



Appeal Decision

Hearing held on 19 May 2026

Site visit made on 19 and 20 May 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2026

Appeal Ref: APP/D0840/C/26/3377903

Land North of Newmill Cottages, Newmill, Penzance TR20 8UU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Scot Davies against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 8 January 2026.
 - The breach of planning control as alleged in the notice is: without planning permission, the construction of a timber building (extended shepherds hut) for residential use, associated development in the form of timber structures/outbuildings, hardstanding areas/tracks, and the material change of use of the land from a nil use to a mixed use comprising of residential use, agricultural use and the siting/storage of a caravan and motorhome on the land.
 - The approximate location of the residential timber building is indicated by a blue 'A' on the attached plan.
 - The approximate locations of the timber structures/outbuilding are indicated by blue 'B's' on the attached plan.
 - The requirements of the notice are:
 - (1) Cease the residential use of the land outlined in red on the attached plan.
 - (2) Cease the siting/storage of caravans and non-agricultural vehicles on the land outlined in red on the attached plan.
 - (3) Demolish and remove from the land the residential building shown in the approximate location by a blue 'A' on the attached plan.
 - (4) Remove all services connected to the residential building for the purposes of independent human habitation, i.e. electric cabling, water pipes, sewage pipes, gas bottles, solar panels etc.
 - (5) Demolish and remove the timber structures/outbuildings shown in the approximate locations by blue 'B's' on the attached plan.
 - (6) Demolish and remove the hardstanding and tracks from the land outlined in red on the attached plan.
 - (7) Remove from the land all structures, materials, paraphernalia, and debris resulting from the residential use of the land.
 - (8) Remove the caravan and motorhome from the land outlined in red on the attached plan.
 - (9) Demolish and remove from the land all structures resulting from the agricultural use of the land.
 - (10) Remove from the land all materials and debris resulting from compliance with the above requirements and restore the land to its former condition before the breach took place.
 - The period for compliance with the requirements is: for (1) - (10) above, 12 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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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Decision

1. It is directed that the enforcement notice is corrected as follows:

- Delete the words "and the siting/storage of a caravan and motorhome on the land", delete requirement (8) and re-number the requirements next following, as (8) and (9); and

- Insert “and” after “residential use”; delete “from a nil use”; and delete “of” after “comprising”.
2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the construction of a timber building (extended shepherds hut) for residential use, associated development in the form of timber structures/outbuildings, hardstanding areas/tracks, and the material change of use of the land to a mixed use comprising residential and agricultural use on the land North of Newmill Cottages, Newmill, Penzance TR20 8UU as shown on the plan attached to the notice and subject to the following conditions:
- 1) The occupation of the timber building hereby approved shall be limited for a period of 6 years to the persons identified in the updated management plan to be submitted and approved by the local planning authority under Policy AL1 to operate the site in accordance with the aims, objectives and methodology of the land-based activities detailed in the approved plan. All residential accommodation shall be removable and the sole residence of its occupants.
- Reason: to accord with the requirements of Climate Emergency Development Plan Document (CEDPD) Policy AL1.
- 2) The development hereby permitted shall be discontinued and the land restored to its former condition on or before 6 years from the date of this permission or the cessation for a period of three months of the use hereby permitted, whichever is sooner.
- Reason: to accord with the requirements of CPDPD Policy AL1.
- 3) Within 3 months of the date of this decision, the updated management plan referred to in Condition 1 shall be submitted for approval to the local planning authority that meets the requirements of CEDPD Policy AL1 including details of:
- how the site is or will become self-sufficient in terms of energy, water and waste and how a significant proportion of food and income is derived directly from the land;
 - a baseline survey of the biodiversity and ecological state of the site and an action plan that will lead to a measured improvement in landscape character, biodiversity, environmental net gain and carbon capture improvements; and
 - a plan describing travel and transport arrangements to be carried on in relation to the occupants of and visitors to the development.
- The site shall be occupied and managed thereafter in accordance with the approved details.
- Reason: to accord with the requirements of CEDPD Policy AL1.
- 4) No later than 5 years from the date of this decision, the occupiers of the site, having first met with representatives of the local planning authority on site and discussed implementation of the development hereby permitted, shall thereafter submit to the local planning authority a monitoring report giving

details of the activities carried out during the previous 5 years in compliance with the said management plan, setting out performance against Policy AL1.

Where the report identifies that adequate performance against any of the essential criteria has not been met, it shall also set out appropriate corrective or mitigating measures designed to address the identified deficiencies in performance which shall be implemented in full and within the timescales set out in the report.

Reason: to accord with the requirements of CEDPD Policy AL1.

Applications for costs

3. An application for an award of costs was made by Mr Scot Davies against Cornwall Council. This application is the subject of a separate decision.

Preliminary matters

The notice

4. It was agreed at the hearing that the notice should be amended to exclude reference to the caravan and motorhome as they had been removed from the appeal site. In addition, in light of the evidence now produced by the appellant as to the previous use of the land, the reference to nil use should be deleted. I am satisfied that these corrections can be made without injustice to either party.

Site inspection

5. I made an accompanied site inspection of the appeal site on 19 May and, on 20 May, an unaccompanied inspection of the wider surroundings of the appeal site.

Gypsy and traveller status of appellant

6. The appellant S claims status as a Traveller (not Gypsy) which for the purposes the Planning Policy for Traveller Sites (PPTS) is included in this definition:

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan”.

7. The basis of the claim is that S has a history of travelling for work. This is not necessarily the same as a person of a nomadic habit of life. Travellers who fit the latter description have a cultural identity as opposed to individuals whose history may have included periods of travelling temporarily for lifestyle, leisure, or work. The appellant gave evidence of having lived for several years of his life in caravans on sites described as traveller sites. The Council disputed whether occupants of those sites were in fact all travellers as defined in the PPTS. The appellant was born in or around 1991 and grew up in the settled community. He went to university where he shared a house.
8. Towards the end of his studies S started to move around for work. The sites described by the appellant are understood not to be exclusively for travellers as such, but provide for a mix of users including holiday makers and others seeking off-grid living and alternative low-impact lifestyles.

9. Those who practice nomadism do not have a single fixed accommodation but move from place to place or have a nomadic heritage. The appellant does not claim status based on ethnicity. The Council did not take the opportunity it had to respond to the claim or to consider it before the hearing. It emphasised that the appellant initially responded “no” to the question in the enquiry form about status, but on closer examination the form was found only to have asked about Gypsy status.
10. S has had previous experience of living on and managing land in a sustainable and low-impact way and S’s children and partner share S’s aspiration for sustainably living off the land. There is some, but in my view insufficient, evidence brought forward, in this appeal at least, to persuade me on the balance of probability that the appellant’s lifestyle or previous experiences of living on caravan or camping sites, amounts to habitual nomadism or a cultural tradition as defined.

Human rights

11. Although not specifically related to Gypsy and Traveller status, the appellant, his partner and two children reside on the appeal site as their only residence. The matters raised in this appeal engage the duty under Article 8 of the European Convention on Human Rights, namely the right to respect for private and family life and home, as well as Article 1 of the First Protocol concerning the peaceful enjoyment of possessions. These qualified rights require a balance between the rights of the individual and the needs of the wider community. In addition, the best interests of children living on the land are a primary consideration under the United Nations Convention on the Rights of the Child 1989 art.3(1) but not the primary or the paramount consideration¹.

Ground (a)

Main issues

12. These are:
 - whether development is locationally sustainable, including whether compliant with Policy AL1 regarding low impact housing tied to the restorative use of land.
 - effect on local character and appearance including impact on Cornwall National Landscape and the Heritage Coast; and
 - ecological and biodiversity impacts.

The appeal site and surroundings

13. The appeal site is in open countryside as defined in the Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP). It was an area of land adjacent to former quarry workings and was being slowly reclaimed by nature to provide a mix of wet woodland, mixed scrub, heathland and herb rich grassland. The scrub and heathland contribute towards the overall landscape character as described in the Cornwall Landscape Character Assessment (LCA), now referred to as CCA (Cornwall Character Areas), in this case the Penwith Central Hills. Further information about the specific uses of the appeal site for agricultural and related uses may be found in the commons registration decision referred to below.

¹ See *Dear v SSCLG* [2015] EWHC 29 (Admin)

Whether a sustainable location

14. CLP Policy 7 permits development of new homes in the open countryside in exceptional circumstances, including for rural occupation workers with an essential need to live in such locations. Strictly speaking, the development would not appear to fit exactly into any of the criteria listed in Policy CL7. When considered against the CLP policies, the development is not exactly an infill or rounding off.
15. However, CEDPD Policy AL1 provides a more specific exception for low impact housing and other buildings necessary to support proposed activities, tied to the restorative use of land and controlled by conditions regarding measurable environmental net gain. To demonstrate the achievability of the project, permission would only be granted on a temporary basis, as discussed below.
16. S relies heavily on Policy AL1 of the Climate Emergency DPD (CEDPD), it is a key development plan policy for determining this appeal, however other key policies seek to protect the special nature of this landscape, discussed further below, and to ensure development is sustainably located.
17. I do not find the residential building (shepherd's hut) to be an isolated feature within the landscape. The Council asserts that as development in the open countryside, it has to be justified in terms of NPPF, paragraph 84. Whether this is correct in relation to a mixed use such as the unauthorised development, may be a moot point. However, what constitutes a "settlement" and "isolated" are matters of planning judgement for the decision-maker on the facts of each case².
18. Newmill is a hamlet with a linear structure of built development along Gear Lane (C0158). It has no readily identifiable centre, the Council describes it as a straggle of low-density buildings, but the development plan does not always identify boundaries of settlements, tending to use a flexible, criteria-based policy to manage housing growth. The appeal site is located to the north of most dwellings in Newmill but, as I saw, there are others relatively close by further along the road.
19. There is a bus route in very close proximity to the appeal site which is used regularly by S and his family to go into Penzance for amenities. Penzance is a relatively short bus ride away where a wide range of services and facilities can be found. St Ives is also accessible using this route. S walks and cycles with his children to the local school, about a 14-minute walk away, where they have attended since March 2024. There is an electric bike on the site which is charged via solar power. S has one motor vehicle, a pickup truck used for gardening purposes outside the site.
20. The use of a car in conjunction with walking and cycling should be seen in the context of NPPF policies in Chapter 9, particularly Paragraph 110 which includes that opportunities to maximise sustainable transport solutions vary between urban and rural areas, and this should be taken into account in decision-making.
21. The Council's Interim Policy Position Statement offers guidance that sustainable settlements are not solely defined in a hierarchical way but by how they function and the presence of services, facilities and connections to other places. The appellant's use of the appeal site could fairly be described in accordance with the CLP policies as small-scale development appropriate in this smaller settlement

² See City and Country Bramshill Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 320

with access by a variety of transport modes to a reasonable level of services and facilities. Subject to compliance with Policy AL1 discussed below, I find the appeal would be a sustainable location for the development in terms of how it would function as a form of low impact housing with access via several sustainable transport modes to a range of services, facilities and connections to other places.

22. To comply with Policy AL1 the Council states:

A binding action plan is required to secure environmental and biodiversity regeneration of the site. Buildings are to be removable. A trust or other bona fide mechanism is required for the management and running of the site and the selection of future residents or activity. Where the above is met, a temporary permission for 6 years is likely. Renewal is subject to the submission of a monitoring report measuring progress against the management plan. The development does not accord with this policy as no action plan has been submitted which identifies environmental and biodiversity objectives, the measures put in place to achieve those objectives and relevant monitoring and review. Also, there is no mechanism to manage and run the site and there are no indications of any detailed business plan for the site.

23. The appeal site is 2.3 acres in area with proportions left for wildlife and regeneration, large areas in need of rehabilitation from invasive species and return to once used agricultural purposes. The structures on site, including the residential accommodation constructed from second-hand materials are removable. The appellant supplied in great detail his plans for progressive development of the site, including biodiversity and environmental improvements and objectives. In my view subsection clarity over timelines, this can reasonably regarded as an action plan.
24. It is unclear what exactly the Council means or understands by the requirement for a “trust or other bona fide mechanism”. The appellant owns the freehold of the appeal site. He holds it for the benefit of himself and his family. The policy is aimed at small groups and potentially private estates³. The site has a compost toilet, and water is obtained from a neighbour’s spring and bottled water. The appellant is self employed as a gardener and sells produce from the land, eggs, vegetables, and willow. Management of the land includes livestock (feeding, welfare monitoring, protection from predators) the plant nursery, polytunnel and growing areas, watering, propagation and maintenance, especially at key seasonal times. Continuous maintenance of other systems is referred to in S’s plans.
25. From my questions of the Council officers, what appears to be lacking from the submission is a more detailed business plan, setting out scheduled actions on a year by year basis, including a projection of how resources will be allocated to the various purposes set out in the submission and what outcomes could be expected to be demonstrated by milestones identified in the plan. This should not have to be an elaborate exercise for a single smallholding designed to be as self-sufficient as practicable. However, it would be reasonable to require such an updated plan as part of compliance with the Council’s policy. The appellant is willing to have his activities monitored in line with the policy requirements.
26. The occupiers explored purchasing or renting a property locally without success. S claims a genuine functional need to reside on the land to support and sustain a rural low-impact development which is land-based, continuous, and requires a consistent on-site presence to be carried out effectively. In my view, without a

³ CEDPD paragraph 7.13

residential presence, the effective management of the land would be significantly compromised and S's ability to generate an income from land-based activities, including plant cultivation, livestock, and associated produce, would also be severely restricted, undermining the viability of the enterprise and his livelihood.

27. I read that the successful implementation of Policy AL1 is to be measured through the annual monitoring report as indicated by the numbers of applications received.⁴ However, the Council was unable to tell me how many applications, if any, had been approved in its district. It is well established that the difficulties of businesses of value to the character of a community are not to be ignored in the administration of planning control.⁵ The development meets a local need for development of a low impact, easily removable home, enabling sustainable lifestyles compatible with Policy AL1. In my view this is a project that can meet the requirements of the policy, subject to the agreed conditions, and it is to be hoped, the constructive input of the Council going forward, if the policy is to be seen to be successfully implemented as envisaged in the development plan.

Character and appearance including landscape impacts

28. A large portion of the appeal site is a county wildlife site (CWS), known as Newmill Quarry. The land falls within the West Penwith section of the Cornwall National Landscape (CNL) (former AONB) and is within a defined Heritage Coast. Paragraph 189 of the NPPF requires that great weight is given to conserving and enhancing the landscape and scenic beauty in National Landscapes which have the highest status of protection. Paragraph 191 states that in a Heritage Coast area, decisions should be consistent with the special character of the area and the importance of its conservation.
29. The Cornwall AONB Management Plan 2022-2027 (AONB management plan) identifies the West Penwith section as a unique character area shaped by granite geology with a rugged, exposed coastal landscape and secluded valleys. Inland is an elevated coastal plateau with stream valleys and ancient field patterns. Policies PD-P1, PD-P2 and PD-P11 seek development in the CNL to adopt a landscape-led approach considering cumulative effects and addressing landscape sensitivity.
30. The Council's Climate Emergency DPD 2023 (CEDPD) is part of the development plan. It sits alongside the CLP. Policies 1 and G4 seek to conserve and enhance the natural and historic environment through locally distinctive high-quality design, and where in or near a local nature recovery network to maintain its connectivity.
31. The site is located in the hamlet of Newmill and within an established pattern of development. The existing residential structure is not comparable to the traditionally built cottages nearby but has a rustic character and is aligned with neighbouring dwellings to the north and south. The site is bounded on two sides by existing residential properties, with the road forming the western boundary. As such, it does not read as isolated or detached from the settlement pattern but as an incremental addition to the hamlet's development rather than an extension into open countryside.
32. The Council was under the mistaken impression that the entire site was classified as open access land, being common land forming part of the larger Newmill

⁴ CEDPD, page 54.

⁵ Westminster City Council v Secretary of State for Communities and Local Government [2013] EWHC 69 (Admin).

Common. However, the appellant produced a decision of the Council in its capacity as commons registration authority for the area⁶, which was to de-register two areas of land within the appeal site, ie to exclude those areas from designation as common land (and with it any associated rights of access for the public).

33. There are in any event specific exceptions to the public rights of access noted in the Countryside and Rights of Way Act 2000, including land surrounding a dwelling, gardens, curtilages around buildings and so forth, in addition to land recently ploughed for the growing of crops or trees, temporary livestock pens, and so forth, not to mention the possibility of excluding or restricting access where necessary to conserve flora, fauna or geological or physiographical features.
34. The Council objected that the locked gate gave the land the appearance of being privately owned, which of course is exactly what it is, but otherwise was unable to say how its character and appearance, qua common land, was adversely affected by the development. Many landscapes can be designated as common land. The site is described in the commons registration decision as having had a variety of agricultural and horticultural-related uses, some of which the appellant now seeks to carry on. Should permission be granted, the remaining area of the appeal site still registered as common land would be subject to similar uses and therefore it is likely that any public user rights would in any event be significantly restricted.
35. I would also note the “Granite hedges”, referred to in the commons registration decision. These iconic Cornish hedges (or a dry-stone wall variation) are built using quarried granite, a landscape feature prevalent in the area. The hedges would not be affected by the development. The Council accepts that vegetation and tree cover lessen the visual harm of the development. Users of open access land east of the site might see over most of the vegetation, but the use of the site for small-scale agriculture, including vegetable cultivation and animal husbandry, reflects a traditional and appropriate rural land use that supports the ongoing management and stewardship of the land. The uses contribute to the character of the landscape, in keeping with the aims of AONB designation. The development is well enclosed and does not unacceptably undermine a full appreciation and experience of the distinctive character and special qualities of the CNL and defined Heritage Coast.
36. In summary, the shepherd’s hut used for residential accommodation is removeable in line with Policy AL1, it clearly has a domestic appearance as would be expected, but rather than contributing to the incremental urbanisation of the countryside, it and the surrounding development the subject of the notice relate closely to its rural surroundings, integrating with the existing pattern of residential and land-based uses. The scale and nature of the use is limited and low-impact, making effective use of a site that is physically and visually connected to the surrounding built environment. The site has a minimal visual impact, the structures and agricultural activity are only glimpsed from the road and overall, there is no unacceptably adverse effect on local character and appearance.
37. The loss of scrub and heathland would be over a small part of the wider landscape whilst the development is clearly being carried on with an empathetic approach to conserving and enhancing landscape features with no adverse cumulative effects having been identified. The development would therefore be compatible with the

⁶ “0.932 hectares of land at Newmill, Penzance” dated 6 November 2017.

aims of AONB management plan Policies PD-P1, PD-P2 and PD-P11 in that the uses of the appeal site would not unacceptably adversely affect the character or integrity of the CNL and Heritage Coast. It would also meet the aims of the Penzance Neighbourhood Plan in emphasising sustainable development, environmental stewardship, and protection of local character.

Ecology

38. The low-impact nature of the use is such that it has the potential to contribute positively to biodiversity rather than cause harm. Regarding the site's designation as a CWS and the absence of a detailed ecological impact assessment, S is willing to provide further ecological information, working constructively with the Council to ensure that the use of the land supports and enhances its ecological value, in accordance with both local and national planning policy.
39. The statutory biodiversity net gain (BNG) condition is a pre-commencement requirement for work that has not yet started. It was agreed between the main parties that it could not be attached to any eventual planning permission.
40. I am satisfied that subject to a condition requiring a management plan that would elicit information on the potential impacts on the features of the CWS, the development would comply with CEDPD policies, including measures to maintain appropriate connectivity with the local nature recovery network.

Planning balance

41. By s38(6) of the 1990 Act if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
42. The deemed application includes housing where a five-year supply of deliverable housing sites cannot be demonstrated and the Council accepts that in such cases paragraph 11d) of NPPF advises that, applying the presumption in favour of sustainable development, permission should be granted unless the NPPF policies that protect areas or assets of particular importance provide a strong reason for refusal, or the impacts of so doing would significantly and demonstrably outweigh the benefits, assessed against the policies in the NPPF as a whole.
43. The policies the most important for determining the appeal are those I have referred to in the foregoing discussion. Applying simultaneously the presumption in favour of sustainable development and the priority in favour of the development plan, I find that despite some conflict with the development plan, inasmuch as the development is in the open countryside, to some extent it would be reliant on the use of a car, and it has a limited adverse effect on visual amenity and landscape character. I have had regard to the fact that the appeal site is the only accommodation known to be available to the appellant and his family and that it would be in the best interests of the children to have a settled residence close to their school. Whilst the family's own needs would carry significant weight it is not a determinative issue in this appeal because I find that, irrespective of these considerations, the development would, subject to the agreed conditions, and despite the limited adverse effects described, constitute a sustainable development and be in compliance with the development plan as a whole.

44. The NPPF policies that protect areas or assets of particular importance, in particular the high importance given in paragraph 189 to conserving and enhancing the landscape and scenic beauty in National Landscapes, do not in this case provide a strong reason for refusal, nor would the impacts of granting permission significantly and demonstrably outweigh the benefits, assessed against the policies in the NPPF as a whole.

Other Matters

45. Several interested parties submitted representations, variously in support or against the appeal. Two representations made unsubstantiated allegations as to the management of the site. I have considered all the submissions, including those made orally at the hearing, however they do not affect my conclusions.

Conditions

46. The submitted management plan contained conditions proposed by the appellant, however the Council proposed a list of conditions which were agreed to by the appellant and which I have used as a basis for the conditions I shall impose.
47. The proposed condition to secure a more detailed management plan in line with Policy AL1 is reasonable and necessary, including that residential occupation is limited to 6 years to the persons therein identified. However, it should not be made retrospective as adequate enforcement powers are available to the Council, including the further condition which I shall impose in the interests of compliance with the CEDPD policies, that requires the land to be restored to its former condition should the permitted use cease. The period of non-use was not specified by the Council. It seems to me that the insertion of a period of three months is reasonable in the circumstances and justified for reasons of certainty.
48. A condition is also reasonable and necessary to provide for monitoring of the implementation of the approved management plan, however it would not be reasonable to leave the occupiers to do this without some input from the Council at the time when the success or otherwise of the plan comes to be reviewed on site, because it is in the interests of the Council as much as anyone that implementation of Policy AL1 is seen to be successful, and I have amended the suggested wording accordingly.

Conclusion

49. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The enforcement notice will be corrected and quashed.

Grahame J Kean

INSPECTOR

APPEARANCES

APPELLANT:

SD	Appellant
MJ	Appellant's partner
DD	Appellant's father

LOCAL PLANNING AUTHORITY:

Mr Blackshaw	Development Officer
Mrs Perry	Planning Enforcement Officer

INTERESTED PERSONS

Mr W
Mrs W