



Appeal Decision

Hearing and site visit held on 14 November 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/D0840/C/22/3309880

Land known as Bullies Lodge, Merry Meeting, Roseworthy, Camborne, Cornwall TR14 0DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr D Taylor against an enforcement notice issued by Cornwall Council.
- The notice was issued on 28 September 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land from nil use to residential through the stationing of a caravan for residential purposes along with associated paraphernalia.
- The requirements of the notice are:
 - (1) Cease the residential use of the caravan shown in the approximate location by a blue 'X' on the attached plan.
 - (2) Remove all services connected to the dwelling for the purposes of independent human habitation, i.e. electric cabling, water pipes etc.
 - (3) Remove caravan indicated by the blue 'X' on the attached plan from the land.
 - (4) Remove all motor vehicles from the land.
 - (5) Remove from the land all materials and debris resulting from the residential use of the land, including dog kennel, chicken pen, washing line, plant pots 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) 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 is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

1. Since the hearing, the Government has published an updated planning policy for traveller sites (the PPTS) which reverts the definition of Gypsies and Travellers used to that adopted in the previous 2012 version of the document. This previous definition was that which was discussed at the hearing, and so my having regard to the revised PPTS definition would cause no prejudice to any party.

The Notice

2. At the hearing, I raised with the parties that while the Notice was directed at the use of the land, the requirements did not require the cessation of that use. To uphold the notice without the requirement for cessation would result in the

grant of planning permission for this use, under S173(11) of the Act. I sought the views of the parties as to whether I would be able to correct the Notice to include a requirement to cease the use of the land, without causing prejudice to any of the parties.

3. Both the appellant and the Council were of the view that to include this additional requirement would not result in prejudice. I agree with this; the intentions of the notice are clear and would require the appellant to remove the caravan from the site thereby ceasing the occupation of the land. The insertion of the requirement to cease the use of the land would therefore not prejudice the appellant. I shall correct the Notice accordingly.
4. Requirement (2) of the Notice requires the removal of services from "the dwelling". The Notice does not allege the erection of a dwelling and both main parties were clear that the notice was directed at the caravan that was on site. I shall therefore correct this to replace dwelling with caravan.
5. Requirement (6) requires the removal of material and debris, and to restore the land to its former condition and use. It is beyond the scope of an enforcement notice to require the active resumption of a former use. Accordingly, I will delete this part of the requirement.
6. There was some discussion around the presence of some hardstanding within the site prior to the breach taking place, and it was mentioned that the Notice could be varied to refer to only the removal of hardstanding associated with the unauthorised use. However, the Notice requires only the removal of "debris and material" resulting from the residential use. Any hardstanding existing before the breach would not therefore have "resulted" from the current use, and thus would not be required to be removed further to the requirements of the Notice.
7. It was also mentioned that requirement (4) seeks the removal of all motor vehicles from the land, and this could possibly be clarified to refer to motor vehicles associated with the residential use. However, as the Notice alleges a change of use from a nil use, I find no evidence to indicate that vehicles would have been associated with that nil use. There is no need to correct the Notice in this respect.

Ground (c)

8. This ground of appeal is that the matters stated in the notice do not constitute a breach of planning control. The onus is on the appellant to demonstrate this, on the balance of probabilities.
9. The appellant's case under this ground relies on there having been planning permission granted for the residential use of the site. It is contended that such a planning permission was granted in 2004. It is stated that a copy of this permission was kept by the appellant within a caravan on the appeal site, which at some point was set alight and burned out, and the copy of the planning permission was lost along with it. The appellant points me to attempts to locate a further copy of the permission, which include contact with the Committee Services at the Council, where previous minutes of Council meetings are held. There appears to be a gap in the record keeping with minutes from meetings held in 2004 missing. I have been provided with a copy of an acknowledgement, from the relevant Council at the time which shows

that additional information was received in respect of a planning application in February 2004.

10. At the hearing, I also asked the appellant about his recollection from this time, and he clearly remembered attending a meeting at the Council offices, and a copy of the planning permission being received shortly after that meeting. There was also a recollection of the permission being kept in a drawer with photographs.
11. However, when I asked the Council, it was stated that there is no record of any planning permission being granted for residential use of the land. It was accepted that there was a loss of documents from 2004, but that this related only to minutes of meetings that were held in the Council. I was told that the planning register, which contains a record of all registered planning applications and their decisions, was complete and contained no gaps. This contains no record of the planning permission that is asserted to have been granted.
12. The Council contended that while an application may have been submitted, it is likely that it was never valid, such that the Council did not register it. On the basis of the evidence, this is the most likely situation. I find that it is appropriate to apply determinative weight to the statutory planning register, over the memory of the appellant, particularly bearing in mind that it has been almost 20 years since the matters referred to took place.
13. It was also put to me at the hearing that Council tax records generally only apply to residences that have planning permission and the existence of the appeal site on the Council's records is a further indication that the planning permission was granted. However, there is nothing before me that convinces me that a requisite of being liable for Council tax is the existence of planning permission. As such, this matter has little bearing on my decision.
14. I therefore find that, on the balance of probability, there has not been planning permission granted for the residential use of the site. Accordingly, the appeal on ground (c) fails.

Ground (a)

15. An appeal under this ground is that planning permission should be granted. In this case the main issues are:
 - Whether the intended occupiers benefit from status as gypsy travellers, and
 - The effect on the character and appearance of the area.

Reasons

Status

16. Within its statement of case, the Council expressed that while the appellant's appeal questionnaire stated that he was a gypsy traveller, it had not seen any evidence to indicate that he benefitted from status as such.
17. Following discussion on this matter, which included the appellant providing details of previous sites of occupation as well as patterns of travel and work, the Council indicated that it accepted the appellant's status, based on what was said at the hearing. Based on the discussions as well as answers given to the questions I asked, I am also satisfied in this regard and find that the appellant

benefits from status as a gypsy traveller and complies with the definition in the PPTS.

Character and appearance

18. The appeal site comprises a roughly triangular parcel of land, located adjacent to the A30 road. Access is gained via an existing track which leads off a nearby road, which itself runs beneath the A30. Within the site is a mobile home, positioned on an area of hardstanding, together with several outbuildings, which I saw included kennels and enclosures for chickens.
19. The wider area surrounding the appeal site is reasonably open, and from certain vantage points there are expansive views of the surrounding countryside. The Landscape Character Assessment for this area identifies that the area is part of a rolling landscape, with a sense of remoteness. This however is not the case at the appeal site itself. Its position, some distance along a track, with mature and dense boundary hedging bounding roads in the area, results in a limited visual envelope. I observed that the site was not generally visible when travelling along the nearby Roseworthy Hill. Moreover, given the proximity of the A30 road, there is little sense of remoteness.
20. It was accepted by the Council that views of the site are generally limited to those that are available from the entrance of the trackway to the east. However, I observed any such views to be very limited and at a distance. In these views, the development appears as a very minor feature, which when considered within the context of its location adjacent to a major highway, was not harmful or intrusive. Any views of the site and the development from the A30 would, as was agreed at the hearing, be glimpsed views of a short duration and thus would not be significant.
21. I acknowledge that there may be users of the trackway, indeed it was indicated that the public do walk along it despite it not being a public right of way. Yet, given that the Council acknowledged that caravans were not unusual in the surrounding area, even that there will be close views of the development for some receptors does not lead me to find that there would be any harmful or unacceptable effect.
22. Furthermore, I am also conscious that the development of gypsy traveller sites in the countryside is acceptable in principle, with paragraph 25 of the PPTS advising that traveller sites in the countryside should be strictly limited, but this does not prevent them entirely. Thus, it is inevitable that there would be some effect resulting from such development. In my judgement, the effect arising from the development in this case is very minor and acceptable at this location.
23. Consequently, I find that the scheme would have no unacceptable effect on the character or appearance of the area. Thus, the scheme accords with policies 1, 2 and 23 of the Cornwall Local Plan 2010-2030 (adopted November 2016). Together, and amongst other things, these policies seek to ensure applications that accord with the development plan are approved, that development maintains the special character of Cornwall, and that development sustains local character and distinctiveness.
24. The notice also refers to policies 3 and 7. These relate to the "Role and Function of Places", as well as "Housing in the Countryside". However, policy

11 of the development plan relates specifically to the provision of gypsy traveller sites, which does not resist them in the countryside. Indeed, the Council raise no objection in respect of the principle of the development at this location. As such, I consider that having regard to the permissive nature of policy 11, policies 3 and 7 do not weigh against the development.

Other Matters

25. Given that I have found the development acceptable in respect of the main issue above, it is not necessary for me to consider matters pertaining to the need for and provision of sites, nor the personal circumstances of the occupiers.
26. There is reference in the Council's statement of case to the effect of the nearby road on the living conditions of the occupiers. It was clarified at the hearing that the Council does not resist the development on these grounds. I have nothing before me that would lead me to disagree with this stance.

Conditions

27. I find it necessary to limit occupation to gypsy travellers, given the policy context for such development at this location. The Council have suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to gypsies and travellers as defined in Annex A of the PPTS (as existed at the time of the Council's decision). Following discussion at the hearing and with reference to the preliminary matter above, I consider it appropriate to use the definition as most recently updated.
28. To protect the character and appearance of the area, I have included a condition to limit the number of caravans that can be located within the site.
29. The Council also suggested at the hearing that a landscaping condition was necessary, to aid in the development assimilating appropriately with its context. However, given my findings above in respect of the effect of the development on the character and appearance of the area, I find that this is not necessary.
30. No further conditions were suggested by the Council, and I find that none are necessary.

Conclusion

31. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice, as corrected.

FORMAL DECISION

32. It is directed that the enforcement notice is corrected by:

- Deleting requirement (1) of the Notice and replacing with "(1) Cease the residential use of the land, and the caravan shown in the approximate location by a blue 'X' on the attached plan",
- Within requirement (2), replacing "dwelling" with "caravan",
- Within requirement (6), deleting "and use".

33. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of the land from nil use to residential through the stationing of a caravan for residential purposes along with associated paraphernalia at Land known as Bullies Lodge, Merry Meeting, Roseworthy, Camborne, Cornwall TR14 0DS, as shown on the plan attached to the notice, and subject to the following conditions:

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as *"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such."*
- 2) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston MRTPI
Mr Taylor
Mrs Taylor

Appellant's agent
Appellant
Wife of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Peter Blackshaw BA (Hons) MRTPI
Ben Bassett

Principal Development Officer
(Appeals)
Planning Enforcement Officer

DOCUMENTS SUBMITTED AT HEARING

- 1) Flyer advertising appellants work services.
- 3) Additional planning policy – Policy C1.
- 4) Update to Character Area Assessment.
- 5) Updated Accommodation Need figures.