



Appeal Decisions

Site visit made on 7 November 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Seven Acres, United Mines, St. Day, REDRUTH, Cornwall, TR16 5HX Appeals by Mr Robert Lord against decisions of Cornwall Council

Appeal A Ref: APP/D0840/X/22/3308779

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, against a refusal to grant a certificate of lawful use or development (LDC).
- The application ref P22/07809, dated 24 August 2022, was refused by notice dated 11 October 2022.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is for use of land and buildings for domestic purposes.

Appeal B Ref: APP/D0840/C/22/3308223

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The enforcement notice, numbered EN22/00823, was issued on 21 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an extension to an existing agricultural building.
- The requirements of the notice are to dismantle and remove from the site the attached unauthorised block-built extension in its entirety, as identified in purple on the plan attached to the notice.
- The period for compliance with the requirement is 6 months.
- The appeal is proceeding on the ground set out in section 174(2) (a) 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.

Appeal C Ref: APP/D0840/W/23/3321686

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application ref PA/22/08948, dated 24 October 2022 was refused by notice dated 12 January 2023.
 - The development proposed is for the retention and completion of an extension to form a two storey dwelling.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. It is directed that the enforcement notice is corrected by the deletion of the words “erection of an extension” in the allegation and their replacement with the words “erection of a partially constructed extension”.
3. 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.

Appeal C

4. The appeal is dismissed.

Preliminary Matters

5. For the avoidance of doubt I should explain that in Appeal A, the planning merits of any use or operations are not relevant and not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on the relevant planning law and judicial authority. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
6. The Council has advised that there is a drafting error in the enforcement notice in the reasons for issuing the notice. Incorrect reference is made to Policy 24 Heritage Assets, of the Cornwall Local Plan. Reference should have been made to Policy 23 Natural Environment.
7. In Appeal B the allegation refers to the erection of an extension to an agricultural building. However at my site inspection it was clear that the extension has not been completed as it was without a roof, windows, doors and a floor to what appears to have been designed as an upper level. I therefore intend to correct the allegation in the notice to refer to the partially constructed extension to an existing agricultural building. This correction can be made without injustice to the parties.
8. In Appeal C, an application for costs by the Council against the appellant has been made. This is the subject of a separate decision.

The site and relevant planning history

9. The appeal site in Appeal A forms part of a larger holding in open countryside within the Cornwall and West Devon Mining Landscape World Heritage Site. Adjoining an existing agricultural building is a partially constructed blockwork building without a roof but with openings for windows on two levels and an external doorway. It is substantially greater in scale than the adjoining agricultural building. To the west of the building is a small orchard. To the rear of the unauthorised building extension are three containers said to be used for domestic storage.
10. To the north of the site of Appeal A, partially separated by a hedge, is a hardstanding and a caravan occupied by the appellant. This forms part of the larger area subject to the enforcement notice in Appeal B. The site subject to Appeal C is the same as for Appeal A but includes the trackway to the Byway Open to All Traffic.

11. Permission was granted in 2009 for the agricultural building limited to use for agricultural purposes.
12. In February 2022 an LDC was granted for the stationing of a caravan used for residential purposes (PA21/11415). The site area of the LDC does not include any part of the site relating to Appeal B.
13. Following enforcement investigations in respect of an alleged breach of condition relating to the agricultural building in use as a private workshop for maintenance/hobby use, as a store for tool and domestic items, and the siting of shipping containers, the Council judged that various uses taking place were immune through the passage of time.
14. The agricultural building has been unlawfully extended which is the subject of Appeal B. In May 2022 permission was refused for the retention and completion of the agricultural building (PA22/01553) and a subsequent LDC application was refused for the use of the land and buildings for domestic purposes, which is the subject of Appeal A.
15. An application for the retention and completion of the extension to form a two storey dwelling has been refused (PA22/0894) and this is the subject Appeal C.

Appeal A

16. In Appeal A the main issue is whether the Council's decision to refuse to grant an LDC was well founded.
17. The appellant's clarification of his LDC application states that it is for the extension of the domestic curtilage approved in the LDC for the caravan (PA/21/11415). However, the term 'curtilage' should not be confused with the use of land and it appears from the appellant's submissions that what is applied for is the use of the appeal site for purposes incidental to the use of the adjoining site for the siting of a mobile home for residential purposes.
18. For the use of the site and buildings for domestic purposes to be lawful, the appellant must demonstrate on the balance of probability that the use commenced at least 10 years before the application and has continued without a break since then and that the claimed use subsists on the date of the application. The relevant date is therefore 11 October 2012.
19. The appellant's general affidavit dated 24 August 2022 is brief and states that the area of land within the red line on a map has been used as part of his residential home for private domestic use for a period of over 10 years.
20. The appellant has owned the land since 2008 and that the building was completed in 2010 although it is stated that the land and building have never been used for or in connection with any agricultural business. He says he uses the appeal site as an extension to his domestic curtilage and the building for hobby and leisure use and for the storage of white goods. The two large machines in the building are classic machines that have been or in the process of restoration. The remaining grass fields are grazed by other peoples' animals.
21. Whilst it appears that the land has not been used for agricultural purposes for some time, little evidence has been submitted by the appellant, as he agrees, to show on the balance of probabilities that a material change in the use of the land has occurred and continued for 10 years prior to the application being

made. The fact that the land containing the orchard may have been regarded by him as being in a domestic use, in reality, it does not form part of the curtilage of the caravan that benefits from the LDC, nor does it achieve a domestic use through ownership and it is possible that any claimed domestic use of the land and building was at a de minimis level initially. The onus of proof rests with the appellant and this has not been demonstrated in this case.

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land and buildings for domestic purposes was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

The appeal on ground (a) and the deemed planning application

23. The appeal on ground (a) 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. The terms of the deemed planning application are derived from the allegation. Hence, the development for which planning permission is sought, is the erection of a partially constructed extension to an existing agricultural building.
24. The main issue in this appeal is whether there is any justification for the partially constructed building extension.
25. The appellant states his original intention was to use the building to accommodate white goods and light storage. It was constructed to a standard to provide long term prospects as a future home for himself. In the event, an application was submitted to retain the extension as a two storey dwelling which has been refused and is the subject of Appeal C.
26. Notwithstanding this background and the current intentions of the appellant I have determined this appeal on the basis of the unlawful structure that has been erected. I note that the County Land Agent does not consider the building serves an agricultural purpose in connection with the smallholding and has limited functionality as an agricultural or rural enterprise workshop.
27. Although the scale and size of such a building for agricultural purposes would not be unusual or inappropriate in the open countryside, in this case no such justification is argued. Indeed, the agenda appears to have been to create a dwelling in the longer term.
28. Policies in the development plan seek to ensure development is appropriate to its context and respects its surroundings. The development fails to achieve this and is harmful to the intrinsic rural character of the area through its prominence and incongruity. Although the site is within the WHS, the effects of the development upon the attributes of the Outstanding Universal Value of the WHS are insignificant and the overall effect on the WHS is neutral. However this does not outweigh the harm to the rural character of the area.
29. I conclude that in the absence of any special justification, the development is contrary to the policies 1, 2, 12 and 23 of the Cornwall Local Plan regarding spatial strategy, design and the natural environment; and, to policies GQD1,

GQD2 and LL5 of the Gwennap Neighbourhood Development Plan regarding the quality and sustainability of development.

30. 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.

Appeal C

31. The appellant points out that the officer's report incorrectly refers to a single storey extension. The proposed development subject to this appeal is a two storey dwelling of some 7.5 x 15 metres footprint and about a metre higher than the agricultural building to which it is attached. The appeal relates to a retrospective application for the completion of a partially constructed building as a two storey dwelling.
32. The appellant justifies the proposed dwelling on the basis that he has lived on the land since 2010 in an energy inefficient static caravan now reaching the end of its life. There is a shortage of affordable housing and the self-build would meet a local need. He considers it not to represent sporadic development and I note that there is other development in the vicinity including a static caravan close to the boundary hedge,
33. National and local planning policies seek to protect the countryside from harmful development and new dwellings are restricted to special circumstances as set out in Policy 7 of the Local Plan and paragraph 80 of the National Planning Policy Framework. The development meets none of the specified criteria and fails to accord with these policies. It also falls outside the scope of the residential policies of the Gwennap Neighbourhood Development Plan.
34. The proposal is of poor quality design of little merit which fails to sustain local distinctiveness and character or to respect the visual qualities of the area, notwithstanding that established vegetation screens some of the site.
35. The proposal would utilise existing services and an existing access without any increase in traffic. It would also respond to the housing crisis by increasing the permanent housing stock. However these factors alone do not outweigh the harm caused.
36. It is noted that the Parish Council objects to the proposal and that the development has support from a neighbour.
37. For the reasons given above I conclude that the appeal should be dismissed as it is contrary to both local and national planning policies.

P N Jarratt

INSPECTOR