
Appeal Decision

Site visit made on 10 October 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th March 2024

Appeal Ref: APP/D0840/C/22/3306450

Land known as Caravan at Milland Farm, Demelza PL30 5PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Martin Udy against an enforcement notice issued by Cornwall Council ('the Notice').
 - The enforcement notice, numbered EN20/01596, was issued on 1 August 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the change of use of the land from agricultural to residential through the stationing of a caravan for residential purposes. The approximate position of the residential caravan is marked with blue 'X' on the attached plan.
 - 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 caravan indicated by the blue 'X' on the attached plan from the land; (3) Remove from the land all materials and debris resulting from the residential use of the land, including sheds, picnic table, children's play equipment, washing line, plant pots etc.; (4) Remove from the land all materials and debris resulting from the above works and restore the land to its former condition and agricultural use before the breaches took place.
 - The period for compliance with the requirements is 24 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (e) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. It is directed that the enforcement notice is varied by omitting the words "and agricultural use" from requirement 4 of section 5 of the Notice, 'What you are required to do'. Subject to the 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.

The Notice

2. Requirement 4 of section 5 of the Notice, 'What you are required to do', states that the land should be restored to its former condition and its agricultural use. Whilst a Notice can require an unauthorised use to cease, it cannot be used to require that another takes place. This is the case even where the use referred to is lawful. For this reason, I will vary the requirement to omit reference to the agricultural use.

Ground (e)

3. An appeal made under this Ground is that copies of the Notice were not served as required by s172 of the Act.

4. Section 172 sets out the process to be followed by local planning authorities when serving copies of Notices. Broadly speaking, its requirements are three-fold: firstly, it relates to the breach and the expediency of issuing a Notice; secondly, that copies shall be served in a particular manner; and thirdly, that service of the Notice needs to be undertaken in a timely manner. The Appellant's case relates to the second of these requirements.
5. In respect of who shall be served with a copy of the Notice, s172(2) requires that "a copy of an enforcement notice shall be served—(a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice".
6. Section 329 sets out how Notices issued under the Act should be served. In brief, its sub-section (1) states that service has to be by way of one or more of the following: by delivering it to the person on whom it is to be served; by leaving it at the usual or last known place of abode of that person or an address given for its service; electronically using an electronic address given by the person; in the case of an incorporated company, to the secretary of the company at its registered office.
7. In this case, it is common ground that a copy of the Notice was given to the Appellant's partner who Officers met on the land, a situation described as "potluck" by the Appellant. I am told that Mr Udy had not lived at the address on the letter attached to the Notice "since 2020", the letter is dated 1 August 2022, and the heading on the letter refers to 'Midland', rather than 'Milland' Farm. The Appellant claims that the method of service led to "significant confusion", in his response to the Council's statement. As the Notice and issue were error strewn, the Appellant says that the Notice should be quashed.
8. In essence, the terms of s172(2) and (3) are designed to ensure that a Notice is served on the correct persons in a timely manner, allowing them to make an appeal against it. Even if this has not been done correctly, s176(5) sets out that "the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him". Here, service might not have been precisely as the terms of s172 require, but the Notice reached Mr Udy in a timely manner and he provides scant evidence of the significant confusion he claims. The Council sets out that the situation was explained to Mr Udy in a meeting subsequent to when Officers gave the Notice to his partner. That he was able to appoint an agent qualified to make his appeal in a timely manner demonstrates that he has not been substantially prejudiced.
9. For these reasons, the Ground (e) case fails.

Ground (a)

10. An appeal made under Ground (a) is that the breach of planning control alleged in the Notice should be given planning permission.

Main Issues

11. The main issues arising are:
 - Whether the site lies in an appropriate location for residential development, including whether it would result in a new dwelling in the countryside whose occupants have undue reliance on car travel without justification;

- The effect of the development on the character and appearance of the area; and
- If the Appellant's case is not made in respect of either or both of the above main issues, whether personal circumstances outweigh the harm that would arise.

Appropriate location

12. Milland Farm lies a short distance to the north of the small settlement of Demelza, which, from what I saw at the time of my site visit, had no services. The farm is linked to the settlement by a lane leading to a narrow public road. The Appellant's 42 acre holding is divided between land at Milland Farm and land at Tregonetha, about two miles to the west.
13. There is a limited range of services, including a railway station, a little under 3 miles away by road at Victoria. Beyond this, the large village of Roche has, amongst other things, a school and health facilities.
14. The farm lies on a gently sloping hillside above a shallow river valley. There are a number of buildings at the site, including¹ a Machinery and Equipment Store, a Hay and Fodder Store, a Lambing/Calf Shed and a Medicine Store. The caravan lies on a levelled area, close to the point where the access lane reaches the farm. It has been finished in dark brown horizontal boarding.
15. It is common to both parties' submissions that the site lies in the open countryside, in a location where policy support for residential development is only gained in certain circumstances.
16. The Cornwall Local Plan ('CLP') is based on delivering development in a manner that provides for a sustainable future. Its Policy 1 repeats the presumption in favour of sustainable development that is set out in the Government's National Planning Policy Framework ('the Framework'), whilst CLP Policy 2 sets out the Council's 'Spatial Strategy' to provide sustainable development. CLP Policy 3 is the principal policy relating to housing provision in the county. It sets out a hierarchical approach where most new dwellings will be provided in the county's larger urban centres. Outside of these, new housing developments will be provided through, amongst other things, limited sized schemes in smaller settlements and through sites identified in Neighbourhood Plans. On this latter point, a majority voted against the terms of the St Wenn Neighbourhood Plan in a local referendum. Therefore, there is no Neighbourhood Plan for the area.
17. CLP Policy 7 refers to the provision of housing in the open countryside. Its terms reflect those of the Framework and the Planning Practice Guidance ('PPG'), supporting housing in rural areas, subject to 5 criteria. Of these, numbers 4 and 5 are relevant to this appeal. These are: "Temporary accommodation for workers (including seasonal migrant workers), to support established and viable rural businesses where there is an essential need for a presence on the holding, but no other suitable accommodation is available and it would be of a construction suitable for its purpose and duration"; and "Full time agricultural and forestry and other rural occupation workers where there is up to date evidence of an essential need of the business for the occupier to live in that specific location", respectively.

¹ As described in the 'Agricultural Need Appraisal' (ANA) by Edward Buckland

18. In his submissions, the Appellant states that there is no alternative accommodation in the locality, and this has not been countered by the Council. The shortage of housing in rural areas is well-known and I have no reason to doubt this claim.
19. In terms of whether there is a need for a rural worker on the land, the Council points to application PA17/09025 that proposed a cabin to house a rural worker. That application was made by the Appellant. The Council refused planning permission for the cabin setting out that, whilst there were animals on the land, the applicant's income was not derived from agriculture, but from a vehicle repair and recovery service that he ran. In support of its case, the Council drew my attention to an report of the agricultural activity at the site, produced by the County Land Agent ('CLA') for application PA17/09025. The Council's reason to refuse that application was based on the report's conclusions.
20. I note that the report was dated nearly 5 years before the Notice was issued. For his part, the Appellant has submitted the Agricultural Need Appraisal ('ANA'). Although undated, as it refers to the appeal, it is safe to assume that it dates from shortly before the appeal was lodged. It indicates a significant change in circumstances on the farm since the CLA's report, with 120 ewes, 2 breeding rams, 20 calves, 5 breeding sows and 7 weaners being held on the land. The Appellant also produces hay for use on the farm and for sale; this is produced in small bales in a labour-intensive manner.
21. The case is made that the young stock requires a higher labour input, and that 24-hour supervision is of paramount importance. The ANA concludes that, based on livestock management, the farm's labour requirement equates to 0.77% of a full-time worker. However, the ANA estimates that the shortfall is made up through the re-seeding of the land, general management including to its hedges, moving fences for sheep, and hay production. On the matter of functional need, the ANA accepts that these figures do not demonstrate requirement for a full-time worker. However, it considers that given the high risk and labour-intensive nature of the livestock enterprise, the essential need is proven.
22. The Council did not address the ANA in its Final Comments, so I have no reason to doubt the numbers of livestock quoted and the nature of the activities it describes. However, it has not been clearly demonstrated that the non-stock related activities amount to 20% of the labour needs of the holding. Whilst I do not doubt the labour-intensive nature of the manner in which hay is cut, baled and stored, this is an activity that would be undertaken only in the warmer and drier part of the year. Similarly, there has been little evidence to show that this, together with the re-seeding, hedgerow and general management of the holding would add up to 20%. Therefore, although the situation has undoubtedly altered since application PA17/09025, it has not been demonstrated that there is a functional need for a full-time presence on the holding.
23. The PPG sets out that one of the considerations in assessing isolated homes for rural workers is the degree to which there is confidence that the enterprise will remain viable for the foreseeable future. The author of the ANA states that they have seen the accounts for the period between 2018-2019 and 2021-2022,

inclusive. They say that they are “generally good” though understandably show reduced margins when there has been investment in the holding.

24. However, those financial returns have not been submitted with the appeal documentation. Therefore, I cannot have the confidence in the viability of the holding that is referred to in the PPG. Therefore, in the absence of this information, I cannot find that the business is sustainable in the manner that the ANA concludes.
25. In the light of the evidence before me, I do not find that there is a functional need for a full-time worker on the land, nor that it has been shown that the holding is viable. Allowing the appeal would significantly undermine the Council’s efforts to control the location of housing and, therefore, the proposal to retain the caravan is contrary to the terms of CLP Policy 7, which reflect national policy and guidance.
26. The caravan is located in a location away from any service provision, where its occupants would be more or less totally reliant on the use of private cars. In this respect, it is an unsustainable location. I appreciate that the Appellant would drive to the site, were the appeal to be dismissed. However, I have not been provided with compelling evidence to show that this would result in more private car journeys than would be generated by him and his family travelling from and back to the site to access services, education, shopping and the like from the land. The proposal is contrary to the terms of CLP Policies 1 and 2 that seek to ensure that development is sustainable. Had it been demonstrated that a residential presence was essential on the land in accordance with CLP Policy 7, this would have justified setting aside concerns regarding sustainability.
27. The Appellant makes the case that he has a fall-back position that would result in more vehicle movements to and from the site over and above the agricultural use. He cites the permitted development right to change the use of ‘agricultural buildings to a flexible commercial use’ set out in Schedule 2, Part 3, Class R of The Town and Country Planning (General Permitted Development) (England) Order 2015 (‘GPDO’). Subject to various conditions and caveats, Class R allows for the change of use of an agricultural building to three use classes in the Town and Country Planning (Use Classes) Order 1997 without the need to apply to the Council: Class B8 ‘Storage and Distribution’; Class C1 ‘Hotels’; and Class E ‘Commercial, business or service’. One of the conditions is that the change of use should not amount to more than 150sqm cumulatively on the holding.
28. It is claimed that the potential uses could have significantly more harmful impact on the appearance of the site and surrounding area, and in terms of “comings and goings” from the site. However, little detail of what such a change of use might entail is given.
29. No details of car movements associated with any of the potential uses, nor those associated with the present use of the site have been given. Without these, I cannot conclude that there would be more “comings and goings” from the site.
30. In terms of the effect of such a change of use on the character and appearance of the area, the permitted development right allows for the change of use. It does not allow for operational development to facilitate it. Any works that

materially altered the external appearance of the building or buildings to which such a change of use occurred would require planning permission. The Appellant does not say which building he would propose to change the use of, but from the evidence of my site visit, their conversion to Class C1 or Class E would be likely to require fairly substantial alteration. Thus, a planning application would be required and any ill-effect on the character and appearance of the area could be controlled. This might not be the case with a Class B8 use, which might be achieved with no material alteration to a building's external appearance, but it still has not been shown that what would be a small area changed to a B8 use would result in increased comings and goings.

31. Therefore, whilst I acknowledge the permitted development right exists, I cannot conclude that it would lead to a more harmful situation in respect of the character and appearance of the area, nor through traffic movements to and from the site, as claimed. Therefore, I find this argument has insufficient weight to set aside the conflict with CLP Policies 1, 2, 3 and 7.

Character and appearance

32. Milland Farm lies in an area that has been designated as an Area of Great Landscape Value ('AGLV'). Policy 14 of the Restormel Local Plan 2001 – 2011 ('RLP'), which relates to AGLVs, has been 'saved' and is part of the development plan. It states that developments will not be permitted where they would cause harm to an AGLV.
33. The Council has produced the 'Cornwall and Isles of Scilly Landscape Character Study', in which the county has been divided into Landscape Character Areas ('LCA'). The site lies within LCA number CA33 'Camel and Allen Valleys'. The description of the LCA as an undulating plateau that has been dissected by rivers, with wooded valley bottoms and plateau tops dominated by farms with a mix of improved pasture and arable land, reflects what I saw. It is an attractive landscape.
34. The caravan is set towards the western end of the holding, on more level land at the upper end of a field rising from the river to the east. It is close to the range of buildings on the farm, in a manner that accords with the nucleated form of farmsteads in the area. It lies quite close to a hedgerow at the field's upper end, which has mature trees growing from it.
35. Whilst the caravan is seen from across the valley, those viewpoints are quite distant. The caravan is discrete, rather than being prominent in the landscape, with its effect being mitigated by its siting close to other buildings and the hedge behind. I find that the siting of the caravan and the paraphernalia associated with its residential use does not harm the character and appearance of the AGLV.
36. For the above reasons, I find that the proposed development accords with the terms of saved RLP Policy 14 and CLP Policy 23 that, amongst other things, seeks to maintain the character and distinctive landscape qualities of AGLVs. In this regard, it represents sustainable development in accordance with CLP Policy 1, and maintains and respects the rural landscape as required by that Plan's Policy 2.

Personal circumstances

37. Article 8(1) of the Human Rights Act 1998 ('HRA') provides that everyone has the right to respect for their private and family life, their home and their correspondence. Article 8(2) of the HRA is a qualified right that states there shall be no interference by a public authority with the exercise of the Article 8(1) right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
38. The Appellant says that he, his daughter and partner would lose their home, should the Notice be upheld, as they have nowhere else to go. Therefore, their Article 8(1) rights would be interfered with. However, the planning system is necessary in a democratic society in the interest of preventing disorder and the rights and freedoms of others. In this regard, I note that the Council has allowed a very lengthy period for compliance. This, it says, reflects the housing situation that the Appellant and his family find themselves in, and is designed to allow time to find alternative accommodation. Although I understand that the two-year compliance period has an end date, and that this causes stress, the terms of the Notice, including its time for compliance, are proportionate.
39. The PPG² states that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.
40. Though not appropriate to set out the full details here, I am aware of the tragic events in the Appellant's life and the effects that these have had on him and his family. Letters from Devon and Cornwall Police and a Counsellor testify to this, setting out, amongst other things, how living on the land and being able to tend his animals is helping him to cope. I am also aware that he and his family have had to move out of accommodation on more than one occasion relatively recently, and the scars these moves have left.
41. The Council served a Planning Contravention Notice ('PCN') on the Appellant, when investigating the breach of planning control. In the completed version that he returned, the Appellant set out that he and his family had nowhere else to go and that his daughter was "vulnerable". He says that these show the Council's assertion in the Notice that there was no special justification to allow the development to be wrong. He states that, following the comments made in the completed PCN, the Council did not adequately look into the matter in the manner that is required by its own Enforcement Investigation Process. Amongst the terms of Step 8 of that Process is the requirement to "Consider personal circumstances and Human Rights".
42. There is little evidence, such as an Officer's report, for example, that the Council followed the approach set out in Step 8. However, that is a procedural matter that is not for me to form a view on. The Appellant criticises the Council for not thoroughly investigating the personal circumstances in the case and says that he was not given the opportunity to make his case in this regard, other than through his answers to a Planning Contravention Notice. Whether or

² Paragraph: 015 Reference ID: 21a-015-20140306. Revision date: 06 03 2014

not this was the case, he has had the opportunity, through the appeal process, to set out the personal circumstances.

43. In any event, that the Council granted such a lengthy period for compliance suggests to me that the personal circumstances of the Appellant and his family were taken into account before issuing the Notice.
44. Given those personal circumstances, I have the utmost sympathy for the Appellant. It is undoubtedly extremely concerning to him and his family that they would lose their home if the Notice is upheld. However, those circumstances do not, to my mind, justify granting planning permission for a form of development that is clearly contrary to well-established national and local policies.
45. In essence, the terms of the Notice are that the Council has granted a temporary two-year permission. This has been designed to allow the Appellant time to find alternative accommodation. It may also allow the Appellant to produce a more robust case for living on the site. In this respect, he might provide greater evidence of how the management of the land makes up the shortfall in labour requirement that I found to be wanting and provide the financial information that was lacking here. This is not to say that the Council should or would grant planning permission, it is merely said to illustrate what the Council's actions might also allow.

Conclusion

46. I have found that there is no harm to the character and appearance of the area arising from the siting of the caravan and residential use of the land around it. However, neither this nor the material considerations, in terms of the Appellant's personal circumstances put forward, outweigh the harm that I have identified.
47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector