
Appeal Decision

Hearing Held on 6 December 2022

Site visit made on 6 December 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/D0840/C/22/3301415

Land South East Thimble Hall, Chilsworthy PL19 9PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Simon Alford against an enforcement notice issued by Cornwall Council ('the Notice').
 - The enforcement notice, numbered EN20/00385, was issued on 6 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 through the siting of a caravan and associated operational development to create a wooden porch, wooden decked area and new access track. The approximate position of the caravan is marked with the blue 'X' on the attached plan.
 - The requirements of the notice are (1) Cease the use of the caravan for residential use, approximate location shown by a blue X on the attached plan; (2) Remove caravan from the land; (3) Demolish and remove the wooden porch next to caravan; (4) Demolish and remove the wooden decking, approximate location shown by blue B on attached plan; (5) Remove from the land all materials and debris resulting from the residential use of the land, i.e. septic tank, shipping container, patio furniture, washing line, plant pots etc; (6) Remove the new access track from the land and restore land to its original condition; (7) Remove from the land all materials and debris resulting from the above works and restore the use of the land to agricultural.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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 is varied by:

omitting "shipping container" in requirement (5) in section 5 of the Notice, 'What you are required to do':

Omitting requirement (6) in section 5 of the Notice;

Omitting "(7)" and substituting "(6)" in section 5 of the Notice; and

Omitting the words "and restore the use of the land to agricultural" from what was originally requirement (7) in section 5 (and is now to be requirement (6) as a result of the directed variations).

Subject to the variations, 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.

Procedural Matters

2. The question of the effects of the development on protected habitats had not been given as a reason for issuing the Notice. The Council's initial position was that, should the deemed planning application be allowed, a condition should be attached to provide for a scheme of mitigation to the ill-effects that would otherwise occur. In an appeal decision¹ it received shortly before the Hearing ('the 2022 appeal') the Council was told that a condition would not suffice in similar circumstances and a planning obligation would be required. Therefore, at the Hearing the Council altered its position to accord with that of the Inspector in that appeal.
3. Leaving aside which approach is required, I set out that the effects on the protected habitats had to be a main issue. As I was the 'competent authority' by reason of the Conservation of Habitats and Species Regulations 2017, I had to carry out an Appropriate Assessment (AA) of the proposal. That AA has to include consultation with Natural England, as the statutory nature conservation body, and the Council confirmed that no such consultation had occurred. I explained that were the AA to indicate that planning permission should not be granted due to the effects of the development on protected habitats, I could not use it as a reason to dismiss the appeal unless it was a main issue. Whilst this did not indicate that this would be the outcome, it was, however, something that I had to bear in mind.
4. The parties agreed that the matter should be made a Main Issue and understood that should the deemed application be refused for other reasons there would be no need for me to undertake the AA.
5. A appeal² in 2021 (the 2021 appeal) for the erection of a log cabin on the land was dismissed. Following this, the Appellant made an application for planning permission for a smaller log cabin. This was turned away by the Council, using its powers under section 70A of the 1990 Act. In his Statement of Case (SoC), the Appellant made arguments to gain planning permission for that smaller log cabin in his Ground (a) case. I explained in a Pre-Hearing Note that this route was not open to him. That ground would only allow planning permission for what was alleged in the Notice, and the log cabin was materially different from the caravan that was the subject of the Notice.
6. At the Hearing, the parties accepted my approach, and the Appellant made those same arguments in support of the retention of the caravan.

The Notice

7. The final requirement in section 5 of the Notice states that the land shall be restored to agricultural use. A Notice can require unlawful uses to cease but cannot require uses to be undertaken. I shall vary the terms of the Notice by removing this part of the requirements.

Reasons

Grounds (b) and (c)

8. An appeal made under Ground (b) is that those matters alleged in the Notice have not occurred; and one made under Ground (c) is that the matters alleged

¹ APP/D0840/W/22/3290276

² APP/D0840/W/21/3288624

in the Notice (if they occurred) do not constitute a breach of planning control. As there is a degree of overlap in the arguments put forward by the Appellant on these grounds, I will deal with the two together. As these are legal grounds of appeal, the onus lies with the Appellant to make his case on the balance of probability. The Appellant's case for both relates to the access track and the caravan.

9. The Council agrees that the lawful use of the land is for agriculture. The Appellant's case is that there has long been a track here and that this was originally put in to serve the agricultural use of the land. The track originally served a stone shed close to the caravan, which was referred to as the tractor shed. I was told the shed had been used to store a tractor and agricultural equipment for the 12 years that the Appellant had owned the land, and he believed this to have been the case prior to his ownership.
10. The Appellant stated that what had happened was that the pre-existing track had been made more substantial through re-surfacing. The works, he said, were better described as being the repair, maintenance and improvement of an existing track.
11. Both parties referred to satellite images of the land; the Council saying that these did not show the track, whilst the Appellant claimed to the contrary. That included in the Appellant's Response to the Council's statement shows what might be a track. However, it could simply be an unsurfaced route for vehicles using the flatter land at the top of the field in which the site lies.
12. The evidence put forward did not prove that a formal, surfaced track had been in-situ prior to the issuing of the Notice. From the evidence, I find that seems more likely that what occurred was operational development to create the track on the land, albeit that this followed the course of the earlier informal route.
13. The other argument put forward was that should I find that the track had been constructed, as per the allegation, this would be permitted development. In this, reliance is made on Part 5, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the 'GPDO'). Amongst its terms, criterion (b) of Class B allows for the 'the provision, rearrangement or replacement of a private way' where this is reasonably necessary for the purposes of agriculture within the unit.
14. Paragraph B.1. of Class B sets out a further list of criteria where the development listed in Class B would not be permitted. Amongst these is (c) that states that if 'any part of the development would be within 25 metres of a metalled part of a trunk road or classified road' it would not be permitted development. At the Hearing, the Council provided evidence to show that the road that runs along the west side of the land is a classified road. The track that has been formed is clearly within 25m of this road and cannot, therefore, be considered to be permitted development.
15. For the reasons given above, the appeals made under Grounds (b) and (c) fail.

Ground (a)

16. An appeal under this ground is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Main Issues in the appeal are:

- Whether the location of the site would be suitable for the development, in the light of development plan policies;
- The effect of the development on the character and appearance of the area, including the Tamar Valley Area of Outstanding Natural Beauty (the AONB); and
- The effect of the development on protected habitats.

Location of the Development

17. The Appellant's landholding, as shown on the Plan attached to the Notice, runs to 7.5 acres. It comprises a single large field that falls steeply from the road bordering the site towards the River Tamar. The caravan is sited at its south-eastern end, together with the tractor shed and a small metal shipping container. At some time, the land appears to have been levelled and terraced in this area. There, an area of raised decking has been constructed and a further level area was being used to park a tractor.
18. It was acknowledged by both parties that the site lies in the open countryside. Amongst a suite of policies that provide guidance on the location of residential development, Policy 2 of the Cornwall Local Plan, 2016, ('CLP') provides an overarching aim for sustainable growth and CLP Policy 3 sets out a hierarchical approach to the location of new residential development, with named towns at the top and houses in the open countryside at the bottom.
19. CLP Policy 7 guides on housing in the countryside, setting out that new housing would only be allowed in 'special circumstances'. The Appellant proposes to use the residential caravan for tourism purposes and, therefore, it falls to be considered under the terms of CLP Policy 5, 'Business and Tourism'. Its criterion 3 sets out that, amongst other things, new high quality tourism accommodation will be supported where it is of an appropriate scale to its location and is accessible by a range of transport modes.
20. CLP Policy 5 has a counterpart in Policy LET2 of the Calstock Parish Neighbourhood Development Plan 2021-2030, August 2021, (the 'CNDP'). This supports new and extended high-quality holiday accommodation where it is for tourism that capitalises on local assets, and encourages cycling, walking and public (rail & river) transport.
21. The CLP dates from 2016 and the Appellant stated that it was based on the terms of the 2012 version of the Government's National Planning Policy Framework ('the Framework'). As such, it was argued, more weight should be placed on CNDP Policy LET2 than on CLP Policy 5.
22. The Council stated that the policy was reviewed by its Cabinet and found to be sound; however, no further evidence of this was brought forward. Notwithstanding this, I find that the terms of CLP Policy 5 does not materially conflict with the terms of the 2021 version of the Framework. Furthermore, the terms of Policy LET2 do not conflict with those of Policy 5, they simply set out to achieve the same result but in a local context. The two have to be read in conjunction with one another, and with other policies in the development plan, which has to be read as a whole. This was the approach taken by the Inspector in the 2021 appeal.

23. No evidence relating to farm diversification was submitted to the Inspector in that appeal. It is the main thrust of the Appellant's case before me. Amongst other things, Policy LET2 supports green tourism development in the open countryside where it is associated with a farm diversification scheme or an existing employment site of a scale proportionate to its surroundings.
24. In his SoC, the Appellant set out that he had 8 alpacas, 4 of which were pregnant. I saw 11 on the land at my site visit. In his Final Comments, he says that the objective is for a herd of 20 next year and states that this is a sustainable business. The only reference to the work required to keep them in the SoC was that they are sheared yearly. In the Hearing, in support of his assertion that there was a farm to diversify, the Appellant set out that the animals need tending and feeding daily. I was told that earlier this year a presence was needed full-time on site as one alpaca had difficulty giving birth and she and her offspring needed care afterwards. He also spoke of how the presence of the alpacas was important to the success of his tourist accommodation adjacent to the appeal site.
25. I find this to be very limited evidence of an agricultural business, and I was told that there was no holding number for the enterprise. Furthermore, I have no business plan or accounts that might substantiate the claim that it is a sustainable business. As the Council put it, one expects a farm business to be the main use and the proposed holiday use diversification scheme to be subservient to it. Here, it has not been shown that this this would be the case. I understand that people staying at the caravan would be happy to interact with the alpacas; however, my finding is that what occurs on the land is more of a hobby than a business that might benefit from diversification in the manner supported by Policy LET2.
26. CLP Policy 5 requires a site to be accessible by a range of transport modes. In the 2021 appeal decision, the Inspector set out why the site could not be considered to be accessible. I saw the nature of the roads in the area, in particular those that link the site to Gunnislake and St Ann's Chapel, where there are bus and train links to a variety of destinations. These are often narrow, for the far greater part unlit and sometimes steep. They do not present an attractive walking or cycling route, especially at night or in poor weather. I was also told that buses ran along the road at Coxpark Farm, which is closer to the site. I did not see any evidence of this along that road, but this cannot be read as meaning that buses do not run there. In any event, the characteristics of the roads that I discuss above apply to the roads leading to Coxpark Farm. They, too, would not be attractive to pedestrians.
27. Although I was told that visitors to the adjacent holiday accommodation enjoy walking and cycling, and that these are popular in the area, I have no doubt that visitors to the caravan would be heavily dependent on private motor vehicles. Thus, the proposal would be contrary to this part of CLP Policy 5 and the similar terms of CNDP Policy LET2.

Character and Appearance

28. The site lies within the AONB, to which the Framework affords great weight to conserving and enhancing landscape and scenic beauty. It has the highest level of protection in relation to these issues. The terms of the Framework are mirrored in CLP Policy 23.

29. The site lies within an area identified as Landscape Character Area 29 'Middle Tamar Valley', which the Cornwall and Isles of Scilly Landscape Character Study describes as an undulating landscape that is deeply cut by the River Tamar. It is a mosaic of fields and woodland with mature hedgerows and a network of narrow lanes linking small dispersed settlements and isolated farmsteads.
30. At the site's upper level, where the track runs and the caravan, decking and container are sited, the land generally has a gentle slope. However, below these the land falls away very steeply down the deeply incised valley side to the River Tamar.
31. I could appreciate that the caravan was in a slightly less prominent position than the land on which it was proposed to site the log cabin in the 2021 appeal. However, extensive views are gained from the site in an arc from the northeast to northwest of the site. Therefore, it is axiomatic that the caravan, decking and container are seen from those directions including across the river into England – notwithstanding that there are no public rights of way in the immediate area. They are well-screened by hedges and trees in views from the south and west, however. The caravan, decking and associated domestic paraphernalia appear as alien features in this rural setting causing harm to its character and appearance.
32. Although the Inspector in the 2021 appeal was assessing an outline proposal for a development that was proposed, rather than one that had occurred with effects he could see, he was clearly able to identify and articulate the harm that would arise from the log cabin. His decision is an important material consideration in my assessment.
33. In the Hearing, the Appellant also made an argument that a caravan would be allowed to be sited, for example for use by seasonal workers, under the terms of the GPDO³ in support of this ground of appeal. The argument was made that the caravan could be retained for this use.
34. There is a limit of 28 days use in this respect. The tourism use of the caravan would be likely to be far greater than this. In the Hearing the Appellant said that his other holiday accommodation was let for 42 weeks per annum, though I recognise that this is likely to be less here given that we are talking about a caravan. However, the harm to the character and appearance of the area arising from the occupation of the caravan, in terms of associated paraphernalia, vehicles parked on the land and the like, would occur for a far greater period. There would not be, as claimed, the same impact from both forms of use and I was not given substantive arguments how this harm might be mitigated by the use of conditions.
35. My finding is that the caravan, decking and domestic paraphernalia cause harm to the character and appearance of the area that cannot be overcome through the use of conditions. As such, it is contrary to the terms of CLP Policy 23, criterion 3 of CNDP Policy LET2 and the Framework. As it is not tourism development that is compatible with the AONB designation, it is not supported by the terms of the AONB Management Plan 2019-2034.

³ Part 5, Class A

36. In the Hearing, the Appellant expanded his Ground (f) argument to say that if the Ground (c) failed, he would seek the retention of the track as it served the agricultural land and the tractor shed and container and they caused no harm to the character and appearance of the area. In response, the Council said the track has an urbanising effect on the land. I deal with those arguments here.
37. The evidence suggests that, on the balance of probability, the route of the track that leads to the caravan from the road was that followed by vehicles serving the agricultural land before the recent works were undertaken. The track itself, which is about 2.5m wide and surfaced in compacted gravel, has been formed by excavating the land to a minor degree. It is a feature that is commonplace in rural settings and does not have an adverse effect on the landscape. That it serves not only the caravan but is also used for agricultural purposes, giving access to the tractor shed, is a matter that I afford significant weight.
38. As it is readily severable from the other aspects of the development alleged in the Notice, I will vary the terms of the Notice to allow for its retention.
39. The container that lies between the tractor shed and the caravan is small. It has an electricity supply and I saw that it is used for a mixture of agricultural and residential purposes. In agricultural terms, it has a fridge used for the storage of medicines for the alpacas and a washing machine used for washing animal blankets and coats. The container is also used to store equipment relating to the keeping of alpacas. As it can be locked, it offers secure storage in this relatively remote location.
40. Although small and positioned against the hedge, it has a minor adverse effect on the landscape and is, therefore, contrary to the terms of CLP Policy 23 and CNDP Policy LET2. However, its agricultural use is a material consideration to which I attach great weight and I find that the minor harm is outweighed by the benefits of its agricultural use. I shall vary the terms of the Notice to allow for its retention for these purposes.

Protected Habitats

41. I have found reason to dismiss the appeal due to its location and effects on the character and appearance of the area, for the reasons I have given. As this is the case, no harm will result to protected habitats. Therefore, I do not need to consider the matter any further in respect of the Habitat Regulations.

Conclusion on Ground (a)

42. For the reasons given above, the appeal on Ground (a) is dismissed.

Ground (f)

43. As I have dealt with these arguments in Ground (a), I need not repeat them here.

Ground (g)

44. Following confirmation that, were his other grounds of appeal to fail, the period for compliance would start from the day that my decision was issued, the Appellant stated that he was happy with the 12-month period for compliance set out in the Notice. He also agreed that there was no need to pursue the Ground (g) and this would be withdrawn in the circumstances.

Conclusion

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

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Simon Alford
Oliver Gibbins

Appellant
Agent

FOR CORNWALL COUNCIL:

Jim Lee
Ben Bassett

Appeals Officer
Enforcement Officer

DOCUMENTS

- 1 CLP Policy 5
- 2 Plan showing highway classification
- 3 Photographs of agricultural building on the land