



Appeal Decision

Site visit made on 20 October 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 3 November 2021

Appeal Ref: APP/D0840/C/20/3263873

Land east of Fordland View, Moorgate, Advent, Camelford, PL32 9QH

- 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 Kevin Baker against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN19/00199, was issued on 22 October 2020.
 - The breach of planning control as alleged in the notice is the operational development and the material change of use of agricultural land, outlined in red on the plan attached to the notice, to a use comprising the stationing of two camping pods, an associated toilet/shower block, a jacuzzi, shed, a caravan, and other residential paraphernalia in approximate positions marked A, B, C, D, E and F on the plan and the laying of chippings in association with the aforementioned works, which all contribute to the residential use of the land.
 - The requirements of the notice are
 - i) Cease the use of the agricultural land outlined in red for stationing of two camping pods and associated toilet/shower block, a jacuzzi, a shed, a caravan and other residential paraphernalia and the laying of stone chippings associated with the aforementioned works for the purposes of extending the domestic curtilage into the open countryside;
 - ii) Remove the camping pod marked in the approximate position A on the land outlined in red on the plan;
 - iii) Remove the camping pod marked in the approximate position B on the land outlined in red on the plan;
 - iv) Remove the toilet/shower block marked in the approximate position C on the land outlined in red on the plan;
 - v) Remove the jacuzzi and marked in the approximate position D on the land outlined in red on the plan;
 - vi) Remove the shed marked in the approximate position E on the land outlined in red on the plan;
 - vii) Remove the caravan/mobile home marked in the approximate position F on the land outlined in red on the plan;
 - viii) Remove all domestic paraphernalia from the land namely items A, B, C, D, E and F listed above plus swings, bbq's, trees, hardcore and any other non-agricultural items;
 - ix) Remove from the land all materials and debris resulting from the above works and restore the land to its former agricultural use and condition
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected:
 - i) by the deletion of the words "outlined in red on the plan" and the substitution of the words "edged and hatched black on the plan" in the allegation;
 - ii) by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
 - iii) by the deletion of the words "a caravan" and "F" in the allegation;
2. and varied by
 - i) the deletion of the words "a caravan" and "the laying of stone chippings associated with the aforementioned works for the purposes of extending the domestic curtilage into the open countryside" in requirement (i);
 - ii) the deletion of requirement (vii);
 - iii) the deletion of the words "F", "trees" and "hardcore" from requirement (viii);

Subject to these corrections and variations the appeal is dismissed and 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.

Costs application

3. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

The appeal site and relevant planning history

4. The appeal site is in open countryside and is within the hydrological catchment of the River Camel Special Area of Conservation.
5. The site is situated to the east of an access serving the dwelling at Fordland View and a field to the south of the appeal site, with the remnants of a Cornish hedge still apparent.
6. On the Council's appeal plan, two buildings are shown in brown but these two buildings have been linked together and extended in an 'L' shape to the roadside boundary. These buildings are substantial and contain a large area used as a workshop and for the storage of miscellaneous items. The part of the structure closest to the road is substantial in height, is open on the west side and used as a vehicle store and is described by the appellant at the site inspection as an agricultural building, albeit that the appeal site forms no part of an agricultural holding. The planning status of this structure is unknown but it does not form part of the allegation. It has been constructed partly on the area outlined and identified on the plan as 'F' and alleged to be used for the stationing of a caravan/mobile home. Its open construction would not prevent its use for either. The appellant's motorhome was parked on the forecourt to his dwelling at the time of my site visit.
7. Chippings/hardcore have been laid at some time on the west part of the site.

8. To the right hand of the open structure is a lower building with wooden doors, stated to be a workshop and a further open fronted building adjacent to it. There is access through the centre building to the land at the rear but within the building to one side are two fridges and microwaves for the use of the occupants of the pods. To the rear of the building on one side is an open 'kitchen' area with a large steel sink and various pots and pans. Further back are 2 pods containing accommodation for two persons each, one of which was occupied at the time of my visit. Beyond the accommodation pods are decked areas which have been roofed over, with two shower/toilet pods contained in a timber structure between the decked areas. Picnic benches/tables and various other seating are set out along with a fire pit. The roofing structure over the decked areas postdates the officer's inspection and does not form part of the allegation.
9. The area north of the pods contains the appellant's family garden, play equipment, benches and a pergola together with a small memorial garden to one side. The garden had been planted with what appeared to be willows on its periphery and a circular arrangement of the willows that had been plaited together to form a wig-wam shape as a feature. There is also a barbecue, jacuzzi and shed within the garden.
10. It is the land occupied by the pods and the garden to the east of the sheds that is primarily the subject of the notice, which, prior to the alleged development formed part of a field in open countryside.
11. The Council refers to the enforcement history which included EN12/01771 for the use of an agricultural shed for residential purposes but this was closed as the use was immune from prosecution through the passage of time. EN15/01972 alleged the construction of a dwelling but this was closed as it was not considered expedient to take action. The Council does not explicitly state whether these relate to what is now known as Fordland View, but if so, Fordland View does not form part of the site subject to the allegation.
12. On 19 February 2019 the Council served a Planning Contravention Notice on the appellant prior to taking enforcement action but this was not completed and returned, with the appellant claiming non receipt of the PCN. I note that the Council did not pursue the non-return of the PCN through the Courts but would have had the opportunity to do so.

The notice and the plan

13. The plan identifies the area subject to the notice and identifies various aspects of operational development (and use of land) that the Council alleges are breaches of planning control. The appellant has submitted a modified plan showing planning uses (the appellant's Appendix 7) including land used by the appellant's business 'The Log Box' which is claimed to be a use that has continued for over 10 years and is not enforced against. It is argued that this is a separate planning unit and that the area outlined in green and annotated 'Logs and Coal' on Appendix 7 should be removed from the plan attached to the notice, and in so doing the appellant claims that the parties would not be prejudiced. The Council has not responded on this point.
14. The areas identified as 'pods' and 'domestic residential use' in Appendix 7 generally reflect what I observed at the site inspection other than the fridges and microwaves for use by the occupants of the pods being in the area of

sheds described as 'Logs and Coal' but there was no evidence of any such commercial use at the time of my visit. It is apparent from the evidence below that the west part of the appeal site has been occupied for commercial uses for some time, yet the Council includes this in the allegation as agricultural land. What seems to be the case is that the land occupied by the pods and the garden have changed their use from agriculture and this is what the notice is largely directed against.

15. The area of the site where chippings have been laid is on the west part of the site as is 'F' relating to the caravan/mobile home, part of which is now occupied by a large open fronted structure. From the photographs referred to in evidence, it is apparent that this area has been and continues to be associated with the structures in the area annotated on Appendix 7 as 'Logs and Coal' and represents a separate planning unit to that of the land to the east occupied by the pods and garden area. Although fridges and microwaves are located in the 'Logs and Coal' area I regard these as de minimis in respect of the former commercial use.
16. I therefore propose to correct the plan attached to the notice to exclude the land on the west part of the identified appeal site, correct the notice and vary the requirements.

The appeal on ground (e)

17. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land. The appellant states that the Council has failed to serve copies of the notice as required by s172 and s329 and the owner (Mr and Mrs Yeo), is prejudiced by the failure of the Council to adhere to the requirements. The appellants believe that the Council has misunderstood the information from the land registry as there are overlapping titles and they failed to pick up the fact that the Yeo's own the surface and the Duchy of Cornwall the minerals.
18. The Council acknowledges that it did not serve a copy of the notice on the Yeo's. The Council states that they undertook a land registry search which revealed a single owner, the Duchy of Cornwall, with a minerals interest in the land, and no other named owner/occupier. Notice was also posted on the site. Although the appellant states he never received a copy of the PCN, he contacted the Council and a meeting was held at his business premises on 12 March to discuss the unauthorised development. It is inferred by the Council that it was receipt of the PCN that prompted him to contact the officer. At the meeting the appellant made no reference to any other person with a legal interest although reference was made to the Duchy of Cornwall.
19. There are limits on how far a Council needs to go in identifying the owners, occupiers and persons having an interest in the land. It has been held that a land registry address is proper service if a Council has not been given another¹. However in this case, it appears that the Council inadequately interrogated the land registry database such that the Yeo's were not served notice. I have no information that the Council has sought to contact the Yeo's since the appellant drew this to their attention, but on the other hand, the appellant likewise offers no indication of any contact with them. It is merely stated on the appeal form

¹ Newham LBC v Miah [2016] EWHC 1043 Admin

under section D that 'The appellant occupies the land under an informal agreement with the owners.'

20. Section 176(5) provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. No claim has been made by the appellant that the Yeo's have been substantially prejudiced, only prejudiced, and the appellant does not indicate the nature of this prejudice.

21. The appeal on this ground fails.

The appeal on ground (b)

22. An appeal on this ground is that the breach alleged has not occurred as a matter of fact and is in respect of the motorhome and the pods.
23. It is claimed that no caravan or mobile home exists in position 'F', and nor did it at the time the notice was issued. The appellant states that he owns a motorhome which is parked on the land which is occupied together with their home. Notwithstanding where the motorhome may now be parked, I am assuming that at the time of the officer's inspection, it was parked in position 'F', otherwise it would not have been referred to in the notice. The Council indicate that as the motorhome was not parked on land having the benefit of a lawful residential use it was considered appropriate to seek its removal. Whilst I note that the appellant has responded to requirement (vii) of the notice, the motorhome was on site and the appeal in respect of the motorhome would otherwise have failed had I not removed this area in the corrected plan revising the appeal site
24. The appellant claims, under the heading of 'pods' that as the use of the site for domestic residential use is lawful through the passage of time, there is no change of use from agricultural. It is further claimed that the notice is flawed as the Council failed to consider the baseline against which to measure the effect of any breach. However, as a matter of fact the pods are present on the site and the appeal on this ground fails.

The appeal on ground (c)

25. An appeal on this ground is that there has not been a breach of planning control.
26. The appellant asserts that that the placing of pods is not operational development but a use of land as they are not buildings according to the tests in *Skerritts*², nor placed on foundations or connected to water and have a simple electrical connection. They are not dwellinghouses as they do not have the day to day facilities required for such.
27. It is asserted that the pods may remain in place for domestic use by the family but no explanation is provided by the appellant how such a conclusion in planning law is reached. Whether they represent operational development or a material change of use of the land, the appellant appears to be overlooking the need to satisfy the requirements of the notice, in respect of the removal of the

² *Skerritts of Nottingham Ltd v SSETR* [2000]2 PLR 102

- Pods. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
28. Furthermore, for the appeal site to benefit from permitted development rights for householders³, the development needs to take place within the curtilage of the dwellinghouse. I note that the requirements of the notice at (i) refer to works for ‘..the purposes of extending the domestic curtilage into the open countryside’, although the allegation refers to ‘..contribute to the residential use of the land.’ Residential curtilage is not a use of land and should not be confused by it, and it is not necessary for me to determine whether the appeal site forms part of the domestic curtilage of the dwellinghouse. I shall remove reference to curtilage in requirement (i) for the sake of clarity.
29. The placing of pods for independent residential purposes and holiday use represents a material change of use of the land, whether from agricultural use or residential use under the meaning of development set out in s55(1) and for which planning permission is required as it does not fall under any of the exemptions set out in s55(2).
30. The growing of trees is not a breach of planning control.
31. The appeal on this ground succeeds in respect of the growing of trees but fails in respect of the pods.

The appeal on ground (d)

32. An appeal on this ground is that there it was too late to take enforcement action. Section 171B sets out the time limits relating to when enforcement action can be taken. In respect of the change of use of the site, it needs to be shown on the balance of probability that this occurred before the end of a period of 10 years beginning with the date of the breach and has continued uninterrupted since then. The operative date in this appeal is 21 October 2010.
33. It is claimed that the southern (sic) part of the site has been used for over 10 years for domestic purposes. It is stated that prior to late summer 2009 the appellant ran a log and coal business from part of the site as shown on Google Street view photos from June 2009 and May 2010. These photos show a single mono-pitched timber building with small lean-to additions, a quantity of logs, the external storage of a range of materials, the ground surfaced with coarse aggregate and a parked vehicle.
34. In late summer 2009 the appellant states that an area of field was fenced off to form a domestic area as an extension to the garden of their property and in so doing created a physically and functionally separate area from the log and coal business. It is stated that this was put to immediate domestic use. The fence, a swing/slide and a picnic bench are visible on the May 2010 Google photo. A letter dated 9 November 2020 from L G Pooley states that Glynn Pooley fenced the land in the late summer of 2009 for a children’s play garden. Mr D R Beare in a letter of 11 November 2020 confirms that around late 2009 and early 2010, he cut the grass at the site and that the garden was well established. Whilst I attach some weight to these letters, they do not carry the same weight as would a statutory declaration. An email from Helen Parkyn (mother of Laura Baker) dated 9 November 2020 and photos dated up to May/June 2011 show that the appellant’s daughter was young and played on a

³ Town and Country Planning (General Permitted Development) (England) Order 20015, as amended

- trampoline, that willows had been planted and there was a chicken run. The photos are not dated and cannot be definitively relied upon in respect of when the material change of use took place.
35. There is conflicting evidence from the Council. They refer to a rating officer's visit to the appellant's dwelling in September 2015 from which it was concluded to be under construction. Accordingly, they say it was difficult to reconcile this with the appellant's case that the garden area was in use for a period of 10 years. However the Council acknowledges that this could relate to an extension to an earlier lawful residential use. The appellant indicates that he moved to Fordland View in January 2006 when he used a mobile home whilst carrying out works to the existing buildings to create a dwelling. The various photos of Fordland View show the domestic nature of the property from 2009.
36. The Council refers to a Google image with a timeline date of 12/31/2010 but also another dated 5/11/2009. The appeal site is partially shown which the Council says it had doubts about the site benefitting from a lawful domestic use 'albeit acknowledging that the image would appear to have been taken over 10 years ago.
37. The American dating convention is used on Google images and the image relied on by the Council is dated 5/11/2009 – this being 11 May 2009 and some months before the assumed date.
38. I am satisfied that the evidence shows on the balance of probabilities that the part of the site to the east of the earlier 'Coal and Logs' building was fenced off from the field and its use as garden commenced in about mid-2009. However, to be immune from enforcement action, it is necessary to show that the residential use has been continuous for a 10 year period up to the date of the notice on 20 October 2020. The appellant does not indicate when the pods were placed on site but the date that the Council's PCN was sent to the appellant was 19 February 2019 which is less than the 10 years from 'the late summer' of 2009 when the appellant claims the site was fenced off. It follows that a material change of use of the planning unit from agricultural land to a mixed use of residential garden land and for the stationing of two camping pods and associated toilet/shower block has occurred and as this mixed use has not existed for a continuous period of 10 years, it is not immune from enforcement action.
39. It follows that the jacuzzi, shed, and other domestic features facilitate the unlawful use of the appeal site and should be removed in accordance with the principles established in case law.⁴
40. The appeal on this ground fails.

The appeal on ground (a)

41. An appeal on this ground is that planning permission should be granted for what is alleged.
42. The appellant acknowledges that the pods (which include both the accommodation units and the shower/toilet units) require planning permission

⁴ Murfitt v SSE and East Cambridgeshire CC [1980] JPL 598
Somak Travel v SSE and Brent LBC [1987] JPL630

- to be used for housing the homeless. There is also a wish to continue to let the pods in the summer months (June, July, August).
43. The appellant claims that the pods are not new homes in the countryside but it is clear to me that they are nevertheless used for residential purposes, whether as holiday use or for housing the homeless. Whilst they may not meet the normal definition of a dwellinghouse does not alter the fact that they have been in residential use. Housing policies that relate to the countryside are therefore relevant. The National Planning Policy Framework (the Framework) at paragraph 80 states that isolated homes in the open countryside should be avoided except in certain circumstances and this approach is reflected in Policy 7 of the Cornwall Local Plan. The appeal site does not fall within the circumstances where new housing would be permitted.
44. The appellant attaches considerable weight on the use of the pods by homeless people (although the frequency and extent of such use is not disclosed) and refers to the need for facilities in locations where support can be given. The appellant considers the isolated nature of the appeal site to be of benefit. A recent contentious permission for accommodation for the homeless in Camborne is referred to in support but that accommodation was in a sustainable urban location and not in an isolated location remote from day to day services.
45. The appellant states that the pods have been let as holiday Airbnb accommodation in the summer months but the website advertising at Appendix 4 of the Council's statement appears to show that they have been available in the winter months. The Council refers to the sustainability issues inherent in Local Plan Policy 5 regarding tourism developments and to the landscape impact of the development.
46. I conclude that the appeal site lies outside any defined settlement boundary or established built up area and given its countryside location, would result in unplanned sporadic residential development that fails to recognise the intrinsic character and beauty of the countryside as set out in the Framework at Paragraph 174(b) and Local Plan Policy 23. Although the pods are modest in size, the increased activity associated with a holiday or residential housing for the homeless is likely to exceed that which would otherwise be experienced on the appeal site.
47. The appellant is willing to accept a condition limiting the use of the pods to those who are homeless, for all or part of the year, and maintain a log of occupants. As an alternative the appellant is willing to submit a business plan detailing how the pods will be managed. The letting of the pods (to non-homeless persons could be controlled through the business plan or condition. The appellant would also accept a temporary permission of 3-5 years which would allow sufficient time to prove the benefits of the pods.
48. Whilst the use of the pods by homeless persons would serve a social purpose, and, even if controlled by conditions or other means, this does not overcome the policy objections which seek to impose restrictions on development in the countryside and to oppose development in unsustainable locations.
49. The site is within the River Camel SAC within which an Appropriate Assessment should have been carried out by the County Council to assess any increased

loadings at the catchment's waste water treatments works. I also note that a local person has objected to the development.

50. The material change of use of the appeal site to a mixed use of residential garden land and for the siting of the pods for use by homeless persons and for holiday purposes is detrimental to the open countryside and landscape character of the area and is contrary to the Framework and to Local Plan Policies 5, 7 and 23.

51. The appeal on this ground fails.

The appeal on ground (f)

52. An appeal on this ground is that the steps to comply with the requirements of the notice are excessive.

53. 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 do not exceed what is necessary to remedy the breach.

54. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

55. The appeal on this ground fails.

The appeal on ground (g)

56. An appeal on this ground is that the time to comply with the notice is too short.

57. The appellant seeks a compliance period of 6-12 months which is considered to be the normal period in such circumstances and does not wish to evict homeless occupants in the winter.

58. In the absence of any information about the occupants of the pods, their personal circumstances and frequency of changes of occupants, I see no reason to conclude that the 4 month compliance period is unreasonable. I note that the Council has indicated that it has powers under s173A (1)(b) to extend the compliance period if necessary.

59. The appeal on this ground fails.

Conclusion

60. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

P N Jarratt

Inspector



Plan

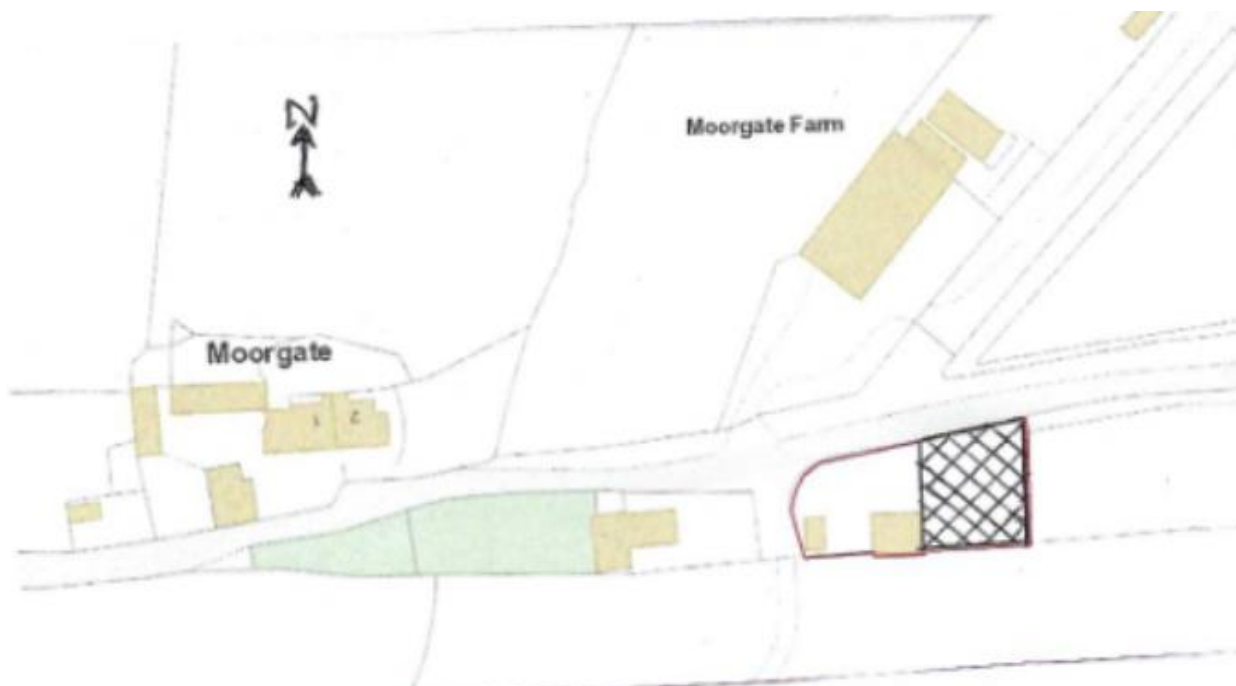
This is the plan referred to in my decision dated: 3 November 2021

by **P N Jarratt BA DipTP MRTPI**

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Reference: APP/ D0840/C/20/3263873

Scale: Do not scale



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