



Appeal Decisions

Site visit made on 31 January 2022

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 February 2022

Notice 1 Ref: APP/D0840/C/21/3287218

Ro Dama, Nancemellin, Camborne, Cornwall, TR14 0DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by doinggoodlocallyCIC against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN18/01132, was issued on 19 October 2021.
 - The development to which the permission relates is: Without planning permission, the material change of use of agricultural land to a mixed use for agriculture and for the residential occupation of 2 buildings on the land, and the operational development on the land to convert a caravan with associated raised decked area and shed to a building for residential occupation.
 - The requirements of the notice are to:
 - (1) Cease the use of the land outlined in red on the plan attached to the notice for residential purposes.
 - (2) Remove from the land the building comprising of the former caravan, raised decked area and shed in the approximate position marked light blue on the attached plan.
 - (3) Cease the use of the building in the approximate position marked green on the attached plan for residential purposes.
 - (4) Remove from the building in the approximate position marked green on the attached plan all domestic items to include furniture, cooker, television, satellite antenna and wood burning stove with flue.
 - (5) Cease the use of the building in the approximate position marked orange on the attached plan for residential purposes.
 - (6) Remove from the building in the approximate position marked orange on the attached plan all domestic items to include furniture, shower facilities and wood burning stove with flue.
 - (7) Remove from the land outlined in red on the attached plan all materials and debris resulting from compliance with (1) – (6) inclusive above.
 - The period for compliance with the requirement is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (f) of the Town and Country Planning Act 1990 as amended.
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Notice 2 Ref: APP/D0840/C/21/3287223

Ro Dama, Nancemellin, Camborne, Cornwall, TR14 0DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by doinggoodlocallyCIC against an enforcement notice issued by Cornwall Council.
- The enforcement notice, numbered EN18/01132, was issued on 19 October 2021.
- The development to which the permission relates is: Without planning permission, the material change of use of agricultural land to a mixed use for agriculture and for the stationing of a residential caravan with associated raised decked area and shed, and the material change of use of two buildings on the land to provide residential accommodation.
- The requirements of the notice are to:
 - (1) Cease the use of the land outlined in red on the plan attached to the notice for residential purposes.

- (2) Cease the use of the land outlined in red on the attached plan for the stationing of caravans for residential purposes
 - (3) Remove from the land the residential caravan with associated raised decked area and shed in the approximate position marked light blue on the attached plan.
 - (4) Cease the use of the building in the approximate position marked green on the attached plan for residential purposes.
 - (5) Remove from the building in the approximate position marked green on the attached plan all domestic items to include furniture, cooker, television, satellite antenna and wood burning stove with flue.
 - (6) Cease the use of the building in the approximate position marked orange on the attached plan for residential purposes.
 - (7) Remove from the building in the approximate position marked orange on the attached plan all domestic items to include furniture, shower facilities and wood burning stove with flue.
 - (8) Remove from the land outlined in red on the attached plan all materials and debris resulting from compliance with (1) – (6) inclusive above.
- The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

Notice 1

1. The notice is quashed.

Notice 2

2. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The notices have been issued in the alternative. Notice 1 alleges a material change of use of land and operational development and Notice 2 alleges a material change of use only. Both allege a material change of use from agriculture to a mixed use involving agriculture and residential occupation of the land either in a caravan and two buildings or in two buildings and a caravan converted by the addition of decking to a building. It is necessary for me to determine whether the caravan with the decking has remained as a caravan or has the characteristics of a building. Accordingly I shall decide which notice is correct and quash the other. I note that the appellant has submitted a single statement setting out his grounds of appeal which deals with both notices and that he has not appealed against the removal of the caravan with associated decking in either notice.

Site description and relevant planning history

4. The appeal site is in a remote location in open countryside on the east side of a valley.
5. It contains two buildings (Buildings 1 and 2 which are shown as green and orange respectively on the plans attached to the notices) and a caravan (referred to as Caravan 1) with associated decking and shed as referred to in the notices. Building 1 is a single storey timber structure containing a kitchen/store area and a living area with solar powered electrical supply and water. Although a bed was not visible, the internal fixtures and fittings clearly indicate a residential use and it is possible that the large settee is used for

- sleeping purposes. Building 2 is also a single storey timber structure appearing better maintained both internally and externally and is fitted out for residential use. The residential occupant was present at the time of my site visit.
6. Caravan 1 is situated between the two buildings and has a tall stove pipe protruding from the roof and timber decking. A timber shed with a solar panel is to one end of the caravan which is linked to the caravan by a small roof between the caravan and the shed.
 7. At the time of my site inspection, two further touring caravans were stationed on the appeal site. The appellant stated that a green one positioned on the upper part of the site was used by his mother and a green and red one lower down was his friend's caravan. There was also a composting toilet and other sheds located on the site. A range of materials were stored externally on the site.
 8. A response to a Planning Contravention Notice indicated that the appellant first lived in Caravan 1 in 2012 to which a timber deck was later added. A second caravan had been on the site since 2011. Both caravans had cooking and washing facilities. Building 1 was stated to have been constructed in 2014 and used as a day room. No response was given in respect of Building 2. In February 2020, the Council were advised that the residential use of the site had ceased and in August, were informed that all the domestic fittings had been removed from Building 2. In October 2020 it was found that Caravan 1 was in occupation by the appellant, Caravan 2 had been removed from the land, that Building 2 was no longer occupied residentially but contained domestic items, a kitchen and a shower. Building 1 was in residential use but not occupied.
 9. An application for a Lawful Development Certificate for the residential use of Caravan 1 was refused 18 October 2021 and no appeal was made.
 10. Although Caravan 1 has a decked area and a lean-to section on one side, with a hedge to the rear, there is no physical attachment between the caravan and the ground so far as I could identify, and the decking and lean-to could be removed without detriment to the structural integrity of the caravan. The caravan therefore fulfils the definition of a caravan and as it is stationed on land for residential purposes, it remains a use of land and does not satisfy the usual criteria that defines a building. Consequently, the allegation in Notice 1 in respect of operational development is not appropriate and I therefore intend to quash that notice.

The appeals on ground (e)

11. An appeal on this ground is that the notices were not properly served. The appellant states that he is a trustee of a community interest company doinggoodlocallyCIC in residence at the appeal site. The other trustees, Bruce Patterson and Dorothea Kendall do not reside on the site and the notices were not served upon them, nor upon the children for whom the land is held in trust or their guardians.
12. The Council ascertained in a Land Registry search that the land was in joint ownership which was confirmed in the PCN response. The Council made repeated requests for the contact details of the other landowners but the appellant declined to provide the information. Accordingly the Council served the notices at the site for the other landowners and served another notice

addressed to those having an interest in the land which were left at the appeal site. Signed copies of the certificates of service of the PCN and Requisition for Information Forms attached to the Council's statement confirm the attempts to obtain relevant details.

13. I am satisfied that the Council served the notices correctly in accord with s172 of the Act.

14. The appeals on this ground fail.

The appeals on ground (d)

15. An appeal on this ground is that it is too late to take enforcement action. The burden of proof rests with the appellant and the level of proof is on the balance of probability.

16. In respect of Building 1 (the green building) the appellant refers to the Council accepting that the building was 'substantially completed on the land in August 2014 and provides a living space, kitchen, workshop and store' in a letter dated 7 August 2019¹. It is claimed that it is not in residential use but used as a day room for the children for whom the land is held in trust, for volunteers and as an agricultural store. The appellant justifies the welfare facilities under the Health and Safety at Work Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992. As a 9 acre site with at peak season of over 20 employees and volunteers it is argued that one 'canteen' is reasonable. However, satisfying workplace regulations does not confer lawfulness for planning purposes.

17. The appellant states that in the Council's letter Building 2 (orange building) was also accepted as being substantially completed between October and December 2013. The appellant quotes from this letter "it was a tool shed to store animal feeds, tools and equipment and she [Tamar Kendall] started to spend nights in the shed when weather permitted on a sofa-bed with wood burning stove and gas hob; she considered this to be 'camping in a tool shed'." It is further quoted that it "was used to provide a home and full-time living quarters for Ms Kendall until moving to Spain) and Vitoria O'flanagan." The appellant provides no further evidence about when a permanent rather than intermittent residential use may have commenced.

18. The Council has considered the planning unit involved stating that the land is in single ownership and that there a number of uses taking place on the land such as agriculture, horticulture, storage and residential. No single use is physically and functionally separate from the other and this is apparent from the PCN responses and the appellant's grounds of appeal. No one use is dominant and all the uses take place within the single planning unit such that there is a mixed use of the planning unit. Whilst the Council appears to accept that the buildings may meet the four year rule in respect of s171(1), because the uses of the buildings are part and parcel of a mixed use of land, the relevant period of 10 years (under s171(B)(3) should apply.

19. In agreeing with the Council's assessment, I have had regard to caselaw² in which it has been held that where a building, constructed in breach of planning legislation, was immune from enforcement action because the enforcement

¹ The appellant has not submitted a copy of the letter in evidence.

² R(oao Sumner) v SSCLG [2010] EWHC 372 (Admin); 2010 JPL 1014

time limit had expired, that did not mean that the use of the building was to be regarded as lawful. The use of the building was not ancillary to its construction as the Town and Country Planning Act 1990 s171B draws a distinction between operational development and change of use.

20. As the land was acquired by the appellant in 2012 and the mix of uses commenced after that date, these uses have not acquired immunity from enforcement action under s171. The appellant's evidence appears to contradict information about the appeal site and use of the buildings previously provided to the Council and he has not shown on the balance of probability that the use of the two buildings have achieved immunity from enforcement action through the passage of time.

21. The appeals on this ground fail.

The appeals on ground (f)

22. An appeal on this ground is that the requirements of the notice are excessive.

23. The appellant argues that s55(2)(f) provides that a change to a different use falling within the same use class as the original use does not require planning permission, the case of *Gravesham BC v SSE and O'Brian* is cited in support, and that 'this structure should therefore be treated as *sui generis*'.

24. The relevance of this argument is not readily apparent to this ground of appeal.

25. The Council has concluded that it is necessary to take action to discontinue the land for residential purposes and they do not consider that a lesser requirement would be sufficient.

26. 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 Notice 2 in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellant doing what he is lawfully entitled to do in the future once the notice has been complied with.

27. The appeals on this ground fail.

Conclusions

Notice 1

28. Although the allegation and requirements in Notice 1 could be corrected and varied, this would serve no purpose in the light of Notice 2, which was served in the alternative, and therefore Notice 1 is quashed.

Notice 2

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice

P N Jarratt

INSPECTOR