



Appeal Decision

Hearing held on 31 October 2023

Site visit made on 31 October 2023

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Appeal Ref: APP/D0840/C/22/3301721

Land East of Deviock, Cardinham, Bodmin, Cornwall, PL30 4DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alan Constance against an enforcement notice issued by Cornwall Council.
- The notice was issued on 16 May 2022.
- The breach of planning control as alleged in the notice is a material change of use of agricultural building approved under planning permission PA19/07037 to a residential dwelling house and the erection of a wooden lean-to building attached to the agricultural used for incidental residential use. The approximate position of the agricultural building with attached lean-to is marked by a blue X on the attached plan.
- The requirements of the notice are to 1. Cease the residential use of the agricultural building shown in the approximate location by a blue X on the plan attached to the enforcement notice, 2. Remove from the agricultural outbuilding shown by a blue X on the attached plan all domestic paraphernalia i.e. washing machine, bathroom etc. 3. Demolish and remove all operational development within the agricultural barn not approved under PA19/07037 i.e. staircase, internal stud walls, mezzanine floor etc. 4. Restore and use the agricultural building shown in the approximate location by a blue X on the attached plan as approved under planning permission PA19/07037, 5. Cease the incidental residential use of the wooden lean-to to the east of the agricultural barn shown by a blue X on the attached plan for storage of non-agricultural items and remove water filtration system, 6. Remove from the land all domestic paraphernalia i.e. garden furniture, washing line etc. 7. Remove from the land all materials and debris resulting from the above works and restore the use of the land and all buildings to agricultural.
- The period for compliance with the requirements is eighteen months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e), (f) and (g), 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.

Preliminary Matters

1. Since the appeal was made a ground (a) appeal has been added.

Human Rights

2. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Article 8 of the European Convention on Human Rights notes everyone has the right to respect for his private and family life, his home and his correspondence and there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Decision

3. 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.

Reasons

Ground (e)

4. The Planning Contravention Notice shows that no person has a legal interest in the land apart from the appellant. A copy of the enforcement notice was sent by recorded delivery to the address in the Land Registry for the appellant and this was signed for, although the appellant notes he does not recognise the signature. There is a record of delivery from the Post Office. The Council notes that the notice was also delivered by hand to a person at the site. The appellant says he had no knowledge of this and thinks it may have been given to a friend's daughter. The notice was found on the premises.
5. I consider that the Council has served the enforcement notice as required. It is also relevant that the appellant is well aware of the enforcement notice, appealing against the notice and providing evidence for this hearing, so there would be no prejudice or issue of natural justice in any case. The appeal on ground (e) fails.

Ground (b)

6. Only part of the existing agricultural building has been converted for the dwelling.
7. The appellant says that the allegation is not correct as what is alleged has not occurred. Clearly some residential use has occurred as this is recorded by the appellant in the Planning Contravention Notice. The question is whether that has involved the whole building or just part and whether it includes the lean-to structure and whether another use is occurring. The replies are confusing, but one use is identified as store/washroom and another is residential occupation. The appellant indicates that some hay is cut from the land and stored in the building, although at the hearing this was said now to be done by a local farmer and stored at his premises.
8. There is no sign of any agricultural uses occurring at the appeal building or surrounding land. Some poultry is kept which is of a very small scale and, in my view, de minimis. The appellant notes that it is his intention to rent land from the adjacent farm in the next two years and commence some agricultural use. That may be the case, but it is not occurring now.
9. There is some stored equipment in the areas not taken up with the dwelling itself. This includes a trailer, boat, bicycles, ride on lawn mowers, a small scarifier and some material off cuts. I consider, on the balance of probability, that these are mainly associated with residential use. Similarly, the lean-to has a water purifier associated with the bore hole. The appellant says this is used for animals as well as the residence. At the moment there are few animals that this could be for, and providing purified water for the animals seems unlikely.

Overall, I consider on the balance of probability that the water purifier is in the main associated with the residential use.

10. Overall, while only part of the barn has been converted to the dwelling, I conclude that there is little agricultural use at the site, and the barn and lean-to are in residential use, so the allegation is correct. The appeal on ground (b) fails.

Ground (c)

11. The appellant says the change in use and change to the building is not discernible as the building or the land around has not been physically changed. Whether or not the building has been physically changed, the character of use has greatly changed. There will be comings and goings associated with school, shopping, deliveries, maintenance associated with residential living and general day to day movements, as well as a different character of use of some of the outside spaces.
12. The use identified in the allegation is a material change of use affecting the character of the area and use associated with the building and requires planning permission. There are no permitted development rights for the development that has occurred. The appeal on ground (c) fails.

Ground (a)

13. The development plan, to which great weight should be attached, includes the Cornwall Local Plan [CLP] and saved policies from North Cornwall District Local Plan [DLP].
14. CLP Policy 1 has a presumption in favour of sustainable development contained in the National Planning Policy Framework [NPPF] and set out in other policies in the CLP. Proposals that accord with policies will be approved. To determine the sustainability, account is to be taken of location, layout and design. All types of development should ensure the protection and, where possible, enhancement of the environmental quality and assets of Cornwall, safeguarding landscapes.
15. CLP Policy 2 sets out the spatial strategy and reiterates the sustainable approach. It sets out the need to respect Cornwall's special character, ensuring design is high quality. CLP Policy 7 relates to housing in the countryside. Development in the open countryside will only be permitted where there are special circumstances. It allows such things as replacement buildings and reuse of historic buildings. Where there is a need, agricultural worker accommodation may be allowed. CLP Policy 21 aims to make the best use of land and existing buildings. CLP Policy 23 relates to the natural environment. Proposals should sustain local distinctiveness and character and protect and, where possible, enhance the natural environment.
16. DLP Policy ENV1 relates to protecting the countryside and landscape character. Development in the countryside will only be permitted where it is allowed under other policies in the plan and does not have a significant adverse impact on the amenity or landscape character of the area.
17. The NPPF sets out, as a basic objective, achieving sustainable development with an economic, social and environmental aspect. Plans for development should apply a presumption in favour of sustainable development. It notes that

to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities.

Sustainability and Policy

18. The appeal site is in a very isolated location, accessible down a narrow, unmade bridleway. It is a considerable distance from the nearest village and Bodmin. Facilities in the village are not extensive, but they do include a school and a parish hall. However, access to the village is poor; it is a considerable distance away, along an unmade rough track and then along a steep, narrow road. The absence of street lighting and footways and the passing vehicles would be likely to deter pedestrians and cyclists from making most trips to the village. Alternative routes along Public Right of Ways would not address these issues. Considering the distance to services in combination with the constraints of the surrounding highway network, I find that the occupants would be almost wholly reliant on the motorcar, which is very poor in terms of sustainability.
19. The NPPF notes that planning policy and decisions should avoid the development of isolated homes in the countryside unless there are identified circumstances that apply. The identified circumstances do not include the appeal proposal. It does include development of redundant/disused buildings, but that is where it would enhance its immediate setting, which this proposal would not.
20. The appellant explains that the building and its use is highly sustainable, having its own borehole, drainage and solar panels for electricity. I accept that this aids sustainability and attach a little weight to it. Housing can enhance the vitality of rural communities and the scheme would provide a degree of social benefit. However, the small scale of the proposal and its isolation from settlements leads me to conclude that its benefits would be minimal in this regard.
21. The Council's policies aim to control the location of development for reasons of maintaining the environment and the countryside. Certain forms of development are permitted, but these are limited and do not include the appeal proposal. The aim of a plan led system is to ensure that the way the land is developed is considered by all and then set out in the Council's Local Plan and public confidence in it is essential, and I attach substantial weight to this.
22. The appellant says that from the outside, the building has not changed from the original agricultural barn. That is not the case. There is a large timber frontage, that includes a balcony, patio doors at first floor level and trellis with plants growing up. This does not have the appearance of a barn, but of residential occupation and the overall structure within an agricultural barn is not good design, but a utilitarian solution. A residential use also substantially changes the character of the land. This seriously detracts from Cornwall's special character. It is also argued that there are many existing houses that are not in locations near to facilities. I accept this, but the planning system aims to control current and future development, not past development.
23. The appellant argues that there is a shortage of housing and affordable housing in particular. The Council accepts that re-housing is a challenge both in terms of supply and affordability. The appellant also notes the present accommodation has been provided at no cost to the public purse and will reduce the need to go on the waiting list, releasing a house to others. The

Council say that there is a housing service within the Council and it is likely that someone with children, such as in this situation, would be likely to be towards the top of any list.

24. I acknowledge that it is the appellant's desire to remain in an area where he and his family feel an established part of the community. He identifies the education and accommodation needs of six children, noting that they attend schools nearby and that this has been the case from the start of their education, including nursery education and they are obviously very settled. This is a primary consideration in the appeal.
25. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights and the Convention of Rights of the Child. I recognise that dismissal of the appeal would interfere with the appellant's and occupiers' rights. If this appeal fails, the family would have to leave the appeal site. This would result in an interference with their rights.
26. In my view, there are a combination of personal circumstances that are of substance in this case. The best interests of the resident children on site are of primary concern. I therefore give a significant degree of weight in support of the development to these matters within my overall planning balance.
27. Conditions have been proposed by the Council, without prejudice, to limit the impact of the use, should it be allowed to continue. In particular, to control landscaping around the building. The appellant agrees to this. I consider that this would be of benefit to control landscaping and some weight for this.

Human Rights and Overall Planning Balance

28. Section s38(6) of the PCP Act requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise. The starting point is conflict with local and national policies. As set out above, the development is not in accordance with the development plan as a whole. I do however consider that significant weight should be attributed to the best interests of children, to safeguard and promote their welfare, human rights and other personal circumstances.
29. In reaching my conclusion, I have also considered whether planning conditions could overcome any elements of the harm. Some mitigation could be achieved by additional landscaping, but this would do little to overcome the overall harm of the use and would not protect the public interest in having a robust planning system.
30. Overall, I attach great weight to housing need in the area, the children's needs and education, but the policies and identified need to protect the countryside and locate development in a planned way is not outweighed by the appellant's circumstances or the fact that the building itself is self-sufficient. I consider that this is a proportionate balance of the needs of the planning system with the personal needs of the appellant and children. The Human Rights considerations are not sufficient to outweigh the harm of the conflict with the development plan. The development is very poor in terms of sustainability as defined by local policies and the Framework. It is necessary to remedy the planning harm that has been caused in the wider public interest, and interference with the appellant's rights is necessary and proportionate.

31. The development does not accord with the development plan policies identified above. The appeal fails on ground (a).

Ground (f)

32. Effectively the appellant is arguing similar grounds as set out in the ground (a) appeal, that of lack of affordable housing and the education of children. I have considered this under ground (a). The Council's intention with the enforcement notice is to return the land so it is available for agriculture and to accord with the development plan. This could not be achieved without removal of the residential use from the land. The requirements are reasonable and necessary. The appeal on ground (f) fails.

Ground (g)

33. There was discussion about whether the use could be allowed for a short period and the appellant considers that the time for compliance should be extended to 3 years, which the Council noted would be tantamount to a temporary planning permission. The harm caused relates largely to the aims of the development plan to manage where housing should be located and its integral impact upon character and needs to be addressed in a timely manner.
34. There is no question that the interior of the barn can be returned to its former condition in the time period allowed. The appellant says finding alternative accommodation is the difficulty. I accept this will not be easy, and I have to take into account the children and their education, but even considering this a time period of 18 months is generous and should allow the appellant a reasonable opportunity to secure accommodation. I accept there is a possibility of the children needing to change school and the difficulty that would cause, but I consider there is a good amount of time in which to endeavour to find suitable alternatives. The appeal on ground (g) fails.

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INSPECTOR