



Appeal Decisions

Site visit made on 28 March 2024

by Jessica Graham BA(Hons) PgDipl

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

Appeal A Ref: APP/D0840/C/22/3312231

Land known as Tremearne, Bone Valley, Heamoor, Penzance, TR20 8UJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. Keith Lee against an enforcement notice issued by Cornwall Council.
 - The notice, ref EN22/00811, was issued on 3 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a dwellinghouse shown in the approximate position by blue 'X' on the attached plan along with other domestic paraphernalia.
 - The requirements of the notice are to:
 - 1) Demolish and remove the building shown in the approximate location by a blue 'X' on the attached plan from the land
 - 2) Remove from the land all materials and debris resulting from the residential use of the land, including outdoor table and chairs, BBQ, wooden fencing etc
 - 3) Remove from the land all materials and debris resulting from the above works and restore the land to its former condition before the breaches took place.
 - The period for compliance with the requirements is twelve months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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Appeal B Ref: APP/D0840/W/22/3312230

Chalet at Lavender Cottage, Tremearne, Bone Valley, Heamoor, TR20 8UJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr. Keith Lee against the decision of Cornwall Council.
- The application Ref PA22/03337, dated 30 March 2022, was refused by Notice dated 1 June 2022.
- The development proposed is the retention of a building as a self-contained residential unit.

SUMMARY OF DECISIONS: The Enforcement Notice is upheld and planning permission is refused.

Procedural matter

1. Appeal B was originally also proceeding on ground (g): that is, that the compliance period specified by the notice is too short. The Appellant's case was that a period of 8-12 months was needed. The period specified by the notice is 12 months. It has subsequently been clarified that there is no dispute between the parties, who agree that 12 months is a reasonable period for compliance. The appeal on ground (g) does not, therefore, need to be determined.

Main issues

2. Ground (a) of **Appeal B** (that is, that planning permission should be granted for the matters stated in the enforcement notice) is substantively the same as **Appeal A**: both seek planning permission for the self-contained residential unit that has been constructed on the land. I shall deal with them together. The main issues are whether the Appeal Site constitutes a sustainable location for this form of development, and the effect of the development on the character and appearance of the area.

Reasons

3. Bone Valley is an unclassified road, which runs from the northern edge of Heamoor to the upland spine of the Penwith peninsula. The Appeal Site is within a wooded area on the the eastern side of this road, accessed via a narrow track serving a range of buildings, which were formerly part of a farm. These buildings, which lie along the southern side of the access track, are the residential property known as Tremearne and two dwellings known as Pear Tree Cottage and Lavender Cottage. There is also a studio next to the dwellings. The Appeal Site lies on the northern side of the access track, opposite the studio, on land which was formerly a mining spoil heap and is infested with Japanese Knotweed.

Whether the Appeal Site is a sustainable location for residential development

4. The Cornwall Local Plan (adopted 2016) sets out a spatial strategy which (among other things) aims to provide homes in a proportional manner, where they can best sustain the role and function of local communities and that of their catchment. Policy 3 seeks to concentrate the provision of housing at, or well-related to, the 18 main towns. It states that outside those named towns, housing may still come forward through a number of mechanisms. These are the identification of sites through Neighbourhood Plans; the "rounding off" of settlements and the use of previously developed land within or immediately adjoining a settlement; infill schemes that fill a small gap in an otherwise continuous built frontage; and rural exceptions sites for affordable housing under Policy 9.
5. The Madron Neighbourhood Development Plan (made in April 2023) does not identify the Appeal Site for housing; rather, since the Appeal Site lies outside the development boundary for Madron, it is identified in NDP Policy H1 as a location where proposals for housing would need to accord with the provisions of Policies 3, 7 or 9 of the Local Plan. The Appellant contends that the three residential properties on the opposite side of the access track to the Appeal Site should be considered a small settlement, such that the residential development of the Appeal Site could be regarded as infilling and/or "rounding off" a settlement, in accordance with the mechanisms identified by Policy 3.
6. While the Local Plan does not define the term "settlement", the supporting text for Policy 3 explains that in smaller villages and hamlets in which infill sites are allowed, the settlement should have a form and shape and clearly definable boundaries, "...not just a low density straggle of dwellings." The supporting text also explains that "rounding off" applies to development on land substantially enclosed by but outside the urban form of a settlement, whose edge is clearly defined by a physical feature that also acts as a barrier to further growth, and "...should not visually extend building into the open countryside."

7. In my judgment, the cluster of three residential properties near the Appeal Site cannot reasonably be regarded as a “settlement” for the purposes of Local Plan Policy 3. The development of the Appeal Site would not “fill a small gap in an otherwise continuous built frontage”, or provide a defining barrier to further growth. Rather, it would extend built form into the countryside on the northern side of the access track. I conclude that the construction of the dwelling on the Appeal Site does not constitute either an infill scheme, or the rounding off of a settlement.
8. The last of the four mechanisms identified by Policy 3 for delivering housing outside the main towns is the provision made by Policy 9 for rural exception sites. These are development proposals on sites outside of (but adjacent to) the existing built-up area of smaller towns, villages and hamlets, whose primary purpose is to provide affordable housing to meet local needs. I do not consider that the small group of buildings near the Appeal Site can rightly be regarded as a hamlet. More fundamentally, no mechanism has been provided to secure the dwelling as local needs housing in perpetuity. I am told that the Appellant is local, requires affordable housing to remain in the area, and would be willing to sign a s.106 Agreement. However, no such Agreement or Undertaking has been provided. Without one, there is no means of restricting future occupancy of the dwelling to local people in housing need, or ensuring any future sale price remains affordable to them. The development does not, therefore, accord with the terms of Local Plan Policy 9.
9. In short, I find that for the reasons set out above, the construction of a dwelling on the Appeal Site does not accord with any of the means identified by Local Plan Policy 3 as suitable for the provision of housing outside the main towns. The Appeal Site is not within or adjacent to a “settlement” for the purposes of Policies 3 and 9, and so needs to be considered as a site in the countryside. Local Plan Policy 7 states that the development of new homes in the countryside will only be permitted where there are special circumstances: none of those circumstances apply here.
10. I note that the nearest settlement with facilities, Heamoor, is some 600m from the Appeal Site. While this is a reasonable walking distance, the road is unlit and there is no pedestrian footway. As a consequence I am not convinced that this provides the “safe access by walking” sought by Local Plan Policy 27. However, Policy 27 also identifies safe access by public transport as a means for minimising car travel, and there is a bus stop on the highway right next to the access track. In my view the fact that the Appeal Site is readily accessible by public transport means that it accords with the overall aims of Policy 27.
11. The Appellant contends that the dwelling here at issue delivers economic, social and environmental benefits, such that it constitutes “sustainable development” in accordance with paragraph 8 of the National Planning Policy Framework (NPPF). However, paragraph 9 of the NPPF explains that the economic, social and environmental objectives of the planning system should be delivered through the preparation and implementation of plans and the application of policies; they are not criteria against which every decision can or should be judged.
12. The adopted Cornwall Local Plan provides up-to-date policies which seek to promote a sustainable pattern of development. The location of the dwelling here at issue conflicts with those policies, and so cannot be considered a

sustainable form of development. There does not appear to be any reason why the economic, social and environmental benefits which the Appellant attributes to the provision of this dwelling could not also be achieved by the provision of a similarly-sized dwelling in a location that would accord with the spatial strategy of the Local Plan.

13. I conclude that the development here at issue conflicts with the aims of Policies 1, 2, 3 and 7 of the Cornwall Local Plan, which together seek to direct most new housing towards the main towns, and to prevent the construction of new dwellings in the countryside other than in certain specified circumstances. The Appeal Site is not, in these terms, a sustainable location for residential development.

The effect of the development on the character and appearance of the area

14. The dwelling is a single-storey structure that is fairly small in scale. Existing vegetation provides some screening, but it is visible from the adjoining road. The presence of the dwelling on the Appeal Site results in the encroachment of built form into the countryside, domesticating an area of land which previously had the character and appearance of undeveloped woodland. This conflicts with the aims of Policies 2 and 23 of the Cornwall Local Plan, which together seek to protect, conserve and enhance the landscape and natural environment.

Other matters

15. The Council's second and third reasons for refusing the application for planning permission that is now the subject of **Appeal B** included concerns about the absence of sufficient information to assess flood risk, and the risks posed by the identification of the Appeal Site as potentially contaminated land. In the course of the appeal the Appellant provided a Flood Risk Assessment and a Phase 1 Contaminated Land Survey, and the Council has advised that it no longer wishes to defend these two reasons for refusal. I am satisfied that if I were minded to grant planning permission for the development, these are matters which could be adequately addressed by the imposition of relevant conditions.
16. I understand that the Appellant has a licence to remove Japanese Knotweed from the site, as a phased programme of work over a period of 5 years. The submissions made on behalf of the Appellant suggest that a s.106 Agreement could be used to secure the removal of this invasive species, but no such deed has been provided. In any event, since there is no argument that removing the knotweed could or should be contingent upon obtaining planning permission for residential development, this is not a consideration which weighs in favour of allowing the appeal.
17. I am mindful that a decision to refuse planning permission and uphold the notice would mean that the Appellant stands to lose what may now be his primary place of residence. This would be an interference with his right to respect for his private life and home.¹ There is no indication that anybody else is living at the residence with the Appellant. The period given for compliance with the requirements of the Notice is twelve months. I consider this a fair amount of time to look for alternative accommodation, and as noted at paragraph 1 above, the Appellant agrees that it is reasonable. I am satisfied

¹ Per Article 8 of the European Convention on Human Rights, set out in Schedule 1 of the Human Rights Act 1998

that the requirements of the enforcement notice are proportionate when balanced against the need to uphold the planning system, including the policies of the Council's adopted Development Plan, in the wider public interest.

The overall planning balance

18. For the reasons set out above I have found that the construction of a dwelling on the Appeal Site conflicts with the aims of Policies 1, 2, 3, 7 and 23 of the Cornwall Local Plan. I have not found any other material considerations of sufficient weight to overcome the conflict with the Development Plan. I therefore conclude that planning permission should not be granted.

Conclusion

19. I determine that the appeals should not succeed. I shall uphold the enforcement notice, refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), and dismiss the appeal against the Council's refusal to grant planning permission.

Formal Decisions

APPEAL A: The Enforcement Notice is upheld and planning permission is refused on the application deemed to have been made under s.177(5) of the 1990 Act as amended.

APPEAL B: The appeal is dismissed.

Jessica Graham

INSPECTOR