
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 04/09/17

gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 12.09.17

Appeal Decision

Site visit made on 04/09/17

by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 12.09.17

Appeal Ref: APP/E6840/C/17/3172915

Site address: Land at the Chainbridge Inn, Kemeys Commander, Usk, NP15 1PP

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Mark Dew against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice was issued on 28 February 2017.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of the land to that for the storage of caravans, lorries, vans, scrap vehicles and scrap metal.
 - The requirements of the notice are to: (i) Remove all lorries, vans, caravans, scrap cars and scrap metal; and (ii) Cease the use of the land for the parking of lorries, vans, caravans, scrap cars and scrap metal.
 - The period for compliance with the requirements is 2 calendar months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words "Land adjacent to Chainbridge Inn, Chainbridge in the County of Monmouthshire shown edged red on the attached plan" and the substitution of the words "Land at the Chainbridge Inn, Kemeys Commander, Usk, NP13 1PP, shown edged red on the attached plan" in Schedule 1, and by the deletion of the words "Unauthorised change of use of land to that for the storage of caravans, lorries, vans, scrap vehicles and scrap metal" and the substitution of the words "Unauthorised change of use of the land to mixed use comprising use as a public house, use as a caravan and camping site, and use for the storage of caravans, lorries, vans, scrap vehicles and scrap metal" in Schedule 2, and varied by deletion of the words "Cease the use of the land for the parking of lorries, vans, caravans, scrap cars and scrap metal" and the substitution of the words "Cease the use of the land for the storage of caravans, lorries, vans, scrap vehicles and scrap metal" in Requirement (ii) in Schedule 4.
2. Subject to these corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. In the enforcement notice the land affected is described as "Land adjacent to Chainbridge Inn, Chainbridge in the County of Monmouthshire shown edged red on the attached plan". However, the land edged red on the enforcement notice plan includes the Chainbridge Inn itself (rather than being adjacent to it), and the Council's subsequent letters of notification use the address "The Chainbridge Inn, Kemeys Commander, Usk, NP15 1PP" (a more suitably precise address). Consequently, I consider the site address is more appropriately described as above, and I shall correct the notice accordingly.

Appeal under Ground (b)

4. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact, and the Appellant argues that the words "to that" in the alleged breach are incorrect as the enforcement site includes areas of land with lawful use as a public house and as a caravan and camping site. Consequently, it is submitted that the notice should have referred to change of use to mixed use including the storage matters listed in the breach, and so the notice is incorrect.
5. The Appellant is quite correct in this respect. The enforcement site encompasses all the land owned by Mr Dew at the Chainbridge Inn, including 2 parts with lawful use as a public house, including the car park, and as a caravan and camping site. The notice should refer to the mixed use in its description of the alleged breach of planning control, and the appeal is successful to the extent that this is recognised.
6. Section 176(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) says that: "*On an appeal under section 174 the Secretary of State may – (a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority*". That power is also transferred to an Inspector, and the courts have further established that an Inspector has a duty to use that power to correct or vary enforcement notices where necessary.
7. In this case, I am satisfied that there would be no injustice to the parties, and I will correct the notice to include appropriate reference to the mixed use in the alleged breach.

Appeal under Ground (c)

8. Turning now to the appeal under ground (c), this ground of appeal is that there has not been a breach of planning control, and the Appellant puts forward two arguments. The first is that all of the vehicles and caravans on the site are privately owned by Mr Dew and are not stored there for any commercial or business purposes. Thus, as the land includes areas of car park and a caravan and camping site, it is contended that planning permission is not required for its use for the storage of the owner's own vehicles and caravans. However, there is little merit in that argument.
9. When I visited the site I noted the presence of 2 white vans and 5 cars in the public house car park and in an area just to the south of the car park a range of other vehicles and equipment, including: a large lorry trailer with (what appeared to be) plumbed-in waste pipes; 3 more old vans (which appeared to be partially stripped for spare parts); a further scrap car; a large lorry (in reasonable condition); a smaller flat-bed lorry loaded with timber materials (also in reasonable condition); and 2 derelict caravans. In addition, there were several smaller pieces of equipment, some building materials, and numerous items of furniture and fittings. Whilst some of the

latter may well be items from the public house, the overwhelming majority of the vehicles, caravans and other scrap items stored on the site do not appear to have any association with the use of parts of the land as a public house or a caravan site.

10. The fact that they may be owned by Mr Dew is irrelevant. The number and nature of the vehicles, caravans and other equipment and materials stored on the site, and their lack of association with the lawful businesses on the site, leads me to the conclusion that, as a matter of fact and degree, there has been a material change of use of the land.
11. It is also argued that the materials described by the Council as scrap metal are in fact materials that have been stripped out of the public house, which is reported to be undergoing refurbishment, and that they are being stored temporarily prior to re-use. Whilst that may be possible for some of the materials lying around, bearing in mind the condition and the general state of storage, I consider that most is more likely to be scrap and not intended for re-use. Unfortunately, I was unable to gain access to the public house premises to make any further assessment of the report of its refurbishment. Thus, on this argument too, on balance I consider there to have been a material change in use of the land.
12. The appeal under ground (c) is unsuccessful.

Appeal under Ground (f)

13. Finally I turn to the appeal under ground (f), which is that the steps required to comply with the notice are excessive, and lesser steps would overcome the objections. The notice requires that use of the land shall cease for the parking of lorries, vans, caravans, scrap cars and scrap metal, and the Appellant says that the notice should not prevent lorries, vans and caravans being brought on to the site as that would prejudice his attempts to re-open the public house and the caravan and camping site.
14. To a large extent this concern is unnecessary, as matters associated with the pursuit of a lawful planning permission override the requirements of an enforcement notice. However, I consider that use of the term "parking" in requirement (ii) is misleading and potentially confusing. The breach refers to "storage", and I consider that would be the most appropriate term to use in specifying the requirement. It would also make it clear that the parking of such vehicles on the site in connection with its lawful uses would not conflict with the requirements of the notice.
15. I shall amend the notice accordingly and the appeal under ground (f) is successful to this extent.

Overall Conclusions

16. For the reasons given above I conclude that the appeal should succeed in part in relation to the matters raised under grounds (b) and (f). I shall uphold the enforcement notice with appropriate corrections and variations.
17. Mention has been made of the Appellant's intention to seek planning permission to retain the large lorry trailer for use in connection with the caravan and camping site. That is a matter for separate consideration by the Council.

Clive Nield

Inspector