



Appeal Decisions

Site visit made on 3 February 2026

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 March 2026

Appeal A Ref: APP/D0840/C/24/3355370

Appeal B Ref: APP/D0840/C/24/3355371

**Land to the east of Pleasant View, Polcrebo Downs, Nancegollan, Cornwall
TR13 0BL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Nick Seaton Burridge and Appeal B is made by Messrs Johns & Kelly against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 17 October 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of land from nil use to a mixed use comprising of nil use and recreational leisure use in connection with the RC Cornwall Flyers Club, and associated development consisting of access tracks, hardstanding areas, clearance of heathland to create areas for model aviation activities and recreational areas, and the siting of a storage container, picnic benches and associated paraphernalia. The approximate location of the storage container is indicated on the attached plan by a blue 'X'¹
 - The requirements of the notice are to:
 - (1) Cease the recreational leisure use of the land outlined in red on the attached plan.
 - (2) Demolish and remove the hardstanding areas and access tracks from the land shaded in orange on the attached plan.
 - (3) Remove the shipping container from the land outlined in red on the attached plan.
 - (4) Remove from the land all materials, paraphernalia, and debris resulting from the recreational leisure use of the land, including but not limited to picnic benches, BBQ, water tank etc.
 - (5) Remove from the land all materials and debris resulting from compliance with the requirements of (2), (3), and (4) above and restore the land to its former condition before the breach took place.
 - The period for compliance with the requirements is: 8 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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The enforcement notice

1. The enforcement notice ("the Notice") alleges the material change of use of land to a mixed use comprising of a nil use and recreational leisure use. It is not clear how a 'nil use' can form part of a mixed use as, if part of the planning unit were simply not in a use, then, usually, the whole planning unit would have changed to the new use. Having sought their views, I am satisfied that this proposition is broadly accepted by the main parties as applying to the current case.
2. With regard to the above, the matters alleged, insofar as it relates to the use, should be the material change of use to a recreational use in connection with the RC Cornwall Flyers Club ("RCCFC"). I note here, that it appears that the activities of the RCCFC are definable ones, such that the wording of the allegation can be

¹ The references to an attached plan in the heading to this Decision are a reference to a plan attached to the enforcement notice.

seen to be targeting a particular type of recreational use, rather than an individual organisation.

3. The extent to which that is taking place across all of the land identified by the Notice ("the Land") is disputed by the parties, the appellants indicating that it relates to only part of the Land. However, other than natural, scrub vegetation, there are no barriers between or definable boundary to the part utilised by the RCCFC and the remainder of the Land. It all appears to be in a single ownership and no part of it is obviously put to any other definable use.
4. Therefore, I find that the whole of the Land is a single planning unit. There is no apparent reason why the use by the RCCFC would have changed that, even though they have only actively used part of the Land. Accordingly, the plan attached to the notice correctly identifies the Land and the allegation should be corrected to remove reference to a mixed use including a nil use. The appellants have made no reference to any nil use, and their case made at appeal can relate equally to the whole of the Land and the part that they actively use. Therefore, no injustice would arise from correcting the allegation to refer to a single alleged, recreational, use.
5. The appellants have also suggested that the Notice incorrectly states the existing use as a 'nil use', for reasons including public access to the Land and historic motorcross activities thereon. That might be relevant to the grounds of appeal, but for the purposes of clearly stating the alleged breach of planning control, reference to the existing use can be simply deleted for the avoidance of any doubt. The parties' positions on the historic use are sufficiently clear for me to understand their various arguments, so no injustice would arise from removing reference to the existing use.
6. I understand that the site is open to the public for recreational purposes. Indeed, it is identified as open access land in the Crowan Parish Neighbourhood Development Plan 2019 ("NP"). It is important that the Notice does not purport to remove existing lawful use rights.
7. While relevant to both the appeal on ground (c) and ground (f), it is clear on reading the Notice that the first requirement could purport to prevent any recreational leisure use of the Land. That could tread upon existing lawful use rights and so, notwithstanding the grounds of appeal, the Notice should be corrected to avoid any such possibility.
8. Accordingly, requirement (1) should be corrected to cease the recreational leisure use in connection with the RCCFC. That would introduce the necessary consistency with the allegation to ensure that the Notice did not go beyond remedying the breach of planning control alleged, and would ensure that any lawful use rights were preserved. This would not alter the matters that the Notice seeks to attack and, therefore, no injustice would arise from such a correction.
9. I shall, therefore, make the corrections referred to. The grounds of appeal will be considered against the corrected allegation.
10. At the time of my site visit, there were two containers, or perhaps more accurately a container and 'portacabin' type structure. The Notice refers only to a single container. The written evidence refers to the prospect of a second container being brought onto the land for the purposes of a 'club house', but although two are

shown in the appellants' site photographs, I have no particular evidence as to the situation at the time the Notice was served. I shall, therefore, consider the situation on the basis of a single container, as described in the alleged breach of planning control.

Ground (c)

11. Ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellants to prove their case to the standard of the balance of probabilities.
12. The appellants suggest that the Land is publicly accessible for recreation purposes. Whether or not that gives the Land a recreational use, there is no indication that the alleged 'recreational leisure use in connection with the RCCFC' is not materially different to that. There is evidence of historic uses for motorcycle scrambling and racing, but no particular indication that this might have resulted in a material change of use of the land, that such was not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") as a temporary use, or indeed, that the use by the RCCFC is not materially different to that in any event.
13. I understand that the RCCFC use the Land for club meets and flying aircraft on less than 28 days per year. Such a use would be authorised by the planning permission granted by the GPDO for up to 28 days in any calendar year. However, the RCCFC has also positioned a container and picnic benches on the land.
14. I understand that the container was brought onto the land in one piece and placed on blocks. It remains movable and could similarly be taken away in a single action, such that it may well not constitute operational development in its own right. It is said that it is not essential to the RCCFC's use of the Land, but it is confirmed as being linked to their activities. There is no clear evidence as to what it is used for, but it seems to include a use for housing solar powered battery packs for charging model aircraft. Thus, I find that the container is part and parcel of, or associated with, the recreational use alleged.
15. In *RW & JP Ramsey v SSETR & Suffolk Coastal DC* [2002] EWCA Civ 118, the temporary use in question was found to cease and the land revert to grazing between events. Like the earthworks in *Ramsey*, it is unlikely that the container, benches, or the condition of the tracks at the site would actually prevent the use of the Land for other purposes, including its 'normal' use. However, it was emphasised by the judges in *Ramsey* that the reversion to the normal use between temporary uses was crucial for the development to be permitted by the GPDO.
16. Here, when there is no flying of aircraft, the container and benches do not appear to be put to the 'normal' use of the Land, irrespective of whether the Land itself remains publicly accessible for casual recreational purposes unconnected with the RCCFC. Nor have they been shown to have moved from the Land. Thus, the activities of the RCCFC, through the container and picnic benches remaining in situ, continue between more active sessions.
17. I, therefore, find that it is more likely than not that the use of the Land for a recreational leisure use in connection with the RCCFC takes place for more than

28 days per calendar year, and did so prior to the service of the Notice. Therefore, it does not benefit from the permission granted by the GPDO.

18. As the siting of the storage container and picnic benches are part and parcel of the alleged breach of planning control, they should be described within the allegation. As should any other associated paraphernalia that might be on the land in connection with the use. The clearance of scrub/heathland, even if not development in its own right, is described as having been undertaken to facilitate the use, so there is nothing wrong with it, too, being described in the allegation.
19. There is evidence of numerous tracks having existed on the Land for many years. They appear to have previously facilitated the motorcycle-related activities. It is suggested that the RCCFC have simply cleared vegetation to expose these tracks, carrying out some repairs with aggregate. However, the extent to which these tracks were previously surfaced is unclear. Aerial photographs show the tracks, but the surfacing cannot be discerned and photographs from the historic motorcycle uses appear to show the activities taking place on surfaces largely composed of mud.
20. While clearance could have revealed some areas of stone or chippings (or similar material), there are distinct areas of extensive and prominent surfacing when compared to some 'greener' cleared areas of the Land, where only a very small amount of underlying stone can be seen. The onus of proof on this ground of appeal rests with the appellants, and there is no evidence before me as to what the cleared routes looked like before they were repaired with additional material. If they had an appearance similar to the remaining 'greener' cleared areas around the site, then there has been a very obvious laying of substantial new material from the site access gate to the area close to the shipping containers and picnic benches.
21. Works for the maintenance, improvement or alteration of buildings that do not affect their external appearance are exempt from the meaning of development within the 1990 Act. However, while highway authorities may maintain or improve roads, there is no such provision to exempt the private maintenance of tracks or similar.
22. On the basis of the evidence before me, and given my observed comparison to other parts of the site, I find the laying of aggregate is more likely than not to have gone significantly beyond some minor repairs to existing hard surfaces such that it constituted development needing planning permission. Even if I am wrong about the extent of works, what has been done was probably undertaken to facilitate the material change of use and, as with the other matters that may not in themselves be development, are clearly then part and parcel of the alleged breach of planning control.
23. For the reasons given I find that the matters alleged in the Notice require express planning permission. In the absence of such a permission, they constitute a breach of planning control. While, in early discussion with the RCCFC, the Council may have not identified any concern in respect of the matters alleged, instead being focussed on the construction of a pond, that has little to do with the merits of the case that I must assess now.
24. The ground (c) appeal should, therefore, fail.

Ground (a)

25. Ground (a) is that planning permission ought be granted for the matters alleged in the Notice. The main issues on this ground are the effect on the character and appearance of the area, the effect on the setting of the Grade II listed detached chimney at Polcrebo Mine, the effect on biodiversity, and whether the Land is appropriately located for the use in respect of accessibility.

Character and appearance

26. The site has an open moorland character, that has been historically reprofiled and left to regenerate following historic mining activities. The high elevation provides long-distance views towards the site, within which the container is not easily discernible. Gently undulating topography limits short-range views to the immediate surroundings, and there are limited viewpoints. Nevertheless, the shipping container does stand above the surrounding vegetation. It is visible from the adjoining road and byway, as well as within the site itself. While it is low and green in colour, its angular, utilitarian form is an alien feature in the landscape, at odds with the prevailing open character. The picnic benches add further harmful clutter to the area, albeit they are only visible within the Land itself.
27. The tracks and cleared areas of heathland are only readily visible from within the site. While the Land is open to public access, these areas are not so formally laid out or manicured as to appear at odds with the surrounding rural landscape or other nearby areas of moorland.
28. Thus, I conclude that the cutting back of vegetation to facilitate the recreational activities of the RCCFC, and laying of the hard surface, cause no material harm to the character and appearance of the area, but the shipping container and picnic benches are intrusive. While the use is described as a temporary one, the RCCFC is intending to occupy the land for at least ten years. Although a large proportion of that period has already passed, the harmful effects would still continue for some time.
29. Collectively, therefore, the matters alleged in the notice are detrimental to the character and appearance of the area. That is in conflict with those aims of Policies 2, 12, 23, and 25 of the Cornwall Local Plan 2016 ("LP"), and NP Policies HT4 and FAS1, that seek to ensure the protection of the character and appearance of the area and Cornwall's landscapes, through development that is compatible with its context, and that recreational uses of the Polcrebo Downs do not detract from their open character.

Listed chimney

30. The significance of the chimney is derived from its association with the mining activity that shaped much of the Countryside in Cornwall and West Devon. The Chimney stands isolated from other surrounding development and is visible from some distance. However, while it is intervisible with the container and tracks on the Land, these low level items do not interfere with views towards it or undermine any understanding of the historic context within which the chimney stands.
31. I, therefore, find that the development preserves the setting of the listed chimney and does not harm its significance. Accordingly, there would be no conflict with LP Policy 24 or NP Policy HLE1 that seek to protect the historic environment.

Biodiversity

32. The Land is undeveloped heathland close to a County Wildlife Site, but there is no substantive evidence as to how any harm might have arisen to biodiversity interests from the minor works undertaken, or intermittent use for flying activities by the RCCFC. While it might usually be for a developer to demonstrate that their proposals would cause no harm, a Council should also be satisfied that there is a reasonable likelihood of adverse effect before requiring substantive evidence to demonstrate otherwise. In the absence of reasons why such a reasonable likelihood might exist, I find that no conflict with those aims of LP Policy 23 that seek to ensure the protection of biodiversity interests, has been identified.

Accessibility

33. The Land is detached from settlements, such that people attending the RCCFC would be required to travel by private car. Nevertheless, the travel patterns linked to the intermittent use of the site are limited. The Council acknowledges that the need to transport aircraft to meetings is likely to limit travel by public transport in any event, and there is no particular evidence that a concentration of members live in any one particular settlement. Therefore, travel patterns would likely be similar, wherever the club was based and the location of the Land, combined with the nature of the use, does not give rise to unacceptable travel patterns, or fail to maximise access by non-car means as required by LP Policy 27 and Policies C1 or T1 of the Climate Emergency Development Plan Document 2023 ("CEDPD").

Other matters

34. I understand that the RCCFC provides a great social benefit to its members, from a variety of backgrounds, at various stages of their life. Supporting healthy lifestyles, including in respect of promoting good mental health, is an important objective of national planning policy. Nevertheless, the appellants' submissions acknowledge that the container, being the harmful aspect of the matters alleged, is useful, but not essential to support the club's activities. Accordingly, it has not been shown that the social and health benefits that might arise could not be achieved without the harm identified, including through the exercise of permitted development rights for the temporary use of the Land. Following discontinuation of the permanent use, I see no reason that new permissions under the GPDO could not then be granted for temporary uses by the RCCFC once again.
35. In this regard, I have considered whether it would be possible to issue a split decision whereby permission was refused for the container, but granted for the tracks alongside a temporary use. However, the required level of use for the flying of aircraft is already permitted by the GPDO. Granting an alternative express planning permission now would necessitate imposing restrictions or limitations on the use through planning conditions. I have insufficient evidence to consider the scope of such conditions without the risk of causing injustice to the parties.
36. In addition, if I were to grant permission for the use, that might also permit the provision of movable structures that were not development in themselves, such as the visually harmful container, or require variations to the Notice that might also have unintended consequences. In the absence of an express permission for the use, even the small-scale of works proposed in the surfacing of the tracks have not been justified. I have not, therefore, granted permission for part of the matters alleged.

37. CEDPD Policy G1 relating to green infrastructure is cited in the reasons for issuing the Notice, but as public access to the Polcrebo Downs does not appear to have been hindered, it is unclear how its aims would have been conflicted.

Conclusion on ground (a)

38. The matters alleged in the Notice cause harm to the character and appearance of the area. Although I have identified no harm to the setting of the listed chimney, biodiversity interests on or around the Land, or policies relating to accessibility, this brings the development into conflict with the development plan, read as a whole. The appeal on ground (a), therefore, fails.

Ground (f)

39. The purpose of the Notice is to remedy the breach of planning control. In that context, ground (f) is that the steps required by the Notice to be taken, or the activities required by the Notice to cease exceed what is necessary to remedy any breach of planning control which may be constituted by the matters alleged.
40. The corrected requirement to cease the use in connection with the RCCFC, does not go beyond what is necessary to remedy the breach of planning control. Similarly, my conclusions in respect of the links between the use, hardstanding, access tracks and paraphernalia mean that their removal, and the restoration of the Land is reasonable and necessary to remedy the breach of planning control.
41. For these reasons, I conclude that the appeal on ground (f) should fail.

Ground (g)

42. Ground (g) is that the period specified in the Notice to comply with the requirements falls short of what should reasonably be allowed. The appellants have made unsubstantiated comments about the time needed to carry out any necessary works and find an alternative site. In the absence of any persuasive evidence as why the period is inadequate, I conclude that it is sufficient and the appeal on ground (g) should fail.

Overall conclusion

43. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the Notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

44. It is directed that the enforcement notice is corrected by:
- In Section 3 ‘the matters which appear to constitute the breach of planning control’, delete the text “from nil use to a mixed use comprising of nil use and recreational leisure use” and replace with the text “to a recreational leisure use”.
 - In Section 5 ‘what you are required to do’, paragraph (1), after the words “leisure use” insert the words “in connection with the RC Cornwall Flyers Club”.

45. Subject to the corrections, the appeals are 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.

M Bale

INSPECTOR