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## Appeal Decision

Site visit made on 25 June 2019

**by Jessica Graham BA(Hons) PgDipL**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 July 2019**

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**Appeal Ref: APP/D0840/C/18/3211722**

**Land adjacent to King Arthurs Car & Coach Park, Fore Street, Tintagel, Cornwall PL34 0DD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr T Dangar against an enforcement notice issued by Cornwall Council.
- The enforcement notice was issued on 21 August 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to form an extension to the adjacent car & coach park.
- The requirements of the notice are
  1. Cease the use of the Land outlined in red on the attached plan for the parking of motor vehicle and caravans.
  2. Remove the hard-core, marked in the approximate position with black crosses on the attached plan, from the Land.
  3. Re-instate the land to its former condition by erecting a chain link fence no more than 1.8m in height in the approximate position marked with a blue line on the attached plan.
- The period for compliance with requirement no. 1 is one week, and the period for compliance with requirements nos. 2 and 3 is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d),(f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld with correction.**

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### Procedural matters

1. The first requirement of the enforcement notice refers to the removal of "motor vehicle" (singular) and "caravans" (plural). Since it is obvious from the context that the reference should be to "motor vehicles" (plural), and since the Appellant's case has been argued on that basis, I am satisfied that I can correct the notice without injustice to either the Council or the Appellant.
2. An application for costs was made by the Appellant against the Council. That application is the subject of a separate Decision Letter of even date.

### The appeal on grounds (c) and (d)

3. Ground (c) is that the matters set out in the enforcement notice do not amount to a breach of planning control, and ground (d) is that by the date when the notice was issued, no enforcement action could be taken in respect of any

breach of planning control which may be constituted by those matters. The Appellant's case is effectively the same for both grounds (in essence, that a material change of use of the appeal site to car parking took place in the early 1970s, and that use has not subsequently been abandoned) so I shall deal with these two grounds together.

4. S.171B of the Town and Country Planning Act 1990 sets out the time limits for taking enforcement action. S.171B(3) provides that where (as here) the breach of planning control consists of a change of use other than the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
5. However, it is important to bear in mind that these time limits became operative from 27 July 1992, and were not retrospective. The transitional provisions set out in s.5(1)(b) of *The Planning and Compensation Act 1991 (Commencement No.5 and Transitional Provisions) Order 1991* indicate that until 27 July 1992 there was nothing to prevent an enforcement notice, relating to a breach of planning control involving a material change of use, from being issued where the breach had occurred after the end of 1963. It was thus not possible for such a post-1963 use to gain immunity before the provisions of the Act came into force, and the earliest 10 year period by which such a use could achieve lawfulness was from 27 July 1982 to 27 July 1992.
6. Put simply, an unauthorised use which commenced after the end of 1963 could not be lawful before the provisions of the amended s.191 and new s.171B came into force on 27 July 1992. If the unlawful use ceased before that date, it would not be a case of an unlawful use becoming dormant, but rather the unlawful use of the land ceasing; the breach of planning control would have come to an end, and there would have been no activity against which a local planning authority could have taken enforcement action.
7. That appears to be the situation here. The evidence of the Appellant is that car parking took place on the appeal site from the early 1970s until 1985, but then ceased. That use was not authorised by a planning permission and could not benefit from previous legislation as being "established" and thus immune from enforcement action, since it did not commence before the end of 1963. This period of unauthorised use for parking ceased in 1985 such that there was no activity on the land against which the local planning authority could have taken enforcement action, so it could not have become lawful when the provisions of s.191 and s.171B of the 1990 Act came into force on 27 July 1992.
8. It is argued, on behalf of the Appellant, that when the use of the appeal site for parking ceased in 1985 that use was not abandoned, so the Appellant's use of it as a car park from May 2017 onwards constitutes the continuation of an existing use rather than a breach of planning control. But since the evidence is that the original use as a car park began after 31 December 1963 and ceased to be active before 27 July 1992, this is not a case where a use that was unlawful (but immune from enforcement) could potentially have become "dormant"<sup>1</sup>; rather, this is a case where an unlawful use of land had not become immune from enforcement before it ceased. It is only when lawful use rights have been accrued that a use can become dormant without losing those use rights.

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<sup>1</sup> As envisaged by caselaw on abandonment, see *Panton v SSETR* [1991] 1 PLR 92

9. It is perhaps worth noting here that the evidence currently available strongly supports the interpretation that when the late Mr Baker ceased his use of the appeal site as a car park in 1985, that particular breach of planning control came to an end. There is nothing to suggest that the use was at that time merely suspended, or placed in abeyance. The Appellant's evidence is that having moved into Brunswick House in 1985, Mr Baker did not want people passing his house to get to the car park on the appeal site, and so stopped its use for that purpose. There is no indication that he had any intention of resuming the use at any point, and indeed he did not do so within the remainder of his lifetime.
10. In summary, there is evidence that car parking took place on the appeal site between the early 1970s and 1985. However, for the reasons set out above, that use did not become lawful or achieve immunity from enforcement before it ceased. The land was then used only for horse grazing and haymaking, with no car parking, for a period of over 30 years. In 2017, the Appellant put the appeal site to use as an extension to the adjacent car and coach park, as alleged by the enforcement notice. In my judgment this amounted, as a matter of fact and degree, to a material change of use of the land.
11. That material change of use constituted development, for which a grant of planning permission was required, but not obtained.<sup>2</sup> This means that it amounted to a breach of planning control, and I therefore conclude that the appeal on ground (c) must fail. Since this breach of planning control occurred less than 10 years before the notice was issued on 21 August 2018, it is still within the period during which enforcement action may be taken.<sup>3</sup> I therefore conclude that the appeal on ground (d) must also fail.

### **The appeal on ground (a)**

12. The appeal on this ground is that planning permission should be granted for the breach of planning control alleged by the notice. The main issues, in this regard, are the effect that granting planning permission for the use of the appeal site as an extension to the adjacent car and coach park would have upon (1) the character and appearance of the area, and (2) living conditions at neighbouring residential properties, with particular regard to any loss of privacy or increase in noise and disturbance.

#### *The effect on the character and appearance of the area*

13. Tintagel lies within the Pentire Point to Widemouth section of the Cornwall Area of Outstanding Natural Beauty (AONB). Paragraph 172 of the Government's *National Planning Policy Framework* advises that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs, which have the highest status of protection in relation to these issues. It goes on to say that the scale and extent of development within these designated areas should be limited. Policy 23 of the Cornwall Local Plan (2016) reflects this approach, and also states that proposals should be informed by and assist the delivery of the objectives of the Cornwall AONB Management Plan.
14. The appeal site is a roughly rectangular shaped plot of grassed land, extending to around 0.37ha. It lies on the northern side of Fore Street, to the rear of

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<sup>2</sup> S.55 of the 1990 Act

<sup>3</sup> S.171B(3) of the 1990 Act

Brunswick House and other buildings fronting the road. Its eastern and western boundaries adjoin, respectively, the car parks known as "King Arthurs Car and Coach Park" and "Tintagel Country Club Car Park". Both of these provide, in addition to parking spaces for cars, overnight pitches for motorhomes. To the east of King Arthur's Car Park there is another car park, which extends northwards for about half the length of King Arthur's car park. I saw at my site visit that there are many other existing car parks in Tintagel, including the Castle Car Park, the Tintagel Visitors Centre Long Stay Car Park, and the Sword in Stone Car Park.

15. I share the Council's view that permitting the use of the appeal site for the parking of cars and motorhomes would result in the loss of a green and open space which provides an important visual buffer between existing car parks in this eastern part of the settlement. I appreciate that the extent to which this grassed field would be covered by vehicles would vary considerably with the seasons, since there are fewer visitors to Tintagel during the winter months, and as the Council suggests, a condition could be imposed preventing parking during this low season. Nevertheless, changing the use of the appeal site from a field to a car park would result in the visual coalescence of the King Arthurs and Country Club car parks, resulting in a large expanse of parking that would be entirely out of keeping with the scale of the settlement. Even if this were limited to the summer months, it would significantly harm the character and appearance of the area.
16. I conclude that allowing the deemed application for planning permission would conflict with the objectives of Policy 23 of the Cornwall Local Plan, Saved Policy ENV1 of the North Cornwall Local Plan (1999), and the provisions of the NPPF, in that it would harm, rather than conserve or enhance, the landscape and scenic beauty of this part of the AONB. It would also be at odds with the aims of Policies 2 and 12 of the Cornwall Local Plan, which together seek to ensure that development maintains and enhances Cornwall's distinctive natural and historic character.

#### *The effect on living conditions*

17. A short cul-de-sac known as Jacks Mews runs eastward from Atlantic Road, serving a row of residential properties which face toward the Tintagel Country Club Car Park. The eastern flank wall of the dwelling at the end of this row, No. 5 Jacks Mews, lies a very short distance from the western boundary of the appeal site. A number of occupiers of the dwellings in Jacks Mews have raised concerns about noise and disturbance associated with motorhomes and campervans stationed on the appeal site overnight (such as the partying of holidaymakers at night, and the running of generators at all hours), and the overlooking of their properties, leading to loss of privacy.
18. The Appellant contends that since the dwellings in Jacks Mews face directly toward a car park that permits overnight stays by motorhomes and campervans, the use of the appeal site for the same purpose could not give rise to any increase, or intensification, of the alleged adverse impacts beyond those already experienced from the car park facing them. I do not share that view. These dwellings were previously protected from noise and disturbance generated at King Arthur's car park by the presence of the appeal site, as an intervening open grassed space. If planning permission were granted for that green buffer also to be used for parking and overnight stays, No. 5 in particular

would be adjoined at very close quarters by a large expanse of parking, and in my judgment its occupiers would be likely to experience a significant increase in levels of noise and disturbance.

19. With this in mind, I agree with the Council that if the use of the appeal site as a car park were to be permitted, it would be necessary to impose conditions preventing any vehicles from being parked on the site between the hours of 10:30pm and 8:00am the following morning, and also preventing any parking at all within 5m of the boundary with No. 5 Jacks Mews. The first of these conditions would mean that no overnight stays could take place on the appeal site, so that neighbouring residents would not experience any additional noise and disturbance in the late night or early evening. The second would secure a reasonable exclusion zone between the existing residences and the closest parking spaces on the appeal site, to reduce perceptions of overlooking.
20. Subject to these conditions, I consider that the development would not cause significant harm to living conditions at neighbouring residential properties. There would be an increase in the amount of noise and disturbance experienced at these properties, due to the increased amount of parking nearby, but the prevention of overnight parking would limit the nature of such noise and disturbance, and ensure that it did not occur at unreasonable times.
21. In this respect I find that the use would accord with the aims of Policies 12 and 16 of the Cornwall Local Plan, which seek to ensure that development proposals should protect individuals and property from overlooking and unreasonable noise and disturbance, and should avoid or mitigate against harmful impacts such as noise pollution.

#### *Other matters*

22. The Appellant has drawn my attention to paragraph RA15 of the Cornwall AONB Management Plan, which seeks to "Improve traffic management within the AONB, particularly in visitor hotspots in the summer months ensuring adequate car parking, where this can be accommodated within a village setting and focusing on integrated public transport solutions."
23. There can be no dispute that Tintagel is a visitor hotspot. However, it already contains a very large number of car parks for a settlement of its size. I have not been provided with any evidence to suggest that these are currently inadequate to meet demand during the summer months, or that they would become so if, as the Appellant suggests, visitor numbers increase with the construction of the new bridge. I also note that paragraph MD6 of the AONB Management Plan seeks the better integration of existing visitor infrastructure and car parks in order to reduce landscape and visual impact, and RA9 the provision of sustainable and joined up transport systems.
24. The approach advocated by the Cornwall AONB Management Plan, then, is to address visitor pressure by taking a joined-up approach to the provision of both parking for private vehicles and more sustainable modes of transport, and limiting the visual harm caused by such development. In this context, I am not persuaded that the additional parking spaces provided by the current proposal – for which there is no evidence of need, and which would come at the cost of significant harm to the character and appearance of the area – would provide any public benefit that would weigh in favour of granting planning permission.

### *Conclusion*

25. While I have found that valid concerns about the impact of the development on living conditions at neighbouring residential properties could be resolved by the imposition of appropriate conditions, I consider that the significant harm caused to the character and appearance of the area would conflict with national and local planning policy. No material considerations have been identified that would have sufficient weight to overcome the failure to accord with the Development Plan.
26. I therefore conclude that the appeal on ground (a) and the deemed application for planning permission should fail.

### **The appeal on ground (f)**

27. The ground of appeal is that the steps required by the notice to be taken are excessive. In this respect a notice which seeks to remedy the breach of planning control that has occurred can go no further than requiring the unauthorised use to cease, and the land to be restored to its condition before the breach took place. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use (even if such works on their own might not constitute development), so that the land is restored to its condition before the change of use took place.
28. The Appellant does not contest the requirement to cease the use of the appeal site for parking, but contends that the requirement to remove the strip of hardcore laid along the eastern boundary of the appeal site is excessive, and contests whether the requirement to erect a chain link fence along the boundary is necessary.
29. Looking first at the boundary treatment, the reasons given for issuing the enforcement notice make reference to "the material change in the use of the land arising from the removal of the boundary fencing and hedgerow". The Appellant disputes this: his position is that there was no hedgerow, only "...a fence separating [the appeal site and King Arthurs car and coach park] with the remains of a stone wall in places and patches of shrub growth. This was removed by the Appellant and a strip of hardcore laid in its place."
30. The Council has provided photographs which appear to show a substantial amount of planting along the boundary, but the Appellant points out that these were taken in 2011, and so pre-date his purchase of the appeal site. Be all that as it may, it is not necessary to resolve the question of when any "hedgerow" was removed since the notice does not seek its reinstatement: the requirement is for the erection of a chain link fence.
31. The Appellant accepts that he removed a fence from the boundary, and does not seek to contend that this was done for any other purpose than facilitating the use of the appeal site as an extension to the adjoining King Arthurs car and coach park. The Planning Contravention Notice completed by the Appellant on 1 July 2017 described that fence as a chain link metal fence. On that basis I am satisfied that the requirement to erect a chain link fence accords with the notice's purpose of restoring the land to its condition before the breach took place, and is not excessive.

32. Turning to the strip of hardcore, the Appellant contends that this did not facilitate the use of the appeal site for car parking. However, he has not provided any alternative explanation for its presence, and on his own evidence it was laid in the place of the former fence, remains of a stone wall, and patches of shrub growth which he had removed from the boundary. It is apparent from the response provided by the Appellant in the PCN that these works, and the use of the appeal site for parking, took place within a few months of his purchase of the appeal site in March 2017.
33. Taking all of this into account, and in the absence of any evidence to the contrary, I consider that on the balance of probabilities the hardcore was laid to facilitate the use of the appeal site as an extension to the adjoining King Arthurs car and coach park. I therefore consider that requiring its removal is a reasonable, and necessary, step toward returning the land to its former condition.
34. I note the Appellant's suggestion that an appropriate lesser requirement would be to cover the hardcore with soil and sow grass seeds, as the area would then shortly grass over, and this would have no effect on the cessation of the use of the land for parking. However, failure to require the removal of that which was brought on to the land to sustain the unauthorised use would not satisfy the purpose in s.173(4)(a): to remedy the breach by restoring the land to its condition before the breach took place. Moreover, it could not be argued that requiring the hardcore to be grassed over would be a less onerous means of achieving effectively the same outcome, because the area of land where the hardcore has been laid was not formerly grass; it was the site of the previous boundary treatment.
35. In my judgment, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. I therefore conclude that the appeal on ground (f) should fail.

### **The appeal on ground (g)**

36. The appeal on ground (g) is that the period for compliance specified in the notice falls short of what is reasonable. The notice specifies a period of one week for the cessation of the use of the land for parking, and two months for the removal of the hardcore and the erection of a chain link fence.
37. The Appellant's case on this ground is that each of the requirements of the notice should be given the same compliance period, which should be three months. However, no explanation has been provided as to why the periods specified by the notice are considered unreasonable, or why it would be more reasonable to extend them to three months.
38. It is not unusual for a notice which includes a number of requirements to specify different compliance periods for each. In this particular case, I see no reason why the cessation of the unauthorised use could not be achieved within one week: it would be a straightforward matter to erect a temporary fence along the boundary with King Arthurs car and coach park, to prevent any further parking on the appeal site. Similarly, in the absence of any evidence to the contrary, I see no reason why the hardcore could not be removed and a chain link fence erected within two months.
39. I therefore conclude that the appeal on ground (g) should fail.

## **Conclusion**

40. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction, and refuse to grant planning permission on the deemed application.

## **Formal Decision**

41. It is directed that the enforcement notice be corrected by:

- at paragraph 5 requirement 1, deletion of the word “vehicle” and its replacement with the word “vehicles”.

Subject to this correction the appeal is dismissed and 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.

*Jessica Graham*

INSPECTOR