Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Appeal Decision

By **A L McCooey BA (Hons) MSc MRTPI**
an Inspector appointed by the Welsh Ministers

Decision date: 30/01/2024
Appeal reference: CAS-02659-R8F4N6
Site address: Land adjoining 10 New Barn Holdings, St Athan Road, Flemingston, the Vale of Glamorgan, CF62 4QL

- 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. John Russell Jarrett & Mrs Angela Jarrett against an enforcement notice issued by the Vale of Glamorgan Council.
- The enforcement notice, numbered ENF/2021/0107PC, was issued on 28 February 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to the storage of construction items and waste, vehicles and vehicle parts, plant/machinery, containers and other items and structures and operational development comprising the construction of structures.
- The requirements of the notice are
  i. Cease the use of the Land for the storage of containers, vehicles, caravans, trailers, vehicle parts, waste building material, windows, fence panels and posts and other items.
  ii. The removal of the containers, vehicles, caravans, trailers, vehicle parts, building material, windows, fence panels and posts and other stored items along with the associated structures and any resultant debris from the Land in their entirety.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on grounds (c), (d), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
- A site visit was made by the Inspector on 13 December 2023.

Decision

1. It is directed that the enforcement notice be corrected in section 5 requirement (i) by the deletion of the words ‘The removal of’ and its substitution with the word ‘Remove’.
2. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of “four months” and the substitution of “six months” as the period for compliance

Background and Procedural Matters

3. The requirements of the enforcement notice (EN) must be worded correctly. The words ‘The removal of’ in requirement (i) does not adopt the correct syntax and should be replaced with Remove.
4. The site is in the countryside to the north of St Athan. The dwelling has various extensions and buildings to the side and rear. There are also other buildings and containers to the rear of the dwelling.

5. At the time of my site visit there were vehicles (cars, Land Rovers and motorbikes), vehicle parts, tyres, scrap, piles of waste, building materials, a caravan and an oil tank in the open and in open buildings on the site. There were two old vehicles to the front of the dwelling and several more in a garage next to the dwelling, which appeared to be the main workshop. The EN plan excludes the dwelling, some extensions to the side and rear, and the area to the front of both the dwelling and extensions.

6. The appellant supplied information and aerial photographs dating from 2001 to the present. This indicates that until 2007 the curtilage of the dwelling was tight to the edge of the buildings. The adjoining agricultural land (corresponding with the appeal site) was then acquired and the fences between it and the dwelling were removed. The appellant argues that this now forms part of the residential unit as a garden area. The Local Planning Authority disputes this and considers the land subject of the notice to have a lawful use for agriculture, as it has not been used for residential purposes for 10 years prior to the service of the EN because of the intensification of the storage use in 2016. As I agree with this conclusion (as set out below), I conclude that the land edged red in the EN is a separate planning unit as a matter of fact and degree in the particular circumstances of this case.

7. I have had regard to the English appeal decisions and the caselaw referred to by the appellant. One of the appeal decisions related to an appeal against a refusal to grant a certificate of lawful use or development for a large outbuilding, which is not directly comparable to this case. The conclusions reached in these decisions and judgements are that the question of whether a use is incidental to the enjoyment of the dwellinghouse is a matter of fact and degree, but the nature and scale of the activities are an important consideration. Caselaw has also established that just because an activity is a hobby it does not automatically follow that it is incidental to the enjoyment of the dwellinghouse. The courts have held that incidental uses should remain at all times ancillary or subordinate to the use of the dwellinghouse.

The appeal on ground (c)

8. Section 55 (2) of the Town and Country Planning Act 1990 specifies uses and operations that shall not involve development within the meaning defined in the Act. One of those so specified is: the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such. The appellant is a car enthusiast whose hobby is to repair and exhibit classic cars. The evidence is that there is no commercial activity taking place. The question is whether the claimed hobby use in this case can be described as incidental to the enjoyment of the dwellinghouse.

9. During my site visit, there was some evidence that the appellant had been clearing some material from the site and that this was hampered by poor ground conditions due to wet weather. However, there remained a considerable number of vehicles and a caravan on site together a large amount of scrap material, tyres etc. In any event, it is the use of the site at the time the notice was served that is at issue. The number of containers and outbuildings does not seem to be warranted by the number of classic cars present on site given the presence of the buildings attached to the dwelling.

10. Whilst it may be the case that cars are purchased for parts and are scrapped, this does not justify the level of scrap and other unrelated material that was present on the site. The storage is not related to any agricultural use. Indeed a considerable amount of material does not relate to classic car restoration. There were other cars, vehicles and caravans on the land. The presence of this material and other vehicles etc. is not explained or justified in the appellant's evidence, which relates solely to the use for classic car restoration. I consider that the scale of the site and extent of the storage of

these items on the land far exceeds what could be reasonably considered to be incidental to the enjoyment of the dwelling. The scale and nature of the storage on the land has materially changed the character of the site, be that as residential use or agricultural land.

11. For these reasons I conclude that a material change of use has occurred. In the absence of any planning permission for this change of use the appeal on ground (c) fails.

The appeal on ground (d)

12. Section 171B of the Town and Country Planning Act 1990 provides that in the case of a breach of planning control for a change of use (other than to use as a single dwellinghouse) no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. For operational development the relevant time limit is 4 years from the date of the breach.

13. Whilst the fences were removed when the land was acquired in 2007, the aerial photographs show that there was limited storage activity on the site until 2016. In 2016 the appeal site began to be used for the storage of the items described in the breach at a scale well beyond the storage seen in the images from 2007, 2009 and 2013. I conclude on the facts of the case that the breach of planning control commenced in 2016 when the storage associated with the hobby use and other storage on the site intensified significantly. Enforcement action was therefore taken within the period of ten years beginning with the date of the breach.

14. The appellant has indicated that the majority of structures on the site will be removed. However he points out that several of the containers on the site can be seen in the image from 2016 and as such they have been there for more than 4 years. Permanent containers such as these are considered to be buildings and as such they would be immune from enforcement action. The caselaw referred to me by the Council has established that a change of use EN can require the removal of operational development provided it is part and parcel and facilitates an unauthorised use irrespective of the fact that it has existed for more than 4 years. It is clear that these containers are used for storage and are part and parcel of the unauthorised use. The EN can therefore require their removal.

15. For these reasons I conclude that the appeal on ground (d) should fail.

The appeal on ground (f)

16. The appellant has confirmed that he is willing to comply with the requirements of the EN insofar as he would remove the majority of the structures, unlawful containers, caravans, vehicle parts, building material, windows and any debris from the site. In terms of vehicles and trailers, he requests that a limited number of vehicles and trailers be allowed to remain on the site.

17. The appellant suggests that the requirements could be amended to:

    (i) The land shall be used as a residential curtilage and no more than 10 vehicles and 3 trailers shall be stored on site.

    (ii) The removal of unlawful containers, caravans, vehicle parts, building material, windows, fence panels and posts and other stored items (with the exception of 10 vehicles and 3 trailers) along with the associated structures and any resultant debris from the Land in their entirety.

18. The difficulty with this approach is that the land does not have a lawful use for residential purposes and that curtilage is not a use. As noted above, the intensification in 2016 instituted a change of use from agricultural thereby ending any purported use for a purpose incidental to the enjoyment of a dwellinghouse. Turning to the suggested

number of vehicles and trailers. The Council considers this to lack precision as the size and nature of the vehicles and trailers is not specified. However, this would have been capable of correction without injustice by specifying for example, cars and car trailers. This would not alter the first consideration that the land does not have a lawful use for residential purposes.

19. Additionally, I have noted that the Local Planning Authority has not included the curtilage of the dwelling in the land subject to the EN. The use of this area and buildings for the storage and repair of cars as part of the hobby of repairing classic cars has not been called into question. No convincing evidence has been supplied to explain why the original curtilage and buildings are not sufficient for the appellant's hobby to continue.

20. For these reasons, I conclude that the appeal on ground (f) should fail.

The appeal on ground (g)

21. The appellant refers to attempts having already been made to clear some items from the site. These efforts have been hampered by poor ground conditions due to heavy rain. The appellant also refers to the complexity of removing heavier items in the winter months. The Local Planning Authority has also noted the appellant's difficulties in complying with the EN and has agreed that an extension of the time for compliance would be acceptable. In these circumstances, the evidence suggests that an increase of the time for compliance from 4 months to 6 months would be justified. The appeal on ground (g) succeeds to this extent.

Other Matters

22. The reasons for serving the EN also refer to the potential pollution of the site from substances such as petrol, diesel, oil, grease, washer fluid and other liquids leaking from the items stored in the open. The appellant argues that as he will remove most of these items from the site there will be no impact on the natural environment. As I am upholding the EN there is no need to consider this aspect any further.

23. The extension of curtilage and erection of stables at other nearby properties has no relevance and is not comparable to this enforcement case. As I have noted the EN does not relate to the residential use of the site. The Local Planning Authority has not alleged an industrial use as claimed by the appellant. The Council states that the use is visually akin to one. I have addressed the breach of planning control alleged in the EN.

Conclusion

24. For the above reasons and having regard to all other matters raised, I conclude that the appeal should succeed to a limited extent on ground (g) and the enforcement notice (as varied) is upheld.

25. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives

A L McCooey

INSPECTOR