



Appeal Decisions

Site visit made on 31 October 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND JANUARY 2024

Appeal A Ref: APP/D0840/C/22/3307527

Appeal B Ref: APP/D0840/C/22/3307542

Land known as Land North East of Bramwell Barn, Mount Hawke, Cornwall TR4 8BQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Andrew Leatherbarrow and Appeal B is made by Mr Simon Bradbury against an enforcement notice issued by Cornwall Council.
- The notice, numbered EN19/01632, was issued on 18 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 nil use to residential through the creation of two dwellings and associated operational development. The land has been outlined in red on the attached plan 'The Plan'.
- The requirements of the notice are to:
 - (1) Cease the residential use of the buildings shown in the approximate locations by two blue 'X' on the attached plan.
 - (2) Demolish and remove the buildings shown in the approximate positions marked with the two blue 'X' on attached plan.
 - (3) Demolish and remove the buildings shown in the approximate positions marked with the two red 'A' on attached plan.
 - (4) Remove from the land all materials and debris resulting from the residential use of the land, including sheds, washing line, plant pots etc.
 - (5) Remove all materials arising from compliance with (1) - (4) above from the land and restore the land to its former condition and use before the breaches took place.
- The period for compliance with the requirements is: Twelve (12) months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Formal Decisions

1. Appeal A and Appeal B are allowed, and the Enforcement Notice is quashed.

Preliminary Matters

2. Planning Contravention Notices (PCNs) were served on the appellants individually. The PCNs were completed, returned and dated 11 May 2021. Mr Andrew Leatherbarrow (appellant for Appeal A) completed a PCN indicating that the use of part of the land (western side) was a carpentry and joinery workshop, storage and live in space, as well as a 'show cabin' for potential carpentry contracts. The building outlined in green on the plan attached to the PCN was claimed to have been built in October 2019, which he occupies as a workshop, storage and live in space.
3. The other completed PCN indicates that the land to the eastern side is used as storage, bike workshop and live in space. Mr Simon Bradbury (appellant for Appeal B) erected the building outlined in blue on the plan attached to the PCN in January 2019, and he is the occupier along with his son. The building is in use as a

storage, bike workshop and live in space since June 2019. Both appellants purchased the land in September 2018.

4. As set out in the banner, there are two appeals against the single Enforcement Notice (Notice) covering the land and buildings currently occupied by Mr Andrew Leatherbarrow and Mr Simon Bradbury. The appellants have appealed separately, but they are represented by the same agent and have appealed on the same grounds (b), (f) and (g). There are individual circumstances in respect of the grounds, particularly in respect of ground (g) that would need to be considered separately. However, much of the content of the statements in respect of the other grounds is repeated with some small differences. I have considered the appeals together, and I will refer to any differences with respect to Appeal A and Appeal B when necessary.
5. Reference has been made by both parties to policies of the Cornwall Local Plan 2016 (Local Plan) and the National Planning Policy Framework (the Framework). There are also recommendations of support from customers of the businesses as well as consideration of impacts, such as the impact on character and appearance of the area as well as the integrity of a nearby Special Area of Conservation (SAC). These issues would be material considerations in a ground (a) appeal, but this has not been plead in this case. As such, these matters are not before me for consideration.
6. The Council indicate in their Statement of Case that the units are not true live/work units and are more akin to dwellings with a store/workshop. However, the term live/work unit is not strictly defined in either the Local Plan or the Framework. Furthermore, the Council has not provided a definition of what they consider to be a 'true live/work unit'. Live/work units can differ depending on the nature of the commercial uses and the percentage of land or floorspace being used for the commercial and residential purposes. Despite this, live/work units would normally include two primary uses (residential and commercial) occurring on the same site, as a mixed use. I have considered the appeal on this basis in the absence of a specific definition of what a live/work unit is in this context.

The Appeals on Ground (b)

7. An appeal on ground (b) is that the matters alleged in the Notice, which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellants must demonstrate that on the balance of probability the matters stated in the Notice have not occurred.
8. The appellants contend that the operational development is not simply associated to a residential use but relates to live/work units, which technically would comprise a mixed use for light industrial within Class E of the Town and Country Planning Use Classes Order 1987 (as amended) (the Order) as well as the residential use alleged. The Council do not consider the use to be a 'true live/work unit' and have alleged that the use is more akin to residential and associated operational development. The Statement of Case confirms the Council consider the associated development to be an incidental store/workshop building.
9. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the primary uses of that unit. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of a

material change of use. In respect of the determination of a planning unit, *Burdle*¹ is the lead case.

10. *Burdle* held that the planning unit is normally 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. Three separate broad categories are identified for planning units, those include (a) a single unit of occupation with a single primary use with ancillary and incidental activities; (b) a single unit of occupation with two separate primary uses that are not incidental to one another (mixed use); or (c) a unit of occupation where two or more physically separate areas which are occupied for different and unrelated purposes. Each area in scenario (c) forms a separate planning unit.
11. It is acknowledged that the land is jointly owned by the appellants. The land outlined on 'The Plan' is accessed via a private track just off an access road to the Mount Hawke Skatepark. The land has been divided by a low boundary fence, resulting in two smaller plots, side by side with a shared parking/turning area in-between. The western side is a defined area of grassed land enclosed by a mixture of boundary fences and vegetation. It includes two mono pitched timber buildings, one being taller and slightly larger. On the eastern side, the plot is defined with hedgerow and trees as boundaries and includes an octagonal single storey timber building and a smaller rectangular timber workshop building. The completed PCN, indicates Mr Leatherbarrow is occupying the buildings to the west for his own residential and commercial purposes and Mr Bradbury is occupying the buildings to the east for his residential and commercial purposes.
12. With *Burdle* in mind, it is clear that even with joint ownership, the two areas are physically separate, distinct and occupied for different and unrelated purposes. In this respect, the land identified on the Notice forms two separate planning units. As the planning units have been established, the appeal on ground (b) now turns on whether the uses are residential with a store/workshop or if they comprise a mixed use of the land for residential and light industrial purposes.
13. As a matter of fact and degree, a light industrial² use is materially different in character to a use as store/workshop that is incidental or ancillary to a residential use. This is because the scale and nature of the commercial use and the resulting increase in comings and goings, as well as potential levels of noises and disturbances would be materially different to how a workshop for hobby or ancillary residential purposes would be used. As such, the scale and type of the activities being carried out and the extent to which it is associated with the residential use of the dwelling is crucial in determining whether its use is ancillary to the residential use, or whether its use is also a primary use, resulting in a mixed use.
14. With respect to Appeal A, Mr Leatherbarrow states he is a carpenter or joiner by trade. He goes on to claim that clients visit the site to discuss projects and view his work, which includes his property as a 'show cabin.' Regular work comprises bespoke small timber framed projects, which are carried out and completed in his workshop building. From the supportive statements from customers it appears he also carries out carpentry and joinery work within customers' houses in the locality. From what I saw, the larger building was an open plan residential space, with a kitchen, living, dining, bathroom and a sleeping area. The workshop

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

² As defined in Class E g) iii) of the Order

included storage of building materials, power and hand tools as well as work benches. There was a sign on the workshop building advertising 'Timberbuild' and including a telephone number. No other income source is detailed for Mr Leatherbarrow.

15. With respect to Appeal B, Mr Bradbury states that he is a plumber and a cycle mechanic. He goes on to claim that he only carries out cycle repairs and not sales. He has built up a local customer base, who bring bikes to the workshop space for him to repair. As a plumber he uses the workshop to store tools, materials and repair items such as pumps, taps, valves and fittings associated with his plumbing services. From what I saw, the octagonal building was being used for residential purposes, with open plan living. Similar to Mr Leatherbarrow, the workshop building includes storage of building materials, power and hand tools as well as work benches. Signs for 'Roundhouse Cycle Repairs' with the appellant's name and a telephone number were also present at the access. No other income source is detailed for Mr Bradbury.
16. There is clearly a residential use occurring on each of the separate planning units within the larger buildings. The workshop buildings are not excessive in size and are physically subservient to the larger residential buildings. Also, there is no physical boundary between the two buildings on each planning unit. Although functionally close and physically subservient to the larger residential building, from what I saw, the workshop does not appear to provide any specific residential storage or purpose, and was specifically set out as a workshop to be used for the commercial purposes outlined by each appellant in Appeal A and Appeal B.
17. The scale and nature of the commercial use is small, but the appellants rely on these businesses as their main source of income. There is no restriction on the businesses operating every day, and the nature of the uses described means there is the potential for a marked increase in comings and goings to and from the site as well as persistent noise and disturbance when compared to a storage/workshop used for hobbies and/or interests. With no restrictions, those noises and disturbances could be constant and have the potential to occur at unsociable times, which could affect the living conditions of occupiers on neighbouring sites.
18. With the above in mind, the provision of a workshop on each of the planning units for the commercial light industrial use set out would not be a typical feature of a single dwellinghouse and would exceed what could normally be considered as ancillary to a residential dwelling. When taken as a whole, the layout of the site and the way the land is being used leads me to conclude that the land has not materially changed to a residential use with associated operational development. As a matter of fact and degree, and based on the available evidence, a material change of use to a mixed use of residential and a commercial light industrial use has occurred.
19. I have considered whether the Notice could be corrected to allege a mixed use of residential and light industrial use. However, I cannot discount the possibility that the appellants could have appealed on other grounds, particularly ground (a), if the allegation was corrected in this manner. For these reasons, I consider that correcting the Notice to allege a mixed use of the site would cause injustice to the appellant.

Conclusion

20. For the reasons given above, I conclude that the breach of planning control alleged in the Enforcement Notice has not occurred. In accordance with my powers under section 176(1)(a) of the 1990 Act I cannot correct the allegation as I cannot be certain that injustice would not be caused were I to do so.
21. Accordingly, Appeal A and Appeal B succeed on ground (b) and the Notice should be quashed. In these circumstances, the appeals on grounds (f) and (g) set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

M. P. Howell

INSPECTOR