



Appeal Decision

Hearing held on 9 August 2022

Site visit made on 9 August 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2022

Appeal Ref: APP/D0840/C/21/3273258

Cherry Mason's Fruit Farm, Higher Road, Breage, Cornwall, TR13 9PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Cherry Mason Limited against an enforcement notice issued by Cornwall Council.
 - The notice, numbered EN18/02100, was issued on 23 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, (1) the unauthorised material change of use of agricultural land to a mixed use comprising of agriculture, a campsite, the stationing of a caravan used for residential purposes and the siting of a mobile toilet/shower block trailer, (2) the unauthorised operational development on agricultural land to construct a building and to site a storage container, and (3) the unauthorised engineering operations on agricultural land to install 2 septic tanks and to re-profile the land to create stone and earth raised terraced areas.
 - The requirements of the notice are:
 - (1) Cease the use of land shown outlined in red on the attached plan as a campsite, to include the pitching of tents and siting of camper vans/motorhomes;
 - (2) Cease the use of land shown outlined in red on the attached plan for residential purposes;
 - (3) Cease to use the land shown outlined in red on the attached plan for the stationing of caravans;
 - (4) Remove from the land the residential caravan and associated concrete platform shown in the approximate position marked dark blue on the attached plan;
 - (5) Remove from the land the septic tanks shown in the approximate positions marked hatched black on the attached plan;
 - (6) Remove from the land the mobile toilet/shower block trailer shown in the approximate position marked hatched pink on the attached plan;
 - (7) Remove from the land the building shown in the approximate position marked light blue on the attached plan;
 - (8) Remove from the land the storage container shown in the approximate position marked hatched brown on the attached plan;
 - (9) Re-profile the terraced areas on the land shown in the approximate positions marked in dark green on the attached plan to the previous land levels when the land was being used solely for agricultural purposes;
 - (10) Remove from the land outlined in red on the attached plan all materials and debris resulting from compliance with (1) to (9) inclusive above.
 - The period for compliance with requirement (1) above is one month and the period for compliance for requirements (2) – (10) inclusive is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) 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 site and relevant planning history

2. The 1.10 ha site is a sloping one comprising two adjoining fields within an open part of the village of Breage having the A394 on its southern boundary and a frontage on Higher Road. The remainder of the open land is used as community open space and for allotment purposes. The village centre is at the eastern end of the open land centred around the Grade I listed church of St Breaca and the Queen's Arms PH.
3. At the time of my site inspection, there were only a few tents on the site. The site appeared well maintained with young fruit trees and numerous hedging plants located within the site, with the hedging plants being for sale at the gate. The hedgerows and vegetation on the periphery of the site were well established. A mobile home occupied by the appellant is located on the east side of the site relatively close to the site boundary shared with a number of dwellings. A bungalow known as 'Meadowside' on Higher Road backed onto the site, beyond which were allotment gardens. Beyond the north eastern boundary of the site is an area of land associated with the Queen's Arms PH occupied by a number of camper vans.
4. In the same part of the site as the mobile home is a shower block and a shipping container converted into toilets and an additional portable shower unit. In the lower part of the site is a further container used by the appellant for the storage of equipment.
5. The site is in the centre of the Breage Conservation Area and within the Tregonning and Gwinear section of the Cornwall and West Devon Mining landscape World Heritage Site.
6. The site forms part of a larger area subject to an Article 4 Direction from February 1979 removing permitted development rights under the Town and Country Planning General Development Order 1977 for Temporary Buildings and Uses (Class IV) and Agricultural Buildings, Works and Uses (Class IV), (GPDO).
7. Planning permission for the stationing of a caravan for residential use was granted temporary approval in September 1954 subject to a condition requiring its removal not later than 30 February 1955 (W2/54/05401/F).
8. Planning permission for a new entrance on to the A394, installation of a cesspool for sewage waste and a cess tank for grey water was refused in October 2017 (PA17/06256) due to the impact on the character and appearance of the Conservation Area and for potential highway safety grounds.
9. Two further application for a new entrance on the A394, a surface water shaft and a hardstanding were refused in July 2018 (PA18/04103) and January 2019 (PA18/10961) were refused for similar reasons.
10. Enforcement investigations were carried out in 2017 but subsequently closed following receipt of information via a Planning Contravention Notice (PCN)

because the caravan and storage container forming part of the complaint were being used as a shelter/storage ancillary to the agricultural land and there was no evidence of a residential use.

The appeal on ground (b)

11. An appeal on this ground is that the breach of control alleged has not occurred as a matter of fact. The appellant considers that the caravan, container and campsite use have permission but as these are matters for consideration on ground (c), I consider these below.
12. As the matters alleged in the notice have clearly taken place, the appeal on this ground fails.

The appeal on ground (c)

13. An appeal on this ground is that there has not been a breach of planning control, either because the breach is not development or is permitted development or has planning permission.
14. The appellant bought the land in 2016 and spent 2 years clearing the site and rebuilding 100m of Cornish hedging. After 12 months he proceeded with tented camping on the basis of 28 days (temporarily extended to 56 days during Covid) as permitted under Part 4 the GPDO. There are some 25 pitches with electric hook-ups, 20 non electric pitches and 5 pitches for motorbikes. He has sought various permissions for a new entrance, septic tanks and a shipping container and considers that the 1954 permission for the stationing of a caravan for residential use entitles him to locate his mobile home on the site. His business earns some £40,000 pa from 3 acres of land supporting the local community, the village shop and the public house.
15. The 1954 permission is no longer extant by virtue of the condition requiring its removal after one year. The appellant claims that he was not aware of the condition and local residents at the hearing raised doubts about whether the permission related to the appeal site or adjoining field. Indeed, Mr Babbage, whose family owned the land from 1920 to about 1978, had no recollection of any caravan on the fields. It was also suggested that Mr Conway's photograph showed a chicken shed and not a caravan. The Council's aerial photo of the site does not show any caravan. In any event it is also more than likely that the use of the land for the stationing of a caravan for residential purposes has long since been abandoned.
16. Although Mr Conway proceeded with his business on the basis of PD rights for 28 days camping, the Council rather late in the day advised him that an Article 4 Direction was in force relating to the open area at the heart of conservation area requiring any development under Parts 4 and 6 of the GPDO to have express permission. The appellant was clearly of the view that such a camping use also permitted camper vans or vehicles converted for sleeping on site so long as there was an awning or a tent being used. However, the Council consider this not the case as 'camping' in the context of the GPDO is for tented camping only and that use as a caravan site is specifically excluded under Part 4 B (1) (c).
17. Part 5 of the GPDO refers to the Caravan Sites and Control of Development Act 1960, as amended, but the caravan/mobile home on the site fails to meet the requirements. Part 5 also provides for the use of the land for tented camping by

members of certain recreational organisations, but the appellant has not indicated that camping on the site is carried out under the auspices of a recognised recreational organisation. Part 5 provides a permission for development required by a site licence, such as hard standings and septic tank, but the appellant accepts that he has no site licence.

18. Part 6 of the GPDO provides for certain building and engineering operations required for agricultural purposes. However there is little evidence of an active agricultural activity at the site or one that is the primary activity and the appellant has not shown that these provisions apply.
19. Mr Conway also states that the caravan gained permission in 2017. The Council state that at that time, the caravan was being used as a rest room in connection with agricultural activities on the land in which case its use was ancillary to the primary use of the land and the appellant was informed accordingly.
20. Although an agricultural use remains in a limited form, it is not the primary use of the land, as it is now used for camping with a caravan used for residential purposes. The shower and toilet facilities serve a camping use. This is materially different from the previous use and is development for which planning permission is required. Similarly the operational development of the hard standings for the caravan and toilet block, the re-profiling of the ground to create a series of terraces and the installation of septic tanks is not a requirement of a current site licence and do not have permission.
21. The appellant has not shown on the balance of probabilities that the works carried out are not development under s55 of the Act or that what is alleged in the notice does not breach planning control.
22. The appeal on this ground fails.

The appeal on ground (a)

23. An appeal on this ground is that planning permission should be granted for what has been alleged.
24. I consider the main issue is the effect of the development on the character, appearance or setting of heritage assets. A secondary issue is the effect the development has on the living conditions of local residents.
25. The National Planning Policy Framework (the Framework) attaches considerable importance to conserving and enhancing both the historic and natural environment and this approach is reflected in the Cornwall Local Plan 2010-2030.
26. The Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2020-2025 shows the appeal site to be in Area 3, Tregonning and Gwinear, described as a rural mining area with extensive mineworkers smallholdings and settlements dispersed or in small groups, which are attributes of the Outstanding Universal Value of the WHS. Policies in the management plan seek to maintain the historic character and distinctiveness of the mining landscape.
27. The Breage Conservation Area Appraisal and Management Strategy 2010 identifies the special character of the conservation area. In respect of the open

area in the centre of the village, it is identified as being a possible remnant of common land, being highly significant and imbuing Breage with much of its rural character. The space provides open views across the settlement opening up the village and allowing good views of the Grade 1 listed church and surrounding areas. The open area contributes to the setting of listed buildings as it provides the space for appreciating a heritage asset and links the built up part of the village with the surrounding area and the rest of the World Heritage Site.

28. The significance to the character of the village as an open area was recognised in the decision to place an Article 4 Direction to control development on the land.
29. The Council draws attention to a decision dismissing an appeal at the rear of the Grade 2 listed Queen's Arms¹ for the construction of 5 dwellings on a site forming part of the wider area of open land due to the harm that would be caused to the character and appearance of the conservation area, amongst other reasons.
30. The appellant seeks to justify his own development through development elsewhere in the village. In particular he draws attention to the parking of camper vans on the land to the rear of the PH subject to the appeal described above. The Council has indicated that this was previously a designated camping and caravan site but that enforcement investigations in respect of its use are currently being pursued. The appellant refers also to a recent planning permission for the development of a pair of houses nearby but the Council indicates that this is for the development of a gap site on an otherwise developed road frontage. He also considers the equipment in children's play area to be painted in inappropriate colours and that the allotments to be unsightly and appearing like a tip. However, as established uses I found nothing in their appearance to be harmful to the character or appearance of the area.
31. Although at the time of my visit, there were few tents on the site and these alone were not particularly intrusive, the toilet and shower blocks, the caravan and the container were intrusive in appearance affecting the setting of the heritage assets, contrasting with the traditional built form and materials of the settlement.
32. The camping use would be increasingly more intrusive when busier with more of the pitches occupied and with more on-site activity taking place. It would take on a more intensive character, with the many colours and sizes of tents and vehicles having a significant and harmful impact on the setting of the heritage assets and on the character and appearance of the conservation area, introducing a jarring element in the rural scene.
33. The use of the site for camping is seasonal and the nature of the use is transient in respect of tents. The Council refers to the site being advertised on [campsite.co.uk](https://www.campsite.co.uk) stating that it is open from 23 May to 28 September, representing 129 calendar days and that it can cater for tents and VW-sized camper vans. Although the appellant originally appealed on the basis that he was seeking to continue the campsite use for 28 days pa, at the hearing he requested permission for 60 days and would accept a condition to this effect.

¹ APOPO/D0840/W/19/3233534

Local residents have expressed concern over loss of privacy, noise and disturbance, through smoke from the use of barbecues, potential danger to pedestrians and children accessing the play area, congestion on Higher Road from the parking of additional vehicles.

34. I consider that the capacity of the site and the duration of use requested by the appellant together with the stationing of a caravan for residential use, the ablutions structures and the attendant operational development, causes harm to the intrinsic character and beauty of this sensitive landscape. It introduces an undesirable form of development within the recognised open green area of Breage village resulting in a significant adverse impact on the visual amenities of the area. The development does not protect, conserve or enhance the significance of designated and non-designated heritage assets and their setting. It causes harm to the special character and appearance of the Breage Conservation Area and World Heritage Site without justification and does not add to the overall quality of the area.
35. Although the level of harm to the significance of the heritage assets is at the upper end of 'less than substantial' in the context of paragraph 202 of the Framework, there is little public benefit arising from the development other than a degree of seasonal support for local businesses. Whilst this is important it is more than outweighed by the harm caused.
36. I note that a number of representations in support have also been submitted but these do not outweigh the harm identified or could be mitigated by the use of conditions.
37. I conclude that the development conflicts with the Framework and with the policies in the Cornwall Local Plan 2010-2030, particularly those relating to the protection of the built and natural environments and with the World Heritage Site Management Plan.
38. The appeal on this ground fails.

Conclusion

39. 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

APPEARANCES

FOR THE APPELLANT:

Maximillion Fuerst von Conway - appellant

FOR THE LOCAL PLANNING AUTHORITY:

Peter Blackshaw – Principal Development Officer, Appeals

Sally Brown – Principal Enforcement Officer

INTERESTED PARTIES:

J Keele Cornwall Councillor

C McLennan, local resident

S Gittins, local resident

N Pascoe, local resident

R and J Treloar, local resident

S Herriett, local resident

S Tressider, local resident

K Babbage, local resident

S Symons, local resident

T Bowen, local resident

D Morgan, local resident

S Robinson, local resident

M Baker, local resident

S Moody, local resident