
Appeal Decision

Site visit made on 24 July 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 27 July 2017

Appeal Ref: APP/D0840/C/17/3171319

Land to the west of Portholland Chapel, West Portholland, Portloe, Truro, Cornwall, TR2 5PU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Allen Jones against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN16/01002, was issued on 24 February 2017.
 - The breach of planning control as alleged in the notice is without planning permission, engineering operations to create an access track and removal of material and the erection of a wooden shed and platform.
 - The requirements of the notice are;
 - a) Dismantle and remove the timber railway sleepers, shed and platform from the land
 - b) Disconnect and remove all services connected to the timber shed
 - c) Reinstate the land where the shed was positioned and the access track to its former condition prior to when the unauthorised development commenced
 - d) Remove from the land all materials and debris resulting from compliance with (a) to (c) above.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) 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.

Procedural matters

2. An application for an award of costs has been made by the Council against the appellant. This is the subject of a separate decision.
3. Although the appeal has been made on ground (f) alone, the appellant asserts that the construction of a tool shed required for the management of the land does not require planning permission. However no appeal has been made on ground (c), which is that there has not been a breach of planning control, for example because it does not represent development or that it is 'permitted development'. Similarly, no appeal has been made on ground (a), that planning permission should be granted for what is alleged in the notice. Notwithstanding this, I will consider the appeal as though it had also been made on ground (c) as well as on ground (f).
4. A neighbour has objected to the development on various grounds to which the appellant has responded. However, the objection relates to the planning

merits of the unauthorised development which are matters that do not need to be considered in the absence of a ground (a) appeal.

The appeal site

5. The site forms part of a steep sided valley/coastal slope visible from the road between East and West Portholland. It is within an AONB and the Heritage Coast and it is a designated County Wildlife site. The unauthorised access path and the wooden structure at a high level on the hillside are visible.

The appeal on ground (c)

6. In an appeal on legal grounds the onus of proof is on the appellant and the level of proof is on the balance of probability. However, the appellant does not present any evidence to support his assertion that the unauthorised works do not require planning permission.
7. Section 55 (1) defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. The unauthorised development is development in the context of this section.
8. Section 55 (2) sets out the categories of operations or uses of land not taken to involve development but this does not include the unauthorised development.
9. Section 57 refers to permission not being required where a Development Order is in place which grants permission to develop land subject to limitations. The unauthorised development does not come within the scope of permitted development.
10. As planning permission is required for the works specified in the notice, and no such permission has been granted, the appeal on this ground fails.

The appeal on ground (f)

11. An appeal on ground (f) is that the steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections.
12. The PINS guidance document 'Making your appeal – How to complete your enforcement notice appeal form – England' dated March 2017 states in relation to a ground (f) appeal '*You should say why you think that the steps are excessive and what lesser steps you consider would remedy the problem. You cannot argue that planning permission should be granted under this ground. If you wish the planning merits of the development to be considered you must argue that under ground (a)*'.
13. The purpose of a ground (f) appeal is to address whether the notice goes further than is required to achieve its aim.
14. The appellant considers the notice to be disproportionate in its requirements which involve the dismantling of the shed disconnecting services and reinstating the land. In particular he considers that as the land is steep; his physical limitations prevent him from carrying his tools or water. Additionally he states that linking several power cables together could create a health and safety issue. He also appears to question who has a right to tell him what he

can and cannot take onto his own land. He also considers that as the path is very narrow it makes very little difference on a large site.

15. In response the Council point out that a building has been erected and engineering works undertaken to create an access track. Both developments require planning permission and both developments have a detrimental impact on the AONB. In order to remedy the breach the works should be removed and the land restored to its former condition. The appellant's sole argument is the need to store tools to maintain the land but there is no reason why a shed and access track towards the summit of the land facilitates such an activity. The Council considers that any tools could easily be stored within the appellant's adjacent property.
16. Given the nature of the land and its status as a County Wildlife Site, the Council fails to understand why water and electricity supplies are required although I note that the appellant states that there is only a single light bulb in the shed that is unlikely ever to be used. The Council considers that no lesser steps can be taken other than to require the removal of the shed and associated works and the access track from the land and reinstatement of the land to its former condition.
17. The unauthorised development is harmful to the character and appearance of the area, being detrimental to the AONB and the Heritage Coast. 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.
18. The appeal on this ground fails.

Human rights

19. The appellant considers the requirement to remove the access track and materials from his land is an infringement of his human rights to the quiet enjoyment of his property and he has a right to store materials required in the management of his land.
20. The Council have considered the appellant's human rights and concluded that taking enforcement action to remedy the breach of planning control is likely to cause interference under the provision of Article 8 (Human Rights Act). However, I agree with the Council that due to the significant identified planning harm that has been caused, such action is in accordance with the law and is necessary in a democratic society for the protection and the rights and freedoms of others.

Conclusion

21. For the reasons given above I consider that the appeal should not succeed.

P N Jarratt
Inspector