings have been formed must fall within the curtilage of Penvose Cottage and they should be used for purposes incidental to the enjoyment of the dwellinghouse.
19. There is no all-encompassing authority for the term curtilage; nor is there a statutory definition, save for that relating to agricultural buildings in the GPDO. It is a term that has been addressed in a number of well-known court decisions. As the parties agree, identifying the curtilage of a dwellinghouse is a matter of fact and degree that depends on the individual circumstances of the case. Regard should be had to 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). The land involved need not be a small area, but there must be an intimate association between the building and the land.
20. I am also aware of the definition in the DCLG document 'Permitted Development for Householders Technical Guidance' (updated 2019) that defines curtilage 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 the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area".

21. The Appellants have submitted a Title Document plan that, whilst undated, shows both areas of land on which the hardstandings lie as being within the same landholding as Penvose Cottage. They have also submitted application forms from planning applications made in 1960 and 1963 that refer to the change of use of land at Penvose Cottage from garden to a tea garden, and its continued use. However, the garden of a property and its curtilage might well be two entirely different things. I am told that the permissions relate to the land to the north of the minor road, though the Appellants were unable to provide drawings from those applications to show this. It is for the Appellants to make their case, and I find that they have not done so in a suitably precise and unambiguous manner in respect of the land north of the minor road.
22. The Council does not comment on whether the land denoted by the red polygon lies within the curtilage of Penvose Cottage. However, it is for the Appellant to demonstrate this. Whilst it would appear to pass the first test, that of physical layout, I do not have sufficient evidence in terms of ownership and use or function to reach a conclusion on the balance of probability that this land is within the curtilage of the property.
23. Furthermore, I cannot find on the balance of probability that the hardstanding was provided for purposes incidental to the enjoyment of the dwellinghouse. It would appear that it was created in relation to the siting of wooden buildings used for commercial purposes. Again, the onus lies with the Appellants to make their case in this regard, and this has not been done.
24. For the reasons above, I find that the Ground (c) appeal fails.

Ground (d)

25. An appeal under Ground (d) is that, at the date the Notice was issued, no enforcement action could be taken in respect of any breach of planning control that it alleges. This, too, is a legal ground of appeal where the onus lies with the Appellants to make their case on the balance of probability.
26. In their Statement of Case ('SoC'), the Appellants referred to a Block Plan that accompanied the 2021 application; this forms the plan attached as Plan 2. In their SoC, the Appellants' Ground (d) case related to Building 2 on that plan; however, in their Final Comments they also make a case for Building 3.
27. In respect of Building 2, they say that it was on the land when they set up their business on 9 January 2018. They point to a 2018 Google Earth image, which is also contained in the Council's SoC, and say that this shows the building and a landscaped area covered by a pergola.
28. I understand the Council's position, in its SoC, that what had been submitted did not provide the required level of evidence. It suggested that it would be willing to revisit this part of the Notice were further, more compelling evidence to be submitted. To my mind, that evidence was submitted in the Appellants' Final Comments. There, they explain some of the technical limitations of aerial images and provide an enhanced copy of the 2018 and 2020 images with measurements annotated on them. To my mind, the evidence shows, on the balance of probability, that Building 2 was on the land for at least 4 years prior to the issuing of the Notice. However, I have not been provided with evidence to show that, on balance that its commercial use is immune from enforcement action.

29. As the Council has no evidence of its own in respect of Building 3, the Appellants' evidence is required to be precise and unambiguous. I find that the evidence put forward here is far less clear cut. I cannot tell whether the aerial photograph from 2018 shows Building 3. That from 2019 shows something coloured grey to the south of Building 2. I take the point made by the Appellants that, due to the shadow, it would appear to have some height that indicates a building, rather than being an area of, say, hardstanding. It may well be Building 3. However even if it is, neither from that photograph nor from the comments made in the Witness Statement and the email from Jane Rickard, can I be sure on the balance of probability that the building was substantially complete before the issuing of the Notice. That is the test to be met and the evidence does not show this.
30. Therefore, in conclusion on the Ground (d) case, I find that on the balance of probability the Appellant has shown that it was too late to take enforcement action against Building 2, but not too late in respect of Building 3. I will correct and vary the Notice accordingly.

Ground (a)

31. In essence, an appeal under this ground is that planning permission should be granted for the matters alleged in the Notice, as corrected. The main issues in this appeal are:
1. Whether the site is an appropriate location for the mixed use;
 2. The effect of the development on highway safety;
 3. The effect of the development on the area's character and appearance; and
 4. The effect of the development on flood risk.

Appropriate location

32. The Council sets out that its initial concerns in respect of the location of the development related to what was alleged in the Notice, rather than on the basis of the information made available through the Appellants' submissions. In reaching this conclusion, it took into account the increase in visits by members of the public to this unsustainable location and the use of a sub-standard access from the A39.
33. Its case referred to the decision in appeal APP/D0840/W/18/3215938, which in part revolved around the development plan policies that are germane to business development proposals in the open countryside. Although it did not provide a copy of Cornwall Local Plan ('CLP') Policy 7, the Council tells me that it provides the definition that shows that the site is in the open countryside. As this is not countered by the Appellant, and from the evidence of my site visit, I find that the site is in the open countryside.
34. Amongst other things, CLP Policy 5 supports proposals for business developments in the open countryside where they are "of a scale appropriate to its location or demonstrate an overriding locational and business need to be in that location such as farm diversification". The case put forward by the Appellant relates simply to the proposal being of an appropriate scale.
35. In the light of the evidence was been put forward by the Appellants, the Council's position changed to an acceptance that, if confined to the garage, the scale of the business would be appropriate to its location. They have also withdrawn any objection to the small wc that is attached to this building.

36. The garage with attached wc is not a large building. Were the business to be confined to this building, as proposed by the Council, I find that it would be appropriate in scale to its location.

37. Therefore, I find that the business is supported by the terms of CLP Policy 5.

Highway safety

38. Neither party has provided much in the way of details of the layout and nature of the local highway network. From my observations, the A39 is a busy road. It slopes gently downhill from southwest to northeast, and is subject to the national speed limit. In the vicinity of Penvose Cottage, two minor roads intersect with the A39. One, running northwards from it, lies a short distance to the northeast. The other is the minor road that runs roughly southwards from the A39 past Penvose Cottage, separating it from the land to the north.

39. The latter road has limited width. Two vehicles might pass at its junction with the A39, but within a short distance of the junction the minor road is only wide enough for a single vehicle. Drivers seeking to enter the A39 from the minor road have limited visibility in both directions. That to the left, quite markedly so. That to the right is less restricted and allows visibility beyond the junction between the A39 and the minor road on its north side.

40. Both parties acknowledge the substandard nature of the junction. However, the Council agrees with the Appellant that were a condition attached that restricted the number of employees of the business to be limited to one in addition to the residents of Penvose Cottage, the traffic from the business using the junction would be acceptable. The use of the junction by a single employee would, as set out by the Appellant, be offset by the fact that the Appellant in Appeal B is the principal researcher. Were the infusions to be undertaken at Wadebridge, where the bulk of the company's work is undertaken, she would use the junction to travel to that location.

41. In the circumstances, I agree with the necessity of a condition restricting the number of employees and that with this the development would accord with the terms of CLP Policy 27 that seeks, amongst other things, to provide developments with a safe and suitable access.

Character and appearance

42. Despite the presence of the busy A39, the site lies in a pleasant countryside location that is designated as an Area of Great Landscape Value ('AGLV'). Amongst its terms, 'saved' Policy ENV1 from the North Cornwall Local Plan 2010-2030 ('NCLP') supports development proposals where they do not have an adverse effect on the AGLV. CLP Policy 23 is the principle policy in terms of landscape protection in that Plan. It sets out the value of the various landscape areas within the county and seeks to protect them from developments that would have an adverse effect.

43. The collection of timber buildings and associated structures that were erected between Penvose Cottage and the river were clearly visible from the public highway. The evidence shows that, by reason of their number, cumulative size, form and designs, the buildings caused significant harm to the character and appearance of the area. Thus, their erection was contrary to the terms of CLP Policy 23 and NCLP Policy ENV1.

44. Though I have found harm in respect of these buildings, I do not find this to be the case with the area of hardstanding that has been created in the area marked with a red polygon on the plan attached to the Notice. Due to its limited size and siting within the garden of Penrose Cottage, this causes no harm to the character and appearance of the area and accords with CLP Policy 5 and NCLP Policy ENV1. I shall vary the terms of the Notice to allow for its retention.
45. The small wc attached to the garage has no effect on the character and appearance of the landscape, and is acceptable in respect of NCLP Policy ENV1 and CLP Policy 23.
46. The Council's objection to the bridges over the small watercourse was based on reasons relating to flood risk. I find that, by reason of their small scale and use of timber, they are appropriate to the area and cause no ill-effects to its character and appearance. These bridges lead to the hardstanding that has been laid on the north side of the small watercourse. The Council's position has changed since it issued the Notice and it raises no objection to the retention of the parking areas, subject to conditions relating to the use of the land and a restriction on the number of employees working from it. With these conditions, which I find to be necessary, the use of the hardstanding would be limited, and its retention would not cause harm to the area's character and appearance. I shall vary the terms of the Notice to allow its retention.
47. The wooden building that has been erected on land to the north of the small watercourse marked with an x on Plan 1 attached to this Notice is small and is appropriate to its location within the garden area of Penrose Cottage. It causes no harm to the character and appearance of the area, and I shall vary the terms of the Notice to allow its retention.
48. No case was put forward for the retention of the signs along the A39. From the evidence put forward, I find that these caused visual harm to the area, and I shall uphold the Notice in this regard.

Flood Risk

49. Evidence of a meeting on-site between the Appellants and members of the Council's highways and infrastructure department and the Environment Agency ('EA') were submitted. Following this, emails were written by those organisations that, essentially, set out that the flood risk associated with the bridges that have been erected over the small watercourse would not be likely to lead to flooding and, even if this occurred, it would flow within a very short distance into the River Allen. Neither would object to their retention, although the EA required the removal of certain structures; this was subsequently done by the Appellants.
50. In the light of this evidence, I find the construction of the bridges would not result in an increase in flood risk and that they accord with the terms of CLP Policy 26 that seek to minimise flood risk.

Conclusion on Ground (a)

51. For the reasons given above, I find that the use of the garage for research and development, the hardstandings marked by green and red polygons, the wooden bridges and the wooden shed to the north of the small watercourse are acceptable, subject to the conditions I propose.

Ground (f)

52. The Appellants' case made here related to retaining the wc, the bridges crossing the small watercourse to access the land to the north of the road and the areas of hardstanding. As I allow for their retention in my Ground (a) decision, there is no need to take the matter further.

Overall Conclusion

53. For the reasons given above I conclude that the Ground (a) appeal should succeed in part only, and I will grant planning permission for the material change of use of land from residential and nil use to a mixed use comprising of residential amenity land and the use of the land for research and development associated with Rock Gin with associated commercial parking of vehicles. Including associated operational development comprising of bridges on land to the north east and south east of Penvose Cottage, St Tudy, Bodmin, Cornwall, PL30 3NP, but otherwise I will uphold the notice with correction and variations and refuse to grant planning permission in respect of wooden structures and associated paraphernalia. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Roy Curnow

Inspector

SCHEDULE OF CONDITIONS

1. The building outlined in green on the Plan 1 shall only be used for purposes within Class(g)(ii) of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
2. There shall be no outside storage of goods or materials associated with the use approved under Condition 1.
3. The number of staff employed at the site in connection with the activities described in Condition 1 shall not exceed one in addition to the residents of Penvose Cottage.
4. The parking area to the north-east of the dwelling known as Penvose Cottage and identified on Plan 1 as a green polygon shall only be used for purposes ancillary to the occupation of the dwelling known as Penvose Cottage or parking for members of staff associated with the activities described in Condition 1.



Plan 1

This is the plan referred to in my decision dated: 18 October 2024

by Roy Curnow MA BSc(Hons) CMS MRTPI

Land to the north east and south east of Penvose Cottage, St Tudy, Bodmin, Cornwall, PL30 3NP

Reference: APP/D0840/C/23/3319592 and APP/D0840/C/23/3319593

Scale: Not to scale





Plan 2

This is the plan referred to in my decision dated: 18 October 2024

by Roy Curnow MA BSc(Hons) CMS MRTPI

Land to the north east and south east of Penvose Cottage, St Tudy, Bodmin,
Cornwall, PL30 3NP

References: APP/D0840/C/23/3319592 and APP/D0840/C/23/3319593

Scale: Not to scale

