



Appeal Decision

Hearing held on 24 January 2023

Site visits made on 23 and 24 January 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal Ref: APP/D0840/W/21/3277170

Windy Ridge, Road from junction at Lyndale to Carnkief, Perranwell, Goonhavern TR4 9PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by L Campbell against the decision of Cornwall Council.
 - The application Ref PA20/05585, dated 6 July 2020, was refused by notice dated 12 May 2021.
 - The development proposed is for 1no additional mobile home on existing Traveller site.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development upon the character and appearance of the area;
 - Whether the access is suitable for the development; and
 - The effect of the proposal on the Fal and Helford Special Area of Conservation (SAC) and the Penhale Dunes SAC.

Reasons

Character and appearance

3. The appeal site is first approached via an unmade track which rises from the road in Perranwell which provides vehicular access to a number of dwellings turning into a narrow Public Right of Way only accessible on foot. The path links to an extensive network of footpaths to the north and east.
4. The site is formed of two triangular parcels of land bisected by a path located within open countryside. The parcel to the south includes a caravan enclosed by a timber shroud with ancillary domestic structures concentrated at one end of the site. The site moving away from Perranwell is largely open and planted with fruit trees. The second parcel is largely scrub with tree specimens along part of the boundary with the track.
5. The site lies within the Newquay and Perranporth Coast Landscape Character Area (LCA) which is characterised by an open and exposed landscape with little tree cover and extensive areas of rough ground and scrub. A dispersed pattern

of rural settlements of medieval farmsteads and miners' smallholdings is a noted characteristic of the LCA. It is also viewed with the Newlyn Downs LCA which is typically an open and gently undulating plateau characterised by open and extensive views.

6. It was agreed, at the hearing, that there had not been any changes of material significance to this part of the landscape since consideration of the previous appeal¹ in 2016.
7. At the hearing the Council directed me to longer-range views of the site from the surrounding landscape. When travelling along Reen Cross and nearby roads, I was able to make out the shroud around the caravan, however, I was specifically looking for the site. Whilst visible, I am not persuaded that the site would be obvious to the casual observer.
8. Turning to the road near Perranzabuloe, the site was noticeable, albeit glimpsed, screened by intervening trees and vegetation. Due to the screening that is present along the roadside the development would not be highly visible, from the road when travelling in either direction, even during autumn or winter when most of the foliage would not be present.
9. Despite the Council's contention I was unable to make out the site with any certainty from the Public Right of Way extending from Perranzabuloe Church across the surrounding landscape.
10. Turning now to close range views of the appeal site - these are largely limited to the path bisecting the site. As the path rises from Perranwell towards the site the path is bounded on both sides by high hedgerows providing some screening. Travelling down in the opposite direction towards Perranwell both parcels including the caravan and associated structures are clearly visible due to the drop in height of the vegetation and open nature of the western part of both parcels.
11. The proposed development is for a mobile home positioned on the northern parcel of land for the appellant's daughter. Vegetation to some extent would screen it, but nonetheless, the development would be viewed as a modern residential insertion into the landscape. Whilst it would be only appreciable from close-by its modern appearance would be stark in contrast to the low-key appearance of the existing structures resulting in an unduly prominent feature within the local landscape.
12. Whilst the site does not sit within a designated landscape, the proposal would result in the loss of undisturbed scrub, which is a key feature of the local landscape. Whilst mobile homes can be part of the accepted rural landscape the resultant harm caused by the spread of development comprising the mobile home and associated paraphernalia onto the opposite side of the path and this intrusion into the countryside would be significant.
13. I accept that longer range views of the site are relatively limited, yet I observed that the site is clearly visible from the path when approaching Perranwell. Whilst the extent of the area from which any harm would be appreciated would be localised, I still find that the development would adversely affect landscape character.

¹ APP/D0840/C/15/3051132

14. I conclude that the proposed development would adversely affect the character and appearance of the area contrary to Policies 1, 2, 12 and 23 of the Cornwall Local Plan (2016) (LP) which, amongst other things, require proposals to maintain and respect the special character of Cornwall including the natural landscape and environment taking into account its sensitivity capacity for change.
15. It would also be contrary to paragraphs 130 and 174 of the National Planning Policy Framework (the Framework) which, amongst other things, seek to ensure that developments are sympathetic to local character and history, including landscape setting and contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
16. I note the council have referred to Policy 7 in the reason for refusal, however, I find that with specific regard to this appeal I have given it negligible weight in coming to my decision.

Access

17. The Council, in their Statement of Case, contended that the site would not be an appropriate location for housing with regard to the accessibility to nearby services and facilities. However, the Council now advise that the site is located within a reasonable distance of nearby settlements and thus is an appropriate location in terms of accessibility to local services and facilities. This matter is no longer in dispute, and I have no reason to disagree based on the evidence presented.
18. Despite the above, the Council express concerns regarding the length and condition of the access. At the time of my visit the track was uneven and muddy with some exposed tree roots under foot. There is no doubt that the path is steep and uneven, and the appellant does not challenge this. The extent to which this represents a poor access is a matter of perception.
19. Due to the condition of the path access depends on the appellant and her daughter being willing to walk along it and remaining relatively fit and healthy to do so. There is nothing before me to suggest that the appellant and her daughter are unwilling to or unable to navigate the path despite its condition and length. Furthermore, I give weight to the fact that the appellant has been using the path for a number of years without an apparent hindrance.
20. As such, the site would be unlikely to provide a suitable permanent base. However, this matter could be address through the imposition of a permission personal to the appellant and her daughter.
21. Having regard to the particular circumstances of the case I find that the access serving the development would not be unacceptable. As such it would accord with LP Policies 11 and 27 which, amongst other things, seek sites to be located to ensure reasonable access to services and facilities and provide safe and suitable access for all people.

The effect upon the Fal and Helford SAC and the Penhale Dunes SAC

22. The site lies within the Zone of Influence of both the Fal and Helford SAC and the Penhale Dunes SAC. The Fal and Helford SAC is one of the richest examples of sandbanks in the UK harbouring a variety of epifaunal and infaunal species;

sheltered intertidal mudflats and sandflats; large shallow inlets and bays supporting important sediment communities and saltmarsh vegetation. The Penhale Dunes SAC principally comprises fixed dunes with herbaceous vegetation and humid dune slacks supporting a number of uncommon plant species.

23. As the appeal site is in close proximity to both SACs, a net increase in housing is likely to adversely affect the integrity of the habitat sites through recreational visits to the protected habitats. Thus, it is necessary for me, as the competent authority for the purposes of the Habitat Regulations², to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SACs.
24. Cornwall Council has agreed Strategic Access Management and Monitoring measures (SAMM) with Natural England requiring a mitigation payment per new residential unit, which includes caravans and mobile homes, within the Zone of Influence to fund the SAMM.
25. I acknowledge that the Council suggested that the payment or the mechanism to secure the payment could be secured by condition. The Planning Practice Guidance (PPG) sets out that a positively worded condition which requires the applicant to enter into a planning obligation or an agreement under other powers, is unlikely to pass the test of enforceability. The PPG also states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate. However, I have not been presented with any substantive evidence that exceptional circumstances have been demonstrated.
26. Therefore, in the absence of a planning obligation I am not satisfied that the impact of the development would be mitigated and that a likely significant effect on the integrity of the SAC would not occur.

Personal circumstances

27. The appellant advises that since the previous appeal her workshop is now in Parranporth, rather than Penryn. Yet, her low impact way of living seems essentially the same as that before the previous Inspector. The harvesting of rainwater; use of a composting toilet; a solar panel to generate electricity and the growing of much of her own food was evidence put to me and my colleague. This low impact would extend to the development including landscaping, biodiversity enhancement and to the point that it would be well insulated sitting on screw pile foundations minimising its impact on the soil below.
28. As evidenced by Mr Yeo and the letters of support, the local community support the way the appellant occupies the site and attest to her contribution to the local community. Overall, to me, this demonstrates social and environmental benefits in accordance with the Cornwall Climate Emergency Development Plan Document and the Framework. However, this does not necessarily mean this would remain the case in respect of the appellant's daughter. I therefore give this moderate weight in the balance.

² Conservation of Species and Habitats Regulations 2017 (as amended)

29. The appellant is a New Age Traveller, which she advises, is specific to the south-west. It is agreed in the Statement of Common Ground that the appellant falls within the definition of gypsies and travellers as set out in Planning policy for traveller sites (PPTS).
30. The PPTS states that gypsies and travellers are persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily.
31. The development would be for the appellant's daughter who I understand recently returned to Cornwall after living abroad for a number of years and now lives in Newquay. The appellant advised that when her daughter was young, they would travel together during the summer months selling goods at festivals. She advised that her daughter wanted to return to this way of life spending the summer months on the road travelling to festivals, and in the fullness of time would take over her business. Whilst she may well have had a nomadic background when she was younger it appears that this lifestyle ceased when she lived abroad.
32. The question of whether someone leads a nomadic habit of life is not the same test as whether they are considered a gypsy or traveller. In the planning judgement the status of the appellant's daughter is one that is finely balanced.
33. I have not been provided with any substantive evidence that the appellant's daughter currently lives a New Age Traveller habit of life thereby I am not satisfied that the appellant's daughter meets the definition of a gypsy and traveller as set out in the PPTS, despite the status of the appellant.
34. At the hearing the appellant advanced a fallback position contending that her daughter could occupy the site as a resident dependant. Whilst it is not uncommon to find adults living with their parents, in my judgement, a resident dependant is anyone who depends on the beneficiary of the permission for support including financial, physical and emotional. Children normally cease to be dependants when they reach 18 unless they have some specific need.
35. Whilst I have sympathy with the appellant's circumstances and the wish for her and her daughter to live together, I have not been presented with any specific need for the appellant's daughter to live on site beyond an understandable desire to live close to her mother. Therefore, based on the evidence presented I am not persuaded that the appellant's daughter could be considered to be a resident dependant.

Planning Balance

36. I have found that the development would result in harm to the surrounding landscape in conflict with the development plan and based on the evidence before me I am not satisfied that the gypsy and traveller status of the appellant's daughter has been established.
37. In taking these considerations together the proposal conflicts with the development plan when taken as a whole and there are no material considerations that outweigh this conflict. As such, I conclude that the appeal should be dismissed.

Human Rights

38. Article 8 of the European Convention of Human Rights (ECHR) is the right to respect private and family life, home and correspondence. These are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country which has been held to include the protection of the environment and upholding planning policies.
39. Whilst dismissing the appeal may result in some interference with the rights of the appellant and her daughter under Article 8 of the ECHR, there is no substantive evidence to indicate that the appellant's daughter would be homeless. The interference is proportionate and the minimum necessary for the legitimate public objective of safeguarding the qualities of the local landscape. Therefore, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8.
40. I have given consideration to a planning permission personal to the appellant and her daughter. However, bearing in mind the harm that arises from the development to the local landscape I conclude that a temporary planning permission for any length of time would not be justified.

Conclusion

41. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Lorraine Campbell Appellant

Dr Simon Ruston Ruston Planning

FOR THE LOCAL PLANNING AUTHORITY:

James Holman

Sophie Rogers

INTERESTED PARTIES:

Ken Yeo Local Councillor