
Appeal Decisions

Site visit made on 1 June 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 08 October 2021

Appeal A Ref: APP/D0840/C/20/3259710

Celtic Park, Lower Metherrill, Callington, Cornwall PL19 9BX

- 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 Ms Katie Bolton against an enforcement notice issued by Cornwall Council (the Notice).
 - The enforcement notice, numbered EN19/00865, was issued on 19 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of land from agricultural to residential through the siting of two caravans to create a residential dwelling and associated residential use of outbuilding. The approximate position of the caravans are marked with the blue 'X' and 'A' on the attached plan.
 - The requirements of the notice are: (1) Cease the use of the caravans for residential use, approximate locations shown by blue X and A on the attached plan; (2) Remove the caravans from the land, approximate locations shown by blue X and A on the attached plan; (3) Cease the use of the outbuilding in the north east corner of site for residential purposes; (4) Remove from the land all materials and debris resulting from the residential use of the land, i.e. cars, patio furniture, washing line etc.; and (5) Restore the use of the land and outbuilding to agricultural.
 - The period for compliance with the requirements is ten 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 application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Appeal B Ref: APP/D0840/W/21/3269691

Celtic Park, Lower Metherrill, Callington, Cornwall PL19 9BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Katie Bolton against the decision of Cornwall Council.
 - The application Ref PA20/08762, dated 29 September 2020, was refused by notice dated 6 January 2021.
 - The development proposed is construction of dwelling.
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Decisions

1. Appeal A – 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.
2. Appeal B – The appeal is dismissed.

Procedural Matters

3. I have omitted that part of the description of development on the planning application form that does not relate to development.
4. Although the development in each of the two appeals differs, the parties agree that the issues raised are very similar for both and are subject to same policy considerations. This being the case, they can be dealt with in a single decision letter. However, I refer to the appeals separately where appropriate.
5. The Government made changes to its National Planning Policy Framework, ('the Framework') following my site visit and the parties were invited to comment on the relevance of these changes to the appeals. The Appellant responded in a submission dated 11 July and the Council on 9 August. The responses have been taken into account in my decisions.

Main Issues

6. The main issues in both appeals are:
 - Whether the site's location is appropriate for residential development;
 - The effect of the development on the character and appearance of the area; and
 - Whether residential development on the land would represent sustainable development.

Reasons

The Location of the Appeal Site

7. Lower Metherell is one of a number of small villages linked by narrow winding lanes that are set in an undulating countryside that is dissected by deep valleys whose streams run to the River Tamar. The village, which is overwhelmingly residential with few community facilities, sits amongst mixed farmland. This setting is characteristic of Landscape Character Area CA26, 'East Cornwall and Tamar Moorland Fringe'¹ in which the site lies.
8. The appeal sites lie adjacent to Treragin Lane, which runs westwards into the countryside from the centre of the village. Dwellings flank the lane for a short distance; the last of these on the south side being 'Cully Park'. The appeal sites lie immediately adjacent to this dwelling.
9. The site identified in the Notice comprises a fairly large area of land that runs in a south to south-easterly direction from Treragin Lane. A stone-faced Cornish hedge with vegetation growing from it runs along the lane, broken only by the entrance to the sites at its northwest corner. Both sites are fairly flat at the northern end, near the road, with the remainder falling gently to the south.
10. In plan form, the site for Appeal B has the form of an inverted letter 'L'. One axis runs parallel to Treragin Lane; the other runs roughly at right angles to that road as far as the lower end of the garden to Cully Park. When I visited, I saw a gravelled area used for parking, a number of sheds, wooden structures, hot tub, caravan on this area, together with a fairly large corrugated shed located adjacent to the boundary with Cully Park. The caravan and large shed were being used for residential purposes, with some of the other structures

¹ As defined in the Cornwall and Isles of Scilly Landscape Character Study

being used for purposes incidental to this use. To the south of the large shed were further small buildings, including a former pigeon loft and what appeared to be a garden shed that had been used for accommodation purposes.

11. The site for Appeal A entails that for Appeal B, as well as the remainder of a fairly large field. The upper part of this field was being used for a variety of purposes including the siting of further domestic items and a chicken coop; otherwise the land was being used for the grazing of sheep.
12. The Cornwall Local Plan 2010-2030 (LP) does not define a settlement boundary for Lower Metherell. A Neighbourhood Plan for Calstock Parish (NP) is being prepared and I am told that it has reached a stage where consultation has been undertaken and alterations are being made in the light of comments received. The Council tells me that the NP will be used to define settlement boundaries. Given that the NP is at an early stage little weight can be attributed to it.
13. The principal policy from the LP, in respect of the appropriate location for new housing, is Policy 3. It sets out a hierarchical approach, with the bulk of new housing centred on the county's main towns. Outside these, amongst other things, the policy advises that housing sites may be identified in NPs, provided through the 'rounding off' of settlements or through infilling gaps. Guidance on how to apply Policy 3 is given in the 'Chief Planning Officer's Advice Note: Infill/Rounding Off' document (CPOAN) produced by the Council.
14. Although Policy 3 is not referred to in the 'Reasons for Issuing the Notice', both parties have referred to it in the single statement that each use to cover both appeals. Given its relevance, I refer to it in respect of both appeals. My doing so does not cause injustice to either party.
15. The Council has provided me with a copy of a plan from the NP that shows a settlement boundary for Lower Metherell. Notwithstanding that the NP carries little weight, to my mind the boundary shown along Treragin Lane accords with what I consider to be the logical boundary for this part of the village. It encloses existing residential development, beyond which the character and appearance of the land is quite different. Notwithstanding the buildings and other paraphernalia on the site, and various rural buildings and land uses further along Treragin Lane, one has little doubt of having moved from the village into the open countryside after passing Cully Park. The boundary between the village and the open countryside has not been "blurred" through the passage of time". Whether the buildings on the site have "reached the point of immunity", as claimed, does not alter my finding in this respect.
16. The rounding off provision of Policy 3 allows for the development of previously developed land (PDL) immediately adjoining a settlement. In support of her assertion that this is PDL, the Appellant states that there has been a large permanent corrugated metal building for at least twenty years. The lawful use of the land, including the building, has, she says, been for recreational equestrian purposes and, as such, it is PDL.
17. I have little reason to doubt that the building has been on site for a considerable period of time. The evidence in support of the use of the land for recreational equestrian purposes consists of three letters². The authors of the

² Appendices 2-4 of the Appellant's statement:
2 – Letter from Mr Cleave dated 6 December 2020

first two letters offer no first-hand evidence of the use. Their comments are mostly based on the equestrian-related equipment and associated paraphernalia they say was present in the building when they purchased the land. The letter from Mr Cleeve states that third parties had told him that the land had been used for equestrian purposes, but I have no submissions from those parties.

18. In his letter, Mr Cosgrove says that he saw the land that adjoins his boundary being used for the keeping of horses and that the building was equipped for this purpose. This was, he says, "some years ago".
19. This evidence lacks sufficient information regarding how, when and by whom the land was used to allow me to conclude that the lawful use of the land, prior to its unlawful use by the Appellant, was for recreational equestrian purposes.
20. In support of its case, the Council refers to Planning Contravention Notices (PCN) from enforcement investigations that it says state that the land was in agricultural use from 2014. I have been provided with one PCN, completed by the Appellant and dated 5 June 2019. Whilst this refers to a previous owner keeping sheep, this does not demonstrate that it was in agricultural use as is claimed.
21. Whether the land was used for recreational equestrian purposes, rather than being in agricultural use, and thus might be considered to be PDL is a matter that should be addressed through a certificate of lawfulness, under S191 of the 1990 Act. That would allow the evidence, including the relevance of court cases³ referred to by the Appellant and information relating to issues such as the use of the land and structures on the land, to be properly tested. However, neither party has referred to such a certificate. In its absence, I cannot conclude that the land is PDL. Therefore, the appeals do not gain support from that part of the second bullet point in Policy 3 that refers to PDL.
22. Amongst its provisions relating to infill, Policy 3 supports schemes that fill a small gap in an otherwise continuous built frontage and do not physically extend the settlement into the open countryside. Notwithstanding that Policy 3 concerns residential development, neither it nor the CPOAN specify that the gap has to be between two dwellings. Therefore, it is legitimate to draw attention to the small stone building to the west of the site in this regard. However, although neither document defines 'small gap', I find that the gap between Cully Park and that building is not small. Furthermore, as the resultant dwelling in each appeal would lie beyond any other dwelling on Treragin Lane, the result would be the extension of the settlement into the open countryside. This would be contrary to the terms of this aspect of Policy 3.
23. Given that I have found that the site is outside the settlement and, therefore, in planning policy terms in the open countryside, LP Policy 7 is relevant. It gives support to housing in the countryside in special circumstances. As neither appeal relates to a replacement dwelling, the sub-division of an existing dwelling, temporary accommodation for workers or full-time accommodation for a rural worker so the circumstances of Policy 7 are not met. Its third circumstance refers to where a "suitably constructed redundant" building is to

3 – Letter from the Appellant dated 30 December 2020

4 – Letter from Mr Cosgrove dated 3 December 2020

³ *Belmont Farm Ltd v MHLG* [1962] 13 P&CR & CR 417; and *Sykes v SSE* [9181] 42 P&CR 19

be converted. No case has been made by the Appellant in this respect in Appeal A. However, my finding is that, notwithstanding the lack of a definition of “suitably constructed” in the policy, the corrugated shed is not such a building.

24. Therefore, the Council’s use of Policy 7 was reasonable, and this militates against the development in both appeals.
25. My finding on this main issue is that the site lies outside the village where policies in the LP provide support for residential development in appropriate circumstances. These are not present in either appeal. As such, this is not an appropriate location for either the use of the land for residential purposes alleged in the Notice or the dwelling proposed in the planning appeal. The developments in both appeals are contrary to the terms of LP Policies 3 and 7 that relate to housing in rural areas. These policies accord with the guidance in the revised Framework on the location of housing and, thus, the appeals are also contrary to its terms.

Character and Appearance

26. The unauthorised development of the site illustrates the effect of residential use on the character and appearance of the area. A range of domestic paraphernalia has been introduced to the site, and there is a significant amount of activity that is quite different from that I saw associated with non-residential uses nearby in the countryside.
27. When I visited the site, I found that the hedge that lies on the boundary with Treragin Lane provided a good degree of screening. However, limited views into the sites were possible and it is likely that they would be more visible at times when the hedgerow vegetation was not in leaf.
28. The site does not lie within a designated landscape, nor does it have any special ecological qualities. However, it is part of the pleasant countryside that surrounds the village. I find that the unauthorised residential use has an adverse effect on its character and appearance, and I have no reason to doubt that this would be the case with the development proposed in Appeal B.
29. The Appellant drew attention to the change in the Framework relating to the creation of high quality, beautiful and sustainable buildings. Given that Appeal A proposes to retain and use the corrugated building that she has described as being “of a poor quality and visually unappealing”, as well as caravans that could not realistically be described as having any beauty, this change does not further that case. Whilst the corrugated building is of no great architectural value, it is fairly typical of its rural setting. Its replacement with a new dwelling of a better design, proposed in Appeal B, is insufficient reason to undermine the LP’s approach to the provision of housing in rural areas set out in its development plan policies.
30. Therefore, the residential use of the land in Appeal A fails to sustain the area’s local distinctiveness and character, as would the erection of a dwelling in Appeal B. Therefore, the development in both appeals would harm the character and appearance of the area contrary to the terms of LP Policy 23.

Whether sustainable development

31. As was the case with LP Policy 3, there is no mention of LP Policy 1 in the Notice. It is referred to in the reason for refusing planning permission in Appeal B. Again, as this policy is referred to in the Appellant's single statement covering both appeals, so my referring to it in my decisions on both would not be prejudicial to either party.
32. LP Policy 1 sets out a presumption in favour of approving sustainable development. It reflects the terms of the Framework, which sets out that sustainable development is a combination of economic, social and environmental objectives. In respect of the social objective, the Appellant refers to: her family's need for decent, comfortable and affordable housing; the manner in which they have assimilated into the local community; and her self-reliance in setting up the family home on the land.
33. I attribute some weight to these factors, though I have been given no evidence to support the contention that the dwelling that would result, especially that in Appeal B, would be affordable. No substantive case for the economic objective has been submitted. Notwithstanding this, if nothing else, I recognise that there would at least be some short-term benefits from the construction of the dwelling in Appeal B.
34. However, those limited benefits and the social case put forward do not outweigh the significant harm that I have identified in my findings on the environmental consequences in the first two main issues. Therefore, the development in Appeal A does not represent sustainable development, and that in Appeal B would not represent it. Whilst Policy 1 states that proposals will be approved wherever possible, this is only where such decisions would accord with S38(6)⁴. Here, the development proposed in both appeals does not accord with the terms of the development plan and in neither case do material considerations indicate that the terms of the plan should be set aside. Neither represents sustainable development and thus both conflict with LP Policy 1 and the terms of the Framework.

Overall Conclusions

35. Appeal A
For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
36. Appeal B
For the reasons given above, and having taken all other considerations into account, the appeal is dismissed.

Roy Curnow

Inspector

⁴ Of the Planning and Compulsory Purchase Act 2004