The Planning Inspectorate

# Appeal Decisions

Site visit made on 23 August 2021

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 31 August 2021**

**Appeal Refs: APP/D0840/C/20/3263880 & 3263881**
**Land west of Old Mill Farm, Stoke Climsland, Callington, Cornwall PL17 8LB**

- 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 Trevor Monger & Ms Wendy Brant against an enforcement notice issued by Cornwall Council.
- The enforcement notice was issued on 22 October 2020.
- The breach of planning control as alleged in the notice is: Change of use from agricultural land, used previously for farming chickens which is covered by an area TPO18/00004, to a use to facilitate the occasional residential use of two caravans/mobile homes, storing of building materials (steel sheets, granite stone, timber and stone chippings), plus the construction of a timber building.
- The requirements of the notice are: Cease the use of the land for siting, 2 caravans, timber outbuilding and building materials, including galvanised steel sheets, timber, granite stone and chippings; 2. Remove the timber outbuilding from the site, in the approximate position marked in blue, numbered 1 on the attached plan; 3. Remove caravan 1 from the site, in the approximate position marked in blue, numbered 2 on the attached plan; 4. Remove caravan 2 from the site, in the approximate position marked in blue, numbered 3 on the attached plan; 5. Remove all building materials from the site, in the approximate positions marked with blue X's, on the attached plan; 6. Remove all stone chippings that have been laid to facilitate the use of the timber outbuilding, and 2 caravans; 7. Reinstated the land to its former condition.
- The period for compliance with the requirements is: For requirement 1: The use of the land shall cease within 28 days after this notice takes effect. For requirements 2-7 inclusive above 6 months after this notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

## Decision

1. It is directed that the enforcement notice is corrected and varied by:

    - Deleting the alleged breach of planning control at section 3 and replacing that with "The change of use to facilitate the occasional residential use of two caravans/mobile homes, storing of building materials (steel sheets, granite stone, timber and stone chippings), plus the construction of a timber building".

    - Amending requirement 1 at section 5 to read "Cease the use of the land for siting 2 caravans used to facilitate occasional residential use and the storage of building materials, including galvanised steel sheets, timber, granite stone and chippings;

- Deleting requirement 4 from section 5 and renumbering subsequent requirements 5, 6 and 7 to 4, 5 and 6;
- Amending renumbered requirement 6 to read "Reinstate the land to its former condition".

2. Subject to the corrections and variations, the appeals are dismissed, 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.

**The Enforcement Notice (EN)**

3. The EN is a mixed use and operational development notice. The first part of the alleged breach of planning control relates to a change of use of the land to occasional residential use and for the storage of building materials. In change of use cases, it is essential to have a corresponding requirement that secures the cessation of the unauthorised use. Otherwise, s173(11) of the 1990 Act could have effect in that any EN which could have required any activity to cease but it does not do so, and all the requirements of the notice have been complied with, then in so far as the notice did not so require, planning permission shall be treated to be granted by virtue of s73A for the carrying out of those activities. Put simply, requiring the caravans to be removed that facilitate the residential use in this case would not cease the residential use of the land. I thus need to vary the requirements of the EN accordingly. Given the grounds of appeal pleaded and the evidence before me, which covers details around the alleged change of use, I can make such a change without causing injustice to either side.

4. The EN also alleges a change of use from agricultural land. However, in its statement the Council confirms that although the site had been used for poultry farming that included a building which has since blown down, the land is classified as a woodland covered by an area Tree Preservation Order (TPO). Also, when it comes to the ground (c) appeal which I shall consider below, the Council accepts that the use of a caravan ancillary to forestry use would not require planning permission. The appellants also say that the land is used for forestry purposes and they have further confirmed that the current use of the land includes a woodland use when responding to a Planning Contravention Notice (PCN) served by the Council. Based on this evidence, it seems to me that the land use is forestry/woodland, and I shall assess the grounds of appeal accordingly. Furthermore, although it is good practice to do so, an EN alleging a change of use need not recite the previous use. I shall further correct the EN to delete reference to agricultural land and in describing the acts of development it is also not necessary to refer to the Tree Preservation Order.

5. On a much more minor matter, requirement 7 refers to "Reinstated" which is an obvious error. It should be "Reinstate". I will make this change as well.

**The ground (b) appeal**

6. This ground of appeal is about whether the matters stated in the EN have occurred or not. This is a different case from whether those matters constitute a breach of planning control for consideration under the ground (c) appeal below. The burden to make out the case in legal grounds of appeal such as this one, and grounds (c) and (d), rests with the appellants.

7. One of the caravans alleged to be on the land has since been removed. Nevertheless, there were two caravans on the land and in response to a PCN, the appellants confirmed that both had been used for occasional overnight use. Despite also stating in the appeal that the land is not being used for the storage of building materials, in a PCN the appellant further confirmed that the current use of the land included "storage of second-hand building materials and scrap; pile of granite and stone". A building has also been erected in the position shown on the EN plan. Against this background, as a matter of fact, the matters alleged in the notice have occurred. Therefore, the ground (b) appeal fails.

**The ground (c) appeal**

8. The case under this ground of appeal is only made out in respect of the caravan. S55 of the 1990 Act defines development as including the making of any material change in the use of land. In the case of caravans, they are normally taken as constituting a use of land. Therefore, provided that the use of the caravan in this case is not for anything else other than ancillary to the use of the land for forestry/woodland purposes, there is unlikely to be a material change of use of the land.

9. The appellants live away from the appeal site and come to it regularly to manage the woodland. Taking account of the works that have been undertaken and those that are proposed, it does not seem unreasonable that the appellants would want somewhere to rest and shelter and to store associated tools and equipment on the land in, for example, the remaining caravan. Such activities would clearly be ancillary to the use of the land. In respect of occasional overnight stays, these amount to about 16 each year. Provided they were by the persons carrying out the woodland work, and there is no evidence to show otherwise, this in my opinion, as a matter of fact and degree, would not constitute a material change of use of the land.

10. The other caravan has been removed and a case for keeping it has not been made. However, two caravans used for such purposes and involving a possible greater number of overnight stays and/or by more persons, bearing in mind the relatively small size of the site at about 2 acres, would probably constitute a material change of use of the land. It would therefore still be appropriate to leave the corrected requirement to remove caravan 1 in the EN (as shown numbered 2) to ensure that another caravan used for such purposes does not return. I shall though delete requirement 4 of the EN to remove caravan 2.

11. I have left the corrected alleged breach of planning control still referring to two caravans, but this will not lead to under enforcement and the effects of s173(11) of the 1990 Act because the EN could not have required the use related to caravan 2 to cease as there is no breach of planning control. Moreover, although I do not have an appeal under s174(2)(f) of the 1990 Act, the breach of planning control as it relates to two caravans can be remedied by only one being removed, which has happened anyway.

12. I have made my findings based on the current circumstances. However, this would not preclude the Council from investigating the use of the caravan in the future if it was suspected that the use of it had changed. No substantive case has been made under this ground that the use of the land for storage of the materials and the erection of the building are not breaches of planning control.

13. In view of the above, there is partial success under ground (c) and I shall make the necessary variations to the requirements of the EN.

**The ground (d) appeal**

14. To be immune from enforcement action, the time for taking enforcement action must have expired. The relevant time limit related to changes of use under s171B(3) of the 1990 Act is the period of ten years beginning with the date of the breach. Given that the EN was issued on 22 October 2020, the appellant needs to show that on the balance of probability, the alleged breach of planning control began at least by 22 October 2010 and continued substantially uninterrupted for ten years. The case made out under this ground of appeal relates to the materials part of the alleged breach of planning control.

15. Although it is stated that the storage use started over 30 years ago, the appellants only bought the land in 2018 and so their first-hand direct evidence can only date back this far, which is well short of the ten years needed. I note a streetview image from 2010 but all that substantively shows at the time of the photograph is the former pole barn, no longer there, and an old bath lying on the ground. I accept that more recent photographs show granite stone with lots of moss on it and undergrowth around it. However, I consider that only shows it might have been stored outside for a long time. It does not prove that the stone has been stored on the site for at least ten years.

16. I note that many of the building materials such as steel sheets and timbers come from the former pole barn. Nevertheless, gathered and stacked in one place since the building came down in November 2018 also means that the storage of these materials falls short of the required ten years. Being stored as they are now does mean the EN can require them to be removed.

17. It may be that by clearing and tidying the site and collecting materials and scrap into one place with the intention of removing them from the land, the appellants have inadvertently attracted the attention of the Council which has taken the position that breaches of planning control have occurred. It may also be that a notice under s215 of the 1990 Act could have remedied the possibly untidy appearance of the land. However, these points fall short of making the case out successfully under the ground (d) appeal.

18. The appellants have not discharged their burden to show, on the balance of probability, that the alleged breach of planning control related to the storage of materials on the land began by at least 22 October 2010 and continued substantially uninterrupted over that time. The ground (d) appeal fails.

**The ground (a) appeal – planning merits**

19. Given the above findings under the ground (c) appeal, the development for consideration under the deemed planning application is the retention of the building and the storage uses. The main issue is the effect of these developments on the character and appearance of the area.

20. Whilst set back from the road, the timber building can be seen from the lane and at the site's access. It has a residential style front door and windows with a chimney/flue on the roof for the log burner. As such, it has a domestic appearance that is out of keeping with the natural woodland surroundings. Inside the building at my site visit there were items such as two camp beds, a stove, sofa, desk, a sideboard style item of furniture, hessian rugs/mats, as

well as some tools and a wheelbarrow. It seems to me that the level of accommodation goes well beyond somewhere to simply shelter and stop overnight occasionally, particularly given that the stationing and forestry use of caravan 2, which is not small, could in my view adequately fulfil the needs of forestry workers.

21. I know that the appellants would prefer to keep the building rather than the caravan. However, it would not be appropriate to grant planning permission for the building with a condition requiring the caravan to be removed which is a use of land that is not development anyway. Furthermore, making the presence of the building permanent would not be acceptable given that it is causing harm to the character and appearance of the area.

22. It might be that the Council would accept a more minimal structure on the land to be used for storage and it has been suggested that, having regard to the judgement in Tapecrown Ltd v. First Secretary of State [2006] EWCA Civ 1744, I could consider granting planning permission for a smaller building. Although I do not have an appeal under s174(2)(f) of the 1990 Act, there are no plans to show what the appellants have in mind and it is not for me to go searching for what might be an acceptable solution. Moreover, given that the existing caravan could meet the needs of equipment storage and a rest area, I cannot see any functional need for a building of reduced dimensions or even if just the windows and door were replaced with different designs.

23. Schedule 2, Part 6, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission for the erection of a building for the purposes of forestry. However, that is subject to the Prior Approval process. Given the resistance by the Council to the current building and now that I have found a caravan could be used for woodland activities, there is considerable doubt that the Council would find a building reasonably necessary for the purposes of forestry. I attach very little weight to a GPDO fallback position.

24. Some of the storage of timbers and building materials is not visible from the lane, but the stack of steel sheets and timbers associated with the collapse pole barn is untidy and further detracts from the woodland setting. I know that the Council is concerned that the storage of some materials may be compacting soil around root areas for trees. However, there is little evidence to support this view or to show that trees are failing or dying as a result. Not finding any harm in this regard does not outweigh the harm I have found to the character and appearance of the area from the building and the storage of materials.

25. For the above reasons, the development carried out does not accord with the sustainable development, landscape, countryside protection and design aims of policies 1, 2, 12 and 23 from the Cornwall Local Plan Strategic Policies 2010-2030 (LP).

26. The Council also referred to policy 3 from the LP. However, that is a location strategy policy that appears more appropriate to other forms of development such as housing. It is not particularly relevant to the development the subject of this appeal. Policy 7 from the LP covers housing in the countryside. Whilst the Council is concerned about the residential appearance of the building it has not been alleged that it is a dwelling and I do not consider there is accommodation as such on the site that could constitute a house. As such, this policy does not appear relevant. Policy 27 covers transport and accessibility

which has not been raised as a concern. Despite these findings, the appeal development does not accord with the development plan taken as a whole.

27. Based on my earlier findings about the caravan and how that could provide a rest and storage facility, it is very unlikely that the woodland management by the appellants could not continue. Therefore, the risk to the future management of the land is a material consideration of little weight and it does not indicate a decision other than in accordance with the development plan. The ground (a) appeal fails. I shall refuse to grant planning permission on the application made under s177(5) of the 1990 Act.

**The ground (g) appeal**

28. Given that one of the caravans has been removed I consider that the time of 6 months allowed for the removal of the various materials and works is not unreasonable. Consequently, the ground (g) appeal also fails.

29. I would remark, however, that some of the granite stones are good quality and they could be usefully used on the site such as for repairing walls like the works needed to the stream embankments as highlighted by the Environment Agency. The use of locally distinctive Cornish granite in such works would not look out of place and it would be a sustainable use of the stone. It is not my place to require this to happen, but I would draw attention to the power available to the Council under s173A(1)(b) of the 1990 Act to waive or relax any requirement of a EN or extend any compliance period. I make clear though that this would be matter for agreement between the appellant and the Council over which I would have no influence.

**Conclusion**

30. For the reasons given, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

*Gareth Symons*

INSPECTOR