



Appeal Decision

Hearing held on 10 January 2023

Site visit made on 10 January 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Appeal Ref: APP/D0840/C/21/3281131

Axe Head Farm, Underlane, Carnkie, Wendron, Helston, Cornwall, TR13 0EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Rebecca Lane against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN20/01357, was issued on 14 July 2021.
- The breach of planning control as alleged in the notice is a material change of use of land from agriculture to a mixed use comprising agriculture and the stationing of 2 caravans for residential purposes.
- The requirements of the notice are:
 - (1) Cease using the land edged in red on the plan attached to the notice for the stationing of caravans used for residential purposes.
 - (2) Remove from the land both residential caravans in the approximate positions shown edged in black on the plan.
 - (3) Permanently remove all materials and debris from the land resulting from compliance with 1-2 above.
- The period for compliance with the requirement is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (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 changing the compliance period from 9 months to 12 months.
2. 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.

Procedural matters

3. A short statement of common ground was submitted at the commencement of the hearing.
4. The appeal originally included grounds (d) and (f) but during the course of the hearing the appellant withdrew both these grounds. I have therefore considered only the appeals on grounds (a) and (g) below.
5. The appellant's personal circumstances were discussed at the hearing in the absence of the public in view of personal matters relating to a child.

The appeal site and relevant planning history

6. The appeal site is in open countryside in an undulating rural landscape and accessed from the minor rural road, Underlane. Within the site and adjacent to the wooded boundary is a static caravan with decking at the front together with a touring caravan, both of which are used for residential purposes. Additionally there are two storage containers, a tented structure, a freestanding composting toilet, animal pens, a steel frame poly-tunnel and a quantity of tyres. There has been substantial tree planting within the fields including an area planted with a variety of fruit trees.
7. A prior notification application for the erection of a steel-framed barn and two poly-tunnels was made in 2014. Following the siting of a static caravan in 2014, the owner claimed it was being used as a rest room during work on the land and not for residential purposes. In June 2015 a complaint was investigated regarding the permanent occupancy of the caravan. The occupier of the caravan claimed she was implementing the works associated with the permitted development in the 2014 prior notification and as such satisfied the GPDO. Subsequent visits by the Council confirmed that the works were progressing but only slowly due to the health of the occupant. A second caravan was brought onto the land in April 2017. A Planning Contravention Notice was served but no enforcement action was taken as the owner was seeking to sell the site.
8. In November 2020 the Council renewed its enforcement investigations and served a further PCN in April 2021 which indicated that the appellant and her partner are owners, the land is in agricultural use, the static caravan is an agricultural dwelling, there are four containers used for agricultural purposes and a touring caravan has been on site since summer 2020 and occupied by a seasonal agricultural worker.
9. The appellant acquired the site in 2018 and is operating a smallholding based on sustainable principles. The market garden was adapted to the 'no dig' method and a range of vegetables have been grown. Various breeds of chicken have been raised for their hatching eggs and rare pigs have been reared. There has been considerable tree planting on the site and there are plans to utilise native plants to create natural medicines, to make cider vinegar and to install beehives. The smallholding has a Cornish Earth accreditation.

The appeal on ground (a)

Issues

10. The main issues are whether the development satisfies planning policies for residential development in the open countryside; the effect that the development has on the character and appearance of the area; and whether there are any over-riding personal circumstances that outweigh the policy considerations.

Planning policies

11. Paragraph 80 of the National Planning Policy Framework (the Framework) indicates that isolated homes in the countryside should be avoided unless particular circumstances apply, such as an essential need for a worker to live permanently at or near their place of work. The appellant argues that whilst the appeal site is in open countryside, it is not isolated and cites Braintree DC v

SSCLG and others in support. Having regard to paragraph 31 of that judgement, I am satisfied that on the facts of the case, the mobile home falls within the category of development referred to in paragraph 80 of the Framework.

12. The appellant further argues that the site is sustainably located but from the distances to the various local facilities referred to, these are limited and access to bus stops is via narrow roads with no footways.
13. Policy 7 of the Cornwall Local Plan is similar to the approach of paragraph 80 in the Framework although no reference is made in the policy to the term 'isolated'. The appeal development does not satisfy any of the special circumstances provided for in the policy and only limited details of the appellant's current and proposed operations have been provided which is insufficient to demonstrate that there is an essential need for the holding to have living accommodation on site.
14. The appellant accepts that the operation does not easily fit into conventional agricultural dwelling policy.
15. The appellant is seeking a personal three year temporary permission to allow the applicant and her family to remain on the site pending the submission of a future planning application to be considered under the emerging Policy AL1 of the Cornwall Council Climate Emergency DPD, which the appellant considers would provide support for the retention of the residential use of the land.
16. The basis of the policy is the Council's acceptance that supporting innovative, low-carbon development that enables a more self-sufficient, low impact lifestyle provides an important part of an approach to reducing greenhouse gas emissions overall. The policy sets out a number of criteria within which that form of development can be supported.
17. As neither party was able to provide an up-to-date version of the draft DPD at the Hearing, both parties accepted that they would not be prejudiced by me accessing the relevant documents from the Cornwall Council web site.
18. The Climate Emergency DPD has been examined and the Inspector has confirmed that the plan is sound subject to recommended modifications. The Council anticipates that the plan will be adopted on 1 February 2023 as part of the Development Plan. In considering Policy AL1 regarding regenerative, low impact development the Inspector has recommended Main Modifications to a number of the criteria set out in that policy and the addition of further criteria.
19. Although the appellant considers that the appeal site has the potential to come within the scope of Policy AL1, it is not claimed that all criteria can be met and it would be necessary to prove the case with a planning application. The Council indicates that the emerging policy does not change the overall approach to restrictive policies for development in the countryside but it could lead to a modified approach in respect of caravans and applications accepted under the policy may need to be supported with a planning obligation.
20. In conclusion on the first issue, I find that the development is contrary to the provisions in the Framework and to Policy 7 of the Cornwall Local Plan in respect of the development of dwellings in the countryside. Although the emerging Climate Change DPD has reached an advance stage towards its adoption and I am able to attach considerable weight to it, the information

required to assess it against the criteria set out in Policy AL1 has not been made available through this appeal..

Landscape character

21. The site is within the landscape character area CA10 Carnmenellis, being an open elevated, undulating granite plateau with a dispersed settlement pattern of farmsteads and small clusters of cottages. It is recognised as being eroded by the clutter of wires and isolated dwellings. The mobile home and decking on the appeal site is set back from the public highway and sited close to a wooded boundary and the touring caravan is sited beyond the mobile home. Taken together with the containers and the other structures on the site, coupled with the current rather dejected appearance of the smallholding, the development is harmful to the landscape character of the area. However, much of this is down to structures and activities forming part of the smallholding which the notice does not attack. Whilst the mobile home, decking and the touring caravan inevitably impact on the character and appearance of the area, the actual level of harm is mitigated marginally by their position on site albeit that they add to the erosion of the open character of the area and are harmful to its appearance. I have also had regard to the other smallholdings and the mobile home park in the vicinity in reaching this conclusion.
22. Although a landscaping condition could be imposed to lessen the visual effects of the development, this would not overcome the harm caused.
23. The development is contrary to Policy 23 of the Cornwall Local Plan as it fails to sustain local distinctiveness and character.

Personal Circumstances

24. The appellant refers to the housing crisis in Cornwall and to the Council's document 'Securing Homes for All: A Plan to Address Cornwall's Housing Crisis'. This does not propose any new planning policies and does not form part of the Development Plan. However it sets out various measures for enabling the delivery of housing targets within the Cornwall Local Plan.
25. The appellant has provided details of her household finances and has submitted details of housing rental costs in Cornwall concluding there is nowhere affordable to rent. Notwithstanding this, the appellant chose to acquire the appeal site and occupy the mobile home as a permanent dwelling for her family in full knowledge of the planning history of the site and the advice in Stags brochure for the auction of the property in July 2018 which clearly stated that 'the static home does not have full residential use'.
26. The appellant states that the upholding of the notice will result in the loss of their home, that Axe Head farm will cease to operate and there is no available suitable alternative accommodation.
27. The appellant submitted a school statement (Document 3) regarding her son who is now being home educated and that her child's best interests are served by not being made homeless. The appellant also referred to the health of her partner which has meant that the smallholding has not had the maintenance attention that it might otherwise have had.
28. The Human Rights Act 1998 incorporated provisions of the European Convention of Human Rights and Fundamental Freedoms into UK law. Article 8

of the convention protects the private life and home of those served with the notice. The rights of Article 8 are qualified rights. Any action which interferes with this right should be in accordance with the law and is necessary in a democratic society for the protection and the rights and freedoms of others.

29. Although the best interest of a child is a primary consideration, it is not determinative of a planning issue when considered against all other material considerations. Whilst I recognise that upholding the notice will disrupt the family and lead to a requirement for alternative accommodation, this is proportionate in the circumstances as the decision has to be balanced against the operation of the planning system in the public interest.

Conclusions on the appeal on ground (a)

30. The development is contrary to the provisions of the Cornwall Local Plan, particularly to Policy 7 and Policy 23, and is also contrary to the provisions of national policy set out in the Framework. The personal circumstance of the appellant and the best interests of the child carry significant weight in the planning balance but this does not outweigh the harm to the countryside that the Development Plan seeks to protect. Planning conditions would not overcome the harm caused and a personal permission for three years would be inappropriate as the requested opportunity to submit a new planning application under Policy AL1 of the Climate Emergency DPD could be dealt with in an extended compliance period as set out in my consideration of the appeal under ground (g).

31. The appeal on this ground fails.

The appeal on ground (g)

32. An appeal on this ground is that the compliance period is too short and the appellant considers that in view of the lack of alternatives 18 months is necessary to allow time to investigate other options further afield or to make an application under Policy AL1 of the under Policy AL1 of the Climate Emergency DPD
33. Mr Blackshaw of the Council felt that the compliance period set out in the notice would be adequate but in view of the housing crisis and the appellant's personal circumstances, he would not object to a compliance period of 12 months.
34. Bearing in mind that at the date of the appeal is August 2021, the Climate Emergency DPD was still in its relatively early stages of consultation and adoption. However, it appears likely that its adoption as part of the Development Plan is imminent and there would be no reason why an application under that policy could not be made and determined in the coming months. On that basis I consider a compliance period of 12 months to be appropriate to give the appellant the opportunity to pursue such an application.
35. The appeal on this ground succeeds to the extent of the compliance period being extended.

Conclusion

36. 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

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston BSc (Hons) MA MA PhD MRTPI, Ruston Planning Ltd
Ms Rebecca Lane (appellant)

FOR THE LOCAL PLANNING AUTHORITY:

Peter Blackshaw BA(Hons) MRTPI, Principal Development Officer
Ms J Patient, Senior Development Officer

INTERESTED PARTIES:

Local residents:
Carol Scott
Robert Ashburn
Peter Ross
Andrew Hopson
Terence Stanley
Elizabeth Stanley

DOCUMENTS

Document 1: Statement of Common Ground
Document 2: PA21/0718 Officer Report (appellant)
Document 3: Report by Angie Larcombe, Special Educational Needs Co-ordinator
dated 9th January 2023