



Appeal Decision

Site visit made on 29 April 2024

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 3 June 2024

Appeal Ref: APP/D0840/C/22/3313376

Trebarvah Woon Farm, Trebarvah Woon, Constantine, Falmouth, Cornwall TR11 5QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr James Brittain-Long against an enforcement notice issued by Cornwall Council.
- The notice was issued on 17 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of agricultural land to a mixed agricultural and residential use and for the stationing of a residential caravan, and the operational development on the land to construct a raised decked area associated with the residential caravan.
- The requirements of the notice are to:
 - 1) Cease the use of the land as outlined in red on the attached plan for residential purposes
 - 2) Cease the use of the land as outlined in red on the attached plan for the stationing of caravans for residential purposes
 - 3) Remove from the land the residential caravan as shown in the approximate position marked in orange on the attached plan
 - 4) Demolish and remove from the land the raised decked area as shown in the approximate position marked in blue on the attached plan
 - 5) Remove from the land as outlined in red on the attached plan the septic tank, gas bottles and other domestic items and associated paraphernalia brought on to the land for the purpose of the unauthorised residential use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) 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 succeeds in part, to the extent that the plan is corrected, the second requirement is deleted, and the compliance period is extended to 4 months for the cessation of use and an additional month for the removal of the caravan, decking and other items. The rest of the appeal is dismissed and the Notice is upheld, with corrections and variations, in the terms set out below in the Formal Decision.

The appeal on ground (b)

1. The ground of appeal is that the matters said by the Notice to constitute a breach of planning control have not in fact occurred. The first strand of the Appellant's case on ground (b) concerns the extent of the land to which the Enforcement Notice relates. The Appellant contends that part of the garden serving the house at Trebarvah Woon has been incorrectly included.

2. The Notice identifies the land to which it relates as "Land at Trebarvah Woon Farm...shown edged in red on the attached plan". The red line on the attached plan is drawn around the entirety of the land within the Appellant's ownership, but excludes the house, together with the portion of its grounds which the Council considers to be residential curtilage.
3. This approach is not unusual: in many enforcement cases the activity complained of only takes place in a small part of the overall land holding, and the Council is entitled to anticipate changes intended to defeat the operation of the Notice by enforcing against the planning unit as a whole. However in this particular case, it is common ground that the siting of the caravan and its use for holiday lets has created a new planning unit. The caravan is sited well apart from the main dwelling, has its own separate access, and provides self-contained accommodation which is occupied independently to the house.
4. Since the breach of planning control alleged by the Notice relates specifically to this separate and distinct planning unit, that is the area of land which should be identified by the Notice. I am satisfied that the plan attached to the Notice can be corrected to achieve this, using the marked-up Google Earth Images provided by the Appellant, without injustice to either party. Reducing the extent of the land addressed by the Notice in this way also has the effect of excluding any areas that might be said to remain in agricultural use, and so the alleged breach should be corrected to refer to the unauthorised residential use of the new planning unit, rather than a mixed use of the land holding as a whole. I am satisfied that this correction can also be made without injustice to either party.
5. As to the submissions about the extent of the residential curtilage associated with the house at Trebarvah Woon Farm, I do not have the remit (or sufficient evidence) to provide a conclusive determination in the context of this appeal. It remains open to the Appellant – irrespective of whether or not the Enforcement Notice is upheld – to apply for a Certificate of Lawfulness to define its limits.
6. The second strand of the Appellant's case on ground (b) is that the Notice is incorrect to allege the residential use of the caravan, because it has only ever been used to provide short-term stays for holiday makers. The Appellant contends that use for residential occupation and use as holiday accommodation are materially different.
7. However, case law has established that a "weekend and holiday chalet"¹ which was subject to a condition restricting occupation to four months of the year did not lose the characteristics of a dwellinghouse, and that the use of a family home for holiday lettings would not necessarily amount to a material change of use.² Put another way, a caravan (or house, or chalet) which provides the facilities necessary for day to day living may be occupied as holiday accommodation, or it may be occupied as a permanent residence. Both are types of residential use, and whether or not there is a "material" (for planning purposes) difference between them will be a matter of fact and degree in each case.
8. I therefore consider it reasonable for the Notice to allege residential use. The Council was aware that the caravan is currently being used to provide holiday

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

² *Blackpool BC v SSE* [1980] JPL 527

accommodation, as is apparent from the reasons given for issuing the Notice, and there is no dispute that this amounts to a breach of planning control.

9. For the reasons given above I conclude that the appeal on ground (b) succeeds in part, in that the extent of the land to which the Notice relates should be amended so as to define the new planning unit formed by the siting and use of the caravan. The remainder of the appeal on ground (b) fails.

The appeal on ground (a)

10. The ground of appeal is that planning permission should be granted for the matters alleged by the Notice. The Appellant has made it clear that permission is not sought for the unrestricted residential use of the caravan but rather its use to provide short-term holiday accommodation only, and this could be secured by an appropriately worded condition. The main issues between the parties are whether the location of the development is accessible by sustainable modes of transport, and the effect of the development on the character and appearance of the area.

Accessibility by sustainable modes of transport

11. Policy 5 of the Cornwall Local Plan (adopted 2016) is supportive of the development of new tourism facilities and accommodation "where they would be of an appropriate scale to their location and to their accessibility by a range of transport modes." It also states that proposals should provide "a well balanced mix of economic, social and environmental benefits". The question of whether or not the caravan at Trebarvah Woon would comply with these requirements was considered in an earlier Appeal against the Council's refusal to grant planning permission for its use for short term holiday lets.³
12. The Inspector who determined that Appeal noted that the Appeal Site lies in the countryside, with access to the nearest settlements provided by narrow, unlit highways with no pedestrian footways; consequently, access to the nearest services and facilities would not be particularly safe for all pedestrians, especially during inclement weather and hours of darkness. However, he also noted that the proposal was for a single unit of accommodation; that bicycles and an electric car would be made available for the use of guests; and that the provision of holiday accommodation would have economic and social benefits. He concluded that the development would accord with that part of Policy 5 which concerns proposals being of a scale appropriate to their accessibility by a range of transport modes, and would not conflict with Local Plan Policy 27, which requires development to provide safe and suitable access.

13. I see no reason to disagree with these findings.

The effect on the character and appearance of the area

14. The Inspector who determined the 2021 Appeal went on to find that although the proposal to clad the caravan in larch would soften its appearance, the caravan would be highly visible to walkers on the adjacent public right of way. He concluded that it would represent a visual intrusion which would be harmful to the character and appearance of the area. One of the reasons he gave for finding that the scale and design of the development would not respect the landscape character of the area was the absence of sufficient screening. The

³ Ref APP/D0840/W/21/3269390 dated 12 July 2021

Appellant now contends that this concern could be overcome either through the effective landscaping of the caravan in its current position, or through its relocation to a site within the existing established tree area.

15. The Appellant has provided a Landscaping Scheme, the intent of which is to supplement the existing Cornish Hedge to the west of the caravan with additional planting, along with a 5 metre strip of new trees planted on the western side of the field boundary. I share the Council's view that this Scheme is somewhat rudimentary, but it is fair to note that concerns about the absence of any proposals for future management and maintenance could be addressed through appropriately worded conditions.
16. However, a more fundamental concern is that it is not merely the absence of screening which is at issue here. As noted by the previous Inspector, the caravan is in a somewhat isolated position, away from the group of buildings which comprise Trevarbah Woon Farm. It has its own vehicular access and parking. It sits on a small lawn, which is separated from the residential curtilage of the house by a belt of trees, and is provided with extensive timber decking surrounding three of its sides. This spatial separation and domestic appearance result in a feature which, rather than remaining visually incidental to the existing residential development at Trevarbah Woon Farm, has the effect of extending it into previously undeveloped countryside. It is this which is harmful to the character and appearance of the surrounding landscape.
17. The proposed Landscaping Scheme would, when mature, limit visibility from the section of the Public Right of Way which passes through the field to the west of the Appeal Site. The caravan would however remain visible, in glimpsed views, from the section that passes through the small patch of woodland to the south of the site. The presence, and domestic character, of the caravan would also be signalled by activities associated with its proposed use; for example, the sounds of occupiers sitting outside on its decking, and playing on its lawn.
18. The Appellant has suggested that relocating the caravan to a position within the trees on the eastern side of the lawn it currently occupies would provide additional screening. However a number of the existing trees would need to be cut down to accommodate it in the position shown, even if the decking were removed. Further, even if the Appellant is right that the residential curtilage of the house extends farther than is accepted by the Council, the caravan would still be located on land that is visually distinct from the main garden of Trevarbah Woon Farm. Occupiers of the caravan would still have the benefit of the separate lawn and separate access, so while the caravan would be closer to the house, their spatial and visual relationship would remain that of two separate domestic units.
19. For these reasons I consider that the stationing and use of the caravan adversely affects the character and appearance of the area, and the harm caused could not be adequately addressed by cladding it in timber, undertaking additional planting to the west, and relocating it within the existing trees. I find that as a consequence of this adverse impact on its surroundings, the development conflicts with that part of Local Plan Policy 5 which requires a "well balanced mix of economic, social and environmental benefits", and so conflicts with Policy 5 when considered as a whole. It is also at odds with the aims of Policies 2, 12 and 23 of the Local Plan, which together seek to ensure

that development respects the character of its setting, promotes local distinctiveness and maintains or enhances the natural environment.

20. I note the Appellant's contention that if the appeal is dismissed, the caravan could be moved to land north of the house, sandwiched between the access and the road, and in this location would be more imposing in public views. It is fair to note that a caravan sited within the residential curtilage of a dwelling, and used for purposes incidental to that dwelling, does not require planning permission. But where a caravan is used for the purposes of providing holiday accommodation for occupiers independent of the main house, it is likely that this will – as the Appellant has accepted was the case with the use of the caravan in its current position – involve the creation of a new planning unit, and a material change of use requiring planning permission. This “fallback position” is not, therefore, a consideration which weighs in favour of permitting the current development.
21. I conclude that the siting and use of the caravan conflicts with the relevant policies of the Development Plan, and there are no material considerations of sufficient weight to overcome this conflict. The appeal on ground (a) fails, and planning permission on the deemed application is refused.

The appeal on ground (f)

22. The ground of appeal is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy the breach of planning control.
23. The first part of the Appellant's case on this ground is that the requirement to cease the residential use of the land would prevent the lawful use of part of the established garden of Trevarbah Woon Farm. For the reasons set out above in my consideration of the appeal on ground (b), I agree with the Appellant that the caravan and its setting constitute a separate planning unit to the main house. The extent of the land identified on the attached plan will be reduced so that the requirements of the Notice apply solely to that specific planning unit; requiring the residential use of this area of land to cease is not excessive, but rather necessary, to remedy the breach of planning control.
24. The second part of the Appellant's case on this ground is that since there has been no residential use of the caravan, the requirement (no. 2) to “cease the use of the land... for the stationing of caravans for residential purposes” is unnecessary. For the reasons set out above in my consideration of ground (b), I consider the description of the alleged breach of planning control to be reasonable, and see no need to amend its references to residential use. I do however consider requirement no. 2 to be unnecessary. This is because the requirement (no. 1) to cease the use of the land for residential purposes and the requirement (no. 3) to remove the caravan from the land already achieve the aim of remedying the breach of planning control; the wording of requirement no. 2 adds nothing to that. If the wording is an attempt to prevent any future breaches of planning control, it goes beyond what is permissible in the context of the current Notice. I shall delete requirement 2.
25. The Appellant also contends that the requirement to remove the caravan should only require its relocation to the suggested position among the trees. This might be the case if I agreed with the Appellant's case on ground (a) about the benefits of the proposed relocation, but for the reasons set out above

I have found that it would not address the identified harm to the character and appearance of the area, and that planning permission for the development should not be granted. It is therefore appropriate for the Notice to require the caravan's removal, in order to remedy the breach of planning control.

26. In summary, the first part of the appeal on ground (f) has already been addressed by my decision, in determining the appeal on ground (b), to amend the plan attached to the Notice. The second part succeeds, to the extent that requirement 2 will be deleted. The remainder of the appeal on ground (f) fails.

The appeal on ground (g)

27. The ground of appeal is that the compliance period specified in the Notice falls short of what should reasonably be allowed. The Appellant's case is that the three month period specified by the Notice is unreasonable, because the caravan has been committed for occupation during the forthcoming season, due to repeat bookings of some visitors. The Appellant contends that a compliance period of twelve months would be appropriate for the cessation of the use of the caravan for holiday accommodation, followed by a further three month compliance period for its removal from the land.
28. I have not been provided with any evidence as to the dates for which bookings have been made, or the contractual and financial obligations of the Appellant concerning their cancellation. In the absence of any evidence of bookings beyond the "forthcoming season", the requested twelve months compliance period seems excessive and unnecessary. I appreciate that cancelling bookings would be disruptive, to both the Appellant and those who had been intending to stay in the caravan, but this harm to private interests needs to be balanced against the public interest in upholding the planning system, and addressing the harm identified in the Council's reasons for issuing the Notice.
29. I consider that an appropriate balance between these conflicting interests would be struck by providing a four month period for the cessation of the use of the caravan. This period would end at the close of September, enabling the Appellant to honour bookings made for this year's main holiday season. Since the work of disconnecting the caravan from services and dismantling the decking could not reasonably commence while it was still in use, I consider it appropriate to allow an additional month for the removal of the caravan, and associated development, from the land.
30. The appeal on ground (g) succeeds to this extent.

Conclusion

31. For the reasons given above, I conclude that the appeal should succeed in part on grounds (b), (f) and (g). I shall correct the Notice by amending the extent of the land to which it relates, and removing the agricultural element from the alleged material change of use. I shall vary the Notice by deleting its second requirement, and extending the compliance period to four months for the cessation of use, and five months for the removal of the caravan and associated operational development. In all other respects the appeal fails. I shall uphold the Enforcement Notice, with corrections and variations, and refuse to grant planning permission on the deemed application.

Formal Decision

32. It is directed that the Enforcement Notice is corrected by:

- At paragraph 2, deleting the words "edged in red" and replacing them with the words "cross-hatched in black"
- At paragraph 3, deleting the words "a mixed agricultural and"
- At paragraph 5(1), deleting the words "outlined in red" and replacing them with the words "cross-hatched in black"
- At paragraph 5(5), deleting the words "as outlined in red on the attached plan"
- Substituting the plan annexed to this Decision Letter for the plan attached to the Enforcement Notice

And varied by:

- At paragraph 5(2), deleting the words "Cease the use of the land as outlined in red on the attached plan for the stationing of caravans for residential purposes"
- At paragraph 5, re-numbering what are currently the third, fourth and fifth requirements as (2), (3) and (4) respectively; and
- At paragraph 6, deleting the words "For (1) – (5) inclusive above, 3 calendar months after this notice takes effect" and replacing them with the words "For requirement (1) above, the compliance period is four months. For requirements (2), (3) and (4) above, the compliance period is five months."

Subject to these corrections and variations the appeal is dismissed, 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.

Jessica Graham

INSPECTOR

Plan

This is the plan referred to in my decision dated: 3 June 2024

by Jessica Graham BA (Hons) PgDipL

Land at: Trebarvah Woon Farm, Trebarvah Woon, Constantine, Falmouth, Cornwall TR11 5QJ

Reference: APP/D0840/C/22/3313376

Scale: Not to Scale

