



Appeal Decision

Site visit made on 16 June 2020

by R Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2020

Appeal Ref: APP/D0840/C/19/3234720

Land North of North Hill, Engollan, Wadebridge, Cornwall PL27 7UN

- 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 Mrs Jane Tasker against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN18/01851, was issued on 11 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of equestrian land to private garden and construction of fencing, BBQ hut and timber pod for friends and family, in the approximate positions shown on the attached plan.
 - The requirements of the notice are Remove internal wooden garden fencing together with BBQ hut and timber pod from the aforementioned land and cease the use of the land for private garden.
 - The period for compliance with the requirements is within 1 month of the date of this notice.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the text in section 3 and its replacement by: "Without planning permission, the change of use of the land to a mixed use of equestrian land and private garden and construction of fencing and BBQ hut"; and varied by, in section 5, the deletion of the words "and timber pod"; and by the substitution of 2 months as the time for compliance. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. Although it had been arranged that my site visit would be undertaken on an access required basis, the appellant did not attend at the arranged time. As I could see the site sufficiently from the public vantage point at the field gate on the public highway, I undertook the visit on an unaccompanied basis.
3. Although the Council did not make reference to the time limit for taking action against the alleged breach in its Reasons for Issuing the Notice, this is not a statutory requirement in section 173 of the Act.

Ground (b)

4. This appeal is made on the ground that that the matters alleged in the notice have not occurred. The burden of proof lies with the appellant to make her case.

5. The appellant states that she did not purchase the timber pod and, thus, this was never brought to the site. The appellant further points out that she grazes horses on the lower part of the land and that a neighbour grazes horses on the upper part of the land, which has been taped off.
6. The allegation relating to the use of the land as a private garden has not been challenged. Indeed, the area fenced off where fruit trees are grown, the creation of raised beds for cultivation and the erection of the BBQ hut, which are all alleged to indicate the private garden use, are acknowledged in the appellant's statement. Furthermore, their presence on the land at the time of the notice is not disputed.
7. Whilst giving no indication as to why it was included in the notice, the Council accepts that the timber pod "has not materialised on the land". Therefore, it is clear that the timber pod referred to in the notice was not on the land at the time that the notice was issued.
8. The Council has not commented on the appellant's claims regarding the use of the field for the grazing of horses, which I saw when I visited the site. In the light of the evidence, I find, on balance, that this use subsisted when the notice was issued.
9. I find, therefore, that the notice should be corrected by deleting reference to the timber pod and by making reference to the mixed use of the land for equestrian purposes and private garden, but otherwise the ground (b) fails.

Ground (g)

10. This ground of appeal states that any period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
11. The appellant claims that one month to comply with the notice is too short, as she is on her own and needs assistance to dismantle the hut once a site has been found. She asks that 6 months is given for compliance.
12. In ordinary circumstances, the Council's period for compliance would be reasonable and proportionate to the work required to be undertaken. However, in light of Government policy regarding Covid-19 and restricting social contact, I consider that this period needs to be extended. I shall therefore vary the period for compliance prior to upholding the notice to 2 months. I also note that the current situation with the pandemic is fluid and it is unclear how long restrictions associated with this will last. However, the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action.
13. I find, therefore, that the notice should be corrected by varying the time for compliance, but otherwise the ground (g) fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variation.

R Curnow

INSPECTOR