



Appeal Decision

Site visit made on 18 February 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2020

Appeal Ref: APP/X1118/C/19/3238880

Land at Corilhead Road, Braunton, Devon EX33 2EW

- 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 David Illidge against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 12 September 2019.
 - The breach of planning control as alleged in the notice is: Within the last 10 years unauthorised material change of use consisting of the storage of a non-agricultural vehicle and within the last 4 years unauthorised operational development consisting of the laying of hardstanding, erection of a building, erection of fences and gates and provision of a wooden seating area.
 - The requirements of the notice are: 1. Remove the non-agricultural vehicle and flatbed trailer from the land outlined in red on the attached location plan. 2. Cease the use of the land outlined in red on the attached location plan for the storage of the non-agricultural vehicle. 3. Remove the hardstanding, double gates, fencing and seating area from the land outlined in red on the attached location plan. 4. Remove all rubbish resulting from complying with steps 1-3 above from the land outlined in red on the attached location plan.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decision

1. The appeal succeeds in part and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

The Enforcement Notice

2. Following my site visit it was highlighted¹ to the Council that the enforcement notice did not require the removal of the building enforced against and therefore in accordance with the provisions of s173(11) and s73A of the Act, upholding the enforcement notice could result in an unconditional planning permission being granted.
3. Rather than withdraw the enforcement notice the Council suggested removing reference to the building from the allegation and thus no enforcement action would have been taken against it. No reason was given for this approach other

¹ Email from the Planning Inspectorate on 19 February 2020

than the Council considered that injustice would not result. The appellant considered it more appropriate for the enforcement notice to be withdrawn but did not bring to my attention any specific injustice that would arise from the Council's suggested course of action. I am therefore minded to accept this course of action given also that the building, or however it may be best described, had been removed at the time of my site visit. If necessary, this course of action should also enable the parties to discuss any future intentions relating to this building.

4. The enforcement notice also requires the removal of a flatbed trailer in paragraph 6.1. However, as this does not form part of the alleged breach of planning control the enforcement notice cannot require its removal. Both parties agreed that injustice would not result from deleting reference to it.

Preliminary Matter

5. Some of the arguments made by the appellant on the ground (c) appeal are better suited to that of ground (b). As the Council has had the opportunity to respond to those original arguments, I do not consider that injustice arises from considering these arguments under a joint heading, as below.

The ground (b) and (c) appeal

6. For the ground (b) and/or (c) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control or that it has not occurred as a matter of fact. The ground of appeal has been brought in relation to the storage of a non-agricultural vehicle, the erection of fences and gates and the provision of a wooden seating area.
7. The Council have alleged a material change of use in respect of the storage of a non-agricultural vehicle. The precise details of this vehicle have not been described, although I do not consider this to be necessary. However, I have very little evidence from the Council, such as photographs or details to evidence the storage of such a vehicle, as opposed it being parked intermittently when the appellant is at the site or in the area, as he contends. I am therefore satisfied on the available evidence provided by the appellant that on the balance of probabilities there has not been this breach of planning control as a matter of fact.
8. The fences and gates do not abut Corilhead Road. Rather, as a matter of fact and degree, I find that they are situated some distance back. They are not contiguous or adjacent to this highway, but predominantly run along the private driveway of the neighbouring property 'Grafton Close'. I am also satisfied that the fences and gates are below 2m in height and note this does not appear to be contested by the Council. I am accordingly satisfied on the balance of probabilities that the fences and gates do not amount to a breach of planning control because they are minor operations that are permitted development by virtue of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
9. The enforcement notice alleges a breach of planning control in respect of the 'provision of a wooden seating area' and paragraph 6.3 requires a 'seating area' to be removed. In the reasons for issuing the enforcement notice reference is made to 'terracing and a seating area'. I take the view, on balance,

that the Council has enforced against a wooden seat and terraced area that was shown to me during my site visit and as such this is the 'provision of a wooden seating area' that is before me. The Council have provided very limited response in their appeal statement to counter the appellant's arguments. However, based on my site visit, the terrace, being on a single-level and set on an earth bank, is modest in size, and the wooden seat amounts to little more than a bench with trellis that is freestanding and so can very easily be moved, as is contended by the appellant. The provision of a wooden seating area is therefore de minimis in planning terms and in my view does not constitute development.

10. The appeal that I have considered on grounds (b) and (c) relating to the storage of a non-agricultural vehicle, the erection of fences and gates and the provision of a wooden seating area therefore succeeds.

The ground (f) appeal

11. The purpose of the enforcement notice is to remedy the breach of planning control as it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives. This ground of appeal now only concerns the laying of a hardstanding.
12. The enforcement notice does not require the original site levels to be restored, so such matters or the removal of self-seeded trees are not relevant in this regard. Whilst the removal of the hardstanding could potentially render the site unsafe, less usable or inaccessible, I am not convinced this would actually be the case following my site visit and note that the fences and gates would now remain in light of my findings above.
13. I am satisfied that the removal of the hardstanding would remedy the breach of planning control, but there is no corresponding ground (a) appeal before me to consider retaining the hardstanding on the basis that it does not give rise to an urbanising aspect over the land.
14. Whilst the extent of hardstanding has not been defined by the Council, such as by highlighting it on the plan accompanying the enforcement notice, given the physical characteristics of the site, the extent of the hardstanding was clear to me based upon my site visit. In any event, the appellant is the person with the best knowledge in respect of the extent of the hardstanding. Whilst it is said that the hardstanding originated from the appeal site itself, I am not persuaded on the available evidence that its removal would amount to an excessive step as no specific lesser alternative relating to the materials have been put before me.
15. The appeal on ground (f) subsequently fails.

The ground (g) appeal

16. The appellant contends that to remove the hardstanding and rubbish arising is likely to take an uncertain period of time. However, it appeared clear to me from my site visit what is required to be removed. Furthermore, the enforcement notice does not require that original site levels be ascertained and there is very limited evidence about the need to secure licencing to allow for transportation and disposal. No alternative period of time has seemingly been

suggested by the appellant and based on the limited available evidence I am not persuaded that the time given to comply with the enforcement notice is too short.

17. The appeal on ground (g) subsequently fails.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed in part only, but otherwise I will uphold the notice with corrections.

Formal Decision

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

- deletion of the words *"Within the last 10 years unauthorised material change of use consisting of the storage of a non-agricultural vehicle and within the last 4 years unauthorised operational development consisting of the laying of hardstanding, erection of a building, erection of fences and gates and provision of a wooden seating area"* and their replacement with the words *"Within the last 4 years unauthorised operational development consisting of the laying of a hardstanding"*
- deletion of the words *"1. Remove the non-agricultural vehicle and flatbed trailer from the land outlined in red on the attached location plan. 2. Cease the use of the land outlined in red on the attached location plan for the storage of the non-agricultural vehicle. 3. Remove the hardstanding, double gates, fencing and seating area from the land outlined in red on the attached location plan. 4. Remove all rubbish resulting from complying with steps 1-3 above from the land outlined in red on the attached location plan."* and their replacement with the words *"1. Remove the hardstanding from the land outlined in red on the attached location plan. 2. Remove all rubbish resulting from complying with step 1 above from the land outlined in red on the attached location plan."*

20. Subject to these corrections, the appeal succeeds in part and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR