



Appeal Decision

Site visit made on 25 January 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Appeal Ref: APP/D0840/C/20/3258997

Land known as Treviskey Yard, Lanner, Cornwall TR16 6AS

- 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 Terence Manaton against an enforcement notice issued by Cornwall Council.
 - The enforcement notice was issued on 7 August 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the land as outlined in red on the attached plan from a nil use to a mixed use comprising:
 1. Commercial use of the land and buildings for the sale, storage of building materials, storage of plant, machinery and vehicles; and
 2. Stationing of a caravan and portacabin for residential occupation and engineering operations to facilitate these uses and access/egress from the site.
 - The requirements of the notice are:
 1. Cease the use of the land outlined in red on the attached plan for residential, commercial and storage purposes;
 2. Remove from the land outlined in red on the attached plan all motor vehicles (including cars, cement lorries, lorries, vans, forklift trucks, diggers, dumpers), vehicles parts, trailers, lorry trailers, caravans, shipping containers, portacabins, sheds, kennels, buildings, pallets, buckets, containers, racks, traffic cones, building materials and equipment and any other material associated with the unauthorised residential and commercial use of the land;
 3. Remove from the land outlined in red on the attached plan all other deleterious or scrap materials;
 4. Remove from the land outlined in red on the attached plan all hardstanding's, (*sic*) concrete pads, brick pavements;
 5. Remove from the land outlined in red on the attached plan the means of access over the Hicks Mill Stream on the east side of the site in the approximate position marked with a black cross and return the boundary to its condition prior to the breach of planning control.
 6. Restore the land to its condition before the breach took place and where the land profile has been altered re-profile the land to previous levels.
 - The period for compliance with the requirements is 12 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. 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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Decision

1. It is directed that the enforcement notice is corrected by:

- inserting the word “sales” after “commercial” within the first requirement at paragraph 5(1).
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The first requirement within paragraph 5(1) of the notice does not precisely follow the wording of the allegations relating to the alleged breach of planning control in paragraph 3. Specifically, the requirement does not refer to “sales”. It is essential that the notice is worded precisely to avoid confusion with respect to the provisions of s173(11) of the Act. The use of the land overall for “commercial” purpose is required to cease. In my view “commercial” includes the buying and selling of goods which are also therefore required to cease. In order to prevent any subsequent of ambiguity, I consider that it would not cause injustice to the appellant or the Council for me to correct the notice, under the provisions of s176(1)(a), to explicitly refer to the word “sales” so that the requirement matches the allegation.
4. The appellant has only challenged the notice on ground (d). However, it is unclear from the limited submissions, whether they are suggesting that the alleged material change of use did not require planning permission. That would also involve an appeal on ground (c). I have therefore considered the appeal on ground (c) as well as (d).

The Appeal on ground (c)

5. The appeal on ground (c) is that the allegation does not constitute a breach of planning control. The onus is upon the appellant to demonstrate their case.
6. It has been held that where there is a mixed use, it is not open to the Council in drafting a notice, to decouple elements of that mixed use. The use is a single mixed use with all its component activities each of which is a primary use. There is no dispute in this case that the mixed use of the site is as alleged.
7. The appellant’s submissions refer to their purchase of the appeal site in September 2010. No evidence has been submitted to back up what is claimed regarding the uses at that time. However the appellant states that following their purchase of the land, the use of the site was a continuation of the commercial use of the land for storage of building materials, portacabins, temporary buildings, stockpiling of topsoil, subsoil and hardcore as well as the parking and sale of cars. It is significant that no mention is made of the residential occupation of the site at that time as is alleged on the notice.
8. The Council issued a Planning Contravention Notice (PCN) on 4 December 2015 and served it on the appellant. The appellant’s responses to some questions in that PCN were vague in parts. However, it was confirmed that a caravan was in use at that time for “living accommodation” but that it was brought onto the land in January 2011. The responses also confirm that there was use at that time of a portacabin for cooking and dining by the occupants of the caravan. That portacabin had been brought to the site in October 2010. The residential use is demonstrated in photographs taken when the Council’s officers visited the site on 28 July 2015.

9. The residential occupation of the site is a further primary use as it cannot be reasonably considered as an ancillary activity to anything else that was occurring at that time. This additional primary use has been added to the mix of uses within the single planning unit in late 2010 and into early 2011. When that residential use commenced, it would have been of a very different character to the existing mix of uses and resulted therefore in a material change of use of the planning unit. I have reached this view taking the appellant's submissions and the responses to the PCN at face value.
10. Car sales from the land may have diminished or ceased altogether which may also affect the particular mix of uses. The appellant states that sales continue but even if that is the case, it would not affect my conclusion that a material change of use occurred when the residential use commenced.
11. The development as alleged required planning permission, it constitutes a breach of planning control and the appeal on ground (c) therefore fails.

The Appeal on ground (d)

12. The main issue is whether at the date that the notice was issued, it was too late to take enforcement action against what is alleged. By reason of S171B(3) of the Act, the onus is upon the appellant to demonstrate that the current mix of uses have subsisted continuously for a 10 year period prior to the date that the notice was issued. The use would need to have been continuous for 10 years therefore from, at the latest, 7 August 2010. The relevant test is on the balance of probabilities.
13. The material change of use does not appear to have commenced until January 2011 when the caravan was first brought onto the land. Even if there was residential occupation of the portacabin before that, it had been brought onto the site after 7 August 2010 and thus the present mix of uses does not appear, on the balance of probabilities, to have been continuous for a period of 10 years prior to the issuing of the notice.
14. The appeal on ground (d) therefore fails.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

A Harwood

INSPECTOR