



Appeal Decision

Site visit made on 10 October 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Appeal Ref: APP/D0840/C/23/3317181

Land east of High Winds, Trethevy, Tintagel, Cornwall PL34 0BG

- 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 Mr Ryan Cathrae against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN22/01395, was issued on 19 January 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the change of use of the land from agricultural to residential use through the stationing of a caravan for residential purposes along with associated operational development including the installation of a septic tank, raised decking, retaining wall and wooden fencing. Also, the sitting of metal containers on land shown in the approximate location by two blue 'A's' on the attached plan. The approximate position of the residential caravan is marked with a blue 'X' on the attached plan and the approximate location of the septic tank is marked with a blue 'C'.
 - The requirements of the notice are: (1) Remove all services connected to the caravan for the purposes of independent human habitation, i.e. electric cabling, water pipes, sewage pipes etc.; (2) Cease the residential use of the caravan shown in the approximate location by a blue 'X' on the attached plan and remove from the land; (3) Demolish and remove the raised decking to the west and north of the caravan shown in the approximate location by a blue 'X' on the attached plan; (4) Dig up and remove from the land the septic tank and connected pipping shown in the approximate location by a blue 'C' on the attached plan; (5) Demolish and remove the retaining wall along the western boundary of site and restore the land level to its original level and condition prior to the unauthorised works; (6) Remove the wooden fencing from the land and restore land to its original condition; (7) Remove from the land the two metal containers shown in the approximate location by two blue 'A's' on the attached plan; (8) Remove from the land all materials and debris resulting from the residential use of the land, including washing line, plant pots etc.; (9) Remove from the land all materials and debris resulting from the above works and restore the land to its former condition and use before the breaches took place.
 - The period for compliance with all of the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) (f) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

Appeal Site, its Environs and Relevant History

2. Trethevy is a small settlement close to the coast, set along the B3263. The appeal site lies towards the northern end of the settlement.

3. A private road leaves the B3263 at this end of the settlement, running south-westwards, parallel to it, to serve a number of residential properties as well as giving access to the land that is the subject of the Notice. Between these two roads, at their junction, a dwelling is under construction. Opposite this building site, on the other side of the private road, a track runs south-eastwards, uphill, through open land. This leads to the area where the development referred to in the Notice is sited, as well as grazing land beyond. When I visited, building materials were being stored on the open land.
4. All of the land that I describe, including the initial length of the private road from its junction with the B3263, is in the Appellant's ownership. He bought land within Land Registry ('LR') Title number CL307832 in June 2017. He thought he had bought all of the land shown in the Title plan but, for reasons of which I am unaware, not all of this was conveyed. What he bought became registered with the LR Title number of CL332446, and included what is now the building site, part of the open land and part of the land covered by the Notice. In October 2017, he bought the land in LR Title number CL334796; this included what might be described as the 'disputed land' from the earlier purchase. The remainder of the land covered by the Notice, a further part of the open land and the field used for grazing is included within this LR Title.
5. In November 2019, the Appellant gained planning permission for the construction of a dwellinghouse on land between the B3263 and the private road. A further grant of planning permission, for the 'Construction of a dwelling with variation of Condition 2 on Decision Notice PA19/09603 dated 26/02/20', was granted in July 2021 on the same land. This is the permission that is relied on for the building works being undertaken.
6. In 2019 the Appellant brought the two containers onto the land. The mobile home was brought on in August 2022. The land on which the caravan sits is largely separated from adjoining land by a stone hedge, stone wall and timber fences. The caravan sits towards the southeast end of the largely enclosed land; it has a large area of decking on two sides, set into which is a hot tub. From the evidence before me, including that of my site visit, the decking is a separate structure that has not resulted in a change from a caravan to a building. The remainder of the largely enclosed land is grassed and used as a garden. The caravan is served by a septic tank that has been installed towards the southern corner of the appeal site.
7. The land to which the Notice relates is clearly shown in the plan attached to it. The map in section 2 of the Council's Statement of Case is simply to put the site into its geographical context and does not purport to provide a definitive location of the alleged breach.

Ground (c)

8. An appeal made under Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. This is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.
9. His case that there has been no breach of planning control is based on two lines of argument: that his land, excluding that used for grazing, is a single planning unit; and that the siting of the caravan is permitted development by

reason of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('the GPDO').

The Planning Unit

10. The leading case for determining a planning unit is *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. It was held in *Burdle* that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key. It held that there are three broad categories: a single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary; a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and the unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes, when each area that has a different primary use ought to be considered as a separate planning unit. The Appellant claims that the first category is relevant here.
11. The Appellant says that he bought the whole of the land, save for the grazing land, with the aim of building a family home with "the remainder of the site being used as part of the same property for his family". The red line that defined the land on which planning permission was granted for the erection of the dwelling was drawn around the area of land at the junction between the track and the B3263. It did not involve the open land, including the appeal site.
12. The evidence shows that the lawful use of the land now in the Appellant's ownership, outside that granted permission for a dwelling, was and is agricultural. I cannot be sure from the evidence whether this was the case with the land on which the dwelling is being built prior to the commencement of the building works. However, the commencement of those works resulted in a new chapter in the history of the land within the red line. From that time, following the line in *Burdle*, although in the same ownership his land comprised two planning units, each with its own primary use. The first of these being a development site for a residential dwelling and the remainder, on which the caravan and containers sit, in agricultural use.
13. The Appellant's aim that the land might be "used as part of the same property for his family" is not explained. Whilst it might remain in his ownership and be used by his family for certain activities, there is nothing in the evidence before me to show that "the Enforcement Site will [lawfully] form the garden of the dwelling under the Planning Permission" nor that it is part of the curtilage of the dwelling under construction. Notwithstanding the field boundary between the grazing land and the open land, there has been no planning permission that would allow for this claimed use. From the evidence before me, the lawful use of the land remains as being for agriculture.
14. Therefore, I find that the Appellant's claim put forward here, that the siting of the caravan is incidental or ancillary to the residential dwelling, is incorrect. They are on separate planning units.

Whether permitted development

15. Part 5, Class A of the GPDO sets out that the 'use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2' would be permitted development. Paragraph A.2 states that the circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the Caravan and Control of Development 1960 Act. These are the cases where a caravan site licence is not required, and thus the siting of a caravan is permitted development. The argument put forward by the Appellant is that there has not been a breach of planning control as a site licence is "not required for the use as a caravan site of land which forms part of, or adjoins, land on which building or engineering operations are being carried out (being operations for the carrying out of which permission under Part III of the Act of 1947 has, if required, been granted) if that use is for the accommodation of a person or persons employed in connection with the said operations".
16. There are, therefore, two 'tests' that the Appellant needs to meet in respect of the siting of the caravan. Firstly, what might be termed a 'location test': that the caravan is sited on land that forms part of, or adjoins, the site on which the dwelling is being constructed. Secondly, an 'occupation test': that it accommodates a person or persons employed in connection with the work.
17. Clearly, the caravan is not sited on the land where the dwelling is being built. "Adjoins" is not defined in the 1960 Act, and this is a matter to be assessed on a case-by-case basis as a matter of fact and degree.
18. Given the position of the red line identifying the land with planning permission, the private road forms part of the open land and thus the two areas of land adjoin one another. Even if this assessment were held to be incorrect, the private road is narrow and, consequently, the degree of separation between that land and the open land is of minimal. In terms of an assessment as to whether the two areas of land are adjoining, I find the effect of the road to be *de minimis*. The two areas would still adjoin one another.
19. Although the caravan is not set directly on the boundary between the two parcels of land, I have not been made aware of any requirement for this to be the case. I understand the Council's suggestion that there has to be a physical and visual relationship between a caravan and a building site under Part 5 Class A. Notwithstanding that the caravan is sited towards the further end of the adjoining land, I find that the distance between the two is not so great as to result in a lack of a physical relationship. In visual terms, although viewed between two intervening dwellings, I was able to see the building site from the land that is the subject of the Notice. There is, therefore, the visual relationship that the Council suggest is required.
20. Therefore, as a matter of fact and degree, I find that the caravan is on land that adjoins the building site and the location test in Part 5, Class A is passed.
21. In November 2022, the Appellant returned a completed Personal Circumstances Questionnaire sent to him by the Council. He set out that he worked for a scaffolding company for 50-70 hours a week. This reduces the amount of time that he could be employed in the construction of the permitted dwelling.
22. The Council's view is that what time he might put into work on the building site would not be sufficient to be considered being employed as required by Part 5,

- Class A. The Appellant responds by saying that he “is continually involved himself working on the construction of the dwelling as permitted by the Planning Permission as his family home”.
23. Whilst I understand the Council’s point, I am not convinced that a person employed elsewhere, even in a job with longer hours, cannot be employed in the building operations as required by Class A. Many people do this over the relatively short period of building a dwelling, when the goal is a home for their families.
24. Assessed as a matter of fact and degree, based on the evidence before me, I find that the Appellant is employed in the construction of the dwelling and thus the occupation test is met.
25. Accordingly, I find that the siting of the caravan is permitted development under the terms of Part 5, Class A of the GPDO.
26. From the evidence, including that of my site visit, the containers are not being used for residential purposes. One is being used for welfare purposes and as a site hut, with the other being used for safe and secure storage of materials and tools. Both are being used for purposes related to the construction of the house on the adjoining land. The site hut is sited in such a way as to form part of the boundary of the land being used for residential purposes. However, whilst it has two windows facing onto the ‘residential land’, its door is on the opposite side and thus access is from outside that land. I find that they are not being used for residential purposes, which is alleged in the Notice. Notwithstanding this, I shall address the arguments that the parties put forward in respect of them.
27. Similar lines of argument are made by the Appellant in respect of the siting of the containers as were given for the siting of the caravan. In respect of that relating to the land where the house is being built and the land where the containers are sited being a single planning unit, the reasons I give above regarding the caravan are germane here. They need not be repeated, save to say that this is not the case.
28. He also points to the permitted development rights conferred by Schedule 2, Part 4, Class A of the GPDO. The right in Class A is for “the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land”.
29. This argument, again, hinges on the meaning of the word “adjoining”. For the reasons that I give in respect of the caravan, I find that the two parcels of land do adjoin one another, and the containers are permitted development by reason of Part 4, Class A of the GPDO.
30. The result of my assessment is that the caravan and the containers are permitted development by reason of the terms of the GPDO.

Other Matters

31. Whether the decking, wall or other operational development at the site are separate breaches of planning control, as set out in a letter from ‘Residents of Trevethy’, is a matter for the Council. I am determining an appeal alleging a material change of use, rather than operational development.

32. I note that an application¹ to develop the open land for residential purposes was refused by the Council, and the subsequent appeal² dismissed. I also note the concerns of the 'Residents' expressed in their letter regarding the future development of that land. However, arguments related to the merits of developing that land are outside the remit of my decision.

Conclusion

33. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (f) and (g) do not fall to be considered.

Roy Curnow

Inspector

¹ PA18/09106

² APP/D0840/W/19/3225512