



Appeal Decision

Site visit made on 11 August 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 September 2025

Appeal Ref: APP/D0840/C/23/3317575

Wheal Prussia Dry, Wheal Prussia, Redruth, Cornwall, TR16 4BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Robert Tolley against an enforcement notice issued by Cornwall Council.
- The notice was issued on 1 February 2023.
- The breach of planning control as alleged in the notice is *without planning permission the material change of use of an agricultural field to a mixed use comprising a caravan for residential purposes, creation of two new accesses and hardstanding, the storage of non agricultural material and creation of additional outbuildings. The land has been outlined in red on the attached plan 'The Plan'.*
- The requirements of the notice are:
 - 1) Cease the residential use of the caravan shown in the approximate location by a blue 'X' on the attached plan and remove caravan from the land.
 - 2) Remove all services connected to the caravan indicated by a blue 'X' on the attached plan, including electric cabling, water pipes, sewage pipes etc.
 - 3) Dig up and remove the cement plinth under the caravan from the land.
 - 4) Demolish and remove from the land, the outbuildings shown in the approximate locations by blue 'A's' on the attached plan.
 - 5) Remove from the land all materials and debris associated with the residential use of the land, including washing line, plant pots, swing, trampoline etc.
 - 6) Cease the use of the land for the storage of non-agricultural materials/items; not limited to: motor vehicles, domestic waste, scrap and building materials.
 - 7) Remove from the land the gateways and hardstanding, shown in the approximate locations by blue 'B's' on the attached plan.
 - 8) Remove the wooden fencing from the land and restore land to its original condition.
 - 9) Remove from the land all materials and debris resulting from the above works and restore the land and boundaries to their former condition and use before the breaches took place.
- The period for compliance with the requirements is *12 months after this notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the 1990 Act (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 1990 Act.

Summary of Formal Decision: The appeal is dismissed, and the enforcement notice is upheld.

Formal Decision

1. The appeal is dismissed, the enforcement notice (EN) 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.

Applications for costs

2. The application for costs made by the Council against the appellant is the subject of a separate decision.

Preliminary Matters

3. Since the EN has been served, alterations have been made to matters alleged in the notice. At the time of my visit, some of the outbuildings subject to the EN had been removed and those that remained, comprised little more than ancillary storage and ancillary functionality. Whilst this forms a different development to that alleged in the notice, I have based my decision on the development that existed at the time the EN was served.
4. Furthermore, given the previous Inspectors decision¹ dated 3 October 2022, this represents a significant material consideration to be taken into account as part of this appeal.

Appeal on Ground (d)

5. An appeal on ground (d) is that, at the date on which the EN was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The test of the evidence is the balance of probability², and the burden of proof is on the appellants. Therefore, the appellants must show, on the balance of probability that the use of the land for mixed use purposes had been continuous for the relevant period, beginning with the date of the breach.
6. The EN is directed against operational development in the form of the two accesses, hardstanding and several outbuildings associated with the residential use of the caravan, but also the material change of use to a mixed use. Caselaw³ highlights where an EN is directed at a material change of use, it can require the removal of ancillary operational development within the ten-year immunity period, even if the four year limit has passed, if the works were intended to facilitate the unlawful use. Given that the operational development is ancillary to the mixed use against which the EN is directed, in order to demonstrate immunity from planning control, the applicant must show that the mixed use has continued on an uninterrupted basis for at least ten years from the date of when the EN was served. Accordingly, the material date here is 8 March 2013.
7. The appellant claims that the caravan, subject to the EN has been on site for several years and was located in situ when the appellant purchased the land. The appellant also states that residential occupation at the site did not begin until October 2022. However, there is little evidence to corroborate these assertions in the form of statutory declarations or alike.
8. The Council has provided more compelling evidence, in the form of several ariel photographs that clearly show how the degree of development at the site has changed in recent times, including the provision of several outbuildings within the site. From the evidence before me, the matters alleged in the EN were undertaken somewhere between 2019 and 2022. Thus, based on the above it is clear that the use alleged in the notice cannot have acquired immunity since it had been carried out for less than the ten years that would be necessary.
9. For these reasons I conclude that it was not too late for the Council to take action when the EN was issued. Accordingly, the appeal on ground (d) fails.

¹ PINS Ref: APP/D0840/W/22/3290810

² Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732

³ Murfitt v SSE & East Cambridgeshire CC [1980] JPL 598

Appeal on Ground (a) and the deemed planning application

Main Issues

10. A ground (a) appeal is that planning permission should be granted for the matters alleged in the EN, in whole or in part. Therefore, the main issues in this appeal are i) whether the development is consistent with the Council's spatial policy along with government advice contained in the National Planning Policy Framework (the Framework); ii) the effect on the character and appearance of the countryside; iii) the effect on the integrity of the Penhale Dunes Special Area of Conservation (SAC) and Falmouth and Helford SAC; and iv) the effect on drainage.

Reasons

Location of development

11. The Framework advises that residential development in rural areas should be located in sustainable locations, where they will enhance or maintain the vitality of rural communities and identify opportunities for villages to grow and thrive, especially where this will support local services. The Framework also seeks to promote the use of more sustainable modes of transport such as walking, cycling and public transport. Policy 1 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP), adopted November 2016 is consistent with this approach.
12. The appeal site is located in a relatively rural area, despite its proximity to several A-roads (A30 and A3047) and its peripheral location to the settlement of Redruth. Although there is no formal landscape designation, the area to the north of the site consists of open fields and land within an agricultural use. Nevertheless, despite its countryside location there is sporadic development including various dwellings and buildings in the vicinity.
13. The main provision of services and facilities are located in the settlement of Redruth nearby. I acknowledge that journeys to Redruth are relatively short, however access via more sustainable means, such as on foot or by bicycle require occupiers to negotiate busy roads (A3047) that predominately do not have pavements and have speed limits varying between 30mph and 40mph. The lack of footpaths makes it less attractive for people to use more sustainable means such as walking and cycling particularly when carrying shopping, in the dark or during inclement weather conditions.
14. I have been supplied with limited substantive evidence to indicate whether the site is well served by public transport, nor have I been provided with details in regard to the frequency and reliability of any service. This leads to uncertainty that there could be a realistic substitute to the convenience of private car use. Therefore, I cannot conclude that there would not be negative environmental and social effects arising from the location of the appeal site, in terms of the use of resources and the accessibility of local services. As a result, this is an adverse consequence to which I afford significant weight. This would be consistent with the findings of the previous Inspectors decision, since which time there have been no significant changes in circumstances which, in planning terms, would alter my conclusions.
15. CLP policy 3 also seeks sustainable development based on the role and function of places. New development is subject to a hierarchy, which is to be primarily provided in the established main towns. Outside these settlements, development

will only be permitted in special hierarchical circumstances. These are where sites are identified in Neighbourhood Plans; rounding off settlements or previously developed land; infill schemes or rural exception sites.

16. I have been presented with no information that the appeal site has been identified in a Neighbourhood Plan as set out in Criteria 3 of CLP policy 3. Given the scattered and sporadic nature of development in the vicinity the site is not considered as rounding off a settlement or development of previously developed land either. Furthermore, as there is no continuous built frontage, neither do I find that the site is an infill scheme. Nor have I been presented with information that the site is a rural exception. As such, there is a presumption against this type of development in this location.
17. CLP policy 7 also provides special circumstances where residential development would be permitted in the countryside. I have been presented with limited information in respect to how the development would meet any of the criteria of this policy.
18. Overall, the development does not provide a suitable location for a mixed use including residential, having regard to the accessibility of services and facilities. In this respect, it would not accord with CLP policies 1, 3 and 7 and the relevant sections of the Framework which seeks to promote sustainable and suitably located developments.

Character and appearance

19. The appeal site consists of a small parcel of land and accessed via a narrow shared accessway from the A3047 highway, which is a busy road to the northern side of Redruth. The appeal site is on the periphery of this settlement where the relatively tight and more urban development pattern becomes sporadic and rural in appearance, despite being bisected by the A30. The site itself is well-screened and hidden from most public vantage points with boundary treatments consisting of well-established mature hedgerows and trees, adding to the countryside feel of the area.
20. Whilst located close to a small cluster of existing development, the area to the north is largely devoid of built structures providing an undeveloped, agricultural appearance. I have taken account of the pattern and form of development which exists locally, and the site appears more as part of the rural area to the north rather than either the small cluster of development close to the site or the established settlement of Redruth to the south.
21. Whilst small scale, the collective introduction of built development at the appeal site, including outbuildings, hardstandings and various other residential paraphernalia provides additional sprawl with an increased urbanising affect, harmful to the overall appearance of the area. The appeal scheme therefore provides further discordant built forms in the locality, that fail to protect or enhance the character of the countryside.
22. Whilst limited, the development does harm the rural character of the area, and as a result would be contrary to CLP policies 2, 12 and 23, which require development to be of a high quality of design, whilst maintaining and respecting the special character of Cornwall, recognising that all urban and rural landscapes, designated and undesignated, are important, amongst other things.

Integrity of the Penhale Dunes and Falmouth and Helford SACs

23. I am told and it is not in dispute, that the appeal site falls within the Zones of Influence (ZOI) of the Penhale Dunes and Falmouth and Helford SACs. These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SACs, either alone or in combination with other plans and projects.
24. The Council has advised that the proposed development may adversely impact the SACs due to an increase in residential units at the site. I therefore conclude that the appeal scheme, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
25. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SACs. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a tariff based mitigation strategy, as set out in the Cornwall Council European Sites Mitigation Supplementary Planning Document (SPD), adopted in July 2021.
26. The SPD requires all development where significant effect is identified to provide an Appropriate Assessment (AA). There is a lack of information supplied with the appeal that prevents me from completing an AA, that would find positively in favour of the scheme or otherwise on this issue. Furthermore, even if, an AA was possible I have not been presented with a mechanism, such as a planning obligation, with which I could secure the necessary mitigation through an appropriate tariff as set out in the SPD.
27. Given the above, there is little if any certainty that the development could mitigate harm to the Penhale Dunes and Falmouth and Helford SACs. As such, it would be contrary to policies 22 and 23 of the CLP, which seeks to ensure the integrity of the SACs are protected through the demonstration that adequate measures are put in place to avoid or mitigate any potential adverse effects.

Drainage

28. The appeal site is located within a Critical Drainage Area (CDA)⁴. Cornwall Council's Local Flood Risk Management Strategy requires development in this area to control run-off from development. Infiltration drainage is not the preferred drainage option in this catchment because of the presence of mine workings and contaminated land. I have been presented with limited information regarding the control of drainage at the site, and without the appropriate information I cannot be confident that the development provides suitable drainage solutions. Consequently, I must adopt a precautionary approach and conclude that I cannot properly assess the developments impact with regard to drainage.
29. I acknowledge that conditions might be used to ensure that otherwise unacceptable development could be made acceptable, for example on receipt of further detailed technical information. However, given the lack of any technical

⁴ Appendix 1 of the Councils Statement of Case

detail, I cannot be sure that conditions would be sufficient or appropriate to make the development acceptable and remedy any potential drainage impacts so that permission can be granted. Consequently, the insufficient information supplied means the development is contrary to the relevant sections of CLP Policy 26.

Other Matters

30. National policy emphasises the need for new housing. I acknowledge that the current development provides a home for 3 people, which would be removed as per the requirements of the EN. Clearly from the sincerity of evidence before me, I am in no doubt how important the loss of a family home would be to the people concerned.
31. This is an important consideration and would also represent a serious interference with their right to respect for private and family life and the home, as outlined in Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. This is a qualified right, and interference may be justified if it is necessary, proportionate and serves a particular planning purpose. The benefit is clear, and therefore I accordingly attach it significant weight.

Conclusion on ground (a)

32. Overall, I conclude that the harm I have identified above, in respect to the existing change of use to the mixed use and the associated operational development, outweighs the benefits of the scheme, despite the weight I have attached to the loss of an existing residence. While upholding the EN would result in the appellants losing their current home, I cannot see that the aims of providing sustainable development; protecting the countryside; protecting the integrity of the SACs or following policy requirements relating to drainage could be achieved by any other means than cessation of the residential use. This outweighs the occupiers' rights under Article 8, as outlined above. Subsequently, a dismissal on ground (a) is a necessary and proportionate response and would not result in any violation of those rights.
33. The development therefore conflicts with the development plan as a whole, and there are no other considerations, including the provisions of the Framework, which outweigh this finding. The appeal on ground (a) therefore fails.

Conclusion

34. For the reasons given above, I conclude that the appeal should be dismissed, and the EN is upheld as set out in the Formal Decision above.

Robert Naylor

INSPECTOR