



Appeal Decision

Site visit made on 14 March 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2022

Appeal Ref: APP/D0840/C/21/3287706

Land South East of Carnkie Farm (Lavender Parc), Underlane, Wendron, TR13 0EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Lavender Parc against an enforcement notice issued by Cornwall Council.
 - The notice, numbered EN21/00392, was issued on 21 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of 6 raised wooden platforms, the erection of 8 geodesic domes, 3 wooden toilet/shower units, erection of a triangular wooden structure, erection of 2 tents, excavations to create an amphitheatre, the laying of a sewage system and the creation of a track from the entrance of the site as shown in the approximate position marked on the attached plan.
 - The requirements of the notice are to:
 - 1) Cease the use of the land for glamping as shown outlined in red on the plan attached to the notice;
 - 2) Remove from the land the six raised decked platforms as shown in the approximate positions marked in blue squares on the plan;
 - 3) Remove from the land the eight geodesic domes as shown in the approximate positions marked in green circles on the plan;
 - 4) Remove from the land the three wooden toilet/shower units as shown in the approximate positions marked in purple squares on the plan;
 - 5) Remove from the land the triangular wooden unit as shown in the approximate position marked with an orange cross on the plan;
 - 6) Remove from the land the sewerage system which has been installed to support the unauthorised use of the land for glamping;
 - 7) Remove from the land the tents are shown in the approximate positions marked in pink squares on the attached plan;
 - 8) Infill the amphitheatre which has been created as shown in the approximate position marked in a yellow circle on the plan reinstating the original ground levels;
 - 9) Remove the hardstanding from the access of the site as shown in the approximate position marked in black on the plan;
 - 10) Remove all materials and debris resulting from compliance with the requirements of 1 to 9 above.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is 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 as amended.

The appeal site and relevant planning history

2. The appeal site is formed of two gently sloping fields, located in open countryside and surrounded by farmland. The site is accessed from the highway by a length of gravelled track/hardstanding.
3. Within the glamping field were 6 raised platforms in pairs adjacent to timber shower/toilet structures at the time of my site inspection. Four of the platforms had geodesic domes sitting on them which were opaque at lower levels and clear above. These contained the sleeping accommodation. Also situated on the platforms are domestic baths. The remaining domes referred to in the allegation had been lost following recent storms or removed.
4. Near one corner of the field is a triangular wooden structure of 4mx8m with its roof covered in what appeared to be solar panels. A sewerage system has been installed to serve the accommodation and this is at low level but visible behind a field boundary.
5. A stepped amphitheatre had been constructed alongside a field boundary.
6. At the time of my visit, there were no tents erected in the field.
7. There is no relevant planning history. During the course of the enforcement investigations the appellant indicated an intention to submit a retrospective planning application but no such application was forthcoming. A Planning Contravention Notice was responded to on 29th of April 2021.
8. The appellant refers to the Woodlands champion club exemption certificate regarding the intention to use the site for glamping but does not explain why this exempts the development from the need for planning permission. If this relates to an exemption issued under Part 5 of Schedule 2 of the General Permitted Development Order 1995 and Schedule 1 of the Caravan Sites and Control of Development Act 1960, then this applies to the use of land as a caravan site but not for the erection of buildings or structures, or engineering works.

The appeal on ground (c)

9. An appeal on this ground is that there has not been a breach of planning control.
10. The appellant states that the shed which houses the agricultural equipment, tractor and tools is permitted development under Class A. It is assumed that the appellant is referring to the Town and Country Planning (General Permitted Development) (England) Order 2015 and Class A of Part 6 of Schedule 2 which concerns agricultural development on units of 5 hectares or more.
11. To benefit from permitted development rights the agricultural holding needs to be greater than 5 ha, the land needs to be operated as an agricultural trade or business, the building needs to be reasonably necessary for the purposes of agriculture within that unit and permitted development rights cannot be applied retrospectively.
12. In the case of the appeal site it is smaller than the necessary 5 ha, it is not used for agriculture but in the provision of tourist accommodation and cannot be regarded as being reasonably necessary for the purposes of agriculture.

13. The appeal on this ground fails.

The appeal on ground (a)

14. An appeal on this ground is that planning permission should be granted for what is alleged in the notice. The main issue in this appeal is whether the change of use of the land from agriculture to glamping and the operational development carried out to facilitate the use is harmful to the character and appearance of the area.
15. The appellant states that the decking is temporary in nature and facilitates the siting of the domes, which are also temporary structures, above ground level in order to lessen their impact on the land and to increase biodiversity. He points out that decking is installed in many local properties and used in many other dome based developments locally. He considers the domes and the decking to be of architectural merit in keeping with many other domes in Cornwall. It is stated that the toilet buildings facilitate the glamping site, are as small as possible, sustainably built and with low impact on the landscape. Similarly the sewerage system is fully sustainable and self-contained.
16. The appellant's case is based on the development satisfying Policy 1 of the Cornwall Local Plan (CLP) as it represents sustainable development, running off solar energy, being accessible via a public footpath close to a main bus route, and there would be a maximum of 6 cars on site at any one time. The intention is to plant 1.5 ha of trees and increase biodiversity. The site is in Flood Zone 1 and the development respects the character of the area such as preserving field boundaries and Cornish hedges. He considers that the development to accord with section 6 of the National Planning Policy Framework (the Framework).
17. Although used for holiday purposes, the domes are considered by the Council to be C3 dwelling houses which should be assessed against policies which concern isolated homes in the countryside where there is a general presumption against residential development. The development does not satisfy any of the circumstances where new dwellings would be permitted as set out in CLP Policy 7 and paragraphs 79 and 80 of the Policy Framework.
18. However, the *Gravesham*¹ test of a dwellinghouse is that its distinctive characteristic is the ability to those who used it the facilities required for day to day private domestic living. The domes have no kitchen facilities but the Lavender Parc website indicates that buffet breakfasts are available and food can be provided for self-cooking in a fire pit in the amphitheatre. The development more appropriately falls within Class C1 (Hotels) of the Town and Country Planning (Use Classes) Order 1987, as amended and should be assessed against the relevant policies.
19. Policy 5 of the CLP supports the development of new tourism facilities through, amongst other things, the provision of new, high quality sustainable accommodation which is of an appropriate scale to its location and is accessible by a range of transport modes. Policy 12 requires development to be of an appropriate scale, and layout with a clear understanding and response to its landscape setting.

¹ *Gravesham BC v SSE & O'Brian* [1983] JPL306

20. The appeal site is within Landscape Character Area LCA10 and the landscape characteristics of that type are found in the locality of the site. In summary, the site is in a bleak open and exposed pastoral agricultural landscape with sparse tree cover with a dispersed settlement pattern comprising basic buildings that are generally small with slate roofs and local stone walls.
21. The domes are of a non-traditional design and materials, and along with the raised platforms and shower blocks are randomly located on the appeal site. Together with the access track, the triangular wooden structure and amphitheatre do not integrate with their surroundings and little could be done to minimise their adverse impact on the character and appearance of the area. It is likely that the nature of the domes is such that they have the capacity to glint in the sunlight and at night would be clearly visible when internally lit. The site is visible from the public right of way crossing the site and from the public highway to the south where the domes and timber buildings are readily seen and appear on the skyline.
22. The appellant refers to the farm track claiming that it has been used since the 1970s. However, Google Earth images for 2009 and 2017 referred to by the Council indicate that any evidence of a track shows it to deviate at different times and it is possible they result from cattle tracks or a tractor driving across a field from one gate to another. The appellant's own aerial shot shows a more pronounced track but in any event is in a different position to the elevated hardcore/track identified in the notice. I note also that a neighbour suggests that this aerial shot is the line of a pipework for utilities.
23. The appellant also claims that if prior notification had been given for the repair of the track it would have been allowed. However, as pointed out under the ground (c) appeal above, such permitted development rights do not exist.
24. The raised track is intrusive within its setting, and access and the parking of cars coupled with the human activity associated with the development contributes to the nature of the site changing from one that is compatible with the rural location to a prominent tourist site which detracts from the prevailing character and appearance of the surrounding area.
25. Although there are bus services at Carnkie and on the A390, services are infrequent and serve a limited number of places. Access to bus stops is via roads or the public rights of way network which limits the attraction of bus transport and is not a reasonable alternative to use in all weathers. In view of this, the principal mode of transport would be by car, which is often the sole means of transport in rural areas, and the development would exacerbate reliance on such vehicles contrary to the spatial strategy set out in CLP Policy 2.
26. There are some limited benefits of the development, namely the contribution that it could have to the local economy, although this remains unquantified, other than reference to the domes being made in Falmouth, albeit that the manufacturer is not identified.
27. The appeal site lies within close proximity to the Fal and Helford Special Area of Conservation. The Framework at paragraphs 174, 180 and 181 recognise the importance of conserving and enhancing the natural environment. The Cornwall European Sites Mitigation Supplementary Planning Document July 2021 requires a financial contribution towards mitigation measures. Whilst this could

be the subject of a condition, this would not overcome the harm to the landscape identified above.

28. I have also had regard to the third party representations submitted raising concerns about the development.
29. In concluding on the main issue, I find that the development to change the use of the land from agriculture to glamping and the operational development carried out to facilitate the use is harmful to the character and appearance of the area. It introduces development in the open countryside that is prominent and visually intrusive detracting from the quality and appreciation of the countryside and to the principles of sustainable development. The development is contrary to national and local policies, in particular to CLP Policies 1, 2, 5, 12, 23 and 27 and also to paragraphs 8, 84, 85, 174, 180 and 181 of the Framework.
30. The appeal on this ground fails.

The appeal on ground (f)

31. An appeal on this ground is that the steps are excessive and lesser steps would overcome the objections.
32. The appellant considers the steps required in respect of the sewerage system, the amphitheatre and the removal of debris exceed what is necessary.
33. It is claimed that the system is not visible but I saw as a matter of fact that part of it is above ground level and is, therefore, visible. Additionally, the appellant states that the sewerage system is used by volunteer farm workers but the Council points out that they have not seen any agricultural work being carried out on site and if sanitary provision is required, this could be provided through temporary means. The appellant makes a spurious argument that he would need planning permission for engineering works. However, as these works are necessary to remedy the breach, this is what is permitted by the notice. Similar arguments are put forward in respect of the amphitheatre and that no debris would be produced.
34. 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 in this case do not exceed what is necessary to remedy the breach.

35. The appeal on this ground fails.

Conclusion

36. 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.

P N Jarratt

INSPECTOR

