



Appeal Decision

Site visit made on 4 August 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 October 2020

Appeal Ref: APP/X1118/C/20/3249509

Pinetree Lodge, Thornlands, Combe Martin, Ilfracombe, Devon EX34 0NT

- 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 Stephen Paul Senn against an enforcement notice issued by North Devon District Council.
 - The enforcement notice, numbered 10191, was issued on 20 February 2020.
 - The breach of planning control as alleged in the notice is within the last ten years the unauthorised change of use consisting of the industrial (B2) use of a porta cabin.
 - The requirement of the notice is cease the use of the porta cabin as B2 use (approximate position coloured blue on the attached location plan).
 - The period for compliance is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The notice refers to a porta cabin, whilst the appellant refers to a portacabin. Both are in common usage, and I have used the form given in the notice.
3. The notice alleges the change of use of the porta cabin, rather than the change of use of the land on which it stands. This indicates that Council's position is that the porta cabin is a building. I have been given no evidence to suggest otherwise and from what I saw on the site, having mind to the established case law in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102, I have treated the porta cabin as a building.

Reasons

4. Thornlands is a small collection of properties that lie in the open countryside. The porta cabin that is the subject of this appeal lies on the north side of the drive that gives access to the three properties, including Pinetree Lodge. The porta cabin is sited a short distance to the west of Pinetree Lodge, outside the wall that bounds it. Whilst it might be on land in the same ownership, the porta cabin is outside the curtilage to Pinetree Lodge. Although there appears to be no planning permission for the porta cabin, the evidence suggests that this has been in place for over ten years.
5. The "planning unit" is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of

changes of use. The starting point for the identification of the planning unit is the principles set out in the case of *Burdle*¹. From the evidence, I find that the “planning unit” here is the footprint of the porta cabin, much as shown on the plan attached the notice.

6. A ground (d) appeal is made on the basis that, at the time 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 burden of proof lies with the appellant to make his case.
7. Therefore, the appeal turns on whether he can show, on the balance of probability and using evidence that is precise and unambiguous, that the porta cabin has been continuously used for purposes within Use Class B2² (Industrial) purposes for at least ten years at the time that the notice was issued. That is to say, at least since 20 February 2010 (‘the relevant date’).
8. In his statement, the appellant states that the porta cabin “has been used as a commercial rental/storage unit” with uses “ranging from metal working, business storage, private storage, commercial kitchen, jewellery workshop, music studio, mail order caravan parts and its current occupant as a carpentry workshop”.
9. I have not been given evidence that meets the required standard to show that these uses fall within Use Class B2. On face value, business storage, private storage, commercial kitchen, music studio or mail order caravan parts would not, whilst metal working and jewellery workshop might. It might be that the manner in which all of these uses were carried out, including when used by Alan Taylor between April 2006 and April 2009, was not materially different from a B2 use. However, I simply have not been provided with the required evidence in this regard, nor as to when these various uses were being carried out, to be able to reach such a conclusion.
10. The evidence, including a site visit report by the Council’s Enforcement Officer dated 29 July 2017 and a third-party representation from Mr and Mrs Spicer, suggests that the use as a carpentry workshop, within Use Class B2, started sometime in 2015 and was in place at the time that the notice was served. This leaves the appellant to demonstrate the continuous use of the porta cabin for B2 purposes between the relevant date and the commencement of the carpentry workshop use. He has not done so.
11. That there might have been several enforcement investigations at Pinetree Lodge over the years, including the issuing and later withdrawal of an enforcement notice, does not equate to supporting evidence for this ground (d) appeal.
12. This appeal has to be assessed on its individual merits. In this regard, the appellant has failed to demonstrate, using precise and unambiguous evidence, that the porta cabin has been used for purposes within Use Class B2 for a period of ten continuous years to the date when the notice was served.

¹ *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Roy Curnow

INSPECTOR