



Appeal Decisions

Site visit made on 28 January 2025

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal A Ref: APP/D0840/C/23/3323634

Land known as Hilltop, St Mewan, St Austell, Cornwall PL26 7DT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Simon Welch against an enforcement notice issued by Cornwall Council.
 - The notice, reference EN23/00199, was issued on 17 May 2023.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the material change of use of nil use land to residential through the stationing of two jackleg cabin mobile homes for residential purposes and associated outbuildings for the keeping of chickens and general storage. The approximate positions of the mobile homes are marked by blue 'X's on the attached plan."
 - The requirements of the notice are to:
 - (1) Cease the residential use of the land
 - (2) Cease the residential use of the two jackleg cabin mobile homes shown in the approximate location by two blue 'X's on the attached plan and remove them from the land
 - (3) Remove all services connected to the two jackleg cabin mobile homes for the purposes of independent human habitation, i.e. electric cabling, water pipes, septic tank etc
 - (4) Demolish and remove from the land the two outbuildings shown in the approximate location by two blue 'A's on the attached plan
 - (5) Remove from the land all materials, paraphernalia and debris resulting from the residential use of the land
 - (6) 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 twelve months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Appeal B Ref: APP/D0840/W/23/3319523

Hilltop, St Mewan, St Austell, Cornwall PL26 7DT

- 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 Mr Simon Welch against the decision of Cornwall Council.
 - The application, Ref PA22/07433, was dated 9 August 2022. It was refused by the Council by notice dated 2 December 2022.
 - The development proposed is described on the application form as "Retrospective development for change of use from previously undefined use/variable use to C3(a), comprising of two linked converted jackleg cabin mobile homes as permanent dwellings and retention of associated drainage and wooden outbuildings already in place for the keeping of chickens and general storage. Car parking to be provided through current hardcore are sufficient for five vehicles. Electrical infrastructure through renewable solar energy. Land reformation and hard and soft landscaping on land."
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Summary of Decisions: The Appeal against the refusal of planning permission is dismissed. The Appeal against the Enforcement Notice is dismissed, and the Notice is upheld with correction in the terms set out below in the Formal Decisions.

Preliminary Matters

1. In the interests of clarity, I shall refer to Appeal A (that is, the appeal against the Enforcement Notice) as “the Enforcement Appeal” and Appeal B (that is, the appeal against the Council’s refusal to grant planning permission) as “the Planning Appeal”.
2. A considerable amount of time has passed since these appeals were lodged in March 2023, and during that period revisions have been made to the Government’s National Planning Policy Framework (NPPF). I therefore invited both parties to provide updates of their respective cases. I have taken their responses into account in my determination of the appeals.
3. Requirement 6 of the Notice includes restoring the land to its former use. This goes beyond the statutory purposes of an Enforcement Notice; the issuing authority may require any unauthorised use to cease, but there is no provision to require that any particular use must be made of the land. It is clear that the breach of planning control alleged by the Notice is the unauthorised change of use of the land to residential accommodation, and that the Notice seeks to end that alleged use. This is the basis on which both parties have made their representations. I am therefore satisfied that correcting the Notice, so as to remove reference to restoring the former use, can be done without prejudice to either party.
4. The Council applied for an award of costs against the Appellant. That application is the subject of a separate Decision Letter of even date.

The Planning Appeal, and ground (a) of the Enforcement Appeal

5. The Planning Appeal, and ground (a) of the Enforcement Appeal, both concern (and seek planning permission for) the same development. It therefore makes sense to deal with them together.
6. The three main issues are the suitability of the location for residential development, the effect the development has on the character and appearance of the area, and the weight to be attached to other material considerations.

The suitability of the location for residential development

7. The Appeal Site is located next to the Charlestown AFC ground, in countryside adjacent to the A390. The Appellant contends that it constitutes “previously developed land”. This is a concept defined in the Government’s National Planning Policy Framework as “Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it... Previously developed land excludes land that is or was last occupied by agricultural or forestry buildings... and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”
8. There is no evidence of any grant of planning permission ever having been made for a permanent structure on the Appeal Site, or for any specific use of the land. The Appellant has provided aerial images from Google Earth, taken at varying intervals over the past 25 years. The image dated 2001 is rather blurred, and shows what is possibly a structure, or perhaps a group of items stored under a cover. This is no longer present in the image dated 2005, which shows what looks like a rectangle of hardstanding, and a pile of what appear to be wrapped bales;

the former is still present in the image dated 2009, but the latter has gone. The image dated 2018 shows a shed or barn type structure on top of the rectangle of presumed hardstanding.

9. The Parish Council has advised that the Appeal Site was used for storage until 2020, when it was bought by Travellers, who removed a section of Cornish hedgebank and created an access and soakaways, before moving caravans on to the land. The Council has provided a Google Earth aerial image dated 2021, in which various structures, mobile homes, caravans, vehicles and what appears to be new hardstanding are visible.
10. I have not been provided with any evidence (such as a Certificate of Lawful Use or Development) that the small area of hardstanding visible in the 2005 image, and the structure visible in the 2018 image, were lawful; in any event, both have been removed or replaced prior to or during the unauthorised works carried out in 2021. Since the Appeal Site has not previously been *lawfully* [my emphasis] developed, it does not constitute “Previously developed land” for the purposes of national and local planning policy.
11. Paragraph 84 of the NPPF advises that the development of isolated homes in the countryside should be avoided, except in certain specified circumstances. This approach to residential development in the countryside is reflected in the Development Plan, which includes the Cornwall Local Plan Strategic Policies 2010 - 2030 (“the Local Plan”), the St Mewan Parish Neighbourhood Development Plan (“the Neighbourhood Plan”), and the Climate Emergency Development Plan Document (“the CEDPD”).
12. Like the NPPF, Policy 7 of the Local Plan prevents the development of new homes in the open countryside except in certain specified circumstances. The residential development here at issue does not comply with any of those circumstances. Local Plan Policies 2 and 3 set out the spatial strategy for the district, which includes directing the development of housing towards the main towns. Outside these, there are opportunities for residential development to come forward through infill schemes; rural exception sites; the re-use of previously developed land within or immediately adjoining a settlement; the rounding off of settlements; and identification through Neighbourhood Plans.
13. The development here at issue is not an infill scheme. It is not a “rural exception” scheme, since it makes no provision to secure affordable housing, and for the reasons set out above the Appeal Site does not constitute previously developed land. The Appellant points out that it accords with some of the criteria set out in the advice note published by the Council’s Chief Planning Officer to clarify what is meant by “rounding off”, in that it is an enclosed and self-contained plot of land, adjacent to a road, a hedge and the existing development at Charlestown Football Club. However, it does not accord with other criteria – such as being surrounded on at least two sides by existing built development, and not visually extending development into the open countryside – and, more fundamentally, does not “immediately adjoin” the nearest settlement of Polgooth with Trelowth but lies some distance from it. In my judgment, the development of the Appeal Site could not rightly be described as “rounding off” any settlement.
14. Policy 1 of the Neighbourhood Plan identifies development boundaries for each of its four settlements, within which residential development will be permitted subject

to certain specified criteria. Policy 2 provides that the only residential development that may be permitted outside those boundaries will be rural exception schemes. The Appeal Site lies outside the defined settlement boundary, and as noted above is not a rural exception scheme.

15. The Appellant contends that the development is supported by Policy AL1 of the CEDPD, which concerns low-impact residential development as part of a regenerative use of land. This policy makes specific provision for a departure from national and local policy preventing development in the open countryside and so, as the explanatory text for the policy notes, it is critical that proposals clearly demonstrate a truly low impact approach. The Policy sets out a number of criteria which must be met, including being able to demonstrate a clear zero-carbon approach to both construction and operation; self-sufficiency in energy, waste and water; the environmental and biodiversity regeneration of the site through a binding action plan; and the ability to provide for the livelihood and substantially meet the needs of all residents on the site within five years from first occupation. I have not been provided with any evidence to demonstrate that the development here at issue meets these criteria, and it does not meet any of the Policy's locational requirements.
16. The Appellant further contends that the Appeal Site is a "sustainable location" in that it lies just 0.3 miles from the nearest settlement and 0.25 miles from the nearest bus stop. The Council points out that while the nearest settlements of Polgooth and Sticker have the benefit of a convenience store, Post Office and public house, it would be necessary to travel further afield to access healthcare, education provision and employment opportunities. The Council also points out that the most direct route to convenience stores is some 2.1km when measured along the road. Parts of the route are unlit, and lack a footway, and pedestrians would need to cross a junction where vehicles are travelling at speed; these are conditions which tend to deter walkers and cyclists.
17. The bus services available from the nearest stop are infrequent and do not provide comprehensive coverage, but this is not unusual for rural parts of Cornwall, as the Council fairly acknowledges. There are hourly buses to Truro and St Austell, both of which have a range of shops and services, including mainline train stations. So while the walk to the bus stop would not be particularly safe or attractive, there would at least be some opportunity for residents of the Appeal Site to make use of sustainable modes of transport. Nevertheless, given the limited range of local facilities and the infrequency of the bus services, it is likely that they would be reliant on the use of a private car for most of their day-to-day journeys. I therefore conclude that the residential development of the Appeal Site is at odds with the aims of CEDPD Policy T1, which seeks to locate development where it would minimise the need to travel, and reduce the use of private vehicles in favour of prioritising walking, cycling and public transport.
18. Taking all of this into account, I consider that the Appeal Site is not a suitable or sustainable location for residential development. It lies in the countryside some distance from the nearest settlement, to which it is not well-related and from which it is not readily accessible by sustainable modes of transport. Its residential use does not round off, or fit in with, the existing pattern of such development in the area but rather extends that development into the open countryside, which is completely at odds with the approach set out in both national and local planning policy. I conclude that the residential development of the Appeal Site conflicts with

Policies 1 and 2 of the Neighbourhood Plan, Policies 2, 3 and 7 of the Local Plan, and Policies AL1 and T1 of the CEDPD.

The effect on the character and appearance of the area

19. The Appeal Site occupies an elevated position, with extensive views over the surrounding landscape. While intervening boundary treatments and vegetation means the Appeal Site cannot be seen from the A390, there are close range public views from the adjoining access road to the Charlestown FC football ground.
20. The character of this part of the countryside is described by the Council's Cornwall Character Area Study ("the CCA") as a very peaceful rural landscape, with a rolling landform which allows far-reaching views across the scenic and largely intact medieval agricultural landscape. It notes that the area is relatively unspoilt with few obvious built structures, and while the majority of it experiences dark night skies, there is localised "night blight" associated with St Austell. The St Mewan Parish Local Landscape Character Assessment considers the area to be "very unspoilt", with landscape that has been shaped by the cycle of farming over many years, and has a "gentle feel".
21. The Appellant contends that the Appeal Site is not well-related to the "unspoilt" area of countryside described, given its location adjacent to the A390 and Charlestown Football Club's ground. It is fair to note that the presence of a busy main road has an adverse impact on the tranquility of its immediate surroundings, but its existence does not alter the rolling, rural character of the landscape that adjoins it. Similarly, while the football club is a non-agricultural form of development, this consists of open grassed playing areas and associated structures that are not out of keeping with their rural surroundings.
22. In contrast, the development here at issue involves the introduction of a new residential use, with non-traditional structures and associated domestic paraphernalia, at odds with the agricultural character and open pastoral appearance of the surrounding area. I do not share the Appellant's view that the locality is characterised by sporadic residential development: while there is other residential development to the east, this is some distance away and is separated by open fields and vegetation. The residential park home site to the south-west of the Appeal Site, on the opposite side of the A390, is a former holiday park that closely adjoins Trelowth, and is now included within its settlement boundary in the Neighbourhood Plan.
23. The Appellant further contends that since the Cornish economy is driven by tourism, mobile home development is commonplace and readily visible across the county, and so should be considered part of its character. The CCA recognises that touring caravan sites, static caravan sites and campsites are "frequent", but regards them as disruptive of – rather than integral to - the farmed landscape: increased urbanisation due to pressure for affordable rural housing and holiday homes is identified as one of the "pressures and forces for change."
24. It is also worth noting that while the provision of a range of different types of tourist accommodation, including mobile homes, is clearly very important to Cornwall's economy that is not what is being proposed here: the development is intended for use as a permanent residence. This has a different character to holiday accommodation, since it involves year-round occupation and a different pattern of vehicle movements.

25. The boundary treatments of the Appeal Site provide some screening, and conditions could potentially be imposed to increase this through additional landscaping; conditions could also be used to limit the use of exterior lighting, and to restrict the presence of domestic paraphernalia. However, even with such conditions in place, the residential use of the mobile homes and outbuildings would remain apparent and incongruous within this part of the rural countryside.
26. I conclude that the development conflicts with the provisions of Policies 12 and 23 of the Local Plan in that it does not maintain or enhance the distinctive natural character of the landscape, does not provide continuity with the existing built form of the area, and is not of an appropriate design.

Other material considerations

27. The Appellant contends that there will be short-term benefits to the local economy through employing local tradespeople and utilising local materials, but since the development has already been constructed, there will be no further benefits in those terms. The long-term economic benefits identified by the Appellant, such as support for local facilities and the payment of Council Tax, would be equally applicable to residential accommodation in any area and do not weigh in favour of the residential development of this particular site.
28. I note the Appellant's assertion that a condition could be imposed, on a grant of planning permission, to secure biodiversity enhancements. However, in the absence of any information concerning the biodiversity status of the Appeal Site prior to the development here at issue, or any suggestion as to what the proposed enhancements might involve, this is not a consideration that carries any appreciable weight in favour of granting permission.
29. A Written Ministerial Statement (WMS) of 17 December 2015, which remains in force, made "intentional unauthorised development" a material consideration in planning applications and appeals. It explains that the reason for this is the Government's concern about the harm caused where the development of land has been undertaken in advance of obtaining planning permission, because in such cases, there is no opportunity to mitigate the harm that has already taken place. From the evidence before me, I can see that the Appellant had what he regarded as good reasons for undertaking the unauthorised development of the site. Nevertheless, the fact that the development was carried out without first obtaining planning permission is a material consideration which carries some weight, albeit limited in this case, against granting permission.
30. Turning to material considerations which weigh in favour of the development, I note that Charlestown Youth and Ladies Football Club have written in support of a permanent residence on the Appeal Site, on the basis that it would add security to the Club's ground. The ground is in a fairly isolated location, some distance from other built development, so I can understand the perception that an occupied dwelling nearby could help to deter opportunist trespassers and vandals. However since there are a number of other security measures which could be deployed, with a less harmful impact on the character and appearance of the area, this is a consideration to which I attach only very limited weight.
31. Of greater import are the personal circumstances of the Appellant, who lives at the Appeal Site with his wife and two of their adult children. Details have been provided in various documents, and are accepted by the Council. It is not

necessary, or appropriate, to set out those details in this public document. In summary, one of the family members has a serious health condition, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This constitutes a “protected characteristic” under the Public Sector Equality Duty (PSED) set out in s.149 of the Equality Act 2010.

32. The PSED establishes that local planning authorities and Planning Inspectors must have due regard to the need to eliminate discrimination, and to advance equality of opportunity, between persons who share a relevant protected characteristic and those who do not. This means, among other things, removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic, and taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of those who do not share it.
33. In addition, since dismissing the Planning Appeal and upholding the Enforcement Notice would effectively render all of the current occupiers of the Appeal Site homeless, Article 8 of the European Convention on Human Rights, set out in UK law within Schedule 1 of the Human Rights Act 1998, would be engaged. This is the right for respect for private and family life. This is a “qualified” right, which means that determining whether it may be infringed involves balancing the fundamental rights of individuals against the legitimate interests of others, and the wider public interest. I shall consider this further, along with the application of the PSED, when I turn to the overall planning balance.
34. Another important material consideration is the Housing Crisis in Cornwall. In 2021 the Council published a document entitled “Securing Homes for All: A Plan to address Cornwall’s Housing Crisis” which acknowledges that the lack of affordability of homes to buy in Cornwall is acute, with many households facing limited housing choices and difficulty in accessing suitable accommodation that they can readily afford. The document identifies a number of interventions and initiatives aimed at improving the situation, and confirms the objective of delivering the new homes Cornwall needs through the Local Plan; at that time, the Council considered it was on track to meet the housing targets set out within its adopted Local Plan.
35. However, that position has now changed. Under the provisions of the revised NPPF published in December 2024, which included changes to the methodology used to calculate housing need, the Council is no longer able to demonstrate the five-year supply of housing sites required by paragraph 78 of the NPPF. This means that the housing supply policies of the Local Plan are considered out-of-date, and the “tilted balance” in favour of sustainable development, set out in paragraph 11(d) of the NPPF, is applicable here. These provisions must inform the overall planning balance that I now undertake.

The planning balance

36. The starting point is the statutory requirement that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. One such material consideration is the “tilted balance” set out in paragraph 11(d) of the NPPF, which is triggered when the policies which are most important for determining the application are out of date: for the reasons set out above, that is the case here.

37. In summary, this means that planning permission should be granted, except in two specified sets of circumstances. The first exception is where NPPF policies that protect areas or assets of particular importance provide a strong reason for refusal. Footnote 7 to paragraph 11 lists the relevant policies, and none of them are applicable here.
38. The second exception is where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes. Footnote 9 to paragraph 11 lists these “key policies” as (among others) those in paragraph 84, which avoids the development of isolated homes in the countryside unless certain specific circumstances apply; paragraph 110, which concerns managing patterns of growth to promote the use of sustainable transport; paragraph 129, which emphasises the desirability of maintaining an area’s prevailing character; paragraph 135, which seeks to ensure that development adds to the overall quality of the area and is sympathetic to local character; and paragraph 139, which states that development which is not well-designed should be refused.
39. To establish whether the development here at issue would fall within the second exception, it is therefore necessary to weigh the benefits of granting planning permission against the adverse impacts, taking account of the NPPF policies I have identified above.
40. The main benefit of granting planning permission for this development is that it would provide a permanent home for one household, in the context of an ongoing housing crisis across the county which means that more dwellings are desperately needed. The single-storey accommodation provided would be of a type suited to the needs of the member of that household who has a protected characteristic. The presence of a dwelling in this location would also have some security benefit for the nearby Charlestown FC football ground.
41. On the opposite side of the balance, there is a range of adverse impacts which weigh against the development. It is an isolated home in the countryside, with no provision to secure its future occupation as an “affordable dwelling”, in a location which would generate trips by private vehicle rather than sustainable modes of transport. This conflicts with NPPF policies aimed at directing development to sustainable locations, and providing affordable homes. The development has not been designed to harmonise with or reflect its rural setting, and is at odds with the pastoral character of the surrounding landscape; the resulting harm to the character and appearance of the area conflicts with the NPPF policies aimed at securing well-designed development that is sympathetic to, and maintains, local character.
42. In my judgment, the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits. The provision of suitable accommodation for one household, together with improved security for the adjoining football ground, are not sufficient to justify an unsustainable form of development that detracts from the rural character of its surroundings. The NPPF recognises that in circumstances where the housing supply policies of the Development Plan are failing to deliver sufficient housing, a more direct approach should be taken to the assessment of proposals for residential development: that is what paragraph 11(d)

does. But it is important to be clear that this does not mean facilitating development in unsuitable places. Paragraph 11(d) is careful to identify the national planning policies which must continue to inform the assessment of development proposals, and this includes those directing development to sustainable locations.

43. I recognise that finding suitable and affordable alternative accommodation is likely to be more difficult for the person with a protected characteristic than it would for a person without that protected characteristic. I have considered possible steps to address that inequality, including the use of conditions limiting occupancy to a temporary period or to specific occupiers, but have found no alternatives that would be both appropriate to the circumstances and less harmful in impact.
44. The consequences of my findings in respect of this appeal are that, at the end of the compliance period specified by the Enforcement Notice, the occupiers of the unauthorised development will lose their home. This amounts to serious interference with their right to respect for their private and family life and home. However, that right is a qualified right, such that interference may be justified where it is lawful and in the public interest. The regulation of land use is an important function of Government, and it is in the public interest for the planning system to protect the environment's quality and character, and ensure that development takes place in suitable locations. In this case, I consider that these legitimate aims could not be achieved by means which would be less interfering with the occupiers' rights, and the refusal of planning permission is necessary and proportionate in the circumstances.

Conclusion

45. For the reasons set out above, I find that the development here at issue conflicts with the Development Plan read as a whole, and there are no material considerations of sufficient combined weight to overcome the harm caused by that conflict. One of those material considerations is the "tilted balance" set out in paragraph 11(d) of the NPPF, which is to be applied where (as here) a Council is unable to demonstrate a five-year supply of housing sites. On applying that "tilted balance" to the circumstances of this particular case, I found that the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. This means that the development falls within the exception set out at paragraph 11(d)(ii), and planning permission should not be granted,
46. I therefore conclude that the Planning Appeal should be dismissed.

Ground (g) of the Enforcement Appeal

47. The ground of appeal is that the compliance period specified in the Enforcement Notice falls short of what should reasonably be allowed. The period specified by the Notice is twelve months, which the Council considers to be reasonable, pointing out that if the Appellant were in rented accommodation the landlord could serve notice to quit, which would take effect in two months. The Appellant contends that a compliance period of at least 24 months is needed, pointing out that he and his household will need to find alternative accommodation, possibly on the housing register where there are significant delays.

48. Ordinarily, I would consider six months sufficient time to look for alternative accommodation. However, I recognise that the criteria that will need to be applied to ensure suitability for the occupier with a protected characteristic – specifically, accommodation that is single-storey – will narrow the range of alternative accommodation that might be available. Further, the ongoing Housing Crisis in Cornwall has resulted in a significant shortage of affordable housing, which in turn means increased demand, and longer waiting times, for such homes as are available.
49. In these circumstances, I consider the compliance period of twelve months reasonable and appropriate. I am satisfied that it strikes the right balance between the conflicting private and public interests in this case, by providing the occupiers of the unauthorised development with sufficient time to look for alternative accommodation, without unduly prolonging the existence of the harm caused by the development as identified in the Enforcement Notice.
50. I therefore conclude that the appeal on ground (g) should fail.

Overall Conclusions

51. I conclude that the Planning Appeal, and the Enforcement Appeal on ground (a), should fail. Planning permission should not be granted for the development.
52. I conclude that the Enforcement Appeal on ground (g) should fail, and the Enforcement Notice should be upheld, subject to the correction noted in paragraph 3 above.

Formal Decisions

The Planning Appeal

53. The appeal is dismissed.

The Enforcement Appeal

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

- the deletion of the words “and use” from sub-paragraph 5(6)

Subject to this correction, the appeal is dismissed and the Enforcement Notice is upheld.

Jessica Graham

INSPECTOR