



Appeal Decision

Site visit made on 7 January 2025

by **R Curnow MA(TCP), BSC(Hons), CMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 January 2025

Appeal Ref: APP/D0840/C/23/3323466

Land South West of 17 Biscovey Road, St Blazey Gate, Par, Cornwall, PL24 2HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr P Rowe against an enforcement notice issued by Cornwall Council ('the Notice').
 - The notice was issued on 16 May 2023.
 - The breach of planning control as alleged in the notice is the conversion of shipping containers to create a residential dwelling and associated development of a timber building hardstanding and associated paraphernalia.
 - The requirements of the notice are: 1) Cease the residential use of the land and remove the residentially converted shipping containers shown in the approximate location by a blue 'X' on the attached plan from the land. 2) Remove all services connected to the residential shipping containers for the purpose of independent human habitation, i.e. electric cabling, water pipes, gas cylinders etc. 3) Demolish and remove the wooden building shown in the approximate location by a blue 'A' on the attached plan. 4) Remove from the land all materials and debris resulting from the residential use of the land, including washing line, solar panels, outdoor furniture, lamppost style outdoor light etc. 5) Cease the use of the land for the storage of non-agricultural material/items; including but not limited to: shipping containers, motor vehicles, caravan, horse lorry, digger and trailer. 6) Remove from the land the access track and hardstanding shown in the approximate location by an orange polygon on the attached plan. 7) 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 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f), (g) of the Town and Country Planning Act 1990, as amended ('the Act').
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

The Site

2. At my site visit, I saw that a gravelled hardstanding area runs roughly westwards from the public highway into the site, providing access, parking and turning areas. It is flanked, on its northern and western sides by containers and a timber clad shed.
3. The container nearest the gate onto the road is used for storage and has a toilet. The latter is linked to a septic tank with a drainage field to the south of the hardstanding. Beyond this, was a further container and a former refrigerated lorry back that were both used for storage. To their west, was a fairly large shed that had a steel frame and timber cladding. This was used for storage purposes; in part it stored batteries used in the Appellant's solar power system. It also had an outside shower fitted to it that is used by the Appellant. On the south side of this shed is another container that housed a basic kitchen area in which, amongst

other things, was a sink, microwave and washing machine. This container, on top of which were solar power collectors, was also used for storage. Adjacent to this, at the western end of the gravelled area, was what had been a refrigerated container. Externally, this had been modified through the provision of a door, French doors and two windows. Internally, it was carpeted and heated through a bottled gas heating system. Amongst other things, I saw it had a double bed, settee and television. Potable water used on the site comes from a well and the grassed area to the south of the track had garden seats and a table on it.

Ground (b)

4. An appeal under Ground (b) is made on the basis that the matters alleged in the Notice have not occurred. This is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.
5. The Appellant's case here questions the wording of the allegation in the Notice. He is of the opinion that the allegation is incorrect, as it does not reflect the development that has occurred. The issue is, he says, that there has been a material change of use of the land rather than operational development. He says that the Notice should either be corrected, using the powers under s176 of the Act, or should be quashed and provides copies of appeal decisions where the latter has been done.
6. Section 55 of the Act defines "development" as the carrying out of building, engineering, mining or other operations in, on, over or under land and the making of any material change of use of buildings or other land. Section 336 defines a "building" as including "any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building".
7. Whether the containers and shed are building operations for which planning permission is required is ultimately a matter of judgement, based on the facts of each case. Established case law identifies three factors in assessing whether something is a building: its size, degree of permanence and the manner of its fixing.
8. In my view, the containers and shed referred to in the Notice are all of a substantial size.
9. In respect of permanence, in what might be termed their normal use, shipping containers are, by their very nature, designed to be conveniently movable from place to place as a matter of course.
10. The evidence shows that the containers have been on the land since May 2021, and occupied since October of that year. Therefore, when the Notice was issued that occupation had been on-going for some 18 months. That is a significant period. As the Appellant wishes to live on the land in them, it seems quite unlikely that the containers would be moved, at least not for a considerable period of time. In this regard, I have been given no information as to how or whether those on the site would be moved.
11. The Appellant's point that the containers "cannot be considered as a permanent feature due to the short amount of time that they have been placed on the site" is wrong. The case law test, outlined above, has to be applied. If, when applying that

test, the conclusion is that something is a building it cannot be rendered to be something else by an argument that it has only been in-situ for a short period.

12. Notwithstanding that they are not connected to services nor to any substantial footings, they are fixed to the land by reason of their own weight. These are large containers and their own, not inconsiderable weight would provide the necessary “degree of physical attachment”.
13. For the reasons given above, and as a matter of fact and degree, I find that the provision of the containers and shed are building operations, as defined in s55 of the Act. In reaching this position, I note that the Appellant does not contest whether the shed is a building.
14. Established case law sets out that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Notwithstanding that the Appellant showers in the open and that his way of living might not suit all people, I find that the containers and shed, which lie in very close proximity to one another, together accord with the case law definition of a dwellinghouse. This is how the Appellant uses them.
15. I find that the Appellant has failed to demonstrate, on the balance of probability, that the matter alleged in the Notice has not occurred. Therefore, the Appeal made under Ground (b) fails.

Ground (d)

16. This ground of appeal is that, at the time that the Notice was issued, no enforcement action could be taken in respect of any breach of planning control set out in the Notice. Here, the Appellant’s case relates to the area of gravelled hardstanding. This is another legal ground where the onus lies with the Appellant to make his case on the balance of probability.
17. No case has been made that planning permission would not have been required for the creation of the hardstanding. Its creation would have been an act of operational development, under s55, and, as such, the Appellant needs to show that it has been in-situ for a period of at least four years. His claim is that the hardstanding has been there since he bought the land in 1992.
18. In his Statement of Case (‘SoC’), he backs this up through the use of a satellite image, dated June 2018. This image shows the site at something of an oblique angle. It is somewhat blurred and shows very little detail. From this, I cannot determine that what is shown is the hardstanding that is on the site.
19. The Council has submitted similar overhead images from a variety of dates, as well as images showing the site from the public road, dated 2010 and 2011. In these, there is no substantive evidence that the hardstanding was in place until images dated June and July 2021.
20. From the evidence that is before me, on the balance of probability, I find that the hardstanding has not been in-situ for the required four-year period. I also note that the SoC is equivocal on the matter, where it states “It would *appear that*... the hardstanding referred to has been in place for well more than the required four (4) years” (my emphasis).
21. For the above reasons, the Ground (d) case fails.

Ground (f)

22. The purpose of the Notice is to remedy the breach of planning control it alleges. Therefore, here, the Appellant's 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.
23. The case is made in two respects: one relates to the hardstanding on the land; and the other to the Appellant's gypsy status.
24. The former case relied upon success under Ground (d). Had this succeeded, the Appellant would not have been required to remove the hardstanding; it did not succeed.
25. In the second case made, the Appellant states that the description of the alleged breach in the Notice is inaccurate and, as a result, he is unsure whether it would preclude him from using the land to site a caravan for residential purposes. In this part of his case, he refers to having told the Council of his gypsy status in a Personal Circumstances Questionnaire sent to him when the Council carried out its investigations.
26. The matter of the Appellant's gypsy status and whether he would be precluded from using the land to site a caravan for residential purposes has been superseded. Subsequent to the parties producing their statements, the Council approved a planning application (Council reference PA23/06129) made by the Appellant for the 'Change of use of land to 1. no gypsy/traveller pitch comprising of 1 no. mobile home, 1 no. touring caravan, and the residential use of those caravans, 1 x day room, 1 x secure storage container, retention of existing hard standing and associated works (part retrospective)'. The land to which that permission relates is, essentially, that on which the development alleged in the Notice has occurred. Thus, the evidence shows that the Council has recognised the Appellant's gypsy status, and the planning permission would allow the Appellant to site a caravan for residential use, irrespective of the terms of the Notice.
27. In the circumstances, the Appellant would not be made homeless as a result of the Council's actions, nor would he be discriminated against. Thus, the Council's actions would not contravene Article 8 of the Human Rights Act 1998 that provides, amongst other things, that everyone has the right to respect for their home. They did not contravene his rights under Article 14, which relates to such things as race, social origin or any other status of an individual. The Notice was issued for sound planning reasons and the Council's decision to subsequently grant planning permission for application PA23/06129 demonstrates that its actions were not discriminatory.
28. For the above reasons, I find that the requirements of the Notice are not excessive and the Ground (f) case fails.

Ground (g)

29. An appeal made under Ground (g) is that the period for compliance given in the Notice falls short of what should reasonably be allowed. The Appellant's case here is that there is insufficient accommodation available for gypsies. He is not comfortable living in bricks and mortar and would wish to site a caravan on an

authorised site. Given the shortage of suitable pitches, he could not do so within 12 months.

30. Given the decision on his planning application PA23/06129, the Appellant has ready access to an authorised site that would provide accommodation to suit his requirements.
31. Given the above, there is no compelling case to extend the period for compliance from 12 to 24 months. No other case has been made to demonstrate why the 12-month period would be insufficient to comply with the terms of the Notice, and I cannot see any.
32. For the above reasons, the Ground (g) case fails.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

R Curnow

INSPECTOR