



Appeal Decision

Hearing and site visit held on 15 November 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/D0840/C/22/3293663

Land at Fernwell, Higher Trevethan, Carharrack TR16 5HJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Nicholas against an enforcement notice issued by Cornwall Council.
- The notice was issued on 27 January 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land for the stationing of a static caravan and erection of a shed type structure for residential use, as shown in the approximate position marked with a black X on the attached plan.
- The requirements of the notice are to:
 - 1) Cease the use of the static caravan for residential purposes.
 - 2) Remove from the land the static caravan and any personal belongings that are not associated with the lawful agricultural use of the land.
 - 3) Remove from the land the wooden shed structure.
 - 4) Reinstate the land as outlined in red on the attached plan to its original condition before the breach took place.
 - 5) Remove all materials and debris resulting from compliance with 1-4 inclusive above from the land outlined in red on the attached plan.
- The period for compliance with the requirements is 6 months
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

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 Matters

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 2012 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.
2. Also, since the hearing, the Government has published a new National Planning Policy Framework (the Framework). In relation to the main issues in this appeal, Government policy has not materially changed. As such, the cases of either side have not been prejudiced.

The Notice

3. 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.
4. 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.

Ground (a)

5. 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 and on the outstanding universal value of the Cornwall and West Devon Mining District World Heritage Site (the WHS).

Reasons

Status

6. At the outset of the hearing, the Council stated that it did not accept the status of the occupiers of the site as gypsy travellers.
7. I asked questions of the occupiers, regarding the work that is undertaken and patterns of travelling for work. I was told that various activities are undertaken, including constructing driveways, cleaning guttering, and patio cleaning. The occupiers travelled away with other members of their family and could be away for two to three weeks at a time. Although, it was accepted that travelling does not occur as frequently since they have resided at the appeal site. The occupier travels individually at all times of year, while during the summer the entire family travels, when the children are not in school.
8. The site occupier travels habitually for work, thereby this serves an economic purpose. The Council has concerns that the occupier's principal income is not obtained by travelling. However, there is nothing before me to indicate that this is the applicable test. I have found that travelling occurs frequently and serves an economic purpose for the occupier.
9. Based on the discussions as well as answers given to the questions I asked, I am satisfied in this regard and find that the site occupant benefits from status as a gypsy traveller and complies with the definition in the PPTS.

Character and appearance

10. The appeal site lies in a rural location, between Carharrack and Redruth, and encompasses a field parcel within which a mobile home and attached structure are located. Access to the site is gained from an access track which leaves the public highway to the north, and which also serves a number of other properties.
11. The site lies within the WHS, which is described as “a series of ten Areas comprising the distinctive patterns of buildings, monuments and sites which together form the coherent series of distinctive cultural landscapes created by the industrialisation of hard-rock mining processes in the period 1700 to 1914.¹” The Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2020-2025 (the Management Plan) also sets out that there are seven main attributes of the Outstanding Universal Value (the OUV) of the WHS, which are: mine sites, including ore dressing sites; mine transport infrastructure; ancillary industries; mining settlements and social infrastructure; mineworkers’ smallholdings; great houses, estates and gardens; and mineralogical and other related sites of particular importance.
12. The appeal site lies within “Area A6 – Gwennap Mining District with Devoran and Perran and Kennall Vale”. The Management Plan sets out that “The central and northern sections of this Area are notable for their well-preserved landscape of smallholdings, interspersed with small mining settlements together with the mines which they served. St Day, Carharrack and Chacewater are particularly fine examples of mining villages.” It is also stated that the boundary of Area A6 “has been drawn to include all of the principal mines, large areas of mineworkers’ smallholdings in the north and east, and country houses and estates in the south and west.”
13. Policy 24 of the Cornwall Local Plan 2010-2030 (adopted November 2016) (the Local Plan) requires that development within the WHS and its setting should accord with the Management Plan. Proposals that would result in harm to the authenticity and integrity of the OUV, should be wholly exceptional. If the impact of the proposal is neutral, either on the significance or setting, then opportunities to enhance or better reveal their significance should be taken.
14. The Framework sets out, amongst other things, that:
 - WHSs are designated heritage assets that are of the highest value and are internationally recognised to be of OUV.
 - When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
 - Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

¹ The Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2020-2025, p16

- Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
15. At the hearing, the Council clarified that its principal concern revolved around the legibility of the miners' smallholding that the appeal site was historically part of. It is contended that use of the parcel of land, for any purpose other than for agriculture would affect the legibility of the location as part of a miner's smallholding. This is a point that I accept, particularly considering the importance placed on these smallholdings, as part of the defining characteristics of the WHS. In this case, the development undertaken, which includes the siting of a mobile home, attached timber structure as well as the creation of a gravelled parking area, appears as an incongruous feature within an area that was previously undeveloped and thus was somewhat reflective of the former smallholding use.
16. However, I am also mindful that the field boundaries that currently exist are no longer reflective of those that existed historically. When comparing the extant field pattern to the extract of the Tithe Map provided by the Council in its statement of case, many of the former parcels have been amalgamated into larger enclosures. Thereby the original plot layout of the miner's smallholdings has already to some degree been degraded. Nonetheless, the site comprises part of a feature for which the WHS was inscribed and continues to make a positive contribution to the OUV of the WHS.
17. I acknowledge that the development that has been undertaken has not interfered with the boundaries of the parcel of land, in that there has been no removal of any boundaries and so no degradation of the existing enclosure pattern within the surrounding area. An appreciation of the historic significance of the smallholding would therefore remain. Nonetheless, this does not prevent the development from resulting in harm.
18. The development has introduced features at this site that are discordant, in terms of the historic use of the land. Moreover, they intrude into the parcel of land, away from existing built development. The development therefore erodes the appreciation of the site as part of a former miner's smallholding and negatively affects the OUV of the WHS. The harm that I find in this respect is tempered due to the development not interfering with the existing boundaries that surround the site, thereby ensuring that the pattern of enclosure that currently exists remains, as well as that there have been previous changes to the pattern of enclosure in the vicinity of the site that have degraded the appreciation of the former smallholdings, such that former plot patterns no longer exist in their entirety. As a result, I find that the scheme would result in a very minor adverse effect on the OUV, and thus the significance, of the WHS. In terms of the cumulative effect of development, no other specific schemes have been brought to my attention and thus I find that there would be no deleterious cumulative effect resulting from the development on the WHS.
19. In terms of landscape effects, the appeal site lies within the CCA 09: Silverwell to Camborne Character Area, as defined within the Cornwall Character Area (August 2023). Within this area, the site falls within the Historic mining farmland component type. At the hearing, it was highlighted to me that what is most valued in respect of this character area, included:

- *"A post-industrial mining landscape parts of which are within the Cornwall and West Devon Mining World Heritage Site, containing many visible and impressive mining relics, including ancillary buildings, shafts, old wheelhouses, engine houses with tall chimneys, mining tracks and Methodist chapels."*
- *"A mixed field pattern of medium-scale post-medieval fields, altered in places for miner's smallholdings, and small medieval field patterns with relic strip fields."*

Amongst the pressures for change within this character area are the demand for residential development, the poor design of new development that does not reflect the historic vernacular, and additional visual clutter from buildings.

20. The site is also located within the Carnmarth Area of Great Landscape Value (the AGLV) as defined within the 2023 Cornwall AGLV Review. This identifies that the mining heritage of the landscape is highly legible and that there is a well-connected network of medieval fields with strong boundaries of traditional Cornish hedges that protect the historic field patterns.
21. As I have set out above, the development does not interfere with any existing field boundary and thus the enclosure pattern that is currently evident, would remain visible. In this respect, there would be no effect on the legibility of the landscape or the existing strong boundary features. There would be the introduction of a new, residential form of development that would in my view be an unfamiliar feature within the site and surrounding area.
22. However, the area surrounding the appeal site is not a pristine, undeveloped landscape. There are existing built features that include dwellings, as well as a large agricultural building, which have an influence on the area. In terms of visual effect, from the road to the north, there are limited glimpses of the development through gaps in the roadside hedging, which sits atop a typical hedgebank. There is a public right of way to the west of the site, which runs southwards to elevated ground and from this there are views towards the appeal site from an elevated position. The existing development is visible. Nonetheless, it is not a prominent feature. Moreover, it is viewed within the context of the existing development to the east, in particular the existing dwellings and agricultural building. Thus, any harm arising is in respect of the location of the caravan at this sensitive countryside location. In my view, this harm resulting from the visual effect and effect on the character of the area, is negligible in its extent.
23. I make this finding bearing in mind 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. I also accept that the area within which the development is located has a low capacity for change.
24. I therefore find that there would be a negligible degree of harm to the character and appearance of the area, as well as a very minor degree of harm to the OUV, and significance, of the WHS. Nonetheless, as a result of this harm, the development does conflict with policies 1, 2, 12, 23 and 24 of the Local Plan. 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, that development

sustains local character and distinctiveness and that designated heritage assets are protected and conserved.

25. 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. 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.

Heritage Balance

26. Paragraph 208 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. While I have found very minor harm to the OUV, and significance, of the WHS, this nonetheless constitutes less than substantial harm and I am required to balance this harm against the public benefits of the proposal, which I shall now consider.

Need for and provision of sites

27. At the hearing I was provided with updated figures in respect of the need for and provision of gypsy traveller pitches. The 2015 Gypsy & Traveller Needs Assessment outlined a need for 318 pitches by 2030. To the date of the production of the figures (9 November 2023) 151 pitches have been provided. This results in an existing shortfall of 167 pitches to be provided by 2030. This is a substantial number that are still to be provided. While the Council have indicated that it has been making good progress on delivering new pitches to date, such progress would need to be maintained, and indeed exceeded, to achieve the identified need for pitches. Moreover, the Council is relying on private site provision to meet this identified need and is currently unable to demonstrate a five-year supply of pitches.

Alternative sites

28. During the discussion at the hearing, the Council mentioned the possibility of there being space on the site occupied by one member of the appellant’s family. It was clarified that there was no available space and that no planning permission existed for any additional pitches here. On this basis, the Council accepted that there are no alternative sites available.

Failure of policy

29. While there has been progress made in terms of the permitting of pitches within the Council area, there remains a significant need. There is also the lack of an allocation policy in the development plan. I am particularly conscious that Inspectors when reaching other decisions have found that there has been an ongoing failure of policy to address the accommodation needs of gypsy travellers for a significant period of time.
30. I attach weight to the acknowledged need for pitches, including a lack of a five-year supply, the lack of alternative sites and the failure of policy. While the development would result only in the delivery of a single pitch of accommodation, I find that in light of the matters above, this carries a

significant public benefit and one that is sufficient to outweigh the less than substantial harm to the designated heritage asset.

Other Matters

31. While not mentioned within the reasons for issuing the notice, the Council raised the matter of the accessibility of the site, in terms of its position in the countryside, specifically an alleged lack of access to services by a range of transport modes.
32. I acknowledge that there is no public transport service in close proximity to the appeal site. Moreover, the roads are narrow and lack pedestrian facilities. Thus, walking to services would be an unattractive proposition for residents at the site. Nonetheless, car journeys would be short in duration. I am also mindful of paragraph 109 of the Framework which outlines that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account.
33. Therefore, while I accept that there would be a reliance on the private car, given the proximity of settlements where services are available, together with that policy 11 requires reasonable access to a range of transport modes, where possible, I find that in this case there is sufficient accessibility to services available to occupants. Thus, I find no conflict with policy 11 in this regard.

Planning Balance

34. As set out above, when balancing the harm to the designated heritage asset against the public benefits, I have found that the balance falls in favour of allowing the development.
35. There would be a negligible amount of harm to the character and appearance of the area in general, consequent to the conflict with policy that I have identified. However, the benefits of the scheme overall are such that they outweigh any harm. Therefore, the planning balance indicates that the development should be permitted.
36. In light of this finding, it is not necessary that I consider the personal circumstances of the occupiers of the site.

Conclusion

37. 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.
38. As I am allowing the appeal under ground (a), the appeal under ground (g) does not fall to be considered.

Conditions

39. 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, utilising the same definition as set out in the revised Annex A of the PPTS. I consider it appropriate to use this definition, as most recently updated.

40. 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, as well as preventing commercial activities from taking place and ensuring that a landscaping scheme is submitted for approval.
41. There was discussion at the hearing in respect of a possible condition requiring the reinstatement of the previous, historic field boundary to the west of the location of the mobile home. However, as this has been removed for a significant period of time, and that other field boundaries have also been removed, I find that such a condition would not be necessary to make the development acceptable in planning terms.
42. In terms of a condition limiting any permission to a temporary period, I have nothing before me that persuades me that the planning circumstances are likely to change in the short term i.e., within the likely life of a temporary permission, such that such a temporary permission would be justified. A condition requiring restoration of the site, should the development ever cease, was also suggested. However, as I am granting a permanent planning permission this is not necessary.

FORMAL DECISION

43. It is directed that the enforcement notice is corrected by:
- Deleting requirement 1) of the Notice and replacing with "1) Cease the use of the land and the static caravan for residential purposes".
44. Subject to the correction, 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 material change of use of the land for the stationing of a static caravan and erection of a shed type structure for residential use at Land at Fernwell, Higher Trevethan, Carharrack TR16 5HJ 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.
 - 3) The use hereby permitted shall cease and all caravans, structures, equipment, and materials brought onto the land for the purposes of such use shall be removed within 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision a scheme, to include a timetable for implementation, for

- the internal layout of the site, including the siting of caravans, hardstanding, parking, and amenity areas;
- tree, hedge, and shrub planting and, where appropriate, earth mounding including details of species, plant sizes and proposed numbers and densities;
- details of the position and type of fencing and gates to enclose the internal layout of the site, as detailed above, from the remainder of the parcel of land;
- any external lighting within the site;

(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii. If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme, to include the layout of the site, shall thereafter be retained. No external lighting, other than that approved as part of the scheme, shall be installed.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) At the same time as the site development scheme required by condition 3 above is submitted to the local planning authority, there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston MRTPI
Mr Nicholas
Mr Richards
Mr Moore

Appellant's agent
Appellant
Tenant
Father of appellant

FOR THE LOCAL PLANNING AUTHORITY:

James Holman MRICS MRTPI FAAV
Emma Milne

Principal Development Officer
(Appeals)
Planning Enforcement Officer

DOCUMENTS SUBMITTED AT HEARING

- 1) Update to Character Area Assessment.
- 2) Updated Accommodation Need figures.