



Appeal Decision

Site visit made on 24 January 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/D0840/C/22/3293708

Land known as Stack View, Lower Condurrow, CAMBORNE, TR14 9AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Tresidder against an enforcement notice issued by Cornwall Council.
 - The notice, numbered EN19/00593, was issued on 27 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a dwelling and the change of use of the land for the stationing of a caravan for residential purposes, siting of two shipping containers for the storage of building materials and plant and the laying of hardcore as a parking area as shown outlined in red on the attached plan.
 - The requirements of the notice are to
 - (1) Cease the use of the land for residential purposes as shown outlined in red on the plan attached to the notice
 - (2) Remove from the land the static caravan as shown in the approximate position marked in blue on the attached plan.
 - (3) Dismantle and remove from the land the building as shown in the approximate position marked in green on the attached plan.
 - (4) Remove from the land the storage containers as shown in the approximate positions marked in purple on the attached plan.
 - (5) Remove from the hardstanding parking area as shown outlined in red on the attached plan.
 - (6) Reinstate the land as outlined in red on the attached plan to its original condition before the breach took place.
 - (7) Remove all materials and debris resulting from compliance with the requirements of (1) to (6) above.
 - The period for compliance with the requirement is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) 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.
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Decision

1. It is directed that the enforcement notice is varied by the extension of the compliance period from 6 months to 9 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.

The appeal site and relevant planning history

3. The appeal site is located largely in open countryside although there are buildings scattered nearby, with a bungalow to the east, an agricultural building to the north and a group of buildings associated with farms to the

west. There is a camping ground to the south of the site. The remains of mining activity are evident in the locality and the site is within the Camborne and Redruth Mining District of the Cornwall and West Devon Mining Landscape World Heritage Site.

4. The site is fenced and accessed from the lane through timber gates onto a large, stoned drive and parking area for about ten or so vehicles. Within the site is a single storey dwelling with a paved area and a hot tub; a mobile home in use for residential purposes with decking and a lean-to bathroom structure; a small store; a small paddock with a couple of sheep; a recently constructed timber garage for the storage of the appellant's classic truck; and, one green shipping container for the storage of equipment associated with the appellant's building business. One of the two containers referred to in the allegation has been removed and replaced with the timber garage which does not form part of the allegation.
5. A planning application was refused in June 2021 for a two storey house involving the removal of the building and caravan. It was refused on the grounds that it would represent unfettered residential development in the countryside for which no special justification had been demonstrated.
6. A response to a Planning Contravention Notice (PCN) indicated that building on the site commenced in 2018 and was completed in 2020.
7. The building is occupied by the appellant and his brother, who has been living in the dwelling since August 2021 and requires care. The caravan has been occupied by the appellant's son (who works in the family business), his partner and two grandchildren (aged 2 and 9 years) since late 2019.

The appeal on ground (b)

8. An appeal on this ground is that the alleged breaches have not occurred as a matter of fact. Where a legal ground is appealed, the onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
9. The appellant claims that the building used as a dwelling was originally a workshop built shortly after the purchase of the site in 2018, replacing a large and dangerous structure twice the size of the existing building. It was converted to residential accommodation after 6 months. No evidence has been submitted to support this assertion and the Council states that at their site inspection of November 2019 the building had a domestic appearance. The PCN response from the appellant showed the building to be occupied as his home.
10. It is also claimed that the siting of two containers for the storage of building materials and plant is incorrect as the containers provide storage of personal effects as well as building materials. However, the allegation was based on the information provided by the appellant's response to the PCN.
11. It is also claimed that the validity of the notice is undermined as the previous use of the land is not specified. There is no requirement for a notice to identify a previous use although it is helpful to do so.
12. I am satisfied that the allegation in the notice tells the recipient what is unauthorised and what must be done to remedy it. It is not hopelessly ambiguous and I do not consider it necessary to correct the notice.

13. In the absence of any evidence to the contrary, I consider that what has been alleged has occurred as a matter of fact and the appeal on this ground fails.

The appeal on ground (a)

14. The main issues in the ground (a) appeal are: whether the development satisfies the policies in the Cornwall Local Plan and National Planning Policy Framework (the Framework) for new housing in the countryside; the effect on the character and appearance of the area; and, whether there are any special circumstances that outweigh policy considerations.
15. The appellant states that the site is previously developed land containing buildings used in association with the previous owner's livelihood; that because of the buildings and development on three sides, the site did not significantly contribute to the openness of the countryside; the site is not isolated or unsustainable being close to Camborne and the villages of Beacon and Cundurrow offering a range of facilities; and development grain is characterised by a smattering of clusters of development related to Camborne.
16. Although there is development in the vicinity of the site and it is bounded on three sides by highways, the general openness of the location is much as described in the Landscape Character Study where it is identified as being within the landscape character area of CA10 Carnmenellis. This is described as being an open elevated undulating granite plateau within which are scattered mining remains with a dispersed settlement pattern and a strong visual association with past mining activity. The site is within Area 5 Camborne and Redruth Mining District of the Cornwall and West Devon Mining Landscape World Heritage Site (WHS). World Heritage Sites are recognised as heritage assets of the highest significance.
17. Open countryside is defined in the Cornwall Local Plan as the area outside of the physical boundaries of existing settlements (where they have a clear form and shape). The site has more affinity with the open countryside in which it is located rather than any built form nearby. The site is not an infill site, neither does the site represent a gap in an otherwise built-up frontage or provide a completion of a development boundary. In response to the PCN it was stated that the prior use of the site was as a smallholding. Agricultural uses are excluded from the definition of previously developed land in the Framework.
18. Accordingly, the development is subject amongst others to Policy 7 of the Cornwall Local Plan and paragraph 80 of the Framework regarding the development of residential development in the open countryside. The development does not satisfy the circumstances where such development would be accepted.
19. The development of a dwelling on the site and the surrounding fencing, the stationing of a mobile home and a shipping container extend domestic and business activities into the open countryside in a manner and style which is harmful to the inherent character and appearance of the area. The appeal site forms part of a miner's smallholding and the development that has taken place has harmed the legibility of the attribute which was one of the key features of the WHS inscription. Although of less than substantial harm in the context of paragraph 202 of the Framework, there is no public benefit arising from the development to justify the harm. A landscaping condition would not overcome the harm to the character and appearance of the area.

Special circumstances

20. The appellant considers that there are special circumstances to justify the grant of planning permission. These including arson attacks, which are not a justified reason for granting permission contrary to the Development Plan, and the health and welfare of the appellant's brother and the appellant's grandchildren.
21. The appellant suggests a personal or temporary permission should be granted until the children reach 18 years of age as not to do so would interfere with their Human Rights under Articles 2 and 8 of the Human Rights Act 1998.
22. The appellant's brother requires full time care and the loss of the dwelling would result in his homelessness and have a detrimental impact on the brother's health, as indicated by his Case Co-ordinator. Additionally he may not be able to attend a day centre at Boscowan Farm.
23. The appellant states that the loss of the caravan would render the family homeless, it could disrupt the child's education and potentially threaten the son's employment with his father.
24. The Human Rights Act 1998 incorporated provisions of the European Convention of Human Rights and Fundamental Freedoms into UK law. Article 2 of the Convention is an absolute right which is a right to life. Article 8 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.
25. Whilst I have had regard for the health of the appellant's brother and his need for care, this has to be balanced against the operation of the planning system in the public interest. Additionally, 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 lives of those living on the site 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 as a whole. The need for care and those of the children do not justify permitting a development that does not comply with local and national policies. Furthermore, a temporary permission to allow the children to continue their education until the age of 18 (with the youngest being two years old at the time of the appeal) is well beyond any period that would be contemplated as being appropriate for any temporary permission.

Conclusions on the appeal on ground (a)

26. I conclude that the development is contrary primarily to Policy 7 regarding housing in the countryside and to Policy 24 of the Cornwall Local Plan regarding historic environments. It also fails to comply with paragraphs 202 and 80 of the Framework.
27. The appeal on this ground fails.

The appeal on ground (f)

28. The appellant considers that the requirements of the notice are excessive as it is maintained that the building used as a dwelling should cease but be retained

as a workshop, and that the caravan and the containers be retained for the appellant's business (although one has since been removed from the site at the time of my site visit). The requirement to reinstate the land to its original condition would involve importing material and structures that have previously been cleared.

29. The Council point out that use of the land for the appellant's business is likely to require permission for a material change of use from the previous smallholding use specified in the PCN. The requirement does not require the reinstatement of buildings or structures on the land.
30. 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. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
31. The appeal on this ground fails.

The appeal on ground (g)

32. The appellant considers a period of 6 months is insufficient to remove structures from the site and to find suitable alternative accommodation in the current housing market and a period of 24 months would be more appropriate.
33. I consider that 6 months is a proportionate and reasonable period of time to comply with the requirements of the notice in terms demolishing the dwelling and removing the caravan and container. However, it acknowledged that there are great pressures in the housing market and a period of 9 months would be more reasonable in the circumstances to provide additional time for the appellant to find alternative accommodation. Furthermore, the Council has pointed out that the appellant can request the Council to extend the period for compliance under s 173A.

Conclusion

34. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

P N Jarratt

INSPECTOR