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## Appeal Decision

Site visit made on 9 November 2022

**by Andy Harwood CMS MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 November 2022**

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**Appeal Ref: APP/F9498/C/22/3290823**

**Cliffe House, 7 Tors Park, Lynton, Devon, EX35 6NB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anthony Glover against an enforcement notice issued by Exmoor National Park Authority (the Park Authority).
  - The notice was issued on 10 December 2021.
  - The breach of planning control as alleged in the notice is without planning permission and within the last 10 years: A change of use of land from agriculture/forestry to a mixed use comprising agriculture/forestry and the storage of items not associated with that use including metal storage containers timber, a trailer, pipes, tyres and an engine.
  - The requirements of the notice are to: Discontinue the use of the land for purposes unconnected with agriculture/forestry and remove the items stored there including metal storage containers, temporary metal fencing, a tractor, timber, a trailer, pipes, tyres, and an engine.
  - The period for compliance with the requirement is: 3 months.
  - The appeal is proceeding on the ground 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 allowed and the enforcement notice is quashed.

### Preliminary Matters

2. I have used the address of the site from the notice. Whilst 'Lynmouth' may be a more precise location for the site, the address is not entirely wrong or inaccurate and is clarified by the plan. I have not corrected the notice.
3. The appellant has clarified in writing before the closing date for the submission of appeal statements, that ground (d) is being pleaded rather than ground (b) as set out on the appeal form. It is not therefore disputed that the matters as alleged on the notice have occurred as a matter of fact.
4. There was a single storage container on site when I visited. Due to the limitations of the evidence provided to me, I do not know if the reference to storage containers in the plural within the allegation and requirement is an error or not. I saw inside this storage container and it was being used for storing various items that I will describe further below, rather than the site being used to store the container.

### The Appeal on ground (d)

5. This ground of appeal is that at the time the notice was issued, it was too late to take enforcement action. By reason of S171B(3) of the Act, for a material change of use of land, no enforcement action could have been taken after the end of the period of 10 years beginning with the date that the use commenced.

The onus in these matters is upon the appellant to demonstrate that the use has been continuous for 10 years, so at least since 10 December 2011. The relevant test is on the balance of probabilities.

6. The appeal site is a parcel of land located on the steep valley side to the north of Lynmouth. It is accessed via the steep, narrow and meandering road up from the village centre that is used to access the Tors Park area. There is a wooden gate and alongside it, the metal storage container which along with fencing separates the land from the road. It appears that the land may have been levelled by cutting into the hillside with the storage container being positioned close to the vertical face of the hillside at this point. The site narrows towards the eastern end which also appears to have been levelled with rocky material being used to build it up on the downhill side. The level of the land therefore drops substantially to the southern edge of this small plateau. I have no evidence before me regarding any of those physical changes to the site or when they were undertaken. I am dealing here with the use of the land.
7. The appellant doesn't dispute the Park Authority's submissions that describe how in 2017, a metal container was stationed on the site. The Park Authority also refer to a lack of engagement by the appellant when they sought further information from them about the site at that time.
8. When I visited, I noted a range of items that were being stored in the open to the side and to the rear of the storage container. At that time, some metal site-fencing sections were stacked in a couple of piles, there were timber-planks, pallets and some large drainage pipes. A tractor was parked centrally within the site as well as some other machinery including a pallet-truck. On a trailer towards the rear of the site was what I thought may be a large boiler but the appellant mentioned to me and Park Authority representative that it was in fact an old torpedo. Some maritime related items such as large coiled ropes were outside with others inside the storage container which also had some boat engines, hoses, electric tools, paperwork, tins of paint, coiled wiring, a stack of plastic storage boxes amongst other things. The container also has a corrugated metal sheet across the top of it. Between the top surface of the container and this metal sheet are what appear to be a number of timber oars.
9. Not much indicates agriculture or forestry activities on site but my visit only gave me a snapshot. There is no dispute about the description of the current mixed-use as alleged. The storage element does not appear to relate to any individual industrial or commercial activity as far as I could tell or from what I can understand from the submissions. It is a generalised storage use. The site does not appear on the Park Authority's records prior to the bringing onto the site of a storage container. Prior to that apart from asking the now appellant for evidence, I am not provided with any details of other investigations about the historic use of the site. The Park Authority state that when they investigated, no evidence was provided to show other items being stored but I am not provided with any letters or formal documents as part of the investigation and do not know what questions were asked of the landowner at that or at any other time over the 10 years before the notice was issued.
10. The appellant has provided limited evidence to back up their assertion that the site, or 'compound' as they refer to it, was an established storage area from when their family took ownership of the nearby Cliff House in the late 1960s. Their statement was accompanied by 2 letters from local people who refer to

the enforcement notice and I am satisfied from this and the context of what is said, that the writers have understood what site is being referred to. Although these letters do not come with the additional legal safeguards of statutory declarations or affidavits, the writers provide their home addresses and these letters have been presented in evidence with the Park Authority and members of the public having the ability to comment upon their veracity. I am prepared to give these letters limited weight although cannot give them the degree of weight that more legally robust documents would normally get.

11. One of the letters submitted along with the appellant's appeal statement explains that the writer was a Town Councillor between 2011 and 2015, has had businesses in the area and was a delivery driver between 2017 and 2021. This person states that the appeal site "has always been a storage area."
12. Another letter also submitted with the appellant's appeal statement is from a person who lived in the nearby property of Cheswood from 1991 to 1994 with their parents. At that time and after, this person ran the local Post Office until 2000 when they then became a postal worker in the area. They say that the site has been used to store various items such as machinery, car trailers and tractors. They also refer to parking taking place on the site although the degree of that is not clarified.
13. In addition to letters that accompanied the appellant's statement, 2 other people have submitted letters. One of those is a signed and addressed letter from somebody who has known the area since around 2004 and who says they remember the land in question being used for storage since at least 2011 when they started working "up there". Another third-party email which doesn't provide a home address is from somebody who says that they have been leading walks on Exmoor for over 30 years, have known the site in that time and that it has been used for storing machinery and maritime paraphernalia. There are no comments from anyone disputing the appellant's case.
14. There is therefore evidence of the use of the land for general storage of a similar nature to of what I saw at my site visit. That evidence corroborates the appellant's assertion and although the parts of the evidence have limited weight, together they are confirmative of the what the appellant is arguing and is sufficiently precise and unambiguous. Conversely the Park Authority has no evidence to dispute the evidence of the history of storage use on the site. Bringing the container onto site does not appear to have involved a new primary use changing the character of the mixed-use but has enabled storage of items in the dry rather than just outside. I consider therefore on the balance of probabilities that the use as alleged has taken place for more than 10 years prior to the issuing of the enforcement notice.

## **Conclusion**

15. I conclude on the balance of probabilities that the alleged material change of use took place more than 10 years prior to the issue of the enforcement notice and so, at the date that the enforcement notice was issued, the time for taking enforcement action as set out in section 171B(3) of the 1990 Act as amended had expired. The appeal succeeds on ground (d) and the notice must therefore be quashed.

*Andy Harwood*  
INSPECTOR