
Appeal Decision

Hearing Held on 15 November 2022

Site visit made on 15 November 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 04 April 2023

Appeal Ref: APP/D0840/C/22/3290171

Land at Horsemans Hill Farm, Trerulefoot, Saltash, Cornwall PL12 5BU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Dina Hellier against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN17/01253, was issued on 2 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden structure used for residential purposes. The approximate position of the residential dwelling is marked with a blue 'A' on the attached plan.
 - The requirements of the notice are: (1) Cease the residential use of the wooden building in the approximate location shown by blue A on the attached plan; (2) Demolish the wooden building shown in the approximate location by blue A on the attached plan; (3) Remove from the land all materials and debris resulting from the residential use of the land, i.e. solar panels, gas bottles, washing line etc.; and (4) Restore the use of the land to agricultural.
 - The period for compliance with the requirements is ten months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (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 paragraph (2) from section 5 of the Notice, 'What you are required to do'; renumbering paragraph (3) of section 5 of the Notice as paragraph (2), omitting its text and substituting it with "Remove the wooden building from the land and all materials and debris resulting from the residential use of the land, i.e. washing line etc."; and renumbering paragraph (4) of section 5 of the Notice as paragraph (3).

Removing the words "ten months" from section 6 of the Notice, 'Time for Compliance', and substituting it with "twelve months"

2. 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

3. The appeal was initially to be assessed under the written representations procedure and I accordingly visited the site on 6 July 2022. A decision was

subsequently made to change the procedure to a Hearing and, notwithstanding that I had already been to the site, I visited again on the day of the Hearing.

The Notice

4. The Appellant raised no objections on the validity of the Notice, or whether correction or variation was needed. Notwithstanding this, I put it to the parties that the second requirement, in section 5 of the Notice, might be deleted with a consequent alteration to the third requirement.
5. I was of the view that the second requirement was onerous and did not sit comfortably with the sustainable aims of the Government's National Planning Policy Framework ('the Framework'). I put it to them that the word 'demolish' suggested the destruction of the wooden building and that this would not be necessary to remedy the breach of planning control. As evidence had been put forward to show that the building might be moved, either in whole or in parts, I suggested that the second requirement was omitted and the third was varied to include the removal of the building. This would potentially allow for its reuse elsewhere. The parties agreed with my reasoning, and the variation is made.
6. It was suggested, in the Appellant's submissions, that what was on site was a structure that was constructed to comply with the terms of section 13 of the Caravan Sites Act 1968. If this was the case, the allegation in the Notice would be wrong as this refers to a building.
7. The Appellant's son explained how what is on the land was constructed, and it became clear that it did not comply with the terms of s13 of the 1968 Act as, if for no other reason, it was not "composed of not more than two sections separately constructed and designed to be assembled on a site" as required in s13(1)(a). It was conceded by the Appellant that, in the light of the description of the works that had been undertaken, what is on the site is a building.

Ground (a)

8. An appeal made 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.

Main Issues

9. The question of the effects of the development on protected habitats had not been given as a reason for issuing the Notice. It was referred to as an 'Other Matter' by the Council and it said 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.
10. By reason of The Conservation of Habitats and Species Regulations 2017, I am the 'competent authority' and would have to carry out an Appropriate Assessment (AA) of the proposal. 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 for refusal unless it was a Main Issue. This did not indicate that this would be the outcome, however, it was something that I had to bear in mind.

11. 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.
12. In the light of the above, the main issues are as follows
 - Whether this is an appropriate location for the residential development that is proposed;
 - The effect of the development on the character and appearance of the area; and
 - The effect of the development on protected habitats.

Reasons

The Location of the Proposed Development

13. The site, which extends to 22 acres, lies in the open countryside. It consists of mostly sloping land on one side of a short valley formed by a minor stream that rises on the land. Access to the land is from a quiet lane just off the A374. This leads to a track that runs up the valley above the stream, which is ponded, to a point where the steepness of the land increases. The dwelling that is the subject of the Notice is located towards the top of this steeper land, where the land starts to level.
14. The dwelling is a timber building with a rectangular plan form that sits above ground level on a timber frame. It is of a single storey, though it has a fairly high floor to eaves height. Internally it has been divided into a number of rooms and has all the facilities required to be a 'Gravesham'¹ dwellinghouse.
15. The site lies in the open countryside. Although there is other development in the area, taking the decision in the Braintree² case into account, I find that the dwelling is in an isolated location. The Framework sets out that decisions should avoid the development of isolated homes in the countryside unless certain circumstances prevail. One of these is that there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
16. The Council submitted a copy of its Cornwall Monitoring Report: Cornwall 5 Year Housing Land Supply (HLS) Statement, dated 14 July 2022. This shows that the authority is able to show a 6.5 year HLS. The Appellant did not doubt the accuracy of the figure. I, too, have no reason to doubt it and I take this to be the case.
17. In terms of local planning policy, similarly, residential development would only normally be allowed on the land in special circumstances. These are set out in Policy 7 of the Cornwall Local Plan Strategic Policies 2010-2030, adopted November 2016, ('LP'). Criterion 5 of the policy is relevant to this case. It allows for the creation of dwellings for 'Full time agricultural, forestry and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location'. This policy approach is compatible with the approach in the Framework, and the Planning Practice Guidance³ ('PPG').

¹ *Gravesham BC v SSE and O'Brien* [1983] JPL 306

² *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610

³ Paragraph: 010 Reference ID: 67-010-20190722. Revision date: 22 07 2019

18. The PPG chapter on housing sets out considerations which could be taken into account when assessing the need for isolated homes in the countryside for essential rural workers. Of these is evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise. Examples of this are where farm animals or agricultural processes require on-site attention 24-hours a day, where otherwise there would be a risk to human or animal health, or from crime, or to deal quickly with emergencies that could cause serious loss of crops or products. It sets out that, in the case of new enterprises, it might be appropriate to consider granting permission for a temporary dwelling for a trial period
19. The rural enterprise at the site began in 2016, with a mix of animal, bird and plant-related activities. I was told that there had been a healthy pig business, but that the effects of Brexit and Covid had resulted to its cessation, leading to a different approach to the use of the land. Briefly, the stock and activities on the land at the time of the Hearing were as follows.
20. Goats had been brought onto the land to clear it of vegetation and to produce milk. There were 11 on the land, which are milked by hand twice a day. It is intended that the number will expand with progeny. I was told that there were 27 ducks on the land; I saw some on the pond and had no reason to doubt the claimed number. They are kept for eggs and meat. There were two Kunekune pigs on the land.
21. Vegetables and flowers were being grown in beds on the more level land at the top of the site. In addition, I saw evidence of biochar and charcoal production on the land, as well as piles of cut vegetation and chipped wood related to an arboricultural waste enterprise. I also saw fairly extensive tree planting had been undertaken, associated with the present and proposed activities on the land.
22. In addition to the dwelling, I saw an agricultural storage building that was under construction⁴ that would be used for storage and flower drying. I took this as an indication of investment on the holding. Amongst other things, there was a further storage building at the southern end of the land, caravans used for purposes ancillary to the use of the land, one of which was in a poor state of repair⁵ solar panels, and various smaller sheds and greenhouses.
23. The Appellant's written case was supported by a Farm Business Plan 2022-2025⁵ ('FBP') and an Agricultural and Rural Business Appraisal⁶ ('ARBA'). The former set out a three-year business plan for the growth of the enterprise, detailing the proposed expansion of the activities on the land, together with the income they were expected to generate. The latter assessed the question of the essential/functional need for accommodation on the site. These documents set out the Appellant's plans to expand activities that are carried out on the land presently, and to introduce new activities.
24. The FBA and ARBA set out that 6 Kunekune sows would be purchased in the spring of 2022. Initially, the pigs would play a role in preparing the land for

⁴ Council's reference PA14/04916

⁵ Robert Rhys, Chartered Surveyor – March 2022

⁶ *ibid*

- cultivation and would provide manure. In the longer term, they would also be reared to enable the production of charcuterie.
25. The number of goats on the land was roughly commensurate with the figure given in the FBP and ARBA for the time at which the Hearing occurred. In respect of chickens, the two documents anticipate a flock of 30 laying hens in early 2022. There were none when I visited. Similarly, a flock of some 30 geese plus 2 ganders was expected in Year 1, but there were none when I visited. The effects of the avian flu outbreak were given as the main reason for this.
26. Miniature Donkeys were not proposed to be introduced until Year 2, so I would not have expected to see them at my site visit.
27. As the stock numbers were not as suggested in the FBP and ARBA, I asked the Appellant where the livestock-related activities were in relation to the 'schedule' given. I was told that this was some 9-12 months behind schedule.
28. At this time, given the very small range and number of animals and birds on the land, a functional need for a permanent presence on the land to care for them has not been demonstrated.
29. In respect of plant production, there were 8 beds for vegetables and flowers when I visited. There was little discernible difference in the area of land being so used between my two site visits. However, the ARBA said that there would be 60 beds by that time, with a further 60 created each year for the following two years. I would not describe what I saw as a significant start, as the ARBA does. I was told that there had been a change in plan to a 'no dig' approach, and I saw how foraging Kunekune pigs prepared the land in this regard. As a result of this change, I was told that there was no longer any great relevance to the 60 bed figures.
30. I was told that this did not equate to being behind schedule, compared with the terms of the ARBA. However, there was markedly less land being used for the production of vegetables and flowers than would have been anticipated from the document. I understand the change in approach to plant production; however, for this part of the enterprise to be on schedule one would have expected to see something like the equivalent area of 60 beds in cultivation. That figure is over 1400sqm and there was nowhere near this area being so used. Therefore, I find that this part of the enterprise was well behind schedule.
31. The limited production of vegetables and flowers was reflected in the small range of markets that have been found for the produce. Mention was made of 'Tamar Grow' in nearby Callington, a letter of interest from a shop in the nearby village of St Germans and a movement into online sales. The Appellant said that the use of the shed under construction would help, as it would be used to dry flowers.
32. I understand the point that the certainty that gaining planning permission to live on the land would bring to this side of the business, especially in terms of the investment in perennials. However, very little progress had been made in terms of the vegetable and flower business both in terms of production and the limited markets that were identified. The figures for future growth in both the FBP and ARBA were based on the figures for bed provision that I refer to,

above. The Appellant did not provide convincing arguments that the changes in vegetable and flower production would lead to the forecasts in the FBP and ARBA being met.

33. The ARBA acknowledges that there is no essential need for a permanent presence arising from vegetable production, and I would agree. I give some limited weight to the argument put forward regarding the need to act quickly to tend flowers in frosty conditions. However, as set out in the ARBA, the nature of the local climate mean that there would be little threat of frost damage. As put forward by the Council, I find that an alertness to weather forecasts should provide an opportunity to address the problem before it occurs. Although I understand the need to pick flowers early in the day, I do not see the need to live on the site to do so.
34. Trees planted on the land are coppiced and pollarded to be used in the production of biochar and charcoal on the land; in addition, their fruit and nuts can be used as pig feed. If there is insufficient wood for burning available from the land, this can be supplied by local tree surgeons looking to dispose of their waste, and the Council's arms' length highway contractor had also approached the Appellant about its waste.
35. Biochar is produced during a season from July to September, when the activity is carried out for 3 days per week for some 13 weeks. Charcoal is produced from late summer onwards. Both require some time and effort for stacking and drying the material and then to be present when it is burnt, to ensure that this occurs in a controlled manner. A presence is needed during burning to address any problems that might arise, such as oxygen getting into the burn.
36. Notwithstanding the need to be there during the burns, the evidence showed that this did not require an overnight presence. The nature of this part of the enterprise, allied to the short period when the operations are carried out, gave little support to the functional need for a permanent presence on site.
37. In reaching this finding, I took account of the Appellant's son's proposal to invest in a gasifier that would increase production and that the resultant Biochar would be of a higher quality with greater returns. I also took into account that the economics of the Biochar production were looking better than they were at the time that the FBP and ARBA were produced. Neither, however, is persuasive that a permanent presence is required.
38. No real case was put forward in support of the need for a full-time residential presence arising from the activities associated with the waste enterprise, 'Arb Waste Limited', nor in the plans to provide seasoned logs for sale. However, I have taken account of the work associated with this in my findings.
39. Other enterprise opportunities are also being considered for the future, including camping and 'walk arounds' where people pay to visit the enterprise. There was, however, little detail regarding taking these forward. As things stand, these add no weight to the argument for a permanent presence on the land.
40. Rural crime is an important issue for all rural enterprises; it is a material consideration to which I give due weight. The Appellant's "objective" estimation was that this would equate to 25% of the labour requirement. The Appellant's son pointed to many small tools that he has, as well as a chipper and tractor.

He recounted one incident of an unknown character on the land to illustrate security concerns and asked how many more might there have been if they weren't on the land. I was told of a police force "not functioning as it should" that has no interest in rural crimes.

41. I am aware that not living on the land would impact upon the Appellant and her son, who said that he would have to carry his tools in his car with the additional insurance and running costs that this might entail. I do not underestimate the security issues, and the effect that these can have on a small holding such as this. These provide arguments in favour of the proposal.
42. However, the 'on balance' position that I have reached on the need for a full-time presence on the land is not counter-balanced by the security arguments put forward. In this, I have had regard to the Council's arguments regarding additional security at the holding, such as remote alarms, and that the land is not easily accessible and would be less so with a stronger gate.

Conclusion on the location of the proposed development

43. For the above reasons, I find that it has not been demonstrated that the farming activities on the land, which were well behind 'schedule', justified the need for a full-time presence on the land. I find this to be the case when the activities are looked at both individually and cumulatively. Given the manner in which plans have been changed and the scheduled growth slipped, I do not have confidence that the circumstances presently support allowing the development for a temporary period. Therefore, I find that the erection of the building for residential purposes to be contrary to the terms of LP Policy 7 and the Framework.

Character and Appearance

44. The site lies within an area identified as Landscape Character Area ('LCA') 25 'Lynher and Tiddy River Valleys', albeit very close to the boundary with LCA 22 'South East Cornwall Plateau'. The Cornwall and Isles of Scilly Landscape Character Study describes LCA 25 as an extensive but narrow river system and talks of steeply-sided valleys that are well wooded. The description of inland LCA 22 refers to a plateau intersected by river valleys, it is an area that is generally sparsely populated with dispersed settlements and isolated farms. Given the site's location close to the boundary between the two LCAs, it is unsurprising that the descriptions of both might apply to the land. It is of relevance that amongst the 'Pressures' on the landscapes identified by the LCAs are, for LCA 25, "Isolated dwellings in the countryside" and, for LCA 22, "Demand for rural housing".
45. The dwelling has been erected close to the highest point on the land. Although it is in the order of a mile distant, it can be clearly seen from a lane to the east that crosses the main railway line and runs down to the A378. Notwithstanding the presence of the shed that was under construction and the relatively small size of the dwelling, the latter appeared as an isolated feature that causes harm to the character and appearance of the area. This was exacerbated by its lighter, eye-catching colour.
46. I acknowledge that there are other, often quite large developments in the landscape and some of these have a markedly greater effect on the landscape than the dwelling. However, it has not been demonstrated that there is a need

for the dwelling that might justify the harm that it causes. Had it been, the harm would have been outweighed.

47. The aim of LP Policy 23 is to protect the character and appearance of the countryside. This is not the result of the development, which is contrary to the terms of this policy. This conclusion is based on my finding that a need for the dwelling had not been demonstrated. Had it been, the limited landscape harm would have been outweighed.
48. The Notice refers to LP Policy 7 in respect of the effect on the character and appearance of the area. However, it relates to housing in the open countryside. Its only reference to character and appearance arguments is in its criterion dealing with replacement dwellings in the countryside. That is not what is before me, so I find that the policy has no relevance to this main issue.

Protected Habitats

49. 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 undertake the AA, nor consider the matter any further in respect of the Habitat Regulations.

Conclusion on Ground (a)

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

Ground (f)

51. An appeal under Ground (f) is that that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
52. In this appeal, the purpose of the Notice is to remedy the breach of planning control. The assessment that I have to make is whether there is an obvious alternative or lesser step that would achieve this purpose with less cost and disruption.
53. The Appellant proposed that the building might be re-purposed for agriculture. How this might be achieved was not expanded upon, save for acknowledging that some of the fenestration would need to be replaced and that it would be used for livestock and general agricultural storage.
54. No plans showing how this building that has clearly been designed and built as a dwellinghouse might be re-purposed. No evidence has been put forward of the need for the retention of the building and, as I have noted, a new building was under construction that might be used for these purposes.
55. Although I understand the arguments regarding sustainability, given the harm that has been identified, the purpose of the Notice and the lack of an obvious alternative or lesser step that would achieve this purpose, the arguments put forward are not sufficient for the Ground (f) appeal to succeed. Furthermore, on this question of sustainability, I am heartened by the arguments that were put forward by the Appellant in the discussions regarding how the building

might be moved. This would seem to preclude the need to demolish it before removing it from the land, allowing the potential for re-use elsewhere.

56. I have found that the solar panels have little effect on the character and appearance of the area. I agree that these, and the gas bottles, have a role to play in the use of the land for the agriculture and other rural activities that were discussed. I will, therefore, vary the requirements of the Notice to remove these from the list of "materials and debris" to be removed from the land in Section 4 of the Notice.

57. The Ground (f) succeeds to this limited degree.

Ground (g)

58. An appeal under Ground (g) is that the time for compliance specified in the notice falls short of what should reasonably be allowed. Here, the Council has allowed 10 months for compliance. The Appellant argues that a minimum of 12 months is required and, ideally, 18 months should be given.

59. The case put to me was that it would be very difficult to find suitable accommodation that was affordable in this part of Cornwall. There would also be problems with finding accommodation for the livestock that is on the land. It was also argued that there was the ever-present threat of further lockdowns.

60. I have no doubt that finding alternative accommodation that is affordable in this area would be very difficult. This leads me to find that 10 months would not be a reasonable period for compliance with the Notice, and that this should be varied to 12 months. I have taken the potential issues relating to the relocation of livestock into account, but these carry relatively little weight as I was not given adequate reasons as to why they could not live on the land and be looked after by the Appellants living in another location.

61. I find that the case for 18 months has not been made.

62. The point about lockdowns was made at a time when there was a greater possibility of their recurrence. This seems a very unlikely prospect now. However, should such an event occur that affected the Appellant's ability to comply with the Notice, the Council has powers to extend the period under s173(1)(b).

63. I will vary the period for compliance to 12 months and, thus, the Ground (g) succeeds.

Conclusion

64. 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:

Ms Dina Hellier	Appellant
Alexander Hellier	Appellant's son
Chris Tivey BSc(Hons), BPL MRTPI	Planning Consultant
Robert Rhys MRICS, FAAV	Chartered Surveyor

FOR CORNWALL COUNCIL:

James Holman MRICS, MRTPI FAAV	Principal Development Officer
Ben Bassett	
Jennie Mason	Enforcement Officer Observer

DOCUMENTS

- 1 Statement of Common Ground
- 2 Cornwall Monitoring Report, Cornwall 5 Year Housing Land Supply
Statement – 14 July 2022
- 3 Photographs of agricultural building erected on the land