



# Appeal Decision

Site visit made on 10 October 2023

**by David Wyborn BSc(Hons) MPhil MRTPI**

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

**Decision date: 30<sup>th</sup> October 2023**

## **Appeal Ref: APP/D0840/W/23/3321504**

### **1 Old Blacksmiths Yard, Higher Condurrow, Camborne, Cornwall TR14 9AL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr James Rigby against the decision of Cornwall Council.
- The application Ref PA22/09171, dated 16 August 2022, was approved on 17 March 2023 and planning permission was granted subject to conditions.
- The development permitted is the change of use from domestic garden to storage yard including stationing of three storage containers and one office container.
- The condition in dispute is No 4 which states that: When the use of the site hereby approved ceases for its approved purpose, all structures and materials brought on to or erected on the land shall be removed and the land shall be restored to its condition before the development took place within 3 calendar months of that date.
- The reason given for the condition is: In the interests of visual amenity and to avoid unnecessary visual clutter in accordance with Policies 12, 23 and 24 of the Cornwall Local Plan and aspirations of the Cornwall Design Guide 2013 and Cornwall and West Devon Mining Landscape World Heritage Site designation.

## **Decision**

1. The appeal is allowed and the planning permission Ref PA22/09171 for the change of use from domestic garden to storage yard including stationing of three storage containers and one office container at 1 Old Blacksmiths Yard, Higher Condurrow, Camborne, Cornwall TR14 9AL granted on 17 March 2023 by Cornwall Council, is varied by deleting condition 4.

## **Preliminary Matters**

2. Planning permission was granted, under Application PA20/04758 on 17 November 2021, for the change of use from domestic garden to storage yard including the stationing of three storage containers and one office container. The permission was subject to nine conditions. Condition 4 required, in summary, that were the use of the site to cease, all structures and materials brought on to or erected on the land should be removed and the land restored to its former condition within 3 calendar months. Condition 9 restricted the operation of the use to Superior Fencing Ltd only.
3. The appellant applied, under Application PA/22/09171, to remove conditions 4 and 9 from this earlier approval. The Council agreed to remove condition 9 but issued a new permission retaining condition 4<sup>1</sup>, and all the other conditions which were not in dispute. This created a new planning permission separate from the original permission. This appeal seeks to vary this new permission by way of the removal of condition 4.

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<sup>1</sup> The Council explain in its statement following discussions with the appellant only the removal of Condition 9 was sought with Condition 4 remaining.

## **Main Issue**

4. In the light of the above analysis, the main issue is whether or not it is reasonable and necessary for a condition to seek the restoration of the land in the event that the use were to cease.

## **Reasons**

5. The appeal site is an area of grassland located back from the line of dwellings fronting the road. The description of the development explains that the present use of the site is domestic garden. A public right of way passes along the western and southern sides of the appeal site and is bounded by a substantial and lengthy timber fence. It is explained that this was erected under permitted development rights and there is no clear evidence to dispute this information.
6. The fence, to a substantial extent, prevents views from the right of way into the appeal site, such that with the fence and the topography of the surroundings, effectively the only clear views of the site are from the upper windows of the backs of the houses along the road.
7. The wider area falls within the Cornwall and West Devon Mining Landscape World Heritage Site (the WHS). This is a designated heritage asset of the highest significance and of international importance. There are seven key attributes that define the Outstanding Universal Value (OUV) of the WHS, including within this part of the Camborne and Redruth Mining District area of the WHS, the mine sites. There are a number of mine sites in the area with remaining engine houses and mine workings. In the general surroundings is the Grade II Listed Wolf's Shaft Engine House, which is a dominant, visual feature. This is located to the broad north of the terrace of houses and adjoining bungalows. Its setting is compromised by the surrounding built development and by the depot entrance and yard in its vicinity.
8. The appeal proposal would change the use of the land to a storage yard including the stationing of three storage containers and an office. The plans show that the grassed area would be finished in hardcore and that conditions attached to both permissions require that any material stored or deposited within the space shall not exceed a height of 2m. The storage containers and office would be positioned in the north east corner of the site, away from the entrance and the right of way. With the limit on the height of stored material and the height of the boundary fence, it would be unlikely that the use of the site would cause any undue effect on the character and appearance of the area, nor adversely affect the enjoyment of those using the right of way. The activity would be sufficiently separated from any dwellings so as to not cause those residents any material harm to their living conditions.
9. There are some glimpsed views of the engine shed from the right of way where it can be seen above the fence. Within the site the Listed Building can also be seen, but it is framed in the foreground by the residential development. I do not consider, given the separation, intervening buildings, and surroundings in which the Listed Building is experienced, that the use of the appeal site as a yard would adversely affect its setting or significance. I also consider that the development, because of its position and containment, would not cause harm to the setting or significance of any other listed mining buildings in the wider area, such as the Grade II\* Listed complex at King Edward Mine.

10. The evidence, such as from the Heritage Statement<sup>2</sup>, indicates that the site itself is not significant in terms of mining heritage, although there are demolished engine sheds within the adjoining land. I agree with the Heritage Statement that comments, in summary, that given the largely undisturbed nature of the land and the intermittent use of the adjoining mine, together with the fact that the site does not include any records of mining features, the site itself should not be considered to demonstrate any attributes of the OUV that define the WHS. The scheme would, therefore, not harm the WHS.
11. This judgement is supported by the view of the Cornish Mining WHS Office which, when assessing the original proposal for the yard on the site, commented that it did not consider the proposed development will impact on a specific attribute that expresses the OUV of the WHS.
12. Consequently, while I attribute great weight to the conservation of the WHS and I am mindful of the duty to pay special regard to the desirability of preserving the setting of the Listed Building, the scheme would cause no harm to the OUV, significance nor setting of these designated heritage assets. In coming to this judgement, I have had regard to the WHS Management Plan 2020-2025 and the WHS Supplementary Planning Document (May 2017).
13. I, therefore, agree with the Council, when it granted planning permission, that the proposed employment use of the site would be acceptable in terms of the effect on designated heritage assets and would comply with the requirements of Policy 5 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan). The storage yard use of the land, with the related storage containers and office, is acceptable in its own right. Consequently, there is no need for a trial run and an associated temporary permission.
14. The condition in dispute allows the use to take place for as long as the site is being used, but were the use to cease, all structures and materials are to be removed and the land restored to its former condition. While this approval may not be a temporary permission with a stated limited period it could, nevertheless, require at some point the cessation of the use and the restoration of the land. It is, therefore, in these circumstances not entirely a permanent planning permission for the use.
15. The applicant has explained that this causes a problem with funding the development and evidence has been supplied to demonstrate this situation. This is because, in the future, were, for instance, a business operating the site to fail and the use of the land cease such that it reverted to a lender, and before any sale to another party, the site would be required to be restored to its former garden use. This significantly affects its lending value at the present time and, as a consequence, has hindered the development of the approved business use of the site.
16. The Planning Practice Guidance (the Guidance) explains that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. The Guidance goes on to explain that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness and that conditions requiring demolition of buildings which are imposed on planning

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<sup>2</sup> Heritage Statement, Land to south of 1 Old Blacksmiths Yard, Higher Condurrow, Camborne, TR14 9AL - A report by Enhance Land & Planning – May 2021

permissions for change of use are unlikely to relate fairly and reasonably to the development permitted. In this case, there is not a building involved but operational development with the laying of hardcore across the site and the use in relation to the stationing of the storage containers and office. I consider that this Guidance advice, although referring to permanent buildings as part of a change of use, is analogous to the present situation because of the nature of the works to enact the use, in particular, the laying of the hardcore across the site which is intended to be permanent and would be difficult to remove.

17. I therefore find that the condition, requiring restoration were the use to cease, when the use and related activities are acceptable in their own right, would not comply with this part of the Guidance. I conclude that the condition is not necessary or reasonable and fails the Guidance and National Planning Policy Framework which sets out the requirements that all planning conditions must meet. I am satisfied that the scheme, without the condition, would comply with Policies 12, 23 and 24 of the Local Plan, which set the development plan approach to design, natural environment and historic environment.
18. I have taken into account the representations from Camborne Town Council who consider that the case lacks justification for the non-compliance with conditions 4 (and 9) of the original permission. However, for the reasons I have explained, I do accept the case that has been made and that the retention of the condition the subject of this appeal is not merited.

## **Conclusion**

19. In the light of the above analysis, I conclude that it would not be reasonable or necessary for the requirement to restore the site were the use to cease. I, therefore, intend to vary the planning permission PA22/09171 by the deletion of condition 4. There is no need for a replacement condition and all the other conditions are reasonable and necessary for this development proposal. The original planning permission PA22/09171 and this decision are to be read together and form the planning permission for the development. In the way described, the appeal succeeds.

*David Wyborn*

INSPECTOR