



Appeal Decision

Site visit made on 30 May 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal Ref: APP/D0840/C/22/3302531

Land to the east of Swelle Cottages, Poundstock, Bude, Cornwall, EX23 0DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Patrick Hirst against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN21/00052, was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is material change of use and associated engineering works of agricultural fields to B8 use.
- The requirements of the notice are
 - 1) Cease the non-agricultural use of the land outlined in red on the attached plan.
 - (2) Remove all non-agricultural vehicles, items and equipment from the land outlined in red on the attached plan i.e. lorries, diggers, building materials, shipping containers etc.
 - (3) Remove from land all spoil and aggregates and restore the land profile to its former condition prior to works.
 - (4) Remove the new access track from the land and restore land to its original condition.
 - (5) Remove from the land all materials and debris resulting from the above works and restore the land to its former condition of agricultural use.
- The period for compliance with the requirements is 12 months
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) 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 the substitution of the amended plan attached to this decision.
2. Subject to the variation, the appeal is allowed insofar as it relates to land edged black on the plan and marked 'A' where planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for engineering operations comprising the creation of a trackway, bund and hardstanding of the alleged development to be granted permission on land to the east of Swelle Cottages, Poundstock, Bude, Cornwall, EX23 0DW and subject to the following conditions:

A (i) Unless within three months of the date of this decision a scheme for the landscaping of the site is submitted in writing to the local planning

authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purpose of such use shall be removed until such time as the scheme is approved and implemented.

A (ii) If no scheme in accordance with this condition is approved within six months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as the scheme approved by the local planning authority is implemented.

A (iii) Upon implementation of the approved scheme specified in this condition that scheme shall thereafter be retained.

A (iv) In the event of a legal challenge to this decision, or a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until the legal challenge has been finally determined.

B No part of the land shall be used for the parking, storage or maintenance of any vehicles, plant or equipment not connected with the use of the site for agricultural purposes.

3. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to land edged black and marked 'B' on the plan where planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, in respect of the carrying out of engineering operations to create a plateau and bund on land to the east of Swelle Cottages, Poundstock, Bude, Cornwall, EX23 0DW.

Preliminary Matters

4. Where legal grounds of appeal are made, such as with grounds (b), (c) and (d), the onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

The site and relevant planning history

5. The site is in open countryside to the east of the A39. It is accessed through an existing gateway in the northern corner of the site and by the site entrance is a large mound of material and a container. A track runs down to an extensive yard area comprised of hardcore, which has been extended into the adjoining field (referred to as the plateau) with a further area of hardcore where some ninety or so hay bales are stored and an earth bund has been formed. Beyond the bund, the field slopes down to a stream and appears not to serve any agricultural purpose. To the southern part of the site are the foundations for a building an east west orientation. Between the west boundary of the site and the area of hardcore is a large bund of material. There are a number of containers, various items of plant and machinery and stacks of building materials around the site.
6. A field in the northern part of the site is in agricultural use and is bounded from the access track by a fence.
7. The site is at a lower level than the road and is screened by established vegetation on this boundary. Land to the west of the A39 is covered by the

Heritage Coast and Area of Great Landscape Value designations. The site is identified as 'Anciently Enclosed Land' where there could be a high likelihood of surviving archaeology.

8. It was determined that prior notification was not required for two prior notification applications (PA20/02053 and PA21/06131) for agricultural buildings on the site.
9. In 2021 Planning Contravention Notices were served on the site owner and partner who stated that the site was being used to graze sheep and the hardcore and vehicles on the site were in connection with the approved agricultural building. A third PCN was served on the appellant who confirmed that 2000 tonnes of hardcore had been brought in to construct a yard area and a further 8000 tonnes of soil had been excavated to reduce site levels. The appellant states that the landowner has permits for the importation of hardcore.
10. At the time of the Council's site visit it was considered that the site was not being used for any agricultural purpose but for the storage of plant and machinery associated with the appellant's business, Hirst Construction Ltd, as indicated by the photos in the Council's statement. Plant and machinery connected with the business are stored in a compound about 325m north of the appeal site but the appellant states that he has to vacate the site and find alternative premises. A negative response was given to a pre-application enquiry for a change of use of the land from agriculture to a mixed B8 and agricultural use in 2022.

The appeal on ground (b)

11. An appeal on this ground is that a breach has not occurred as a matter of fact.
12. The appellant's case is that there has been no change of use of the land and the use remains agricultural and the machinery and equipment on site is to facilitate the construction of a steel framed agricultural building under PA21/06131.
13. The prior notification application indicated that the agricultural unit extended to 14.9ha and the proposed building would be 30.5 x 15m with a ridge height of 5.8m in a north-south orientation and to be used for the storage of agricultural equipment, fodder and implements. The drawing accompanying the prior notification indicated a large area of bunding and tree screening although the prior notification application only relates to approval of the building.
14. Although the Council's submitted photos only show a limited amount of plant, machinery and vehicles, comments from the Parish Council and local residents provide greater detail and refer to HGVs being left on the site over a period of time, 6 waste skips, 2 office containers, human waste tankers, diesel storage tank and other heavy machinery. Reference is made to the transfer of sewage from a small tanker to a larger tanker. Aerial and other photos submitted by the neighbour confirm that the appeal site was being used for substantially different purposes than for agriculture for a period of time and this has significantly changed the character of the use, which amounts to a material change in the use to a mixed use. I note that after the appeal was made, residents refer to tankers subsequently being removed from the site and

replaced with more agricultural goods such as hay bales, slurry tankers and agricultural tractors.

15. Although the site has the appearance of a construction site at present, with few items of non-agricultural plant and machinery evident at my site inspection, it is clear from the resident's evidence that a change of use had occurred and this is what is relevant in respect of the allegation in the notice, rather than what may be on site today. The area of hardstanding and the extent of engineering works is substantial and extends into the adjacent field with the loss of a section of hedgerow and the carrying out of engineering operations to create a level area or plateau and the formation of a bund. These extensive engineering operations appear to be excessive in respect of the appellant's claims that the works are associated with carrying out the permitted development for the construction of the agricultural building. This is not borne out by the evidence.
16. As a matter of fact and degree the alleged breach has taken place and the appeal on this ground fails.

The appeal on ground (c)

17. An appeal on this ground is that there has not been a breach of planning control and the appellant relies on no material change of use having taken place, although it is acknowledged that the physical works and creation of bunding and landscaping requires planning permission as an engineering operation (para 6.24 of the appellant's statement). In the light of this acknowledgement and the comments in respect of the appeal on ground (b), the material change of use and the engineering works require planning permission, for which none has been granted.
18. The appellant's claimed permitted development rights under Part 6 of the Town and Country Planning (General Permitted Development) England Order 1995, as amended, cannot apply as a result of the change of use of the land that has taken place and the doubt that arises over whether the extensive engineering operations are reasonably necessary for the purposes of agriculture.
19. The appellant has not shown on the balance of probabilities that there has not been a breach of planning control and the appeal on this ground fails.

The appeal on ground (d)

20. An appeal on ground (d) is that it is too late to take enforcement action.
21. In respect of the access track, the appellant has provided a series of Google Earth screenshots in 2009, 2010, 2017, 2018, 2020 and 2021. These show the existence of a track in 2009 that by 2017 has slowly being grassed over, but not abandoned according to the appellant. However, evidence from the neighbour indicates that the work carried out from October 2019 involved excavation of the track by 8 inches and hardcore/ballast put in for a good foundation. This represented more than the repair and maintenance of an existing field track and appears to be a new engineering operation to construct a new formal roadway of some substance and separated from the field by a new fence. As this operation has taken place less than four years prior to the date of the enforcement notice, it is not too late for action to be taken.
22. The appeal on this ground fails.

The appeal on ground (a)

23. An appeal on this ground is that planning permission should be granted for what has been alleged. The main issues in considering this is whether there is any planning policy support for the development and the impact that it has on the character and appearance of the countryside.
24. The breach is clearly set out in the notice. However, the appellant is not seeking permission for the change of use to a B8 use but only for the physical works set out in the notice, namely the access and track, bunding and the plateau.
25. The Cornwall Local Plan at Policy 5.1 (c) states that business uses in the countryside should be of a scale appropriate to its location or demonstrate an overriding locational and business need to be in that location. As the appellant maintains a position of claiming that the alleged development has not taken place, no arguments are put forward in support of the mixed use.
26. The lawful use of the land is agriculture and the prior notification approval for an agricultural building is commensurate with that use and is a commonplace form of development in the countryside. The use of part of the appeal site for B8 storage use and the extensive engineering that has been carried out is not of a scale appropriate to a rural location adjacent to the Area of Great Landscape Value and no clear policy support exists for such a development.
27. The appellant has submitted landscape proposals and a Landscape and Visual Appraisal. It is stated that the earth bund inside the roadside hedge will reinforce the boundary and provide a tree planting area with native species, helping to screen the site from Swelle Cottages. It is argued that the formation of the bank has not significantly altered either the appearance or profile of the land.
28. In respect of the extended area of hardcore and the made-up ground creating a plateau, it is indicated that this will be planted and allowed to 'green-up,' blending with the visible character and nature of the site.
29. I note that the prior notification application indicated that a new landscaped bund was proposed although the approval relates to the building only. There is no indication of the extensive deposition of material to create the extended plateau of hardstanding and hay bale storage area to the east of the original site. These works have had a significant impact on the form and appearance of the landscape which is detrimental to its character. Whilst the appearance of these works could be softened over time as vegetation becomes established, the re-profiling of the site would nevertheless remain intrusive in the landscape.
30. Although visibility of the site is limited from the west or north, the site is visible from other viewpoints such as from the public footpath to the north and east, and from private land.
31. At paragraph 174 of the National Planning Policy Framework (the Framework) refers to development contributing to and enhancing valued landscapes and recognising the intrinsic beauty of the countryside. This approach is reflected in the Cornwall Local Plan particularly in Policies 5 and 23. Policy 23 indicates that development needs to sustain local distinctiveness and character, and protect

the natural environment. The engineering works create alien features in the open countryside causing visual harm.

32. In respect of the access track, although the appellant has not shown on the balance of probability that the track is immune from enforcement action, I do not consider that the effect the character and appearance of the countryside to be at a level that causes harm sufficient for permission to be refused.
33. Similarly, given that appropriate conditions could ensure that the main area of hardstanding and the bund to the west can be landscaped, then this can also be deemed to be an acceptable development. However, the works carried out to create the plateau to the east of the red-line site boundary shown on the prior notification drawing approved under PA21/06131 and which has breached the former field boundary, are unacceptable.
34. I conclude that the development as carried out is contrary to the policies in the local plan and to the Framework, both in respect to the lack of policy support for the change of use and in respect of the impact that the extensive engineering works have on the character and appearance of the countryside. Part of the development can be made acceptable through the implementation of appropriate conditions but the engineering works associated with the plateau cannot. I therefore intend to vary the notice through the substitution of an amended plan and issue a split decision. A further condition to restrict the use of the site for non-agricultural plant and machinery is intended to prevent the reintroduction of a mixed use that has led to enforcement action being taken.
35. The appeal on this ground succeeds to a limited extent.

The appeal on ground (f)

36. The appellant considers that the steps required are excessive and that had the Council engaged with the appellant prior to serving the enforcement notice, lesser steps could have been taken to regularise the position.
37. Under appeal on ground (c) I have indicated that planning permission will be granted for certain aspects of the development but not for the carrying out of engineering operations to create a plateau and bund on the land to the east of the red-line boundary shown on the prior notification plan submitted for the approval of the agricultural building.
38. 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 for the plateau area do not exceed what is necessary to remedy the breach.
39. 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.
40. The appeal on this ground fails in respect of the plateau area.

Conclusion

41. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the engineering operations comprising the creation of a trackway, bund and hardstanding on the land

identified on the substituted plan but otherwise I will uphold the notice with variation and refuse to grant planning permission in respect of the carrying out of engineering operations to create a plateau and bund on the land identified. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

P N Jarratt

INSPECTOR

Plan

This is the plan referred to in the decision letter dated: 5 June 2023

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Scale: Not to Scale

