



Appeal Decisions

Site visit made on 19 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 22 NOVEMBER 2024

Appeals A to D Refs: APP/D0840/C/22/3313753, 54, 55 and 56.

Land to the east of Chapel Hill Farm, Troon, Plantation, Cornwall, TR14 9JP.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
- The appeals are made by Mr Peter Clark-Roberts (Appeal A), Ms Zania Clark-Roberts (Appeal B), Mr Toni-Anne Datuvalla Datuvalla (Appeal C) and Mr Tank Roberts (Appeal D) 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 the change of use of the land from nil use/scrub land to residential through the stationing of two static caravans used for residential purposes along with associated engineering operations. The approximate position of the residential caravans are marked with two blue 'X' on the plan attached to the notice.
- The requirements of the notice are to: (1) Cease the residential use of the caravans. (2) Remove all services connected to the caravans for the purposes of independent human habitation, i.e. electric cabling, water pipes and sewage pipes etc. (3) Remove the caravans indicated by the two blue X's from the land. (4) Remove from the land all materials and debris resulting from the residential use of the land, including washing line, domestic waste etc, and (5) 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 above 12 months.
- All appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f), and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a) in Appeal A, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The Appeals are dismissed, the enforcement notice is upheld, and, in Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Grounds (b) and (c)

2. The onus of proof is on the appellants and the standard is on the balance of probabilities. In ground (b), the appellants maintain the use of the words "nil use/scrub land" to describe the previous use of the land is incorrect. They argue the land on which the mobile homes are positioned fall within the curtilage to Copper Mine Lodge. I will return to this argument later.
3. An enforcement notice does not have to specify the previous use of the land, but clarity demands the correct description if it is stated. What matters in ground (b) is the alleged breach of planning control has in fact occurred during the period leading up to the issue of the notice.

4. In response to searching questions via a planning contravention notice, it seems the caravans were positioned on scrub or vacant land. At the date of issue, the evidence clearly shows the residential use had occurred in fact and it was facilitated by the stationing of two static caravans along with associated engineering operations.
5. On ground (c), the issue is whether the matters stated constitute a breach of planning controls. Section 55(1) defines development for planning purposes and includes the making of a material change in the use of the land. A self-contained residential use is a primary use and the appellants have not provided any cogent reasoning as to why the residential use of the caravans does not amount to a primary use.
6. There is no dispute that the mobile homes fall within the statutory definition of a caravan. Although the stationing of a caravan is not considered development, it is necessary to examine the use of the caravan. Normally, the stationing of caravans for human habitation clearly involves a change in the character of the use of the land. For example, comings and goings associated with a residential use is likely to have both on and off-site effects and impacts. It is up to the appellants to sufficiently show that express planning permission is not required for the stationing of two static caravans used for residential purposes.
7. The argument is a simple one, namely, that the positioning of the caravans does not amount to "development" by virtue of s55(2)(d)¹ of the Act. The caravans are stationed within the same planning unit or curtilage of Copper Mine Lodge and used for ancillary purposes. The latter benefits from a certificate of lawfulness for use as a self-contained residential dwelling (ref PA21/07567).
8. The concepts of the curtilage and planning unit are distinct and separate; they should not be confused. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. The mere fact that the appeal site physically adjoins the curtilage, and is in the same ownership, does not automatically mean that it is/not curtilage land. Curtilage defines an area of land in relation to a building and not a use of land.
9. Applying the leading authority² on planning unit to this case, clearly there is physical separation given the location of the caravans from Copper Mine Lodge. The evidence submitted does not demonstrate how the occupiers of the mobile homes share their lives with the occupiers of the Copper Mine Lodge. For example, it is unclear if utility bills are shared. On the available evidence, I am not satisfied that there is any functional link between the occupation of Copper Mine Lodge and the two mobile homes which, incidentally, are occupied as someone's home. It appears to me that the notice clearly identifies the relevant planning unit given the physical and functional distinctiveness between the residential use of Copper Mine Lodge and the mobile homes.

¹ The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land... the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

10. As for curtilage, well the appellants have that incorrect too. Application ref PA21/07567 clearly defines the extent of the curtilage to Copper Mine Lodge because the area is identified on a site plan and is out lined in red. Copper Mine Lodge's curtilage includes land to its front and a small area located to the rear of the Lodge. I observed that this area is used for outdoor seating and is functionally associated with the primary residential use. In comparison, the area around and about the Copper Mine Lodge usefully serves the purpose as curtilage to the dwelling.
11. The agent says that the land upon which the caravans are sited is only 11 metres away from the Copper Mine Lodge. Be that as it may, as a matter of fact and degree I find that the land upon which the caravans are sited does not have a close association or functional link with Copper Mine Lodge. The land is separate and does not have an intimate association with land that is clearly defined as curtilage to Copper Mine Lodge, because of the area's topography. I am not persuaded s55(2)(d) of the Act is of direct relevance to this case.
12. Bringing all the above threads together, I find that, on the balance of probabilities, the matters alleged have occurred and constitute a breach of planning control, because express planning permission is required, and it has not been obtained. Both grounds (b) and (c) must fail.

Ground (a) – the deemed planning application

13. Planning permission is sought for the residential use through the stationing of two static caravans along with engineering operations. The Council's reason for issuing the notice refers to an objection based on the site's location. The main issue is whether the development is appropriate for its location.
14. Policies 2 and 2a of the Cornwall Local Plan Strategic Policies 2010-2030 set out a sustainable approach to accommodating growth and maintaining the dispersed development pattern. The latter establishes key targets for the delivery of new homes during the plan period and Policy 3 establishes a hierarchy in which new development will be accommodated up to 2030. Policy 7 relates to housing in the countryside, policy 12 to design, and policy 23 to natural environment. I consider these policies are consistent with the aims and objectives of the national planning policy framework (NPPF).
15. Clearly, a residential caravan site of this kind is unacceptable given the rural location. The development conflicts with the objectives of local and national policies that seek to manage residential development in a sustainable manner.
16. I appreciate the need for affordable housing in the area and the caravans provide much needed accommodation. I am also mindful that the site provides accommodation and services to a religious community. In addition, there are personal circumstances of the individuals who occupy the caravans. Nevertheless, the evidence suggests residential activity has spread on the wider land due to the siting of the caravans. The latter being facilitated by engineering operations. The display of residential paraphernalia such as outdoor seating and washing lines as well as coming and goings associated with the residential use of the caravans represents spread of residential living in this part of the countryside. The design and scale of the caravans is at odds with the surrounding landscape.

17. I am also mindful of the human rights implications given the potential homelessness because of dismissing these appeals. However, the interference with the rights of the occupiers is a proportionate response in pursuance of the well-established and legitimate aims of planning policies in the public interest. Turning to the public sector equality duty. I understand residents are part of a religious community and share protected characteristics. Enabling the occupiers to remain on the site, with the benefit of planning permission to establish a lawful use, has the potential to foster improved relations and to eliminate discrimination.
18. Drawing all the above points together, there is conflict with local plan policies and the NPPF which seeks to coordinate delivery of housing in sustainable and suitable locations. Other considerations advanced include personal circumstances, provision of affordable housing, and my considerations on human rights and the PSED. However, given the inappropriate location of the residential caravan site, I attach limited weight to these matters.
19. The development does not accord with the development plan policies referred to above, as a whole, and there are no other considerations to indicate that the appeals should be determined otherwise. Therefore, for the reasons given above, I conclude that Appeal A should not succeed, and that planning permission should not be granted. This action would not unacceptably violate occupiers' human rights and the protection of the public interest cannot be achieved by means that are less interfering of their rights.

Ground (f)

20. The claim is that step 5) of the requirements would involve importation of material and structures which had previously been cleared. Whilst the contravener is best placed to know the condition of the land before the breach occurred, no lesser steps have been advanced. In addition, while some kind of soil may be required to backfill levels or any excavation, it remains unclear as to what kind of structures would be brought on the land to remedy the breach through restoration. The latter derives from s173(4)(a) and requires full compliance to achieve the purpose behind the notice. Ground (f) must fail.

Ground (g)

21. The claim is that the period of compliance is too short, and a reasonable period would be 18 months. I am mindful of the personal circumstances of the occupiers, the need to find alternative accommodation and risk of homelessness. I also appreciate Cornwall's housing crises. However, the evidence presented does not show to me alternative and suitable accommodation is not available. I consider that 12 months from the date of this decision is a reasonable period to find alternatives. The period of compliance is reasonable to comply with the requirements of the notice. Ground (g) must fail.

Conclusions

22. For all the above reasons and having regard to all other matters raised, I conclude the appeals should not succeed. I further conclude that the appeal on ground (a) should not succeed.

A U Ghafoor

INSPECTOR