



Appeal Decisions

Site visit made on 12 October 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2021

Appeal Ref: APP/D0840/C/21/3274642 & 3274643 Greenacres, St Issey, Wadebridge PL27 7QL

- 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 Robert Kirby & Miss Lyn Ash against an enforcement notice issued by Cornwall Council.
 - The enforcement notice was issued on 12 April 2021
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of agricultural land to a use for the stationing of two static caravans for residential use, together with wooden structures and other residential paraphernalia, as shown in the approximate positions marked with crosses on the attached plan.
 - The requirements of the notice are: 1) Cease the use of the static caravans for residential purposes and remove them from the land. 2) Remove from the land the wooden structures, steps to the caravans and any personal belongings that are not associated with the lawful agricultural use of the land.
 - The period for compliance with the requirements is: 1) 6 months after this notice takes effect. 2) 6 months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (c) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been under s177(5) of the 1990 Act as amended.

Preliminary Matter

2. In the appellants grounds of appeal, reference is made to the appeal site previously being owned and lived on by a different person between 2005 and 2015. It was on that basis the appellants claim they bought the site with the aim of carrying on the same use of the land. Arguments such as these are related to an appeal under s174(2)(d) of the 1990 Act that "at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters". A ground (d) appeal has not been made. However, I recognise that the points made amount to a 'hidden' ground (d) appeal and the Council has also picked up this is the case in its appeal statement.
3. Given that these matters by the appellants were made in the grounds of appeal and thus the Council has been able to respond to them, I shall take them as a ground (d) appeal and consider them accordingly without causing injustice to either side. This is also a fair and reasonable approach.

4. The appellants case in their ground (c) appeal is mostly matters of planning merit. I shall consider those points under the ground (a) appeal. In legal grounds of appeal, such as (c), (d) and (e), the burden to make out the case rests with the appellants. The test of the evidence is the balance of probability.

The ground (e) appeal

5. An appeal on this ground is one that claims copies of the EN were not served as required by s172 of the 1990 Act. The only point made is a query about the EN plan which is irrelevant. In any event, it is clear from section 3 of the EN what the crosses on the EN relate to. I also saw at my site visit that the crosses denote the positions of the two caravans and a wooden structure. There is nothing to show that copies of the EN were not served as required. I also note that there is no mortgage involved and so it seems that probably only the appellants in this case, as owner and occupiers of the land, needed to be served. The ground (e) appeal fails.

The ground (c) appeal

6. S55 of the 1990 Act defines development as including the material change of use of land. Siting caravans on land that are lived in constitutes a use of land that in my view is a material change of use of the planning unit in this case. S57 of the 1990 Act sets out that planning permission is required for development of any land. There is no evidence in this case that the residential use attacked in the EN has planning permission and there are no other reasons given why the development that has occurred, including the erection of the wooden structures, does not constitute a breach of planning control. Therefore, the ground (c) appeal also fails.

The ground (d) appeal

7. The relevant time limit for not being able to take enforcement action in cases involving changes of use is ten years beginning with the date of the breach. The appellants state that the previous owner of the land bought it at the end of 2005 and then he lived on it until around 2015. The appellants therefore need to show that, as a matter of fact and degree, the residential use of the land continued substantially uninterrupted for at least 10 years from 2005.
8. There are claims that the previous occupier paid Council tax to live there, regular refuse collections occurred, a telephone line was installed, and the site had/has a postal address with mail deliveries. However, there is no evidence to back up these claims and even if there was, the payment of Council Tax for example does not necessarily go to prove that the residential use was full-time without any significant breaks in occupation. A letter of support from a neighbour also refers to the previous owner living there for 10 years but nothing more specific than that, and again without any substantive evidence to back up the claim. For these reasons, I give the claims made little weight.
9. Moreover, the Council has supplied an aerial photograph dated 1 January 2006 which shows there was nothing on the land in terms of caravans or any structures. I recognise that the photograph was taken on the first day of 2006 and, if it was the case that the previous owner only bought the land at the end of 2005, it may not be surprising that there are no signs of activity on the land so soon into 2006. Nevertheless, the photograph casts doubt on the claims made that the former owner lived on the land from 2005. Moreover, even if

the previous owner did live on the land from the end of 2005, the relevant 10 years of occupation would need to run to the end of 2015. The appellants claim the former occupier lived there until around 2015 and other statements, such as that he "lived on the land between 2005-2015", are not sufficiently precise and unambiguous.

10. I accept that a 2009 aerial photograph shows what may be a caravan and possibly a boat which may be the ones also shown in an undated street view image. There may also be a vehicle in the 2009 photograph. However, the presence of these on the land in 2009 does not show when the caravan was brought to the land, whether it was being lived in or for how long. The boat and the caravan may have been simply stored on the land. It seems that there may also have been a gap when there were no caravans on the land between 2015 and when the two there now were put in the field in August/September 2018. As such, there is also no continuity of use from 2015 up to the date when the EN was issued which falls short of the required 10 years anyway. Other evidence such as Council Tax paid by the appellants since they have been there does not assist the ground (d) appeal.
11. All in all, the appellants evidence is very thin, and they have not as a matter of fact and degree discharged the burden on them to show on the balance of probabilities substantially uninterrupted residential use of the land for 10 years from 2005 up until when the EN was issued. Consequently, it was not too late to take enforcement action. Therefore, the hidden ground (d) appeal must fail.

The ground (a) appeal – planning merits

12. The main issue is the effect of the development on the character and appearance of the area, having regard to development plan policies that seek to only allow residential uses in the countryside in special circumstances.
13. The appeal site is outside any defined settlement in the countryside in an Area of Outstanding Natural Beauty (AONB) that has the highest status of protection in relation to landscape and scenic beauty. Great weight should be afforded to conserving and enhancing the landscape and scenic beauty of an AONB. The site is also in Landscape Character Area 34 as defined in the Cornwall and Isles of Scilly Landscape Character Study, which describes the area as a gently rolling, low lying, exposed landscape around the Camel Estuary.
14. The two large static caravans are sited towards the top of the gently sloping field. Caravan A called 'Roberts View' is parallel to a side hedge while Caravan B, called 'Flowers', is parallel to the roadside hedge. Attached to Caravan B is a wooden porch/pergola with hanging baskets and around the caravan is various domestic paraphernalia such as a trampoline frame, clothes airer, washing line, garden plant pots, chairs, table, and a BBQ. Other items scattered across the top end of the land include solar panels, a metal shipping container, a chicken run/hen house, a wooden garden style shed, and at the time of my visit two vehicles.
15. In my view, the residential use and domesticated appearance of the land is out of keeping with the natural rural beauty of the area which has sweeping views down toward the Camel River/estuary. The openness and elevated position of the development in this pastoral setting, that is dotted with traditional farmsteads, is incongruous. Consequently, it fails to conserve the scenic beauty of the protected landscape.

16. I note that Miss Ash forages and she grows produce and chickens that has led to establishing an organic market garden business that supplies local customers. However, there are very scant details about the extent of the business or to justify an essential need for a rural worker to live permanently at this countryside location. No other circumstances have been put forward to justify the presence of isolated homes here.
17. I am aware of the personal circumstances of Miss Ash who lives in her caravan with her young daughter who attends the local school. I have no desire to dash their futures. However, given the great weight that must be afforded to protecting the landscape and scenic beauty of an AONB, and the need to uphold the aims of planning policies that restrict development in the countryside, I am satisfied that having due regard to my public sector duty in this case the interference with their home is proportionate and justifiable.
18. For these reasons, the appeal development does not accord with policies 1, 2, 3, 7, 12, 13 and 23 from the Cornwall Local Plan which are most relevant to the main issue in this appeal. Collectively, these policies seek high quality sustainable development, protection of the special and distinctive character of landscapes in Cornwall by directing development to settlements, and only allowing housing in the countryside in limited special circumstances. The appeal development further conflicts with the related aims of the National Planning Policy Framework.
19. The development conflicts with the development plan taken as a whole and the material considerations in this appeal do not indicate a decision other than in accordance with the development plan. As such, the ground (a) appeal fails.

Conclusion

20. For the reasons given above, I conclude that the appeals 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.

Gareth Symons

INSPECTOR