



Appeal Decision

Site visit made on 23 November 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 7 December 2023

Appeal Ref: APP/D0840/C/22/3309792

Land northeast of Tremenhere Farm, Kennall Valley, Ponsanooth, Truro, Cornwall TR3 7HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Kerry Milton against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN22/00175, was issued on 26 September 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the material change of use of land from agricultural use to a recreational leisure use of the land comprising the siting of a caravan including its occasional residential use indicated on by blue 'X' on the attached, tepee, second caravan and associated operational development including a large wooden shed indicated by a blue 'A' and a smaller wooden shed indicated by a blue 'D' on the attached plan. The land has been outlined in red on the attached plan 'The Plan'."
- The requirements of the notice are to:
 1. Remove the static caravan from the land, shown in the approximate location by blue 'X' on the attached plan
 2. Demolish and remove the large wooden structure (shed) shown in the approximate position by blue 'A' on the attached plan
 3. Remove from the land the tepee shown in the approximate location by blue 'B' on the attached land
 4. Remove from the land the caravan shown in the approximate location by blue 'C' on the attached plan
 5. Remove from the land all materials and debris resulting from the above works and reinstate the land to its former condition and use.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(b) and (c) 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.

Summary Of Decision: The appeal succeeds in part, and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

The terms of the Enforcement Notice

1. Requirement no. 4 of the Notice is to remove the caravan shown at location 'C' on the attached plan. The evidence of the Appellant is that this caravan was destroyed before the Notice was issued. The Council accepts that the caravan no longer exists, and suggests that I amend the Notice accordingly. I am satisfied that I can delete requirement no. 4 without prejudice to either party.
2. Requirement no. 5 includes returning the land to its former use. This goes beyond the statutory purposes of an enforcement notice; the issuing authority may require any unauthorised use to cease, but there is no provision to require

that any particular use must be made of the land. It is clear that the breach of planning control alleged by the Notice is the unauthorised material change of use of the land to recreational and leisure purposes, and that the notice seeks to end that alleged use: this is the basis on which both parties have made their representations. I am therefore satisfied that correcting the Notice so as to require the cessation of the alleged unauthorised use, rather than the reinstatement of the former use, can be done without prejudice to either party.

The appeal on ground (b)

3. S.174(2)(b) of the 1990 Act defines this ground of appeal as “that those matters [stated in the Notice] have not occurred.” The past tense is used, so the question is whether the breach had occurred by the date of issue of the Notice. If the alleged activities had taken place on the site, an appeal on ground (b) cannot succeed simply on the basis that they have now ceased. The Appellant’s case on this ground is that the land is not being (and has not been) used for recreational leisure use, and the caravan shown at location ‘X’ on the plan attached to the Notice was no longer being used for occasional residential use by the time the Notice was served.
4. Evidence as to the use made of the Appeal Site is somewhat sparse. The Council and the Appellant rely on responses provided by the Appellant to a Planning Contravention Notice (PCN) served by the Council in 2022, and a subsequent exchange of emails between the Appellant and the Council’s Enforcement Officer. The only additional evidence provided by the Appellant, upon whom the burden of proof rests and who is professionally represented, is a set of Google images of the appeal site and an unsigned document (as distinct from a Statutory Declaration made in front of a witness) entitled “Appellant’s description of the use of the site”.
5. The Appellant has explained that she and her daughter have medical conditions which mean that the work they do on the land can only be carried out slowly, and they are obliged to rest if symptoms worsen. I fully accept that just because work on the land is done slowly and by hand does not mean it cannot constitute agriculture. It is also the case that some forms of agriculture (such as permaculture or subsistence farming) do not generate commercial returns.
6. But a distinction does need to be drawn between agriculture, which generally involves using the land for a productive purpose, and recreational leisure use, which is more akin to the use made of a residential garden. Often the clearest difference is in scale: for example, keeping a flock of sheep rather than one or two as pets, or planting an orchard rather than a single fruit tree.
7. The difficulty here is that the evidence provided by the Appellant provides very little idea of the scale of activities on the land, and focuses largely on her ideas and aspirations for its future use, rather than the use that has been made of it to date. The unsigned document describing the use of the appeal site refers to fruit crops having been planted, but does not describe where on the site or how many: current cultivated fruit-bearers appear to be limited to an apple tree, a pear tree, and an unspecified number of raspberries and redcurrants.
8. The PCN response states that the Appellant has goats, ducks, and chickens, which reside in Looe and will be used to graze the appeal site, but no details have been provided as to numbers. Nor is it clear whether any such grazing has yet taken place: in response to a question in the PCN about the purpose of

the timber building (that is, the shed at location 'A') the Appellant advised that "The shed has been used for storage, but will be used to house livestock when we bring them to graze the field and to keep hay/animal feed." At my site visit the shed appeared still to be in use for storage. I understand that the Appellant and her family have harvested dandelions from the Appeal Site, and while I accept that such activities could potentially constitute an agricultural use, I have not been provided with any detail as to the scale of the operation.

9. The google images provided by the Appellant do not show any evidence of domestic paraphernalia, such as toys, barbecues or washing lines, such as might be indicative of recreational activity taking place on the land. I have no reason to doubt the claim that any overnight use of the caravan ceased after the PCN was issued, but the PCN response does confirm that the Appellant and her family had previously stayed in the caravan when working on the land. As for the tepee, the PCN response states that it was erected on the Appeal Site to run therapeutic activities for people with mental health activities, "as well as to have fun with."
10. Taking all of this into account, I find that I have insufficient evidence to reach a firm conclusion, on the balance of probabilities, as to whether the use the Appellant has made of the land has been agricultural or recreational. It seems to me most likely that there have been elements of both. I shall therefore vary the notice so that the alleged breach of planning control is described as the material change to a mix of agricultural and recreational leisure use.

The appeal on ground (c)

11. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. The Appellant's case on this ground is limited to the static caravan (at location 'X' on the plan attached to the notice), on the basis that it has been, and will be, used solely for agricultural purposes.
12. For the reasons given above, I have concluded that the unauthorised material change in the use of the land was to a mix of agricultural and recreational use. It could be argued that the siting of this caravan on the land was part and parcel of that breach of planning control, and so it is legitimate for the Notice to seek its removal. However, it could also be argued that to the extent that the caravan was being used in connection with the agricultural element of the land use, it did not require planning permission.
13. No appeal has been made on ground (f) (that is, that the requirements of the notice exceed what is necessary to remedy the breach of planning control) but I have a duty to ensure that the requirements of the notice are not excessive. As discussed above, I shall correct the Notice to make it clearer that recreational leisure use of the land must cease. The appeal on ground (a) (which I deal with below) is limited to seeking planning permission for operational development, so even if that succeeds, the requirement to cease any recreational use of the land will be upheld. If the land is then used for its existing lawful use – that is, solely for purposes of agriculture – a caravan could lawfully be stationed on the land for purposes connected with that use.
14. In these circumstances, there seems very little point in requiring the removal of the caravan, as it could simply be moved back on to the Appeal Site once the recreational element of the mixed use ceased. Should the caravan be used

in future for any purpose other than agriculture, it would be open to the Council to consider further enforcement action.

15. I shall therefore vary the Notice by deleting the requirement to remove the static caravan from the land. The appeal on ground (c) succeeds to that extent.

The appeal on ground (a)

16. The ground of appeal is that planning permission ought to be granted for the whole, or any part, of the matters alleged to amount to a breach of planning control. The Appellant's case on this ground does not include the change of use, but relates only to operational development in the form of the large wooden shed at location 'A' on the plan, and the tepee at location 'B'.
17. Looking firstly at the shed, it would seem that the notice describes it as 'large' mainly to distinguish it from the smaller wooden shed at location 'D' on the plan, whose removal the notice does not require. In any event, the shed at location 'A' is not particularly large in terms of agricultural buildings, being a functional timber structure measuring some 5m x 3m. Nevertheless, along with the caravan and the shed at location 'D', it occupies a hilltop location which makes it visible from the road, and within the wider landscape.
18. The Appellant's evidence is that the shed has been used for storage, but will in future be used to provide shelter for goats, and to keep animal feed, bedding, stakes, tree guards and other equipment. No details have been provided as to the breed or number of goats involved, or the length and frequency of the periods they would spend grazing the Appeal Site. In the absence of any further information, there appears to be no reason why they could not be returned to their usual residence in Looe during periods of inclement weather, or a temporary field shelter provided for them at the Appeal Site if necessary. Similarly, in the absence of further details about the quantities of feed, bedding and other equipment involved, I can see no justification for requiring more storage space than the already sizable amount provided by the static caravan and the shed at location 'D'.
19. The Appeal Site lies within one of Cornwall's designated Areas of Great Landscape Value. The Cornwall Local Plan (Strategic Policies 2010-2030) explains that these are areas of high landscape quality, which make them particularly sensitive to development. Policy 23 of the Local Plan requires development to respect the sensitivity of the landscape and take into account cumulative impacts. In the absence of any clear agricultural justification for its presence, I consider the shed an unnecessary intrusion of built form into the otherwise relatively undeveloped character of this part of the landscape.
20. Turning to the tepee, this was erected in 2019, but its fabric covering was destroyed in 2019/20 and only the poles forming its framework now remain. For the avoidance of doubt, the Appellant is correct that a tepee erected as a temporary structure, for a temporary period, would not usually require planning permission. However, in this case the evidence indicates that the framework of the Tepee is not temporary, but rather is intended to remain on site to provide shelter and support for fruit crops. It is a sizeable structure, with the tops of the poles reaching some 4m above ground level, and could not be moved in one piece. I therefore consider that, as a matter of fact and degree, the existing structure amounts to development for which planning permission is required.

21. The Appellant contends that the tepee "makes a great nursery/fruit cage/windbreak so we can protect our crops from extreme winds and give them the best chance of survival." The height of the structure is however excessive for such purposes, and makes it a distinctive and uncharacteristic feature of the landscape. In the absence of any convincing agricultural justification for its presence, I consider that like the shed, the tepee constitutes an unnecessary intrusion of built form into the open countryside.
22. I therefore conclude that both the wooden shed at location 'A' on the plan, and the tepee at location 'B', conflict with the objectives of Local Plan Policy 23; on the basis of the evidence currently before me, there are no other material considerations of sufficient weight to overcome that conflict. The appeal on ground (a) fails, as does the deemed application for planning permission.

Conclusion

23. For the reasons given above I conclude that the appeal succeeds in part, on ground (c), but otherwise fails. I shall uphold the Enforcement Notice, with corrections and variations, and refuse to grant planning permission on the application deemed to have been made under s.177(5) of the 1990 Act as amended.

Formal Decision

24. It is directed that the Enforcement Notice is corrected by:

- deleting, in its entirety, requirement no. 4
- deleting the words "and use" from requirement no. 5
- inserting a new requirement, as no.1, to "Cease the recreational leisure use of the land"

and varied by:

- at paragraph 3 of the Notice, deleting the words "a recreational leisure use of the land" and replacing them with the words "a mixed use, consisting of agricultural use and recreational leisure use,"
- deleting, in its entirety, the former requirement no. 1 (that is, "Remove the static caravan from the land, shown in the approximate location by blue 'X' on the attached plan").
- re-numbering the requirement formerly numbered 5 as no. 4
- at paragraph 6, replacing the numerals "(1) – (5)" with "(1) – (4)"

Subject to these corrections and variations, the appeal is dismissed, the Enforcement Notice is upheld and planning permission is refused on the application deemed to have been made under s.177(5) of the 1990 Act as amended.

Jessica Graham

INSPECTOR