



Appeal Decision

Inquiry held on 20 January 2026

Site visit made on 20 January 2026

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2026

Appeal Ref: APP/X1165/C/25/3372245

188 Newton Road, TORQUAY, TQ2 7JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Samantha Kenny against an enforcement notice issued by Torbay Council.
 - The notice was issued on 1 August 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the sub-division of the residential unit to form two separate residential units and any relevant works that facilitate this.
 - The requirements of the notice are:
 - (i) Cease the separate residential use of the part of the building known as 188A Newton Road, as indicated in the approximate location edged green on the plan attached to the notice titled "Map 2", reverting the land back to one single residential unit.
 - (ii) Remove the boundary demarcation between the sites known as 188 Newton Road and 188A Newton Road, in the approximate location identified by the blue line on the plan titled "Map 3"
 - (iii) Carry out remedial works to bring the building in accordance with drawings '1370-11(Rev A) and 1370-12(Rev A)'.
 - (iv) Remove all resulting debris generated as a result of any remedial works set out in points (ii) to (iii) in its entirety from the land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended)
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Evidence in respect of the appeal on ground (d) was taken under oath by the witnesses and subject to formal examination and cross examination. The appeals on ground (f) and (g) were subject to a round table discussion.
3. At the inquiry, the appellant indicated he had not received copies of two written representations submitted to the Inspectorate by members of the public although the Inspectorate's records indicate that copies were sent to the parties at the appropriate time. Notwithstanding this, the parties were given an opportunity following the inquiry to respond. The appellant responded with information regarding tenancies of the properties; made an assumption regarding the person

or persons submitting the statements whose names and addresses had been redacted; that one of the representations misunderstood the nature of the appeal; and refuted the builder's comments.

Statement of Common Ground

4. A signed statement of common ground dated 16 January 2026 described the planning history of the site and the contents of the enforcement notice together with the areas of agreement. These included ownership details; planning permission P20/2017/1222 for a two storey side extension; the dismissed appeal (APP/X1165/W/21/3282199) for the conversion of 188 Newton Road into two dwellings; that the house has been separated into two dwellings which is development requiring planning permission; and, that the enforcement notice under appeal was issued under the second bite provisions of s174B(4).
5. The proof of evidence of Teresa Buckley, the Council's Democratic Services Team Leader, relating to the Council's historic Scheme of Delegation was agreed by the parties.
6. The areas of disagreement between the parties and the main issues for the inquiry are:
 - (i) Whether the Council can rely on the second bite provisions;
 - (ii) Whether the appellant's lesser steps would secure permanent restoration of the property as a single dwelling,
 - (iii) Whether a 12 month compliance period is reasonable.

The appeal on ground (d)

7. An appeal on this ground is that at the time the notice was served it was too late to take enforcement action. As it is a legal ground of appeal, the onus is on the appellant to prove the case and the standard of proof is the balance of probabilities.
8. It is the appellant's case that they did not know about the two enforcement notices served in August 2021 and was only made aware of these when a Lawful Development Certificate for the erection of a dwelling (C3) was refused by the Council in April 2024 (P2024/0120).
9. The appellant contends that the Council does not benefit from the "second bite" provisions of s171B(4) as the Council had failed to serve the previous enforcement notices as it cannot demonstrate that the two notices dated 25 August 2021 were properly authorised by the Council, that the Council's usual practice for contemporaneously recording service were not followed and registering the service of the notices in a timely manner were not followed.
10. Section 171B(4)(b) states "...taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of the breach."

11. The current notice was issued on 1 August 2025, within the four years of the issue of the first notice on 25 August 2021 which leaves the issue to be determined to be whether the Council has taken or purported to take enforcement action.
12. Enforcement action has a number of stages. Firstly where it appears there has been a breach of planning control it is expedient to issue the notice having regard to the provisions of the development plan and any other material considerations. The appellant does not take issue with this.
13. Secondly, this involves gaining the necessary authority to commence enforcement action. The appellant questions whether this was done in accordance with the Schemes of Delegation effective at the relevant time or whether the correct scheme was applied. I am satisfied from the evidence presented that the relevant authority for signing and issuing the notices was in place and has been followed. The argument that if a director or a post title was changed, then this would cancel the delegation and I attach little weight to such arguments.
14. The third stage is the issue of the enforcement notices which is not contested by the appellant.
15. The fourth stage is the service of the notices which is challenged by the appellant. The evidence of Mr Bartlett is forensic in detail and together with that of Mr Farley, is very helpful in understanding the procedures operated in the serving of the notices. Some 9 letters were sent on 25 August 2021 on behalf of the Planning Department to 188 and 188A Newton Road and this is supported by screenshots of audit trails. None of these nine items was returned. The then Case Officer entered the notices on a spreadsheet indicated they had been posted and being sent to the Land Charges Department. The Council does however acknowledge that there are no signed Certificates of Service for the notices.
16. An interested party and neighbour, Mr Conway, spoke at the inquiry to advise that he and his neighbours were aware that the house may be demolished as a result of the 2021 notices. He referred to tenants leaving the property after the notices were served. Although this evidence was not given on oath, I attach modest weight to his comments which supports the case on the balance of probabilities that the notices were in fact served, despite the Council relying in a small part on circumstantial evidence.
17. I therefore conclude that the Council is able to rely on the second bite provisions of s171B(4)(b) for the purpose of the enforcement notice subject to this appeal.
18. Even if there had been a fatal error in the procedures, the Council relies on *Lambrou*¹ as the Council has purported to take enforcement action in respect of the breach. Whilst the appellant maintains that the Council has not purported to take action as it needs to show that its purpose or intention was an attempt at enforcement action or that it appears ostensibly to be enforcement action. I am satisfied that the threshold for purporting to take action has been well exceeded.

¹ *Lambrou v SSCLG* [2013] EWHC 325 (Admin)

19. The appellant has failed to show on the balance of probabilities that it is too late for enforcement action to be taken and the appeal on this ground fails.

The appeal on ground (f)

20. An appeal on this ground is that the compliance steps are excessive and lesser steps would overcome the objections.
21. The purpose of the notice is to remedy an injury to amenity caused by the breach and is not to be confused with the reasons for taking enforcement action. In ground (f) appeals it is necessary for me to consider whether there any obvious alternatives that would achieve the purpose of the notice with less cost and disruption, but it is not for me to raise any possible alternative that is not put forward in evidence. Planning merits may only be considered pursuant to ground (a), where that is pleaded and the fee is paid for the DPA. That is not the case in this appeal. Under ground (f), the issue is whether the requirements are reasonable.
22. The appellant does not want to carry out alterations to the property as required in the notice as he does not require a garage which was originally part of the extension scheme to overcome potential flood issues. He pointed out that the ground floor of No188A is in Flood Zone 3b.
23. The appellant submitted a drawing (Document 2) showing the ground and first floors of the appeal property. The drawing is not referenced, dated or scaled. On the ground floor it indicates that an opening would be created between 188 and 188A on the ground floor hallways of both properties at the bottom of the staircase. It indicates that a single kitchen would serve the dwelling (although the dining room could not be described as being conveniently located to the kitchen). No schedule of works or external elevations have been provided. Externally, the property would appear the same with two adjacent front doors remaining with No 188 appearing to be the middle dwelling in a terrace of three, affecting the street scene.
24. The Council stated that Policies DE1, DE5 and TH8 of the Torbay Local Plan 2012-2030 have a bearing on the property. The appellant expresses a view that there are no references to design policies in the enforcement notice other than to Policy ER1 and it would have been reasonable to include reference to policies raised by the Council at the round table discussion. However, as already stated consideration of planning merits are not relevant to a ground (f) appeal.
25. I note that the original 2021 notices required the demolition of No 188A which would have restored the land its condition before the breach took place. In the current notice the Council have adopted a compromise approach which enables the built form to be largely maintained but requiring amendments to leave no reasonable prospect that the site would be subdivided again. In the absence of any other scheme that remedies the injury to amenity that has occurred, the requirements of the notice require the development to be brought in line with the previously approved, although expired, scheme P/2017/1222 and which satisfies planning policies for extensions.
26. The appellant considers that as the breach is a subdivision, the works proposed are sufficient to meet the remedy required in the notice. However the very minor

internal changes proposed by the appellant would not remedy the injury to amenity and future enforcement against a subdivision reoccurring would be difficult to enforce and ultimately require constant monitoring. As such this would be an unreasonable burden on the Council. Additionally, the dividing fence in the rear garden is unlawful and facilitates the breach of the sub-division of the residential unit. The appellant's suggestion to create an access between the two sections of the garden would not achieve the purpose of the notice.

27. The purpose of the requirements of a notice is 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.
28. 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 or indeed seeking planning permission for an alternative scheme acceptable in planning terms to the Council.
29. The appeal on this ground fails.

The appeal on ground (g)

30. An appeal on this ground is that the compliance period is too short. The appellant contends that the 12 month compliance period should be extended by a further 6 months in order to carry out extensive remedial works required and to secure a suitably qualified builder.
31. According to the appellant, it took less than 6 months to construct the new dwelling and I find it surprising that it is considered that 18 months is an appropriate compliance period. A period of 12 months is a reasonable time in which to commission and carry out such works.
32. The appeal on this ground fails.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Graham Cridland, Solicitor, who called:
Graham Kenny

FOR THE LOCAL PLANNING AUTHORITY:

Gavin Collett , Barrister, who called:
Russel Farley, Corporate Administration Manager, Torbay Council
Andrew Bartlett, Senior Planning Enforcement Officer, Torbay Council

INTERESTED PARTIES:

Ms E Clouder
Mr M Fox
Mr Conway, neighbour.

DOCUMENTS

- 1 Documents relating to the sale of parcel 475 de Gryon, Switzerland, (Minute 8796 with annexed plan and annexed Power of Attorney).
- 2 Untitled plans showing proposed alterations to the appeal property.
- 3 Mr Collett's closing submissions on behalf of the Council.
- 4 Mr Cridland's closing submissions on behalf of the appellant.