



Appeal Decision

Site visit made on 7 November 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/D0840/C/22/3308101

Land south of Bramwell Barn, Mount Hawke, Cornwall TR4 8BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Robert Hancock against an enforcement notice issued by Cornwall Council.
- The notice was issued on 24 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land from agricultural to residential through the stationing of a motor home and caravan for residential purposes along with associated paraphernalia. The approximate positions of the residential motor home and caravan is marked by two blue 'X's' on the attached plan 'The Plan'.
- The requirements of the notice are to:
 - 1) Cease the residential use of the land.
 - 2) Cease the residential use of the motor home and caravan shown in the approximate locations by two blue 'X's' on the attached plan.
 - 3) Remove the motor home and caravan indicated by the blue 'X's' on the attached plan from the land.
 - 4) Demolish and remove the toilet and workshop shown in the approximate locations by two red 'A's' on the attached plan.
 - 5) Remove from the land all materials, paraphernalia and debris resulting from the residential use of the land, including shipping container, washing line, plant pots, sheds, wind turbine, motor vehicles etc.
 - 6) 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 the requirements is: 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of requirements (5) and (6) and their replacement by new requirement (5) and (6) stating:-
 - (5) "Remove from the land all domestic paraphernalia associated with the residential use of the land, including the shipping container, washing line, plant pots, sheds, wind turbine and motor vehicles."
 - (6) "Remove from the land all materials and debris resulting from the above works and restore the land to its former condition before the breach took place."
 - the deletion of the time for compliance and its replacement with:-

For requirements (1) to (3), 12 months after this notice takes effect and for

requirements (4), (5) and (6), 15 months after this notice takes effect.

2. Subject to the corrections and variation 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.

Preliminary Matters

3. The appellant states that the caravan on the site is not occupied. The Council issued a Planning Contravention Notice (PCN) on 16 June 2021 asking various questions about the use of the land. The appellant's response to the question about the caravan indicated that it was occupied at times when his sons visit. Furthermore, whilst I saw at my site visit that the touring caravan was not obviously in a condition to enable it to be lived-in at that time, it may be possible to make it so and even if not, its use is clearly part of the overall residential use of the site. The allegation is sufficiently accurate.
4. Since the notice was issued the Council has adopted, on 21 February 2023, its Climate Emergency Development Plan Document (CEDPD). This forms part of the Development Plan and I have given both parties an opportunity to comment upon the implications of this.

The Appeal on ground (a)

5. Under this ground of appeal, I have to consider whether planning permission ought to be granted for the matters stated on the notice as the breach of planning control. The appellant has referred in their case on this ground that they are a traveller and I will consider that matter below. However, the notice does not explicitly refer to any specific type of occupancy.

Main issues

6. The following are the main issues:
 - 1) whether the appellant has traveller status and if so, what the needs are for that type of accommodation within the County;
 - 2) whether residential development as alleged in this location is suitable with respect to the development plan;
 - 3) the effect of the development on the character and appearance of the area; and
 - 4) the degree of any other personal circumstances of the appellant and their family including the best interests of children.

Traveller status

7. At the time of preparing their personal statement, the appellant claims that they have a nomadic habit of life and therefore fall within the definition with the Planning Policy for Traveller Sites (PPTS). They state that their travelling existence commenced whilst in the Royal Navy at the age of 15. However, a person within the services who travels according to the needs of national defence and security is not travelling due to a habitual nomadic lifestyle, because of any cultural background or even individual choice or yearning. I

have no evidence about their actual living situation or home life during their time in the Navy.

8. The appellant purchased the appeal site in September 2018 only just over 2 years since they say that they adopted a nomadic lifestyle. The site is close to family including, at the time of writing the personal statement, 2 teenage children and it seems that travel plans were curtailed by the Covid-19 pandemic which they state is the only reason that they came to reside temporarily on the land.
9. Since August 2016 the appellant has adopted a more transient existence, travelling for work as an engineer including abroad within his motor home. However, there is little explanation of how that is a habitual or cultural nomadism rather than a professional person travelling to carry out contract work which happens across a number of trades and professions by people in the settled community who would not normally be classed as travellers. The statements regarding fairs that they have attended and worked at are not specified or any detail given about what they were doing when there.
10. Furthermore, the appellant confirms that they are now, since October 2022, above state pension age any nomadism seems, as a matter of fact and degree, to have been a small proportion of their life-time. Any nomadism they have adopted is very limited and I am not persuaded that it has been a habitual practice for any significant time. I note that they have some family nearby on traveller pitches on the land to the east of access lane. However, it is not clear from the evidence provided that travelling is an established part of the appellant's cultural background within a travelling community. The appellant's residential and work circumstances seem to be a choice that they have made recently rather than being any predisposition.
11. In relation to this main issue, from the evidence provided, I do not consider that the appellant has traveller status as defined by the PPTS. The PPTS definition was recently amended but not in a way that is material in this case. As such, I do not need to consider the degree of provision for travellers within the Council area. In these circumstances the appellant's case is not supported by the PPTS or Policy 11 of the Cornwall Local Plan, Strategic Policies, adopted November 2016 (LP). That seeks to provide for the residential needs of Gypsies, travellers and travelling showpeople.

Suitability of the location

12. The appeal site is positioned to the east of the settlement of Mount Hawke. The St Agnes Parish Neighbourhood Development Plan 2018-2030 (NDP) has been 'made' and thus forms part of the Development Plan. The NDP defines a settlement boundary for Mount Hawke and there is no dispute that the appeal site is outside of this with the appellant estimating that it is less than 400m outside. Policy 1 of the NDP, with respect to settlement boundaries states that development within them will be supported where it conforms to other policies in that plan. That policy, which the Council has referred me to, does not state what the plan requires or will allow outside of settlement boundaries. However, one of the supporting paragraphs does state that "any new development outside these boundaries", will be treated as "exception sites".
13. Notwithstanding the above, the site is within the largely rural area on the outskirts of the built-up part of Mount Hawke. I recognise that there is

residential accommodation nearby in the form of traveller pitches which it was pointed out to me at my site visit, are to the eastern side of the track that also leads to this appeal site. However, the residential use of the site is not part of an infill or a rounding off of the settlement as it is distinctly separate from the built-up part of Mount Hawke. The development of the site is not therefore supported by LP Policy 3.

14. The appellant states that they live on the site in an off-grid, self-sufficient manner. I saw for myself the solar panels and wind-turbine as well as a small shed with other equipment in it. There is a water supply from a borehole and compost toilet as well as a large polytunnel and modest raised bed where I could see some plants. I am also told that the site has been cleared of fly-tipped waste when the appellant purchased it. I return to consider whether the polytunnel was installed in association with the residential use, below in considering the appeal under ground (f).
15. The CEDPD sets out some detailed criteria for regenerative and low-impact development. The document explains that off-grid, low-impact highly sustainable lifestyles are part of the One Planet movement which seeks to encourage society to live within the capacity of the planet. Policy AL1 then sets out in what circumstances such development will be permitted as part of a regenerative use of land.
16. The site is not within Mount Hawke but it is well related to it. The settlement has, according to the NDP and what I saw, a substantial shop, a primary school, public house and doctors' surgery as well as other sports and social facilities. These are within a walkable and cyclable distance albeit the first part of that is along a lane without footpaths or street-lights. Living on the site in my view would not however rely upon the use of motor-vehicles. I have no evidence about public transport services but from what I could see in terms of the position relative to bus stops, the appeal site is as accessible to destinations further afield as many parts of the built-up area of the settlement. As a consequence of this and the above, I am satisfied that the requirements of paragraphs 1 and 2 of CEDPD Policy AL1 are met.
17. That policy, however, requires a great deal of supporting evidence such as a carbon statement, a binding action plan related to biodiversity, landscape and heritage, a robust justification regarding how the land available can provide for the livelihood and needs of the residents, mechanisms for management and running of the enterprise. Such development has to be done in a manner that does not unacceptably impact upon residential amenities or other neighbouring uses. Such evidence is not before me and given the potential complexity of it, I cannot know with any certainty that the requirements could be satisfactorily met. I cannot therefore apply a planning condition, and one has not been suggested, to require the submission of such matters in these circumstances.
18. In relation to this main issue, the appeal site is in a location where residential development is not generally supported by policy and it has not been demonstrated that it could be considered acceptable as an exception, such as by full compliance with CEDPD AL1. It does not, for those reasons, comply with the spatial strategy for Cornwall within LP Policy 2 which looks to provide homes and jobs based on the role and function of each place. Furthermore, it is not a sustainable form of development overall when considered with respect to LP Policy 1 due to non-compliance with those other policies.

Character and appearance

19. The appeal site is within a pleasant rural area which is close to an enclave of traveller pitches along the lane leading to the indoor skate-park at the end of that land to east. Much of the site is left open to grass with buildings to house the turbine and battery equipment in a modest timber shed which is noticeable above the adjoining hedge as is the wind-turbine. The solar-panels are positioned on the ground low-down relative to the surrounding hedges. The detached workshop has been built into the ground and the large polytunnel is against a hedge in a discrete location. The touring caravan and motor-home at the time of my visit were alongside the toilet shed in the north-western corner of the site surrounded by vegetation including substantial trees.
20. The Council has provided an extract from the Cornwall and Isles of Scilly Landscape Character Study (LCS). The site is within Landscape Character Area LCA11 and my attention is drawn to the area being a small scale rolling landscape, with pasture as the dominant land use and I note reference to irregular fields, anciently enclosed which seems similar to the fields patterns nearby to the site. The LCS also referred to the strong influence generally of mining in the area but with farming being a mixture of pastoral and arable. The physical developments on the site are not substantially visible within the wider landscape and the land use which, although including clearly residential buildings as well as vehicles and the caravan, still has a low-intensity agriculture feel rather than being obviously residential. The wind-turbine is a minor feature as are the solar panels.
21. In relation to this main issue, the development does not harm the character and appearance of the area. It respects the special character of Cornwall and the qualities of the area near to the appeal site. In these ways, the development complies with LP Policies 2 and 23.

Personal circumstances

22. The appellant has mentioned at the time of preparing their personal statement that they would be of state pension age by October of last year. They suffer some unspecified age-related health issues and with family nearby who assist in coping with these matters. These factors indicate that living at the site will have some advantages to assist in overcoming these issues or at least living more comfortably with them. Furthermore, the appellant says that they have spent their life savings purchasing the site. I have limited information about this, their other financial circumstances or whether the land value, if it were sold, would leave them overall in a better or worse situation.
23. It is incumbent on me to have due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that age constitutes a relevant protected characteristic for the purposes of PSED.
24. The appellant's family includes their 2 teenage sons who live with their mother nearby, the appellant's ex-wife. I am mindful that 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. I understand that these children need emotional support and sharing of parenting responsibilities. These are an important reason for

the appellant living at this site. The appellant's daughter and grandchild also live on the nearby pitches. The family unit is in close proximity to one another.

25. It would be advantageous for the family to live close to each other for all of the above reasons. I have no evidence that these advantages would only be possible if the appellant remains at the appeal site as opposed to looking for alternative accommodation. In relation to this main issue, I attribute a moderate amount of weight in support of the development due to the personal circumstances including the PSED and best interests of the appellant's children and grandchild.

Other matters and overall planning balance

26. The site falls within the zone of influence of the Penhale Sands Special Area of Conservation (SAC) and the River Fal and Helford River Special Area of Conservation (SAC). There is agreement between the parties that the appellant could pay to provide appropriate mitigation under the provision of s111 of the Local Government Act 1972 and an agreement has been submitted to that end. Given my overall decision on ground (a), I am not required to address this in any detail such as through the assessment of significant affects or appropriate assessment under the provisions of the Conservation of Habitats and Species Regulations 2017. This is therefore a neutral factor.
27. The Council states that it is exceeding its housing need targets and I have no evidence to dispute that although they do also have a draft housing crisis plan. The development would provide a further limited but nevertheless beneficial unit of residential development. Nevertheless, these limited benefits would carry very limited weight in favour of the development.
28. The appellant is not a traveller for the reason given in my conclusion on the first main issue so that is a neutral factor. For that reason, the case details provided relating to gypsy and traveller sites do not support the appellant's case here. The development is unacceptable with respect to the second main issue although is not harmful with respect to the third. I give a moderate degree of weight due to my conclusion on the fourth main issue relating to personal circumstances. There is some further very limited weight in favour of the benefit to housing supply. However, I consider that the development plan as a whole is not complied with and these positive factors and other matters do not outweigh that conflict. As such, s38(6) of the Planning and Compulsory Purchase Act 2004 means that there is a lawful reason to refuse planning permission. The development plan polices guide where development is located with LP Policy 1 stating that when considering whether a development proposal is sustainable or not, account will be taken of its location, layout, design and use against the three pillars of economic development, social development and environmental protection and improvement.
29. There would be an interference with the appellant's rights under Article 8 of the Human Rights Act 1998 which states that everyone has a right to respect for private and family life, their home and correspondence. This is however a qualified right. In this case, the interference is in accordance with the law. Unauthorised development, contrary to the development plan undermines the economic well-being of the country. As such, the interference would be proportionate to the legitimate public interest which the development plan seeks to achieve.

30. The appeal on ground (a) is dismissed and planning permission is refused.

The Appeal on ground (f)

31. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The requirements of the notice include the cessation of the use, thereby its purpose is to remedy the breach of planning control rather than the alternative of remedying injury to amenity. The use alleged is "residential" and the appellant has not challenged the way in which the breach is described such as through an appeal on other grounds.
32. Where a material change of use has occurred, it can be sufficient to simply require the use to cease. It has however been held that an enforcement notice may require ancillary works carried out to facilitate that use, are removed. Otherwise, potentially the site would not be restored to its previous condition and the breach would not be remedied. That can be the case even where the physical operational development is lawful through the passage of time or because it would not in itself require planning permission.
33. The appellant has owned the site since 2018 and appears from what is stated in their personal statement to have occupied it in his motor home shortly afterwards. As a matter of fact and degree, given that all of the structures that are explicitly mentioned appear to have facilitated his occupation of the site, it is justifiable to seek their removal. The argument that the works would be justified by a subsequent use, such as agriculture, does not address whether they are in place as part and parcel of the material change of use. If the physical developments have utility in the future is a concern to be addressed between the main parties as a separate matter if a new use is implemented. I have not been provided with any evidence about any obvious alternatives to the requirements that would achieve the purpose of the notice.
34. Requirement 5 of the notice specifies the removal of all "materials, paraphernalia and debris". The requirement can be made more precise by removing "etc". It is also clearer to seek the removal of items associated with the residential use rather than those resulting from it particularly as that would more closely match the wording of the allegation. In using "etc." the Council appear to require more items removed and it would have been clearer for them to state precisely what they are. However, in fairness, the nature of a residential use means that items will be brought on and off of site and the notice is the best attempt based on a snap-shot in time. It is sufficient and reasonable therefore with these variations.
35. The polytunnel is not however mentioned on the notice and I cannot extend the scope of the notice to explicitly include it. However, it would seem to stand to reason that it is associated with the residential use of the site as there is no allegation of a mixed use including agriculture as a continuing primary use. It would need to be removed to restore the land to its previous condition notwithstanding that it may be useful in future.
36. It is settled case law that an appellant is often the person with the best knowledge of previous condition of the site prior to the breach occurring. A requirement to restore the land to its condition prior to the breach taking place can be sufficiently precise. Requirement 6 seeks this. A notice cannot however positively require a use to take place and so I have removed the part of the requirement stating that the former use should be restored. Reference to the

plural “breaches” is also mis-leading because there is only one alleged breach – the material change of use.

37. I consider that these variations can be made without causing injustice to the appellant or the Council under the provision of s176 (1)(a) of the Act. The appeal on ground (f) succeeds to that extent.

The Appeal on ground (g)

38. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.

39. Finding alternative accommodation is not an easy task whatever the personal circumstances. However, 12 months is a substantial amount of time to do so. Whilst finding alternative accommodation and ceasing the residential use should be achievable within that time, I consider that allowing a further period to remove the physical structures that are integral to living on the is necessary because they would take some effort to take down and remove. However, the 6 months requested would be excessive. A further 3 months to comply with requirements 4 and corrected requirement 5 would achieve a more reasonable and proportionate balance.

40. To this extent, the appeal on ground (g) succeeds.

Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed other than on grounds (f) and (g). I shall uphold the enforcement notice with the corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood

INSPECTOR