Appeal Decisions

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 05/01/2024

Appeal references: CAS-02369-N7X7V3 and CAS-02613-V7X3T3

Site address: Land at Aberduna Farm, Maeshafn Road, Gwernymynydd, Mold CH7 5LE

Appeal A Ref: CAS-02369-N7X7V3

- 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 B R Newell against an enforcement notice issued by Denbighshire County Council.
- The enforcement notice, numbered ENF/2022/00091 was issued on 9 November 2022.
- The breach of planning control as alleged in the notice is the material change of use of agricultural land through the establishment of a storage facility.
- The requirements of the notice are to cease the use of the Land for the storage of items which are not associated with the agricultural use of 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) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- A site visit was made on 20 September 2023.

Appeal B Ref: CAS-02613-V7X3T3

- 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 Ben Newell against an enforcement notice issued by Denbighshire County Council.
- The enforcement notice, numbered ENF/2023/00004, was issued on 28 February 2023.
- The breach of planning control as alleged in the notice is operational development comprising the erection of a storage and administration building; the formation of a hardstanding; and the formation of two bunds.
- The requirements of the notice are to:
    i. Remove the bunds from the Land, reprofiling the ground as necessary to form a level of uniform gradient,
    ii. Remove the hardstanding from the Land,

iii. Remove the storage and administration building (whose location, for the avoidance of doubt, is shown within the area edged in red on the plan attached hereto and marked “Ref: ENF/2023/00004 – Plan EN02” from the Land,

iv. Restore the land affected by the carrying out of steps ii and iii above by returning it to a condition fit for agriculture, and

v. Dispose of any detritus resulting from the carrying out of steps i to iv above from the Land.

- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
- A site visit was made on 20 September 2023.

Decisions

Appeal A Ref: CAS-02369-N7X7V3

1. The Enforcement Notice (EN) is quashed.

Appeal B Ref: CAS-02613-V7X3T3

2. The appeal on ground (g) succeeds and the enforcement notice is varied by the deletion of “4 months”, and the substitution of “9 months” as the period for compliance.
3. Subject to the variation the appeal is dismissed, the enforcement notice is upheld.

Appeal A Ref: CAS-02369-N7X7V3

The Notice

4. The EN refers to the material change of use of agricultural land through the establishment of a storage facility. This description is not specific to the type of storage use taking place on the unit of occupation. The absence of a specific purpose for the use is a significant matter as to the clarity and precision of the allegation. The information as to the purpose of the storage use is not expressed on the face of the notice and is not contained in the reasons for issuing the notice. It was apparent from the site inspection that a building that had contained storage for tents, marquees and other items associated with holding large events on the planning unit was a mixed use being also used for agricultural purposes. The planning unit would have been in a mixed use which has not been defined in the allegation and considered in the light of the mix of uses taking place within the planning unit.
5. As not all the components of a mixed use have been expressed and the allegation has no specific use it is beyond correction without causing injustice. To correct the notice would significantly alter the details of the allegation which may not be precise given that all activities in the planning unit should be defined to established that a material change of use is involved. To correct the notice would change the basis of the ground (a) appeal and the deemed application which have not been argued in these terms which would be prejudicial to the parties’ cases.
6. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

7. In these circumstances, appeal A on grounds set out in section 174(2) (a) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Appeal B Ref: CAS-02613-V7X3T3

8. The appeal is proceeding by ground (g) that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The EN requires the operational development to be removed within 4 months.

9. The appellant requests a compliance period of 9 months. This is to allow time to produce a revised scheme and to submit a further planning application. Additional time is also required to make the necessary alterations to the building.

10. The steps in the notice require the removal of the building, the bunds, and the hardstanding amongst other steps of restoration and clearance of materials. The EN does not specify that the building be altered to accord with the previous planning permission under reference 21/2019/0145/PF. The expectation that the building could be altered could only done through the grant of a subsequent planning permission.

11. The Council's stance is that there is a material difference between the building as built and the approved building. The EN specifies the erection of a building and has not referred to planning permission 21/2019/0145/PF in the allegation.

12. The appellant contends that the material difference is insignificant and concedes that there is a material deviation. Both viewpoints cannot be sustained. There is no case advanced by ground (c) that the matters alleged in Appeal B do not constitute a breach of planning control. The building enforced against is a dual pitched roof with a central ridge, the approved scheme is a mono-pitch lean-to roof with a ridge point sloping down to the eaves. There is no substantive case made as a matter of fact and degree that the building enforced against is not a new building even where parts of the old building may remain. There are material differences in the design of the built structure to that approved in a location sensitive to the visual amenity of an Area of Outstanding Natural Beauty.

13. The Council indicates that it cannot justify holding compliance with the EN in abeyance until such time that a subsequent planning application be submitted for consideration. The Council indicates that the appellant should first relocate space for the use away from the unauthorised storage use, however, this case is made under Appeal A and is not before me. My consideration on Appeal B for the ground (g) relates to the operational development and the steps specified in the EN is too short a time for compliance.

14. The Council does concede that should a new proposal be forthcoming it could underenforce the EN at its discretion but maintains that it must retain its ability to enforce remedial action swiftly. However, it would be appropriate and proportional in the circumstances to allow more time for compliance rather than consider some form of under enforcement or variation of the EN under section 173A.

15. The appellant is entitled to appeal the ground (g) and assume it might be successful. A variation as noted by the Council would provide no certainty for the appellant whereby allowing time for a revised planning application may be proportionate if it can regularise the breach of planning control. I therefore consider that allowing 9 months for the compliance period is proportionate after considering the conflicting matters of the public interest against the private interests of the appellant.

16. To this extent the appeal on ground (g) succeeds.

Conclusions

17. For the reasons stated, I shall quash the EN in relation to Appeal A.

18. The appeal on ground (g) succeeds for Appeal B and the EN is varied accordingly, but subject to the variation the appeal is dismissed, the enforcement notice is upheld.

Iwan Lloyd

INSPECTOR