



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: 3 February 2023

Appeal Ref: APP/D0840/C/22/3293632

Land known as Land at The Old Quarry, Leat Road, Pendeen, Penzance, Cornwall, TR19 7EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tom Westfoot against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN/19/01692, was issued on 26 January 2022.
- The breach of planning control as alleged in the notice is without planning permission, (1) the material change of use of agricultural land to a mixed use for agriculture and for the stationing of a residential caravan with associated raised decked area, the siting of 2 lorry bodies for domestic storage purposes, the parking of vehicles and a trailer, Class B8 use as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) for the storage of materials, aggregates, tools, machinery, plant and other items and the siting and storage of domestic items and paraphernalia, (2) the operational development on the land to site a storage container used to house electricity supply equipment and for storage purposes and (3) engineering operations to install a septic tank.
- The requirements of the notice are:
 - (1) Cease the use of the land outlined in red on the plan attached to the notice for residential purposes.
 - (2) Cease the use of the land outlined in red on the attached plan for the stationing of caravans for residential purposes.
 - (3) Cease the use of the land outlined in red on the attached plan for a class B8 storage use.
 - (4) Remove from the land the residential caravan with associated raised deck area in the approximate position marked outlined in blue on the attached plan.
 - (5) Remove from the land the septic tank in the approximate position marked with the black circle on the attached plan.
 - (6) Remove from the land the container in the approximate position marked outlined in green on the attached plan.
 - (7) Remove from the land the lorry bodies in the approximate position marked outlined in pink on the attached plan.
 - (8) Remove from the land outlined in red on the attached plan the materials, aggregates, tools, machinery, plant and other items associated with the class B8 storage use.
 - (9) Remove from the land outlined in red on the attached plan all domestic items and paraphernalia
 - (10) Remove from the land outlined in red on the attached plan all vehicles and trailers not associated with the agricultural use of the land.
 - (11) Remove from the land outlined in red on the attached plan all materials and debris resulting from compliance with (1) to (10) inclusive above
- The period for compliance with the requirements is 12 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 corrected by the deletion of 'caravans' in Requirement (2) and replaced with the word 'caravan'.
2. Subject to the correction 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 Notice

3. Requirement 2 of the notice refers to ceasing the use of caravans. However it should refer to caravan in the singular. I can correct the notice without injustice to either party.

The site and relevant planning history

4. The appeal site is a rectangular parcel of land to the north of Pendeen village which was formerly a quarry that came into the appellant's father's ownership in the 1980s. Since that time it is claimed that the site has been used for storing materials, vehicles and other paraphernalia. The site is in open countryside within the Cornwall and West Devon Mining Landscape World Heritage Site (WHS), in a Conservation Area and the Cornwall AONB, and is within the defined Heritage Coast.
5. The appeal site is in a parlous and untidy state containing a caravan and decking, storage containers, vehicle parts and various materials. It creates an incongruous element in this part of the countryside adversely affecting its character and appearance and those of the heritage assets they contain. The site has water and electricity supplies and a holding tank, described in the notice as a septic tank.
6. In 2019 two applications for Permission in Principle were sought for housing on the site, one relating to 3 dwellings on the south-east part of the site, and for a single dwelling on the remainder of the site. These were both dismissed on appeal (APP/D0840/W/20/3247594 and 3247590) for various reasons including harm to the countryside, the AONB and the WHS.
7. A Lawful Development Certificate for storage (use class B8) on the south-east portion of the site was refused in June 2021¹.

The appeal on ground (a)

8. The appellant does not seek to provide any assessment of the policy reasons set out by the Council in the reasons for issuing the notice. These relate to various policies in the Cornwall Local Plan and the National Planning Policy Framework. Additionally there are a number of third party representations objecting to the development, including representations from St Just Town Council.
9. The appellant's case is that a temporary planning permission should be granted and the period of compliance altered to enable his children to complete their schooling at local secondary school. The children were aged 14 and 16 at the

¹ I note that the Decision Notice for the refusal of an LDC does not provide any reasons in the attached schedule. Whether this was subsequently rectified in a revised notice is unknown.

date of the appeal in February 2022). Accordingly, the main issue is whether there are any special circumstances that outweigh the policy reasons set out in the notice.

10. The appellant refers to Articles 2 and 8 of the Human Rights Act 1998. The removal of the caravan would render the appellant and the children to be homeless leading to the disruption of the children's education which under the Education and Skills Act 2008 requires education or training to the age of 18 years.
11. 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.
12. The requirements of the notice would have an effect on the children, but whether they would be homeless or have their education disrupted as a consequence, is not clearcut as the appellant states that the children only spend 50% of their time with their father (although the Divorce Settlement attached as Appendix 1 to the appellant's final comments refers to the children being with their mother four nights each week).
13. 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. In this case, the personal circumstances of the appellant do not outweigh the conservation of the AONB, the Conservation Area and the WHS.
14. The appeal on this ground fails.

The appeal on ground (g)

15. The appellant considers that the period for compliance with the requirements of the notice is unreasonable because of the age of the appellant's children and their studies. In the absence of a temporary planning permission a period of 24 months would be more appropriate to remove the structures, dispose of the appellant's interest in the land and purchase alternative accommodation.
16. The adverse visual affects of the site indicate that they should be ameliorated at the earliest opportunity. In my view a period of 12 months is generous and more than adequate to meet the requirements of the notice. I note that the Council has indicated that it has powers under s173A to extend the period of compliance.
17. The appeal on this ground fails.

Conclusion

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