
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 January 2021

Appeal Ref: APP/X1118/C/20/3259167

Land and buildings on the south side of Trimstone Cross, West Down, Ilfracombe, Devon

- 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 Clint Pain against an enforcement notice issued by North Devon District Council.
 - The enforcement notice was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is: Unauthorised change of use consisting of the storage of a motorhome and a caravan.
 - The requirements of the notice are: 1. Remove the motorhome stored within the building edged blue on the attached location plan from the land edged in red on the attached location plan; 2. Remove the caravan whose approximate position is edged in green on the attached location plan from the land; 3. Remove any rubbish and or debris resulting from compliance with steps 1 and 2 from the land.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The Enforcement Notice (EN) is quashed.

Procedural Matter

2. Prior to determining the appeal, I sought the views of the appellant and the Council about not needing to visit the appeal site. This is because there are no planning merits to consider and both sides had submitted sufficient evidence for me to consider the points in dispute under the two grounds of appeal pleaded. Although the appellant did respond raising concerns about the enforcement action taken in general, no objection was raised to me not undertaking a site visit. The Council had no objection. I am satisfied that under the circumstances I have described, and in view of my findings below, no prejudice has been caused by not visiting the site.

The Notice

3. S55(2) of the 1990 Act defines what constitutes development. There are two limbs. One of those is the making of any material change in the use of any buildings or other land. The EN in this appeal alleges an unauthorised change of use and refers to the ten-year time limit. Whilst it goes on to confirm that the change of use involves the storage of a motorhome and a caravan, the

development alleged to have taken place in breach of planning control is clearly one of change of use.

4. To cease that use the EN must have a requirement for it to cease. It does not. Simply requiring the current motorhome and caravan to be removed would not have the effect of ceasing the use of the land. A possible consequence of this could be the effect of s173(11) of the 1990 Act. Where an EN in respect of any breach of planning control could have required any activity to cease, but does not do so and all the requirements of the EN have been complied with then, so far as the EN did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the carrying out of the activity.
5. In this case, without a cessation of use requirement, once steps 1-3 had been complied with, planning permission would be treated to be granted for a storage use of a motorhome and a caravan on the land affected in the EN. That is the land outlined in red. Given that the Council has considered it expedient to issue an EN to cease such an activity, I cannot envisage that such a situation would be acceptable. I must therefore address this issue and consider whether I can add to the ENs requirements.
6. I have the power to correct or vary an EN under s176(1) of the 1990 Act provided that such actions would not cause injustice to the appellant or the local planning authority. In my view, adding to the ENs requirements could have a material bearing on the case that the appellant may have wished to put under the grounds of appeal pleaded, particularly ground (f). Furthermore, given the consequences of seeking to cease a storage use across all the land and buildings I cannot rule out that the appellant may have wished to appeal under other grounds. Against this background, I find that the EN is not capable of variation without causing injustice and so I cannot exercise my powers.
7. For the reasons given above, I conclude that the EN lacks a key step required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. The Council could, subject to it being considered expedient to do so, issue a further EN under the second bite provisions of s171B(4) of the 1990 Act.
8. In these circumstances, the appeal on the grounds set out in section 174(2)(f) and (g) of the 1990 Act do not fall to be considered.

Gareth Symons

INSPECTOR