



Appeal Decision

Site visit made on 3 October 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2022

Appeal Ref: APP/D0840/C/22/3302264

Land West of 1 Landue Lodge, Lezant, Launceston, Cornwall, PL15 9NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Godfrey Day against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN20/01271, was issued on 16 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of land from agricultural to residential for the stationing of a caravan with 2 timber structures attached, decking and other residential paraphernalia, being used for residential (C3) purposes
- The requirements of the notice are:
 - 1 Cease the use of the static caravan marked in blue (X) on the plan attached to the notice for residential purposes;
 - 2 Cease the use of the two timber structures, decking area marked in blue (1 and 2) being for residential purposes and storage;
 - 3 Remove from the land the static caravan, all services such as water, gas and electric, and any personal belongings that are not associated with the lawful agricultural use of the land as shown marked in red on the plan;
 - 4 Remove from the land the two timber structures, decking and all building materials used to construct them remove any services that have been connected;
 - 5 Reinstate the land as outlined in red on the plan to its original condition before the breach took place;
 - 6 Remove all materials and debris resulting from compliance with 1-5 inclusive above from the land outlined in red on the plan.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (g) 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.

Decision

1. It is directed that the enforcement notice is varied by the deletion of 12 months for the period for compliance and replaced with 15 months. Subject to the variation, 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.

Preliminary Matter

2. Due to a misunderstanding for which I was responsible, the appellant and the local planning authority did not attend the site visit. However, I was able to enter the site to establish the whereabouts of the owner and I therefore saw the site and the unauthorised development, which was also partially visible from the public highway. The photographs submitted as part of the Council's

statement also assisted my understanding of the development. Accordingly, I did not consider it necessary to re-schedule the site visit.

The site and relevant planning history

3. The appeal site is a parcel of agricultural land of about 1.03 hectares in extent surrounded by established hedges and accessed by a field gate from an unclassified narrow lane. Adjacent to the hedge and close to the field gate is a caravan and the unauthorised structures referred to in the notice. It is located in open countryside.
4. An earlier enforcement investigation into the residential use of the site was closed following a response from the landowner. Further investigations identified that a caravan on the site was not being used residentially but as a crib hut.
5. Subsequently Planning Contravention Notices were served on the owner, Mrs Merarie Canada Day, and on her husband, Godfrey Day, the occupant of the appeal site. Variations between the individual responses indicated that the caravan was brought to the site either in 2011 or 2015 with the timber structures dating from 2015 and 2018 or 2014 and 2015. Despite advice from the Council to both the owner and occupier of the site, no action was taken to rectify the situation.

The appeal on ground (a)

6. An appeal on his ground is that planning permission should be granted for the matters alleged. The main issue is whether the development is in a location acceptable in the Development Plan where permission would normally be granted and, if not, whether the personal circumstances of the appellant outweigh the presumption against residential use in open countryside.
7. The adopted Lezant Neighbourhood Plan 2020 indicates that the appeal site does not fall within an identified settlement boundary. Mobile homes and caravans are considered to be a C3 residential use and the appeal can be appraised under Cornwall Local Plan Policy 7 which indicates that housing development in open countryside will be permitted only where there are certain special circumstances. However the appeal development does not fall within any of the categories specified in the policy.
8. The appellant acknowledges that he has breached planning control. He says that both the dwelling and shed are below the level of the lane and well-hidden without intent to hide. He states that structure '1' is a trellis but I note that it is identified correctly in the notice as a decking area. Despite the limited views available of the development, it is of poor design, looks unsightly, and is intrusive and harmful to the landscape character of the locality contrary to Policy 23 of the Local Plan regarding the protection of Cornwall's natural environment. The siting of the caravan and associated structures in an isolated rural location results in a sporadic incursion in the countryside, contrary to local policies and to the National Planning Policy Framework.
9. Against the policy objection to the development the appellant has requested that his own personal circumstances should be considered in the balance. He is a former long distance lorry driver who now has irregular work through an agency. He adds that his age, health, financial and marital breakdown issues have affected what he is able to do and he now has limited physical capacity.

He indicates that the site has been his home for four years and his focus is on wildlife conservation and wild flowers. The appellant does not anticipate that he will reach retirement age due to his health conditions and wishes to remain on the site for what remains of the rest of his lifetime.

10. Whilst I have some sympathy with the appellant's predicament and his wish not to become a burden on the tax payer, it is only exceptional personal circumstances that would outweigh the harm caused to the environment. Although a personal occupancy condition could be attached to a permission, this would mean that the development would remain in the landscape for an unknown period of time and that would not be in the public interest due to the harm caused.
11. I conclude that the development is contrary to the Development Plan for the reasons set out above and that the personal circumstances of the appellant do not outweigh the harm caused.
12. The appeal on this ground fails.

The appeal on ground (g)

13. An appeal on this ground is that the compliance period is too short. The appellant seeks a compliance period for the rest of his lifetime due to the personal circumstances set out above.
14. In normal circumstances a compliance period of 12 months is entirely reasonable to remove the caravan and carry out the other steps set out in the notice, which in themselves are not particularly onerous. However, having regard to the appellant's circumstances, I propose to vary the notice by requiring a compliance period of 15 months which will give the appellant a short additional period in which to meet the steps of the notice.
15. As pointed out by the Council, they have powers under s173A(1)(b) to extend the period of compliance if the specified period proves to be unrealistic.
16. Accordingly the appeal succeeds on this ground to the extent that the compliance period will be extended from 12 to 15 months.

Human Rights

17. The appellant refers to Chapter 8 of the Human Rights Charter, by which it is assumed that he is referring to Article 8 of the European Convention on Human Rights and Fundamental Freedoms incorporated in the Human Rights Act 1998. Article 8 provides that everyone has the right to enjoy a home peacefully and public authorities, such as a local planning authority, should not stop a person from living in their home without very good reason.
18. The enforcement action of the Council is discretionary but it has been expedient for such action to be taken as it is necessary, lawful and proportionate in the interests of protecting the environment. This is a legitimate public interest to which I attach considerable weight and there is no lesser course of action that would overcome the harm caused.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation 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