



Appeal Decision

Site visit made on 4 February 2025

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/D0840/C/23/3324739

Land South East of Willow Barn, Lower Bodwen, Redmoor, BODMIN, PL30 5AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr David Elphick against an enforcement notice issued by Cornwall Council.
- The notice was issued on 24 May 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a residential dwellinghouse and associated operational development and change of use, including the creation of an access track/hard standing area, wooden outbuilding, sheds and fencing. The approximate position of the dwellinghouse is indicated by a blue 'X' on the plan attached to the notice and the wooden outbuilding by a blue 'A'. The land has been outlined in red on the plan.
- The requirements of the notice are :
 - 1) Cease the residential use of the land.
 - 2) Demolish and remove the dwelling shown in the approximate location by blue 'X' on the plan.
 - 3) Demolish and remove the outbuilding shown in the approximate location by blue 'A' on the plan.
 - 4) Remove all non-agricultural motor vehicles from the land outlined in red on the plan.
 - 5) Remove from the land all materials, paraphernalia and debris resulting from the residential use of the land, including washing line, plant pots, sheds, wooden fencing, chairs and decking etc.
 - 6) Remove the access track and hardstanding from the land.
 - 7) Remove from the land all materials and debris resulting from the above works and reinstate the land to its former condition and use before the breach occurred i.e. soiled and grass seeded agricultural field.
- The period for compliance with the requirement is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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.

Decision

1. 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 site and relevant planning history

2. The site of 0.4 hectares is located outside any defined settlement in open countryside and within an Area of Great Landscape Value. The site is laid to grass and contains a single-storey timber dwelling known as 'Tamwith,' a number of timber outbuildings and a disused poly-tunnel.
3. An application for a Certificate of Lawfulness (LDC) for an existing use of a dwelling was refused in March 2021. A further application for an LDC for a dwelling was dismissed on appeal in April 2022 (APP/D0840/X/22/3302550).

The appeal on ground (a)

4. An appeal on this ground is that planning permission should be granted for what is alleged. However, the appellant is not arguing that permission should be granted for the retention of the dwellinghouse but is seeking to retain and repurpose it as an agricultural building, even if only a temporary three year permission is granted.
5. It is therefore unnecessary for me to consider in any detail the principle of residential development in the countryside in the context of local and national planning policies as this has been set out at length in the Council's statement of case without any arguments to the contrary by the appellant. Notwithstanding this, and on the evidence before me, the unauthorised development is contrary in particular to Cornwall Local Plan Policy 2 (special character of Cornwall), Policy 7 (housing in the countryside), Policy 12 (design), and Policy 23 (natural environment). It is also contrary to the Lanlivery Neighbourhood Development Plan, and to the National Planning Policy Framework in respect of isolated homes in the countryside.
6. The main issues therefore are whether the dwelling would be suitable for agricultural purposes and the impact that the development has on the character and appearance of the area. These are considered in more detail below.
7. The appeal on this ground fails.

The appeal on ground (f)

8. An appeal on this ground is that the steps required to comply with the notice are excessive.
9. The purpose of the notice is to remedy the breach of planning control and to restore the land to its condition before the breach took place. It is necessary to consider whether there is any 'obvious alternative' or 'lesser step' which would achieve the purposes of the notice with less cost and disruption.
10. Turning to the alternative suggested by the appellant, he states his intention is to operate a specialist mushroom and micro-salad growing business for supply to the local pub/restaurant trade and this would utilise the dwelling and parts of the outbuildings identified in the notice. He states that the building has been present on the land since 2015 and an agricultural business was operated from the building thereafter before a change of use to a dwellinghouse. An approximate site layout has been submitted utilising the dwelling and outbuildings for the business. This would involve a temperature and humidity-controlled area for the mushrooms and lighting and pumps for the hydroponics where the micro-salad crops would be grown, both having a 4-5week growth cycle.
11. No evidence has been submitted by the appellant to support his contention that the building had been used for agricultural purposes before being converted as a dwellinghouse. Although the appellant does not rely on evidence of a former saffron business in this appeal, the LDC application dismissed by myself on appeal in April 2022 failed because the evidence was lacking and contradictory and as such, did not achieve the level of proof required in respect of the use of the building.
12. The building used as a dwelling appears to have been designed and constructed for that purpose and has the appearance of a log-cabin style of dwelling through its size, roof, openings, fenestration, chimney, external decking and construction materials. It does not have the appearance of a typical agricultural building. No

information has been provided to show what physical works would be necessary for the conversion of the building to a new use.

13. The notice requires the use of the land to revert to agriculture and the appellant claims it would be necessary for there to be buildings on the land to support an agricultural use. Whilst that may be the appellant's wish, it is not essential for there to be a building on the land. In any event, the appellant would not be prevented from doing what he is lawfully entitled to do or, for that matter, applying for any necessary planning permission for buildings necessary for the purposes of agriculture. Additionally, the Council has not seen any agricultural use of the site that would warrant a building of the scale of the dwelling and point out that the land available within the site for agriculture is small, and that the land has been maintained by grass cutting.
14. The appellant runs a business as a chimney sweep and stove installer and that materials relevant to this activity are stored in one of the outbuildings on the site and this facility would be lost as a result of the requirements of the notice. However, the appellant's personal circumstances do not outweigh the harm caused by the unauthorised development as a whole.
15. The requirements set out in the notice are reasonably required to remedy the breach and are not excessive. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. Whilst the appellant's lesser steps of converting the dwelling to an agricultural building have been put forward as an alternative, this would result in the dwelling structure remaining on the site, together with the outbuildings, other than for one small shed identified as shed marked C by the appellant.
16. It has not been demonstrated that the main building is suitable for conversion to agricultural purposes. These and the other buildings on the site cause harm to the character and appearance of the surrounding countryside which has been designated as an Area of Great Landscape Value. Furthermore, although the appellant has indicated that a temporary permission would help him to establish the business, no details have been provided to indicate that the venture has a reasonable prospect of success.
17. The appeal on ground (f) fails.

Other matters

18. The appellant has raised the possibility of bats being present on the appeal site. Their protection is governed by other legislation and the Council has indicated that it has powers under s173(1)(b) to extend the period of compliance.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

P N Jarratt

INSPECTOR