



Appeal Decisions

Site visit made on 18 March 2025

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 April 2025

Land known as land west of 4 Parc an Peath, St. Buryan, Penzance, Cornwall, TR19 6EW

Appeal A Ref: APP/D0840/C/23/3332349 and Appeal B Ref: APP/D0840/C/23/3332351

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A made by Mr D Hosking and Appeal B by Mrs Helen Hosking against an enforcement notice issued by Cornwall Council.
- The notice was issued on 26 October 2023.
- The breach of planning control as alleged in the notice is without planning permission, the commencement and partial construction of a residential building and the associated material change of use of the land from agricultural to residential. The approximate position of the building is marked by a blue 'X' on the plan attached to the notice.
- The requirements of the notice are to:
 - 1) Cease the residential use of the land shaded in green on the attached plan.
 - 2) Remove all services connected to the building shown in the approximate location by a blue 'X' on the attached plan; including but not limited to: electric cabling, water pipes, sewage pipes, soakaway, etc.
 - 3) Dismantle and remove from the land, the building shown in the approximate location by a blue 'X' on the attached plan,
 - 4) Remove from the land shaded in green on the attached plan, all materials and debris resulting from the residential use of the land; including but not limited to: fencing, washing line and plant pots etc.
 - 5) Remove all materials arising from compliance with (1) to (4) and above from the land and reinstate the land to its former condition and use before the breaches took place.
- The period for compliance with the requirements (1) to (5) above is six months.
- Appeal A 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.
- Appeal B is proceeding on grounds (c), (f) and (g).

Decisions

1. It is directed that the enforcement notice is varied by the deletion of 6 months and its substitution with 12 months as the time for compliance. Subject to the variations, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the planning application deemed to have been made under s177(5) of the 1990 Act as amended.

The site and relevant planning history

2. The site of appeals A and B relate to a paddock to the rear of a building plot at the head of a cul-de-sac known at 5 Parc an Peath where construction has commenced for a dwelling. To the rear an L-shaped timber and tile single-storey dwelling has been constructed with its plot fenced off from the remainder of the

paddock. It is accessed through the rear garden of No 5 from which access to the paddock is also gained.

3. Planning application PA/19/01149 has been granted with conditions for the retention of an existing pergola, agricultural poly tunnels and fruit cage and the construction of a timber stable block. Following notification of a breach of the approved plans, the Council found that the stable doors had been replaced with windows, additional openings added and a slate roof replacing the approved sheet material roof. Internally, the layout is different and has been provided with heating, electricity, kitchen and bathroom. When interviewed by the Council the owner stated that the intention was to live in the building pending construction of the house at No.5.
4. In April 2024, an appeal was dismissed for the appeal site for the extension of domestic curtilage, retention of converted stable as annex to the principle dwelling and associated works (APP/D0840/W/23/3327966).

Appeals A and B – the appeals on ground (c)

5. An appeal on this ground is that there has not been a breach of planning control. The appellant asserts that planning permission exists for the building, the minor deviation is easily reversed and that the fence is permitted development.
6. Whilst the permission for the stable building shows a building of similar size and shape, it is clearly evident that the building on site is not used as a stable but as a dwelling with internal and external alterations to the scheme permitted. I note also the Council's view that the original intention was to construct a dwelling which the application the subject of the dismissed appeal was intended to regularise.
7. As the fence was provided as part and parcel of the development of a dwelling on the site it facilitates the use of the land around the dwelling for purposes incidental and ancillary to the use of the dwelling, the fence cannot be considered as permitted development in a similar manner to *Somak Travel Ltd v SoS & Brent LB* [1987] JPL 630.
8. The erection of a dwelling and enclosure of land for residential purposes represents development for which no permission exists.
9. It has not been shown on the balance of probability that a breach of planning control has not occurred and the appeal on ground (c) fails.

Appeals A – the appeal on ground (a) and the deemed application

10. An appeal on this ground is that planning permission should be granted for what is alleged.
11. The allegation refers essentially to the same development as dismissed on appeal (APP/D0840/W/23/3327966). The Inspector in that case found that the development would comprise a separate dwelling, rather than an annex, and determined the appeal on that basis.
12. In concluding on that appeal, the Inspector found that "the proposal would lead to the creation of a new dwelling in an open countryside locationand... would conflict with the settlement hierarchy for the location of housing outlined in the development plan and harm the character and appearance of the area. It is

therefore contrary to Policies 1, 2, 3, 7, 12 and 23 of the Cornwall Local Plan and saved policy CC-5 of the Penwith Local Plan (2004). Amongst other things, these seek to ensure high quality safe, sustainable and inclusive design, sustain local distinctiveness and character and protect and where possible enhance Cornwall's natural environment, and ensure that development does not cause significant harm to the character and amenity of the Areas of Great Landscape Value. The proposal would also be contrary to Policy C1 of the Climate Emergency Development Plan Document (February 2023) and the Framework that seek to conserve and enhance the natural environment and achieve well-designed and beautiful places.

13. The appellant has not raised any new or additional matters relevant to the current appeal that were not considered in detail by the Inspector in the earlier appeal. In the light of this there are no reasons for me to reach a different conclusion in this case.
14. The appeal on this ground fails.

Appeals A and B – the appeals on ground (f)

15. An appeal on this ground is that the requirements of the notice are excessive. The appellant considers that it is sufficient to require the building to revert to the form and appearance of the 2019 permission for the stables and that the fencing should be allowed to remain as permitted development.
16. 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.
17. The Council has indicated that it is open to suggestions to the extent of any demolition involved but in the absence of specific proposals, I am satisfied that the requirements reflect the intention of the notice. It is a matter for the appellant to secure any necessary permission for altering the structure that may satisfy the Council and over-ride the requirements of the notice by virtue of s180(1)(a).
18. 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.
19. The appeal on this ground fails.

Appeals A and B – the appeals on ground (g)

20. An appeal on this ground is that the compliance period of 6 months is too short and a period of 12 months is requested by the appellant to allow for the rehousing of an elderly relative.
21. The Council indicates that it is willing to allow a period of 12 months and in view of the circumstances of the elderly relative, the extension to the compliance period is reasonable. I allow the appeal on this ground.

Conclusions

22. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on ground (g) succeeds to that extent.

P N Jarratt

INSPECTOR