



Appeal Decisions

Site visit made on 17 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal A Ref: APP/D0840/C/23/3328971

Land East of Six Chimneys, Bolenowe, Troon, Camborne, Cornwall, TR14 9JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Simon Rodda against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 21 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a residential chalet and associated material change of use of the land from agricultural to a mixed use of agricultural and residential. The land has been outlined in red on the plan attached to the notice.
 - The requirements of the notice are to:
 - 1) Cease the residential use of the land.
 - 2) Demolish and remove the chalet shown in the approximate location by a blue 'X' on the plan.
 - 3) Remove all services connected to the chalet for the purposes of independent human habitation, ie electric cabling, water pipes, sewage pipes, septic tank, gas bottles, etc.
 - 4) Remove from the land all materials and debris resulting from the residential use of the land, including but not limited to; washing line, plant pots, concrete pads, etc.
 - 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 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/D0840/W/23/3328901

Caravan East of Six Chimneys Bolenowe, Troon, CAMBORNE, Cornwall, TR14 9JA

- 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 Simon Rodda and Martyne Barker against the decision of Cornwall Council.
 - The application Ref is PA22/09675.
 - The development proposed is use of land for stationing a residential mobile home.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by
 - (i) the deletion of the allegation and its replacement with the words “Without planning permission, the erection of a residential chalet and associated material use of the land from agricultural to residential use” and;
 - (ii) the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

Subject to the substitution of the plan and the correction, the appeal is dismissed and the enforcement notice is upheld;

Appeal B

2. The appeal is dismissed

The site and relevant planning history

3. The appeal site in Appeal A is a roughly triangular shaped plot comprising agricultural land, an agricultural building and an L shaped chalet building. The chalet is located in an extremely prominent and exposed position towards the upper part of a hill and visible from some distance away. The chalet is adjacent to a track and is sited behind a recently planted hedge. The site excludes the property known as Six Chimneys and two single-storey outbuildings.
4. In appeal B, the appeal site is a much smaller plot demarcated with a red line on the application plan although it is not physically separated from the field containing the agricultural building.
5. The appeal sites are within an Area of Great Landscape Value and the zone of influence for the Falmouth and Helford Special Area of Conservation.
6. There have been a number of applications since 2002 relating to the appeal sites and to the main dwelling, including the continued stationing of a temporary caravan; an extension to the dwelling; conversion of a barn to residential; and, erection of an agricultural building,
7. The construction of the chalet was drawn to the Council's attention in July 2023 and a Planning Contravention Notice indicated that the site was being used for agricultural and residential purposes, it was of timber frame construction and had been occupied from May 2022 by the appellant's daughter. It is intended that the appellant's mother would also occupy the chalet and be cared for by the daughter.

Appeal A: appeal on ground (b)

8. An appeal on this ground is that the breach has not occurred as a matter of fact. On legal grounds of appeal such as this, the onus of proof rests with the appellant on the balance of probability.
9. The appellant considers that the planning unit is incorrectly shown and refers to the third test in *Burdle*¹. Within the single unit of occupation there are two or more physically separate and distinct areas occupied for substantially different and unrelated purposes. In such a case, each area is used for a different main purpose (together with its incidental and ancillary activities) and ought to be considered as a separate planning unit. It is argued that the annexe is ancillary to the main dwelling and should be considered to be part of that planning unit, but the annexe cannot be considered to be part of the same planning unit as the agricultural field.
10. For the reasons set out in Appeal B below, I do not consider the chalet is an annexe ancillary to the main dwelling. The appeal site is a field which is in the same ownership but separated from the main dwelling by hedges and a track. The chalet is part of a field containing an agricultural building and is not physically separate from the field. However, the appeal site in Appeal B indicates an area of land that is

¹ *Burdle and Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

distinguishable from the main field albeit that there is an absence of a physical boundary on its west and north sides. Whilst the Council's rationale for identifying the larger site in Appeal A is understandable, I consider that as a matter of fact and degree that the site identified in Appeal B can reasonably be considered as a separate planning unit.

11. The appellant has indicated that it would be acceptable for the site to match that in the s78 application. As no injustice would be caused by the substitution of a revised site plan, I will do so, together with amending the allegation to remove reference to a mixed use of agriculture and residential use, to residential alone.
12. The s78 application described the development as a caravan, but the structure fails to satisfy the limitations on the size of a caravan in the Caravan Sites and Control of Development Act 1960. It is a substantial 'L' shaped timber structure raised off the ground but not capable of being moved without being dismantled. It represents operational development and is occupied as a dwelling, for which no planning permission has been granted.
13. On the basis of the substituted plan and correction to the allegation, I am satisfied that the breach of planning control has occurred as a matter of fact.

Appeal A - the appeal on ground (f)

14. An appeal on this ground is that the requirements of the notice are excessive and the appellant indicates that where there is harm to the AGLV, this can be reduced by painting the building a different colour, for example green. However, as indicated above this would not mitigate the harmful effects of the development.
15. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. 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. .
16. The appeal on this ground fails.

Appeal A - the appeal on ground (g)

17. An appeal on this ground is that the compliance period of 12 months is too short. The appellant has requested a compliance period of 18 months in view of the medical issues of the appellant's mother and the difficulty in sourcing suitable care.
18. Although there are relevant personal circumstances in this case to which I attach some weight, they do not outweigh the significant degree of harm caused by the development. I therefore consider that the compliance period is adequate to carry out the requirements of the notice. The Council has indicated that if the compliance period cannot be met, it is within the Council's power to extend the period through s173A(1)(b) of the Act.
19. The appeal on ground (g) fails.

Appeal B: the S78 appeal

20. The application was refused on two grounds, the second of which is that the development would adversely affect the integrity of the Fal and Helford SAC and

would represent Habitats Development for which no mitigation had been secured. However, the Council has received a signed s106 obligation and the relevant payment for mitigation measures. In the light of this, the Council is not pursuing this reason for refusal.

21. The first reason for refusal relates to the development being a new dwelling in open countryside contrary to the Development Plan and being harmful to the natural beauty of the open countryside. Consequently the issues are, firstly, whether there are any special circumstances that justify the residential development, and secondly, the effect of the development on the character and appearance of the countryside.
22. Policy 2 and 2a of the Cornwall Local Plan sets out the spatial strategy and to provide homes in a proportional manner and Policy 3 sets out the role and function of places. Policy 7 allows for new homes in the open countryside where there are special circumstances in a similar manner to paragraph 84 of the National Planning Policy Framework (the Framework) but the development does not comply with the defined categories.
23. The appellant considers the structure to be an annexe to the main dwelling of Six Chimneys. Whilst the Council's Annexe Guidance Note of May 2020 does not form part of the Development Plan it provides six general considerations for assessing the suitability of annexe proposals and I attach considerable weight to it. Although the land is in the same ownership as the main house and a single drive serves both dwellings, the chalet is poorly related to the main house being outside the residential curtilage and some 63m from it separated by hedges and trackway. It cannot be regarded as being subservient as it greater than 50% of the footprint of the main dwelling. The chalet has all main services and does not rely on the main dwelling.
24. Although occupied by the appellant's daughter at present, it is also intended for the appellant's elderly mother for which wheelchair modifications would be necessary to ensure the chalet's accessibility.
25. The appellant advises that alternative locations have been considered to provide the required accommodation. It is stated that there is insufficient space to allow the creation of an attached extension and that conversion of either of the outbuildings would be too small to provide the required accommodation and would be damaging to a non-designated heritage asset. The outbuilding to the east of the main dwelling has planning permission for conversion but the appellant states that it would require modification but, in any event, it would be too small. However no objective assessment has been submitted to demonstrate that the only means of providing accommodation for the appellant's mother is through the provision of the unauthorised building.
26. On the first issue I find that the unauthorised chalet building represents a new dwelling in open countryside contrary to the Local Plan and it fails to meet any of the special circumstances set out in Policy 7 or of the Framework.
27. The design and appearance of the structure is contrary to the traditional design of residential buildings and appears prominent and incongruous in the landscape, being particularly visible due to its elevated position and failing to maintain the character or distinctiveness of the Area of Great Landscape Value. A condition requiring the chalet to be painted a different colour or for landscaping to be

introduced would not overcome the harm caused by the size and scale of the building on such a prominent site.

28. On the second issue I find that the development is contrary to Local Plan, primarily to Policies 12 (design) and 23 (natural environments).
29. The appellant refers to the 5 year housing land supply in Cornwall not being met and that the tilted balance set out in paragraph 10 of the Framework should apply. This indicates that there is a presumption in favour of sustainable development. The appellant considers that Policies 2a, 3 and 7 are out of date in the context of the Framework but even if these are regarded as out of date, certain development plan policies remain relevant to the determination of the appeal, such as Policies 12 and 23. These are not out of date and consequently the unauthorised development does not benefit from the presumption in favour of sustainable development. Paragraph 12 of the Framework advises that where a planning application conflicts with an up to date Local Plan permission should not usually be granted.
30. I have had regard to the personal circumstances and medical needs of the appellant's mother and the fact that she would be cared for by her daughter. However, I do not consider that these outweigh policies in the Local Plan and in particular, the harm that the chalet causes to the character and appearance of the countryside. Additionally, although mitigation measures in respect of the Falmouth and Hel SAC have been agreed they do not outweigh the harm caused by the development.

Conclusion

31. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the s78 application.

P N Jarratt

INSPECTOR

ANNEXE

Appeal A Ref: APP/D0840/C/23/3328971

Land East of Six Chimneys, Bolenowe, Troon, Camborne, Cornwall, TR14 9JA

Substitution of the plan attached to the enforcement notice

The Plan

