



Appeal Decision

Site visit made on 5 November 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/D0840/C/23/3318579

The Ranch, Mawgan Porth Hill, Mawgan Porth, NEWQUAY, TR8 4AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Dean Robson against an enforcement notice issued by Cornwall Council.
- The notice was issued on 9 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a paddock and agricultural land to residential use associated with the dwelling known as 'The Ranch' and associated operational development comprising of the construction of an outbuilding (garage/office space), below ground level outdoor pool, creation of earth bunds, a 10kw solar installation and the creation of new access track and gateway.
- The requirements of the notice are to:
 - (1) Demolish and remove from the land, the outbuilding and pool shown in the approximate locations by the two blue Xs on the plan attached to the notice.
 - (2) Cease the use of the land shaded in red on the attached plan as residential use associated with 'The Ranch' dwelling and restore the land extent of domestic curtilage as approved under planning permissions PA17/11991.
 - (3) Dig up and remove the earth bunding shown in the approximate location by a green line on the attached plan.
 - (4) Remove from the land the solar panels and connecting electric cables shown in the approximate location by a blue B on the attached plan.
 - (5) Demolish and remove from the land the gateway and associated walling shown in the approximate location by a blue A on the attached plan.
 - (6) Dig up and remove from the land the access track shown in the approximate location by a blue line on the attached plan and restore track original as approved under PA17/11991.
 - (7) 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 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed insofar as it relates to the 10kw solar installation and the creation of a new access track and gateway, 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 10kw solar installation and the creation of a new access track and gateway at The Ranch, Mawgan Porth Hill, Mawgan Porth, Newquay, TR8 4AL.

2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the material change of use of the land from a paddock and agricultural land to residential use associated with the dwelling known as The Ranch and the associated operational development comprising the construction of an outbuilding (garage/office space), below level outdoor pool and creation of earth bunds and planning permission is refused in respect of the material change of use of the land from a paddock and agricultural land to residential use associated with the dwelling known as The Ranch and the associated operational development comprising the construction of an outbuilding (garage/office space), below level outdoor pool and creation of earth bunds at The Ranch, Mawgan Porth Hill, Mawgan Porth, Newquay, TR8 4AL on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

The site and relevant planning history

3. The appeal site lies in open countryside and is within an Area of Great Landscape Value (AGLV).
4. It comprises a dwelling, known as The Ranch, an outbuilding (garage/office space), an outdoor swimming pool, earth bunds, solar installation, access track and gateway. The stone access track is flanked by an avenue of young trees, maintained grass verges and ornamental planting. Other than the cultivated area around the house and pool the remainder is planted with a substantial number of whips of various species and protected by tree guards. The development appears to have been carried out to a high standard and is maintained accordingly.
5. A chicken shed on the land benefitted from a Lawful Development Certificate for an existing use as a dwelling (PA14/09797). Permission was granted for the replacement of the existing dwelling (PA17/1191) and conditions were approved subsequently (PA18/06471). A retrospective application was refused (PA20/08097) for the 'change of use of domestic curtilage' and the erection of a garage/office space and pool, and the regularisation of a solar array, relocation of the access track and a bund that had been repositioned and slightly extended. Applications PA22/00361 and PA22/00362 were resubmissions of PA20/08097 but applying separately for the outbuilding/pool development and the solar installation and revision of the original access track. Both were refused.
6. Applications PA20/08097, PA22/00361 and PA22/00362 were recommended for approval by the case officer but were refused by the Planning Committee. The appellant alleges that the decisions were procedurally flawed and that the Committee did not have sound grounds for refusing the applications, although no evidence has been submitted to indicate that any appeal, complaint or legal challenge was made at the time. The development that has occurred is a sensitive local issue as implied through the comments of St Mawgan Parish Council and the Planning Committee is perfectly entitled to reach a decision contrary to an officer recommendation, so long as they have sound planning reasons for doing so.
7. From 2019, the Council carried out a series of enforcement investigations eventually leading to the notice the subject of this appeal.

The appeal on ground (c)

8. An appeal on this ground is a legal ground, where the onus of proof rests with the appellant and the level of proof is on the balance of probabilities. The appellant contends that there has not been a breach of planning control in respect of the entrance gateway as this benefits from permitted development rights under Schedule 2, Part 2 minor operations, Class A - gates, fences, walls, etc of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GDPO). It is stated that it is not adjacent to a highway used by vehicular traffic, is some 5.5 metres from the highway and less than 2 metres high.
9. The courts have held that 'adjacent' does not mean something being 'contiguous' or 'abutting' the highway (*Simmonds v SSE & Rochdale MDC* 1980). Whilst the entrance gateway, which comprises a wide electric sliding gate flanked by white painted walls of a similar height and a bin store, is set a few metres back from the edge of the carriageway, the structure is of significant size that is perceived as an enclosure to demarcate the boundary of the property from the highway. Accordingly, I consider that the gateway is adjacent to the highway for the purposes of the GDPO.
10. The appellant has not shown on the balance of probabilities that the gateway benefits from permitted development rights and consequently planning permission is required.
11. The appeal on this ground fails.

The appeal on ground (a)

12. An appeal on this ground is that planning permission should be granted for what is alleged. I consider the main issue to be the extent of landscape harm arising from the development and its impact on the Area of Great Landscape Value (AGLV).
13. The site is within LCA15 Newquay and Perranporth Coast in the Cornwall and Scilly Landscape Character Study which characterises the area by its exposed and windswept nature where Cornish hedges are common but contain few trees and where a negative characteristic is the encroachment of built development on to higher more exposed land.
14. Policy 23 of the Cornwall Local Plan requires development to sustain local distinctiveness and character and protect and where possible to enhance Cornwall's natural environment and assets. Saved Policy 14 of the Restormal Local Plan 2001 does not permit development that causes harm to the landscape features and characteristics of AGLV. Whilst the appellant contends that the policy is of limited weight because of intentions to review the policy, I am satisfied that the policy remains relevant and I attach full weight to it.
15. The National Planning Policy Framework (the Framework) indicates that there is an overall requirement to ensure that development contributes to the natural and local environment including the protection and enhancement of valued landscapes.
16. The appellant's Landscape Visual Appraisal reflects on the impact of the single storey 'green' flat roof building constructed of dark weathered materials to tie in with the dwelling, which is considered to be unobtrusive, nestling within and

set back from the more exposed fringes of the plateau. It is argued that sensitively designed earth mounds, tree and hedgerow planting improve screening and enclosure and provide a locally distinctive sense of place as well as encouraging biodiversity. The LVA acknowledges that it is only from the more distant, elevated and/or open locations focussed to the north that the development has the potential to be perceived and influence landscape character and views from surrounding visual amenity receptors but this is not 'out of place' or affects the special character and qualities of the AGLV.

17. The appellant is highly critical of the views expressed by the Council's Landscape Officer which are considered to be flawed. It is alleged that the elements requiring permission have not been specifically appraised, there has been an incorrect assessment of the base visual and landscape character of the site, incorrect assertions about the ability of trees to grow in the local climate and what has existed at the site in the recent past has not been considered.
18. Considering matters of visual and other impacts on landscape character is very much a matter of professional judgement based on the available facts and one that is assisted by established assessment methods such as an LVA. However, in considering the findings of any assessment, it is necessary to determine the degree with which those conclusions are confirmed and decisions made should be balanced against all relevant factors.
19. In this regard I have found the sequence of google earth images from 2017 to 2022 included in the Council's statement to demonstrate very clearly the extensive and intrusive nature of the development that has occurred in the landscape. In the 2017 photo, the site is in two distinguishable parts. The majority is a field to the west of the track which is adjacent to the east boundary. The smaller and greener part of the field (part of which is described as a paddock) is contained on its south and west sides by a dog-leg extension to the track and contains a building. Successive images show the formation of an earth bund along the west side of the site (which is aligned some distance from the B3276 with a paddock intervening between the property boundary and the road), the construction of the pool and garage/office, the re-routing of the access track and construction of two bays for vehicular parking, the construction of a new entrance gate, and the installation of an array of 12 double solar panels. The unauthorised development coupled with the construction of the earth bunds, landscaping and tree planting that has been carried out has transformed what had been an established part of the traditional agricultural landscape into a property having extensive grounds that have no particular relationship with either agriculture or with the landscape.
20. Whilst I accept that the property is of limited visible within the landscape and only from a relatively small number of public viewpoints due to the landform, it is noticeable from the road leading from Mawgan Porth to St Eval (a viewing point suggested by the Council). Whilst the external materials used in the construction of the office/garage building are dark and subdued, and which help to lessen its visual impact, it is not a subservient outbuilding to the dwelling, but one that contributes further to the reduction in the undeveloped area of countryside which forms a buffer between Mawgan Porth and Trevarrian, which is an important visual component of the landscape separating the two settlements. It is likely to be more noticeable when illuminated at night time.

21. The earth bunding is intrusive particularly when viewed from the B3276 due to its length and height. The development fails to sustain local distinctiveness and does not protect and enhance the landscape.
22. The entrance gateway, with its wide electric sliding gate, flank walls and bin store is a structure of significant size. It is adjacent to a pair of white painted semi-detached houses relatively close to Trevarrian which mitigates the visual impact of the gates in this location. The access track was originally aligned along the east boundary of the property before dog-legging towards the site of the replacement dwelling. It has been moved some metres away from this boundary and then seems to share a similar alignment from where it meets with the start of the dog-leg albeit that two hardstanding parking bays have been constructed. Another leg of the track returns close to the east boundary but this is a rough secondary track leading towards the north of the paddock. The tree planting alongside the track and the cut verges coupled with the gateway structure provide a formal entrance to the property in sharp contrast to the original simple field gate and track. Notwithstanding this, the tracks do not cause a level of harm to the character and appearance of the area for them to be determinative.
23. I note that the plan attached to the notice identifies the approximate position of the access track by a blue line which terminates at the end of the smaller of the two parking bays but excludes the extension of the track to the dwelling and the garage, notwithstanding that the latter lies within the paddock area.
24. In respect of the solar array and connecting electric cables, this is positioned at ground level behind the roadside hedge, is not prominent and has a lesser degree of harm to the landscape than the other operational development. I note that the Parish Council raises no objection to the solar array and I consider that it does not conflict significantly with the Cornwall SPD on Renewable Energy.

Fallback position

25. The appellant refers to the permitted development rights available within the curtilage of The Ranch, both to the north and south of the dwelling, where the facilities subject to the notice could be constructed and which would be no less visible. However, the plans approved under PA17/1191 and PA18/06471 illustrate the limited extent of the curtilage associated with the dwelling and within the red line on the plans. It cannot be described as being extensive as claimed by the appellant.
26. Whilst limited permitted development could be a legitimate option for the appellant, I attach little weight to it due to the site limitations and because there would be a significant difference in landscape impact between permitted development constructed within the restricted lawful curtilage of the dwelling than those constructed on the paddock.
27. The appellant also refers to earth bunding being a means of enclosure under Class A of Part 2 of the GPDO when not adjacent to a highway and under 2 metres in height. The appellant believes he could erect a similar or alternative means of enclosure in lieu of the bunding attacked by the notice. The Council consider the bunding to be an engineering operation and refer to the leading case of *Ewen Developments v SSE (1980) JPL 404* in which it was held in that particular case that earth embankments, whilst having some function of

enclosure, were nevertheless not permitted development. Consequently I attach little weight to the appellant's argument in respect of the claimed fallback position.

Other matters

28. The appellant seeks justification for the development partly through the impact of development in the local context including tourism activity, aviation movements, turbines, etc. and also from the biodiversity and environmental benefits arising from the development. The Biodiversity Net Gain submissions with the retrospective applications refers to extensive habitat creation through orchard planting, grasslands, planting of ornamental shrubs, mixed scrub planting and linear habitat creation, representing an enhancement in terms of the ecological function of the site.
29. The appellant draws attention to other development in the area and to a recent planning permission for glamping pods about 150 metres to the south-east of the appeal site. That application can be distinguished from the appeal case on its facts and I note that the development was considered to have economic and social benefits which outweighed the limited visual and environmental harm.

Conclusions on the ground (a) appeal

30. The original curtilage of the approved dwelling is not extensive and potential domestic activities should have been contained within this area. The introduction of the ancillary building, the swimming pool and the likelihood of associated increased domestic activity in the former paddock and outside the original curtilage affects the character of the land causing considerable landscape harm which diminishes the intrinsic qualities and characteristics of the AGLV. This is further diminished by the intrusive nature of the earth bunds. The harm caused is not outweighed by biodiversity or economic benefits and cannot be mitigated through the imposition of conditions. Accordingly the development is contrary to policies in the Cornwall Local Plan, particularly Policy 23 and saved Policy 14 of the Restormel Local Plan and to the protection of the valued landscapes as set out in the Framework.
31. As I have found the solar array, gateway and access drive to be of lesser impact I intend to issue a split decision upholding the appeal in respect of these developments but dismissing the appeal in respect of the outbuilding (office/garage), the swimming pool and the earth bunding. The requirements of the notice relating to the acceptable part of the development will not be deleted, so as to avoid any grant of unconditional planning permission being made through s173(11). The appellant can rely on the notice ceasing to have effect insofar as it is inconsistent with the permission under s180(1).

The appeal on ground (f)

32. An appeal on this ground is that the steps required are excessive.
33. In particular, the appellant wishes to reuse the materials from the demolition of the pool, outbuilding and PV to construct similar operational development within the established curtilage of The Ranch using permitted development rights. The appellant suggests that 'the land' in the notice should exclude the existing residential curtilage. 'The land' in the notice refers to the whole property and it would not be appropriate to make the distinction requested,

particularly in view of the considerable volume of materials and debris associated with meeting the requirements of the notice.

34. Additionally, the appellant claims that as a means of enclosure, earth bunding is permitted development up to 2 metres in height and it would be reasonable to retain the bunding but to reduce it in height to 2 metres. In view of my conclusions on the ground (a) appeal, this would not be appropriate. As concluded earlier, the earth bunds are an engineering operation requiring planning permission.
35. The appellant points out that the planting of trees is not development and the requirement to restore the land to its former condition should exclude the trees. A straightforward reading of the allegation and requirements of the notice makes no reference to trees and there is no requirement for their removal albeit that the requirement to remove the bunds will affect those planted on them.
36. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
37. The appeal on this ground fails.

The appeal on ground (g)

38. An appeal on this ground is that the compliance period of 8 months is too short due to the scale of the works and the business implications of ceasing to use the office.
39. The appellant provides little information about why the compliance period is too short to carry out the requirements of the notice or why alternative office arrangements cannot be found in that time. The Council state that if the period of 8 months proves to be unrealistic, they have powers under s173A(1)(b) to extend the compliance period.
40. Consequently I conclude that the compliance period is reasonable and the appeal on this ground fails.

Conclusion

41. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the 10kw solar installation and the creation of a new access track and gateway, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the other part of the matters. 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 section 180 of the 1990 Act (as amended).

P N Jarratt

INSPECTOR