
Appeal Decisions

Hearing held on 16 August 2016

Site visit made on 16 August 2016

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 October 2016

Land at Little Meadows Arbour, Toldish, Indian Queens, St. Columb, TR96HG

Appeals A and B Ref: APP/D0840/C/16/3143967 and 3143968

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Paul Cooper (Appeal A) and Mrs Jenty Cooper (Appeal B) against an enforcement notice issued by Cornwall Council.
 - The enforcement notice was issued on 11 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a nil use to the stationing of caravans used for residential purposes (indicated in the approximate positions on the attached plan marked with a circled cross and numbered one to seven).
 - The requirements of the notice are to:
 - a) Cease the use of the caravans, as shown in the approximate position marked 1, 2, 3, 4, 5, 6 and 7 on the attached plan, for the purposes of independent residential accommodation.
 - b) Cease the use of the Land outlined in red for the stationing of caravans for the purposes of independent human habitation.
 - c) Remove the caravans, as shown in the approximate position marked 1, 2, 3, 4, 5, 6 and 7 on the attached plan, from the Land.
 - d) Remove all services, gas bottles and all other domestic paraphernalia from the Land.
 - e) Remove the septic tank from the Land.
 - f) Remove the hard-core from the Land.
 - g) Take down the block built shed, as shown in the approximate position marked with a black cross (X), and remove the resultant materials from the Land.
 - h) Using the earth and materials removed in the course of the forming and laying out of the caravan pitches used to form the bund (indicated in the approximate position on the attached plan marked with a black hatched area) reinstate the Land to its former condition prior to the breach of planning control.
 - The period for compliance with requirements (a) to (h) is 9 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) of the Town and Country Planning Act 1990 as amended
-

Appeal C Ref: APP/D0840/W/16/3143964

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Cooper against the decision of Cornwall Council.
 - The application Ref Pa15/06186, dated 3 July 2015, was refused by notice dated 27 August 2015.
 - The development proposed is use of land for the stationing of mobile homes.
-

Formal Decisions

Appeal A: APP/D0840/C/16/3143967

1. It is directed that the enforcement notice be corrected by the deletion of requirement (a). Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/D0840/C/16/3143968

2. It is directed that the enforcement notice be corrected by the deletion of requirement (a). Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/D0840/W/16/3143964

3. The appeal is dismissed.

Preliminary Matters

4. The stationing of caravans normally constitutes a use of land and so it is correct that the Council has directed the notice at the material change of use of land. However, requirement (a) requires the use of the caravans to cease rather than the land. Requirements (b) and (c) ensure that the use of the land for residential purposes ceases and that the caravans are removed. Requirement (a) is not therefore correct but in any event is superfluous. I intend to correct the notice to delete requirement (a) and I am satisfied that no injustice would be caused as a result.
5. At the hearing the appellant's agent confirmed that the appeal made under ground (f) was only proceeding in relation to requirement (h) concerning the earth bund.
6. The relationship between the application site (Appeal C) and the ownership certificate was disputed by some, having regard to the land registry records. The appellants are however satisfied that the land that is the subject of the planning application and this appeal is within their ownership and that it was not therefore necessary for them to give notice to anyone else of their application. Similarly the Council are satisfied that the enforcement notice was correctly served. Should this not be correct, any planning permission granted would not enable the appellants to develop land outside of their ownership.

Reasons

Appeals A & B, Ground (c) – that there has not been a breach of planning control

7. The appellant argues that the earth bund referred to in requirement (h) of the notice is a means of enclosure that benefits from permitted development by virtue of the provisions of the Town and Country Planning (General Permitted Development) Order. However, the breach of planning control alleged in the notice is the material change of use of land rather than the construction of an earth bund. No separate operational development is included in the description of the alleged breach of planning control. There is no case advanced on behalf of the appellant that the material change of use of land does not result in a breach of planning control.

8. A ground (c) appeal must be directed at the alleged breach of planning control which in this case does not include the earth bund. Whether or not requirement (h) is necessary to remedy the breach of planning control is more appropriately considered under ground (f) 'that being that the requirements of the notice are excessive'. The appeal on ground (c) fails.

Appeal A, Ground (a) and Appeal C

9. The reasons for issuing the notice and refusing planning permission relate to saved policies in the Restormel Local Plan (LP). The LP was adopted in 2001 to plan for the ten year period to 2011. It is therefore a very dated plan, a matter to which I shall return.
10. LP Policy 1 requires new development to contribute to the sustainable development of the Borough. Indian Queens / Fraddon / St.Columb Road is identified as a main local service centre in the rural area where development may occur of a size and type appropriate to the needs of the locality, its environmental constraints and its potential for reducing the number and length of journeys. The appeal site is however outside the defined development envelope for the area. Policy 3 confirms that land outside the development envelopes is the countryside which will be safeguarded for its beauty, the diversity of the landscape, the wealth of its natural resources and its ecological agricultural and recreational value. Development which will harm the countryside will not be permitted.
11. As a matter of principle the development conflicts with policies 1 and 3 due to the location of the site outside a development envelope. However, the principle of defined settlement envelopes in the LP is out-of-step with the emerging Cornwall Plan which is now at an advanced stage. The emerging policies support suitable infilling and the rounding-off of settlements. Furthermore paragraph 55 of the NPPF states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Local authorities should, it clarifies, avoid new isolated homes in the countryside unless there are special circumstances. The appeal site is not isolated in terms of its relationship with other built development or its proximity to services. Indeed as stated previously, Indian Queens / Fraddon / St.Columb Road is identified as a main local service centre in the rural area. Accordingly these policies in the LP are inconsistent with the NPPF and emerging policy and so the weight I afford to these policies in so far as they restrict development outside the housing development boundary as a matter of principle is greatly reduced.
12. There are two main issues arising from the reasons for refusal and reasons for issuing the notice. These are the effect of the development on:
 - (a) The character and appearance of the area; and
 - (b) Highway safety.

Character and appearance

13. Policy 6 sets out a number of criteria that new developments are required to meet to ensure that new developments respect the character and identity of the surrounding area. Policy 11 seeks to conserve and enhance the landscapes, features and habitats of heritage importance. Landscape features are also protected through Policy 18.

14. Access to the appeal site is along a by-way between Indian Queens workshops and a relatively recent residential development off the cul-de-sac Hanover Park. The appeal site itself is situated immediately to the west of the Hanover Park housing development. The appeal site comprises two broadly rectangular parcels of land that are connected and extend westwards. The by-way serves a number of other properties and the western boundary of the site is defined by the by-way, adjacent to which is Kelliars House.
15. There were 7 static caravans stationed on the western most 'rectangle' within the site at the time of my visit. The enforcement notice requires these caravans to be removed. The proposed development (Appeal C) seeks permission for the stationing of 17 caravans as shown on the supporting application plans.
16. To the rear of this existing housing and Indian Queens Workshops there is a noticeable change in the characteristics of the area. The development generally focused around Moorland Road, including Indian Queens Workshops and Hanover Park, is fairly close-knit. In contrast, the land beyond comprises a small scattering of properties dispersed along the by-way. Further west beyond the by-way and Kelliars House are open fields and largely undeveloped countryside.
17. The development of the site could not in my judgement be regarded as 'infilling' or 'rounding off'. The existing caravans are stationed on the rectangular parcel furthest away from Hanover Park. They do not integrate well with the existing pattern of development being physically detached from the more built-up area and Hanover Park and of a relatively high pitch density in comparison to the spacious and rural nature of the development immediately surrounding it. The increase in the number of caravans from 7 to 17 would further exacerbate this disparity in density, albeit it would introduce pitches closer to Hanover Park housing.
18. At the time of my visit, the Cornish hedging and existing vegetation helped to assimilate the fence that has been erected around the perimeter of most of the site into the rural surroundings, although I acknowledge it will be more prominent during the winter months. Nevertheless, the notice does not require the existing close boarded fence that has been erected and which is domestic in appearance to be removed. In terms of their wider visual impact, I acknowledge that the existing caravans are relatively unobtrusive by reason of their limited height beyond this fence.
19. Nevertheless, to conclude, the use of the appeal site for the stationing of 7 caravans referred to in the notice or 17 as proposed for residential purposes fails to harmonise with or respect the character and identity of the surrounding area contrary to LP Policy 6 and does not enhance the landscape as required by LP Policy 2.

Highway safety

20. Policy 80 of the LP seeks to ensure that the additional traffic generated by development proposals can be accommodated on the road system without undue environmental, operational or safety problems. The NPPF clarifies that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

21. The Council accept that the access is physically of sufficient width at the junction with Moorland Road to allow two vehicles to pass. However, due to the existing walling and vegetation either side of the access point it is considered that vehicles will manoeuvre in such a way so as to restrict the ability of two vehicles to pass. The Council asserts will cause vehicles to reverse back onto Moorland Road.
22. However, that was not what I observed during my site visit. Indeed I was able to pass a transit van comfortably at the junction; it was not necessary for the transit van to reverse in order to let me pass. I do not doubt that on occasions vehicles turning left into the site may swing wide given the position of an existing wall and pillar such that another vehicle cannot pass which may result in a vehicle reversing back into the carriageway. I carried out this manoeuvre myself more than once. Using the width of the footpath I was able to obtain good visibility in both directions before reversing into the carriageway. Equally, I consider a vehicle reversing out would be apparent to pedestrians such that I do not accept that pedestrian safety would be compromised.
23. From my observations on site, I do not consider the increase in vehicular traffic arising from the existing or proposed development would prejudice highway or pedestrian safety. I find no conflict with LP Policy 80 or the NPPF in this regard.

Other Matters

24. I have carefully considered other concerns raised by interested parties, in particular concerns about unsociable behaviour and noise and disturbance. Satisfactory distances are achieved between the proposed development and surrounding residential properties to safeguard the reasonable living conditions of the occupiers of surrounding properties. I acknowledge that there have been incidents of unsociable behaviour arising from the site in the past but the unacceptable behaviour of individuals of the nature described is a matter for the site owner and police.
25. Concerns about surface water drainage and run-off from the site could be overcome through the imposition of a condition requiring a scheme to be agreed with the local planning authority to ensure satisfactory drainage within the site should planning permission be forthcoming. A land contamination assessment and satisfactory mitigation measures could also be secured through conditions although I have some concerns about the site being occupied before any such assessment has been carried out. The NPPF states that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.
26. In accordance with paragraph 49 of the NPPF, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In its statement of Case the Council accepted that it was unable to demonstrate a five year housing land supply.
27. However, before the hearing, the Council's position changed and it confirmed that it does now consider that it can demonstrate such a five year housing land supply. The monitoring report that is relied upon by the Council is dated December 2015 and so was available when the Council prepared its statement.

However, the change in circumstance, to which Councillor Cole drew my attention, is that the Cornwall Plan examination hearings have since occurred and the suggested main modifications have been published with the guidance of the Inspector. The Inspector has not requested that the Council seek to identify any additional deliverable sites. The Council are of the view that this indicates that the Inspector is satisfied that the Council has demonstrated a five year housing land supply based on the evidence underpinning the plan.

28. Whilst it is not possible to be certain about what the Inspector's view will be in relation to housing land supply, I concur with the Council that in the absence of any direction from the Inspector prior to the Main Modification consultation period commencing that additional deliverable sites will be necessary to make the plan sound and in the absence of any challenge from the appellant about the deliverability of the specific sites that have been identified in the five year housing trajectory, that I can afford significant weight to this housing supply evidence.
29. However, as stated at the start, the LP is very dated. I share the views of the appellant that notwithstanding the position in relation to five year housing land supply, that this renders the policies out-of-date so that paragraph 14 of the NPPF is engaged. This requires that where relevant policies in the development plan are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
30. The appeal site is well located in terms of proximity to services and facilities. The Council accepts that there is some economic and social benefit arising from the provision of low cost rental accommodation particularly suitable for seasonable workers. However this must be weighed against the effect of the development on the character and appearance of the area. The developments fail to protect or enhance the natural environment and are of a poor design that has little regard to the characteristics of the area.
31. I recognise that the caravans are occupied for residential purposes and that compliance with the notice will therefore result in the loss of accommodation for those tenants. However, in light of the harm that I have identified, I consider the refusal of planning permission is necessary and that a period of 9 months in which to comply with the notice is a proportionate response when balancing the harm against the loss of accommodation for the current tenants.
32. To conclude, I find that, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Appeal A & B, Ground (f) that the requirements of the notice are excessive

33. Case law has established that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement action, so that the land is restored to its condition before the breach took place (*Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630).

34. It is not necessary for the creation of the earth bund to be separately referred to in the description of the alleged breach if the Council are satisfied that it was constructed as part and parcel of the material change of use of land. No substantive evidence is before me to demonstrate that the creation of the earth bund was a separate operation, unrelated to and not facilitating the material change of use of the land.
35. Requirement (h) of the notice requires the earth and materials that were removed to prepare the site and form the bund to be used to reinstate the land to its original condition. Given the purpose of the notice is to remedy the breach of planning control and therefore to restore the land to its condition before the breach occurred, requirement (h) is not excessive.
36. The appeal on ground (f) fails.

Overall Conclusions

37. For the reasons given above I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice. I refuse to grant planning permission on the deemed application.
38. For the reasons given above I conclude that Appeal C should be dismissed.

Claire Sherratt

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Sebastian Head of Counsel Instructed by Mr and Mrs Cooper	Appellant's Barrister
Mr Richard Marsden John Pearson FIHE Mr and Mrs Cooper	Appellant's Agent Transport and Highway Consultant Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Sleemen BA(Hons) Town & Country Planning	Planning Officer for Cornwall Council
Chris Cooper-Young TECH RTPI	Planning Officer for Cornwall Council
James Holman MRICS MRTPI FAAV	Principal Development Officer for Cornwall Council

INTERESTED PERSONS:

Councillor Cole	Local Councillor
Michael Bunyan	Parish Council
Scot Hutchins	Interested party
Mr and Mrs Griffin	Interested parties

DOCUMENTS

- 1 Appeal notification letter.
- 2 Statement of Common Ground.
- 3a Extract from Land Registry Act 2002
- 3b Gov.UK – 'Your Property Boundaries' info.