
Appeal Decision

Site visit made on 15 October 2016

by P N Jarratt BA DipTP MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/D0840/X/16/3146619

Little Perran, Reen, Perranporth, Cornwall, TR6 0AJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Julian Colwill Fox against the decision of Cornwall Council.
 - The application (Ref.PA15/10046) dated 23 October 2015, was refused in part by the Council by notice dated 15 January 2016.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is livestock housing and the use of the mobile log cabin as a dwelling and storing animal supplies.
 - **Summary of Decision:** Appeal dismissed.
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Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of the existing use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Planning history and the site

1. The site is in a countryside location at the junction of the B3285 and C0395 roads. It is approximately 1.2 ha in extent.
 2. In 1994, permission was granted for the change of use from agricultural to recreational associated engineering works.
 3. Planning permission was refused in December 2011 for an agricultural small holding living accommodation, mixed recreational use, animal and poultry sheds and shelters, mobile log cabin and hardcore track and poles for netting for footballs.
 4. Two enforcement notices took effect on 12 September 2012 (Ref C1ENF/227/10/A21). The first is in respect of operational development for the erection of buildings and flag poles on the land and formation of hard surfaces.
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The second is in respect of the material change of use of recreational land to a mixed use comprising camping, and for the stationing of a twin mobile unit for residential purposes. No appeals were made against the notices and the requirements of the notices have not been met. The Council indicates that further enforcement proceedings are pending.

5. Planning permission was refused in December 2012 for an agricultural small holding living accommodation, mixed recreational use, animal and poultry sheds and shelters, mobile log cabin and hard-core track and poles for netting for footballs. An appeal was dismissed in September 2013.
6. The LDC the subject of this appeal was allowed in part for the use of land for agricultural purposes as a smallholding.

Reasons

7. The appellant seeks an LDC for an existing use of a mobile log cabin as a dwelling and for storing animal supplies. This represents a mixed use and does not comply with the extant enforcement notice which is in effect.
8. The livestock housing for poultry and other livestock in fenced compounds do not benefit from any planning permission. These are also not in compliance with the requirements of the enforcement notice.
9. Section 191(2)(b) states that uses and operations on land may be lawful if they do not contravene any of the requirements of any enforcement notice then in force. Clearly, the development for which a certificate is sought fails this test.
10. The onus of proof for a LDC rests firmly with the appellant with the level of proof being the balance of probability. In this case the appellant has set out the history of his involvement with the site; details of his and his family's health, including the submission of documents from his doctor and medical professionals; details of other developments in the locality; various photographs of his injuries and of the log cabin; letters of support from local people; tax details and utility bills. Much of this material is irrelevant to the application of planning law.
11. Whilst it is apparent that the appellant's personal circumstances have been extremely difficult for some time, none of his submissions change the situation in respect of Section 191(2)(b).

Conclusion

12. For the reasons given above I conclude that the Council's refusal in part to grant a certificate of lawful use or development in respect of livestock housing and the use of the mobile log cabin as a dwelling and storing animal supplies was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal decision

13. The appeal is dismissed.

P N Jarratt

INSPECTOR