



Appeal Decision

Site visit made on 18 June 2021

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 23 July 2021

Appeal Ref: APP/D0840/C/20/3259997

Land known as Treven Wood, Golberdon, Cornwall PL17 8PX

- 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 Wayne Jacobs against an enforcement notice issued by Cornwall Council.
- The enforcement notice was issued on 19 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the creation of a wooden chalet and wooden outbuilding for residential purposes.
- The requirements of the notice are to
 - 1) cease the use of the chalet for residential use
 - 2) demolish and remove the chalet from the land
 - 3) demolish the outbuilding
 - 4) remove from the land all materials and debris resulting from the residential use of the land i.e. garden shed
 - 5) remove from the land all materials and debris resulting from the above works and restore the use of the land to a forest.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fee having been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended, and will be determined with this appeal.

Summary of Decision: The appeal is allowed, the Enforcement Notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The terms of the Enforcement Notice

1. The Council's concern, as is evident from the reasons given for issuing the notice and from its Appeal Statement, is with the unauthorised residential use of the land. Rather than directing the notice at a material change in the use of the land, the Council has instead chosen to direct it at the operational development which embodies that use; specifically, the chalet and outbuilding constructed on the land. I make no criticism of that choice, since the wording of the breach alleged by the notice clearly tells the Appellant what the Council considers him to have done wrong. I do however consider it necessary, in order to make it clear that the alleged breach constitutes development as statutorily defined, to correct "creation" to "erection". I am satisfied that this minor correction would not prejudice either party.
2. Further, it is important that the requirements of the notice accord with the alleged breach. Here, the requirement (at no.5) to "...restore the use of the land to a forest" goes beyond the provisions of s.173(4) in terms of achieving the purpose of the notice. Also, it is not readily apparent whether the reference

(at no.4) to “i.e. garden shed” is to the “wooden outbuilding for residential purposes” cited in the alleged breach (whose removal is already required at no.3) or another structure not detailed in the description of the breach.

3. It would be a relatively straightforward matter to correct the requirements to accord with the alleged breach, and this too could be done without prejudice to either the Council or the Appellant. I shall therefore proceed on the basis that the ground of appeal is that planning permission should be granted for the erection of a wooden chalet and wooden outbuilding for residential purposes. Should I determine that the appeal should fail and the enforcement notice be upheld, I shall set out the corrections that should be made to the requirements of the notice. Should I determine that the appeal should succeed and the notice be quashed, that will not be necessary.

Main issues

4. The Council does not accept the Appellant’s contention that he is a Travelling Showperson. The first main issue, then, is the status of the Appellant for the purpose of this appeal. The answer to that question will dictate which planning policies are relevant to the consideration of the second main issue, which is the suitability of the appeal site for residential development; the third main issue is the impact of the development on the character and appearance of the area.

Reasons

The status of the Appellant

5. National planning guidance on sites for travellers is set out in the Government’s publication *Planning policy for traveller sites* (“the PPTS”). Annex 1 to the PPTS defines what is meant, for the purposes of planning policy, by the term Travelling Showpeople. It is worth setting this out here in full:

Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family’s or dependants’ more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers as defined above.

6. The evidence of the Appellant is that he has been a circus performer for all of his adult life. It is his sole means of employment. He started travelling and working in the circus at the age of 16, and has been employed in and travelling with the circus for the last 15 years. He is a highly skilled motorcycle stunt rider and performer, and a member of Equity, the performers’ union. He provides acts for shows such as “Extreme Circus”, “Motostunts International” and “Extreme Stunt Show”. Each year (in ordinary times) he starts travelling with the circus in April, and continues through to November.
7. The Appellant travels all over the UK, and has also performed in other countries such as Bahrain and Oman. He has provided a letter, dated 16 January 2021, from the Secretary of the Association of Circus Proprietors. This states “I can confirm that Wayne is a travelling show person, who most recently performed in Circus Extreme as a Freestyle Motocross stunt rider.” It goes on to advise that the Appellant is considered an integral part of Circus Extreme and their travelling community; that for a short period last summer he performed in a travelling Auto Circus show, being “one of only a few circus artistes who were fortunate enough to perform in 2020 due to the Covid Crisis”; and that while

- on tour, the Appellant lived in a circus-supplied caravan shared with other members of the circus.
8. The Council points out that no evidence has been submitted about the Appellant's family background, but as the Appellant's agent rightly notes, it is not necessary to come from a family of Travelling Showpeople in order to meet the PPTS definition. Similarly, I note the Council's concern that the Appellant is not a member of the Showmen's Guild, but that organisation primarily represents Travelling Showpeople who gain their livelihoods via funfairs. Travelling Showpeople who gain their livelihoods via circuses tend to be represented by other trade associations. The Association of Circus Proprietors is one such body.
 9. The Council also drew my attention to an appeal decision¹ in which the Inspector, assessing the status of the Appellant, described the travelling she and her partner carried out as "similar to that of many persons in the settled community who have permanent bases and, from time to time, have contracts to travel to pre-arranged sites in connection with their employment/business" and went on to conclude that this was not "consistent with a 'nomadic habit'".
 10. It is important to be clear that the relevance of the phrase "nomadic habit" in that case, where the Inspector was obliged to determine whether or not the Appellant had the status of a Gypsy or Traveller, derives from the PPTS definition of Gypsies and Travellers which begins "Persons of nomadic habit of life, whatever their race or origin...". There is no specification of a "nomadic habit of life" in the PPTS definition of Travelling Showpeople. Of course, it is fundamental to the very nature of their trade that Travelling Showpeople should travel, but the point is that the nature and pattern of such travel does not fall to be assessed on the same basis as that of "Gypsies and Travellers", who are specifically excluded from the PPTS definition of Travelling Showpeople.
 11. The Council's *Gypsy and Travelling Communities Strategy*, adopted in 2014, notes that "The traditional pattern of travelling for Travelling Showpeople is changing and a reduction in the number of large scale traditional fairs has led to a diversification of activities, involving more localised travelling and the need for more permanent bases on which Showpeople can live and maintain equipment." As discussed above, the livelihood of the Appellant in this case is linked to the circus rather than the fair, but traditions are changing in that context too; the letter from the Association of Circus Proprietors refers to the diversification into alternative performances (such as Freestyle Motocross) which has taken place since the wild animal ban came into force during 2020, and this clearly has implications for the types of plots and associated land that will be required.
 12. In summary, I have been provided with no convincing reason to doubt the Appellant's own evidence that he has been a circus performer all his life, and (in ordinary times) travels with a circus for seven months of the year. There is also evidence that the Appellant is considered an integral part of Circus Extreme and their travelling community, and so accords with the PPTS definition of being a member of a group organised for the purposes of holding fairs, circuses or shows. I am therefore satisfied, on the basis of the evidence

¹ Ref: APP/Y1138/C/11/2167967, dated 13 August 2012

available, that the Appellant has the status a Travelling Showperson for planning policy purposes.

The suitability of the appeal site for residential development

13. The appeal site is part of a small area of woodland, which lies in the open countryside. The *Cornwall Local Plan Strategic Policies 2010 – 2030* ("the Local Plan") contains policies which seek to direct the majority of residential development toward settlements with a range of facilities, and to limit the provision of homes in the open countryside (Policies 2 and 7). It also contains a policy which specifically addresses the provision of new residential sites for Gypsies, Travellers and Travelling Showpeople (Policy 11). Since I have established that the Appellant has the status of a Travelling Showperson for planning policy purposes, and he is seeking planning permission on the basis that occupancy of the dwelling should be restricted to a Travelling Showperson, it is that policy against which this development should be assessed.
14. Policy 11 states that new residential sites will be approved where they meet seven specified criteria. The first criterion is that the development should be "of appropriate size and proportionate in scale to and avoid dominating any nearby settled community". The development here at issue is a single-storey timber chalet, of a size proportionate to the needs of a small family, and a small wooden building which provides space for the secure storage of (among other items) the Appellant's motorbikes. The nearest residential properties front on to the opposite side of the B3257, the road which runs along the south-western boundary of the appeal site. The density of the woodland surrounding the buildings at the appeal site means that they are largely concealed from view, and certainly do not dominate any nearby dwellings or settled community.
15. The second criterion requires proposals to take account of the particular and differing needs of different groups of Gypsies and Travellers. As the Council's *Gypsy and Travelling Communities Strategy* recognises, Travelling Showpeople often have a need for additional land to store and maintain showground vehicles and equipment, or suitable space in which to exercise and rehearse. In this case, the need is for a plot that can accommodate a motorcycle training circuit, laid out with the various ramps necessary for the Appellant to practice the stunts and jumps that are part of his circus act. This is provided at the appeal site, where the density of the surrounding trees provides valuable protection from high winds during off-season practice sessions. The appeal site also provides storage for the Appellant's circus equipment, including a lorry modified to provide a jump ramp, which he drives to various shows.
16. The third criterion is reasonable access "by a range of transport modes, where possible including walking, cycling, public transport and car sharing" to services such as shops, healthcare and education. Reasonable access is defined as "within approximately three miles for transit sites and less for permanent sites". The appeal site is 1.2 miles from the village of Kelly Bray, which has a shop, Post Office, pub and launderette, and 2.4 miles from the centre of Callington, a town with a wider range of shops, a doctor's surgery, schools and other facilities. The absence of pavements and lighting from the roads around the appeal site would make walking to these settlements unattractive, but both lie within a reasonable cycling distance, and have bus stops providing access to onward travel by public transport.

17. The fourth criterion is safe road access, and sufficient space within the site for parking and turning of vehicles as well as the storage of equipment. I saw at my site visit that the appeal site provides ample space for the storage of equipment and the parking and turning of vehicles, including the Appellant's modified lorry. There is also safe access from the short section of unclassified road that serves the appeal site, and from there to both the A388 and the B3257, and the road network beyond.
18. The fifth and sixth criteria are the avoidance of locations that would have a detrimental impact on the health and well-being of occupiers, and the provision of sufficient residential amenity and play areas to meet the needs of the residents and promote healthy lifestyles. There are no identified health or well-being concerns associated with the location of the appeal site, which provides ample recreational space for the Appellant and his family.
19. The seventh and final criterion of Policy 11 is the provision of opportunities to live and work from the same location, where this can be sensitively designed to mitigate potential impacts on the site surroundings or other residential uses near to the site. The appeal site is capable of providing a home for the Appellant and his children alongside the ability to train, on an appropriately designed and scaled track, to meet the specific demands of his work as a circus motorcycle stunt performer. The small area of woodland within which the appeal site lies adjoins the busy A388 on the north-eastern side, and the B3257 on the south-western side. The presence of existing traffic noise associated with these nearby roads helps to minimise the impact of noise generated by the use of the motorcycle training track, an impact which could potentially prove troublesome to neighbouring residents if located within a settlement. In my judgment, the development does not give rise to any significant adverse impact on other residential uses nearby.
20. As to other impacts on the site's surroundings, I shall consider this further in the context of the third main issue: that is, the effect that the development has on the character and appearance of the area.

The effect on the character and appearance of the area

21. Policy 23 of the Local Plan states that development proposals will need to sustain local distinctiveness, and be of an appropriate scale, mass and design that recognises and respects the landscape character of both designated and un-designated landscapes. Development must respect the sensitivity and capacity of the landscape, using guidance from the Cornwall Landscape Character Assessment (LCA).
22. The landscape in which the appeal site lies, which has no local or national designation, is identified by the LCA as Character Area 26: East Cornwall and Tamar Moorland Fringe. It is described as a domesticated and enclosed landscape, used for improved pastoral farming, with broadleaved woodland in steep-sided valleys, and some mixed plantation woodlands in linear blocks along roads. As the Council rightly points out, one of the identified pressures on this landscape is from "development and housing".
23. The Council also states that one of the Planning and Land Management Guidelines set out in the LCA is "to conserve woodland pattern." The full advice is "Conserve the woodland pattern within valleys by encouraging restocking", and in describing the area the LCA observes that "...true woodland is restricted

to the steepest valley sides and the wetter valley bottoms". It seems to me that this guideline is directed more toward conserving the broadleaved woodland located along the valley slopes and streams than it is with small blocks of roadside commercial/coniferous plantation such as that containing the appeal site.

24. But be that as it may, the development here at issue does not in any event affect the pattern of the woodland or, in my judgment, undermine local distinctiveness. The timber cabin and storage building are well-designed, modest in scale and appearance, and sit comfortably within their woodland setting. The modified lorry is largely hidden from view in the southern part of the site, where it is screened by roadside agricultural buildings that are in other ownership. When the motorcycle practice track is not in use, the only section which is more than barely discernible is the large central ramp; but views of this (as with the cabins and lorry) are, from outside the appeal site, limited to very fleeting glimpses over hedgerows and through trees.
25. As noted above, the use of the motorcycle practice track generates noise, but the impact of this needs to be assessed in the context of traffic noise from the two classified roads (one heavily trafficked, the other less so) which run either side of the appeal site. It is also important to bear in mind that, during daylight hours at least, the countryside is not inherently quiet: agricultural and forestry machinery is capable of generating noise on a par with that of a motorcycle. Another consideration is that the introduction of a new residential use can increase the presence of artificial light, but again context is relevant: here, there is already light from scattered dwellings in the vicinity of the appeal site, and from the headlamps of cars on the adjoining roads.
26. The Council expressed concern that the close-boarded wooden gates at the site entrance clearly convey the introduction of a use not associated with any form of agricultural or forestry activity. I saw at my site visit that the gates are well-made and visually attractive, so I understand the Council's concern to be that they signify, and signal, the presence of what it considers an inappropriate use of the appeal site. In other words, the character and appearance of the gates is in keeping with the proposed residential use as a single plot for a Travelling Showperson, and their acceptability turns on the acceptability of that use.
27. Drawing all of this together, I conclude that the development here at issue is respectful of the landscape in which it stands, and sustains local distinctiveness. It does not conflict with any of the planning and land management guidelines set out in the LCA, and accords with the aims and objectives of Local Plan Policy 23.

Other considerations

28. After confirming the statutory requirement that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise, the PPTS sets out a number of issues that should be considered when assessing planning applications for traveller sites. I shall deal with these briefly, because I have already established that the development accords with the relevant policies of the Development Plan, and none of these material considerations indicate that the application should be determined otherwise than in accordance with them: it is therefore unnecessary to establish their weight in any detail.

29. Looking firstly at the existing level of provision and need for sites, the Council's most recent assessment of need² concluded that 11 plots for Travelling Showpeople were required. This informed the "key targets" set out at Local Plan Policy 2a, which states that "development proposals in the period to 2030 should help to deliver... 11 plots for Travelling Showpeople." To date, on the Council's evidence, three such plots have been provided. The supporting text to Policy 11 explains that the Council will produce a "Travelling Communities Site Allocations Development Plan Document" to identify, and manage the delivery of, sites suitable to meet the needs of the travelling communities. However, the Council has not yet produced such a document, and has no plans to do so in the foreseeable future.
30. The consequence of this is that the Council is not able to demonstrate (as it is required to do by the PPTS) a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets.
31. As to the availability of alternative accommodation, the Appellant contends that there is none that is suitable and this is not disputed by the Council. I do not need to address in detail the personal circumstances of the Appellant (about which I have only limited information) but I note that he has two children who live with him when he is not travelling. Clearly it would be in their best interests that this take place in an authorised and settled location, rather than in unsuitable alternative accommodation.
32. The PPTS states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements; ensure that sites in rural areas do not dominate the nearest settled community; and avoid placing undue pressure on local infrastructure. As discussed above, I have found that the development in this case would not dominate the nearest residences or settled community, and accords with the Local Plan's definition of "reasonable access" to shops and services. There is no evidence to suggest that it would place any undue pressure on local infrastructure. Further, it is difficult to see how the need for a residential plot with associated land on which to practice a circus act (such as, in this case, motorcycle stunt riding) could reasonably be accommodated within an existing settlement. In my judgment, the location of the appeal site is well-suited to the development here at issue.

Conclusion

33. I have found that the development satisfies all of the criteria specified by Local Plan Policy 11, which sets out the circumstances in which new residential sites for Travelling Showpeople will be approved, and meets the objectives of Local Plan Policy 23, which seek to sustain local distinctiveness, landscape character and the natural environment. It also accords with Local Plan Policy 2a, being a development proposal which helps to address the identified need for Travelling Showperson plots. There is no conflict with any other relevant policies of the Development Plan, and no material considerations which indicate that my decision should be made otherwise than in accordance with the Development Plan.
34. I therefore conclude that the Enforcement Notice should be quashed, and planning permission granted.

² *Supporting an Assessment of the Accommodation Needs of Gypsies and Travellers in Cornwall* (2015)

Conditions

35. I have determined the appeal on the basis that the occupation of the dwelling would be restricted to a Travelling Showperson as defined by the PPTS, so it is necessary to impose a condition to that effect. Since the site is located in the countryside, and my assessment is based on the existing development, I agree with the parties that in the interests of protecting the character and appearance of this part of the countryside, a condition removing Permitted Development Rights for sheds, fences and other structures is needed.
36. The Council has not suggested that a personal condition should be imposed, and I agree that this is not necessary. While my determination of this appeal has had regard to some of the Appellant's specific needs, such as space for a motorcycle practice track, I am satisfied that these are representative of the needs of other Travelling Showpeople too. Subject to the conditions discussed above, it is not necessary to prevent occupation of the dwelling by anyone other than the Appellant.
37. I note the Appellant's suggestion that if I were to consider the current access gates unacceptable, a condition could be imposed to require their replacement with gates of a different design. As discussed above, I consider the design and appearance of the gates appropriate to the use of the site as a Travelling Showperson's plot, and since I have found that use acceptable, it follows that such a condition is not necessary.

Formal Decision

38. It is directed that the notice be corrected by deleting the word "creation" from paragraph 3 and replacing it with the word "erection".
39. Subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a wooden chalet and wooden outbuilding for residential purposes on land known as Treven Wood, Golberdon, Cornwall PL17 8PX referred to in the notice, subject to the following conditions:
- 1) The occupation of the dwelling shall be limited to a Travelling Showperson as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy) or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no sheds or amenity/utility buildings, or other buildings or structures, fences, gates, walls or other means of enclosure shall be erected other than those expressly authorised by this permission.

Jessica Graham

INSPECTOR